

sixty (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 the order to cease and desist.

IN THE MATTER OF
INTERSTATE RUBBER AND MANUFACTURING
COMPANY, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 7006. Complaint, Dec. 23, 1957—Decision, Nov. 28, 1960

Order dismissing, for failure of proof, complaint charging New York and New Jersey respondents with representing falsely, by use of a "hallmark" and on labels on their products and in promotional literature distributed to dealers, that three adhesives for the installation of clay tile which they distributed complied with Commercial Standard 181-52 of the U.S. Department of Commerce.

Mr. Edward F. Downs and *Mr. Garland S. Ferguson* for the Commission.

Breeden, Howard & MacMillan, of Norfolk, Va., and *Mr. George H. Hafner*, of Woodhaven, N.Y., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

The respondents are charged with falsely representing that their products "Carbo-cement DC-40", "Mason-Mastic B-20", and "Mason-Mastic B-30", complied with the requirements of Commercial Stand-

1202

Decision

ard 181-52, issued by the United States Department of Commerce. This Commercial Standard covers water-resistant organic adhesives for installation of clay tile, and specifies minimum requirements and methods of test for stability in storage, sheer strength under various temperatures and conditions of use, sheer strength at intervals of time, cohesive strength immediately after application, solubility in water, and resistance to mold growths.

The respondents deny the charges and hearings have been held at New York, New York, Philadelphia, Pennsylvania and Washington, D.C. After the Commission rested its case, the respondents filed a motion that the complaint herein be dismissed on the following grounds:

1. The complaint filed in this proceeding alleges that on December 23, 1957, and for several years prior to December 23, 1957, the respondents engaged in "false, misleading and deceptive practices", but no evidence adduced in this proceeding relates to the allegations of the complaint, which allegations were directly denied in respondents' answer.

2. The testimony of complainant's witness, John Parsons Frenck, should be struck and the complaint dismissed, as Witness Frenck, by his own admission and testimony, was not qualified to conduct the test of respondents' products as specified in Commercial Standard 181-52.

3. The evidence shows conclusive that Witness Frenck failed to properly conduct all tests involving "constant weight" in accordance with the provisions of Commercial Standard 181-52.

4. The evidence shows conclusively that Witness Frenck failed to determine the absorption of the tile used in the test conducted of respondents' product; and, further, that the tests he did conduct established that 60 percent of the tile tested failed to pass the absorption test required by Commercial Standard 181-52.

5. That portion of the Bill of Complaint relating to respondents' product "Mason-Mastic B-30" should be dismissed, as no test data or proof of defect of any nature was presented by the complainant.

6. That portion of the Bill of Complaint relating to "Carbo-Cement DC-40" should be dismissed as the complainant has failed to prove that respondents' annual gross interstate sales of the product were "substantial."

It is the opinion of the hearing examiner there is no merit to the contention of the respondents with reference to grounds 1, 2 and 6 of the motion. The reasons for arriving at such a conclusion will not be discussed in view of the manner in which the motion is disposed.

The only testimony offered in support of the complaint relating to the alleged failure of respondents' products to meet the requirements of Commercial Standard 181-52 was that of a technician who conducted tests in relation to requirements for sheer strength of "Carbo-cement DC-40" and "Mason-Mastic B-20". There was no evidence offered with respect to "Mason-Mastic B-30" complying or failing to comply with the Commercial Standard.

Commercial Standard 181-52 set forth the type of tile to be used in making the tests and the method of test to be employed to determine if the product meets the requirements.

It is the opinion of the hearing examiner that the tile used in the subject tests did not meet the requirements of the Commercial Standard and the tests were not conducted as directed by the Commercial Standard. The testimony received in this case fails to substantiate the charges of the complaint, and for the reasons stated the motion of the respondents to dismiss should be allowed.

ORDER

It is ordered, That the complaint herein be, and it hereby is, dismissed without prejudice.

FINAL ORDER

Counsel supporting the complaint having filed an appeal from the hearing examiner's initial decision dismissing the complaint herein, and the matter having been heard by the Commission on the whole record, including briefs and oral argument; and

The Commission having concluded that the hearing examiner's initial decision is correct, both on the law and the facts, and that it constitutes an appropriate disposition of this proceeding:

It is ordered, That the appeal of counsel supporting the complaint be, and it hereby is, denied.

It is further ordered, That the hearing examiner's initial decision be, and it hereby is, adopted as the decision of the Commission.

IN THE MATTER OF

ALPINE QUILTING COMPANY, INC., ET AL.