

IN THE MATTER OF
NATIONAL DECORATING PRODUCTS
ASSOCIATION, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT

Docket 9192. Complaint, April 29, 1985—Decision, June 11, 1986

This consent order requires, among other things, a St. Louis, Mo. wallcovering industry trade association and its New England regional affiliate based in Westport, Conn., to cease any conduct having the effect of fixing prices, terms or conditions of sale of wallcoverings. Further, respondents are prohibited from: (1) coercing any seller or supplier of wallcovering to use or not use any prices, terms or conditions of sale, distribution methods or policy of choosing customers, and (2) assisting any affiliate or member who use any of the prohibited practices.

Appearances

For the Commission: *Kevin T. Cronin.*

For the respondent: *George D. Webster, Webster, Chamberlain & Bean, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, *as amended*, 15 U.S.C. 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the respondents named in the above caption 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 this complaint stating its charges as follows:

PARAGRAPH 1. For purposes of this complaint, the following definitions shall apply:

A. *Wallcoverings* means flexible materials used to cover residential and commercial walls, such as simple wallpapers, vinyls, fabrics, and foils.

B. *Supplier* means a manufacturer or a distributor of wallcoverings or an entity engaged in the sale of wallcoverings for resale by others to consumers.

PAR. 2. Respondent National Decorating Products Association, Inc. ("NDPA") is a New Jersey corporation with its principal place of business at 1050 North Lindbergh Boulevard, St. Louis, Missouri.

NDPA is composed of full voting members, which are retail businesses engaged in the promotion and sale of wallcoverings, and non-voting associate members, which are suppliers of wallcoverings. NDPA's membership consists of approximately 4000 firms, over 99 percent of which are independent decorating products retailers operating some 7000 retail stores, or about one-third of all the stores that sell wallcoverings, and constituting about 75 percent of the independent decorating products retailers in the United States.

PAR. 3. NDPA was organized, *inter alia*, to facilitate the exchange of information among its members concerning methods for conducting business in the sale and distribution of wallcoverings, and to encourage the formation of regional and local affiliates composed of retail sellers of wallcoverings. There are about 24 local affiliates and three regional affiliates of NDPA. Approximately one-third of NDPA members are members of a local affiliate. NDPA's policies are determined, and its affairs are directed, by an 18 member board of directors, which includes a minimum of one member from each of nine geographic zones.

PAR. 4. Respondent Eastern Decorating Products Association ("EDPA") is an unincorporated association with its principal place of business at 10 Bay Street, Suite 134, Westport, Connecticut. EDPA is a regional affiliate of NDPA and is composed of members from nine local affiliates of NDPA in the New England and Middle Atlantic states.

PAR. 5. Respondent Decorating Products Dealers Association of Greater New York, Inc. ("DPDA-NY") is a New York corporation with its principal place of business at Bell Plaza, 42-40 Bell Boulevard, Bayside, New York. DPDA-NY is a local affiliate of NDPA.

PAR. 6. Full voting members of respondents are engaged in the operation of retail decorating products stores where wallcoverings are sold. Annual retail sales of wallcoverings in the United States are approximately \$1.5 billion. Except to the extent that competition has been restrained as herein alleged, full voting members of respondents have been and are now in competition among themselves and with other sellers of wallcoverings.

PAR. 7. Respondents engage in substantial activities which further the pecuniary interests of their members. By virtue of their purposes and their activities, respondents are corporations within the meaning of Section 4 of the Federal Trade Commission Act, *as amended*, 15 U.S.C. 44.

PAR. 8. Respondents, and their members, engage in acts and practices, including the acts and practices described below, which are in or affect commerce within the meaning of the Federal Trade Commission Act, *as amended*.

COUNT I

PAR. 9. Members of respondents NDPA, EDPA, and DPDA-NY are wallcovering retailers. To permit consumers to select from a wide variety of wallcoverings, retailers display in their showrooms sample books most of which contain manufacturers' suggested retail prices and product identification numbers. Some wallcovering retailers, including mail order houses, offer percentage discounts from manufacturers' suggested retail prices. Consumers use suggested resale prices both to comparison shop between retailers offering percentage discounts and as one indication of quality differences between various wallcovering samples.

PAR. 10. Respondents NDPA, EDPA, DPDA-NY, and others, have combined or conspired between and among themselves, and with at least some of their members, to restrain price competition in the sale of wallcoverings, to fix or stabilize prices, and to prevent discounting from manufacturers' suggested retail prices by suppressing, or attempting to suppress, information concerning manufacturers' suggested retail prices.

PAR. 11. Respondents NDPA, EDPA and DPDA-NY, and at least some of their members, have engaged in various acts or practices in furtherance of this combination or conspiracy, including, one or more of the following:

A. Removing or otherwise concealing, or urging members to remove or otherwise to conceal the suggested prices in wallcovering sample books;

B. Attempting to pressure, and urging members to pressure, suppliers into publishing wallcovering sample books without suggested prices by, among other things, agreeing to give favored treatment to products of suppliers that do not include suggested retail prices in wallcovering sample books;

C. Offering to provide assistance to members to determine what retail prices to charge in the absence of manufacturers' suggested retail prices.

PAR. 12. The combination or conspiracy and the acts and practices alleged in Paragraphs Ten and Eleven have had, or have the tendency or capacity to have, the following effects, among others:

A. Fixing, maintaining, or stabilizing prices of wallcoverings;

B. Restraining competition in connection with the sale and distribution of wallcoverings;

C. Depriving consumers of the benefits of additional price, quality, and service competition in connection with the purchase and sale of wallcoverings.

PAR. 13. The combination or conspiracy and the acts and practices alleged in Paragraphs Ten and Eleven constitute unfair methods of competition or unfair or deceptive acts and practices by respondent in violation of Section 5 of the Federal Trade Commission Act, *as amended*.

COUNT II

PAR. 14. Wallcoverings are packaged in double rolls, although some manufacturers price and sell wallcoverings in single rolls. Some suppliers impose a cutting charge when processing orders for single rolls.

PAR. 15. Respondents NDPA and DPDA-NY, and others have combined or conspired between and among themselves, and with at least some of their members, to restrain competition by attempting to fix or restrain the prices paid to wallcovering suppliers by retailers.

PAR. 16. Respondents NDPA, DPDA-NY, and at least some of their members and others have engaged in various acts or practices in furtherance of these combinations or conspiracies, including, one or more of the following:

A. Threatening, and urging members to threaten, to refuse to deal with suppliers that imposed cutting charges;

B. Refusing to pay, or urging members to refuse to pay, cutting charges imposed by suppliers;

C. Publishing and circulating to suppliers, and others, letters stating or implying that members would refuse to deal with suppliers imposing cutting charges, or urging members to refuse to pay cutting charges imposed by suppliers.

PAR. 17. The combination or conspiracy and the acts and practices alleged in Paragraphs Fifteen and Sixteen have had, or have the tendency or capacity to have, the following effects, among others:

A. Fixing, maintaining, or stabilizing prices of wallcoverings;

B. Restraining competition in connection with the sale and distribution of wallcoverings;

C. Depriving consumers of the benefits of additional price, quality, and service competition in connection with the purchase and sale of wallcoverings.

PAR. 18. The combination or conspiracy and the acts and practices alleged in Paragraphs Fifteen and Sixteen constitute unfair methods of competition or unfair or deceptive acts and practices by respondents in violation of Section 5 of the Federal Trade Commission Act, *as amended*. These combinations or conspiracies, as well as those alleged in Count I, are continuing and will continue in the absence of appropriate relief.

DECISION AND ORDER

AS TO

NATIONAL DECORATING PRODUCTS ASSOCIATION, INC.
AND EASTERN DECORATING PRODUCTS ASSOCIATION

The Commission having heretofore issued its complaint charging respondents National Decorating Products Association, Inc. ("NDPA"), a corporation, and Eastern Decorating Products Association ("EDPA"), an unincorporated association, named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondents, their attorney, 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 respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Secretary of the Commission having thereafter withdrawn this matter as to these respondents from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent NDPA is a corporation organized, existing and doing business under and by virtue of the laws of the state of New Jersey, with its office and principal place of business located at 1050 North Lindbergh Boulevard, St. Louis, Missouri.
2. Respondent EDPA is an unincorporated association with its office and principal place of business located at 10 Bay Street, Suite 134, Westport, Connecticut.
3. 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

I.

It is ordered, That for purposes of this order the following definitions shall apply:

A. *NDPA* means the National Decorating Products Association, Inc., its officers, directors, committees, representatives, agents, employees, successors and assigns.

B. *EDPA* means the Eastern Decorating Products Association, its officers, directors, committees, representatives, agents, employees, successors and assigns.

C. *Wallcoverings* means flexible materials used to cover residential and commercial walls, such as simple wallpapers, vinyls, fabrics and foils.

II.

It is further ordered, That NDPA and EDPA, individually or in concert with any other person, directly or indirectly, or through any corporate or other device, shall cease and desist from:

A. Conduct having the purpose or effect of:

1. fixing, maintaining, or stabilizing prices, terms or conditions of sale of wallcoverings;

2. coercing any seller of wallcoverings to adopt, abandon, or refrain from adopting or abandoning any practice or policy concerning prices, terms or conditions of sale, or distribution methods or choice of customers.

B. Expressly or impliedly advocating, suggesting, advising, or recommending that any of NDPA's or EDPA's members refuse to deal with any seller of wallcoverings on account of, or that any of NDPA's or EDPA's members engage in any other act to affect, or to attempt to affect, the prices, terms or conditions of sale, or distribution methods or choice of customers of any seller of wallcoverings.

C. Publishing or circulating the results of any survey of, or otherwise identifying, prices, terms or conditions of sale, or distribution methods or choice of customers of any seller of wallcoverings in order to coerce, compel or induce any seller of wallcoverings to adopt or abandon or to refrain from adopting or abandoning any practice or policy concerning prices, terms or conditions of sale, or distribution methods or choice of customers.

D. Aiding or assisting any affiliates of NDPA or NDPA members in engaging in any of the acts prohibited by this Part II.

III.

It is further ordered, That this order shall not be construed to prevent NDPA or EDPA from publishing written materials or sponsoring seminars, or otherwise providing information or its members' views on topics including but not limited to cost accounting principles, and suggested prices and product identification numbers in wallcovering sample books to other sellers of wallcoverings, *provided, however,* that the information or views are not presented in a manner constituting a violation of any provision contained in Part II of this order.

IV.

It is further ordered, That NDPA shall:

A. Within 30 days following service of this order, mail a copy of this order to each of its members.

B. Within 60 days following service of this order, publish this order in an issue of *Decorating Retailer* in the same type size normally used for articles in *Decorating Retailer*.

C. For a period of three years provide each new NDPA member with a copy of this order at the time the new member is accepted into membership.

D. Terminate for a period of one year its affiliation with any affiliate organization within 60 days after learning or having reason to believe that said affiliate organization has engaged, after the date this order becomes final, in any act or practice that, if engaged in by NDPA, would be prohibited by Part II of this order.

V.

It is further ordered, That NDPA and EDPA shall:

A. Within 60 days following service of this order, file a written report with the Commission, setting forth in detail the manner and form in which they have complied with this order. Thereafter, additional reports shall be filed at such other times as the Commission may, by written notice to NDPA and EDPA, require.

B. For a period of 3 years following service of this order, maintain in their files copies of all correspondence received from, or sent to, sellers of wallcoverings, associations of sellers of wallcoverings, or

NDPA affiliates or members, and make such copies available for inspection by representatives of the Federal Trade Commission upon written request. However, NDPA and EDPA need not maintain copies of press releases received from sellers of wallcoverings.

C. Notify the Commission at least 30 days prior to any proposed change in NDPA's or EDPA's organization or operations, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or association, or any other change that may affect compliance obligations arising out of this order.

Chairman Oliver did not participate.

Decision and Order

107 F.T.C.

IN THE MATTER OF

DECORATING PRODUCTS DEALERS ASSOCIATION OF
GREATER NEW YORK, INC.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT*Docket 9192. Complaint,* April 29, 1985—Decision, June 11, 1986*

This consent order requires, among other things, a Bayside, N.Y. local affiliate of a wallcovering industry trade association to cease any conduct having the effect of fixing prices, terms or conditions of sale of wallcoverings. Further, respondent is prohibited from: (1) coercing any seller or supplier of wallcovering to use or not use any prices, terms or conditions of sale, distribution methods or policy of choosing customers, and (2) assisting any affiliate or member who use any of the prohibited practices.

Appearances

For the Commission: *Kevin T. Cronin.*

For the respondent: *James H. Sneed, Washington, D.C.*

DECISION AND ORDER

AS TO

DECORATING PRODUCTS DEALERS ASSOCIATION OF
GREATER NEW YORK, INC.

The Commission having heretofore issued its complaint charging respondent Decorating Products Dealers Association of Greater New York, Inc. ("DPDA-NY"), a corporation, named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

* Complaint previously published at 107 F.T.C. 498 (1986).