

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
ARMSTRONG CORK COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT AND SEC. 2(a) OF THE CLAYTON ACT

Docket C-1010. Complaint, Nov. 3, 1965—Decision, Nov. 3, 1965

Consent order requiring a Lancaster, Pa., manufacturer and distributor of floor covering products such as linoleum, linoleum tile, asphalt tile, rubber tile and related products—having total net sales of approximately \$341,899,000 in 1963—to cease conspiring unlawfully with its wholesalers to fix and maintain the prices, terms and conditions of resale of such products by wholesalers or other purchasers; to cease discriminating in price between competing purchasers of its products by charging some purchasers higher net sale prices than charged other competing purchasers, in violation of Sec. 2(a) of the Clayton Act; and requiring an independent review of its present pricing policies and pricing materials and thereafter issue new pricing materials to be effective, July 1, 1966.

COMPLAINT

The Federal Trade Commission, having reason to believe that the corporation named as respondent in the caption hereof, and more particularly designated and described hereinafter, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C. Sec. 41, et seq.) and subsection

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(a) of Section 2 of the Clayton Act (U.S.C., Title 15, Sec. 13), as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

Count I

PARAGRAPH 1. Respondent, Armstrong Cork Company, 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 West Liberty and Charlotte Streets, Lancaster, Pennsylvania.

PAR. 2 Respondent has been and is now engaged in the manufacture, sale and distribution of various products, including floor covering products such as, but not limited to, linoleum, linoleum tile, vinyl corlon, rubber tile, linotile, cork tile, excelon tile, asphalt tile, quaker rugs, vinyl accolon and their accompanying adhesives and primers with total net sales in all products of approximately \$341,899,000 in 1963. The respondent is a major factor in the highly concentrated floor covering industry. By way of example, in the year 1962 respondent's sales of asphalt floor tile represented approximately 23% of total industry sales; while sales of respondent and two other companies represented approximately 65% of the total market of asphalt floor tile.

PAR. 3. Respondent is now, and for the last several years has been, engaged in the sale and distribution of floor covering products to different purchasers located in the various States of the United States and in the District of Columbia. Said products are sold by respondent for resale and use within the United States and the District of Columbia, and respondent causes said products so sold to be shipped and transported from the State or States of manufacture to purchasers located in States other than the State or States wherein said shipments originated. In the course and conduct of its business, respondent has engaged and is now engaging in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business in commerce, the respondent has been and is now in substantial competition in the sale of floor covering products with other manufacturers and sellers of such products. Respondent's purchasers are now, and during the times mentioned herein, have been in substantial competition with other purchasers in the sale and distribution of floor covering products. Respondent's wholesale distributors are now, and during the times mentioned herein have been in substantial

competition with each other in the resale of respondent's products to retailers and flooring contractors. Many of respondent's retail purchasers are likewise directly or indirectly in competition with each other in the resale of respondent's products within the same trading area.

PAR. 5. Respondent is now, and for the last several years has been, distributing its floor covering products to approximately 40,000 retailers through some 84 wholesalers having a total of some 170 outlets in the United States. In addition, the respondent sells directly to selected mail order houses.

PAR. 6. Respondent and its wholesalers are now and, for the last several years, have been continuously maintaining a close and cooperative relationship through communications and publications such as, but not limited to, correspondence, seasonal letters to wholesale distributors, price and policy bulletins, price lists and supplements thereto, reports, invoices showing prices and other writings, and by means of annual wholesalers' conventions and other meetings and conferences.

PAR. 7. Respondent for the last several years and continuing to the present time has, in combination, agreement and conspiracy with its wholesalers, or some of them with the cooperation or acquiescence of others, established, maintained and pursued a planned course of action to hinder, lessen and eliminate competition in the sale and distribution of respondent's floor covering products in interstate commerce.

PAR. 8. Pursuant to and in furtherance of the said combination, agreement and conspiracy, respondent and its wholesalers, have established, maintained, and fixed the prices, terms and conditions of sale of respondent's floor covering products by wholesalers to retail dealers and flooring contractors.

PAR. 9. The acts and practices of respondent as herein alleged, and practices pursuant thereto being implemented by the respondent's substantial market position are to the prejudice of the public, and have a dangerous tendency to, and have, hindered, suppressed, lessened, and eliminated competition in the sale and distribution of respondent's floor covering products in commerce and constitute unfair methods of competition in commerce, all in derogation of the public interest and in violation of Section 5 of the Federal Trade Commission Act.

Count II

PAR. 10. The allegations of Paragraphs One, Two, Four, Five and Six of Count I are hereby incorporated by reference and made

a part of this Count as fully and with the same effect as if quoted verbatim herein.

PAR. 11. Respondent, in the course and conduct of its business, is now, and for the last several years has been, engaged in the manufacture, sale and distribution in commerce as "commerce" is defined in the amended Clayton Act, of floor covering products, for resale and use within the United States.

PAR. 12. Respondent, in the course and conduct of its business, as above described, for the last several years has been and is now discriminating in price, directly or indirectly, between different purchasers of its floor covering products who are in competition with each other, by selling said products of like grade and quality to some of such purchasers at substantially higher prices than to other of such purchasers. The following examples are illustrative of respondent's discriminatory pricing practices:

(a) Respondent is now distributing, and for the last several years has distributed, its floor covering products to its wholesalers under a volume rebate plan based upon purchases made during a six month season, with earned rebates payable at the end of the season. The percent of volume rebate is and has been determined on the basis of three-tenths of one percent per \$100,000 of aggregate purchases, with a maximum of 4%, after cash discount and before freight equalization. In computing this percentage, respondent multiplies aggregate purchases by a factor of .000003, the product thereof representing the percentage figure which, when applied to aggregate purchases, determines the amount of rebate earned.

Some of respondent's wholesalers, purchasing under respondent's volume rebate plan have been discriminated against by having to pay higher net sale prices than other competing wholesalers purchasing floor covering products of like grade and quality under the same plan.

(b) Respondent is now and, for the last several years has been selling to direct purchasers in the wholesale trade and by and through such means to indirect purchasers in the retail trade. Respondent, in making such indirect sales, sends directly to each retail dealer a seasonal letter accompanied by the new price lists for that particular six month season. The lists contain the prices and conditions of sale on the basis of which Armstrong wholesalers will sell to the retailers in the coming season. Armstrong also employs salesmen who work out of twenty-one district offices. These salesmen have direct contact with the retailer accounts and perform functions such as, but not limited to, signing seasonal contracts, taking orders and other "missionary" and promotional duties.

Some of respondent's indirect purchasers purchasing under the said price lists containing rebate and discount schedules, have been discriminated against by having to pay higher net sale prices than other competing indirect purchasers purchasing floor covering products of like grade and quality under the same price lists.

PAR. 13. The effect of respondent's aforesaid discriminations in price, as alleged in Paragraphs Eleven and Twelve herein, may be to injure, destroy, or prevent competition between and among purchasers of respondent's products, or to substantially lessen competition or tend to create a monopoly in the line of commerce in which the aforesaid purchasers receiving the discriminatory prices are engaged.

PAR. 14. The aforesaid acts and practices of respondent constitute violations of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C. Title 15, Sec. 13).

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of Section 2(a) of the Clayton Act, as amended, and with violation of the Federal Trade Commission Act, and the respondent 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 respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as set forth in such 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 Armstrong Cork Company 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 West Liberty and Charlotte Streets, in the city of Lancaster, State of Pennsylvania.

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

ORDER

I

It is ordered, That respondent, Armstrong Cork Company, a corporation, its officers, employees, agents and representatives, successor or assigns, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of floor covering products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Engaging in, participating in, continuing, carrying out or enforcing any contract, agreement, arrangement or understanding, with any wholesalers, distributors, or other purchasers of Armstrong floor covering products, which directly or indirectly establishes, maintains or fixes prices, terms or conditions of resale of such products by such wholesalers, distributors, or other purchasers.

2. Enforcing, or attempting to enforce, the price or prices or suggested prices, discounts, rebates or terms or conditions for the resale of Armstrong floor covering products.

3. Securing or attempting to secure the cooperation of its distributors in any system of resale prices by agreement or understanding.

4. Circulating to or exchanging with any wholesaler or distributor or other purchaser, any circulars, price lists, suggested price lists, policy letters or other information, the effect of which is to create a contract, agreement, arrangement, or understanding which fixes or establishes a price or prices, terms or conditions at or upon which any Armstrong floor covering products shall be resold.

5. Requiring or requesting any wholesaler or distributor or other purchaser of Armstrong floor covering products to furnish respondent any invoice or any report which reflects the price at which any such product has been resold.

II

It is further ordered, That respondent Armstrong Cork Company shall complete an independent review of its present prices, price lists, suggested prices, discounts, rebates, pricing policies, and other pricing materials, and based upon such review respondent shall

thereafter issue new pricing materials to be effective not later than the beginning of the floor covering sales season July 1, 1966.

III

It is further ordered, That respondent, Armstrong Cork Company, send a copy of this Order to all parties to whom it sends any of the new price lists, suggested price lists, or other pricing materials issued pursuant to Part II of this Order.

IV

It is further ordered, That respondent, Armstrong Cork Company, a corporation, its officers, employees, agents and representatives, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of floor covering products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from discriminating, directly or indirectly, in the price of such products of like grade and quality by selling to any purchaser at net prices higher than those charged any other purchaser who in fact competes in the resale and distribution of such products with the purchaser paying the higher price.

V

It is further ordered, That nothing contained in this Order shall be interpreted as prohibiting respondent herein from establishing, continuing in effect, maintaining, or enforcing in any lawful manner any price agreement excepted from the provisions of the Federal Trade Commission Act by virtue of the McGuire Act amendments to said Act or any other applicable statute, whether now in effect or hereafter enacted.

VI

It is further ordered, That nothing in this Order shall prohibit respondent from sending to its wholesalers, distributors and potential customers or users of respondent's floor covering products its suggested resale price lists.

VII

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

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IN THE MATTER OF
STANLEY MYERS ET AL.

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

Docket C-1011. Complaint, Nov. 4, 1965—Decision, Nov. 4, 1965

Consent order requiring three defunct firms in Melrose Park, Pa., engaged in purchasing used X-ray film from hospitals, doctors and others, for resale to processors for the recovery of silver therefrom, to cease misrepresenting the condition of materials received and the cost or amount of labor expended upon any shipment of goods, and to cease from failing to pay suppliers agreed-upon amounts for material unless failure to pay is based upon a bona fide claim.

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 Stanley Myers, Edward S. Myers and Louis Myers, individuals, formerly doing business at Edward S. Myers Company, Jostan-Montgomery Plastics Company and Philadelphia Processing Company, 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. Respondents Stanley Myers, Edward S. Myers and Louis Myers are individuals who have in the past done business as Edward S. Myers Company, Jostan-Montgomery Plastics Company and Philadelphia Processing Company, with their principal office and place of business located at 7607 Spring Avenue, Melrose Park, Pennsylvania.

PAR. 2. Respondents have in the past engaged in the solicitation for and purchase of used X-ray film from hospitals, doctors and others, for resale to processors of such film for the recovery of silver therefrom. Respondents used the name Edward S. Myers Company from the inception of their business in about 1955 until about May, 1961 when they adopted the name Jostan-Montgomery Plastics Company. Respondents used the latter name until about January, 1964 at which time they chose the name Philadelphia Processing Company, which they used until September, 1964 when they ceased doing business.

PAR. 3. In the course and conduct of their business, respondents for some time in the past caused the aforesaid product, when pur-