

Complaint

59 F.T.C.

IN THE MATTER OF

TILE CITY, INC. OF PITTSBURGH, PENNSYLVANIA,
ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-27. Complaint, Nov. 14, 1961—Decision, Nov. 14, 1961*

Consent order requiring five affiliated retailers of rubber and asphalt tile, floor covering, and paint in as many Pennsylvania cities, to cease representing falsely in newspaper advertising that they offered Kentile Tile in "A" colors at 3½¢ each when they had not stocked the tile for some time and it was not available; that their "solid Vinyl tile" was composed wholly of vinyl; and that purchasers of one gallon of Rubber Tuff Wall Paint would receive a second can "free" when they were required to pay for one gallon the usual price for two; and to cease representing falsely through use of higher amounts in connection with the words "Reg." and "Sold for", that said amounts were the usual prices for their merchandise.

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 City, Inc. of Pittsburgh, Pennsylvania, a corporation; Tile City, Inc. of New Kensington, Pennsylvania, a corporation; Tile City, Inc. of Ambridge, Pennsylvania, a corporation; Tile City, Inc. of Irwin, Pennsylvania, a corporation; Tile City, Inc. of Charleroi, Pennsylvania, a corporation; and Robert Solomon and Irving Germaise, individually and as officers of said corporations and as co-partners trading under the name Tile City Company of Steubenville, Ohio, hereinafter 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 in respect thereof stating its charges in that respect as follows:

PAR. 1. Respondent Tile City, Inc. of Pittsburgh, Pennsylvania, 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 1501 5th Avenue, Pittsburgh, Pennsylvania.

Respondent Tile City, Inc. of New Kensington, Pennsylvania, 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 333 10 Street, New Kensington, Pennsylvania.

Respondent Tile City, Inc. of Ambridge, Pennsylvania, 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 801 Merchant Street, Ambridge, Pennsylvania.

Respondent Tile City, Inc. of Irwin, Pennsylvania, 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 on Route 30, west of Irwin, Pennsylvania.

Respondent Tile City, Inc. of Charleroi, Pennsylvania, 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 626 McKean Avenue, Charleroi, Pennsylvania.

Respondents Robert Solomon and Irving Germaise are officers of all of the corporate respondents and are co-partners trading under the name of Tile City Company of Steubenville, Ohio. They formulate, direct and control the acts and practices hereinafter set forth. The address of Robert Solomon is 1911 5th Avenue, McKeesport, Pennsylvania. The address of Irving Germaise is 501 5th Avenue, 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 rubber and asphalt tile, floor covering and paint at retail to the consuming public.

PAR. 3. In the course and conduct of their business, respondents have been and are engaged in disseminating and causing to be disseminated 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 order means 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. 4. Among and typical but not all-inclusive of the statements appearing in the advertisements described in Paragraph Three are the following:

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Kentile

9 x 9 x 1/8—1st quality
 Color goes clear thru
 Guaranteed for Life
 "A" colors—3½¢ ea.

* * *

Solid Vinyl Tile at 10¢

* * *

Tile City 2 For 1

Rubber Tuff Wall Paint

Paint Deal

6.95 per gallon

2 For 1 Sale

Buy 1 Gallon

2nd Gallon Free

* * *

Plaster Paint

Reg. 5.95

3.89 per gallon

* * *

Rubber Tuff Wall Paint

3.89

Sold for 6.99 Gal.

PAR. 5. Through the use of the aforesaid statements and representations and others of similar import not specifically set out herein respondents have represented that:

1. They are making a bona fide offer to sell Kentile Tile in "A" colors.

2. The tile offered for sale and described as "solid Vinyl tile" was composed wholly of vinyl.

3. If one gallon of Rubber Tuff Wall Paint is purchased at the advertised price a second can will be given "free", that is, as a gift or gratuity without cost to the purchaser.

PAR. 6. Said statements and representations were false, misleading and deceptive. In truth and in fact:

1. The offer to sell Kentile Tile in "A" colors was not a genuine or bona fide offer to sell said tile. In truth and in fact, none of the respondents had stocked said tile for some time prior to the time of the advertisements and same was not available for sale.

2. The tile described as solid vinyl tile was not composed wholly of vinyl.

3. Purchasers do not receive one gallon of paint free for the reason that they are required to pay \$6.95 or \$6.99 which amount is the usual and customary charge for two gallons.

PAR. 7. Through the use of the higher amounts in connection with the words "Reg." and "Sold For" the respondents represented that said amounts were the prices at which they had usually and cus-

tomarily sold the merchandise referred to in the recent and regular course of business and that the differences between said prices and the lesser amounts represented savings from the prices at which the merchandise referred to had been usually and customarily 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 "Sold For" 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 floor coverings and paint 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 are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 11. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and the injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth 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 had been violated as set forth in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent, Tile City, Inc. of Pittsburgh, Pennsylvania, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 1501 5th Avenue, in the City of Pittsburgh, State of Pennsylvania.

Respondent, Tile City, Inc. of New Kensington, Pennsylvania, 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 333 10th Street, New Kensington, Pennsylvania.

Respondent, Tile City, Inc. of Ambridge, Pennsylvania, 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 801 Merchant Street, Ambridge, Pennsylvania.

Respondent, Tile City, Inc. of Irwin, Pennsylvania, 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 on Route 30, west of Irwin, Pennsylvania.

Respondent, Tile City, Inc. of Charleroi, Pennsylvania, is a corporation organized, existing and doing business under and by virtue of the laws of the States of Pennsylvania, with its principal office and place of business located at 626 McKean Avenue, Charleroi, Pennsylvania.

Respondents Robert Solomon and Irving Germaise are officers of all of the corporate respondents and are copartners trading under the name of Tile City Company of Steubenville, Ohio. The address of Robert Solomon is 1911 5th Avenue, McKeesport, Pennsylvania. The address of Irving Germaise is 501 5th Avenue, 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.

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Order

ORDER

It is ordered, That respondents Tile City, Inc. of Pittsburgh, Pennsylvania, a corporation, Tile City, Inc. of New Kensington, Pennsylvania, a corporation, Tile City, Inc. of Ambridge, Pennsylvania, a corporation, Tile City, Inc. of Irwin, Pennsylvania, a corporation, Tile City, Inc. of Charleroi, Pennsylvania, a corporation, and their officers, and Robert Solomon and Irving Germaise, individually and as officers of said corporations, and as co-partners trading under the name of Tile City Company of Steubenville, Ohio, or under any other trade name, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of tile, paint, or any 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 merchandise is offered for sale when such offer is not a bona fide offer to sell such merchandise.

2. Representing, directly or by implication:

(a) That tile not compounded wholly of Vinyl is a solid Vinyl tile or misrepresenting in any manner the composition of a product.

(b) That merchandise is given free or without charge in connection with the purchase of other merchandise when the price charged for the merchandise purchased includes the price of the other merchandise.

(c) That any amount is respondents' usual and customary price of merchandise when it is in excess of the price at which the merchandise has been usually and customarily sold by respondents in the recent regular course of business.

(d) That any saving is afforded from respondents' usual and customary price of merchandise unless the price at which it is offered constitutes a reduction from the price at which the merchandise has been usually and customarily sold by respondents in the recent regular course of business.

3. Misrepresenting in any manner the amount of savings available to purchasers of respondents' merchandise or the amount by which the price of merchandise has been reduced from the price at which it has usually and customarily been sold by respondents in the recent regular course of business.

4. Using the terms "Reg." or "Sold For", or any other words or terms of the same import, to refer to respondents' usual and customary price of merchandise, unless the amount so designated

is the price at which respondents have usually and customarily sold the merchandise in the recent regular course of business