

IN THE MATTER OF
AMERICAN MEMORIAL COMPANY

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 2182. Complaint, May 17, 1934—Decision, Nov. 6, 1934

Where a corporation engaged in the manufacture and sale of monuments with core of concrete and outer facing of crushed marble, granite, copper, or mica, mixed with cement and cast in appropriate molds, and so made as to simulate closely monuments of natural granite or marble, carved from the original stone; in advertising the same—

- (a) Represented and implied that said monuments were offered and sold, for advertising purposes, for a limited time, and to selected purchasers in their respective communities, at a greatly reduced price, through such statements in newspapers and magazines of interstate circulation as "\$60 Monument \$19. For a limited time to advertise our wonderful values. We want one in every community", etc., and through such statements in circular letters sent to those making inquiry in response to the aforesaid advertisements, as "In order to get a specimen of our work in every possible locality * * * we are offering to let at least one prominent family in each community secure one of our beautiful designs * * * at about one third of its actual value * * *", "* * *
- As this is a limited time offer being made especially to you, your order should be mailed in promptly if you want a monument at these money saving prices. * * * We are approaching the time when we must recall the extra special advertising prices * * *" "A small deposit will hold the offer open 60 days", and through lists of purported "regular prices" and "special advertising prices", which showed pretended reductions from \$60 to \$19, \$75 to \$28.50, and numerous other comparable purported savings, facts being that it did not make or quote special prices or make special offers for advertising purposes or for a limited time or to selected purchasers, the prices it offered were those regularly made and offered by it to all, regardless of any limitation as to time of acceptance, number of purchasers in a community, or otherwise; and
- (b) Depicted in the cuts used by it, its said monuments, which closely simulated in shape, design, color and appearance those made from natural granite or marble carved from the original stone, and which, as thus depicted, had the same general appearance as natural stone monuments similarly set forth, without stating in its catalogs, circular letters, or advertisements that said products were made from synthetic or cast stone, and were not cut and carved from the natural, original stone as it comes from the quarry, and tended thereby to lead members of the purchasing public to believe that said cuts and pictures were of a product made from natural stone and cut and carved from the original substance;

With tendency and capacity to confuse, mislead, and deceive members of the public into the belief that said monuments were offered at special or introductory or advertising prices, exclusive to the person to whom offered,

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and available for a limited time only, and that they were made from the natural, original stone as it came from the quarry, and to induce the purchase and use thereof because of the erroneous beliefs thus engendered, and divert trade to it from competitors engaged in the sale of similar products, and also of those made from the original stone as above set forth: *Held*, That such practices, under the circumstances set forth, were to the prejudice of the public and competitors, and constituted unfair methods of competition.

Mr. John W. Hilldrop for the Commission.

Douglas & Andrews, of Atlantic, Ga., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Georgia corporation engaged in the manufacture and sale, by mail, of monuments made with an inner core of concrete and an outer facing of molded crushed marble, granite, granulated copper, or mica, and cement, and with principal place of business in Atlanta, with advertising falsely or misleadingly as to special prices, offers, and values, and as to nature of product, in violation of the provisions of Section 5 of such Act prohibiting the use of unfair methods of competition in interstate commerce; in that respondent, in newspaper and periodical advertising, and in circulars and price lists sent those replying thereto, represents its said synthetic or cast-stone products as offered for a limited time and to introduce the same into the particular communities concerned, through the particular prospective purchaser, at greatly reduced prices, as in said advertising specified,¹ facts being that the purported special prices are those at which its products may be had by anyone, without any time limitation, and in that in its said catalogs it fails to advise the reader that its said products are not, as they appear, cut and carved from the original stone; with tendency and capacity to confuse, mislead, and deceive members of the public into believing that said monuments are offered at special introductory or advertising prices, exclusive to the person to whom offered and for a limited time only, and are made from the natural, original stone as it comes from the quarry, and to induce members of the public to buy and use its said products because of such erroneous belief, and to divert trade to it from competitors engaged in the sale in interstate commerce of similar products, and also products made from the original natural stone as it comes from the quarry; all to the injury and prejudice of the public and competitors.

¹ Respondent's advertisements, as alleged and quoted in the complaint, may be found set forth in the findings, *infra*, at pages 359-360.

Upon the foregoing complaint the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served a complaint upon American Memorial Company, a corporation, charging the use of unfair methods of competition in commerce in violation of the provisions of Section 5 of the Act.

The respondent, having entered its appearance, and having filed its answer herein, hearings were held and evidence was thereupon introduced on behalf of the Commission and on behalf of the respondent before an examiner of the Federal Trade Commission theretofore duly appointed.

Thereupon, the respondent, having stipulated in writing that it waived the filing of briefs and oral argument, this proceeding came on for final hearing on the record and the Commission, having duly considered same and being fully advised in the premises, makes this its findings as to the facts and conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. That respondent, American Memorial Company, is a corporation organized, existing, and doing business under the laws of the State of Georgia; with its office and principal place of business in the city of Atlanta in said State.

PAR. 2. That said respondent, American Memorial Co., is now and has been for more than 2 years last past engaged in the business of manufacturing monuments which are made with an inner core of concrete and with an outer coating or facing of crushed marble or crushed granite, which is mixed with a binder of cement and cast in appropriate molds; using at times granulated copper and mica, also mica alone, in the mixture containing the crushed stone.

These monuments manufactured as aforesaid by respondent are by it sold to the public by advertisements in newspapers and magazines having an interstate circulation, and circular letters sent out by it direct in the United States mail to actual and prospective customers throughout and in the several States of the United States, and said respondent caused its said monuments, when sold, to be transported in interstate commerce from its said place of business in Georgia to and into, and through the States of the United States other than Georgia, to the buyers thereof to whom they have been sold.

PAR. 3. That during the time above mentioned, other individuals, firms, and corporations in various States of the United States are and have been engaged in the manufacture, sale and transportation in interstate commerce of monuments of various kinds, including monuments similar and alike to those manufactured, sold, and transported in interstate commerce by respondent, and made of the same ingredients as those used by respondent in the manufacture of its monuments and set out and described in paragraph 2. Said respondent has been and is now in competition in interstate commerce in the sale of its said monuments with such other individuals, firms, and corporations likewise engaged in manufacturing and shipping monuments, when manufactured, in interstate commerce.

PAR. 4. That in promoting the sale of its said monuments, the said respondent inserted, or caused to be inserted, in newspapers and magazines having an interstate circulation advertisements of which the following is an example:

\$60 MONUMENT \$19

For a limited time to advertise our wonderful values. We want one in every community. 3 ft. high, 16 in. wide, 10 in. thick, wt. 500 lbs. All Lettering Free. Satisfaction Guaranteed. Write for information. American Memorial Company Dept. B-67. 1489 Piedmont Ave., Atlanta, Ga.

In the foregoing and similar advertisements, respondent represents and implies to prospective purchasers that its monuments are offered for sale at a greatly reduced price; that the offer is made for advertising purposes; and that such offer is limited in point of time.

When prospective purchasers reply to such advertisements similar to the foregoing, respondent sends them through the United States mail circular letters in which similar representations are made and other representations indicating that the price quoted is one greatly reduced from the usual and customary selling price of the said monuments, also that the price quoted is for a limited time only and that it is quoted to only one person in a community as an introductory offer. Among such representations are the following:

Your prompt response to our advertisement gives you the first chance to benefit by the special offer now open on our beautiful monumental designs.

In order to get a specimen of our work into every possible locality in this country, we are offering to let at least one prominent family in each community secure one of our beautiful designs shown in our catalog at about one-third of its actual value. * * *

* * * As this is a limited time offer being made especially to you, your order should be mailed in promptly if you want a monument at these money saving prices. * * *

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* * * We are approaching the time when we must recall the extra special advertising prices which we have had on them (respondent's monuments), and to restore our prices to something like their real value.

* * * this matchless opportunity to get a beautiful one (monument) almost free. * * *

* * * a small deposit will hold the offer open 60 days. * * *

In a catalog or booklet also sent to prospective purchasers, respondent represents that the price quoted on each monument listed therein is a—

Special Introductory Price

and that the offer made thereby is a

Special Introductory Offer

In said catalog various monuments are pictured and described and what is represented to be the "Regular Price" on each is set out as well as the "Special Advertising Price." Such prices are given as follows:

Regular price:	<i>Special advertising price</i>
\$60.00 -----	\$19.00
75.00 -----	28.50
70.00 -----	27.50
100.00 -----	44.00
40.00 -----	14.50
100.00 -----	48.00
150.00 -----	59.00
50.00 -----	17.00
75.00 -----	29.50
125.00 -----	38.50
200.00 -----	82.50
250.00 -----	97.50
50.00 -----	14.50

That in truth and in fact respondent did not make or quote special prices or make special offers for advertising purposes or for a limited time but such offers and such prices were those regularly made and offered by respondent to all regardless of any limitation as to time of acceptance or as to the number of purchasers in a community or otherwise.

PAR. 5. That respondent's monuments in shape, design, color, and appearance closely simulate monuments made from natural granite or natural marble, as the case may be, as the same is cut and carved from the original stone. That respondent's monuments in the cuts used by respondent in its said catalog have the same general appearance as natural stone monuments as aforesaid when similarly pictured, and such cuts and pictures are calculated to and have the tendency and capacity, without descriptive information, to lead members of the purchasing public to believe that they are in fact cuts and pictures of monuments made from natural stone as the same

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are cut and carved from the original stone. That now nowhere in said catalog or in said circular letters or in its advertisements does the respondent disclose that its monuments are made from synthetic or cast stone or that they are not cut and carved from the natural, original stone as it comes from the quarry. That purchasers of respondent's monuments do not usually see samples of the same prior to the time they are ordered and paid for.

PAR. 6. That the representations of respondent as aforesaid have the tendency and capacity to confuse, mislead, and deceive members of the public into the belief that respondent's monuments are offered for sale at special or introductory or advertising prices; that the offer made is exclusive to the one to whom offered and is available for a limited time only; and that said monuments are made from the natural, original stone as it comes from the quarry when such are not the facts. That said representations of respondent have the tendency and capacity to induce members of the public to buy and use its monuments because of the erroneous beliefs engendered as above set forth, and to divert trade to respondent from competitors engaged in the sale in interstate commerce of the same or similar kind as well as those made from the original, natural stone as it comes from the quarry.

PAR. 7. The above acts and things done by respondent are all to the injury and prejudice of the public and the competitors of respondent in interstate commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

CONCLUSION

The practices of respondent, American Memorial Co., under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and respondent's competitors, and are unfair methods of competition in commerce and constitute a violation of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent and the testimony taken and brief filed therein, and Commission having made its findings as to the facts with its conclusion that the respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal

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Trade Commission, to define its powers and duties, and for other purposes"—

It is now ordered, That the respondent, American Memorial Co., a corporation, its agents, representatives, and employees, in selling and in offering for sale in commerce among the several States of the United States or in the District of Columbia, its monuments, described in the findings of the facts herein, cease and desist from—

(a) advertising and representing by advertisements inserted in newspapers, magazines, trade journals, circular letters, or otherwise, its said monuments for sale at any price greater than the actual, usual and customary price charged therefor, coupled with the statement that for a limited time and to a limited number of persons in a community, the said monuments can be bought for so much less than the fictitious price advertised;

(b) from representing and holding out by advertisements or otherwise to purchasers, prospective purchasers or the buying public that the prices quoted are for a limited time;

(c) from representing by advertisements or otherwise, that any offer of sale or quotation of price is made to only one person in a community as an introductory offer;

(d) from representing by advertisements or otherwise that any quotation of price is a special price unless in truth and in fact a special price is being quoted at a sum less than the usual and customary price charged therefor;

(e) from publishing in magazines, newspapers, trade journals, pamphlets, circulars or on its letterheads or otherwise, pictures or photographs of its said monuments made of the materials set out in the findings of the facts herein which said pictures and photographs have the appearance of and simulate monuments made from natural granite or natural marble unless in truth and in fact said monuments so photographed and advertised are made of natural granite or natural marble or unless, in its advertisements containing pictures and photographs of its monuments made of the materials mentioned in the findings of the facts herein, it is clearly and plainly stated and designated that such monuments so photographed and advertised are not made of natural granite or natural marble.

It is further ordered, That the respondent shall, within 60 days from the date of the serving upon it of the order herein, file with the Commission a report in writing, setting forth in detail the manner and form in which this order has been complied with and conformed to.

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IN THE MATTER OF

JACK D. MENDELSON, TRADING UNDER THE FIRM
NAME AND STYLE OF METRO MANUFACTURING
COMPANY

COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 2216. Complaint, Aug. 9, 1934—Order, Nov. 6, 1934

Consent order requiring respondent, his agents, etc., in connection with the sale or distribution, in interstate commerce or in the District of Columbia or in any Territory, of radio sets manufactured or assembled or sold or offered for sale by him, under the names of other well-known manufacturers, to cease and desist from directly or indirectly—

- (a) Making or using any representations, statements, or assertions, in advertisements or trade promotion literature, on wrappers or containers, or signs, or in sales talks, or in any other manner whatsoever, to the effect that such radio sets or other similar devices, appliances or products are "Edison" or "Brunswick" (Brunswick) radio sets, devices, appliances or products manufactured, assembled and sold, or sponsored, indorsed and approved, licensed, authorized or consented to by Thomas A. Edison or companies organized or controlled by said individual, or by any person, corporation or partnership, licensed, authorized or empowered by said individual or corporation so to do, or by Brunswick-Balke-Collender Co., Warner Bros. Pictures, Inc., Brunswick Radio Corporation or any person, corporation or partnership authorized, licensed or empowered by them or either of them; and from—
- (b) Applying, attaching to or using, or causing to be applied, attached to or used, on any radio set or other device, appliance or product manufactured or assembled and sold by respondent, "escutcheon plates, brands, marks or other means, bearing the name 'Edison', or 'Brunswick' (Brunswick)."

Mr. Carrel F. Rhodes for the Commission.

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Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission having reason to believe that Jack D. Mendelson, trading under the firm name and style Metro Manufacturing Company, hereinafter referred to as respondent, has been or is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said 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: