

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.

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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.