

U. S. v. TILE MANUFACTURERS CREDIT ASSO.
IN THE DISTRICT COURT OF THE UNITED STATES,
SOUTHERN DISTRICT OF OHIO.

In Equity No. 201.

UNITED STATES OF AMERICA, PLAINTIFF,

VS.

TILE MANUFACTURERS CREDIT ASSOCIATION, ET AL.,
DEFENDANTS.

FINAL DECREE.

The United States of America having filed its petition herein on the 11th day of January, 1922, and all of the defendants having duly appeared by A. R. Johnson and Agnew Hice, their solicitors of record, and having answered, and the cause being now at issue on the petition and answers;

Now comes the United States of America by Benson W. Hough, its attorney for the Southern District of Ohio, and by James A. Fowler and C. Stanley Thompson, Special Assistants to the Attorney General of the United States, and come also all of the defendants herein by their solicitors as aforesaid; and it appearing to the court that it has jurisdiction of the subject matter alleged in the petition and that the petition states a cause of action; and the petitioner having moved the court for an injunction against the defendants as hereinafter decreed; and the court having duly considered the statements of counsel for the respective parties; and all of the defendants through their said solicitors now and here consenting to the rendition and entry of the following decree;

Now, therefore, it is ordered, adjudged and decreed as follows:

1. That the combination and conspiracy in restraint of interstate trade and commerce, the acts, regulations, rules, resolutions, agreements, contracts and understandings in restraint of interstate trade and commerce as described in the petition herein, and the restraint of such trade and

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commerce obtained thereby, are violative of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," known as the Sherman Anti-Trust Act.

2. That the contract of association dated April 24, 1917, between the defendant tile manufacturers, under which the defendant Tile Manufacturers Credit Association is organized, is a contract in restraint of interstate trade and commerce in violation of the aforesaid act of Congress, and the Tile Manufacturers Credit Association is in and of itself a combination in restraint of such trade and commerce and an unlawful instrumentality organized, operated and maintained for the purpose of carrying into effect the combination and conspiracy described in the petition herein, and constitutes a violation of said act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," known as the Sherman Anti-Trust Act.

3. That the defendants and their officers, agents, servants and employees, and all persons acting under, by or in behalf of them or any of them, be and they are hereby perpetually enjoined, restrained and prohibited from combining, conspiring, or agreeing, expressly or impliedly, directly or indirectly, through any collective agency or agencies, or directly between themselves or any of them, to make or receive any or all of the reports described in the petition herein or to collect and distribute the information or any part thereof specified in said reports, or either or any of them, or to make or receive any reports having the same general character or the same purpose and effect as said reports, or to collect and distribute information similar to that specified in said reports, or any part thereof.

Provided, however, that the defendants may, through the association, or corporation, hereinafter provided for, receive and compile for transmission to any governmental agency such information and statistics as it may request as to production, shipments, the stocks on hand and the prices of tiles, but are restrained from distributing said

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information among themselves, except that information respecting sales may be collected annually and used to enable the assessment of the several members for their proportionate parts of the several expenses of the association, and for no other purpose.

4. That the defendants and their officers, agents, servants and employees, and all persons acting under, by or in behalf of them or any of them, or claiming so to act, be and they are hereby ordered and directed to dissolve and to forever discontinue defendant Tile Manufacturers Credit Association, and that they be and they are hereby perpetually enjoined, restrained and prohibited from directly or indirectly engaging in or forming any like association, from making any express or implied agreement of association or arrangement similar to or like said agreement or arrangement, from carrying out or continuing in effect the contracts and agreements described in the petition herein, from making any express or implied contracts, agreements or arrangements similar thereto and from using any other means or methods having the purpose or effect of restricting or restraining interstate trade and commerce in tiles.

Provided, however, that the defendants are not restrained or enjoined from maintaining an association, either voluntary or incorporated, for the following objects and purposes and none other:

(a) To advance or promote the use of tiles by research, publicity, advertisement and similar activities;

(b) To deal with engineering and trade problems for the purpose of advancing the manufacture and use of tiles and to secure the arbitration of trade disputes;

(c) To carry on educational work pertinent to the industry through fellowships in schools and colleges and experimental and research work, and the instruction of mechanics and training of apprentices and workmen, and to provide for scientific research, lectures and the writing, reading and publication of papers on subjects pertaining to the industry;

(d) To maintain a traffic bureau to assist the industry

in transportation matters before federal and state commissions and other bodies concerned in questions of transportation and tariff and also with common carriers, and, upon request of any member of the association, to furnish such member any information relating to rates upon its products or rules of transportation that may be contained in any public schedule or tariff, but all rates furnished shall be the actual rates between points of shipment and delivery, and shall not be based on any fixed or basing point;

(e) To improve sanitation, safety appliances, working conditions, accident prevention, employment, housing conditions, insurance, and matters of like character;

(f) To handle the insurance of its members, including fire, industrial, indemnity or group insurance;

(g) To maintain a credit bureau for the sole purpose of furnishing upon specific requests information as to the financial standing and the credit rating of persons and corporations purchasing or attempting to purchase tiles, but not to create directly or by inference a list or class of so-called legitimate or preferred dealers or purchasers. The gathering of information, solely for the purpose of providing credit information on special request, shall not be considered a violation of any part of this decree;

(h) To secure and maintain the standardization of quality and of technical and scientific terms, and the elimination of nonessential types, sizes, styles or grades of products.

5. That the defendants, their officers, agents, servants and employees, and all persons acting under, through, or in behalf of them or any of them, be and they are hereby perpetually enjoined, restrained and prohibited from combining, conspiring or agreeing, expressly or impliedly, directly or indirectly, to do any of the following acts:

(a) To adopt or use a uniform basic price list, or to fix and adopt list prices for their products;

(b) To establish or maintain uniform prices for their products;

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(c) To establish and maintain individual prices that are uniform for all classes of purchasers or dealers and for all sales;

(d) To establish or maintain rules or regulations as to the acceptance of orders at prices in effect prior to changes therein;

(e) To establish or maintain uniform extra charges for built-up letters, for numbers or for beveled edges;

(f) To establish or maintain uniform limitations on the proportionate amounts of the lower grades of tile sold;

(g) To sell tiles f. o. b. factory with freight equalized with other factories in the United States manufacturing the same class of tiles;

(h) To compile and distribute freight rate books for use in making freight equalizations;

(i) To establish or maintain uniform terms of sale;

(j) To establish or maintain uniform conditions on or for the acceptance of orders;

(k) To establish or maintain uniform charges for barrels, half barrels or boxes used for shipping tiles; to refuse to allow credit for old packages returned; to quote prices with package charges included, and to charge for packages whether used in shipment or not;

(l) To establish or maintain uniform conditions for the furnishing of tiles for sample purposes;

(m) To refuse to combine less than carload shipments into carload shipments invoiced to one of the purchasers;

(n) To refuse to sell to any persons or corporations because of any unpaid account or accounts;

(o) To formulate and establish or to retain in effect any requirements, circumstances, or conditions, nonconformity or noncompliance with which shall exclude any customer or customers from securing credit or shall impose any limitations or conditions whatsoever upon the credit granted;

(p) To restrict sales to dealers or contractors in tile or to establish uniform requirements for classification as dealers or contractors;

(q) To establish any system of cooperative purchasing of raw materials or supplies or of cooperative owning of the sources of raw materials, which shall eliminate or tend to eliminate competition in the purchasing of said materials or supplies;

(r) To adopt or to use a common trademark;

(s) To pool orders or to enter joint bids;

(t) To prepare and publish any list or lists of dealers or of certified dealers;

(u) To advise or communicate with one another as to proposed advances or decreases in prices or to circulate among themselves in any way information concerning or relating to proposed advances or decreases in prices, or to prices charged or to be charged;

(v) To effect in any manner whatsoever any discrimination of any character in favor of or against any individual or corporation purchasing or attempting to purchase tiles, by reason of the fact that such person or corporation is a mail-order house, or a dealer in other supplies or commodities, or a cooperative purchasing association, or a building contractor, or for any other reason, or to do any act or acts to effectuate any discrimination in favor of or against any person or corporation for any reason whatsoever.

Provided, however, that nothing contained in this decree shall be construed as prohibiting any defendant from doing or performing any of the foregoing acts or from selecting his or its own trade and from disposing of his or its own products to such persons and on such terms as he or it may choose, if done individually and without combining, conspiring or agreeing with any other defendant or with any other manufacturer of tiles or other person.

6. Jurisdiction of this case is hereby retained for the purpose of enforcing this decree and of enabling the United States to apply to the court for a modification or enlargement of its provisions on the ground that they are inadequate, and the defendants or either of them to apply

for its modification on the ground that its provisions have become inappropriate or unnecessary.

JOHN E. SATER,
District Judge.

NOVEMBER 26, 1923.