

contract for sale, or of such condition, agreement, or understanding, may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

§ 26.15 Prohibited forms of trade restraints (unlawful price fixing, etc.).²

It is an unfair trade practice, either directly or indirectly, to engage in any planned common course of action, or to enter into or take part in any understanding, agreement combination or conspiracy, with one or more industry members, or with any other person or persons, to fix or maintain the price of any goods or otherwise unlawfully to restrain trade; or to use any form of threat, intimidation, or coercion to induce any member of the industry or other person or persons to engage in any such planned common course of action, or to become a party to any such understanding, agreement, combination, or conspiracy.

PART 27—BRICK AND STRUCTURAL CLAY TILE AND ALLIED PRODUCTS INDUSTRY

Sec.
27.0 The industry and its products defined.

GROUP I

27.1 Prohibited discrimination.
27.2 Misrepresentation and deception (general).
27.3 Misrepresentation as to character of business.

² The inhibitions of this section are subject to Public Law 542, approved July 14, 1952, 66 Stat. 632 (the McGuire Act) which provides that with respect to a commodity which bears, or the label or container of which bears, the trade-mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, a seller of such a commodity may enter into a contract or agreement with a buyer thereof which establishes a minimum or stipulated price at which such commodity may be resold by such buyer when such contract or agreement is lawful as applied to intrastate transactions under the laws of the State, Territory, or territorial jurisdiction in which the resale is to be made or to which the commodity is to be transported for such resale, and when such contract or agreement is not between manufacturers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other.

Sec.
27.4 Deceptive representations as to products conforming to a standard or specification.
27.5 Deception as to composition.
27.6 Guarantees, warranties, etc.
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27.8 Deceptive use of trade or corporate names, trade-marks, etc.
27.9 Imitation or simulation of trade-marks, trade names, etc.
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27.11 Defamation of competitors or false disparagement of their products.
27.12 Inducing breach of contract.
27.13 Enticing away employees of competitors.
27.14 Commercial bribery.
27.15 Procurement of competitors' confidential information.
27.16 Tie-in sales; coercing purchase of one product as a prerequisite to the purchase of other products.
27.17 Arrangements to exclude sales of competitors' products.
27.18 Prohibited forms of trade restraints (unlawful price fixing, etc.).
27.19 Unlawful interference with competitors' purchases or sales.
27.20 Consignment distribution.

AUTHORITY: The provisions of this Part 27 issued under secs. 6, 5, 38 Stat. 721, 719; 15 U.S.C. 46, 45, unless otherwise noted.

SOURCE: The provisions of this Part 27 appear at 21 F.R. 3830, June 5, 1956, unless otherwise noted.

§ 27.0 The industry and its products defined.

(a) Products of the industry respecting which these rules are promulgated consist of any kind or type of building units or materials which are, or are represented directly or indirectly as being, brick or structural tile.¹

(b) Members of the industry are persons, firms, corporations, and organizations engaged in the manufacture, sale, offering for sale, or distribution of any such products.

GROUP I

§ 27.1 Prohibited discrimination.²

(a) *Prohibited discriminatory prices, or rebates, refunds, discounts, credits, etc., which effect unlawful price discrimi-*

¹ As here used, the term "structural tile" does not include the veneer types of tile used for floor or wall surfacing.

² As used in this section, the word "commerce" means "trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the (Footnote continues on next page.)"

nation. It is an unfair trade practice for any member of the industry engaged in commerce, in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, or other form of price differential, where such rebate, refund, discount, credit, or other form of price differential, effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce, and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided, however,*

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States, and are not purchased by schools, colleges, universities, public libraries, churches, hospitals, or charitable institutions not operated for profit, as supplies for their own use.

(2) That nothing contained in this paragraph shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered.

(3) That nothing contained in this section shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade.

(4) That nothing contained in this paragraph shall prevent price changes from time to time where made in response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States."

(5) That nothing contained in this section shall prevent the meeting in good faith of an equally low price of a competitor, or the services or facilities furnished by a competitor. (See paragraphs (c) and (d) of this section.)

(b) *Prohibited brokerage and commissions.* It is an unfair trade practice for any member of the industry engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited advertising or promotional allowances, etc.* It is an unfair trade practice for any member of the industry engaged in commerce to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited discriminatory services or facilities.* It is an unfair trade practice for any member of the industry engaged in commerce to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all competing purchasers on proportionally equal terms.

(e) *Inducing or receiving an illegal discrimination in price.* It is an unfair trade practice for any member of the industry engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by the foregoing provisions of this section.

(f) *Purchases by U. S. Government; applicability of Robinson-Patman Antidiscrimination Act to same.* In an opinion submitted to the Secretary of War under date of December 28, 1936, the U. S. Attorney General advised that the Robinson - Patman Antidiscrimination Act "is not applicable to Government contracts for supplies." (38 Opinions, Attorney General 539.)

§ 27.2 Misrepresentation and deception (general).

It is an unfair trade practice to make or publish, or cause to be made or published, by way of advertising, labeling, stamping, or otherwise, any statement or representation which, directly or indirectly, or by reason of concealment of material fact, has the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers concerning the grade, quality, quantity, use, size, material, finish, character, nature, strength, thickness, composition, durability, design, origin, preparation, manufacture, or distribution of any industry product, or in any other material respect.

§ 27.3 Misrepresentation as to character of business.

It is an unfair trade practice for any member of the industry to represent, directly or indirectly, through the use of any word or term in his corporate or trade name, in his advertising, or otherwise, that he is a producer or manufacturer of, wholesaler or jobber of, contractor or dealer in, industry products, or that he owns or controls a factory making such products, when such is not the fact, or in any other manner to misrepresent the character, extent, volume, or type of his business. (See also note to § 27.8.)

§ 27.4 Deceptive representations as to products conforming to a standard or specification.

In the sale, offering for sale, or distribution of industry products, it is an unfair trade practice:

(a) To falsely represent or imply that any of such products conform to the requirements of any standard or specification, whether established or recognized by a department or unit of a city or state government, or of the Federal Government, by trade practice, or otherwise.

(b) To represent or imply that any of such products conform to the requirements of any standard or specification without clearly disclosing the identity of the standard or specification to which reference is made. Such disclosure shall be by reference to the standard or specification on all labels, invoices, sales literature, and other advertising containing such representation or implication.

(c) For any member of the industry to claim or imply that any product conforms to any standard or specification which is inapplicable or which has been rescinded, revised, superseded, or amended, and thereby mislead or deceive purchasers or prospective purchasers.

§ 27.5 Deception as to composition.

(a) It is an unfair trade practice to sell, offer for sale, or distribute any product of this industry under any designation or representation which has the capacity and tendency or effect of deceiving purchasers or prospective purchasers as to the composition of said product.

(b) Under this section no products of the industry shall be designated as "brick," "tile," or "structural tile," unless:

(1) The composition thereof is primarily of clay or shale or mixtures thereof; and

(2) The ingredients thereof have been fused together as a result of the application of heat:

Provided, however, That such designations may be used for products not meeting the requirements in this section when so qualified as to denote the basic composition thereof (as, for example, "concrete brick," "coral brick," "plaster brick," "sand-lime brick," "concrete structural tile," etc.), or when, in immediate conjunction with the designations, disclosure is made of the fact that the products are not ceramic products. (See also note to § 27.8.)

§ 27.6 Guarantees, warranties, etc.

(a) It is an unfair trade practice to use any guarantee respecting industry products, whether in respect to quality, construction, serviceability, method of manufacture, or in any other respect, which

does not make reasonable disclosure of the terms, conditions, and limitations of such guarantee, or which contains statements, representations, or assertions which have the capacity and tendency or effect of misleading or deceiving in any material respect, or which are of such form, text, or character as to represent or imply that the guarantee is broader than is in fact true.

(b) It is an unfair trade practice for the guarantor to fail to observe scrupulously his obligation under the guarantee by him used or caused to be used.

(c) This section shall be applicable also to warranties or any writing purporting to be a guarantee or warranty.

(d) It is also an unfair trade practice to represent any industry product as being "guaranteed" unless the nature and extent of the undertaking, and the identity of the guarantor, are conjunctively disclosed.

§ 27.7 Substitution of products.

It is an unfair trade practice for a member of the industry to make an unauthorized substitution of products, where such a substitution has the capacity and tendency or effect of misleading or deceiving the purchaser, by:

(a) Shipping or delivering industry products which do not conform to samples submitted, to specifications upon which the sale is consummated, or to representations made prior to securing the order, without advising the purchaser of the substitution and obtaining his consent thereto prior to making shipment or delivery; or

(b) Falsely representing the reason for making a substitution.

§ 27.8 Deceptive use of trade or corporate names, trade-marks, etc.

The use of any trade name, corporate name, trade-mark, or other trade designation, which has the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public as to the name, nature, or origin of any product of the industry, or of any material used therein, or which is false or misleading in any other material respect, is an unfair trade practice.

NOTE: Nothing in this section is to be construed as prohibiting:

(a) The use of the word "brick" as a part of the name of a corporation or business concern which manufactures or distributes brick of any type or composition, or

(b) The use of the word "tile" or the words "structural tile" as a part of the name of a corporation or business concern which manufactures or distributes structural tile of any type or composition;

Provided, however, That descriptions or references to any non-ceramic industry products contained in advertising, sales promotional literature or invoices of said corporations or concerns are in accord with the requirements of § 27.5.

§ 27.9 Imitation or simulation of trade-marks, trade names, etc.

The imitation or simulation of the trade-marks, trade names, brands, or labels of competitors, or of the exclusively owned designs of competitors which have not been directly or by operation of law dedicated to the public, with the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers, is an unfair trade practice.

§ 27.10 False invoicing.

Withholding from or inserting in invoices or sales tickets any statements or information by reason of which omission or insertion a false record is made, wholly or in part, of the transactions represented on the face of such invoices or sales tickets, with the capacity and tendency or effect of thereby misleading or deceiving purchases, prospective purchasers, or the purchasing public, is an unfair trade practice.

§ 27.11 Defamation of competitors or false disparagement of their products.

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, or manufacture of the products of competitors, or of their business methods, selling prices, values, credit terms, policies, or services, or in any other respect, is an unfair trade practice.

§ 27.12 Inducing breach of contract.

(a) Knowingly inducing or attempting to induce the breach of existing lawful contracts between competitors and their customers or their suppliers, or interfering with or obstructing the performance of any such contractual duties or services, under any circumstance having the capacity and tendency or effect or substantially injuring or lessening competition, is an unfair trade practice.

(b) Nothing in this section is intended to imply that it is improper for an industry member to solicit the business of a customer of a competing industry member; nor is the section to be construed as in anywise authorizing any agreement or understanding by two or more industry members not to solicit business from the customers of either of them, or from customers of any other industry member.

§ 27.13 Enticing away employees of competitors.

Knowingly enticing away employees or sales representatives of competitors under any circumstance having the capacity and tendency or effect of substantially injuring or lessening competition is an unfair trade practice: *Provided*, That nothing in this section shall be construed as prohibiting employees from seeking more favorable employment, or as prohibiting employers from hiring or offering employment to employees of competitors in good faith and not for the purpose of injuring, destroying, or preventing competition.

§ 27.14 Commercial bribery.

It is an unfair trade practice for a member of the industry, directly or indirectly, to give, or offer to give, or permit or cause to be given, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase products manufactured or sold by such industry member or the maker of such gift or offer, or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors.

§ 27.15 Procurement of competitors' confidential information.

It is an unfair trade practice for any member of the industry to obtain information concerning the business of a competitor by bribery of an employee or agent of such competitor, by false or misleading statements or representations, by the impersonation of one in authority, or by any other unfair means, and to use the information so obtained so as substantially to injure competition or unreasonably restrain trade.

§ 27.16 Tie-in sales; coercing purchase of one product as a prerequisite to the purchase of other products.

The practice of coercing the purchase of one or more products of the industry as a prerequisite to the purchase of one or more other products, where the effect may be substantially to lessen competition or tend to create a monopoly or unreasonably to restrain trade, is an unfair trade practice.

§ 27.17 Arrangements to exclude sales of competitors' products.

It is an unfair trade practice for any member of the industry to sell or contract for the sale of any industry products for use or resale, or to fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the purchaser thereof shall not use or deal in new or used products of a competitor or competitors of such industry member, where the effect of such sale or contract for sale, or such condition, agreement, or understanding, may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

§ 27.18 Prohibited forms of trade restraints (unlawful price fixing, etc.).³

It is an unfair trade practice for any member of the industry, either directly or indirectly, to engage in any planned common course of action, or to enter into or take part in any understanding, agreement, combination, or conspiracy, with one or more members of the industry, or with any other person or persons, to fix or maintain the price of any goods or otherwise unlawfully to restrain trade; or to use any form of threat, intimidation, or coercion to induce any member of the industry or other person or persons to engage in any such planned common course of action, or to become a party to any such understanding, agreement, combination, or conspiracy.

§ 27.19 Unlawful interference with competitors' purchases or sales.

It is an unfair trade practice for any industry member, by means of any mo-

³The inhibitions of this section are subject to Public Law 542, approved July 14, 1952, 66 Stat. 632 (the McGuire Act).

nopolistic practice or through combination, conspiracy, coercion, boycott, threats, or any other unlawful means, directly or indirectly, to interfere with a competitor's right to purchase his raw materials and supplies from whomsoever he chooses, or to sell his product to whomsoever he chooses.

§ 27.20 Consignment distribution.

(a) It is an unfair trade practice for any member of the industry to employ the practice of shipping industry products on consignment without the express request or prior consent of the purchasers.

(b) It is an unfair trade practice for any member of the industry to employ the practice of shipping industry products on consignment or pretended consignment for the purpose and with the effect of artificially clogging or closing trade outlets and unduly restricting competitors' use of said trade outlets in getting their products to purchasers through regular channels of distribution, thereby injuring, destroying, or preventing competition or tending to create a monopoly or unreasonably to restrain trade.

(c) Nothing in this section shall be construed to authorize any understanding or agreement, combination or conspiracy, or planned common course of action, by and between industry members, mutually to conform or restrict their practice of shipping goods on consignment with the intent or effect of lessening competition.

PART 28—BLUEPRINT AND DIAZO-TYPE COATERS INDUSTRY

Sec.

28.0 The industry defined.

GROUP I

28.1 Deception (general).

28.2 False and misleading price quotations, etc.

28.3 Deceptive invoicing.

28.4 Substitution of products.

28.5 Prohibited sales below cost.

28.6 Commercial bribery.

28.7 Defamation of competitors or false disparagement of their products.

28.8 Procurement of competitors' confidential information.

28.9 Enticing away employees of competitors.

28.10 Prohibited forms of trade restraints (unlawful price fixing, etc.).

Sec.

28.11 Exclusive deals.

28.12 Prohibited discrimination.

AUTHORITY: The provisions of this Part 28 issued under secs. 6, 5, 38 Stat. 721, 719; 15 U.S.C. 46, 45, unless otherwise noted.

SOURCE: The provisions of this Part 28 appear at 21 F.R. 4010, June 12, 1956, unless otherwise noted.

§ 28.0 The industry defined.

The industry to which these trade practice rules have application consists of persons, firms, corporations, and organizations engaged in the coating and sale of blueprint and/or diazotype light-sensitive paper, cloth, film, or other material, used for reproducing engineering and architectural drawings, designs, formulae, and office or business communications.

GROUP I

§ 28.1 Deception (general).

It is an unfair trade practice to sell, offer for sale, or distribute any industry product, or promote the sale or distribution thereof, under any representation or by any method or under any circumstance or condition which has the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers:

(a) With respect to the construction composition, design, strength, or durability of any industry product; or

(b) With respect to a process or technique used in the preparation, fabrication, or coating of any industry product; or

(c) With respect to the materials used in the preparation, fabrication, or coating of any industry product; or

(d) Which is false, misleading, or deceptive in any other material respect.

NOTE: Illustrative of the type of misrepresentation inhibited by this section is the practice of an industry member advertising or otherwise claiming that a paper contains a certain percentage of rag, or is of a certain basis weight, when such is not the fact.

§ 28.2 False and misleading price quotations, etc.

The publishing or circulating to purchasers or prospective purchasers by any member of the industry of false or misleading price quotations, price lists, or terms or conditions of sale, with the capacity and tendency or effect of thereby misleading or deceiving purchasers or prospective purchasers, is an unfair trade practice.