

Complaint

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IN THE MATTER OF

HUBERT J. McQUESTION, WILLIAM M. McQUESTION AND
MRS. MARY M. McQUESTION, TRADING AS NORTH
SHORE CEMENT BURIAL VAULT COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2218. Complaint, Aug. 14, 1934—Decision, Mar. 10, 1936*

Where a firm engaged in the sale of concrete burial vaults; in advertising same in newspapers and periodicals and otherwise, and through purported demonstrations with miniature models and through warranties—

Represented that their "Vault Eternal" was water and air-tight, impervious to moisture, invulnerable to mineral action of water and to ground corrosion of every form, and constituted the one successful method of permanent positive protection regardless of conditions, and would become stronger with age and was so constructed as to insure against earth weight and unsightly sunken graves and was guaranteed for all time;

The facts being that said vaults were not always water-proof or air-tight at time of sale, were subject to effects of corrosion, and would not endure as water-proof or air-tight for all time, and, in view of unknown variables in the concrete itself and in certain soil conditions making for rapid destruction of the concrete, presence of corrosives in soil in different localities, limited life of the paint used, and other facts pertaining to said products in actual use, they could not truthfully and fairly be represented as enduring as water-proof for any fixed or stated period of time or as insuring against earth weight and sunken graves, said over-ground demonstrations were therefore deceptive and, due to rarity of disinterment, said warranties, employed as sales inducements, were worthless;

With capacity and tendency to mislead and deceive the public into the belief that products in question were air-tight and water-proof under actual burial conditions and would endure as such for all time:

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. William C. Reeves*, trial examiner.

Mr. E. J. Hornibrook for the Commission.

Mr. L. E. Vaudreuil, of Kenosha, Wis., 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 Hubert J. McQuestion, William M. McQuestion, and Mrs. Mary M. McQuestion,

copartners, trading under the firm name and style of the North Shore Cement Burial Vault Co., 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 to the public interest hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Hubert J. McQuestion, William M. McQuestion, and Mrs. Mary M. McQuestion are copartners, trading under the firm name and style of the North Shore Cement Burial Vault Co., with their factory and principal place of business in the city of Kenosha, State of Wisconsin, and at and from said city of Kenosha, respondents, under said trade name and style, among other things, manufacture and sell cement vaults used to encase or enclose a coffin in the burial of the dead. These cement vaults are called by the respondents "The Vault Eternal." The respondents sell these vaults to undertakers, who in turn sell the same to ultimate purchasers thereof. These said vaults are so sold in different States of the United States and when orders are received therefore, they are shipped by respondents from their said place of business into and through other States of the United States to the respective places of business of such undertakers, many of which are located in States other than the State of Wisconsin. In the course and conduct of said business respondents are 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, respondents advertise the same by and through the use of circulars, letters, booklets, pamphlets, purported certificates of warranty, and other printed and illustrated materials caused by respondents to be furnished to the consuming public, and by means of demonstrations hereinafter described, and in and through such media respondents make the following among other false and misleading statements and representations:

A. It remained for the present day and generation to accomplish the seemingly impossible; to mould in steel and cement, a crypt of enduring strength. Sealed hermetically, impervious to moisture, and an impregnable barrier to every destructive element of the ground, it is in truth, "The Vault Eternal";

B. The Vault Eternal is made of the only known material that is invulnerable to the attack of ground corrosion;

C. The security afforded by concrete—the only known material durable enough and dependable enough to use in harnessing one of nature's most powerful forces—WATER—gives assurance to the family that the lovely casket enclosed in a water-proof and air-tight vault, such as "The Vault Eternal", is the most permanent type of interment;

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D. The material and construction insures it (The Vault Eternal) against earth weight, preventing the unsightliness and expense of sunken graves and the destructive elements of nature, particularly mineral action. The Vault Eternal is absolutely guaranteed, not for a lifetime but for ALL time.

E. Truly, the Vault Eternal assures undisturbed, peaceful rest.

With the sale of each of respondents' vaults they cause to be given to the ultimate purchaser thereof, a so-called "Guarantee" in the following language:

GUARANTEE

We, the undersigned, do hereby certify that each "Vault Eternal" produced by us is guaranteed against any and all defects due to poor workmanship or materials. If at any time a "Vault Eternal" should be disinterred and found to be materially defective in any way or to contain any water or liquid other than that derived directly from the body which it contains we will furnish a new "Vault Eternal" without charge for the vault itself or the delivery thereof.

NORTH SHORE CEMENT BURIAL VAULT COMPANY

Milwaukee, Kenosha

Respondents also supply their undertaker customers with miniature vaults. These vaults are so made that they can be submerged into a bowl of water. A pipe is run up through the center with a cover on it so that the cover can be taken off and matches dropped down on the inside of the vault, the purpose being to show the prospective purchaser that respondent's product is impervious to moisture and is in fact water-proof. Respondents instruct their undertaker customers to make this test and demonstration and it is often made by undertaker customers.

PAR. 3. A. The statements and representations set forth in the preceding paragraph are false and misleading in that respondents' said vaults are not invulnerable to the attacks of ground corrosion, are not impervious to moisture and are not an impregnable barrier to every destructive element of the ground;

B. That respondents' said burial vaults are not air-tight, and interment therein is not the most permanent type of interment;

C. Respondents' "Vault Eternal" will not endure for ALL time, as said name implies;

D. The term water-proof as used by respondents in their advertising as aforesaid means to the consuming public a water-tight vault, a vault which will not permit water to enter it, and

Respondents' said vault is not water-proof as the term is so understood by the consuming public, and water will seep into it through the joints and the walls thereof, when used in the burial of the dead;

E. Disinterment after burial is so rare as to make the said certificate of guarantee worthless to the vast majority of purchasers of

respondents' said vaults for the reason that no opportunity is afforded them in which to ascertain whether the vault is water-proof or not;

F. The tests and demonstrations referred to above are unfair and misleading for the reason that the same physical conditions do not prevail when the tests are being made as would and do prevail when the vaults of the respondents are buried in the ground and such tests do not prove that said vaults are air-tight or water-proof or water-tight.

PAR. 4. Each and all of the said representations and statements of respondents and the said use of said tests and demonstrations 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 fair and to induce purchasers to buy said vaults in such belief and to unfairly divert trade from the said competitors to the said respondents and otherwise injure them.

PAR. 5. The acts and practices of the said respondents above set forth are all to the prejudice of the public and the respondents' 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 14th day of August A. D. 1934, issued and served its complaint in this proceeding upon respondents, Hubert J. McQuestion, William M. McQuestion, and Mrs. Mary M. McQuestion, copartners, trading under the name and style of North Shore Cement Burial Vault Co., 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 respondents' answer thereto, testimony and evidence, in support of the allegations of said complaint, were introduced by E. J. Hornbrook, attorney for the Commission, before William C. Reeves, an examiner of the Commission theretofore duly designated by it, and respondents by and through their attorney, L. E. Vaudreuil, of Kenosha, Wis., declined to introduce testimony in defense; and said testimony and evidence in behalf of the Commission was duly recorded and filed in the office of the Commission. The Commission's said attorney filed brief herein and respondents by and through their

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said attorney declined to file brief or appear and orally argue this matter. Thereafter, the proceeding came on for final hearing before the Commission on the said complaint, the answer thereto, the said testimony and evidence, the brief in support of the complaint; 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, Hubert J. McQuestion, William M. McQuestion, and Mrs. Mary M. McQuestion, are copartners trading under the name and style of North Shore Cement Burial Vault Company, with their principal office and factory in the city of Kenosha, in the State of Wisconsin. At and from said city of Kenosha, respondents, among other things, manufacture and sell concrete vaults for use in encasing coffins and caskets in the burial of the dead. These concrete vaults are called by respondents the Vault Eternal.

Respondents sell these vaults exclusively to morticians and undertakers. At said city of Kenosha these said concrete vaults are manufactured by respondents. They make approximately 350 per year. They employ from three to four men in the manufacture of such vaults. All of said vaults are sold in the State of Wisconsin, except about 15 per year, which latter number, upon orders of their Illinois customers, are sold by respondents in the State of Illinois and shipped or hauled by them to their said last named customers from the said city of Kenosha into the various towns and cities in the State of Illinois, where said customers reside or have their places of business. These vaults are usually placed in graves by respondents and sealed by them.

In the course and conduct of said business respondents have been, and are now, in competition with various persons, corporations, and copartnerships engaged in the manufacture or sale of metal, cement, and concrete vaults, in commerce among the States of the United States.

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

PAR. 2. Respondents make one type of vault, although they manufacture several sizes of the same type. The "Vault Eternal" varies in size from 8 feet in length, 36 inches in width by 35 inches in depth to a vault which is 2 feet 7 inches in length, 1½ feet in width and

14 inches in depth. They vary in price (f. o. b. Kenosha) from \$50 for the first described vault to \$18 for the last described vault. The vault first described weighs around 1,980 pounds. The vault last described weighs 200 pounds. They vary in thickness from 1 $\frac{5}{8}$ inches to 1 $\frac{1}{2}$ inches. They are made of reinforced concrete. The concrete which enters into the construction of vaults is made of one part sand, one part stone, and one-half part cement, with 5 gallons of water added for each sack of cement; the reinforcing material thereof consists of cold-rolled steel of 3.4 gage with meshes three-fourths of an inch apart. In the manufacturing process the concrete is poured into a mold which is vibrated to produce a very dense material and is calculated to add to its lasting quality. The outside covers of these vaults and the inner walls thereof are painted with a good quality enamel paint, and the inner sides of the covers and the base and outside walls are covered with an asphalt paint. These vaults are closed by having the covers thereof fitted into a groove at the top of the main body of each of the vaults, which groove contains a quantity of ship tar asphalt.

PAR. 3. Respondents in the course of their said business as set forth in paragraphs 1 and 2 hereof have in the aid of the sale of said vaults made and now make use of advertisements which they have caused to be published in newspapers of general circulation, and in periodicals and they also have made and now make use of various forms of advertising matter which they have caused to be distributed to customers and prospective customers in the States of Wisconsin and Illinois, in which advertisements and advertising matter certain claims and representations are, and were, made concerning the said vaults, among which are claims and representations to the effect that such vaults are, and were, invulnerable to mineral action of water and to ground corrosion of every form, and constitute the one successful method of permanent, positive protection regardless of any conditions and will not corrode or decay but will become stronger with age. These vaults are, and were, described in such advertisements and advertising matter as the Vault Eternal and as being of enduring strength, impervious to moisture, an impregnable barrier to every destructive element of the ground, invulnerable to the attack of ground corrosion, waterproof and airtight, constructed so as to insure against earth weight, guaranteed not for a lifetime but for *all time*, assuring undisturbed, peaceful rest. Respondents have also caused to be given to ultimate purchasers of such vaults what purports to be a guarantee in the following language:

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"GUARANTEE"

THIS IS TO CERTIFY that the 'Vault Eternal' used today in the cemetery for the interment of the body of _____ is hereby guaranteed by us against defect due to poor workmanship or materials. If it should be disinterred at any time whatsoever and found materially defective in any way or to contain any water other than that derived directly from the body, this company will furnish a new vault to take its place without charge for the vault or delivery thereof.

NORTH SHORE CEMENT BURIAL VAULT COMPANY

Kenosha

Date_____

President."

The above described purported guarantee was adopted and its use begun in the year 1934. At the time of taking testimony in this matter the respondents had not distributed them to their said Illinois customers but had distributed to at least one of their Illinois customers the material which appears on the back of Commission's Exhibit No. 5, which contains a copy of said guarantee and also in the upper right-hand corner thereof under the title "Economy" appear the words, "The material and construction insure it against earth weight, preventing the unsightliness and the expense of sunken graves from the destructive elements of nature. The 'Vault Eternal' is absolutely guaranteed not for a lifetime but for all time"; and under the title "The Answer", appear the words, "Truly the Vault Eternal assures undisturbed peaceful rest"; and under the title "Material" appear the words, "Moreover it is the only material that is invulnerable to the attack of ground corrosion."

The representations in said advertisements and of said warranties import and imply that said vaults are not only waterproof and airtight at the time of interment thereof, but that they will endure as such under any and all burial conditions forever.

Respondents also, in aid of the sale of said vaults, furnish their said customers with miniature vaults for the purpose of making demonstrations and convincing the ultimate purchaser thereof that they are waterproof.

PAR. 4. The said representations and advertising of respondents and the use of said guarantee as described in paragraph 3 hereof, are false and misleading in that said vaults are not always waterproof or airtight at the time of sale thereof and will not endure as

waterproof or airtight for all time; these vaults are subject to the effects of corrosion; in many cases of alkali in the soil all concrete is subject to corrosive effects; there is a condition which cannot be accounted for which makes concrete when buried underground subject to corrosion; there are certain variables in the concrete itself and in certain soil conditions, which are unknown, which cause rapid destruction of the concrete of which these vaults are made; there is no way to determine the resistance of the concrete of which these vaults are made to these disintegrating actions; the length of time concrete will last in alkali soil is unknown; there are many locations where alkali and other soluble chemicals occur in soil, and these, or any of them, will cause disintegration of any concrete; corrosive soil occurs in a number of localities in the United States; concrete such as that used by respondents will often disintegrate on the surface of the ground; the paint covering the Vault Eternal only has a life of 4 to 5 years and at the end of such period the resistance to water then entering depends entirely upon the resistance of the vault itself; nothing is absolutely waterproof; this paint only remains temporarily—not for all time; these vaults do not remain waterproof for all time; the jointing material does not last indefinitely; settling of the vault causes cracking; injurious salts which are in many soils cause corrosion and disintegration of the concrete of which the vaults are made; corrosion once started continues until the vault is a mass of pulp; the chances of getting an airtight seal of respondents' vaults is about 50 percent; the tar and asphalt seal gives trouble and disintegration begins in 10 years or less; concrete will not resist corrosive action of the soil, moisture, and minerals for all time; the probabilities of this vault being waterproof at the time of burial are about 50 percent and it, if waterproof at the time of burial, will not endure as waterproof for all time; these vaults cannot be truthfully and fairly represented as enduring as waterproof for any fixed or stated period of time; the material and construction of these vaults do not insure them against earth weight, or the prevention of unsightliness and the expense of sunken graves and the resistance of destructive elements of nature; the material and construction of these vaults do not assure "undisturbed peaceful rest"; the material and construction of these vaults are not invulnerable to the attack of ground corrosion; the demonstrations made with miniature vaults, in aid of the sale of respondents' said vaults, as aforesaid, are not made under burial conditions and are therefore deceptive.

Disinterments as compared to burial are so rare that respondents' said certificates of guarantee are worthless to the purchasers of said

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vaults. Disinterments as compared to burials are less than 5 percent. These vaults are not proper subjects of warranty or guarantee. Many are not waterproof when placed in the ground, and many which are then waterproof will not endure for any considerable length of time. These warranties are used by respondents as sales inducements.

Water in graves is a common occurrence in the States of Illinois and Wisconsin. In Illinois water has been seen in graves to a depth of 6 feet.

PAR. 5. The practices of respondents in using said purported guarantee, as aforesaid, and in using the advertising described in paragraph 3 hereof, 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 and waterproof under actual burial conditions and that they will endure as such for all time.

CONCLUSION

The practices of the said respondents, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and respondents' 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 the respondents, the testimony and evidence taken before William C. Reeves, an examiner of the Commission theretofore duly designated by it, in support of the allegations of the complaint, and upon the brief of E. J. Hornibrook, counsel for the Commission, no testimony having been offered or brief filed in opposition to the charges of said complaint by the respondents, and the Commission having made its report, stating its findings as to the facts and its conclusion that 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 Hubert J. McQuestion, William M. McQuestion, and Mrs. Mary M. McQuestion, copartners trading under the name and style of North Shore Cement Burial Vault Company, re-

spondents, their agents, employees, and representatives, in connection with the offering for sale or sale in interstate commerce of cement or concrete burial vaults in purported certificates of warranty or guarantee, in advertising or in any other manner do forthwith cease and desist from representing that:

(a) Any such vault is of enduring strength, is hermetically sealed, impervious to moisture and an impregnable barrier to every destructive element of the ground or is a "Vault Eternal";

(b) Any such vault made of material which is invulnerable to the attack of ground corrosion;

(c) The materials used in the construction of said vaults are durable and dependable enough to assure air-tightness and water-proofness at the time of sale thereof or under actual burial conditions or that said vaults insure the most permanent of any type of interment;

(d) The materials and construction of such vaults insure against earth weight, prevent the unsightliness and expense of sunken graves and the destructive elements of nature due to mineral or other action;

(e) Such vaults are guaranteed not for a lifetime but for *All Time*;

(f) Such vaults are water-proof or air-tight at the time of sale thereof or for any fixed or stated period of time;

(g) Such vaults assure undisturbed, peaceful rest;

(h) And also from representing by or through the use of tests or demonstrations that such vaults are water-proof at the time of sale thereof, or that they will endure as water-proof or air-tight under burial conditions.

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

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IN THE MATTER OF
MILES L. FINCH DOING BUSINESS AS ASSOCIATE
BRITISH MANUFACTURERS

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 2519. Complaint, Aug. 15, 1935—Decision, Mar. 10, 1936

Where an individual engaged in the sale of genuine Harris Tweed and of certain power loomed woolen fabrics of domestic manufacture—

Advertised and labeled the latter as "IMPORTED British Wool HARRIS TWEED type (Shepherd and black faced sheep in background)" and as "Loomed from British Island Wool, HARRIS TWEED type", notwithstanding fact that fabric thus described was not genuine Harris Tweed, i. e., hand woven wool cloth made in the Outer Hebrides, Scotland, but was an imitation thereof and inferior thereto;

With effect of misleading and deceiving the purchasing public and retail merchants into buying said fabrics in the belief that they were the genuine Harris Tweed, and of further affording said retailers an opportunity to perpetrate a fraud upon the purchasing public, and with further effect of unfairly diverting trade to said individual from competitors engaged in the sale of genuine Harris Tweed and from those truthfully and honestly advertising tweed similar to aforesaid product, and with capacity and tendency so to deceive and mislead; to the injury and prejudice of the public and competitors:

Held, That such acts and practices were all to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Edward M. Averill*, trial examiner.

Mr. R. L. Kennedy for the Commission.

Mr. Felix A. Russell, of Washington, D. C., 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 Miles L. Finch, engaged in business under the name and style of Associate British Manufacturers, hereafter referred to as the respondent, has been and 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:

PARAGRAPH 1. The respondent Miles L. Finch is an individual engaged in business under the name and style of Associate British Manufacturers, with his principal place of business at 200 Fifth