

IN THE MATTER OF
STRUCTURAL CLAY PRODUCTS, INC. AND BRICK & TILE
SALES CORP. ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5467. Complaint, Oct. 16, 1946—Decision, May 28, 1948

Where a trade association, a corporate selling agency, and certain manufacturers of glazed brick and tile, namely—

(1) Said corporate trade association, organized in 1934 by the clay products industry under the code authority provisions of the National Industrial Recovery Act, which embraced in its membership manufacturers of all types of structural clay products, including manufacturers of glazed facing tile, herein concerned, and, upon invalidation of said act, reached agreement with the former code authorities representing the clay industry (including those joined in the instant proceeding), whereby it was to continue on a voluntary basis the activities which had been carried on under the code, and pursuant to which it recommended to manufacturers herein concerned the adoption of a plan for the establishment of regional sales agencies by said industry;

(2) An exclusive corporate selling agency which was one of a number of regional agencies established as a result of the aforesaid recommendation, by member manufacturers who owned its stock and supplied its officers and directors, and through which said manufacturers cooperated to suppress competition and fix and maintain the price of said product; and

(3) Five manufacturers who sold annually, through their aforesaid selling agent and its subagents, over 60 percent of the glazed facing tile shipped from their producing area of Pennsylvania and Ohio to purchasers in various States—

(a) Cooperated between and among themselves in establishing, adopting and continuing a common course of action and agreement resulting in substantial frustration of competition in the sale and distribution of glazed facing tile; and

Where said corporate selling agency and manufacturers, in pursuance and in furtherance of the aforesaid common course of action, etc., and its objectives—

(1) Agreed that said selling agent should be the exclusive seller of the tile made by them, and through it agreed upon prices and pricing methods for their products under a plan dividing their trade area, which consisted of most of the United States east of the Rocky Mountains, by counties into about 40 zones; and maintained and published pricing schedules giving the delivered price, including terms and conditions, for all glazed facing tile sold therein;

Whereby the purchaser was quoted a delivered price consisting of a mill net price plus an arbitrary charge in lieu of the actual freight from the nearest manufacturing plant; and purchasers located in that section of any zone which had the lowest freight rate from the nearest plant were required to

pay a higher mill net price than purchasers in other sections which had a higher freight rate, and were deprived thereby of the natural price advantage which ordinarily attaches to such proximity; and

Where said selling agent, in pursuance of said plan and undertaking—

- (2) Established and maintained a method of uniform classification of types and sizes of glazed facing tile for the purpose of quoting matched delivered prices for all manufacturers here involved;
- (3) Established and maintained a policy of limiting the sale of said member manufacturers' second quality tile by restricting the terms and conditions under which it might be sold by any subagent; and
- (4) Established, maintained, and published lists of dealers and subagents, and fixed and determined the amount of trade and cash discounts applicable to all sales; and

Where aforesaid trade association, in pursuance of said undertaking, etc.—

- (5) Cooperated with said manufacturers by originally devising, recommending, and assisting in the establishment of said selling agent; and

Where said manufacturers—

- (6) Mutually and reciprocally enforced their contracts with said selling agent, as a means of facilitating the policing of one another's activities, and to prevent one another from departing from the established prices, terms, and conditions of sale and other contractual arrangements with said agent, by filing (together with subagents) copies of all invoices showing sales made, prices, and related terms and conditions of sale, and by agreeing upon a method of calculating damages to be paid by manufacturers or subagents making price quotations or sales in violation of such contracts; and
- (7) Collectively and collusively used other methods and means to effect their common purpose and design to suppress competition among themselves and between themselves and their competitors in the production, sale and distribution of said product; and

Where each of said manufacturers—

- (b) Contributed to the accomplishment and effectiveness of the aforesaid acts, things and results by using a zoning method of computing delivered price quotations, and by discriminating among its customers through charging high net prices from customers located nearer its plant than from those more distantly located; whereby each matched its quotations on a delivered basis with the quotations of other members;

Inherent effects of which methods and practices included the substantial lessening of competition among said members, unfair and oppressive discrimination against portions of the purchasing public in large areas by depriving them of the advantage of proximity to factories, and by requiring them to pay increases over prices fixed by competition; and

Dangerous tendency and capacity of which were unreasonably to restrain competition in the sale of their products:

Held, That such acts and practices constituted unfair methods of competition in commerce and unfair acts and practices therein.

Mr. Lynn C. Paulson for the Commission.

Sanders, Gravelle, Whitlock & Howrey, of Washington, D. C., for respondents.

Complaint

44 F. T. C.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties and for other purposes," the Federal Trade Commission, having reason to believe that the respondents named and represented in the caption hereof have been and are using unfair methods of competition and unfair or deceptive acts or practices in commerce as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be to the interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Structural Clay Products, Inc., is a Delaware corporation, with its office and principal place of business at 1756 K Street, Washington, D. C.

Respondent, Brick & Tile Sales Corp., is a Delaware corporation with its office and principal place of business at 123 South Main Street, Canton, Ohio.

Respondent, Continental Clay Products Co., is a Pennsylvania corporation with its office and principal place of business at Post Office Box 488, East Canton, Ohio.

Respondent, The Mapleton Clay Products Co., is an Ohio corporation with its office and principal place of business at Mapleton, Ohio, mailing address Box 488, Canton, Ohio.

Respondent, The Metropolitan Paving Brick Co., is an Ohio corporation with its office and principal place of business at the Renkert Building, Canton, Ohio.

Respondent, The National Fireproofing Corp., is a Pennsylvania corporation with its office and principal place of business at the Republic Building, Pittsburgh, Pa.

Respondent, The Stark Brick Co., is an Ohio corporation with its office and principal place of business at East Canton, Ohio.

The aforesaid respondents, Continental Clay Products Co., The Mapleton Clay Products Co., The Metropolitan Brick Co., The National Fireproofing Corp., and The Stark Brick Co., for convenience, are sometimes hereinafter referred to as respondent manufacturers; respondent, Brick & Tile Sales Corp., for convenience, is sometimes hereinafter referred to as respondent selling agent; and respondent, Structural Clay Products, Inc., is sometimes hereinafter referred to as respondent, S. C. P. I.

PAR. 2. Respondent manufacturers are engaged in the manufacture of glazed facing tile. This product is in general use throughout the

country as an interior finish in public and private structures, and dwelling houses, for decorative, sanitary, and other purposes.

Respondent manufacturers sell annually over 30,000,000 brick equivalent units of glazed facing tile, which in 1943 amounted to over 60 percent of the glazed facing tile shipped from the respondents' producing area of Pennsylvania and Ohio.

PAR. 3. Respondent, Structural Clay Products, Inc., was organized in 1934 by the clay products industry under the code authority provisions of the National Industrial Recovery Act. It is a voluntary trade association. The membership consists of the manufacturers of all types of structural-clay products including the respondent manufacturers of glazed brick and tile.

Upon invalidation of the National Industrial Recovery Act the former code authorities representing the clay industry including respondents reached agreement with respondent, S. C. P. I., for the latter to continue the activities, which had been carried on under the code, on a voluntary basis. Pursuant to this end, respondent, S. C. P. I., recommended to respondent manufacturers the adoption of a plan for the establishment of regional sales agencies by the clay industry. Following this recommendation a number of regional sales agencies, including respondent selling agent, were established by the member manufacturers of respondent, S. C. P. I., in the various producing regions.

PAR. 4. Respondent, Brick & Tile Sales Corp., is a corporation organized under the laws of the State of Delaware. Its voting stock is entirely owned by respondent manufacturers, and its officers and directors consist of individuals affiliated with said respondent manufacturers. It was organized in 1935 following the recommendation and plan presented to the members of the clay industry by respondent, S. C. P. I., alleged in paragraph 3 hereof. Respondent selling agent has executed contracts with respondent manufacturers by which it has been appointed their exclusive distributor to sell, offer for sale, or take orders for glazed facing tile. The actual selling, however, is done by subagents appointed by the selling agent with the consent of respondent manufacturers.

Respondent selling agent has at all times herein mentioned served as a vehicle or medium through which respondent manufacturers have jointly and cooperatively operated to suppress competition and fix and maintain the price of glazed facing tile.

PAR. 5. Respondent manufacturers in the regular course and conduct of their business sell and ship, or cause to be sold and shipped, through respondent selling agent and its subagents glazed facing tile to pur-

Complaint

44 F. T. C.

chasers located in the various States of the United States and the District of Columbia, and during the time referred to herein, have carried on and engaged in, and do now carry on and engage in commerce, as the term "commerce" is defined in the Federal Trade Commission Act.

Respondent, S. C. P. I., has at all times mentioned herein cooperated with, assisted and served as an implement or vehicle for the promotion of the mutual interest of respondent manufacturers and respondent selling agent.

PAR. 6. For more than 5 years last past respondents have done and performed, and are now doing and performing, unfair acts and practices, have engaged in and are now engaging in unfair methods of competition, in violation of section 5 of the Federal Trade Commission Act in that they have acted, and are still acting, wrongfully and unlawfully by cooperating between and among themselves in establishing, adopting, and continuing a common course of action, concert of action, and agreement, resulting in substantial hindrance, frustration, restraint, suppression, and prevention of competition in the sale and distribution of glazed facing tile in trade and commerce, as "commerce" is defined in the Federal Trade Commission Act.

Pursuant to, in furtherance of, and in order to effectuate the purposes and objectives of the aforesaid cooperation and common course of action respondents, as a part of their said cooperation, common course of action and agreement have formulated, adopted, performed, and put into effect, among others, the overt acts and used the methods, systems, practices, and policies listed, described, and set forth in the immediately succeeding subparagraphs numbered 1 to 4, inclusive, of this paragraph 6:

1. Respondents have collectively and collusively, and are now collectively and collusively pricing, distributing, and selling their products by means of a common selling agent, the respondent, Brick & Tile Sales Corp. By and through contracts with this agent, they have agreed that the selling agent shall be the exclusive seller of the glazed facing tile which they manufacture. Through the selling agent they have agreed upon prices, and pricing methods for their products, the pricing plan in use being as follows, to wit:

(a) The trade area for the respondents which consists of most of the United States east of the Rocky Mountains is divided by counties into approximately forty territories, zones or areas, for each of which respondents, through respondent selling agent, have established, maintained, and published pricing schedules giving the delivered price, including terms and conditions of sale, for all glazed facing tile sold

within any of the aforesaid zones. Under this system the purchaser is quoted a delivered price consisting of a mill net price plus an arbitrary charge in lieu of the actual freight rate from the nearest plant of respondent manufacturers. Upon delivery, the purchaser pays the actual freight to the carrier and deducts the actual freight charge from the quoted price and remits the balance to the respondents. The delivered prices established by the selling agent under this system are discriminatory in that purchasers located in that section of any area or zone having the lowest freight rate from the nearest respondent manufacturer's plant is required to pay a higher mill net price for glazed tile than purchasers in other sections of the same zone having a higher freight rate. In this manner purchasers located nearer the respondent's plants are deprived of their natural price advantage ordinarily attached to such proximity.

(b) The selling agent has established and maintained a method of uniform classification of types and sizes of glazed facing tile for the purpose of quoting matched delivered prices for all respondent manufacturers.

(c) The selling agent has established and maintained a policy of limiting the sale of respondent manufacturers' second quality tile by restricting the terms and conditions under which it may be sold by any subagent.

(d) The selling agent has established, maintained and published lists of dealers and subagents and has fixed and determined the amount of trade and cash discounts applicable to all sales.

2. Respondent, S. C. P. I., has cooperated with respondent manufacturers by originally devising, recommending, and assisting in the establishment of the respondent selling agent.

3. Respondent manufacturers mutually and reciprocally enforce their contracts with the respondent selling agent by and through the selling agent in the following manner:

(a) To facilitate policing of each others' activities and to prevent each other from departing from the established prices, terms, and conditions of sale, and other contractual arrangements with the selling agent, respondent manufacturers and subagents file copies of all invoices showing sales made, prices, and related terms and conditions of sale with respondent selling agent.

(b) Respondent manufacturers have agreed with the selling agent upon a method of calculating damages to be paid by manufacturers or subagents where price quotations or sales in violation of the aforesaid contracts are made by manufacturers or subagents.

Complaint

44 F. T. C.

4. Respondents have collectively and collusively used other methods and means to effectuate their common purpose and design to suppress, hinder, and lessen competition among themselves and between themselves and their competitors in the production, sale, and distribution of glazed facing tile.

PAR. 7. Each of the respondent manufacturers has contributed to the accomplishment and effectiveness of the acts, things, and results alleged in the immediately preceding paragraph 6 hereof through its—

1. Use of a zoning method of computing, formulating, and using delivered price quotations when other respondent members simultaneously do likewise and by which it is enabled to, and does, match its quotations on a delivered basis with the quotations of other respondent manufacturers.

2. Discrimination between and among its customers through its demanding, charging, accepting, and receiving higher net prices from its customers located near its plant than from its customers more distantly located for goods of like grade, quality, and quantity, and thereby is enabled to, and does, match its quotations on a delivered basis with the quotations of other respondent members.

PAR. 8. The inherent effects of the adoption and maintenance by the respondent manufacturers of the methods and practices described and alleged in paragraphs 6 and 7 herein include, all and singularly, the following, to wit:

1. Substantial lessening of competition among respondent manufacturers.

2. Unfair and oppressive discrimination against portions of the purchasing public in large areas by depriving such purchasers of the advantage which would otherwise accrue to them as a result of their proximity to the factories of respondent members, and by requiring such purchasers to pay increases over what the net prices to such purchasers would have been if such net prices had been fixed by competition among respondents.

PAR. 9. The combination, agreements, and understandings of the respondents and the acts, practices, pricing methods, systems, devices, and policies as hereinbefore alleged, all and singularly, are unfair and to the prejudice of the public; deprive the public of the benefit of competition; promote discrimination against some buyers and users of respondents' products; have a dangerous tendency and capacity to restrain unreasonably competition in the sale of such products in commerce; and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the meaning of Section 5 of the Federal Trade Commission Act as amended.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 16, 1946, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with using unfair methods of competition and unfair and deceptive acts or practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answers, the Commission, by order entered herein, granted respondents' motion for permission to withdraw said answers and substitute therefor answers admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts. The filing of the substitute answers having been conditioned upon a recommendation by counsel supporting the complaint of a form of order agreed upon between counsel, and said recommended order having been altered by the Commission to the extent and for the reasons shown in the tentative order entered herein on January 26, 1948, respondents were afforded opportunity to show cause why the recommended order, as modified, should not be entered as an order to cease and desist; and respondents not having appeared in response to said leave to show cause, the substitute answers were duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answers; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. (A) Respondent, Structural Clay Products, Inc., is a corporation organized and existing under the laws of the State of Delaware, with its office and principal place of business at 1756 K Street, Washington, D. C. It is a voluntary trade association organized in 1934, by the clay-products industry under the code of authority provisions of the National Industrial Recovery Act. Its membership consists of the manufacturers of all types of structural clay products, including the manufacturers of glazed brick and tile named in subparagraphs (C) to (G), inclusive, hereof (sometimes hereinafter referred to as respondent manufacturers). Upon invalidation of the National Industrial Recovery Act, the former code authorities

representing the clay industry, including respondents herein, reached agreement with respondent Structural Clay Products, Inc., for latter to continue on a voluntary basis the activities which had been carried on under the code. Pursuant to this end, respondent, Structural Clay Products, Inc., recommended to respondent manufacturers the adoption of a plan for the establishment of regional sales agencies by the clay industry. Acting upon this recommendation, the member manufacturers of respondent, Structural Clay Products, Inc., established a number of regional sales agencies in the various producing regions, including respondent Brick & Tile Sales Corp. (sometimes hereinafter referred to as respondent selling agent). Respondent, Structural Clay Products, Inc., has at all times mentioned herein cooperated with, assisted, and served as an implement or vehicle for the promotion of the mutual interest of respondent manufacturers and respondent selling agent.

(B) Respondent, Brick & Tile Sales Corp., is a corporation organized and existing under the laws of the State of Delaware, with its office and principal place of business at 123 South Main Street, Canton, Ohio. Its voting stock is entirely owned by respondent manufacturers, and its officers and directors consist of individuals affiliated with said respondent manufacturers. It was organized in 1935 following the aforesaid recommendation and plan presented to the members of the clay industry by respondent, Structural Clay Products, Inc. Respondent, selling agent, has executed contracts with respondent manufacturers by which it has been appointed their exclusive distributor to sell, offer for sale, or take orders for glazed facing tile. The actual selling, however, is done by subagents appointed by the selling agent with the consent of respondent manufacturers. Respondent selling agent has, at all times herein mentioned, served as a vehicle or medium through which respondent manufacturers have jointly and cooperatively operated to suppress competition and fix and maintain the price of glazed facing tile.

(C) Respondent, Continental Clay Products Co., is a corporation organized and existing under the laws of the State of Pennsylvania, with its office and principal place of business at East Canton, Ohio.

(D) Respondent, The Mapleton Clay Products Co., is a corporation organized and existing under the laws of the State of Ohio, with its office and principal place of business at Mapleton, Ohio.

(E) Respondent, The Metropolitan Paving Brick Co., is a corporation organized and existing under the laws of the State of Ohio, with its office and principal place of business in the Renkert Building, Canton, Ohio.

(F) Respondent, The National Fireproofing Corp., is a corporation organized and existing under the laws of the State of Pennsylvania, with its office and principal place of business in the Republic Building, Pittsburgh, Pa.

(G) Respondent, The Stark Brick Co., is a corporation organized and existing under the laws of the State of Ohio, with its office and principal place of business at East Canton, Ohio.

PAR. 2. The aforesaid respondent manufacturers are engaged in the manufacture of glazed facing tile. This product is in general use throughout the country as an interior finish for decorative, sanitary, and other purposes in public and private structures and dwelling houses. Respondent manufacturers sell annually over 30,000,000 brick-equivalent units of glazed facing tile, which in 1943 amounted to over 60 percent of the glazed facing tile shipped from the respondents' producing area of Pennsylvania and Ohio. In the regular course and conduct of their business, respondent manufacturers sell and ship glazed facing tile, or cause it to be sold and shipped, through respondent selling agent and its subagents to purchasers located in the various States of the United States and in the District of Columbia, and during the time referred to herein they have maintained, and do now maintain a course of trade in glazed facing tile in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. (A) For more than 5 years last past respondents have been cooperating between and among themselves in establishing, adopting, and continuing a common course of action, concert of action, and agreement resulting in substantial hindrance, frustration, restraint, suppression, and prevention of competition in the sale and distribution of glazed facing tile in trade in commerce, as "commerce" is defined in the Federal Trade Commission Act. Pursuant to, in furtherance of, and in order to effectuate the purposes and objectives of the aforesaid cooperation and common course of action, respondents, as a part of their said cooperation, common course of action, and agreement have formulated, adopted, and put into effect the methods, systems, practices, and policies set forth below in subparagraphs (B) and (E), inclusive, of this paragraph.

(B) Respondents have collectively and collusively priced, and are now pricing, distributing, and selling their products by means of a common selling agent, the respondent, Brick & Tile Sales Corp. By, and through contracts with this agent, they have agreed that the selling agent shall be the exclusive seller of the glazed facing tile which they manufacture. Through the selling agent they have agreed upon prices and pricing methods for their products, the pricing plan

Findings

44 F. T. C.

in use being as follows: The trade area for the respondents—which consists of most of the United States east of the Rocky Mountains—is divided by counties into approximately 40 territories, zones, or areas, for each of which respondents, through respondent selling agent, have established, maintained, and published pricing schedules giving the delivered price, including terms and conditions of sale, for all glazed facing tile sold within any of the aforesaid zones. Under this system the purchaser is quoted a delivered price consisting of a mill net price, plus an arbitrary charge in lieu of the actual freight rate from the nearest plant of respondent manufacturers. Upon delivery, the purchaser pays the actual freight to the carrier and deducts the actual freight charge from the quoted price and remits the balance to the respondents. The delivered prices established by the selling agent under this system are discriminatory in that purchasers located in that section of any area or zone which has the lowest freight rate from the nearest respondent manufacturer's plant is required to pay a higher mill net price for glazed tile than purchasers in other sections of the same zone which have a higher freight rate. In this manner purchasers located nearer the respondents' plants are deprived of their natural price advantage ordinarily attached to such proximity. The selling agent has established and maintained a method of uniform classification of types and sizes of glazed facing tile for the purpose of quoting matched delivered prices for all respondent manufacturers. The selling agent has established and maintained a policy of limiting the sale of respondent manufacturers' second quality tile by restricting the terms and conditions under which it may be sold by any subagent. The selling agent has established, maintained, and published lists of dealers and subagents and has fixed and determined the amount of trade and cash discounts applicable to all sales.

(C) Respondent, Structural Clay Products, Inc., has cooperated with respondent manufacturers by originally devising, recommending, and assisting in the establishment of the respondent selling agent.

(D) Respondent manufacturers mutually and reciprocally enforce their contracts with the respondent selling agent by and through the selling agent in the following manner: To facilitate policing of one another's activities and to prevent one another from departing from the established prices, terms, conditions of sale, and other contractual arrangements with the selling agent, respondent manufacturers, and subagents file with respondent selling agent copies of all invoices showing sales made, prices, and related terms and conditions of sale. Respondent manufacturers have agreed with the selling agent upon a method of calculated damages to be paid by manufacturers or sub-

agents where price quotations or sales in violation of the aforesaid contracts are made by manufacturers or subagents.

(E) Respondents have collectively and collusively used other methods and means to effectuate their common purpose and design to suppress, hinder, and lessen competition among themselves, and between themselves and their competitors, in the production, sale, and distribution of glazed facing tile.

PAR. 4. Each of the respondent manufacturers has contributed to the accomplishment and effectiveness of the acts, things, and results set out in paragraph 3 hereof by the following methods: Use of a zoning method of computing, formulating, and using delivered-price quotations when other respondent members simultaneously do likewise, and by which it is enabled to, and does match its quotations on a delivered basis with the quotations of other respondent manufacturers; and, further, by discrimination between and among its customers through its demanding, charging, accepting, and receiving higher net prices for goods of like grade, quality, and quantity from its customers located near its plant than from its customers more distantly located, and thereby is enabled to, and does, match its quotations on a delivered basis with the quotations of other respondent members.

PAR. 5. The inherent effects of the adoption and maintenance by the respondent manufacturers of the methods and practices described in paragraphs 3 and 4 herein include, all and singularly, the following: Substantial lessening of competition among respondent manufacturers, and unfair and oppressive discrimination against portions of the purchasing public in large areas by depriving such purchasers of the advantage which would otherwise accrue to them as a result of their proximity to the factories of respondent members, and by requiring such purchasers to pay increases over what the net prices to such purchasers would have been if such net prices had been fixed by competition among respondents.

PAR. 6. The Commission concludes, and therefore finds, that the capacity, tendency, and effect of the combination, agreements, and understandings established and maintained among respondents as aforesaid, and of the acts, practices, pricing methods, systems, devices, and policies followed pursuant thereto, as hereinbefore found, all and singularly, are unfair and to the prejudice of the public, deprive the public of the benefits of competition, promote discrimination against some buyers and users of respondents' products, and have a dangerous tendency and capacity unreasonably to restrain competition in the sale of respondents' products in commerce.

Order

44 F. T. C.

CONCLUSION

The aforesaid acts and practices of respondents constitute unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and substitute answers by respondents, in which answers respondents admit all of the material allegations of fact set forth in said complaint and waive all intervening procedure and further hearing as to the facts, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondents, Brick & Tile Sales Corp., Continental Clay Products Co., The Mapleton Clay Products Co., The Metropolitan Paving Brick Co., The National Fireproofing Corp., and The Stark Brick Co., their respective officers, agents, representatives, and employees, in or in connection with the offering for sale, sale, and distribution of glazed facing tile in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, agreement, combination, or conspiracy between any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts or practices:

1. Continuing, establishing, or maintaining any common sales agent by or through which the prices, terms, or conditions of sale for their glazed facing tile are established, fixed or maintained, and from otherwise fixing, establishing, or maintaining prices, terms, or conditions of sale for their said glazed facing tile.

2. Continuing, establishing, or maintaining any agency, system, or method for promoting adherence to prices, terms, or conditions of sale for their glazed facing tile, regardless of how such prices, terms, or conditions of sale are established or announced.

3. Selecting outlets for substandard glazed facing tile or limiting the sale of such glazed facing tile to designated outlets.

4. Continuing, establishing, or maintaining any classification of types or sizes of glazed facing tile for the purpose or with the effect of restraining price competition in the sale of such products.

5. Continuing, establishing, or maintaining policies or practices respecting the selection, designation, or classification of dealers, or respecting the terms or conditions of sale to dealers, or respecting the division of sales between dealers and respondents or any of them.

6. Using a zoning method of computing or formulating delivered-price quotations when other respondents simultaneously do likewise and by which any respondent is enabled to, and does, match its quotations on a delivered basis with the quotations of other respondents.

7. Discriminating between and among purchasers of glazed facing tile through demanding, charging, or accepting for glazed facing tile of like grade, quality, and quantity, higher net prices from purchasers located near the producing plant of the seller than from purchasers more distantly located with respect to such plant, and whereby any respondent is enabled to, and does, match its price quotations on a delivered basis with the price quotations of other respondents.

Provided, however, That nothing contained in paragraphs 1 to 5, inclusive, of this order shall be construed as prohibiting the establishment of a sales agency which does not prejudice the public interest by tending unduly to restrict competition or tending unduly to obstruct the course of trade.

It is further ordered, That Structural Clay Products, Inc., its officers, representatives, agents, and employees, do forthwith cease and desist from instigating, aiding, assisting, or cooperating in doing or performing any of the things prohibited in paragraphs 1 to 7, inclusive, of this order.

It is further ordered, That the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
STRUCTURAL CLAY PRODUCTS, INC., COLONIAL CLAYS,
INC., ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5468. Complaint, Oct. 16, 1946—Decision, May 28, 1948

In a proceeding in which various manufacturer sellers, their corporate selling agency, and their trade association were charged with violation of the provisions of section 5 of the Federal Trade Commission Act, through the concerted use, among other things, of certain means of price fixing under which each manufacturer was able to and did match the delivered quotations of any other to a given purchaser on a given order, as the result of the use of a zoning method of computing delivered price quotations and under which they charged higher net prices from customers located near their plants than from those more distant: said systematic discriminations resulted in part because of their failure to make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered.

Where a trade association, a corporate selling agency, and certain manufacturers of sand-struck brick, namely—

(1) Said corporate association, organized in 1934 by the clay products industry under the code authority provisions of the National Industrial Recovery Act, which embraced in its membership manufacturers of all types of structural clay products, including manufacturers of sand-struck brick herein concerned, and which, upon invalidation of said act, reached agreement with the former code authorities representing said industry (including those joined in the instant proceeding), whereby it was to continue on a voluntary basis the activities which had been carried on under the code, and pursuant to which it recommended to manufacturers herein concerned the establishment of regional sales agencies by said industry;

(2) A corporate selling agency which was one of a number of regional agencies established as a result of the aforesaid recommendation, by member manufacturers, who owned all the stock, and officers and directors of which consisted of individuals affiliated with them; and which was designated the exclusive selling agent for their products (and for which they were sub-agents), and through which they cooperated to suppress competition and fix and maintain the price of said products; and

(3) Nine manufacturers of sand-struck brick in Connecticut and Massachusetts, which sold some 75,000,000 bricks a year, with their 1944 production amounting to about 75 percent of all the bricks shipped by New England brick manufacturers;

(a) Cooperated in a common course of action and agreement resulting in substantial frustration and prevention of competition in the sale and distribution of brick in trade and commerce; and