

Syllabus

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IN THE MATTER OF
MAXWELL STEEL VAULT COMPANY

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

Docket 2160. Complaint, Jan. 26, 1934—Decision, Nov. 5, 1935

Where a corporation engaged in the manufacture and sale of two types of steel burial vaults,

Represented in periodical and newspaper advertisements thereof and in circulars, letters, and other trade literature and in purported certificates of warranty, that one or both of said vaults, as the case might be, were made of rust-resisting metal and would withstand any earth pressure incident to interment and that they were absolutely or positively airtight, waterproof, and vermin-proof, and included in their said purported certificates of warranty an offer to replace without cost to the purchaser any vault failing to meet such "warranties";

The facts being that said supposed warranties were mere sales inducements and false and misleading, in that said products would not withstand any or all earth pressure, were not made of rust-resisting material, but were subject to the pitting or corroding action and resulting rust from the corrosive qualities inherent in varying degrees in all soils and quite common in those in the United States, were not at all times free from defective materials or workmanship, were not positively or at all times waterproof or airtight or watertight or vermin-proof, as understood by the consuming public from a reading of the supposed warranties, and that only under ideal burial conditions, presupposing coincidence of various favorable factors and including, among others, uniformity in temperature and atmospheric pressure, which coincidence in many instances does not prevail, would said vaults endure as waterproof for a great number of years, and said certificates were worthless to a vast majority of the ultimate purchasers of said products, due to infrequency of disinterment and consequent absence of opportunity in which to ascertain whether or not they were fulfilling their terms;

With capacity and tendency to mislead and deceive the public into the belief that said vaults had the qualities claimed for them under all burial conditions, and that they would endure as airtight, etc., as hereinbefore set forth, and to divert trade to it from competitors engaged in manufacturing and selling steel and other vaults for similar purposes and otherwise to injure the same:

Held, That such practices, under the conditions and circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. John W. Norwood*, trial examiner.

Mr. E. J. Hornibrook for the Commission.

Coville & Santry, of Oneida, N. Y., and *Waite, Schindel & Bayless*, of Cincinnati, Ohio, for respondent.

COMPLAINT

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 Maxwell Steel Vault Company 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 to the public interest hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Maxwell Steel Vault Company is a corporation organized and existing and doing business as such under and by virtue of the laws of the State of New York, with its principal office and factory in the city of Oneida in said State, at and from said city of Oneida, respondent, among other things, manufactures and sells steel vaults for use in the burial of the dead. These steel vaults are called by respondent the Maxwell Burial Vault and Oneida Air-Seal Vault. Respondent sells these vaults exclusively to jobbers. Practically all of its contacts with said jobber customers and sales of the said vaults are made through the United States mails. Its jobber customers number approximately 8,000. These vaults are so sold in every State of the United States and in the Dominion of Canada and when orders are received therefor, they are shipped by respondent from the said city of Oneida into and through other States of the United States to the respective places of business of such jobbers. These jobbers resell said vaults to undertakers, morticians, cemetery associations and the like, who, and which in turn, sell the same to the ultimate purchasers thereof with a written certificate of warranty of respondent to the effect that they are waterproof. In the course of the conduct of said business respondent is in substantial competition with individuals, copartnerships, and corporations likewise engaged in the manufacture and sale and transportation between and among various States of the United States of steel, stone, cement, and other vaults used in the burial of the dead.

PAR. 2. In aid of the sale of said vaults, respondent advertises in magazines and newspapers having general circulation throughout the United States and by and through the use of circulars, letters, booklets, pamphlets, purported certificates of warranty and other printed and illustrated materials caused by respondent to be furnished to the consuming public, and in and through such media respondent makes the following false and misleading representations:

- (a) Maxwell Burial Vault is absolutely waterproof;
- (b) Oneida Air-Seal Vault is positively waterproof

The term "waterproof" as used by respondent as aforesaid, means to the consuming public a watertight vault, a vault which will not permit water to enter the same. Neither of said vaults is waterproof as the term is understood by the consuming public; in either water may seep into it through the joints thereof.

PAR. 3. The certificate of warranty mentioned above contains a clause in which respondent offers to replace without cost to the purchaser any such vault failing to meet the warranty as to being waterproof. The exhumation of bodies after burial is so rare as to make this certificate of warranty worthless to a vast majority of the ultimate purchasers of either of these vaults for the reason that no opportunity is afforded them in which to ascertain whether a vault is waterproof or not.

PAR. 4. The said use of the said certificates of warranty has the tendency and capacity to deceive ultimate purchasers of said vaults into the mistaken belief that they are waterproof and to induce them to purchase the same in that belief and to unfairly divert trade from said competitors to the said respondent and otherwise injure them, and the representations of respondent described in paragraph 2 hereof, have and have had the tendency and capacity to deceive the purchasing public into the belief that they are true and to induce purchasers to buy said vaults in such belief and to unfairly divert trade from the said competitors to the said respondent and otherwise injure them.

PAR. 5. The acts and practices of respondent above set forth are all to the prejudice of the public and to respondent's said competitors and constitute unfair methods of competition in interstate commerce within the intent and meaning of Section 5 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."

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, on the 26th day of January, A. D. 1934, issued and served its complaint in this proceeding upon respondent, Maxwell Steel Vault Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said Act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and evidence, in support of the allegations of said complaint and in opposition

thereto, were introduced before John W. Norwood, an examiner of said Commission theretofore duly designated by the Commission, by E. J. Hornibrook, attorney for the Commission, and by William F. Santry and Herbert Shaffer, attorneys for the respondent; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, briefs in support of the complaint and in defense thereto, and the oral argument of counsel aforesaid; and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Maxwell Steel Vault Company, is a corporation organized, existing, and doing business as such under and by virtue of the laws of the State of New York, with its principal office and factory in the city of Oneida in said State. At and from said city of Oneida, respondent, among other things, manufactures and sells steel vaults for use in encasing coffins and caskets in the burial of the dead. These steel vaults are called by respondent the "Maxwell Burial Vault" and the "Oneida Air-Seal Vault".

Respondent sells these vaults exclusively to jobbers. Practically all of its contacts with said jobber customers and sales of the said vaults are made through the United States mails. Its jobber customers number approximately two hundred and fifty. Since the year 1911 respondent has sold metal vaults of the gross value of \$5,000,000. The estimated total sales of the entire metal vault industry are 1,800,000 units. Respondent's said vaults are so sold in every State of the United States and in the Dominion of Canada, and when orders are received therefor, they are shipped by respondent from the city of Oneida, into and through other States of the United States, to the respective places of business of such jobber customers. These jobbers resell said vaults to undertakers and morticians who, and in turn, sell the same to the ultimate purchasers thereof with written certificates of purported warranty of respondent to the effect that they are waterproof and will endure as such.

Maxwell Burial Vault

PAR. 2. The Maxwell Burial Vault is a top closing vault constructed of Keystone copper bearing steel, 15 gauge on top and 17 gauge on the sides. It is made of five pieces of pressed metal which

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are assembled, welded, and soldered. The top is fastened by twenty clamps, the lever action of which exerts pressure on a ropelike fiber gasket confined in the rim of the lower section and presses the gasket between the top and bottom of the vault. The gasket is made of hemp or flax with a cotton covering and is treated with grease, tallow, or paraffin. The ends of the gasket are spliced for the purpose of forming a continuous sealing cushion around the rim and this splicing must be directly under one of the eccentric clamps in order to prevent leakage. No instructions accompany the vault as to how the same should be sealed. There are other metal vaults on the market similar in construction, materials, and designs to that of the Maxwell Burial Vault.

Oneida Air-Seal Vault

Respondent began the manufacture and sale of the Oneida Air-Seal Vault in the year 1925, and has continued the manufacture and sale of the same since that year. The Oneida Air-Seal Vault is a steel receptacle consisting of two parts, (1) a pan (or base), and (2) a hood (dome or top) which operates on the principle of the diving bell, by which the confined air in the inverted airtight dome is supposed to resist the entrance of water from rising from below. It is constructed of Keystone copper bearing steel of 12 gauge of 0.1072 of an inch in thickness. The top and sides of the hood are made of one piece of steel. The pan is made of one piece of steel. The pan (or base) consists of a flat edge or flange $1\frac{1}{2}$ inches wide extending entirely around the bottom of the vault and a raised portion $2\frac{3}{4}$ inches above the plane of the lower surface of the flange as it rests on the ground or support. The entire base resembles an inverted pan. Small raised portions, or bosses, hold the bottom of the casket $\frac{7}{16}$ inch above the top of the pan and $3\frac{1}{16}$ inches above the grave floor. The bottom rim or flange of the hood (or top dome) rests on this outside flange of the pan the width of the metal from the grave floor.

Respondent's air-sealed vault is similar to the air-sealed vaults made by the trade generally, including the Clark, Galion, Springfield, Champion, Perfection, U. "5", and National. These are made on the same principle and their dimensions are practically the same. Similar results can be expected from all of these under identical conditions. This vault is not airtight until sealed by resisting water at the level at the highest point in the rim of the inverted dome which rests on the flange of the pan. Water rising from the bottom of the grave forces the air from the cavity, under the base through holes at each corner of the pan, into the hood, and as the pressure of

the outside water head increases the resistance of the compressed air increases.

PAR. 3. In the course and the conduct of said business, respondent is in substantial competition with individuals, co-partnerships, and corporations likewise engaged in the manufacture and sale and transportation between and among various States of the United States of steel, stone, cement and other vaults used in the burial of the dead. The following, among others, manufacture steel burial vaults and sell and ship the same in and into States other than the State where they are manufactured: G. F. Mitchell & Sons Co. of Cleveland, Ohio; Commercial Shearing Co. of Youngstown, Ohio. The first named company does not issue warranties for its vaults and has lost business because of respondent's methods in issuing the purported warranties hereinafter described. The following among others manufacture concrete, cement or stone vaults and sell and ship the same in and into States other than the State where they are manufactured: Permanent Concrete Co. and Kurtz Rock & Stone Co. of Columbus, Ohio; Taylor Stone Co. and Walter Bros. of McDermit, Ohio; Belmont Burial Vault Co. and Hernwood Vault Co. of Philadelphia, Pa.; Mead-Suydon Co. of Reading, Pa.; and Nazareth Vault Co. of Nazareth Pa.

The practices of respondent as heretofore and hereinafter set forth have and have had, and each of them has and has had the capacity and tendency to divert trade to respondent from its said competitors, and to otherwise injure them.

PAR. 4. In aid of the sale of said vaults, respondent advertises in magazines and newspapers having general circulation throughout the United States, and by and through the use of circulars, letters, booklets, pamphlets, purported certificates of warranty, and other printed and illustrated material caused by respondent to be furnished to the consuming public and in and through such media, respondent makes the following among other false and misleading representations:

- (a) Maxwell Burial Vault is absolutely water-proof;
- (b) Oneida Air-Seal Vault is positively water-proof.

The certificates of purported warranty mentioned above contain a clause in which respondent offers to replace, without cost to the purchaser, any vault failing to meet the terms of such purported warranty.

PAR. 5. These purported certificates of warranty are furnished by respondent through the jobber of said vaults and are intended to be and are delivered to ultimate purchasers thereof by undertakers or

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morticians or other persons in charge of funerals in which said vaults are used. They read as follows:

MAXWELL CERTIFICATE OF WARRANTY

We hereby certify that this

MAXWELL BURIAL VAULT

is made of strong, durable, rust-resisting metal, so constructed and reinforced as to withstand any earth pressure incident to burial.

That this vault has been fully tested and carefully inspected before shipment and is free from defective materials, construction or workmanship.

That the especial feature known as the Maxwell-Eccentric-Sealing-Clamp provides a positive method of sealing and when properly fastened will make this burial vault absolutely air tight, waterproof and vermin-proof.

We offer to replace without cost to the purchaser any such vault failing to meet these warranties.

MAXWELL STEEL VAULT COMPANY, ONEIDA, NEW YORK.
J. D. Candey, President.

MAXWELL CERTIFICATE OF WARRANTY

We hereby certify that this

ONEIDA AIR-SEAL VAULT

is made of strong, durable, rust-resisting metal, so constructed as to withstand any earth pressure incident to burial.

That this vault has been thoroughly tested and carefully inspected before shipment and is positively waterproof, and free from defective materials, construction or workmanship.

We offer to replace without cost to the purchaser any such vault failing to meet these warranties.

MAXWELL STEEL VAULT COMPANY, ONEIDA, NEW YORK.
J. D. Candey, President.

PAR. 6. The above described purported warranties are not warranties. They are mere sales inducements and are false and misleading in that: the Maxwell Burial Vault will not withstand any or all earth pressure incident to burial, and is not made of rust-resisting metal, and is not at all times free from defective materials and workmanship; the method of sealing the same is not a positive method and will and frequently does fail and permits water to enter said vaults; it is not absolutely airtight, watertight or vermin-proof, in fact, or as these terms are understood by the consuming public from a reading of said purported warranties, as will be hereinafter explained.

The Oneida Air-Seal Vault will not withstand any and all earth pressure incident to burial, it is not rust-resisting and is not at all times free from defective materials or workmanship, and is not positively waterproof in fact, or as the term is understood by the

consuming public from a reading of the said purported warranty, as will be hereinafter explained.

PAR. 7. The word "waterproof" as applied to a burial vault is understood by scientific men to indicate that the vault will not let water pass, that it will exclude water and that it will not permit water to touch the casket contained in the vault. The ordinary meaning of the word, as defined by Funk & Wagnalls Standard Dictionary is: "To render impervious to water, allowing no water to enter or pass through."

The term "Waterproof" as used by respondent, as aforesaid, means to the consuming public, a watertight vault, a vault which will not permit water to enter the same. Neither of said vaults is waterproof in fact, or as the term is understood by the consuming public; in either water may and often does seep into it through the joints and holes thereof and cause the coffin and remains therein to disintegrate.

These said purported warranties are silent as to the length of time during which said vaults will remain waterproof. Respondent contends in its answer and in some of its testimony that these warranties only guarantee that the vaults in question are waterproof at the time of interment. Eight lay witnesses were called to testify as to their reaction as to the length of time these vaults were guaranteed to endure as "waterproof" and as protecting the remains of a deceased person. They read the purported warranties and understood their terms to imply the continuation of water exclusion under burial conditions for varying lengths of time such as:

- A reasonable length of time after burial;
- For a long period of time;
- For at least one hundred years;
- During the life time of the purchaser;
- For a life time;
- Forever;
- For an indefinite time;
- No limit to time;
- At least during my lifetime;
- At least my lifetime or an average lifetime;
- From twenty-five to fifty years.

These witnesses included a barber, grocery-store keeper, a housewife, a drug-store clerk, an engineer draftsman, instructor in economics, the manager of the Haskin Information Bureau of Washington, D. C., and the head of a division of the Hall of Science of Washington, D. C.

The representations of said warranties are understood by the purchasing public to mean, import and imply, and they do so mean, import and imply, that said vaults are not only waterproof at the time of interment thereof, but that they will endure as such under any and all burial conditions for a period from twenty-five to one hundred years; while in truth and in fact many of each type of said vaults are not waterproof at the time of interment thereof and many will cease to be waterproof under burial conditions in a period of from one to fifteen years.

PAR. 8. Under ideal burial conditions these said vaults will endure as waterproof for a great number of years, but these conditions presuppose a perfectly dry grave at all times, and that the vault is buried in soil which is only very slightly corrosive. In many instances such ideal burial conditions do not prevail and these said respondent's vaults fail of being waterproof and protecting the coffin and remains encased therein, as will be hereinafter shown.

Wet graves are common. Water frequently appears in graves located at the tops of hills. In the Arlington Cemetery, which has the highest elevation of any cemetery in or adjoining the District of Columbia, water very frequently is found coming out of the tops of graves which are six feet or more in depth and such graves are often located on the high ground of this cemetery. Many graves in various sections of the country have been opened and found to be full of water.

It is generally true that cemeteries are located on high ground, yet the topography of much of the territory of the United States is flat and high ground cannot be found convenient thereto for the purpose of burial and the cemeteries in such localities are perforce located on flat or low ground. Where cemeteries are located on flat or low ground, water will be found in graves thereof, particularly during the rainy seasons. In the State of Indiana there is much flat country with no hills in sight and many cemeteries are located there on flat ground. The same is true in parts of Ohio, northern Iowa, southern Minnesota, parts of South Dakota, much of North Dakota, the great plains of Kansas and the irrigated valleys of Idaho, Nevada, Utah, California, and elsewhere in the States of the United States. In these irrigated belts water has been seen coming out of the sides of the hills ten feet above the surface of the surrounding country—due to seepage.

Water in graves will touch these said vaults and such water will in time produce rust thereon. Rust is the beginning of corrosion. Corrosion once started on these vaults is progressive and will continue

until the metal of the same is eaten through and they are then no longer waterproof or vermin-proof. This has happened to respondent's said vaults and similar vaults many times.

All soils are corrosive and will cause all ferrous metals to pit or corrode. The fact that you have rust indicates that corrosion has started. Rust is the source of corrosion.

Corrosive soils are quite common in the United States and ferrous metals which have been buried in corrosive soils for from two to eleven years have corroded and pitted and several have pitted to a depth greater than the 12 gauge (the thickest) metal used by the respondent in the construction of its said vaults. All ferrous metals will pit and corrode in a given soil to an equal depth. The copper bearing steel used in the construction of respondent's said vaults is a ferrous metal.

In the case of the Maxwell Burial Vault, corrosion or pitting is the principal factor in the deterioration of these vaults and its effects in many instances weaken the structure and perforate the metal thereof so that air and water may pass through. The seventeen gauge metal, of which the sides of the Maxwell Burial Vault are made, is only 0.0552 of an inch thick and would weaken and become pitted from corrosion much quicker than twelve gauge metal if buried in corrosive soils. The said fiber gasket with which this vault is sealed, as aforesaid, is another hazard against its efficiency, as such sealing if properly adjusted could not be maintained longer than the fiber gasket would retain its elasticity.

One condition precedent to the exclusion of water by this vault, even when first buried, is that the fiber gasket must be placed so that the splicing comes directly under one of the eccentric clamps. No instructions are furnished with these vaults showing how the gasket is to be placed, although respondent furnishes a tag instructing the user to "be sure the gasket or packing is in proper position when placing the cover on the vault at the time of burial." The vault is shipped with the gasket properly placed, but any disarrangement in handling, or otherwise, might in this way result in the vault failing to be water resistant, or impervious to water at the time of burial.

In a number of cases Maxwell Burial Vaults and similar makes were disinterred and found after burial of from six to fifteen years to be in a damaged condition. One of these, buried six years, was indented, had rust spots, looked scaly and had water running out of it to the extent of twenty-five to thirty buckets. Another buried fourteen years was rusted, full of holes and had water running out of it. Another was shown to have collapsed. Other vaults made of the same or similar metals have failed or were found to be in various

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stages of corrosion. A scientist, Walter F. Stutz of the Bureau of Standards, conducted experiments with this Maxwell Burial Vault for the purpose of ascertaining whether or not it was waterproof. A new Maxwell Burial Vault was immersed in water and tested for air and water tightness. The vault permitted a small amount of water to enter and allowed air pumped into the vault to escape through the water. The manner in which these experiments were conducted and the results obtained will be set forth later in these findings.

The Oneida Air-Seal Vault

PAR. 9. Respondent's Oneida Air-Seal Vault is similar to the air-seal vaults made by the trade generally. They are made of the same metals, 12 gauge in thickness, they operate on the same principle, and their dimensions are practically the same. Similar results could be expected from all of these under identical conditions.

This vault is subject to the effects of corrosion as set forth above, and corrosion is often the cause of its failure to remain waterproof. In addition, in order for it to remain waterproof for any considerable length of time, it must be buried and remain buried under ideal conditions, which are:

(1) An airtight hood, (2) A level base, (3) The air space underneath the pan must not be occupied by dirt or other materials that will reduce the amount of air to be forced into the dome, (4) There must be no appreciable change of temperature in the grave from that obtaining when the vault is first buried, (5) There must be no appreciable changes in atmospheric pressure.

These said "ideal" conditions do not obtain in a large number of cases of burial.

Condition 1. An airtight hood is essential to the waterproofness of these vaults. When it is removed the air escapes, removing all compression and consequent resistance to the water which then rises on the inside to the level of the outside head. A puncture the size of a pin hole would destroy the diving bell action and permit free entry of water. This essential condition is destroyed by fracture and puncture resulting from excessive or uneven pressure, weakness, corrosion, freezing and other causes.

Condition 2. With the removal of a level base to the extent of 1 inch and with all other favorable conditions present a 5-foot outside water head would permit water to rise above the top of the rests or bosses and cause a wooden or cloth covered casket to take up the water by capillary attraction. With such a head, an elevation of any side or corner one inch above the level of any other side or

corner would produce an equivalent rise of water and would submerge some part of the casket bottom to an approximate depth of nine-sixteenths of an inch. With smaller water heads, 3 and 6 inch deviations would permit water to reach the casket. The bottoms of graves are not always level. No spirit level is used for the purpose of determining whether graves are level at the bottom or not. In many cemeteries it is the custom to dig graves from one to three inches lower at one end than the other for the purpose of drainage.

The Oneida Air-Seal Vault rests entirely on the flange of the pan which is $1\frac{1}{2}$ inches in width extending entirely around the edge of the vault and which approximates a total area of 2 square feet. This supports the weight of the vault, casket, body, and the overlying dirt. This weight varies in a 6-foot grave under burial conditions from 2,500 pounds to 3,900 pounds per square foot of flange. This would sink the flange of the vault in ordinary soils and would do so the more readily because of the narrowness of the supporting flange. In clay soil commonly distributed throughout the East, parts of the South and through the West, this vault in a 6-foot grave would sink more than 2 inches. In case of a soil variation such as volcanic ash at one end and this clay at the other, the vault would sink more 0.4 of an inch at one end and more than 2 inches at the other. Soil variations which permit of uneven settling under such pressure are quite common in some parts of the country. Thus soils expand and contract on taking up moisture, freezing and drying in different proportions, and such conditions affect adversely the level of the loaded areas of the earth. Soils become much less stable when saturated with water and in case of water standing in a grave for a considerable length of time the base support would be lessened in varying degrees depending upon the character and variety of the underlying strata.

The estimate of 3,900 pounds of earth pressure per square foot of flange is well within that which must be sustained by a large number of vaults as it does not include greater weights of earth which may run as high as 150 pounds per cubic foot, nor does it include the weight of water with which the soil is often saturated.

Condition 3. The air space underneath the pan must not be occupied by dirt or other materials that would reduce the amount of air which would be forced by rising water up into the dome to augment the air already there and add to the resultant resistance. When water is in the grave and ten per cent of this space is filled with solid material, the water rises 0.2 of an inch higher within the vault. With this cavity 40 percent filled the water level is increased 0.8 of an inch or more than enough to enable a 5-foot waterhead to

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reach and saturate an ordinary casket. Filling the pan 75 percent increases the water level approximately 1.5 inches.

Percolating and rising water, as well as base settling from other causes, has the effect of reducing and filling up this underneath air space. Water rising subsequent to this filling encounters a reduced air volume and less resistance. As a result of such action, the water level inside the vault is raised.

Condition 4. There must be no appreciable change of temperature from that obtaining when the vault is first buried. A drop of 10 degrees Fahrenheit inside this vault contracts the air 2 percent of its volume which is equivalent in its effect on the inside water level to adding 7 inches to the waterhead outside. With the mouth of the vault closed by water pressure, this 2 percent contraction admits a proportionate amount of water to fill the space. Repeated changes of temperature, together with continuous water pressure, tends to a gradual reduction of air resistance within the vault and constant encroachment of the water level. Changes of temperature between summer and winter are sufficient to affect the water level. Monthly averages of underground changes of temperature at a depth of 36 inches vary in Fahrenheit degrees from 41 to 66 in Indiana, 45 to 77.2 in Missouri, from 35.3 to 69.4 in Nebraska, and from 32.6 to 66.6 in Colorado. There is a frost penetration of over 5 feet in large sections of the country comprising portions of Maine, New Hampshire, New York, Michigan, Wisconsin, Minnesota, Iowa, the Dakotas, Wyoming, Idaho and Montana.

The top of this air-sealed vault in a 6-foot grave is 43 inches from the surface and in a 5-foot grave 31 inches. As the confined air in the vault would circulate until the entire vault is uniformly affected by the temperature of the top, these depths are well within a temperature range that would affect the air volume of water-sealed vaults from 2 to 6 percent and affect a proportionate rise of the water surface. The depth of graves is usually from 5½ to 6 feet.

Condition 5. There must be no appreciable change in atmospheric pressure. Atmospheric pressure affects conditions inside an air-sealed vault to the extent of raising the outside water level 1 foot for every 1 inch of increase of barometric pressure. Such changes are common.

The removal of one or more of these said five ideal conditions would result in the increased entry of water into an Oneida Air-Seal Vault in the presence of waterheads of from 4 inches to 6.1 feet, results varying with the nature of the causes and complications obtaining.

PAR. 10. Substantial numbers of respondent's said vaults and other vaults of similar construction failed through corrosion and the nat-

ural agencies mentioned. In actual experience, as testified to by witnesses to disinterments of these vaults, they have been found to contain water, rust holes, surface rust, and weaknesses from corrosion.

Due to corrosion and collapsing, a steel vault or any other vault made of ferrous metal is not a permanent fixture and their use has been excluded from one cemetery unless they are vaulted (i. e., encased in a vault of stone, brick, concrete, or cement) for the reason that they do collapse. One metal vault which was exhumed from the Charles Evans Cemetery of Reading, Pa., was full of water. A vault built on the principle of a diving bell will not exclude water therefrom if water remains there long enough to absorb the air pressure within. All metal vaults which have been exhumed from said cemetery contained wet caskets and were wet on the inside and rusted. One such vault buried in said cemetery collapsed after being buried for a period of about 10 years.

In the National Cemetery, Washington, D. C., a metal vault was exhumed and at one corner of the vault one of the locks or fasteners had become corroded on the side and out of that corner water came out. It ran for possibly an hour, just a trickle, trickle, trickle, like a spigot turned on, possibly one-fourth or one-fifth of its full force. The stream or trickle was about the size of a lead pencil.

At the Riverdale Cemetery at Niagara Falls a Maxwell Burial Vault which had been buried for 14 years was exhumed. At the time of the disinterment it was in poor condition, very well rusted and full of holes. There was water in it. The water had gotten around the glass top of and into the casket so that the water had been above the casket. There were many holes in the vault, both at the bottom and sides thereof. A vault similar in type to Oneida Air-Seal Vault was exhumed in this cemetery. It had been in the ground one year and on disinterment it was found that water had gotten into the vault and had risen about six inches on the casket.

In a cemetery at Pittsburgh, Pa., a Clark metal air-sealed vault which had been interred about three months was exhumed. Water had entered the vault to a depth of about 4 inches above the bottom of the pan or base. This means that water had reached the casket to a depth of about 4 inches. There were indications of rust on the outside of this vault.

In a cemetery at Westerville, Ohio, a Clark air-sealed vault was disinterred which had been buried about 12 years. This vault was rusted until the metal thereof was very thin. There were pits in this vault. This vault had rings of rust around it up to about 6 inches, inside the vault, indicating that water had been up to that point.

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Another Clark air-sealed vault which had been buried about 6 months in the cemetery named last above was slightly rusted on the outside.

A Maxwell Burial Vault which was buried at Utica, N. Y., on March 13, 1931, and was disinterred in June 1931, upon examination showed that the finish on the coffin was gone. At the time of disinterment the finish was gone and it was back to its natural wood birch condition. The inside of the vault was mouldy and there was mould on the casket plate. The coffin itself was wet. The varnish of the coffin was off completely. A Maxwell Burial Vault which had been in the ground 15 years upon disinterment was found to be covered with rust with some small holes in it, and it was possible to stick one's finger through the metal because it had become so thin.

At the burial of two Maxwell vaults at a cemetery at Erie, Pa., when dirt was thrown upon them they were seen to bend and heard to make a muffled noise, and the vault settled under the weight of the dirt. Metal vaults disinterred at this cemetery have shown rust spots and the entire side of metal vaults completely rusted, the handles at times almost undistinguishable as such because of the heavy coating of rust. Men digging alongside metal vaults buried in this cemetery have thrust their shovels through the sides of such vaults.

At a cemetery at Wilkes-Barre, Pa., a Maxwell Burial Vault which had been buried and disinterred had the top indented from 5 to 6 inches, had spots of about 3½ inches of rust upon it. There was water coming out of this vault in a stream as big as a lead pencil. It probably ran for three hours. Between 25 and 30 buckets of water came out of the vault.

Metal vaults at Arlington Cemetery in Virginia have been found upon disinterment to be full of water and in some the metal was decayed and looked like it was falling apart. In one instance there were two or three holes found in one of these metal vaults.

A metal vault buried in a cemetery at Spartansburg, S. C., which had been buried eight years was disinterred and water was seen to be coming from it. It had pits in it from the size of a dime to the size of a dollar. Some of these pits were deep enough to permit water to seep into the vault. These pits went clear through the vault. Water dripped out of the pits and holes in the vault.

At the Lake View Cemetery of Jamestown, N. Y., metal vaults which have been in the ground for any length of time show evidence of corrosion. Vaults disinterred at this cemetery show a rusted condition both inside and out. A casket inside of a metal vault which

had been disinterred at this cemetery was in a damp, mouldy condition.

Thirty-one tests as to the waterproofness of the Maxwell Burial Vault were conducted at the instance of respondent, and one came out with a small amount of water therein.

PAR. 11. Both the Maxwell Burial Vault and the Oneida Air-Seal Vault were tested for waterproofness by the Bureau of Standards. In the case of the Maxwell Burial Vault, it was found by experts who made such tests, and the Commission so finds, that this vault leaked water to the extent of about one-half a glassful, and that the same was and is not airtight, or waterproof.

In the case of the Oneida Air-Seal Vaults, four tests were made by said Bureau of Standards to determine whether or not this vault was waterproof.

These said four tests show, and the Commission finds, that:

In Test No. 1, with water 3 feet above the top of the vault and the vault empty, that water entered the vault to a height such that the top of the base was submerged to the depth of $2\frac{1}{2}$ inches.

In Test No. 2, with water standing around the vault to a depth of 1 foot, water entered the vault to a height so that the floor of the base was just covered with water.

In Test No. 3, wherein material was used to simulate a coffin and water was turned on to a depth of 3 feet above the top of the cover, water entered the vault to a depth such that the top surface of the base was covered with water to a depth of $3\frac{1}{2}$ inches. In other words, under actual burial conditions, the coffin would have been resting in more than 3 inches of water.

In Test No. 4, the test was made under conditions which would prevail if the shallow space below the base were not filled with earth but with a vault resting upon the solid floor. Under these conditions with the vault submerged to a depth of 3 feet above the top of the vault, water entered the vault to a depth such that the top surface of the base was covered with water to a depth of 1 inch.

These vaults are buried in graves which do not have a solid base as was the case in this last test. Under actual burial conditions the earth seeps into or is pressed under the pan until the air or most of it is pressed out, thereby lessening the resistance of the air and consequently permitting a greater amount of water to enter the vault.

The results obtained by the Bureau of Standards show that both of these vaults will permit water to enter the same at the time of interment, and the Commission so finds.

Findings

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PAR. 12. The number of disinterments of metal vaults is negligible. The testimony of 17 dealer witnesses, whose aggregate sales experience covered many years, indicated no complaints by customers on account of the failure of metal vaults. Respondent received 30 complaints of rust, water, seams, etc., as to the Maxwell Burial Vaults, during and since the year 1929. During this period respondent sold 34,000 of this type of vault. From the sale of 3,000, one dealer received one complaint. Another made complaint that two Maxwell Burial Vaults had collapsed. The number of disinterments reported, or known, out of 37,781 metal vaults sold by various jobbers and dealers was 91, or one disinterment for 404 vaults, or about one-fourth of 1 percent of the total number of interments. The exhumation of bodies is so rare as to make this certificate of warranty worthless to a vast majority of the ultimate purchasers of either of these said vaults, for the reason that no opportunity is afforded them in which to ascertain whether said vaults fulfill the terms of said purported warranties.

PAR. 13. The practices of respondent in using said purported warranties in aid of the sale of its said Maxwell Burial Vaults, as aforesaid, and in so using or otherwise using the words "Certificate of Warranty", or the word "Warranty", or the phrases "Rust-resisting metal, so constructed as to withstand any earth pressure incident to burial"; "Maxwell-Eccentric-Sealing-Clamp provides a positive method of sealing and when properly fastened will make this burial vault absolutely airtight, waterproof, and vermin-proof"; "we offer to replace without cost to the purchaser any such vault failing to meet these warranties", have and have had, and each of them has and has had, the capacity and tendency to mislead and deceive the public into the belief that said vaults are airtight, waterproof, and vermin-proof under all burial conditions, and that they will endure as such.

The practices of respondent when using said purported warranties in aid of the sale of its said Oneida Air-Seal Vault, as aforesaid, and in so using or otherwise using the words "Certificate of Warranty", or the word "Warranty", or the phrases "Rust-resisting metal, so constructed as to withstand any earth pressure incident to burial", "positively waterproof", "we offer to replace without cost to the purchaser any such vault failing to meet these warranties", have and have had, and each of them has and has had, the capacity and tendency to mislead and deceive the public into the belief that said vaults are waterproof and that they will endure as such.

CONCLUSION

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in interstate commerce and a violation 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."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, the testimony and evidence, and briefs and arguments of counsel for the Commission and of counsel for respondent, and the Commission having filed its report, stating its findings as to the facts and 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 Trade Commission, to define its powers and duties, and for other purposes"—

It is now ordered, That respondent, Maxwell Steel Vault Company, its agents, employees, and representatives cease and desist:

From representing, in connection with offering for sale or selling in interstate commerce burial vaults, in purported certificates of warranty, in advertising or in any other manner, that: (a) Maxwell Burial Vaults are made of rust-resisting metal and will withstand any earth pressure incident to burial, or that they are waterproof, airtight, or vermin-proof at the time of interment thereof, or that they will endure as waterproof, airtight, or vermin-proof under burial conditions for any fixed or stated period of time; (b) Oneida Air-Seal Vaults are made of rust-resisting metal, so constructed as to withstand any earth pressure incident to burial, or that they are waterproof at the time of interment thereof, or that they will endure as waterproof under burial conditions for any fixed or stated period of time.

It is further ordered, That respondent shall, within 60 days after the 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.

Syllabus

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IN THE MATTER OF

LEADING PERFUMERS & CHEMISTS, INC.

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

Docket 2361. Complaint, Apr. 11, 1935—Order, Nov. 5, 1935

Where a domestic corporation engaged in compounding perfumes and other toilet preparations and in the sale and distribution thereof to retail dealers and jobbers, doing no business of any kind in France and having no connection with any business organization therein—

- (a) Labeled the bottles in which it sold a perfume compounded by it of essential oils and alcohol bought in the United States, with its trade name "Fleur de Matin-Cartel", and displayed the same upon the large shipping cartons in which it customarily delivered its said products in dozen unit quantities, and set forth upon the individual containers thereof a French legend followed by the words "Fleur de Matin by Cartel", together with the notice on one side in small and inconspicuous letters, "1/4 oz. Net, Bottled in the U. S. A.", and statement thereon that "the intention behind the packing of this product is to deliver a fine perfume in a sensible container at the minimum cost"; and
- (b) Set forth on the front of the circulars enclosing said bottles within their said individual containers the words "Parfum de Cartel", and on the center panel thereof, "Les Parfums Fleur De Matin-Cartel", "* * * An empress could have no lovelier perfume than this creation of one of the leading perfumers of Paris. * * * To import this perfume from Paris would make the cost prohibitive. Our chemists have succeeded in making it so perfect that it will please the discriminating person as well as the expert";

With capacity and tendency to mislead and deceive many vendees and the consuming public into the belief that said perfume was an imported product made or compounded in France by a perfumer or leading perfumer of Paris or France, and with effect of causing purchase thereof in such belief by said public, many of whom consider the French product superior to the domestic and purchase it in preference thereto, and of placing in the hands of retailers and jobbers a means of representing, offering and selling to the consuming public said domestic perfume as and for one made or compounded in France, with the high reputation attached thereto, and with tendency to divert to itself business from competitors to their substantial injury and prejudice:

Held, That such practices, under the conditions and circumstances set forth, were all to the injury and prejudice of the public and constituted unfair methods of competition.

Before *Mr. William C. Reeves*, trial examiner.

Mr. Astor Hogg for the Commission.

Mr. Emanuel L. Turberg and *Newman & Bisco*, of New York City, for respondent.