

discriminating, directly or indirectly, in the price of fluid milk and milk products of like grade and quality:

1. By selling any of these products to any purchaser in any city or definable market area in which respondents are in competition with another seller at a price which is lower than the price for such products charged any other purchaser at the same level of distribution in that or any other city or definable market area served by the same processing plant, where such lower price undercuts the lowest price offered to that purchaser by any other seller having a substantially smaller annual volume of sales of milk and milk products than respondents' annual volume of sales of those products.

2. By selling any of these products to any purchaser at a price which is lower than the price for products of like grade and quality charged any other purchaser who competes in the resale of such products with the purchaser paying the lower price.

It is further ordered, That the hearing examiner's initial decision, as above modified and as modified by the accompanying opinion, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondents, Dean Milk Company and Dean Milk Co., Inc., 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 the order to cease and desist.

Commissioners Elman and Jones dissenting. Commissioner MacIntyre has filed a separate statement.

IN THE MATTER OF
SWISS LABORATORY INC., DOING BUSINESS AS
FEDERAL LEAD COMPANY ET AL.

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

Docket C-1006. Complaint, Oct. 25, 1965—Decision, Oct. 25, 1965

Consent order requiring Cleveland, Ohio, distributors of commercial wire solders to jobbers, to cease misrepresenting the nature, quality or composition of any of their solders, by such practice as using the designation "50/50" on labels and price sheets to describe a commercial wire solder which was not a 50/50 solder as known in the trade, as said solder contained less than 50% tin and more than 50% lead by weight.

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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 Swiss Laboratory Inc., a corporation, doing business as Federal Lead Company and Leon W. Diamond and Myron Levy, individually and as officers of said corporation, 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 Swiss Laboratory 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 1515-1531 Hamilton Avenue in the city of Cleveland, State of Ohio. Federal Lead Company is a trade name of Swiss Laboratory Inc.

Respondents Leon W. Diamond and Myron Levy are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale and distribution of commercial solders including wire solders designated "50/50" and "40/60." Said solders are sold to jobbers who sell to retailers for ultimate resale 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 products, when sold, to be shipped from their place of business in the State of 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 products 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 purchase of their commercial wire solders, respondents have engaged in the practice of labeling and describing in price sheets certain of said solders as "50/50" and "40/60."

PAR. 5. By and through the use of the aforesaid manner of labeling and describing said wire solders, the respondents represented:

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(1) That their wire solder designated "50/50" is a 50/50 solder which is known in the trade as a solder containing 50% tin and 50% lead by weight.

(2) That their wire solder designed "40/60" is a 40/60 solder which is known in the trade as a solder containing 40% tin and 60% lead by weight.

PAR. 6. In truth and in fact:

(1) Their wire solder designated "50/50" is not a 50/50 solder as known in the trade as it contains less than 50% tin and more than 50% lead by weight.

(2) That their wire solder designed "40/60" is a 40/60 solder as known in the trade as it contains less than 40% tin and more than 60% lead by weight.

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

PAR. 7. In the conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind and nature as that sold by respondents.

PAR. 8. 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' products by reason of said erroneous and mistaken belief.

PAR. 9. 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 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

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The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents 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 respondents that the law has been violated as set forth by 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 Swiss Laboratory 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 1515-1531 Hamilton Avenue, in the city of Cleveland, State of Ohio.

Respondents Leon W. Diamond and Myron Levy are officers of the corporate respondent and their address is the same as that of said corporate respondent.

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 Swiss Laboratory Inc., a corporation, doing business as Federal Lead Company or under any other name or names, and its officers, and Leon W. Diamond and Myron Levy, individually and as officers of said corporation, 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 solders, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Using the designation 50/50 to designate, describe or refer to a commercial solder, which does not contain 50% tin by weight: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the tin content of a solder is within the permissible variations in composition allowed in the sampling procedures set forth in the then existing Specifications for Solder Metal as published by the American Society for Testing and Materials.

(2) Using the designation 40/60 to designate, describe or refer to a commercial solder which does not contain 40% tin by weight: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the tin content of a solder is within the permissible variations in composition allowed in the sampling procedures set forth in the then existing Specifications for Solder Metal as published by the American Society for Testing and Materials.

(3) Misrepresenting by any numerical designation or in any other manner the nature, quality or composition of any of their solders.

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.

IN THE MATTER OF
FREEMAN-TOOR CORPORATION

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

Docket C-1007. Complaint. Oct. 25, 1965—Decision, Oct. 25, 1965

Consent order requiring a New York City shoe manufacturer and its subsidiaries, to cease entering into agreements with independent retail stores to fix prices, terms and conditions of sale and delivery of its merchandise and attempting to enforce such resale price agreements, and from coercing and intimidating retail dealers for failure to observe and maintain prescribed resale prices.

COMPLAINT

The Federal Trade Commission having reason to believe that Freeman-Toor Corporation, a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Freeman-Toor Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with executive offices located

at 350 5th Avenue, New York, New York. Respondent Freeman-Toor Corporation is successor to Freeman Shoe Corporation, a Wisconsin corporation, now dissolved, the assets of which having been transferred on June 30, 1965, to respondent Freeman-Toor Corporation. The former business of Freeman Shoe Corporation is now operated by respondent Freeman-Toor Corporation through its division now known as Freeman Shoe division of such respondent corporation. For purposes of this complaint, the hereinafter recited acts and practices of respondent were engaged in by Freeman Shoe Corporation prior to the above-described corporate reorganization. The net annual sales of respondent Freeman-Toor Corporation are approximately \$30,000,000.

PAR. 2. Respondent is now, and for some years last past has been, engaged in the manufacture, sale and distribution of shoes and other related incidental merchandise such as shoe laces, shoe polish, rubbers, house slippers and shoe trees. Said products of respondent are sold by respondent to independent retail shoe stores and other type apparel stores selling shoes to the consuming public. Respondent also sells its products direct to the consuming public through the respondent's own retail subsidiaries. Respondent has approximately 110 such subsidiaries operating approximately 230 retail shoe outlets located in department stores and men's clothing stores throughout the United States.

PAR. 3. The products of respondent are sold by said respondent for use, consumption and resale 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 wherein they are manufactured to the purchasers thereof located in other States. Respondent maintains, and at all times mentioned herein has maintained a course of trade in commerce of said products among and between the various States of the United States and in the District of Columbia.

PAR. 4. Except to the extent that competition has been hindered, frustrated, lessened and eliminated as set forth in this complaint, respondent is now, and has been, in substantial competition with other corporations, individuals and partnerships engaged in the manufacture, distribution and sale of men's shoes in commerce as that term is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of its business, respondent has, together with its retail subsidiary corporations, entered into agreements, understandings and arrangements with many independent retail stores competing with said subsidiaries in the sale

of men's shoes whereby the prices at which the men's shoes are to be sold have been fixed, established and coordinated.

PAR. 6. In addition to the practices described in Paragraph Five above, it has been the policy and practice of respondent, in the course and conduct of its business, to enter or attempt to enter, into agreements, understandings and arrangements with various independent retail dealers located in areas within which it does business, to fix and maintain resale consumer prices of respondent's products distributed, offered for sale and sold by said independent retail dealers. Respondent employed persuasion, threats and compulsion in prevailing upon independent retail dealers selling its products to maintain resale prices fixed and promulgated by respondent for its products.

PAR. 7. The agreements, understandings, conspiracy, combination, planned common course of action or course of dealings, together with the acts, practices, methods and policies, as hereinabove alleged, are unlawful and against public policy because of their tendency to unduly restrain, hinder, suppress and eliminate competition and restrain and monopolize trade and commerce and they therefore constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue a complaint charging the former Freeman Shoe Corporation with violation of the Federal Trade Commission Act, and respondent herein, Freeman-Toor Corporation, successor to Freeman Shoe Corporation, having been furnished 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

Respondent herein, Freeman-Toor Corporation, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by said respondent of all the jurisdictional facts set forth in the complaint now to issue herein against said respondent, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by said 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, now issues its complaint in the form contemplated by

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said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Freeman-Toor Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with executive offices located at 350 5th Avenue, New York, New York. Respondent Freeman-Toor Corporation is successor to Freeman Shoe Corporation, a Wisconsin corporation, now dissolved, the assets of which having been transferred on June 30, 1965, to respondent Freeman-Toor Corporation. The former business of Freeman Shoe Corporation is now operated by respondent Freeman-Toor Corporation through its division now known as Freeman Shoe division of such respondent corporation.

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

It is ordered, That respondent Freeman-Toor Corporation, a corporation, and its officers, and subsidiaries and said respondent's representatives, agents, employees, successors and assigns, directly or through any corporate or other device, in or in connection with the offering for sale, sale or distribution of shoes and related products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Entering into, continuing, cooperating in, carrying out any planned common course of action, understanding, agreement, combination or conspiracy between or among respondent or subsidiaries of respondent and any other person or persons not parties hereto, to fix, maintain, adhere to, stabilize by any means or methods, any prices, terms or conditions of sale or delivery of respondent's merchandise.

2. Entering into, continuing, establishing, or enforcing, or attempting to enforce, any agreement or understanding with any customer or customers or prospective customer or customers concerning the price at which any of respondent's products are to be resold.

3. Harassing, intimidating or coercing or threatening to refuse or refusing to sell men's shoes to independent retail dealers for failure to observe and maintain the resale prices prescribe by respondent.

It is further ordered, That respondent shall within sixty (60) days after service upon it of this Order, inform and advise each of

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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.

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.

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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 7⅜¢

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

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.

IN THE MATTER OF
ENDICOTT-JOHNSON CORP.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE CLAYTON ACT

Docket C-1009. Complaint, Oct. 29, 1965—Decision, Oct. 29, 1965

Consent order requiring one of the Nation's largest shoe manufacturers with its principal place of business located in Endicott, N. Y., to cease and desist from acquiring any interest in any domestic concern engaged in manufacturing shoes and footwear for the next 20 years, without the prior approval of the Commission.

COMPLAINT

1. The Federal Trade Commission, having reason to believe that the party respondent named above, and hereinafter more particularly designated and described, has violated and is now violating provisions of Section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. § 45 (a) (1)), and of section 7 of the Clayton Act, as amended, (15 U.S.C. §18), and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint charging as follows:

Endicott-Johnson Corporation

2. Respondent, Endicott-Johnson Corporation (hereinafter sometimes referred to as Endicott-Johnson) is a corporation organized and existing under the laws of the State of New York, with its office and principal place of business located at 1100 East Main Street, Endicott, New York.

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3. Endicott-Johnson is engaged in commerce as "commerce" is defined in the Clayton Act, as amended, and in the Federal Trade Commission Act.

4. Endicott-Johnson is engaged principally in the manufacture, sale and distribution of men's, women's and children's shoes and footwear. Endicott-Johnson produces most of its own leather and other shoe raw materials and components. It presently produces shoes in over two dozen shoe manufacturing plants. Of the shoes produced by Endicott-Johnson, approximately one-third are sold to mail order houses and large chain stores, approximately one-third are sold to small independent shoe retailers, and approximately one-third are retailed through the approximately 550 retail shoe outlets owned and operated by Endicott-Johnson itself.

5. In 1963, Endicott-Johnson had total dollar sales in excess of \$118,000,000, and assets of over \$85,000,000. In that year, Endicott-Johnson was the fourth largest manufacturer of shoes in the United States when measured by the number of pairs of shoes manufactured, and the fifth largest company when measured in terms of dollar sales.

6. Endicott-Johnson sells men's, women's and children's shoes under various trade names, including the following: "Johnsonian," "Guide Step," "Dobie's," "E-Jay," "Cool Notes," "Ranger," "Fashion 10," and "High Society."

Nobil Shoe Company

7. The Nobil Shoe Company (hereinafter sometimes referred to as Nobil) was a corporation organized and existing under the laws of the State of Ohio, and its office and principal place of business was located at 750 East Talmadge Avenue, Akron, Ohio.

8. Nobil operated 121 retail shoe outlets consisting of retail, family type shoe stores, or of leased shoe departments. Nobil's stores were located in Ohio, Michigan, Indiana, Pennsylvania, Wisconsin and Illinois. Nobil did not own or operate any shoe manufacturing facilities. In 1964 Nobil had sales of approximately \$17,000,000, and assets of \$6,564,000.

Trade and Commerce

9. Although domestic shoe manufacturing is spread among many companies, a small number of companies occupy a commanding position in the shoe industry. There are between 700 and 1,000 manufacturers of shoes in the United States, but just a few large companies control a sizeable segment of total industry production, while the balance is divided among hundreds of smaller companies

having only very tiny shares. In 1962 the four largest companies accounted for 23.6% of total industry production, the fifty largest companies accounted for 52.5% of total industry production.

10. Endicott-Johnson is one of the few large companies controlling a comparatively large segment of the total market. In 1962 Endicott-Johnson produced over 28,000,000 pairs of shoes, which made it the fourth largest manufacturer of shoes in the United States, with a total market share exceeded only by International Shoe Company, Brown Shoe Company and Genesco.

11. In 1963 "shoe stores," or stores and retail outlets which deal primarily in the sale of shoes, accounted for more than 50% of the total market for shoes sold and distributed in the United States. A very large proportion of shoe stores in this country are "factory owned" or owned and operated by companies manufacturing shoes.

12. Furthermore, there has been a definite trend since 1945 for shoe manufacturers, particularly the largest shoe manufacturers, to acquire retail outlets. International Shoe Company, the leading producer in the industry had no retail outlets in 1945, but by 1956 had acquired 130 retail outlets, and today is estimated to have over 700 retail units. Genesco had only 80 retail outlets in 1945, while today it is estimated to have more than 1,000 retail outlets. Shoe Corporation of America during this same period increased its retail outlets from 301 to approximately 350. Melville Shoe Company has increased its retail outlets from 526 to about 1,275. And Brown Shoe Company with no retail outlets of its own prior to 1951, is estimated to have in excess of 715 outlets today. In addition, between 1950 and 1956 nine independent shoe store chains operating 1,114 retail shoe stores were found to have become subsidiaries of these large firms, and to have ceased their independent operations.

13. There also exists a definite trend for the parent manufacturers of such acquired shoe outlets to supply a large and increasing proportion of the retail outlets' needs, thereby foreclosing other shoe manufacturers, particularly independent producers, from competing for the business of these retail stores.

14. Since 1953 Endicott-Johnson has made four acquisitions of companies operating retail shoe stores. In 1953 Endicott-Johnson acquired Liberty Shoe Stores, Inc., for a consideration of \$300,000. Liberty Shoe Stores, Inc. operated nine shoe stores in the Buffalo, New York area. In 1955 Endicott-Johnson acquired Slaters Boot Shops for approximately \$800,000. Slaters Boot Shops operated 11 stores in Louisiana and Florida. In 1958 Endicott-Johnson acquired

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Rival Shoe Co., Inc. for approximately \$356,000. Rival Shoe Co., Inc. operated 11 retail shoe stores in New York City and Philadelphia. In 1962 Endicott-Johnson acquired Brasley-Cole Shoe Co. Ltd., for a consideration of \$2,700,000. Brasley-Cole Shoe Co., Ltd. operated 83 retail shoe stores in California, New Mexico and Texas.

15. It is estimated that there are twenty-three companies in the United States that own 100 or more retail shoe outlets. Endicott-Johnson ranked seventh among these companies in number of retail outlets, while Nobil ranked twentieth. Endicott-Johnson and Nobil combined rank sixth.

16. These twenty-three companies, each of which operated over 100 retail shoe outlets, had in the aggregate, about 9,000 retail shoe outlets. Of these twenty-three companies, fourteen were shoe manufacturers as well as retailers, while nine were retailers only. Of the approximately 9,000 shoe stores owned by this group of companies, the fourteen manufacturer-retailers owned 75% of all the stores, while the retailer group accounted for only 25% of such stores. Nobil was the ninth ranking non-manufacturing shoe retailer. The addition of the Nobil stores to the manufacturer-retailer group lowers the number of units operated by the non-manufacturing retailers with over one hundred stores by nearly 6%. Nobil was a substantial independent shoe retailer, and accouter for an appreciable part of the independent shoe retailer business.

17. Endicott-Johnson operated retail shoe stores in all of the states in which Nobil operated retail stores. The stores operated by Endicott-Johnson which were located in the same States as were Nobil stores, had total sales, in 1963, of \$12,389,000.

18. There were twenty-six cities, in five States, in which both Endicott-Johnson and Nobil operated retail outlets. Those cities were Altoona, Erie, New Kensington, Pittsburgh, and Scranton, Pennsylvania; Alliance, Cleveland, Lorain, Mansfield, Massillon, Mount Vernon, Sandusky, Stow, and Youngstown, Ohio; Anderson, Indianapolis, and Marion, Indiana; Aurora, Illinois; Ann Arbor, Battle Creek, Bay City, Benton Harbor, Detroit, Lincoln Park, Muskegon, Port Huron and Saginaw, Michigan. Endicott-Johnson operated 52 retail shoe store outlets with aggregate sales of \$2,400,000, and Nobil operated 39 retail shoe outlets with aggregate sales of \$5,400,000 in the 26 cities named above.

Violations Charged

In September 1965, Endicott-Johnson Corporation acquired all

of the stock of Nobil Shoe Company for a consideration of \$9,400,000.

A. Violation of Section 7 of the Clayton Act.

19. The effect of the aforesaid acquisition of Nobil Shoe Company by Endicott-Johnson Corporation may be substantially to lessen competition and to create a monopoly in the manufacture and sale of shoes and footwear in the United States as a whole in the following ways among others:

(1) Competition between Endicott-Johnson and other manufacturers of shoes and footwear has been eliminated or restricted;

(2) An independent purchaser of shoes and footwear has been eliminated;

(3) A portion of the market for shoes and footwear has been acquired by Endicott-Johnson thereby foreclosing other manufacturers of shoes and footwear from effectively competing for the business of the acquired company;

(4) In an industry already characterized by the existence of a trend toward vertical integration between manufacturers and retailers, the acquisition has further reduced the number of available independent purchasers of shoes;

(5) The trend towards vertical integration between manufacturers and retailers has been, or may be, encouraged or stimulated;

(6) The level of integration between the shoe and footwear manufacturing industry and shoe and footwear retailing has been increased;

(7) The entry of new competitive entities into the manufacture and sale of shoes and footwear has been made more difficult.

20. A further effect of the aforesaid acquisition of Nobil Shoe Company by Endicott-Johnson Corporation may be substantially to lessen competition or to tend to create a monopoly in the sale of shoes at retail in the United States as a whole, and in that area of the country which consists of all or any part of the States of Pennsylvania, Ohio, Indiana, Illinois, and Michigan, in the following ways among others:

(1) Actual or potential competition between Endicott-Johnson and Nobil has been eliminated;

(2) Nobil has been eliminated as an independent competitive factor;

(3) Concentration has been increased;

(4) The members of the consuming public will be denied the benefit of free and unrestricted competition.

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21. The acquisition of Nobil Shoe Company constitutes a violation of Section 7 of the Clayton Act (15 U.S.C. § 18), as amended.

B. Violation of Section 5 of the Federal Trade Commission Act.

22. The combination by which Endicott-Johnson and Nobil undertook to merge Nobil into Endicott-Johnson is an unreasonable restraint of trade and commerce in the retail sale of shoes and footwear, throughout the United States or certain sections thereof, in violation of Section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. § 45(a)(1)).

23. The acquisition of Nobil, and the previous acquisitions by Endicott-Johnson, taken as a whole, have hindered, and have a dangerous tendency to hinder, competition unduly, and constitute unfair acts and practices, in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of Section 7 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 Endicott-Johnson Corporation is a corporation organized, existing and doing business under the laws of the State of New York with its office and principal place of business located at 1100 East Main Street, Endicott, New York.

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.

Complaint

ORDER

It is ordered, That for a period of twenty years after the service upon it of this Order, Endicott-Johnson Corporation shall cease and desist from acquiring, directly or indirectly, through subsidiaries, or otherwise, the whole or any part of the share capital, or assets (other than products sold or purchased in the course of business), of, or any other interest in, any domestic concern, corporate or non-corporate, engaged principally or as one of its major commodity lines at the time of such acquisition, in any State of the United States or the District of Columbia, in the business of manufacturing or selling shoes or footwear, without the prior approval of the Federal Trade Commission.

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

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, 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. 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-

chased, to be shipped to their place of business in the State of Pennsylvania from sellers thereof located in various other States of the United States. In addition, respondents for some time in the past caused the aforesaid product, when sold, to be shipped from their place of business in the State of Pennsylvania to a purchaser thereof located in the State of New Jersey. At all times mentioned herein respondents maintained a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, respondents engaged in the practice of mailing circulars to prospective sellers of used X-ray film throughout the country, offering to purchase such film at a specified price and offering to pay the motor freight charges for the shipment of such film. When contacted by the recipients of these circulars, respondents forwarded to them a purchase order contract along with instructions for shipping the used X-ray film.

Upon receipt of a shipment of used X-ray film accompanied by a signed purchase order contract, respondents engaged in the practice of notifying the seller that the packaging of the film did not comply with the conditions prescribed in the purchase order contract, that most of the film was substandard or was received in a damaged condition and, by reason thereof, respondents were required to perform extensive labor upon the substandard or damaged film. Consequently, respondents deducted a substantial portion of the agreed upon amount as compensation for the alleged labor performed and for the lower value of the alleged substandard or damaged film, and remitted a check which was a small fraction of the amount originally offered as full payment for the film received.

PAR. 5. In truth and in fact, the used X-ray film received by respondents was packaged in the same manner usually and customarily employed by sellers of such used film and such packing was in substantial compliance with the terms of the purchase order contract. The film was not substandard, received in a damaged condition, or otherwise of lower value than any other used X-ray film of the same type. No labor was performed by respondents upon the film other than that required in any case to prepare such film for resale to processors thereof.

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

PAR. 6. In the conduct of their business, at all times mentioned herein, respondents were in substantial competition, in commerce,

