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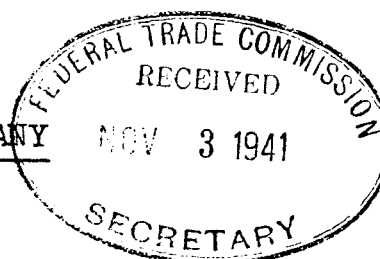
DOCUMENT DESCRIPTION: Legal - Answer of Respondent Keasby & Mattison Co.
in the Matter of Acme Asbestos Before the Federal Trade Commission

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of :
ACME ASBESTOS COVERING AND :
FLOORING COMPANY, et al. :

Docket No. 4613

ANSWER OF RESPONDENT KEASBEY & MATTISON COMPANY



KEASBEY & MATTISON COMPANY, one of the respondents named in the complaint (hereinafter referred to as "RESPONDENT"), solely on behalf of itself and only in so far as the allegations of the complaint refer to it, by way of answer avers:

FIRST DEFENSE:

The complaint fails to state a claim against RESPONDENT upon which a cease and desist order can be predicated.

SECOND DEFENSE:

On September 20, 1935, RESPONDENT became a licensee of respondent Donald Tulloch, Jr., under United States Patent No. 1,972,500, in order to enable itself to manufacture the products covered by the patent without infringement, a step which it deemed to be in the best interests of its business. Thereafter RESPONDENT, through the experience gained by it as licensee, found that the privileges derived by it under the patent did not result in any real benefit to it in the manufacture and sale of low-pressure asbestos pipe covering. As a consequence, RESPONDENT by letter

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dated May 4, 1938, notified its licensor that it would cease operating as a licensee on December 31, 1938. Since December 31, 1938, RESPONDENT has not been a licensee under said patent, nor has RESPONDENT acted in concert or combination with any of its competitors in the manufacture and sale of low-pressure asbestos pipe covering. On the contrary, RESPONDENT, independently of its competitors, has determined and fixed its own prices, conditions and terms of sale for such products in free and open competition.

THIRD DEFENSE:

The conduct of RESPONDENT as a licensee under said patent from September 20, 1935, to December 31, 1938, was within the lawful scope of the patent monopoly held by its licensor.

FOURTH DEFENSE:

At no time mentioned in the complaint, nor at any other time, has RESPONDENT in the sale and manufacture of low-pressure asbestos pipe covering been guilty of unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

By way of particular answer to the allegations of the complaint, RESPONDENT avers:

2. Admitted that RESPONDENT is a corporation organized and existing under the laws of the State of Pennsylvania, with its office and principal place of business being located at Ambler, Pennsylvania.

3. Admitted that RESPONDENT manufactures and sells low-pressure asbestos pipe covering. RESPONDENT is without knowledge as to the other averments of this paragraph.

4. Admitted.

5. Denied that respondent Tulloch aided or abetted RESPONDENT in the formation or conduct of any unlawful combination or conspiracy. On the contrary, RESPONDENT avers that the License Agreement made by and between itself and respondent Tulloch constituted a lawful and proper exercise of respondent Tulloch's monopoly under the patent.

6. RESPONDENT at all times has competed actively, both as to prices and terms and conditions of sale of low-pressure asbestos pipe covering, with other manufacturers of competitive products, except to the extent that such competition was lawfully restrained in the manufacture and sale of the patented product by respondent Tulloch in the exercise of his lawful privileges under his patent monopoly during the period RESPONDENT was a licensee.

7. On information and belief, RESPONDENT admits that the Toohey Patent was granted to respondent Johns-Manville Corporation on September 4, 1934, and that thereafter respondent Johns-Manville Corporation granted respondent Tulloch an exclusive license to use the same and the exclusive right to issue a non-exclusive license to others. RESPONDENT denies that the license granted it by respondent Tulloch under the Toohey Patent was in pursuance of any unlawful combination or conspiracy in restraint of trade.

8. Denied that RESPONDENT at any time became a party to any unlawful combination in restraint of trade. On the contrary, RESPONDENT avers that the License Agreement granted it by respondent Tulloch on September 20, 1935, and to which it was a party until December 31, 1938, conferring upon it the right to make, use and sell materials under Patent No. 1,972,500, was in the lawful exercise of the patent monopoly. RESPONDENT is without wledge as to the other averments of this paragraph.

9. Denied that RESPONDENT, pursuant to any unlawful combination or conspiracy, put into effect any collusive or improper methods of competition, policies or trade practices. Such methods as RESPONDENT adopted and put into effect from September 20, 1935, to December 31, 1938, were exclusively those imposed upon RESPONDENT by its licensor, respondent Tulloch, in the legitimate exercise of his rights under his patent monopoly, and are substantially as set forth in paragraphs (a) through (f) of subparagraph (10) of the complaint. RESPONDENT is without knowledge as to whether it was represented at any alleged meetings of the various other respondent corporations prior to September 4, 1934, or at any time prior to September 20, 1935, when RESPONDENT became a licensee, wherein any merchandising plan was discussed, or, more particularly, any such merchandising plan as outlined in the complaint was formulated; or as to whether it discussed or agreed upon with any of the other respondent corporations a proposed form of licensing agreement under the patent, for the reason that the officers of RESPONDENT in charge of its business and sales policies at that time are no longer in its employ, the present management having taken charge in 1937. RESPONDENT admits that certain unlicensed materials were embraced in the merchandising plan, but only such as were essential to the application and use of the licensed materials and so connected therewith as to render the control of the terms and conditions of sale thereof a reasonable measure on the part of the licensor.

10. Denied as stated. Admitted that under the Schedule of Minimum Prices, Terms and Conditions of Sale issued by licensor pursuant to the License Agreement, prices were established upon a basing point system of delivered prices within specified zones and areas. Such a method of computing prices was within the lawful scope of the licensor's patent monopoly.

11. Denied that prior to the effective date of its License Agreement, September 20, 1935, or that subsequent to its termination, December 31, 1938, RESPONDENT has acted in concert and cooperation with any of the other named respondents with regard to the price of low-pressure asbestos pipe covering or the terms and conditions of sale thereof.

12. Denied that at any time mentioned in the complaint, or at any other time, RESPONDENT has practiced unfair methods of competition within the intent and meaning of Section 5 of the Federal Trade Commission Act in the manufacture, use and sale of low-pressure asbestos pipe covering. Such restraints as were practiced in the manufacture and sale of low-pressure asbestos pipe covering under the patent were solely those enforced by respondent Tulloch under the License Agreement, and were lawful and proper, being within the scope of the licensor's patent monopoly.

KEASBEY & MATTISON COMPANY,

By: 
Vice-President

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STATE OF PENNSYLVANIA :
COUNTY OF PHILADELPHIA : ss.

WM. C. SCOTT , being duly sworn according to law, deposes and says that he is.....Vice-President.....of KEASBEY & MATTISON COMPANY, called "RESPONDENT" in the foregoing Answer; that he is duly authorized to make this affidavit on its behalf; and that the facts set forth therein are true and correct to the best of his knowledge, information and belief.

SWORN TO AND SUBSCRIBED before me :
this 29th day of October, A.D. 1941: 


NOTARY PUBLIC
J. A. Martin
Philadelphia, Pa.

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