

its customers of this Order, by serving by mail a copy of said Order upon all of said customers.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF
BARNEY'S SUPER CENTER, INC., ET AL.

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

Docket C-1008. Complaint, Oct. 27, 1965—Decision, Oct. 27, 1965

Consent order requiring a chain distributor of paints and floor covering products with 6 retail outlets in Pennsylvania, Ohio, and West Virginia, to cease making false and deceptive pricing, value, and savings claims in advertising its products by setting forth the term "Reg." in comparative-price advertisements to refer to prices which were higher than their regular retail prices, and the term "Val." to refer to prices which were higher than the retail prices of the trade area, and misrepresenting the quantity of merchandise for sale.

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 Barney's Super Center, Inc., Barney's Tile and Paint of Baden, Inc., Barney's Tile and Paint of Butler, Inc., Barney's Tile and Paint of New Castle, Inc., Barney's Tile and Paint Stores of Wheeling, West Virginia, Inc., and Barney's Tile and Paint Stores in Youngstown, Inc., corporations, and Lawrence R. Weisberg and Harry Weltman, individually and as officers of said corporations, 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 stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Barney's Super Center, 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 1600 Fifth Avenue in the city of Pittsburgh, State of Pennsylvania.

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Respondent Barney's Tile and Paint of Baden, 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 Northern Lights Shopping Center in the city of Baden, State of Pennsylvania.

Respondent Barney's Tile and Paint of Butler, 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 Greater Butler Shopping Center in the city of Butler, State of Pennsylvania.

Respondent Barney's Tile and Paint of New Castle, 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 Lawrence Village Shopping Center in the city of New Castle, State of Pennsylvania.

Respondent Barney's Tile and Paint Stores of Wheeling, West Virginia, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of West Virginia, with its principal office and place of business located at Fourteenth and Market Streets in the city of Wheeling, State of West Virginia.

Respondent Barney's Tile and Paint Stores of Youngstown, Inc., 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 234 Boardman-Canfield Road in the city of Youngstown, State of Ohio.

Respondents Lawrence R. Weisberg and Harry Weltman are officers of all of the corporate respondents. They formulate, direct and control the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. Their address is 1600 Fifth Avenue in the city of Pittsburgh, State of 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 paints and floor covering products 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 to be transported from their main store in the city of Pittsburgh, State of Pennsylvania, to their other stores located in the States of Pennsylvania, Ohio, and West Virginia for sale to the purchasing public. Respondents 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 aforesaid business, and for the purpose of inducing the purchase of their paints and floor covering products, respondents have made numerous statements in advertisements inserted in newspapers published in the States of Pennsylvania, Ohio, and West Virginia. Said newspaper advertisements describe certain of the articles of merchandise offered for sale by respondents and in connection therewith set forth various comparative prices.

Typical and illustrative but not all inclusive of such statements are the following:

LUCITE WALL PAINT—\$4.99 Gal.
FORMERLY \$6.79 Gal.

LUCITE WALL PAINT \$4.99 Gal. \$6.79 VAL.

LUCITE HOUSE PAINT \$5.94 Gal.
Reg. \$8.55 Gallon.

LUCITE HOUSE PAINT \$6.42 Gal. \$8.55 VAL.

Duco Enamel SATIN SHEEN or Gloss
ENAMEL—\$1.99 QT. Reg. \$2.98

DUPONT PORCH-FLOOR \$4.95 Gal. \$7.60 VAL.
Trim "N" Shutter DuPont DULUX ENAMEL
\$2.09 Qt. Reg. \$3.08 Save 99¢ Qt.

DUPONT HOUSE PAINT REG. \$6.98
SAVE \$2.10 gal. \$4.88 Gal.

PAR. 5. By and through the use of the above-quoted statements, and others of similar import not specifically set out herein, respondents have represented, directly or by implication, that the higher stated prices set out in said advertisements in connection with the terms "formerly" and "Reg." were the prices at which the advertised merchandise was sold or offered for sale by respondents in good faith for a reasonably substantial period of time in the recent regular course of their business, and that purchasers save the difference between respondents' advertised selling prices and the corresponding higher prices.

PAR. 6. In truth and in fact, the higher prices set out in said advertisements in connection with the terms "formerly" and "Reg." were not the prices at which the advertised merchandise was sold or offered for sale by respondents in good faith for a reasonably substantial period of time in the recent regular course of their business, and purchasers do not save the difference between respondents' advertised selling prices and the corresponding higher prices.

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Therefore, the statements and representations as set forth in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. By and through the use of the higher stated prices set out in connection with the term "Val.," respondents have represented, directly or by implication, that said higher prices were not appreciably in excess of the highest price at which substantial sales of such merchandise have been made in the recent regular course of business in the trade area where such representations appeared, and that purchasers save the difference between respondents' advertised selling prices and the correspondents higher prices.

PAR. 8. In truth and in fact, the higher prices set out in said advertisements in connection with the term "Val." were appreciably in excess of the highest price at which substantial sales of such merchandise have been made in the recent regular course of business in the trade area where such representations appeared, and purchasers do not save the difference between respondents' advertised selling prices and the corresponding higher prices.

Therefore, the statements and representations as set forth in Paragraphs Four and Seven hereof were and are false, misleading and deceptive.

PAR. 9. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their said merchandise, respondents have made statements in advertisements inserted in newspapers indicating that such merchandise has been purchased and is available in specified quantities.

Typical and illustrative but not all inclusive of such statements are the following:

10 carload purchase! 10,000 cases
of tile just arrived—\$5.95 case
of 80 tiles reg. \$9.60 value—save \$3.65 per case.

10,000 gal. factory purchase A-1
Supertone Interior Latex Vinyl Paint
Save a Big 44%.

PAR. 10. By and through the use of the above-quoted statements, and others of similar import not specifically set out herein, respondents have represented, directly or by implication, that said quantities of merchandise have been purchased and are available for sale.

PAR. 11. In truth and in fact, respondents have not purchased or have available for sale such quantities of said merchandise.

Therefore, the statements and representations as set forth in

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Paragraphs Nine and Ten hereof were and are false, misleading and deceptive.

PAR. 12. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their merchandise, respondents have made statements in advertisements inserted in newspapers describing certain prices at which specified articles of merchandise can be purchased at respondents' stores.

Typical and illustrative but not all inclusive of such statements are the following:

Duco Enamel Satin Sheen or
Gloss—\$1.99 Qt.

Trim "N" Shutter DuPont DuLux
Enamel \$2.09 qt.

Armstrong Excelon Tile
9 x 9" size 7¢

Armstrong Excelon Tile 7½¢ each

Armstrong Excelon Tile 7⅝¢

Translucent Vinyl Tile with solid
VINYL CHIPS Armstrong Congoleum-Nairn
Goodyear Your Choice 12¢ 9 x 9"

Translucent solid Vinyl Tile with solid
vinyl chips Armstrong-Goodyear your choice 11⅞¢

PAR. 13. By and through the use of the above-quoted statements, and others of similar import not specifically set out herein, respondents have represented, directly or by implication, that said merchandise in all instances was available for purchase at the advertised prices and would be sold at such prices.

PAR. 14. In truth and in fact, said merchandise in all instances was not available for purchase at the advertised prices and was often sold at higher prices.

Therefore, the statements and representations as set forth in Paragraphs Twelve and Thirteen hereof were and are false, misleading and deceptive.

PAR. 15. 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 paints and floor covering products of the same general kind and nature as those sold by respondents.

PAR. 16. 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

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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' products by reason of said erroneous and mistaken belief.

PAR. 17. 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 methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Deceptive Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; 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 aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having reason to believe that the respondents have violated the Federal Trade Commission Act, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings and enters the following order:

1. Respondent Barney's Super Center, Inc., 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 1600 Fifth Avenue, Pittsburgh, Pennsylvania.

Respondent Barney's Tile and Paint of Baden, Inc., 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 Northern Lights Shopping Center, Baden, Pennsylvania.

Respondent Barney's Tile and Paint of Butler, Inc., 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 Greater Butler Shopping Center, Butler, Pennsylvania.

Respondent Barney's Tile and Paint of New Castle, Inc., 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 Lawrence Village Shopping Center, New Castle, Pennsylvania.

Respondent Barney's Tile and Paint Stores of Wheeling, West Virginia, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of West Virginia, with its office and principal place of business located at Fourteenth and Market Streets, Wheeling, West Virginia.

Respondent Barney's Tile and Paint Stores of Youngstown, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 234 Boardman-Canfield Road, Youngstown, Ohio.

Respondents Lawrence R. Weisberg and Harry Weltman are officers of said corporations and their address is 1600 Fifth 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.

ORDER

It is ordered, That respondents Barney's Super Center, Inc., Barney's Tile and Paint of Baden, Inc., Barney's Tile and Paint of Butler, Inc., Barney's Tile and Paint of New Castle, Inc., Barney's Tile and Paint Stores of Wheeling, West Virginia, Inc. and Barney's Tile and Paint Stores of Youngstown, Inc., corporations, and their officers, and Lawrence R. Weisberg and Harry Weltman, individually and as officers of said corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of paints and floor covering products, or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the terms "Reg.," "formerly," or any other terms or words of similar import or meaning, to refer to any amount which is in excess of the price at which such merchandise has been sold or offered for sale in good faith by respondents

for a reasonably substantial period of time in the recent regular course of their business; or otherwise misrepresenting the price at which such merchandise has been sold or offered for sale by respondents.

2. Using the term "Val." or the word "value," or any other term or word of similar import or meaning, to refer to any amount which is appreciably in excess of the highest price at which substantial sales of such merchandise have been made in the recent regular course of business in the trade area where such representations are made; or otherwise misrepresenting the price at which such merchandise has been sold in the trade area where such representations are made.

3. Representing, in any manner, that by purchasing any of said merchandise, customers are afforded savings amounting to the difference between respondents' stated price and any other price used for comparison with that price:

(a) Unless respondents have offered such merchandise for sale at the compared price in good faith for a reasonably substantial period of time in the recent regular course of their business; or

(b) Unless substantial sales of said merchandise are being made in the trade area at the compared price, or a higher price; or

(c) Unless a substantial number of the principal retail outlets in the trade area regularly offer the merchandise for sale at the compared price or some higher price; or

(d) When a value comparison representation with comparable merchandise is used, unless substantial sales of merchandise of like grade and quality are being made in the trade area at the compared price or a higher price and it is clearly and conspicuously disclosed that the comparison is with merchandise of like grade and quality.

4. Misrepresenting, in any manner, the savings available to purchasers or prospective purchasers of respondents' merchandise.

5. Representing, directly or by implication, that stated quantities of certain merchandise have been purchased or that stated quantities of certain merchandise are available for sale: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that such quantities have been purchased or that such quantities are available for sale as represented.

6. Representing, directly or by implication, that merchandise is available for purchase at stated prices or is being or will be sold at such prices: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that a sufficient quantity of the advertised merchandise was available to meet all reasonably anticipated demands for the merchandise at the advertised price and that such merchandise was sold at or below the advertised price.

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.