

Complaint

59 F.T.C.

with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist.

IN THE MATTER OF
ROYAL TILE CO. OF NORTH PHILADELPHIA ET AL.
CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 8286. Complaint, Feb. 8, 1961—Decision, Sept. 7, 1961

Consent order requiring 17 associated companies engaged in the retail sale of rubber and asphalt tile and other floor coverings in several States, to cease falsely representing excessive prices as the usual prices for their merchandise and the difference between such amounts and the sale prices, as savings for purchasers, through use of such typical statements in newspaper advertisements as "Flexitone Tile 12¢ each Reg. 17¢", "Congo-Wall, original 59¢, Run ft. 5 Run Foot for \$1", etc.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the respondents described in the caption hereof have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Royal Tile Co. of North Philadelphia, Royal Tile Co. of South Philadelphia, and Royal Tile Co. of Suburban Philadelphia are corporations organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania with their main offices and principal place of business located at 424 Central Avenue, Cheltenham, Pennsylvania.

Respondent Royal Tile Co. of Eastern Maryland is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its main office and principal place of business located at 424 Central Avenue, Cheltenham, Pennsylvania.

Respondents Royal Tile Co. of Central New Jersey and Royal Tile Co. of Southern New Jersey are corporations organized, existing and doing business under and by virtue of the laws of the State of New

Jersey with their main office and principal place of business located at 424 Central Avenue, Cheltenham, Pennsylvania.

Individual respondents Jack Tizer and Vivian Tizer are officers of all the corporate respondents named in Paragraph One. They formulate, direct and control the acts and practices of the corporate respondents, including the acts and practices herein set forth. Their address is the same as that of the corporate respondents named in Paragraph One hereof.

PAR. 2. Respondents Royal Tile Co. of Eastern Pennsylvania, Royal Tile Co. of Delaware Valley, Royal Tile Co. of West Philadelphia, Royal Tile Co. of Central Pennsylvania, Royal Tile Co. of Beaver Valley, Royal Tile Co. of Greater Pittsburgh, Royal Tile Co. of Suburban Pittsburgh, and Royal Tile Co. of Western Pennsylvania are corporations organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania with their principal office and place of business located at 296 Keswick Avenue, Glenside, Pennsylvania.

Respondents Royal Tile Co. of Northern Massachusetts, Royal Tile Co. of Southeast Massachusetts, and Royal Tile Co. of Mid-Massachusetts are corporations organized, existing and doing business under and by virtue of the laws of the State of Massachusetts with their main office and principal place of business located at 296 Keswick Avenue, Glenside, Pennsylvania.

Individual respondents William Tizer and Frank Ochman are officers of all of the corporate respondents named in Paragraph Two herein. They formulate, direct and control the acts and practices of said corporate respondents, including the acts and practices herein set forth. Their address is the same as that of the corporate respondents named in Paragraph Two hereof.

PAR. 3. Respondent Jack Tizer owns and controls individual proprietorships which do business under the name of Royal Carpet and Linoleum Company in Long Island, New York, Cleveland, Ohio, Los Angeles, California, and Richmond, Virginia.

Respondent William Tizer owns and controls individual proprietorships which do business under the names of Royal Tile Co. of Coatsville, Pennsylvania, Royal Tile Co. of Eastern Pennsylvania, and Royal Tile Co. of Wilkes-Barre, Pennsylvania.

PAR. 4. All respondents are engaged in the sale of rubber and asphalt tile and other floor coverings at retail direct to the consuming public.

PAR. 5. In the course and conduct of their business, respondents have been and are engaged in disseminating and causing to be dissemi-

nated in newspapers of interstate circulation, advertisements designed and intended to induce sales of their merchandise.

In the further course and conduct of their business, respondents are now, and for some time last past have been, transmitting and receiving, by the United States mails and by other means, newspaper advertising mats, checks, sales memoranda and other written documents to and from respondents' various places of business in the United States and all respondents have been and are engaged in extensive commercial intercourse in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. Among and typical but not all inclusive of the statements appearing in the advertisements described in Paragraph Five are the following:

Flextone Tile 12¢ each Reg. 17¢
Congo-Wall, original 59¢, Run ft.
5 Run Foot for \$1.
Genuine Sandran, Reg. 1.79, 93¢ lin. ft.
Rubber Tile 16¢ ea. Reg. 24¢

PAR. 7. Through the use of the higher amounts in connection with the words "Reg." and "original" the respondents represented that said amounts were the prices at which they had usually and customarily sold the merchandise referred to in the recent and regular course of business and through the use of the said higher amounts and the lesser amounts represented savings from the prices at which the merchandise referred to had been sold by respondents in the recent regular course of their business.

PAR. 8. The aforesaid representations were and are false, misleading and deceptive. In truth and in fact the amounts set out in connection with the words "Reg." and "original" were in excess of the prices at which the merchandise referred to had been sold by respondents in the recent regular course of their business and the differences between said amounts and the lesser amounts did not represent savings from the prices at which the merchandise had been sold by respondents in the recent regular course of their business.

PAR. 9. At all times mentioned herein, respondents have been and are in substantial competition, in commerce, with corporations, firms and individuals in the sale of rubber and asphalt tile and other types of floor covering of the same general kind and nature as those sold by respondents.

PAR. 10. The use by respondents of the aforesaid false, misleading and deceptive statements and representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the mistaken and erroneous belief that said statements and representations were and are true and into the purchase

of substantial quantities of respondents' products by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been and is being unfairly diverted to respondents from their competitors and substantial injury has thereby been and is being done to competition in commerce.

PAR. 11. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Frederick McManus for the Commission.

Mr. Samuel Kagle, Philadelphia, Pa., for respondents.

INITIAL DECISION BY RAYMOND J. LYNCH, HEARING EXAMINER

The complaint in this proceeding, issued February 8, 1961, charges the above-named respondents with violation of the provisions of the Federal Trade Commission Act.

On June 21, 1961, there was submitted to the undersigned hearing examiner an agreement between respondents and counsel supporting the complaint providing for the entry of a consent order.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint, and that the complaint may be used in construing the terms of the order.

The hearing examiner finds that the content of the agreement meets all of the requirements of Section 3.25(b) of the Rules of the Commission.

The agreement further provides that the complaint insofar as it concerns respondents Vivian Tizer and Frank Ochman, in their individual capacities but not as officers of the corporate respondents, should be dismissed for the reasons set forth in affidavits attached thereto to the effect that said respondents have not participated in the formulation, direction or control of the advertising of the said corporate respondents.

The hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the agreement is hereby accepted, and it is ordered that said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

JURISDICTIONAL FINDINGS

1. Respondents Royal Tile Co. of North Philadelphia, Royal Tile Co. of South Philadelphia, and Royal Tile Co. of Suburban Philadelphia, are corporations organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania with their main offices and principal place of business located at 424 Central Avenue, Cheltenham, Pennsylvania.

Respondent Royal Tile Co. of Eastern Maryland is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its main office and principal place of business located at 424 Central Avenue, Cheltenham, Pennsylvania.

Respondents Royal Tile Co. of Central New Jersey and Royal Tile Co. of Southern New Jersey are corporations organized, existing and doing business under and by virtue of the laws of the State of New Jersey with their main office and principal place of business located at 424 Central Avenue, Cheltenham, Pennsylvania.

Individual respondents Jack Tizer and Vivian Tizer are officers of all the corporate respondents named in paragraph 1 hereof. They formulate, direct and control the acts and practices of the corporate respondents. Their address is the same as that of the corporate respondents named in paragraph 1 hereof.

2. Respondents Royal Tile Co. of Eastern Pennsylvania, Royal Tile Co. of Delaware Valley, Royal Tile Co. of West Philadelphia, Royal Tile Co. of Central Pennsylvania, Royal Tile Co. of Beaver Valley, Royal Tile Co. of Greater Pittsburgh, Royal Tile Co. of Suburban Pittsburgh, and Royal Tile Co. of Western Pennsylvania are corporations organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania with their principal office and place of business located at 296 Keswick Avenue, Glenside, Pennsylvania.

Respondents Royal Tile Co. of Northern Massachusetts, Royal Tile Co. of Southeast Massachusetts, and Royal Tile Co. of Mid-Massachusetts are corporations organized, existing and doing business under and by virtue of the laws of the State of Massachusetts with their main office and principal place of business located at 296 Keswick Avenue, Glenside, Pennsylvania.

Individual respondents William Tizer and Frank Ochman are officers of all of the corporate respondents named in paragraph 2 hereof. They formulate, direct and control the acts and practices of said corporate respondents except as hereinafter set forth. Their address is the same as that of the corporate respondents named in paragraph 2 hereof.

3. Respondent Jack Tizer owns and controls individual proprietorships which do business under the name of Royal Carpet and Linoleum Company, in Long Island, New York, Cleveland, Ohio, Los Angeles, California, and Richmond, Virginia.

Respondent William Tizer owns and controls individual proprietorships which do business under the names of Royal Tile Co. of Coatsville, Pennsylvania, Royal Tile Co. of Eastern Pennsylvania, and Royal Tile Co. of Wilkes-Barre, Pennsylvania.

4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That the respondents Royal Tile Co. of North Philadelphia, Royal Tile Co. of South Philadelphia, Royal Tile Co. of Suburban Philadelphia, Royal Tile Co. of Eastern Maryland, Royal Tile Co. of Central New Jersey, Royal Tile Co. of Southern New Jersey, corporations, and their officers, and Jack Tizer, individually and as an officer of said corporations, and doing business under the name of Royal Carpet and Linoleum Company, or under any other name or names, and Vivian Tizer, as an officer of said corporations; and Royal Tile Co. of Eastern Pennsylvania, Royal Tile Co. of Delaware Valley, Royal Tile Co. of West Philadelphia, Royal Tile Co. of Central Pennsylvania, Royal Tile Co. of Beaver Valley, Royal Tile Co. of Greater Pittsburgh, Royal Tile Co. of Suburban Pittsburgh, Royal Tile Co. of Western Pennsylvania, Royal Tile Co. of Northern Massachusetts, Royal Tile Co. of Southeast Massachusetts, Royal Tile Co. of Mid-Massachusetts, corporations, and their officers, and William Tizer, individually and as an officer of said corporations, and Frank Ochman, as an officer of said corporations, and William Tizer, doing business under the name of Royal Tile Co. of Coatsville, Pennsylvania, Royal Tile Co. of Eastern Pennsylvania, and Royal Tile Co. of Wilkes-Barre, Pennsylvania, or under any other name or names; and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of rubber and asphalt tile or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any amount is respondents' usual and customary retail price of merchandise when such amount is in excess of the price at which such merchandise has been usually and customarily sold at retail by respondents in the recent regular course of business.

2. Representing, directly or by implication, that any saving is afforded in the purchase of merchandise from respondents' usual and customary retail price unless the price at which it is offered constitutes a reduction from the price at which such merchandise has been usually and customarily sold by respondents in the recent regular course of business.

3. Using the words "Reg." or "original" or any other word or term of the same import to describe or refer to prices of merchandise unless respondents have sold said merchandise at such prices in the recent regular course of business.

4. Misrepresenting in any manner the amount of savings available to purchasers of respondents' merchandise, or the amounts by which the prices of said merchandise are reduced from the prices at which said merchandise is usually and regularly sold by respondents in the recent regular course of their business.

It is further ordered, That the complaint be, and it hereby is, dismissed as to Vivian Tizer as an individual.

It is further ordered, That the complaint be, and it hereby is, dismissed as to Frank Ochman as an individual.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF
COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 7th day of September 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Royal Tile Co. of North Philadelphia, Royal Tile Co. of South Philadelphia, Royal Tile Co. of Suburban Philadelphia, Royal Tile Co. of Eastern Maryland, Royal Tile Co. of Central New Jersey, and Royal Tile Co. of Southern New Jersey, corporations, and Jack Tizer, individually and as an officer of said corporations, and doing business under the name of Royal Carpet and Linoleum Company, and Vivian Tizer, as an officer of said corporations; and Royal Tile Co. of Eastern Pennsylvania, Royal Tile Co. of Delaware Valley, Royal Tile Co. of West Philadelphia, Royal Tile Co. of Central Pennsylvania, Royal Tile Co. of Beaver Valley, Royal Tile Co. of Greater Pittsburgh, Royal Tile Co. of Suburban Pittsburgh, Royal Tile Co. of Western Pennsylvania,

Royal Tile Co. of Northern Massachusetts, Royal Tile Co. of Southeast Massachusetts, Royal Tile Co. of Mid-Massachusetts, corporations, and William Tizer, individually and as an officer of said corporations, and Frank Ochman, as an officer of said corporations, and William Tizer, doing business under the name of Royal Tile Co. of Coatsville, Pennsylvania, Royal Tile Co. of Eastern Pennsylvania, and Royal Tile Co. of Wilkes-Barre, Pennsylvania, shall, within sixty (60) days after service upon them of this order file with the Commission a report in