

IN THE MATTER OF
VERNON SEITZ AND RAYMOND G. SEITZ, TRADING AS
WINONA MONUMENT COMPANY

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

Docket. 2437. Complaint, June 17, 1935—Decision, Feb. 6, 1936

Where a firm, engaged in the manufacture and sale of granite and other monuments and memorials, sold as Barre granite monuments products not in fact made of said highly reputed product from the Barre quarries in Vermont, but made of cheaper granite, and inferior in appearance and lasting qualities to those made from the genuine substance; with result that the purchasing public was defrauded by such sales, and with capacity and tendency to deceive purchasers of said products and divert business from other competing manufacturers who do not make such substitutions: *Held*, That such acts and practices, under the circumstances set forth, constituted unfair methods of competition.

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

Mr. Everett F. Haycraft and *Mr. Reuben J. Martin* for the Commission.

Lamberton & Lamberton, of Winona, Minn., for respondents.

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 Vernon Seitz and Raymond G. Seitz, copartners, trading as Winona Monument Company, hereinafter referred to as respondents, have been and are 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:

PARAGRAPH 1. Respondents, Vernon Seitz and Raymond G. Seitz, are copartners, trading as Winona Monument Company, with their principal place of business located in the city of Winona in the State of Minnesota. They are now and for more than two years last past have been engaged in the business of manufacturing, among other kinds, granite monuments and memorials, and of the sale thereof, between and among the various States of the United States. They have caused and still cause such granite monuments and me-

monials when sold by them to be transported from their place of business in the city of Winona aforesaid to the purchasers thereof, some located in the State of Minnesota and others located in various other States of the United States, and there is now and has been for more than two years last past a constant current of trade and commerce by respondents in such granite monuments and memorials between and among the various States of the United States.

In the course and conduct of their business respondents are now and for more than two years last past have been in substantial competition with other partnerships, and with persons, firms, and corporations engaged in the sale of granite monuments and memorials between and among the various States of the United States.

PAR. 2. Barre granite is found and quarried only in the Barre district of the State of Vermont, which district begins at the southerly part of the city of Barre in Washington County in said State and extends westerly about two and one-half miles and southerly about four miles to and including Williamstown in Orange County in said State. Barre granite by reason of its texture, color, durability, and other qualities, has acquired a high reputation, and by reason of its qualities and reputation said Barre granite and monuments and memorials made therefrom command a higher price than do other kinds of granite found and quarried in Vermont and in other States, and than monuments and memorials made from such other kinds of granite.

PAR. 3. To monuments and memorials manufactured from granite quarried in various sections of the United States other than the aforesaid Barre district of the State of Vermont, said respondents have given in and by their advertisements, catalogs, letterheads, bill heads, invoices, and by other means, the designation and name "Barre Granite", and have offered for sale and still offer for sale and have sold and still sell such monuments and memorials as "Barre Granite"; when, in truth and in fact as hereinabove stated, such monuments and memorials are not and were not Barre granite, but are and were inferior to monuments and memorials made of Barre granite.

PAR. 4. There are among the competitors of respondents mentioned in paragraph 1 hereof, partnerships, persons, firms, and corporations who sell and have sold monuments and memorials made of genuine Barre granite; and there are also among such competitors persons, firms, partnerships, and corporations who manufacture monuments and memorials from granite not quarried in the aforesaid Barre district but who have not called nor do not call such monuments and memorials "Barre Granite".

The practice of the respondents in designating as Barre granite the monuments and memorials made of granite quarried outside

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of the Barre district hereinabove described, has had the capacity and tendency to mislead and deceive the purchasing public into the belief that the monuments and memorials offered for sale and sold by the respondents as Barre granite were and are Barre granite, and to induce the purchase of such monuments and memorials in such erroneous belief. Such practice of the respondents has had and still has the capacity and tendency to divert trade to respondents from competitors who have sold and offered for sale and still sell and offer for sale genuine Barre granite monuments and memorials, and from competitors who, without misrepresentation, have sold and offered for sale and still sell and offer for sale the same kind of granite monuments and memorials as respondents have represented and still represent to be Barre granite; thereby substantial injury has been done and is being done by respondents to substantial competition in interstate commerce.

PAR. 5. The above alleged acts and practices of respondents have been and still are to the prejudice of the public and respondents' competitors, and constitute unfair methods of competition in 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."

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 17th day of June 1935, issued and served its complaint in this proceeding upon the respondents, Vernon Seitz and Raymond G. Seitz, copartners trading as Winona Monument Company, charging them 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 were introduced by Everett F. Haycraft, attorney for the Commission, before John W. Bennett, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by H. M. Lamberton, Jr., of Lamberton & Lamberton, attorney 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, and briefs in support of the complaint and in defense thereto, and the oral arguments 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. Respondents, Vernon Seitz and Raymond G. Seitz, are a partnership, trading and doing business under the name of Winona Monument Company, with their principal place of business located in the city of Winona, in the State of Minnesota. They are engaged in the business of manufacturing granite and other monuments and memorials, and of selling such goods in the several States of the United States. Such goods, when sold, are shipped from the respondents' place of business in Winona, Minn., to the places of purchase and erection in the several States of the United States.

PAR. 2. In the course and conduct of their said business, the respondents are now and have been for several years in substantial competition with other partnerships, persons, firms, and corporations engaged in the sale of granite and other monuments and memorials in the several States of the United States.

PAR. 3. Among the various kinds of granite is a granite known as Barre granite which is found and quarried only in the Barre district of the State of Vermont. Said Barre district begins at the southerly part of the city of Barre in Washington County within the State of Vermont, and extends westerly about two and one-half miles and southerly about four miles, to and including Williamstown, in Orange County, within said State of Vermont.

PAR. 4. Barre granite, by reason of its texture, color, durability, and other qualities, has acquired a high reputation and is considered a granite of high quality. Because of its reputation for such quality, it commands a higher price than other granites not quarried in the Barre district within the State of Vermont. Barre granite is sold to customers in the several States of the United States, and is shipped from the Vermont monument manufacturers to customers in such other States.

PAR. 5. In the sale of their monuments and memorials, respondents have sold and are now selling monuments and memorials as Barre granite which said monuments were not and are not in fact made out of Barre granite quarried from quarries within the Barre district in the State of Vermont. The granites which were and are being substituted by said respondents for Barre granite in said monuments and memorials were and are inferior to monuments and

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memorials made from Barre granite, both as to appearance and as to lasting qualities. Such sales so made and being made constitute a fraud upon the purchasing public and have the capacity and tendency to deceive purchasers thereof and to divert business from other manufacturers in competition with respondents, which said other manufacturers have not and do not make such substitutions.

CONCLUSION

Respondents, by reason of the facts set forth in the foregoing findings have been and now are using unfair methods of competition in commerce in 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 respondents, testimony and evidence taken before John W. Bennett, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, brief filed herein by Everett F. Haycraft, counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that said respondents have 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 ordered, That the respondents, Vernon Seitz and Raymond G. Seitz, copartners trading as Winona Monument Company, and their officers, representatives, agents, employees, and successors, in connection with the offering for sale and sale of granite monuments and memorials, in interstate commerce, forthwith cease and desist from:

(1) Representing that the granite used in making said monuments and memorials is "Barre" granite, unless and until the granite so used is in truth and in fact granite quarried from quarries in the Barre district within the State of Vermont;

(2) Representing that the monuments and memorials manufactured and sold or offered for sale by respondents are made of or are to be made of "Barre" granite, unless and until in truth and in fact said monuments and memorials are made of or are to be made of granite quarried from quarries within the Barre district of the State of Vermont;

(3) Substituting for Barre granite where said Barre granite has been specified in an order or contract, granite of any other sort, quality, and kind than Barre granite actually quarried from quarries within the Barre district of the State of Vermont.

It is further ordered, That the respondents, within 60 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinabove set out.

IN THE MATTER OF
UNITED STATES ELECTRIC MANUFACTURING
CORPORATION

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

Docket 2504. Complaint, July 31, 1935—Decision, Feb. 6, 1936

Where a corporation engaged in the manufacture and sale of flashlight and dry cell batteries sealed with a strip of bakelite instead of the usual wax-top—

Represented and described such batteries as having a special patented "Lok-Top" and advertised and offered them under the trade name "Usalite Lok-Top" batteries, and made use of the word "patented" in its advertising matter in such a way as to deceive purchasers into the belief that it had the exclusive right to make or sell the feature thus referred to;

The facts being that products in question were not patented under the laws of the United States or any other country and it had no exclusive right to make the cell thus designated to indicate aforesaid difference;

With capacity and tendency to mislead and deceive a substantial part of the purchasing public and induce their purchase of said batteries in and because of the erroneous belief that same had been patented, and with effect of placing in the hands of dealers therein the means of defrauding the purchasing public through the sale of said products, and with capacity and tendency unfairly to divert trade from and otherwise injure the business of competitors and with effect of so doing:

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. Edward M. Averill*, trial examiner.

Mr. Joseph C. Fehr for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress 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 United States Electric Manufacturing Corporation, a corporation, hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, states its charges in that respect as follows:

PARAGRAPH 1. United States Electric Manufacturing Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal