

Syllabus

IN THE MATTER OF
GALION METALLIC VAULT COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914, AND OF SEC. 3 OF TITLE I OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933¹

Docket 2317. Complaint, Mar. 6, 1935—Decision, Dec. 11, 1936.

Where a corporation engaged in the manufacture of air seal and of mechanically sealed and closing burial vaults, made of one of the highest grade and quality of non-ferrous metals obtainable for such purpose and also of a non-ferrous metal which would corrode in some soils of the United States, and in the sale of said products to jobbers, funeral directors, and undertakers, in substantial competition with those engaged in the sale and distribution of metal, stone, concrete, and other burial vaults in and between the various States—

(a) Represented, in certificates of warranty and in advertising the same in periodicals of wide interstate circulation and in booklets, circulars, pamphlets, letters, and through photographs and testimonials, and in other advertising media, circulated among its customers and prospective customers in the several States, that its said air seal vaults were waterproof and airtight at time of interment and after, and that its said vaults, generally were made of rust resisting metal and would endure as waterproof under all conditions for fifty years, and afforded absolute protection against water and other external elements, buried, for twenty-five or fifty years or more, and that its said vaults gave insurance that the processes of change would be undefiled by the action of water, earth, or other foreign elements, gave permanent burial protection and greater resistance than the bronze of the ancients, and were practically indestructible and would not crush in; and

(b) Made use of certificates of warranty, in connection with the sale and offer of its said vaults, which guaranteed against damage to the contents thereof through water or other elements admitted because of the failure of the same due to rust or corrosion, and undertook, in such event, to replace such vaults without cost;

The facts being that, while its said vaults were made with great care by skilled workmen, and the ferrous metal of which made was one of the highest grades and quality obtainable for such purpose, impervious and impenetrable by air, moisture, and living organisms within the earth during the life of the metal, it was not rust or corrosion-proof to the extent that it would never rust or corrode after burial, and, once rusted or corroded to a certain extent during a period of years, it would, like all other material, crumble and disintegrate; non-ferrous metal, corrosive in some soils as aforesaid, was impervious to water only until penetration through corrosion or other causes; 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,

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

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would resist penetration thereby for more than one hundred years, in other soils its said ferrous metal 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 case of said air seal vaults in order to provide protection from entering water, its said vaults and materials from which made had not been tested under ground for full period of fifty years, or been manufactured or advertised for such length of time, and its said ferrous metal vaults would not, in some of the more corrosive soils, remain waterproof for such a period, and its vaults, buried, would and often do permit entrance of air, vermin, and water; disinterment is rare and it had rarely been called upon to replace the same;

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

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

Mr. E. J. Hornibrook for the Commission.

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

COMPLAINT

Acting in the public interest and pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that the Galion Metallic 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 Galion Metallic 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, the following and similar false and misleading claims, statements, and representations as to respondent's said vaults are made:

That said grave vaults will remain waterproof and airtight when placed underground; that the function of these said vaults is to insure that the process of change be undefiled by the action of water, earth, or other foreign elements; that the metal of which said vaults are made is impervious to water and to chemical elements and living organisms usually present in the ground; that the weight of covering earth cannot crush its unyielding dome; that the body which is entrusted to the keeping and protection of respondent's said vaults is protected from uncleanness, contamination, and violation; that the respondent's said vaults are the ultimate in burial protection; that casket and contents are placed beyond the reach of external agency of change in the protection found in respondent's said vaults; that human affection can provide no worthier tribute with which to safeguard and to honor the mortal part of the beloved dead; that only within comparative recent years has science been successful in making permanent burial protection of those with moderate means; that prior thereto, the materials used were porous and quickly perishable and that rain and melting snow went through the ground and often stood for months in the graves and that this water necessarily seeping through envelopes the casket and contents in a mass of or-

ganic and inorganic conglomerate; that the metals used in the manufacture of respondent's said vaults are not only impervious to water but they possess enormous strength; that such appearances of corrosion as may develop on the surfaces of such vaults are superficial and act as a protective coating to retard pitting and rusts; that metallurgical chemists estimate that respondent's vaults will retain their protective agency, unimpaired for at least fifty years; that respondent's vaults are practically indestructible under all normal conditions of earth burial; that the resistance of respondent's vaults to the elements is presumably greater than that of the bronze used by the ancients for the production of weapons, vessels, and works of art which have been recently brought to light by archeologists dating back thousands of years before the beginning of the Christian Era. Respondent has also advertised its said vaults as absolute protection against water and other external elements even though buried underground for a period of twenty-five to fifty years or more.

(B) Respondent issues with each vault for delivery to ultimate purchasers thereof and they are so delivered, a written purported warranty which provides in substance, that each of its said vaults has been tested by being submerged in water, inspected, found to be free from defects in material or workmanship and to be airtight and waterproof and that when properly closed it will protect its contents from water and other elements from external sources and if the contents of any vault are damaged by water or other elements, admitted because of the failure of the same, due to rust, corrosion, defective materials, or workmanship, respondent will replace said vault without cost, except in cases of damage to the casket or contents caused by dehydration of the elements.

PAR. 5. The statements and representations described in subdivision A of the preceding paragraph are false and misleading in that respondent's said grave vaults will not remain waterproof and airtight indefinitely when buried in the ground; that respondent's said vaults when buried in the ground do not insure that process of change be undefiled by the action of water, earth or other foreign elements; that respondent's said vaults are not impervious to water and to chemical elements or living organisms usually present in the ground; that a coffin when buried in respondent's vault is not protected at all times from uncleanness, contamination, and violation; that science has not in comparatively recent years or at all been successful in making permanent protection through the use of metal vaults to the bodies or coffins encased therein when buried underground; the metals used in the construction of respondent's vaults are not impervious to water or corrosion or rust and the surface

rust coating which at times appears upon the respondent's vault does not act as a protective coating to retard pitting and rust; respondent's vaults will not retain their protective agencies unimpaired for at least fifty years; respondent's vaults are made of metals which will corrode; there is a vast difference in the corrosive properties of soils throughout the United States; 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 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 are not airtight or waterproof and will, and often do, permit air and water to enter therein. Either air or water entering respondent's vaults, when buried underground, promote and cause disintegration of the coffin and body encased in said vaults. Water often enters the graves of the dead. The mechanism provided by respondent for sealing their said vaults will not at all times prevent the entrance of water into said vaults.

The statements and representations described in the 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 purchasers thereof a watertight airtight vault, a vault which will not permit water or air to enter the same. 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 of flange thereof or through pit holes due to rust or corrosion.

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.

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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.

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 effecting 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 constituted 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 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 6th day of March 1935, issued and thereafter served its complaint in this proceeding upon respondent, the Galion Metallic 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 Federal Trade Commission, and respondent, by which it was stipulated and 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; and that the Commission may proceed upon said statement of facts, including inferences drawn from said stipulated facts, to issue its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Said stipulation as to the facts has been duly filed in the offices of the Commission and approved by it. Thereafter this proceeding came on for final hearing before the Commission on said complaint, answer thereto, and statement of facts as agreed upon in lieu of testimony, briefs and arguments 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. The respondent, the Galion Metallic Vault Company, is and has been for the past thirty years, 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 Galion in the State of Ohio.

Respondent is now and for the past thirty years has been engaged in the business of manufacturing and selling metal burial vaults, called Cryptorium; said vaults are intended to be and are actually used to 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 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 therefor, they are filled by respondent,

either causing said vaults to be shipped from the city of Galion in the State of Ohio, into and through other States of the United States to the respective places of business or the residence of such purchasers, or by shipping said vaults to branch warehouses in other States of the United States from which deliveries are made to such purchasers.

PAR. 2. In magazines having 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 prior to and in 1932, but not since said year, the following claims, statements, and representations as to its said vaults, to wit:

The metal of which said vaults are made is impervious to water and to chemical elements and living organisms usually present in the ground.

The metals used in the manufacture of respondent's vaults are not only impervious to water, but they possess enormous strength.

They will remain waterproof and airtight when placed under ground.

The body which is entrusted to the keeping and protection of respondent's said vaults is protected from uncleanness, contamination and violation.

The function of these said vaults is to insure that the process of change be undefiled by the action of water, earth or other foreign elements.

Only within comparatively recent years has science been successful in making *permanent* burial protection for those with moderate means.

Prior thereto, the materials used were porous and quickly perishable and rain and melting snow went through the ground and often stood for months in the graves and this water necessarily seeping through envelops the casket and its contents in a mass of organic and inorganic conglomerate.

The resistance of respondent's vaults to the elements is presumably greater than that of the bronze used by the ancients for the production of vessels, weapons and works of art which have been recently brought to light by archeologists dating back thousands of years before the beginning of the Christian Era.

Respondent's vaults are practically indestructible under all normal conditions of earth burial.

Such appearances of corrosion as may develop on the surfaces of such vaults are superficial, and act as a protective coating to retard pitting and rusts.

The casket and contents are placed beyond the reach of external agency of change in the protection found in respondent's said vaults.

Metallurgical chemists estimate that respondent's vaults will retain their protective agency, unimpaired for at least fifty years.

Its vaults are absolute protection against water and other external elements, even though buried underground for a period of 25 to 50 years or more.

The weight of covering earth cannot crush its unyielding dome.

Respondent's said vaults are the ultimate in burial protection.

Human affection can provide no worthier tribute with which to safeguard and to honor the mortal part of the beloved dead.

PAR. 3. Respondent, prior to and in 1932, but not since then, issued with each vault, for delivery to ultimate purchasers thereof, and they were usually so delivered, a written certificate of warranty that each of its vaults had been tested by being submerged in water, inspected, found to be free from defects in material or workmanship and to be airtight, and waterproof, and when properly closed it will protect its contents from water and other elements from external sources; that if the contents of any vault are damaged by water or other elements, admitted because of the failure of the same, due to rust, corrosion, defective materials, or workmanship, respondent will replace said vault without cost, except in cases of damage to the casket or contents caused by dehydration of the remains.

PAR. 4. In 1932, respondent adopted, and since then and now issues with each vault, for delivery to ultimate purchasers thereof, and they are usually so delivered, a written certificate of warranty in words and figures as follows:

WARRANTY

THE GALION METALLIC VAULT COMPANY OF GALION, OHIO,
MANUFACTURERS OF THE GALION CRYPTORIUM, WARRANTS:

(1) That every Gallon Cryptorium is manufactured of Armco Ingot Iron Copper, or Everdur Bronze, is built by skilled workmen, has been tested by being submerged in water, inspected and found to be free from defects in material or workmanship.

(2) The Gallon Metallic Vault Company will replace this Gallon Cryptorium without cost if its contents are damaged by water or other elements admitted from the grave because of the failure of the Cryptorium due to rust, corrosion, defective material or workmanship. Damage to the casket or contents caused by dehydration of the remains is excepted.

This warranty has been issued by duly authorized officers of the Company, whose signatures are hereto affixed, and has been counter-signed by the funeral director at the time of the delivery.

THE GALION METALLIC VAULT COMPANY
 By ----- President.
 By ----- Secretary.

PAR. 5. The ferrous metal used by respondent in the manufacture of its burial vaults is Armco Ingot Iron, manufactured by the American Rolling Mill Company of Middletown, Ohio.

This metal is 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 this material is considerably higher than the cost of ordinary commercial steel.

This material is one of the highest grade and quality of metals that are now in the market in the United States, which can be obtained by respondent for the purpose of the manufacture of its burial vaults.

This metal, purchased by the respondent and used in the manufacture of its vaults is a highly refined grade of steel, carefully made under the best, modern scientifically controlled steel making process; it is a high quality metal made as carefully, accurately and thoroughly as it can be made by exact control of furnacing operations to make the best metal that will resist, but not prevent, corrosion, in the sense that the high purity and quality of the metal tends to retard and slow the rate of corrosion and tends to increase its durability underground for a longer period of time than if the impurities were not removed from the metal, and if the metal has not been so highly refined and freed from those impurities which facilitate the process of rusting or corrosion.

The above steel manufacturing company, from which respondent purchases this metal, represents in its advertising and otherwise to the respondent that said metal is rust resisting. It is a manufacturer of recognized responsibility and integrity. This company makes rigid inspection and testing of each sheet of said metal before it is shipped to the respondent.

This metal is by its very nature impervious and impenetrable by air, moisture, water and living organisms within the earth and will exclude them from seeping or going through or between any pores or molecules of said metal during the life of said metal, which terminates when a hole has been punctured or has penetrated through the metal from rust or corrosion.

This metal is not rustproof or corrosionproof, but will rust and corrode after it has been buried underground. It is not rust-resisting

or corrosion-resisting to the extent or degree that it will never rust or corrode after burial underground. When it has rusted and corroded to a certain degree and extent during the period of years after burial underground, it will crumble and disintegrate, just as all other materials will ultimately decay and disintegrate.

Respondent also uses in the manufacture of the Galion Cryptorium, Everdur Bronze, 12 gauge and heavier. This is a non-ferrous metal and will corrode in some soils of the United States. It is by nature impervious to water, moisture and the living organisms within the earth, and also to the usual chemical elements within the earth, until a hole is penetrated through this metal due to corrosion or other causes. It is purchased from the American Brass Company of Waterbury, Conn., and similar representations as to the quality and physical characteristics of this metal are given by the seller to this respondent.

PAR. 6. Respondent's vaults are manufactured with great care by skilled workmen. Respondent so manufactures and sells three types of the said Cryptorium vaults, to wit, the air seal, the quick closing and the bolted end.

PAR. 7. Respondent's air seal 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 $88\frac{15}{16}$ inches; width 32 inches; and height $30\frac{3}{16}$ inches. It weighs empty and without a casket in it, 440 pounds. Its inside dimensions are: length 86 inches; width 30 inches; side height $29\frac{7}{16}$ inches; center height $25\frac{15}{16}$ 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 fused to the top on standard sizes, 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 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 $3\frac{1}{8}$ 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 outward approximately $\frac{7}{8}$ th inch 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 8 square inches, which includes a strip 4 inches wide across each

end on the under part of the base. The entire base resembles an inverted pan. At each of the four corners of the pan is a hole, pierced through it near its top edge. Circulation of air from the hollow space under the pan into the hood is provided by these holes, thereby making one single column of air.

Projecting $\frac{1}{2}$ 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 $4\frac{3}{8}$ inches above the bottom of the grave or grave floor.

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

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. As the water level rises in the ground surrounding the vaults, 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. And as the pressure of the outside water level increases, the resistance of the compressed air within the dome increases and resists the entrance of water rising from below.

Water and air will go in and out of the space underneath the raised portion of the pan of said air seal vault 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, above the lower edge of the dome, to the extent that it is not resisted by the pressure of the confined air within the dome.

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 under the water and thus submerged, is two and one-half tons or 5,000 pounds. This pressure is applied so as to equally distribute it over the top of the vault.

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

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.

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-half 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, the water will be permitted to enter the vault 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 will, and often do, permit air, vermin and water to enter them. Water entering respondent's said vaults, when buried underground, 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 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. 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 air seal vaults to provide protection for the casket and body placed therein from the effect of water entering said air seal 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 air seal 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 such changes in conditions 2, 3, 4, and 5 are sufficient to cause water to enter said vault to touch the casket therein, then such changes tend to damage the casket and the body contained therein.

The term "waterproof" and "airtight" and "verminproof" 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, nor vermin to enter the same, and that 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 7 above. In dry graves these vaults are not verminproof or airtight.

PAR. 8. As aforesaid, respondent manufactures two types of mechanically sealed and closing vaults, the quick closing type and the bolted end type. In these types, 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 plates on its inner side engage behind a flange inside the wall and seals the vault.

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

Each of the respondent's mechanically sealed types of vaults, bolted end and quick closing type, is placed upon the surface of the ground, the casket is placed inside the vault, and the door is closed and the vault is sealed, before it is lowered into the grave.

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.

Each of the two mechanically sealed types of Galion 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 described 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. The actual protection of the corpse by respondent's vaults will depend upon the actual burial conditions of the locality in which they are buried.

PAR. 9. 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, and 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, and the vault will cease to be waterproof when a hole has been punctured through the thickness of the metal by rust or corrosion or other causes or the seal has ceased to function during the course of the years after its burial.

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

PAR. 10. Respondent's vaults which are made of Armco Ingot Iron 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. In some soils the corrosion is practically negligible.

There are some 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 one year or less.

Other metal grave 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 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. 13. 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 its air seal vaults are airtight either at the time of interment or after burial underground;
2. That its air seal vaults are waterproof;
3. That they will endure as waterproof under all burial conditions for a period of 50 years, or for any fixed or stated period of time;
4. That any of its said vaults are made of rust-resisting metal;
5. That they insure that the processes of change will be undefiled by the action of water, earth, or other foreign elements, when buried underground;
6. That they give permanent burial protection when buried underground;
7. That they give greater resistance than that of the bronze used by the ancients, when buried underground;
8. That they are practically indestructible after burial underground;

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9. That they are beyond the reach of external agency of change, after burial underground;

10. That they will give absolute protection against water and other external elements for a period of 25 to 50 years or more, when buried underground;

11. That the weight of the covering earth cannot crush its unyielding dome, after burial underground.

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 conclusions 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, Galion Metallic Vault Company, a corporation, its officers, representatives, agents and employees, in connection with the offering for sale, sale, and distribution of 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 Air Seal vaults are airtight, either at the time of interment, or after burial underground,

(b) Its Air Seal vaults are waterproof;

(c) Any of its vaults will endure as waterproof under all burial conditions for a period of fifty years, or for any fixed or stated period of time;

(d) Any of its vaults are made of rust resisting metal;

(e) Any of its vaults insure that the processes of change will be undefiled by the action of water, earth, or other foreign elements, when buried underground;

(f) Any of its vaults give permanent burial protection when buried underground;

(g) Any of its vaults give greater resistance than those of bronze used by the ancients, when buried underground;

(h) Any of its vaults are practically indestructible after burial underground;

(i) Any of its vaults are beyond the reach of external agencies of change, after burial underground;

(j) Any of its vaults will give absolute protection against water and other external elements for a period of twenty-five to fifty years, or more, or for any fixed or stated period of time;

(k) The weight of the covering earth cannot crush the unyielding dome of any of its vaults after burial underground;

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

3. 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.

IN THE MATTER OF
ROBERT R. DUNN, JR. AND TOM KECK, TRADING AS
IOKELP COMPANY

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

Docket 2373. Complaint, Apr. 22, 1935—Decision, Dec 11, 1936

Where two individuals engaged in the offer and sale of an alleged remedial preparation which consisted of a kelp or seaweed product compressed into tablet form, with an iodine content of about one-fourth of one percent, and other constituent elements such as those usually found in vegetables ordinarily used for food in the United States, and in approximately the same quantities and proportions—

Represented in advertisements of their said preparation, through pamphlets, circulars, and other printed matter, and through newspapers and radio broadcasts, that the same was a remedy or cure for constipation, nervous anemic conditions, prostate, pituitary, and thyroid gland troubles, including simple goiter, and was a preventative of such last-named troubles, and of indigestion, neuritis, rheumatism, and periodic irregularity in women, and was essential to the health of the thyroid gland and to that of adolescent girls and of women under certain conditions, and to health in general; facts being it did not possess the therapeutic efficacy represented by them, and their said various representations and implications were false;

With effect of misleading and deceiving many persons desiring to purchase a remedy for or preventative of, or preparation essential to, one or more of the conditions in question, and of causing a substantial portion thereof erroneously to believe that such representations and implications were true and, because of such erroneous beliefs, to buy said "Iokelp," and of thereby diverting unfairly and illegally trade to them from their competitors, many of whom truthfully represent their products and do not misrepresent their therapeutic efficacy or use such acts and practices in connection with sale thereof; to the substantial injury of such competitors and that of the public;

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. Edw. W. Thomerson for the Commission.

Mr. Daniel Dougherty, of Los Angeles, Calif., for respondents.

COMPLAINT ¹

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission,

¹ An extended enumeration in Par. 2 of the complaint, quoting respondents' representations with respect to their "Iokelp" product, which various representations, with certain exceptions noted in footnote on page 168, are likewise set forth in the findings, *infra*, at page 172, is, except as set forth in footnote, omitted from the complaint in the interest of brevity.