

Syllabus

IN THE MATTER OF
NATIONAL GRAVE VAULT 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 2324. Complaint, Mar. 12, 1935—Decision, Nov. 30, 1936.

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

- (a) Represented, in periodicals of wide interstate circulation and in booklets, circulars, etc., and through photographs, testimonials, and other advertising media, that its said vaults were made of rust resisting metal and were waterproof, verminproof, and airtight, and that they were rust proof and would not corrode, and had been tested and proved by time as permanently sealed, that no earth load could crush through the top, and they afforded full protection to the contents against water, earth and nature's ruthless elements; and
- (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 vermin and waterproof for fifty years and undertook therein to replace any vault without cost in the event of damage to the contents by vermin, water, or other elements admitted due to rust, corrosion, etc.;

The facts being that, while its said vaults were equal to the standard comparable product made by the industry, and not inferior in metal or method of construction to those used by reputable and responsible members thereof, but were made with great care by skilled workmen, of the highest grade and quality of metals obtainable by it for the manufacture of such vaults, impervious and impenetrable by moisture, vermin, and water during the life of the metals, such metals were not rust or corrosion resistant to the extent that they would never rust or corrode after burial, and, once rusted or corroded to a certain extent during a period of years, they would crumble and disintegrate just as do, ultimately, all other materials; 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 one hundred years, in other soils its said vaults would pit through and cease to be 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 entering water; its vaults and materials from which made had not been tested under ground for the full period of fifty years, disinterment is rare and it had rarely been called upon to replace its said vaults;

With capacity and tendency, as result of such misleading acts and practices, to induce the public to purchase and use its said vaults in the belief that

¹ Count 2 of the complaint alleging violation of the National Industrial Recovery Act dismissed November 9, 1935.

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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.

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 National Grave Vault 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, the National Grave Vault 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 Galion in said State. It is now, and for several years last past, has been engaged in the business of manufacturing and selling metal grave vaults used to encase a coffin in the burial of the dead, to purchasers thereof, many of whom reside outside the State of Ohio, and when orders are received therefor, they are filled by respondent by shipping the same from the said city of Galion, State of Ohio, into and through other States of the United States 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, 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 promotion of the sale of its said vaults, and by and through its agents and salesmen, the following and similar false and misleading claims, statements, and representations as to respondent's said vaults are made:

That said vaults when delivered to the consuming public are water-proof, verminproof and airtight, and will remain so under burial conditions for a period of fifty years; that when properly closed they will protect their contents from vermin, water and other elements from external sources; that they are rustproof and will not corrode; that the remains, if encased in said vaults, are fully protected against water, earth, and nature's ruthless elements; that no earth load can crush through the top; that they have been tested and proven by time that they are permanently sealed.

(B) Respondent issues with each vault for delivery to ultimate purchasers thereof, and they are so delivered, a written purported warranty which in the case of its Pyramid Grave Vault provides as follows:

Warrants that each Pyramid Grave Vault is constructed by skilled workmen, and has been tested and inspected and found to be free from defects in material or construction and to be airtight and waterproof.

When properly closed, it will protect its contents from vermin, water and other elements from external sources.

If within fifty years from the date of interment, the contents of any Pyramid Grave Vault are damaged by vermin, water or other elements admitted because of the failure of the vault due to rust, corrosion, defective materials or workmanship, the undersigned manufacturer will replace it without cost, but it does not warrant against damage to the casket or contents due to dehydration of the remains.

In the case of the National Purity Metal Grave Vault, the warranty reads in substance as follows:

Warrants that every National Purity Metal Grave Vault is constructed by skilled workmen, and has been tested and inspected and found to be free from defects in material or construction and to be airtight and waterproof.

When properly closed, it will protect its contents from vermin, water and other elements from external sources.

If at any time after date of interment the contents of any National Purity Metal Grave Vault are damaged by water or other elements admitted because

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of the failure of the vault due to rust, corrosion, defective material or workmanship, the undersigned manufacturer will replace it without cost, but it does not warrant against damage to the casket or contents due to dehydration of the remains.

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 are not always waterproof, verminproof and airtight at the time of sale to ultimate purchasers thereof and that they will not always remain so under burial conditions; that respondent's said vaults when buried underground are not impervious to water or corrosion or rust; the materials of which respondent's said vaults are made are not rust resisting or corrosion resisting; respondent's said vaults are not permanently sealed under burial conditions; the casket and remains are not always fully protected by respondent's said vaults against water, earth and nature's ruthless elements under burial conditions. There is a vast difference in the corrosive properties of soils throughout the United States and the District of Columbia; in some soils, respondent's said vaults will corrode and pit in a period of from three to ten years and in others from ten to twenty years. In many soils respondent's said vaults will corrode and pit so as to let water in them; in many instances they will corrode and rust so as to cave in or collapse; respondent's said vaults have never been tested as to their corroding over a period of fifty years, nor has the metal of which they are made been so tested; respondent's said vaults when buried underground are not airtight or waterproof or verminproof and will, and often do, permit air, water and vermin to enter therein. Either air or water or vermin entering respondent's vaults, when used for burial purposes, 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 their said vaults will not at all times prevent the entrance of water into said vaults.

The statements and representations described in subdivision (B) of paragraph 4 hereof are false, misleading, and deceptive in that the terms "waterproof" and "airtight" as used by respondent as aforesaid mean 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 for a period of fifty or more years. The respondent's said vaults are not waterproof or airtight as the terms are understood by ultimate purchasers thereof. Water or air may seep into or enter the said vaults through the joints, holes, fastenings, or flanges thereof, or through pit holes due to rust or corrosion or due to collapse or bending of the said vaults.

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These said purported warranties contain a clause in which respondent offers to replace without cost to the purchaser any such vault failing to meet the warranty as to being waterproof or airtight because of failure due to rust, corrosion, defective material, or workmanship. The exhumation of bodies after burial is so rare as to make these certificates of warranty worthless to a vast majority of purchasers of these vaults for the reason that no opportunity is afforded them in which to ascertain whether such vaults are or have 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 at all.

PAR. 6. Each and all of the said false and misleading statements and 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 competitors 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 Galion, 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 a coffin 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 causes said products when so sold to be transported from its principal place of business in the city of Galion, 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 products in the State of Ohio and between and among the States of the United States and in the District of Columbia.

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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.

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 of 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 practice of misrepresentation 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

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of such standards in the aforesaid transactions 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, National Grave Vault 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 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 this 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 proceeding 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, National Grave Vault Company, is and has been since November 4, 1912, a corporation duly organized and existing under the laws of the State of Ohio, with its factory and

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principal place of business located in the city of Galion, in the said State.

Respondent is now and for the past twenty-three years has been engaged in the business of manufacturing and selling metal burial vaults; said vaults are intended to be and are actually used to encase or enclose coffins or caskets in the burial of the human dead.

Respondent sells and ships its 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.

Respondent now sells and ships and has so sold and shipped its vaults to 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 Galion 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 respondent's said customers 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 the following claims, statements, and representations as to its vaults, to wit:

When properly closed, they will protect their contents from water, vermin, and other elements from external sources.

Said vaults are waterproof, verminproof, and airtight.

The remains, if encased in its vaults, are fully protected against water, earth and nature's ruthless elements.

They have been tested and proven by time that they are permanently sealed.

PAR. 3. In and through said media respondent prior to and in 1933 but not since then, made the following statement and representation as to its vaults, to wit:

Its vaults are rust-proof and will not corrode.

PAR. 4. In and through said media respondent, prior to and in 1934, but not since then, made the following general statement and representation as to its vaults, to wit:

No earth load can crush through the top.

PAR. 5. Respondent makes and sells, as aforesaid, two types of air-seal vaults, which are called the "Pyramid" and "National Purity."

PAR. 6. Respondent has issued and now issues with each Pyramid grave vault, and with each National Purity metal grave vault, for

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delivery to ultimate purchasers thereof, and they are usually so delivered, written certificates of warranty in words and figures as follows:

THE NATIONAL GRAVE VAULT COMPANY, GALLION, OHIO

WARRANTS; That each Pyramid Grave Vault is constructed by skilled workmen, and has been tested and inspected and found to be free from defects in material or construction and to be air-tight and waterproof.

When properly closed, it will protect its contents from vermin, water and other elements from external sources.

If, within fifty years from the date of interment, the contents of any Pyramid grave vault are damaged by vermin, water or other elements admitted because of the failure of the vault due to rust, corrosion, defective material or workmanship, the undersigned manufacturer will replace it without cost, but it does not warrant against damages to the casket or contents due to the dehydration of the remains.

This warranty will become effective upon being dated and countersigned by the funeral director at the time of the sale of said vault.

IN WITNESS WHEREOF, the National Grave Vault Company has caused its name to be hereunto subscribed by its President, duly authorized by the Board of Directors.

THE NATIONAL GRAVE VAULT COMPANY
By _____, *President.*

THE NATIONAL GRAVE VAULT COMPANY

Gallion, Ohio

WARRANTS: That every National Purity Metal Grave Vault is constructed by skilled workmen, and has been tested and inspected and found to be free from defects in material or construction and to be air-tight and water-proof.

When properly closed, it will protect its contents from vermin, water and other elements from external sources.

If at any time after date of interment the contents of any National Purity Metal Grave Vault are damaged by water or other elements admitted because of the failure of the vault due to rust, corrosion, defective material or workmanship, the undersigned manufacturer will replace it without cost, but it does not warrant against damage to the casket or contents due to dehydration of the remains.

This warranty will become effective upon being dated and countersigned by the funeral director at the time of the sale of said vault.

IN WITNESS WHEREOF, The National Grave Vault Company has caused its name to be hereunto subscribed by its President, duly authorized by the Board of Directors.

THE NATIONAL GRAVE VAULT COMPANY
By _____ *President.*

PAR. 7. Ferrous metals are used by respondent in the manufacture of its said burial vaults; they are called Armco Ingot Iron and Copper Bearing Steel, and are manufactured by the American Rolling Mill

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Company of Middletown, Ohio, and the American Sheet & Tinplate Company of Pittsburgh, Pa., respectively.

These metals are purchased by the respondent in sheets of extra dimensions of 12 United States Standard Gauge and heavier thicknesses, specially processed and rolled for the purpose of the manufacture of burial vaults. The cost of these metals is considerably higher than the cost of ordinary commercial steel.

These metals are 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 purpose of manufacture of its burial vaults.

These metals, purchased by the respondent, and used in the manufacture of said vaults, are highly refined grades of steel, carefully made under the best, modern scientifically controlled steel making processes; they are high quality metals made as carefully, accurately and thoroughly as they 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 under ground for a longer period of time than if the impurities were not removed from the metal.

Each of the above steel manufacturing companies, from whom respondent purchases these metals, represents in its advertising and otherwise to the respondent that said metals are rust-resisting. They are manufacturers of recognized responsibility and integrity. These companies make rigid inspection and testing of each sheet of said metals before they are shipped to the respondent.

These metals are by their very nature, impervious and impenetrable by air, moisture, vermin 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, or has penetrated through the metal from rust or corrosion.

These metals are not rustproof or corrosionproof, 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. When they have rusted and corroded to a certain degree and extent during the period of years after burial underground, they will crumble and disintegrate just as all other materials will ultimately decay and disintegrate.

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

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

The outside measurements of said vault are: length $89\frac{5}{8}$ inches; width $33\frac{5}{8}$ inches; and height $28\frac{1}{8}$ inches. It weighs empty and without a casket in it 410 pounds. Its inside dimensions are: length 86 inches; width 30 inches; side height $19\frac{5}{8}$ inches; center height $24\frac{1}{2}$ 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 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. The pan is flat on top and the four edges are turned down so as to raise the top of the pan $3\frac{1}{4}$ inches above the plane of the lower surface of the flange as it rests on the ground or support. The edges of the pan are turned inward approximately $1\frac{1}{4}$ inches wide to form this flange, which extends entirely around the bottom of the vault. This flange itself has approximately a total of two square feet and five 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 one inch above the top of the pan are four small raised portions or 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 $4\frac{1}{4}$ inches above the bottom of the grave or grave floor. This change was made March 30, 1933.

The bottom rim or flange of the hood does not rest on this flange of the pan as it is turned inward, but the bottom edge of the dome is turned inward and forms an additional flange, which supports to some extent the dome of the vault.

The principles of construction of respondent's air seal vault are such that it operates on the principle of the diving bell, by which the pressure of the confined air in the inside of the inverted airtight and watertight dome, when the lower edge of the dome is covered all around with outside water, resists the pressure of the water head to cause the surface of the water level to rise within the dome above the lower edge of the dome. The dome of this vault is sealed when the water level in the ground completely surrounds the edge or rim of the dome on its four sides. The air within the vault is not sealed until then.

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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.

Water and air will go in and out of the space underneath the raised portion of the pan at the time of its burial underground. Air will go in and out of the open bottom of the dome of the vault, except when the principle of the air seal vault is in operation, to wit, when the edges on the four sides of the dome are sealed all around by the water head in the ground rising above the edges of the dome on its four sides. The water level will rise upwards within the dome, to the extent that it is not resisted by the pressure of the confined air within the dome.

Respondent's air seal vault is not airtight as a vault when the air seal principle is not in operation, as air from the ground can enter the vault through the open joint where the dome rests on the pan and also through the four holes near the top of the pan, because of the absence of water sealing the lower edge of the dome on its four sides. When the air seal principle is in operation because of the presence of water above the lower edge of the dome on the four sides of the vault, then the vault is airtight.

The dome of each air seal burial vault manufactured by respondent 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 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 $27\frac{1}{4}$ inches 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 no air bubbles rise to the surface of the water, it indicates that no air is escaping from the inside of the dome and

that the dome is airtight; then the dome is approved for shipment, and it is waterproof and airtight at the time of the shipment. No vault is shipped by respondent until the dome of said vault has been so tested and proved to have no defect in its material or in its welds, and the dome is waterproof and airtight at the time of shipment. No test is made of the material or welds of the pan.

According to the recognized principles of mechanical engineering applied in the construction of respondent's air seal vault, the confined air within the airtight dome of respondent's air seal vault buried level on the bottom of the grave containing a corpse in an ordinary casket, or one not hermetically sealed estimated at 5 cubic feet will resist the pressure of a water column in the ground 5 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. 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.

In some instances under actual burial conditions, the results outlined in the preceding paragraph are not obtained. The said vaults when buried underground are not impervious to corrosion or rust. Respondent's vaults are made of materials which will corrode and rust and if there is water in the grave at the time that such metal has sufficiently corroded or rusted to cause holes or punctures through the metal, it will permit the entrance of water through holes occasioned by such rust or corrosion; there is a vast difference in the corrosive property of soils throughout the United States; in some instances said 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 of which they are made been so tested; respondent's said vaults when buried underground have, 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 has a tendency to promote, and in some instances cause, disintegration of the body and casket in said vault. Water often enters the graves of the dead. In many cemeteries of the United States water rises in some graves to a depth of six feet. The mechanical principles provided by respondent for sealing said air seal vaults 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.

In order for said vaults to provide protection for the casket and body placed therein from the effect of water entering said air seal

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vaults of the respondent from the grave, they must be buried and remain buried under 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 cases 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 the 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 the air seal vault favorably and make the air seal vault resist a higher level of water than stated in the first paragraph of this section or may affect the air seal vault unfavorably and make the water rise higher within the hood of the vault sealed with water on its four sides. 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.

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 vaults to mean, a watertight, airtight, verminproof vault, a vault which will not permit water nor 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 air seal vaults through the bottom holes in the pan, and the open joint thereof or through pit holes due to corrosion, or when there is so much water in the graves in which they are contained that the water touches the casket, or because of the absence of one or more of the conditions described in paragraph 8 above. In dry graves these vaults are not vermin proof or airtight.

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

PAR. 9. Respondent also manufactures two types of mechanically sealed end closing vaults, the quick closing type and the bolted end type. They are made of the same metals as the air-seal vaults. 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 side wall or the top.

In the quick closing type, this door is equipped with powerful mechanical clamps and closes tightly against a gasket. When the operating mechanism on the outside of the door is turned the clamping places on its inner side engage behind a flange inside the wall and seal 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 National 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.

The above use of the two types of end-closing vaults of the respondent is 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; but said use of the air seal vault of the respondent is intended by the respondent 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.

Each of the mechanically sealed types of vaults manufactured by respondent is airtight, watertight and waterproof before and at the time it is shipped. After it has been properly closed and sealed, it will not permit any water to enter it from the ground at the time it is buried underground. It will remain waterproof so long as the life of the metal, and the life of the seal. 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 during the course of the years after its burial.

PAR. 10. The two 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, the union of iron and oxygen and its presence means that to some extent the metal has corroded. No ferrous metal has an absolute rate of corrosion, but it depends on local conditions so that the rate of corrosion cannot be determined with a great deal of precision.

The corrosive qualities of different soils vary immensely. 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 in such soils.

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 until punctured by rust or corrosion, in terms of years after burial, depends upon the character of the soil in which it is buried and upon the climatic and other conditions prevailing in the territory where interment is made.

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

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

Respondent's vaults and the metal of which they are manufactured have not been tested underground for the full period of fifty years nor have they been manufactured or so advertised as long as fifty years.

Respondent's ferrous metal vaults will not remain waterproof for a period of fifty years when buried in some of the more corrosive soils in the United States.

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.

Metal grave vaults of 12 gauge ferrous metal have been disinterred, in good condition with no water in them, no holes in them, and no damage to the caskets and the corpses in them from water entering or ever having entered these vaults from the grave in 26 States and the District of Columbia, after being buried 48 years, 37 years, 33 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 1 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. 11. 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. 12. Respondent's vaults are equal to the standard metal vaults manufactured by the industry. They are not inferior products, are not made of an inferior grade of metal or method of construction different from those used by reputable and responsible members of the metal vault industry.

PAR. 13. 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 the 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. 14. 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 they are made of rust-resisting metal;
2. That the air seal vaults are airtight or vermin proof either at the time of interment or after burial underground;
3. That the air seal vaults are waterproof;

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4. That any of said vaults will endure as waterproof under all burial conditions for a period of 50 years, or for any fixed or stated period of time;

5. That any of its said vaults give permanent protection after burial underground;

6. That the remains, if encased in any of its vaults are fully protected against water, earth and nature's ruthless elements;

7. That said vaults have been proven by time to be permanently sealed;

8. That any of said vaults are rustproof or will not corrode;

9. That no earth load can crush through the top of any of said vaults.

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, verminproof, and waterproof 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 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, National Grave Vault Company, a corporation, its officers, representatives, agents, and employees, in con-

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nection 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) Any of such vaults are made of rust resisting metal,
- (b) Such Air Seal vaults are airtight or verminproof, either at the time of interment or after burial underground,
- (c) Such Air Seal vaults are waterproof,
- (d) Any of such vaults will endure as waterproof or verminproof under all burial conditions for a period of fifty years, or for any fixed or stated period of time,
- (e) Any of such vaults give permanent protection after burial underground,
- (f) The remains, if encased in any of such vaults, are fully protected against water, earth, and nature's ruthless, or other elements,
- (g) Any of such vaults have been proved by it to be permanently sealed at the time of burial thereof,
- (h) Any of such vaults are rustproof, or will not corrode,
- (i) No earth load can crush through the tops of such vaults,

II. And from so making other statements or representations of like import;

III. 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, verminproof, 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.

ORDERS OF DISMISSAL, OR CLOSING CASE, ETC.

BUFF & POLISHING WHEEL MANUFACTURERS' ASS'N ET AL. Complaint, December 5, 1935. Order, July 22, 1936. (Docket 2642.)

Charge: Combining or conspiring to fix uniform prices, in connection with open price filing, carried on by members under National Recovery Administration and voluntarily since; in connection with manufacture and sale of cotton buff and polishing wheels.

Record closed, after answers, by the following order:

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the same, and being now fully advised in the premises, and it appearing to the Commission that the practices charged in the complaint were carried on under the authority conferred by a code formulated and approved under the National Industrial Recovery Act, and there being no evidence that the practices charged in the complaint have been indulged in by the respondents since the decision of the United States Supreme Court in the case of *A. L. A. Schechter Poultry Corp. et al. v. United States* (295 U. S. 495), and it being the policy of the Commission not to proceed against respondents for practices authorized and engaged in prior to May 27, 1935 (the date of the above decision), pursuant to codes formulated and approved under the National Industrial Recovery Act.

It is ordered, That the case growing out of the complaint hereinbefore issued on December 5, 1935, be, and the same hereby is, closed without prejudice to the right of the Commission, should the facts warrant, to reopen the same and resume prosecution of the complaint in accordance with its regular procedure.

Mr. Wm. T. Chantland for the Commission.

Mr. John T. McGovern, of New York City, for respondents, generally and along with *Mr. Joseph A. McCaffrey*, of Jamaica, N. Y., for John Fuchs.

CLEAR SPRING DISTILLING CO. Complaint, June 6, 1935. Order, June 23, 1936. (Docket 2427.)

Charge: Using misleading corporate name as to business status, and misbranding or mislabeling and advertising falsely or misleadingly; in connection with the wholesaling of liquors, purchasing and reselling of whiskies, gins, and other spirituous beverages.

Record closed, after answer and trial, by the following order:

This matter coming on for consideration by the Commission upon respondent's motion, affidavit and memorandum in support thereof, filed herein on June 25, 1936; and it appearing to the Commission that respondent changed its name by amendment of its corporate charter to "Clear Spring Company", that it has abandoned the practices and violations of law alleged in the Commission's complaint issued herein on June 6, 1935, and stated under oath its intention not to resume the said practices; and it therefore appearing to the Commission that it is unlikely that the respondent will resume the said practices, and the Commission being fully advised in the premises:

It is ordered, That the case growing out of the complaint hereinbefore issued on June 6, 1935, be and the same is hereby closed, without prejudice to the right of the Commission, should the facts warrant, to reopen the same and resume prosecution of the complaint in accordance with its regular procedure.

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

Mr. PGad B. Morehouse for the Commission.

Mr. Hall Johnston, of Washington, D. C., for respondent.

MANDRE, INC.; AND LOUIS C. ROSENBLATT ET AL. doing business as M. BROOKS & Co.; ET AL. Complaint, May 29, 1936. Order July 30, 1936. (Docket 2828.)

Charge: Misrepresenting nature and value of product; in connection with manufacturing and dealing in furs, fur coats, fur pieces, etc.

Record closed by the following order:

This matter coming on for consideration by the Commission upon the record and it appearing that respondents Mandre, Inc., a corporation, Louis C. Rosenblatt, Arthur J. Rosenblatt, and H. Edelman, and Mandre, Inc., and Louis C. Rosenblatt, Arthur J. Rosenblatt, and H. Edelman, individually and trading under the name M. Brooks & Company, have entered into a stipulation as to the facts and an agreement to cease and desist from certain enumerated practices, which stipulation and agreement was on the 27th day of July 1936 [No. 01460], approved by the Commission, and the Commission having duly considered the same and being now fully advised in the premises;

It is ordered, That the case growing out of the complaint hereinbefore issued on May 29, 1936, be, and the same hereby is, closed without prejudice to the right of the Commission, should the facts so warrant, to reopen the same and resume prosecution of the complaint in accordance with its regular procedure.

Mr. Carrel F. Rhodes for the Commission.

Mr. Milton Handler, of New York City, for respondents.