

IN THE MATTER OF
SPRINGFIELD METALLIC CASKET COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 3 OF TITLE I OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933¹

Docket 2326. Complaint, Mar. 12, 1935—Decision, Nov. 27, 1936

Where a corporation engaged in the manufacture of metal caskets and burial vaults, designated as air sealed and mechanically sealed end closing vaults, and in the sale of said products to jobbers and funeral directors and undertakers—

- (a) Represented, in purported certificates of warranty or guarantee, and in periodicals of wide interstate circulation, and in booklets, circulars, etc., and through photographs, testimonials, and other advertising media, that the metals of which its said vaults were made withstood the ravages of time and resisted rust and corrosion, and that said vaults were and would remain waterproof and airtight, when placed underground, for fifty years;
- (b) Made use of certificates of warranty or guarantee in connection with the sale and offer of its said vaults which guaranteed the same to be airtight, vermin and waterproof, when used for burial purposes, and undertook therein to replace any vault without cost in the event of damage to the contents by water or other elements as a result of rust, corrosion, etc.; and
- (c) Published, in connection with the sale of its said vaults, pictures, drawings, and photographs of cement vaults which had been disinterred in badly disintegrated condition, together with comment calling attention thereto;

The facts being that while its said vaults were made with great care by skilled workmen, of a highly refined grade of steel, by its very nature impervious and impenetrable by air, moisture, and water, such metal was not rust or corrosion resistant to the extent that it would never rust or corrode after burial, and, once rusted or corroded to a certain extent during a period of years, said vaults would crumble and corrode, and, in some instances, cave in and collapse, corrosive qualities, present in all soils, vary greatly, so that, while in many sections throughout the United States in which soil corrosion is not a problem, a twelve gauge metal vault, buried, would resist penetration by corrosion for more than 100 years, in other soils its said vaults would pit through and cease to become waterproof in from eight to ten years, conjunction of conditions, which does not always exist, must obtain in the case of said air sealed vaults in order to provide protection from the effects of entering water, its vaults and metals from which made had not been tested under ground for the full period of 50 years, disinterment is rare, and it had rarely been called upon to replace its said vaults;

¹ Count Two of the complaint alleging violation of the National Industrial Recovery Act dismissed November 9, 1935.

1000

Complaint

With capacity and tendency, as a result of such misleading acts and practices, to induce public to purchase and use its said vaults in the belief that said statements and representations, which were each and all to the prejudice of the public, were true, and to divert unfairly trade to it from its competitors engaged in sale and distribution of metal, stone, concrete, cement, and other burial vaults, in and between the various States:

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

Mr. E. J. Hornibrook for the Commission.

Mr. Herman L. Weisman, of New York City, and *Waite, Schindel & Bayless* of Cincinnati, Ohio, for respondent.

COMPLAINT

Acting in the public interest and 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 charges that the Springfield Metallic Casket Company, a corporation, hereinafter referred to as respondent, has been and is now using unfair methods of competition in commerce, as "commerce" is defined in said act, and in violation of an Act of Congress approved June 16, 1933, known and designated as the "National Industrial Recovery Act," and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, states its charges in that respect as follows:

Count 1

PARAGRAPH 1. The respondent, Springfield Metallic Casket Company, is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its factory and principal place of business located in the city of Springfield in said State. It is now, and for several years last past, has been engaged among other things in the business of manufacturing and selling metal grave vaults used to encase coffins in the burial of the dead, to purchasers thereof, many of whom reside in States other than the State of Ohio and in the District of Columbia, and when orders are received therefor, they are filled by respondent by shipping the same from the said city of Springfield, State of Ohio, into and through other States of the United States and the District of Columbia to the respective places of business or residences of such purchasers.

PAR. 2. In the course and conduct of its said business, respondent is in competition with other individuals, copartnerships, and corporations engaged in the sale and transportation of metal, stone,

Complaint

23 F. T. C.

concrete, cement, and other grave vaults between and among various States of the United States.

PAR. 3. Respondent sells and ships said grave vaults, as aforesaid, to jobbers, funeral directors, and undertakers, the last two of which sell the same to ultimate purchasers thereof for use in the burial of their dead.

PAR. 4. (A) In magazines having a wide interstate circulation, and in booklets, circulars, pamphlets, letters, and in and through the use of photographs, testimonials, and in other advertising media, all of which is circulated among its customers and prospective customers residing in the several States of the United States, and which respondent's said customers use and are authorized by respondent to use in the sale and the promotion of the sale of its said vaults, the following and similar false and misleading claims, statements, and representations as to respondent's said vaults are made.

That said grave vaults will remain waterproof and airtight when placed underground; that the metal of which said vaults are made withstands the ravages of time, resists rust and corrosion for a period of 100 years or more.

(B) Respondent issues with each vault for delivery to the ultimate purchaser thereof and they are so delivered, a written purported warranty which provides as follows:

WARRANTY

Springfield Metallic Grave Vaults

Every Springfield air-sealed metal grave vault of the styles known as No. 10, No. 9, No. 7 and York, as well as the open end (No. 5) style is made exclusively and entirely of genuine Armco ingot iron. The metal used in these vaults is entirely of No. 12 United States Standard gauge. The above trade name and gauge of metal are definitely stated in the Springfield trade-mark affixed to each of these vaults.

(The trade-mark reads:

Springfield
Made of 12 Gauge
The
Pioneer
Line
Established
1884
Ingot Armco Iron
Springfield Metallic Casket Company,
Springfield, Ohio.)

The highest standard of workmanship on these vaults is the result of nearly one-half century of experience in manufacturing quality burial receptacles. Every one of the above mentioned vaults must pass a rigid inspection as to

1000

Complaint

quality of workmanship. Each of the air-sealed types must also pass a complete water submersion test made in 5,000 pounds electrically controlled pressure to prove its air and water tightness. Each of the above mentioned vaults will withstand a top weight of more than 20,000 pounds without perceptible deflection or injury to the vault.

We hereby warrant the above mentioned vaults for a period of fifty years from date of purchase against water entry as a result of defective construction, rust or corrosion. Any such vault found to be defective from causes stated herein will be replaced without cost to the purchaser of the vault or to the funeral director who sold it. This warranty is invalid unless dated and countersigned by the funeral director at time of sale of the vault, and nothing in this warranty shall obligate the company against damage to the contents of the vault from dehydration of the remains or from any other cause not specifically stated herein.

The Springfield Metallic Casket Company,
By E. N. Lupper,
President and General Manager.

(C) Respondent in connection with its advertising and sale of metal grave vaults as aforesaid, unfairly disparages the stone, concrete, and cement burial vaults of its said competitors in manner following:

It disparages and condemns the use of stone, concrete, and cement burial vaults by publishing a picture of a purported cement, concrete, or stone burial vault in a badly disintegrated condition with this comment:

Cement caskets or cement vaults will not protect contents.

Isn't this a most horrible condition to find a casket as shown below. A reinforced cement casket gone all to pieces—no better than a wooden box. Why buy cement vaults. They will fill up with water and then go to pieces, the same as casket shown in picture below.

PAR. 5. The statements and representations described in subdivision (A) of the preceding paragraph are false and misleading in that respondent's said grave vaults will not always remain waterproof and airtight when buried in the ground; that they will not always remain watertight and airtight for a period of fifty years or for any definite period when buried underground; that respondent's said vaults are not made of rust resisting, non-corrosive materials; that respondent's said vaults when buried under the ground do not always afford positive or permanent protection to the body or coffin encased therein; that the metals of which respondent's vaults are made are not proof against crumbling; that the tests made of respondent's said vaults before shipment are not sufficient to assure that they will remain in all cases watertight or airtight; that respondent's said vaults are made of metals which will corrode and rust; that there is a vast difference in the corrosive properties of soils throughout the United States; in some soils respondent's said vaults will pit and

Complaint

23 F. T. C.

corrode in a period of from three to ten years and in others from ten to twenty years; that respondent's said vaults have not been tested underground for a period of fifty years, nor has the metal of which they are made been so tested; that in many instances respondent's said vaults will corrode and have corroded and pitted so as to let water into them; that in many instances they will corrode and have corroded and rusted so as to cave in or collapse; that respondent's said vaults when buried underground are not airtight or waterproof and will, and often do permit water or air to enter therein. Either air or water entering respondent's vaults when buried underground promote and cause disintegration of the coffin and body encased in said vaults. Water often enters the graves of the dead. The mechanism provided by respondent for sealing its said vaults will not at all times prevent the entrance of water into said vaults to an extent where the coffin is damaged.

The statements and representations described in subdivision (B) of paragraph 4 hereof are false and misleading and deceptive in that the terms "waterproof" and "airtight" as used by respondent, as aforesaid, means to the ultimate purchaser thereof a watertight, airtight vault; a vault which will not permit water or air to enter the same and that will endure as such under burial conditions. The respondent's said vaults are not waterproof nor airtight as the terms are understood by the ultimate purchaser thereof. Water or air may seep into or enter the said vaults through the walls, joints, and flanges thereof or pin holes due to rust or corrosion, or due to collapse or bending of the vault.

These purported warranties contain a clause to the effect that the Springfield Metallic Casket Company warrant such vaults for a period of fifty years from the date of purchase thereof against water entering such vault from the grave due to defective construction, rust or corrosion. Exhumations of bodies after burial are so rare as to make these certificates of warranty worthless to the purchasers of such vaults for the reason that no opportunity is afforded them to ascertain whether such vaults have or have not been airtight or waterproof. These said purported warranties are not warranties, but are merely sales persuaders under the terms of which respondent will rarely, if ever, be called upon to replace said vaults. It is false and misleading for respondent to call them warranties or to issue them. Ultimate purchasers are induced to buy respondent's said vaults because of said warranties.

The picture of the disintegrated cement, stone, or concrete vault and the comments thereon made by respondent in its advertising, as aforesaid, do not represent the true or general conditions of such

1000

Complaint

vaults after having been buried in the ground and are used by respondent for the purpose of discouraging purchasers or prospective purchasers from buying said vaults for use in the burial of their dead and to encourage them in the purchase of respondent's own vault.

PAR. 6. Each and all of the said false and misleading representations used by respondent as set out in paragraph 4 hereof have and have had the capacity and tendency to induce the public to purchase and use respondent's said grave vaults in the belief that they are true and have and have had the tendency and capacity to divert trade from said competitor's of respondent.

PAR. 7. 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."

Count 2

PARAGRAPH 1. Respondent is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its factory and principal place of business located in the city of Springfield, in said State. Respondent is now, and for several years last past has been engaged in the business of manufacturing, selling, and distributing metal grave vaults used to encase coffins in the burial of the dead, to purchasers thereof located at points in the State of Ohio and at points in various other States of the United States and in the District of Columbia, and causes said products when so sold to be transported from its principal place of business in the city of Springfield, Ohio, to the purchasers thereof in the State of Ohio, and to other purchasers thereof in other States of the United States and in the District of Columbia, at their respective places of business, and there is now, and has been for several years last past, a course of trade and commerce by the said respondent in said product in the State of Ohio, between and among the States of the United States and in the District of Columbia.

PAR. 2. As grounds for this paragraph of this complaint, the Federal Trade Commission reiterates, adopts, and relies upon all matters and things set out in paragraphs 2 to 7, inclusive, of count 1 hereof to the same extent as though each and all of the allegations thereof were set out at length and in full in this paragraph.

Complaint

23 F. T. C.

PAR. 3. On November 4, 1933, under and pursuant to the provisions of the National Industrial Recovery Act, the President of the United States made, issued, and approved a Code of Fair Competition for the Funeral Supply Industry, which became effective on the tenth day thereafter. The respondent herein was a party to and signatory of such Code of Fair Competition and such Code is now in full force and effect as to this respondent.

The said National Industrial Recovery Act, Section (3), Paragraph (B), provides:

If the President shall have approved any such Code, the provisions of such Code shall be the standards of fair competition for such trade or industry, or supervision thereof. Any violation of such standards in transaction in or affecting interstate or foreign commerce shall be deemed an unfair method of competition in commerce within the meaning of the Federal Trade Commission Act, as amended; but nothing in this title shall be construed to impair the powers of the Federal Trade Commission under such Act, as amended.

In Article IX, under the heading of "Trade Practice" of said Code, appears the following:

1. The following practices constitute unfair methods of competition and are prohibited:

To resort to or indulge in practices which are prejudicial to the public interest such as

Misbranding,
Misrepresentation in branding,
Labeling,
Selling, and
Advertising.

(W) Nothing in this Code shall limit the effect of any adjudication by the courts or holdings by the Federal Trade Commission on complaint, finding and order, that any practice or method is unfair providing that such adjudication herewith is not inconsistent of any provision of the Act or of this Code.

Notwithstanding the said provisions of said Code of Fair Competition, respondent has continued to and does, use said methods of competition hereinabove alleged and described, and has resorted to or indulged in the practices of misrepresentations in branding, labeling, selling, and advertising its said vaults in the manner hereinabove set forth.

PAR. 4. The above alleged methods, acts, and practices of the respondent are and have been in violation of the standards of fair competition as set forth in said Code of Fair Competition for the said Funeral Supply Industry of the United States. Such violation of such standards in the aforesaid transaction in interstate commerce and in other transactions which affect interstate commerce in the manner set forth above are in violation of Section (3) of the National

Industrial Recovery Act and they are unfair methods of competition in commerce within the meaning of the Federal Trade Commission Act, as amended.

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 12th day of March, A. D., 1935, issued and served its complaint in this proceeding upon respondent, Springfield Metallic Casket Company, a corporation, 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, a stipulation as to the facts was agreed upon by and between W. T. Kelley, Chief Counsel for the Commission, and respondent by which it was agreed that, subject to the approval of the Commission, the statement of facts so agreed upon should be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto. It was further agreed that the said Commission might proceed upon such statement of facts, including inferences drawn from said stipulated facts, to issue its report stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Said stipulation as to the facts has been duly filed in the office of the Commission, and approved by it. Thereafter the proceedings came on for final hearing before the Commission on said complaint, the answer thereto and the statement of facts as agreed upon in lieu of testimony, briefs and argument having been waived, 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, Springfield Metallic Casket Company, is and has been for the past fifty years, since 1886, a corporation duly organized and existing under the laws of the State of Ohio, with its factory and principal place of business located in the city of Springfield, in the State of Ohio.

Respondent is now, and for the past fifty years has been, engaged in the business of manufacturing and selling metal caskets and metal

Findings

23 F. T. C.

burial vaults; said vaults are intended to be, and actually are, used to encase or enclose coffins in the burial of the human dead. Said vaults are designated by respondent as air sealed vaults and mechanically sealed end closing vaults.

Respondent sells and ships its said vaults to jobbers, funeral directors, and undertakers, the last two of which sell the same to ultimate purchasers thereof for use in the burial of their dead.

It now sells and ships and has so sold and shipped its vaults to such purchasers thereof to be used in the State of Ohio and other States of the United States; when orders are received by it therefor, they are filled by causing said vaults to be shipped from the said city of Springfield, in the State of Ohio, into and through other States of the United States to the respective places of business or the residences of such purchasers.

PAR. 2. In magazines having a wide interstate circulation, and in booklets, circulars, pamphlets, letters, and in and through the use of photographs, testimonials, and in other advertising media, all of which are circulated among its customers and prospective customers residing in the several States of the United States, and which said customers of respondent use and are authorized by respondent to use in the sale and in the promotion of the sale of its said vaults, respondent has made, prior to the year 1932, but not since that year, the following claims, statements and representations as to its vaults, to wit:

The metal of which its vaults are made withstands the ravages of time and resists rust and corrosion, said vaults will remain waterproof and airtight when placed underground.

Respondent voluntarily abandoned, and in the usual course of business ceased to use, the above statements, and has not made since 1932, nor does it now make, issue or use them, or either of them.

PAR. 3. Respondent, prior to July 1, 1934, issued with its air-sealed vaults, for delivery to ultimate purchasers thereof—and they were usually so delivered—written certificates of warranty, in words and figures as follows:

WARRANTY

Springfield Metallic Grave Vaults

Every Springfield air-sealed metal grave vault of the styles known as No. 10, No. 9, No. 7 and York, as well as the open end (No. 5) style is made exclusively and entirely of genuine Armo Ingot Iron. The metal used in these vaults is entirely of No. 12 United States Standard gauge. The above trade name and gauge of metal are definitely stated in the Springfield trademark affixed to each of these vaults.

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Findings

(The trade-mark reads:

Springfield
Made of 12 Gauge
The
Pioneer
Line
Established
1884
Ingot Armco Iron
Springfield Metallic Casket Company
Springfield, Ohio.)

The highest standard of workmanship on these vaults is the result of nearly one-half century of experience in manufacturing quality burial receptacles. Every one of the above mentioned vaults must pass a rigid inspection as to quality of workmanship. Each of the air-sealed types must also pass a complete water submersion test made in 5,000 pounds electrically controlled pressure to prove its air and water tightness. Each of the above mentioned vaults will withstand a top weight of more than 20,000 pounds without perceptible deflection or injury to the vault.

We hereby warrant the above mentioned vaults for a period of fifty years from date of purchase, against water entry as a result of defective construction, rust or corrosion. Any such vault found to be defective from causes stated herein will be replaced without cost to the purchaser of the vault or to the funeral director who sold it. This warranty is invalid unless dated and countersigned by the funeral director at time of sale of the vault, and nothing in this warranty shall obligate the company against damage to the contents of the vault from dehydration of the remains or from any other cause not specifically stated herein.

Springfield Metallic Casket Company,
By E. M. Lupper,
President and General Manager.

PAR. 4. Respondent voluntarily abandoned, and in the usual course of business ceased to use the foregoing warranty in July 1934, and has not since then issued, nor does it now issue, use or deliver, or cause to be delivered said warranty.

In July 1934, respondent adopted and since then has issued and now issues with each vault, for delivery to ultimate purchasers thereof—and they are usually so delivered—a written certificate of warranty in words and figures as follows:

WARRANTY

Springfield Metallic Grave Vaults

Highest Standard—Electrically Welded—
Equal to Any on the Market.

The Springfield Metallic Casket Company WARRANTS: That each Springfield Vault, No. 5, No. 7 (open end) Styles and No. 9 and No. 10, air sealed styles, are manufactured of Armco Ingot Iron, No. 12 gauge, and built by skilled

Findings

23 F. T. C.

workmen and have been tested by being submerged in water, and inspected and found to be free from defects in material or workmanship.

The Springfield Metallic Casket Company will replace any such vault without cost if its contents are damaged by water or other elements admitted from the grave because of the failure of the vault due to rust, corrosion, defective material or workmanship, but does not warrant against damage to the casket or contents caused by the dehydration of the remains.

This warranty has been issued by a duly authorized officer of the company, whose signature is hereto affixed and has been countersigned by the funeral director at the time of delivery.

Springfield Metallic Casket Company,
By Chas. H. Hiser,
President and General Manager.

PAR. 5. Respondent until January 1928, but not since that time, in some of its advertising of its vaults, published a picture of a cement burial vault showing a badly disintegrated condition and commented upon this condition.

Since January 1928, respondent has ceased to use, publish, distribute, or cause to be distributed, such photographs or comments.

PAR. 6. The ferrous metal used by respondent in the manufacture of its said burial vaults is Armco Ingot Iron and Armco Iron manufactured by the American Rolling Mill Company of Middletown, Ohio.

These metals are purchased by the respondent in sheets of extra dimensions of 12 U. S. Standard gauge and heavier thicknesses, specially processed and rolled for the purpose of the manufacture of burial vaults.

The cost of Armco Ingot Iron is considerably higher than the cost of ordinary commercial steel. It is one of the highest grade and quality of metals that are now in the market in the United States, which can be obtained by respondent for the manufacture of its burial vaults.

Armco Ingot Iron, purchased by respondent and used in the manufacture of all of its vaults, is a highly refined grade of steel, carefully made under the best, modern scientifically controlled steel-making processes. It is a high quality metal, made as carefully, accurately and thoroughly as it can be made by exact control of furnacing operations to make the best metal that will resist, but not prevent, corrosion, in the sense that the high purity and quality of the metal tends to retard and slow the rate of corrosion and tends to increase its durability underground for a longer period of time than if the impurities were not removed from the metal.

The above named steel manufacturing company, from whom respondent purchases Armco Ingot Iron, represents in its advertising and otherwise to the respondent that said metal is rust resisting. It

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Findings

is a manufacturer of recognized responsibility and integrity. This company makes rigid tests and inspection of each sheet of said metal before shipping to the respondent.

These metals are, by their very nature, impervious and impenetrable by air, moisture and water, and will exclude them from seeping or going through or between any pores or molecules of said metals during the life of said metals, which terminates when a hole has been punctured or has penetrated through the metal from any instrument, rust or corrosion.

These metals are not rust-proof or corrosion-proof, but will rust and corrode after they are buried underground. They are not rust-resisting or corrosion-resisting to the extent or degree that they will never rust or corrode after burial underground. If they have rusted and corroded to a certain extent during a period of years after burial underground, they will crumble and corrode.

PAR. 7. Respondent's said vaults are manufactured with great care by skilled workmen.

PAR. 8. Respondent's said air sealed vaults are constructed on the air seal principle. The vaults consist of two parts: (1) A pan or base, and (2) a dome (hood or top).

The outside measurements of said vault are: Length, 91 inches; width, 33 inches; and height, $27\frac{7}{8}$ inches. It weighs empty and without a casket in it, 298 pounds. Its inside dimensions are: Length, 88 inches; width, 30 inches; side height, 19 inches; center height, 24 inches above the top of the pan.

The entire dome consists of three pieces, two ends and one piece which forms the rounded top and both sides. The ends are electrically welded from the inside and acetylene welded from the outside, so as to then make the dome airtight and watertight in the sense that no air or water can then get through the metal or welds of the top, sides and ends of the dome from the outside of the dome to the inside of the dome. Of course, water and air can go in and out of the dome from the bottom of it, as the dome itself has no bottom to it.

The pan is made of one piece of steel and the ends are electrically welded on Type No. 10 vault; on Type No. 12 vault the ends are bent down and pieces are electrically welded in the corners. The pan is flat on top and the four edges are turned down so as to raise the top of the pan three inches above the plane of the upper surface of the flange as it rests on the ground or support. The edges of the pan are turned outward $1\frac{5}{8}$ inches wide to form this flange, which extends entirely around the bottom of the vault. This flange itself has approximately a total of 2 square feet and $103\frac{5}{8}$ square inches. The entire base resembles an inverted pan. At each of the four corners of

the pan is a hole, pierced through it near its top edge. Circulation of air from the hollow space under the pan into the hood is provided by these holes, thereby making one single column of air.

Projecting $\frac{3}{4}$ inch above the top of the pan are four small raised bosses or casket rests, which support the bottom of the casket when it is placed in the vault. Thus, the bottom of the casket is raised $3\frac{3}{4}$ inches above the top surface of the flange on the pan.

The bottom edge or rim of the dome rests on this outside flange of the pan, the width or thickness of the metal from the bottom of the grave or the grave floor.

Respondent's said air-sealed vaults are constructed on the principle of the diving bell—as water completely surrounds the vault to the extent that it covers the entire line of juncture between the dome and the flange on the pan the pressure of the confined air on the inside of the dome resists the pressure of the water head so as to prevent the surface of the water level rising above the lower edge of the dome. The air within the vault is not sealed until then. As the water level rises in the ground surrounding the vault, its pressure forces the air from the empty space underneath the raised portion of the pan through the holes at each corner of the pan into the hood, where it is added to the air within the dome, thereby increasing the pressure and resistance of the air to the pressure of the water level in the ground, and so adding to the effectiveness of the operation of the air-seal principle of the vault.

The dome of each air seal burial vault manufactured is tested before it is shipped, by submerging in water the dome in an upright position, without the pan being placed under it. The dome, containing air inside it is forced down into the water by a mechanical apparatus similar to a baling press. It operates on a screw and exerts pressure on top of the dome, and thereby forces the dome under the water. The pressure necessary and actually used, in order to put the dome down so that the top of the dome is under the water, and thus submerged, is two and one-half tons, or 5,000 pounds. This pressure is applied so as to equally distribute it over the top of the vault.

The purpose of making this test is to find any defect in the material of the dome or in the welds in the dome. If any air bubbles rise to the surface of the water, it indicates that air is escaping from the inside of the dome through a hole in the material, or a defect in the welding; then the dome so found to be defective would be returned to the production line and this defect would be repaired and the dome would be given a second test. If the defect is in the metal itself, the unit is rejected and not used thereafter. If no air bubbles rise to the surface of the water, it indicates that no air is escaping from the inside of the

1000

Findings

dome and that the dome is airtight; then the dome is approved for shipment, and it is waterproof and airtight at the time of shipment.

PAR. 9. When for any reason the air seal principle of the above-described vault is not in operation, the vault is not airtight as a vault. Air can circulate freely and water can enter the dome and rise within it to the extent that it is not resisted by the pressure of the air confined within the dome.

PAR. 10. According to the recognized principles of mechanical engineering applied in the construction of the respondent's air-sealed vaults, the confined air within the dome of respondent's vaults, buried level on the bottom of the grave, containing a corpse in an ordinary casket, or one not hermetically sealed, estimated at five cubic feet, will resist by the air seal principle the pressure of a water column in the ground five feet, or 60 inches, above the lower edge of the hood, and under such conditions, the water in the vault will rise only to the top of the pan, or one inch below the rests for the bottom of the casket. According to such recognized principles it would require a water column in the ground 6.1 feet or 73.2 inches above the lower edge of the hood for the water in the vault to rise so as to submerge the bottom of the casket.

Respondent's air sealed vaults, even though provided with said mechanical principles of air sealing, will not, under all burial conditions, prevent the entrance of water into said vaults to such a height as to damage the coffin and body placed therein. The metals from which said vaults are made will corrode and rust. If said metals do so corrode or rust to the extent that holes or punctures, which will permit the entry of water, develop, and there is sufficient water in the grave to reach the holes or punctures, or exit of air from the enclosed portion of the dome develops, then the entire principle of the diving bell is defeated.

In some instances said air sealed vaults will corrode and rust so as to cave in and collapse. Respondent's said vaults have never been tested for corrosion for a period of fifty years, nor has the metal from which they are made been so tested; respondent's said vaults when buried underground will, and often do, permit air, vermin, and water to enter them. Water entering respondent's said vaults to such a height as to touch the casket will promote in some instances disintegration of the body and the casket therein. Water often enters the graves of the dead. In many cemeteries of the United States, water rises in some graves to a depth of 6 feet.

In addition, in order for said air sealed vaults to provide protection of the casket and body placed therein from the effects of water

Findings

23 F. T. C.

entering from the grave, they must be buried and remain buried under the following conditions, which are:

- No. 1. The hood of the air seal vault must not be defective and the metal and welds must be airtight.
- No. 2. The vault should be buried level.
- No. 3. The vault should be buried on the surface of the bottom of the grave and have no earth or other material which occupies the empty space underneath the pan.
- No. 4. There should be no change in temperature after its burial.
- No. 5. There should be no change in barometric pressure after its burial.

These said conditions do not obtain in all conditions of burial where said vaults are used.

Condition No. 1 is essential for the operation of the air seal principle. A change in conditions Nos. 2 or 3 affect the air seal vault unfavorably to a more or less degree in that they reduce the amount of confined air within the dome and also its pressure, when this vault is sealed by water rising above the lower edge of the hood, and thus the water within the hood tends to rise higher. A change in conditions Nos. 4 and 5 may affect these air seal vaults favorably, or it may affect these vaults unfavorably and make the water rise higher in the hood, even though the air seal principle is in operation. When changes in conditions 2, 3, 4 and 5 are sufficient to cause water to enter said vault and to touch the casket therein, then such changes tend to damage the casket and the body contained therein.

PAR. 11. Said air sealed vaults are not shipped by respondent until the domes thereof have been tested and proved to have no defects in its metal or in its welds, and the domes thereof are waterproof and airtight at the time of shipment. No test is made of metal and weld of the pan.

PAR. 12. A corpse, either embalmed or not embalmed, is in the process of decay and disintegration at the time of its burial. The process of embalming is the method of injecting certain fluids into the corpse for the purpose of delaying such decay and disintegration of the corpse for a temporary period of time after burial. The delay in disintegration thus brought about is temporary and not permanent.

The above described use of the air seal vaults of the respondent is intended for the purpose of protecting the corpse against such accelerated decay and disintegration through damage by water rising to such a height within the dome of the vault that it will touch the bottom of the casket. The actual protection of the corpse by respondent's vaults will depend upon the actual burial conditions of the locality in which they are buried.

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Findings

PAR. 13. The terms "waterproof" and "airtight" and "vermin proof" as used by respondent as described herein, mean in fact, and are understood by many ultimate purchasers of said air sealed vaults to mean, a watertight, airtight, vermin proof vault, which will not permit water, air or vermin to enter the same and that it will endure as such under burial conditions for a period of twenty-five to fifty years or more. Water, vermin and air do enter these said vaults through the bottom holes, holes due to corrosion, or other causes, or when there is so much water in the graves in which they are contained that the water touches the casket, or because of absence of one or more of the conditions described in paragraph 10 hereof. Said vaults are not vermin proof or airtight until the same are sealed with water.

Disinterment after burial is rare and respondent has rarely been called upon to replace said vaults.

PAR. 14. The metals of which all of respondent's vaults are made are ferrous metals and will rust after burial underground. Rust is an oxidation of iron, a union of iron and oxygen, and its presence means that to some extent the metal has corroded.

The corrosive qualities of different soils vary to a great extent. In some soils the corrosion is practically negligible.

There are many sections throughout the United States where soil corrosion is not a problem. In some soils in the United States a 12 U. S. Standard gauge metal vault buried underground would resist penetration by corrosion for a period of more than 100 years.

As one goes down in the ground, the strata in contact with the burial vault changes, and it may be a more corrosive or less corrosive strata, depending on the location.

The life of a metal burial vault unless punctured by rust or corrosion, depends upon the character of the soil in which it is buried and upon the climatic and other conditions prevailing in the locality where interment is made.

All soils are more or less corrosive and in the course of years will cause all ferrous metals to pit or corrode.

Corrosion, in the course of years, will cause the failure of respondent's ferrous metal vaults.

Respondent's vaults, and the metals from which they are manufactured, have not been tested underground for the full period of fifty years.

There are some soils in the United States where respondent's ferrous metal vaults will pit through and cease to be waterproof in a period of from eight to ten years.

PAR. 15. Metal grave vaults of 12 gauge metal have been disinterred, in good condition, with no water in them, no holes in them, and no

Findings

23 F. T. C.

damage to the caskets and the corpses in them from water entering or having entered these vaults from the grave in 26 States and the District of Columbia, after being buried 48 years, 37 years, 35 years, 30 years, 27 years, 26 years, 25 years, 24 years, 23 years, 22 years, 21 years, 20 years, 19 years, 18 years, 17 years, 16 years, 15 years, 14 years, 13 years, 12 years, 11 years, 10 years, 9 years, 8 years, 7 years, 6 years, 5 years, 4 years, 3 years, 2 years, and one year or less.

Other metal vaults of 12 gauge ferrous metal have been disinterred and found to be in bad condition, with water in them, with holes in them, and the caskets and corpses therein in a damaged condition due to water having entered these vaults from the grave in which they were contained.

PAR. 16. In addition to the air seal vaults hereinbefore referred to, respondent also manufactures and sells as aforesaid two types of mechanically sealed and closing vaults, the quick closing type and the bolted end type. The ends are stamped out of sheet metal by powerful presses, using special dies to bend to form at the same operation. The bottoms are stamped in like manner. Side walls and dome are formed by bending the metal sheets in great presses. The vault is electrically welded on the inside. The ends, except the door, are electrically welded to the side walls and dome on the inside. The door at the open end of the mechanically closed types is hinged on one sidewall or the top.

In the quick closing type, the door is equipped with powerful clamps and closes tightly against a gasket. When the operating mechanism on the outside of the door is turned the clamping plate on its inner side engages behind a flange inside the wall and seals the vault.

In the bolted end type, the door is removable in its entirety and has no hinges. When the door is placed in position against the gasket, it is then bolted securely all the way around the edge of the door; this door can be opened and removed only by releasing these bolts.

Each of the two mechanically sealed types of Springfield vaults manufactured by respondent is tested before it is shipped by locking the open end as above described, then drilling a small hole in the door, and attaching an air compression line at this hole; then completely submerging the vault under water in the same manner as the respondent tests its air seal vaults; then compressed air is forced into the submerged vault through the air line so connected with the vault. The remainder of the test, inspection and rewelding is identical as in the case of the air seal vault, except that after the test has been completed and the vault is found to be airtight, the hole for the introduction of the compressed air is closed by welding.

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Findings

These two types of end-closing vaults of the respondent are intended by the respondent for the purpose of protecting the corpse against accelerated decay and disintegration through damage by water, the admission of vermin, air and other elements from the ground. The actual protection of the corpse by respondent's vaults will depend upon the actual burial conditions of the locality in which they are buried.

PAR. 17. Each of the mechanically sealed types of vault manufactured by respondent has been proved by tests to be airtight, watertight, and waterproof before shipment thereof and if it remains so at the time of burial and is properly closed and sealed, it will not permit any water to enter it from the ground at the time of burial; it will remain waterproof so long as the life of the metal and the life of the seal, and the vault will cease to be waterproof when a hole has been punctured through the thickness of the metal by rust or corrosion or other causes or the seal has ceased to function or the vault has collapsed.

PAR. 18. In the course and conduct of said business, respondent is in substantial competition with other individuals, copartnerships, and corporations engaged in the sale and distribution of metal, stone, concrete, cement and other burial vaults in and between the various States of the United States.

PAR. 19. Respondent is and has been financially able, ready and willing to comply fully with and perform the full terms of its written certificate of warranty, by replacing without cost any one of its vaults which has been damaged by water admitted from the grave because of failure of the vault due to rust, corrosion, defective material or workmanship; respondent has made and issued said certificates of warranty in good faith.

PAR. 20. All of the said ferrous metal burial vaults so manufactured by the respondent are useful, proper and suitable receptacles for the burial of the dead and are transported in interstate commerce for such purpose. In certificates of warranty and in other advertising material used by the respondent, its agents, employees and representatives, in offering for sale or selling the various types of air seal or end-closing ferrous metal burial vaults manufactured by it, the respondent has represented:

1. That the metal of which said vaults are made withstands the ravages of time and resists rust and corrosion;
2. That its vaults will remain waterproof and airtight when placed under ground;
3. That they are water-proof.

Order

23 F. T. C.

The respondent has also unfairly disparaged cement burial vaults by the publication of a picture in January 1928, but not since that date, of a disinterred cement burial vault in badly disintegrated condition and by comment calling attention to the bad condition of the said cement burial vault. In connection with the sale of its vaults, the respondent has also made use of certificates of warranty which guarantee such vaults to be airtight, vermin proof and water-proof, when used for burial purposes.

All of the aforementioned representations, together with the acts and practices of the respondent, hereinabove set out, are deceptive and misleading and have and have had the capacity and tendency to induce the public to purchase and use respondent's vaults in the belief that said statements and representations are true, and each and all of them are to the prejudice of the public, and have the capacity and tendency to unfairly divert trade to the respondent from its said competitors.

CONCLUSION

The aforesaid acts and practices of the respondent under the conditions described in the foregoing findings, are to the prejudice of the public and of respondent's competitors; they are unfair methods of competition in commerce and constitute violations 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."

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 stipulated facts filed herein, and the Commission having made its findings as to the facts and its conclusion that said 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 ordered, That respondent, The Springfield Metallic Casket Company, a corporation, its officers, representatives, agents and employees, in connection with the offering for sale, sale and distribution of ferrous metal burial vaults in interstate commerce or in the District of Columbia, forthwith cease and desist from:

I. Representing in purported certificates of warranty, or guarantees, in advertising, or in any other manner, that:

- (a) The metal of which any of said vaults are made withstands the ravages of time, and resists rust and corrosion;

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Order

(b) Its said vaults will remain waterproof and airtight when placed underground, for a period of fifty years, or for any fixed or stated period of time;

(c) Its said vaults are waterproof or airtight;

II. And from publishing, in connection with the sale of said vaults as aforesaid, pictures, drawings and photographs of cement burial vaults, disinterred in badly disintegrated condition, and from comment calling attention to such condition;

III. And from so making other representations of like import;

IV. And from using certificates of "Warranty" or "Guaranty" in connection with the sale or offering for sale of such vaults, unless it clearly appears therein that such certificates refer to the care, skill, mechanism and materials used in the construction of said vaults, and to tests made to determine whether they leak, and not to their durability as to remaining airtight, vermin proof, or waterproof, when used for burial purposes.

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.

IN THE MATTER OF
JOHN H. DOCKMAN & SON, INC.

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

Docket 2709. Complaint, Jan. 31, 1936—Decision, Nov. 27, 1936

Where a corporation engaged in manufacture and sale of "straight" goods candy, and of so-called "break-and-take," "draw," or "deal" assortments, principal trade demand for which comes from the small retailers, with stores in many instances near schools and patronized by the school children, and sale and distribution of which, or similarly sold candy, offering opportunity of obtaining a prize or becoming a winner by lot or chance, teaches and encourages gambling among children, largest class by far of purchasers and consumers of such type of candy, who buy same in preference to so-called "straight" goods when displayed side by side, by reason of lottery or gambling feature connected with former, and sale of which in the market of the other, i. e., the "straight" goods, sold exclusively by many manufacturers, has been followed by a marked decrease in sale of such "straight" candy due to the gambling or lottery feature of the so-called "draw" or "deal" merchandise—

Sold to syndicated retail dealers and to wholesalers and jobbers in the various States, its said candy, including such break-and-take, draw, or deal assortments, as assortments in which (1) chance punch from 150-hole punch board included determined whether person making selection received simply the candy pellet disclosed or, depending upon the red, white, or blue color of a few of said pellets, further received, as the case might be, a toy auto whistle, stone pendant, or toy bird warbler, with purchaser of last punch further receiving gilt pencil; (2) same plan and board were used with other articles of merchandise; and in which, (3) chance selection of one of a large number of pieces of chocolate-coated candy, concealed color of a few of which differed from that of majority, entitled person to prize consisting of larger pieces or boxes of candy; so packed and assembled that such various assortments could be displayed and offered by the numerous retailer purchasers thereof, and with knowledge and intent that such assortments would and could be sold, without alteration, addition, or rearrangement, to the public by lot or chance by the retailers thereof, including practically all stores in which candy is sold; in violation of public policy, and in competition with some manufacturers who have begun sale and distribution of candy for resale to public by lot or chance to meet competition of those who sell and distribute candy sold by such methods and in demand, and in competition with many who regard such methods of sale and distribution as morally bad and as encouraging gambling, and especially among children, and as injurious to the industry, through resulting in the merchandising of a chance or lottery instead of candy, and as providing retailers with the means of violating the laws of the several States, and, therefore, refuse to sell candy so packed and assembled that it can be resold to public by lot or chance;