

IN THE MATTER OF
MARION VAULT MANUFACTURING COMPANY

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

Docket 2712. Complaint, Feb. 4, 1936—Decision, Dec. 4, 1936

Where a corporation engaged in the manufacture of two types of metal burial vaults, i. e., its "New Imperial Burial Vault" and "Gold Seal Burial Vault," and in the sale thereof to jobbers, funeral directors, and undertakers—

- (a) Represented, in circulars advertising its said products, distributed among undertakers, funeral directors, and morticians, that its said Imperial Vaults would "protect through the years" and that they were "inherently qualified to provide enduring protection," and, as to said "Patented Double Seal," that it was "permanently secure" and that it "improves as time goes on"; and represented that the former were watertight both at time of interment and after, and were waterproof and endured as such under all conditions for fifty years, and would give permanent protection; and
- (b) Made use of certificates of warranty or guarantee, in connection with sale and offer of latter, that said vaults were guaranteed "to be vermin, moisture, water, and air-proof, and to give positive protection for an indefinite number of years," and authorized "the undersigned funeral directors" "to countersign this guarantee to the purchaser";

The facts being that, while its said vaults were equal to the standard metal vaults made by the industry and were not inferior products or made of an inferior grade of metal or by methods of construction which differed from those used by reputable and responsible members of the industry in question, 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; 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, and in some of which a 12-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 vaults in order to provide protection from entering water; its vaults and the materials from which made have 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 the same 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 com-

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petitors 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. M. Turin for the Commission.

Waite, Schindel & Bayless, of Cincinnati, Ohio, for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Marion Vault Manufacturing Company, hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Marion Vault Manufacturing Company, is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its principal office and place of business in the city of Marion in said State.

PAR. 2. Respondent is now, and has been for a number of years last past, engaged in the manufacture and sale of two types of metal burial vaults for use in the burial of the dead, one being designated "The New Imperial Burial Vault," and the other "Gold Seal Burial Vault," and has caused said products, when sold, to be shipped and transported from its place of business in the city of Marion, State of Ohio, to purchasers thereof located in many other States of the United States.

PAR. 3. In the course and conduct of its business, as aforesaid described and alleged, respondent, in soliciting the sale of and selling its said products in interstate commerce, caused circulars pertaining to its New Imperial Burial Vault to be distributed among undertakers, funeral directors, and morticians located in various States of the United States for their use and which were used by them in aid of soliciting the sale of and selling its said products to the purchasing public. In said circulars appeared statements and representations to the effect that said products "will protect through the years," and are "inherently qualified to provide enduring protection." Other circulars also were distributed as aforesaid by said corporation in interstate commerce as a means to advertise its Gold Seal Burial Vault,

equipped with a patented double seal represented to be "permanently secure" and as "improving as time goes on." A so-called guarantee accompanied each Gold Seal Burial Vault sold and shipped by the respondent in interstate commerce, said guarantee reading in part:

The Marlon Vault Manufacturing Company, through its duly authorized officers whose signatures are attached hereto, hereby guarantee their Gold Seal Burial Vaults, to be vermin, moisture, water, and air proof, and to give positive protection for an indefinite number of years.

And which products, so advertised and represented, the respondent sold in interstate commerce; when, in truth and in fact, the aforesaid statements and representations to the effect that said vaults, or either of them, will "protect through the years," or "provide enduring protection," or are guaranteed to be verminproof, moisture, or water-proof, and air-proof, are vague, misleading, and deceptive and are not justified. The terms "Protect through the years," "Provide enduring protection," "waterproof," "verminproof," "moistureproof" and "airproof" as used by respondent as aforesaid, mean to the consuming public water tight vaults, vaults which will not permit water, vermin, moisture, or air to enter the same under actual burial conditions. Neither of said vaults is waterproof as the term is understood by the consuming public; and either water, vermin, moisture, and air may enter the same through the joints thereof, because of defects in mechanical construction and through holes due to corrosion.

PAR. 4. With reference to the Gold Seal Burial Vault guarantee, above mentioned, it contains no statement, promise, or agreement of any kind by the respondent as to what it will do or agree to do, in the event that any purchaser should claim, or make claim, that said Gold Seal Burial Vault has not proven to be "vermin, moisture, water, and air-proof, and to give positive protection for an indefinite number of years," as stated in respondent's said guarantee. Aside from this, the exhumation of bodies after burial is so rare as to make this certificate of guarantee utterly worthless for all purposes to a vast majority of the ultimate purchasers of this Gold Seal Burial Vault, for the reason that ordinarily and usually no such opportunity is afforded them in which to ascertain and establish, under any circumstances, whether said Gold Seal Burial Vault gives "positive protection" and is "vermin, water, and air-proof." The fact that exhumation of bodies after burial is so rare, also, in like manner, make the statements and representations of respondent in connection with the sale of the New Imperial Burial Vault practically worthless to a vast majority of ultimate purchasers of this type of burial vault for the like reason that ordinarily and usually no opportunity is afforded them in which to ascertain and establish, under any circumstances,

whether said New Imperial Burial Vault "provides enduring protection" or "will protect through the years."

PAR. 5. The said methods and practices of respondent in soliciting the sale of and in selling its said burial vault products, as hereinabove alleged and set forth, have the tendency and capacity, and are calculated, to mislead and deceive, and in fact do mislead and deceive, a substantial portion of the purchasing public, including the ultimate purchaser, into buying such said burial vault products, or either of them, in the erroneous and mistaken belief that they will "protect through the years" or "provide enduring protection," or are guaranteed to be verminproof, moisture, or water-proof, and airproof.

PAR. 6. In the course and conduct of its business as aforesaid, respondent is in competition with corporations, partnerships, firms, and individuals likewise engaged in the manufacture, sale and transportation in interstate commerce of like and similar products, such as steel, stone, cement, and other vaults used in the burial of the dead, which said competitors in no wise make or indulge in the same or similar false and misleading representations, methods and practices as are made or indulged in by the respondent as hereinbefore set forth. The aforesaid representations made by respondent about its said burial vault products and the use of its guarantee as hereinabove set forth and alleged, have the capacity and tendency to deceive and mislead the purchasing public, and to induce purchasers, including ultimate purchasers, to buy the product of respondent in and on account of the belief that said statements, representations and warranties are true, and thus unfairly divert trade to the respondent from its said competitors engaged in the sale in interstate commerce of like or similar burial vault products.

PAR. 7. The acts, things and practices of the respondent, as hereinabove alleged, are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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 6th day of February 1936, issued and served its complaint in this proceeding upon respondent, Marion

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Vault Manufacturing 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 the 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 make its report stating its findings as to the facts and its conclusions 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 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 conclusions drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Marion Vault Manufacturing Company, is, and has been for a number of years last past, 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 Marion, in the State of Ohio.

It is now, and for a number of years last past has been, engaged in the business of manufacturing and selling two types of metal burial vaults, "The New Imperial Burial Vault" and the "Gold Seal Burial Vault"; said vaults are intended to be, and actually are, used to encase or enclose coffins 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.

It does now, 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 they are filled by causing the said vaults to be shipped from the city of Marion in

the State of Ohio, into and through other States of the United States, to the respective places of business or the residences of the purchasers.

PAR. 2. Respondent, in the course and conduct of its said business, and in soliciting the sale of and selling its said product in interstate commerce, has caused circulars advertising said vaults to be distributed among undertakers, funeral directors, and morticians located in the various States of the United States. Said circulars are used by them in connection with the solicitation of the sale of said vaults to the purchasing public. In said circulars, the respondent causes the following general statements and representations as to its vaults to be made without limitation or qualification:

As to its New Imperial burial vaults:

They "will protect through the years."

They are "inherently qualified to provide enduring protection."

As to its Gold Seal burial vaults:

The Patented Double Seal "is permanently secure."

The Patented Double Seal "Improves as times goes on."

Respondent issues with each Gold Seal burial vault, the following written guarantee which is intended to be, and usually is, delivered to the ultimate purchaser:

GUARANTEE

MARION VAULT MANUFACTURING COMPANY

MARION, OHIO.

The Marion Vault Manufacturing Company, through its duly authorized officers, whose signatures are attached hereto, hereby guarantee their Gold Seal Burial Vaults to be vermin, moisture, water and air proof, and to give positive protection for an indefinite number of years.

The undersigned funeral director is hereby authorized by the Marion Vault Manufacturing Company of Marion, Ohio, to countersign this guarantee to the purchaser.

All genuine Gold Seal Vaults are labeled with the Gold Seal shown below.

Secretary

President

PAR. 3. The ferrous metals used by respondent in the manufacture of its said burial vaults are: Armco Ingot Iron and Armco Steel manufactured by the American Rolling Mill Company of Middletown, Ohio, and Keystone Copper Bearing Steel manufactured by the American Sheet and Tinplate Company of Pittsburgh, Pa.

These metals, 12 U. S. Standard Gauge and heavier, are purchased by the respondent in sheets of extra dimensions specially processed and rolled for use in the manufacture of burial vaults. The cost of said metals is considerably higher than the cost of ordinary commercial steel for the same gauges.

These metals are the highest grade and quality of metals for use in the manufacture of burial vaults that can be obtained on the market in the United States. Said metals used by the respondent in its burial vaults are highly refined grades of steel which are made under the best modern scientifically controlled steel manufacture processes wherein the impurities are removed and furnacing operations are accurately controlled. This process results in the best grade of steel which resists, but does not prevent corrosion, thus tending to increase its life and durability in use underground over steel not similarly or equally refined.

Both of the companies from whom respondent purchases these metals, represent in their 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 metal before it is shipped to the respondent.

These metals are, by their very nature, impervious to, and impenetrable by, air, moisture, vermin, and water during the life of said metals, which said life terminates when a hole has been punctured or has been penetrated through the metal by any instrument, rust, or corrosion.

The metals are not rustproof or corrosionproof, but will rust or 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.

PAR. 4. Respondent's said vaults are manufactured with great care by skilled workmen.

PAR. 5. 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).

PAR. 6. The outside measurements of the said New Imperial vault are: length, 90 inches; width, 34 inches; and height 29 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 inches; center height 25 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 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. 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, making 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 2 inches wide to form this flange, which extends entirely around the bottom of the vault. This flange itself has approximately a total of 3 square feet and 46 square inches. The entire base resembles an inverted pan. At each of the four corners of the pan is a hole, pierced through near its top edge. Circulation of air through its hollow space 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 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 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.

PAR. 7. The dimensions of the said Gold Seal vault vary slightly from the dimensions of the vault described above, but the principle upon which it operates is the same. In the Gold Seal vault the bottom edge or rim of the dome is turned inward to form a flange. At the line of contact between the dome and the base is a rubber gasket, fitted by hand to a metal retainer, which is welded to the base of the vault. As the weight of the dome, earth and water presses down, the pressure causes the rubber gasket to seal this vault, so that it has a double seal, the air seal and the gasket seal. This is the principal difference between the New Imperial vault and the Gold Seal vault. Like the New Imperial, it has a hole at each of the four corners of the pan. The said gasket is especially prepared by incorporating therein certain chemicals to retard ordinary oxidation. Respondent purchases said gasket from reputable rubber manufacturers, to wit, Goodrich Rubber Company of Akron, Ohio, and the Corduroy Rubber Company of Grand Rapids, Mich. After water completely surrounds either the Imperial or Gold Seal 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 in the inside of the dome resists the pressure of the water head so as to prevent the surface of the water level rising within the dome above the lower edge. 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.

PAR. 8. When, for any reason, the air seal principle of the above-described vaults 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. 9-A. According to the recognized principles of mechanical engineering applied in the construction of the respondent's New Imperial and Gold Seal 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 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 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 order for either of said vaults to provide protection of the casket and body placed therein from the effects of water 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 in 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 either of said vaults are used.

Condition No. 1 is essential for the successful operation of the air seal principle of either of said vaults. Conditions Nos. 2 or 3 affect these air seal vaults 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 within 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 either of said vaults, and to touch the casket therein, then such changes tend to damage the casket and the body contained therein.

PAR. 9-B. Neither the New Imperial or the Gold Seal vault is shipped by respondent until the domes thereof have been tested and approved to have no defect 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. 10. 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-

ent's vaults will depend upon the actual burial conditions of the locality in which they are buried.

PAR. 11. 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, 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 New Imperial and Gold Seal vaults through the bottom 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 9. Neither of said vaults is vermin proof or air tight until the same is sealed with water.

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

PAR. 12. The metals of which 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. 13. Metal Grave vaults of 12 gauge 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, 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. 14. 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. 15. 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 of methods of construction different from those used by reputable and responsible members of the metal vault industry.

PAR. 16. Respondent is and has been financially able, ready and willing to comply fully with and to perform the full terms of its written certificate of warranty, or to replace, 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 and respondent has made and issued said certificates of warranty in good faith.

PAR. 17. The 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 ferrous

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metal burial vaults manufactured by it, the respondent has represented:

1. That its New Imperial Air Seal vaults are water-tight, both at the time of interment and after burial under ground;
2. That its New Imperial Air Seal vaults are water-proof;
3. That its New Imperial Air Seal vaults will endure as water-proof under all burial conditions for a period of fifty (50) years, or any fixed or stated period of time;
4. That its New Imperial Air Seal vaults will give permanent protection after under ground;
5. That the double seal of its Gold Seal burial vaults is permanently secure;
6. That the double seal of said Gold Seal burial vaults gives permanent protection.

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 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 the respondent, and 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, Marion Vault Manufacturing 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:

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

(a) Its new Imperial Air Seal Vaults are water-tight either at the time of interment or after burial under ground;

(b) Its new Imperial Air Seal Vaults are water-proof;

(c) Its new Imperial Air Seal Vaults will endure, as water-proof, under all burial conditions, for a period of fifty years, or for any fixed or stated period of time;

(d) Its new Imperial Air Seal Vaults will give permanent protection after burial under ground;

(e) The double seal of its Gold Seal Burial vaults is permanently secure;

(f) The double seal of said Gold Seal burial vaults gives permanent protection, and that such vaults will endure vermin, moisture, water, and are air-proof when buried in the ground.

2. Making other representations of like import.

3. 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.

IN THE MATTER OF
JAMES VAN DISSEN DISTILLING COMPANY

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

Docket 2426. Complaint, June 5, 1935—Decision, Dec. 7, 1936

Where a corporation engaged as rectifier and wholesaler of spirituous liquors, in purchasing and bottling whiskies, gins, and other spirituous beverages, and in making gin with a still which it used therefor by redistillation of purchased alcohol, not produced by it, over juniper berries and other aromatics, and in selling its aforesaid various products to wholesalers and retailers, in substantial competition with those engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages, and in selling the same in trade and commerce among the various States and in the District of Columbia, and with those engaged in purchasing, rectifying, blending, and bottling such various beverages and in similarly selling the same, and including among said competitors those who, as manufacturers and distillers from mash, wort, or wash of whiskies, gins, and other spirituous beverages sold by them, truthfully use words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate names and on their stationery and on the labels of the bottles in which they sell and ship such products, and those who, engaged in purchasing, rectifying, blending, and bottling such various products, do not use, with competitive advantage attaching thereto, aforesaid words as above set forth—

Represented, through use of word "Distilling" in its corporate name, printed on its stationery and labels, together with words "Distilled by" in case of its aforesaid gin, "Manufactured by" in case of its sloe gin and cordials, and "Bottled by" in case of its brandy, and in various other ways to its customers, and furnished the same with the means of representing to their vendees, both retailers and ultimate consuming public, that the whiskies, gins, and other spirituous beverages contained in such bottles were by it made through process of distillation from mash, wort, or wash, notwithstanding fact it did not thus distill said various beverages thus bottled, labeled, sold and transported by it, as definitely understood and implied to the trade and ultimate purchasing public from word "Distilling" as meaning such original distillation from grain, fruit or vegetable mash, and did not own, operate, or control any place or places where such beverages are thus made, and was not a distiller, investment and expenses of which are greater, in general, than those of the rectifier, and for the purchase of the bottled liquors of which there is a preference on the part of a substantial portion of the purchasing public, and to which an advantageous prestige in overcoming sales resistance attaches in the mind of the wholesale trade, and associated with the products of which there is an advantage to the seller by virtue of the distiller's control, as believed, of the making of its product and the ingredients entering therein from start to finish in its own establishment; With effect of misleading and deceiving dealers and purchasing public into the belief that the whiskies, gins, and other spirituous beverages sold by it were by it made and distilled from mash, wort, or wash, and of inducing