

... 100) 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
TILE AND APPLIANCE MART, INC., ET AL.

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

Docket 8278. Complaint, Jan. 27, 1961—Decision, Oct. 9, 1961

Consent order requiring two associated concerns—in Wheeling, W. Va., and Youngstown, Ohio, respectively—and their common officer, to cease deceptive pricing of their products through representing falsely in newspaper advertising—by such statements as “Armstrong Woodgrain Floor Tile Reg. 15¢ 10¢”, “100 Blocks Asphalt Tile Reg. Value \$7.00 \$4.88”—that the higher prices following “Reg.” or “Regularly” or “Reg. Value” were the usual retail prices and purchasers would save the difference between these and the lower “sale” prices; by statements “Save 62% and more”, “Everything . . . sold at approximately 80% off”, that prices had been reduced by the given percentage; and through use of the terms “Clearance Sale” and “Warehouse clearance Tile sale” that customary retail prices were reduced.

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 Tile and Appliance

Mart, Inc. and Tile Mart, Inc., of Youngstown, corporations, and Irving M. Molever, individually and as an officer of said corporations, herein after referred to as respondents, 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. Respondent Tile and Appliance Mart, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 14th and Main Streets, in the City of Wheeling, State of West Virginia.

Respondent Tile Mart, Inc. of Youngstown is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio with its principal office and place of business located at 793 Wick Avenue, in the City of Youngstown, State of Ohio.

Respondent Irving M. Molever is an officer of the corporate respondents. He formulates, directs and controls the acts and practices of the corporate respondents, including the acts and practices herein-after set forth. His address is Carlton House, Pittsburgh, Pennsylvania.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of tile, paint and various hardware items to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said merchandise, when sold, to be shipped from their respective places of business in the States of West Virginia and Ohio to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business and for the purpose of inducing the sale of their said merchandise, respondents have made numerous statements in advertisements inserted in newspapers as to reduced prices, savings, special sales and other representations regarding the price or value of their merchandise.

A. Typical, but not all inclusive of such statements made by respondents Tile and Appliance Mart, Inc. and Irving M. Molever, are the following:

Armstrong "EXCELRON" Vinyl Plastic Regularly 21¢—12¢
Armstrong Woodgrain Floor Tile Reg. 15¢—10¢
100% Vinyl Tile Homogeneous "Goodyear" Reg. 34¢ ea.—17¢ ea.
Ceiling Tile Reg. 21¢—12¢
CONGOWALL Famous "Gold Seal" Reg. 59¢—29¢ ft

Hi Glo Porch-Deck enamel—Hi Glo House Paint Reg. \$6.95 Gal.—Now \$3.89 Gal.
 Texture Tone Plaster Paint Reg. \$6.95 gal.—Now \$3.89 gal.
 Paint Sale—Famous “Rubber Tuff” Wall paint \$3.89 gal.—Reg. \$6.95.
 Turpentine Reg. \$1.99 gallon—99¢.
 Garbage Cans Reg. \$3.99—\$1.99.
 Bathtub Enclosure Reg. \$69.95—\$39.95.
 100 Blocks Asphalt Tile Reg. Value \$7.00—\$4.88—B Color.
 100 Blocks Linoleum Tile Armstrong Woodgrain Reg. \$15.00 Value—\$9.88.
 Save 62% and more.
 Everything will be sold at approximately 80% off.
 Clearance Sale—Everything must be cleared.

B. Typical, but not all inclusive of such statements made by respondents Tile Mart, Inc., of Youngstown and Irving M. Molever, are the following:

Vinyl Plastic Floor Tile Reg. 21¢—12¢.
 Famous Armstrong “Excelon” Vinyl Plastic Tile 100 Tiles \$17.99—Regularly \$21.00.
 Woodgrain Floor Tile Reg. 15¢—10¢ ea.
 Woodgrain Tiles—100 Tiles \$14.99—Regularly \$18.00.
 Woodgrain Tile Reg. 17¢ ea.—10¢ ea.
 “Goodyear” 100% vinyl—34¢ value! Now at Tile Mart 17¢.
 Armstrong “Excelon” 18¢ Elsewhere—12¢ ea.
 Woodgrain Tile 15¢ Elsewhere—10¢ ea.
 Warehouse clearance Tile sale.
 Save 62%.

PAR. 5. By means of the aforesaid statements in PARAGRAPH FOUR A, and others of the same import but not specifically set forth, respondents Tile and Appliance Mart, Inc. and Irving M. Molever have represented, directly or by implication:

1. That the higher prices listed under the denomination “Reg.” or “Regularly” were the prices at which the advertised merchandise had been usually and customarily sold by respondents at retail in the recent regular course of business and that savings amounting to the differences between these prices and the lower “sale” prices would result to purchasers.

2. That the higher prices listed under the denomination “Reg. Value” were the prices at which the advertised merchandise was usually and customarily sold at retail in the trade area in which the representation was made and that savings amounting to the difference between these prices would result to purchasers.

3. Through the use of the statements “Save 62% and more” and “Everything will be sold at approximately 80% off” that respondents’ usual and customary retail price of the advertised merchandise in the recent regular course of business had been reduced by 62% and approximately 80% and savings to that extent from respondents’ usual and customary prices were afforded to purchasers.

Complaint

59 F.T.C.

4. Through the use of the statement "clearance sale" that respondents' usual and customary retail prices of the advertised merchandise in the recent, regular course of business had been reduced.

PAR. 6. By means of the aforesaid statements in PARAGRAPH FOUR B and others of the same import but not specifically set forth, respondents Tile Mart, Inc., of Youngstown and Irving M. Molever have represented, directly or by implication:

1. That the higher prices listed under the denomination "Reg." or "Regularly" were the prices at which the advertised merchandise had been usually and customarily sold by respondents at retail in the recent regular course of business and that savings amounting to the differences between these prices and lower "sale" prices would result to purchasers.

2. That the higher prices listed under the denomination "Value" or "Elsewhere" were the prices at which the advertised merchandise was usually and customarily sold at retail in the trade area in which the representation was made and that savings amounting to the difference between these prices and the lower "sale" prices would result to purchasers.

3. Through the use of the statement "Save 62%" that respondents' usual and customary retail prices of the advertised merchandise in the recent, regular course of business had been reduced by 62% and savings to that extent from respondents' usual and customary prices was afforded to purchasers.

4. Through the use of the statement "Warehouse clearance tile sale" that respondents' usual and customary retail price of the advertised merchandise in the recent, regular course of business had been reduced.

PAR. 7. The aforesaid statements and representations were and are false, misleading and deceptive. In truth and in fact:

1. The higher prices listed under the denomination "Reg.", "Regular" or "Regularly" were not the usual and customary prices at which the advertised merchandise had been usually and customarily sold by respondents at retail in the recent, regular course of business, but were in excess of such prices and that savings amounting to the difference between these prices and the lower "sale" prices would not result to purchasers.

2. The higher prices listed under the denomination "Reg. Value", "Value" or "Elsewhere" were not the prices at which the advertised merchandise was usually and customarily sold at retail in the trade area where the representation was made, but were in excess of such prices and savings amounting to the differences between these prices and the lower "sale" prices would not result to purchasers.

3. Respondents' usual and customary retail prices of the advertised

merchandise in the recent, regular course of business had not been reduced by 62% and approximately 80% and 62%, respectively, and savings to the extent of the percentages stated from the respective respondents' usual and customary prices were not afforded to purchasers.

4. Respondents' usual and customary retail prices in the recent, regular course of business of the merchandise advertised "clearance sale" and "warehouse clearance tile sale", respectively, had not been reduced.

PAR. 8. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of tile, paint and hardware of the same general kind as that sold by respondents.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' merchandise 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. 10. 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.

DECISION AND ORDER

This matter having come on to be heard by the Commission upon a record consisting of the Commission's complaint charging the respondents in the proceeding with violation of the Federal Trade Commission Act and an agreement by and between respondents and counsel supporting the complaint, which agreement contains an order to cease and desist, an admission by the respondents of all the jurisdictional facts alleged in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the complaint, and waivers and provisions as required by the Commission's rules, and further provides for dismissal of the complaint as to respondent Irving M. Molever in his capacity as an individual respondent; and

Order

59 F.T.C.

The Commission having considered the agreement and order contained therein and being of the opinion that the agreement provides an adequate basis for an appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered:

1. Respondent Tile and Appliance Mart, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 14th and Main Streets, in the City of Wheeling, State of West Virginia.

Respondent Tile Mart, Inc., of Youngstown is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio with its principal office and place of business located at 793 Wick Avenue, in the City of Youngstown, State of Ohio.

Respondent Irving M. Molever is an officer of the corporate respondents. His address is Carlton House, Pittsburgh, Pennsylvania.

2. 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 respondents Tile and Appliance Mart, Inc., and Tile Mart, Inc., of Youngstown, corporations, and their officers, and Irving Molever, as an officer of said corporations, and the respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of tile and other merchandise, 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 it is in excess of the price at which such merchandise is usually and customarily sold by respondents at retail in the recent regular course of business.

2. Using the word "Reg." or "Regularly" to describe or refer to the retail price of merchandise when such amount is not the price at which the merchandise has been usually and customarily sold by respondents at retail in the recent, regular course of business.

3. Representing, directly or by implication, that any amount is the price at which merchandise is usually and customarily sold at retail in the trade area, or areas, where the representation is made, when it is in excess of such price.

4. Using the words "Reg. value", "Value" or "Elsewhere" to describe or refer to the retail price of merchandise when such amount

769

Order

is not the price at which the merchandise has been usually and customarily sold at retail in the trade area, or areas, where the representation is made.

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

6. Representing, directly or by implication, that any saving is afforded in the purchase of merchandise from the price at which said merchandise is usually and customarily sold at retail in the trade area, or areas, where the representation is made unless the price at which it is offered constitutes a reduction from such price.

7. Using percentage savings claims to represent that merchandise is offered at a reduction from respondents' usual and customary retail price unless the price of such merchandise has been reduced in direct proportion to the percentage stated from respondents' usual and customary price in the recent, regular course of business.

8. Using the word "Sale" to represent, directly or by implication, that merchandise is offered at a reduction from respondents' usual and customary retail price in the recent, regular course of business, unless such is the fact.

9. Misrepresenting in any manner the amount of savings available to purchasers of respondents' merchandise, or the amount by which the price of said merchandise is reduced from the price at which it is usually and customarily sold by respondents in the recent, regular course of their business, or from the price at which said merchandise is usually and customarily sold in the trade area, or areas, where the representation is made.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to respondent Irving M. Molever in his individual capacity.

It is further ordered, That the respondents herein shall, within 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 this order.

Complaint

59 F.T.C.

IN THE MATTER OF

SEYMOUR LUSTIG DOING BUSINESS AS SEYMOUR
LUSTIGCONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(c)
OF THE CLAYTON ACT*Docket 8214. Complaint, Dec. 8, 1960—Decision, Oct. 10, 1961*

Consent order requiring an Orlando, Fla., distributor-broker of citrus fruit and produce to cease violating Sec. 2(c) of the Clayton Act by unlawfully receiving brokerage or discounts in lieu of brokerage from various packers or sellers on purchases for his own account for resale, receiving a lower net price which reflected an allowance of brokerage, and receiving brokerage as the buyer's representative in numerous transactions.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly described, has been and is now violating the provisions of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Section 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Seymour Lustig is an individual doing business as Seymour Lustig under and by virtue of the laws of the State of Florida, with his office and principal place of business located at Orlando, Florida, with mailing address as Post Office Box 7505, Orlando, Florida.

PAR. 2. Respondent is now and for the past several years has been engaged in business as a distributor and selling agent, purchasing citrus fruit and produce for his own account for resale, as well as a buying broker representing buyers in the purchase of citrus fruit and produce for said buyers. A substantial part of respondent's business is in the purchase, sale and distribution of citrus fruit and produce, hereinafter sometimes referred to as food products, purchased from packers or sellers located in several states of the United States but more particularly the State of Florida.

PAR. 3. In the course and conduct of his business for the past several years, but more particularly since January 1, 1959, in the purchase, sale and distribution of food products for his own account, or for the account of buyers represented by respondent, respondent has directly or indirectly shipped and transported, or caused said food products when purchased or sold to be shipped or transported, from the various packers' packing plants or places of business located in the State of Florida, as well as in other states, to respondent or to