

Syllabus

IN THE MATTER OF
GRANITE ARTS, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2610. Complaint, Nov. 2, 1935—Decision, Feb. 16, 1937*

Where a corporation engaged in manufacture of monuments, tombstones and grave markers, through mixing granite chips or powder with cement and molding same into cast stone, and in the sale of its said products, which simulated in appearance and were used as a substitute for granite; in advertising its said products in farm papers of interstate circulation and through descriptive circulars mailed to prospective purchasers—

- (a) Represented its said monuments, etc., as "Victoria Granite" and featured the corporate and trade name adopted by it, in which were included words "Granite Arts," in its said advertising and in correspondence with customers and prospective customers, and caused its address in said newspaper advertisements to appear as "Graniteway, Omaha," and represented that its said products constituted "A Permanent Lasting Tribute of Love and Respect," and that "Our Memorials Will Endure Far into the Centuries," facts being it did not make any products from true granite, almost everlasting solid rock formation of great strength, etc., and known universally as a substance from which tombstones, monuments, and grave markers have long been made, and of which Victoria Granite is an old established type and well-known to trade, aforesaid address was purely fictitious, and aforesaid representations were otherwise false;
- (b) Represented, in its advertising matter, that its memorials were standardized to dimensions which had the official approval of practically every cemetery in the United States, facts being many such cemeteries have rules and regulations prohibiting any such markers, excepting those made of granite, bronze, or marble, and do not allow cast stone monuments, etc., to be placed therein, and such representations were false; and
- (c) Mailed circulars to prospective purchasers offering discount of 10% for ten days only from price listed in circulars, and sent, thereafter, to such prospects who did not reply, card, at end of such period, offering 20% discount, and third card thereafter to non-replying customers offering 30%, facts being price thus finally arrived at was not a special one for its products, but was regular and usual price at which it sold the same;

With effect of misleading purchasing public into false and erroneous belief that said representations were true, and into purchase of substantial quantities of its products on account of such belief, thus induced, and of unfairly diverting trade to it from competitors who did not make use of same or similar representations in manufacture, sale and distribution of aforesaid products; to the injury of competition in commerce:

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

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

Mr. Morton Nesmith for the Commission.

Complaint

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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 Granite Arts, Inc., a corporation, 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 the Commission that a proceeding by it in respect thereof would be in the public interest, states its charges in that respect as follows:

PARAGRAPH 1. The respondent, Granite Arts, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Nebraska, with its principal place of business at 1909 Leavenworth Street in the city of Omaha, State of Nebraska. It is now, and has been for several years last past, engaged in the business of manufacturing and selling cast stones which are used as monuments, tombstones, and grave markers. Said product is designed as and used as a substitute for granite, which it simulates in appearance. Its process of manufacture is that of mixing granite chips or powder with a cement mix, which is cemented sand. Respondent causes said product, when sold, to be transported from its principal place of business into and through numerous States of the United States other than the State of Nebraska, to the purchasers thereof at their respective points of location.

PAR. 2. In the course and conduct of its business as aforesaid, respondent is in competition with other individuals, partnerships, and corporations engaged in the manufacture, sale, and distribution of granite monuments, tombstones, and grave markers, in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of its business as aforesaid, respondent, in soliciting the sale of and selling its products in interstate commerce:

1. In advertisements and advertising matter describes its products as "Victoria Granite";

2. Adopted as and for a corporate and trade name under which to carry on its said business, the words "Granite Arts, Inc.," and used and displayed same in its advertising matter and in correspondence with customers and prospective customers in the various States of the United States; and caused in its newspaper advertisements the address "Graniteway, Omaha," to appear;

3. Described its product as "A Permanent, Lasting Tribute of Love and Respect," and "Our Memorials Will Endure Far Into The Centuries";

4. Represented in its advertising matter that their memorials are standardized to dimensions which have official approval of practically every cemetery in the United States; and

5. Mailed to prospective purchasers circulars offering a discount of 10% from the price listed in such circulars, and in other cases offered them a discount of 20% from such prices, and in certain cases, when the person circularized made further inquiry but did not purchase, offered them a special discount of 30% from the list prices.

PAR. 4. In truth and in fact:

1. The products which said corporation manufactures, sells, and distributes are not composed of natural stone or granite, but are manufactured by said corporation from cement and other ingredients;

2. The address of said corporation, "Graniteway, Omaha," given in its advertisements, is a fictitious address and one having the tendency and capacity to add to the deception caused by its misuse of the word "granite," as likewise is the corporate name of respondent, "Granite Arts, Inc.";

3. Said products are not permanent, nor will they endure for centuries;

4. Respondent's memorials do not have the official approval of practically every cemetery in the United States; and

5. The statement and representation that the discount of 10%, 20%, and 30% was a special price, is false and misleading, and the prices so quoted were and are the regular and usual prices at which said corporation sells its said products, all of which has the tendency and capacity to mislead and deceive many among the consuming public into the belief that respondent's said product is granite, and to purchase said product in that belief, and that they are obtaining a special discount in the purchase of said products.

PAR. 5. The above alleged acts and things done by respondent are all to the injury and prejudice of the public and to the competitors of respondent in interstate commerce, and constitute unfair methods of competition in interstate 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 second day of November 1935, issued and on the fourth day of November 1935, served its complaint in this proceeding upon respondent Granite Arts, Inc., a corporation, charging it with the use of unfair methods of competition in violation of the provisions of said act. After the issuance of complaint the respondent failed to file answer thereto, and thereafter testimony and other evidence in support of the allegations of said complaint were introduced by Morton Nesmith, attorney for the Commission, before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearings before the Commission on the said complaint, testimony and other evidence and brief in support of the complaint; respondent having filed no brief though given an opportunity to do so, and the Commission having duly considered the same and being now 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 Granite Arts, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Nebraska, with its principal office and place of business at 1909 Leavenworth Street in the city of Omaha, State of Nebraska. The respondent was for several years prior to the issuance of the complaint engaged in the business of manufacturing and selling cast stones which were used as monuments, tombstones, and grave markers. The respondent caused these products, when manufactured, to be transported from its place of business in Omaha, Nebr., to purchasers thereof located in the various other States of the United States. In the course and conduct of its business respondent was in competition with other individuals, partnerships, and corporations engaged in the manufacture, sale, and distribution of granite monuments, tombstones, and grave markers in commerce between and among the various States of the United States.

PAR. 2. Respondent's process of manufacture was that of mixing granite chips or powder with cement and moulding the same into a

cast stone. Its products, when manufactured, simulated granite in appearance and were used as a substitute for granite. The president of respondent company was one John Afflerbaugh who was the controlling and majority stockholder of the corporation. It appears that Mr. Afflerbaugh left his place of business shortly after the issuance of the complaint in this case and his address is unknown and could not be ascertained after reasonable inquiry was made.

The respondent at one time maintained an agent in Sioux City, Iowa, which agent made sales of respondent's products under the name "Sioux City Granite Arts Company."

PAR. 3. The respondent, in soliciting sale of and selling its product in commerce, as herein described, advertised its products in farm papers having an interstate circulation and mailed to prospective purchasers circulars descriptive of its products. In these advertisements respondent advertised and represented its products as "Victoria Granite." Respondent also adopted and used as its corporate and trade name "Granite Arts, Inc." which name was conspicuously displayed in all of its advertising matter and its correspondence with customers and prospective customers in the various States of the United States. Respondent also caused its address in certain newspaper advertisements having an interstate circulation to appear as "Graniteway, Omaha." Respondent further represented in its advertising matter that its memorials were standardized to the dimensions which have the official approval of practically every cemetery in the United States; and further, respondent mailed to prospective purchasers circulars offering a discount of 10% for ten days only, from the prices listed in said circulars, and at the end of said ten days respondent sent to said prospective buyers another card offering a 20% discount, and if the customer did not respond, a third card was sent offering a 30% discount. Respondent further represented in its advertising matter that its products were "A Permanent Lasting Tribute of Love and Respect," and "Our Memorials Will Endure Far into the Centuries."

PAR. 4. Granite is a solid rock formation composed of quartz, feldspar and mica of great strength, almost everlasting, and takes an excellent polish. It is universally known as a substance from which tombstones, monuments and grave markers have been made for many years. Granite is taken from quarries in various sections of the country by a mechanical process and subsequently cut and manufactured into stone markers and tombstones. Respondent's monuments, tombstones and grave markers are not composed of natural granite or stone but are made entirely of granite chips and other material

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mixed with cement. Respondent does not manufacture any products from true granite. Respondent's products therefore will deteriorate and disintegrate in time and are not permanent, lasting memorials nor will they endure far into the centuries. Respondent's products are not standardized to dimensions which have official approval of cemeteries throughout the United States. On the contrary there are many cemeteries throughout the United States that do not allow cast stone monuments, tombstones, and grave markers to be placed therein. These cemeteries have rules and regulations prohibiting any such markers except those made of granite, bronze, or marble. Victoria granite is a type of real granite which is quarried in the State of Massachusetts and is an old established type taken from old established quarries and is well known to the trade. Graniteway, Omaha, is a purely fictitious address. There is no post-office known as "Graniteway, Omaha, Nebraska." The statements and representations of respondent as to allowing first a 10% discount followed by a 20% discount and that followed by a 30% discount was not a special price for respondent's products but was the regular and usual price at which the respondent sold its monuments, tombstones, and grave markers.

PAR. 5. The aforesaid false and misleading statements and representations used by the respondent in offering for sale and selling its merchandise have had a tendency and capacity to and have misled the purchasing public into the false and erroneous belief that said representations are true and into the purchase of substantial quantities of respondent's products on account of said belief so induced. As a result thereof trade has been unfairly diverted to respondent from competitors in commerce as herein set out who did not make use of the same or similar representations in the manufacture, sale and distribution of tombstones, monuments, and grave markers, all to the injury of competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, Granite Arts, Inc., a corporation, are 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 approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

Order

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, testimony and other evidence taken before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and brief on behalf of the Commission filed herein by Morton Nesmith, counsel for the Commission, 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 the respondent, Granite Arts, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of cast stone monuments, tombstones, and grave markers in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. That its cast stone monuments, tombstones, and grave markers are granite;
2. Through use of any corporate or trade name containing the word "Granite" or through the use of any other words or phrases containing the word "Granite," alone or in conjunction with any other word or words, or through any other means, that its cast stone monuments, tombstones, and grave markers are granite;
3. That its monuments, tombstones, and grave markers are standardized to dimensions which have the official approval of practically every cemetery in the United States, when such is not the fact;
4. That its cast stone products are permanent or lasting, or that they will endure far into the centuries;
5. That the prices at which said cast stone products are offered for sale and sold are other than its regular and customary retail prices unless an actual discount from its customary retail prices is offered;
6. That prices at which it sells its cast stone products are other than its customary retail prices, when such is not the fact.

It is further ordered, That the 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 the order.

Syllabus

IN THE MATTER OF
DOLLAR CRYSTAL COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2919.—Complaint, Sept. 8, 1936—Decision, Feb. 16, 1937*

Where a corporation engaged in the offer and sale of mineral water crystals under such trade names as "Genuine Texas Mineral Crystals"—

Represented, through radio broadcasts and otherwise, that drinking water in which said product had been dissolved would relieve headaches, nervousness, irritability, and fatigue, and that such crystals would remove poisonous waste matter that had accumulated in the system and the cause of disease and of most human ailments, and inability to eat certain foods, and that they contained essential minerals necessary for good health, and would impart pep and energy and accomplish various beneficial results, and were not a medicine or habit-forming drug, and that dissolving thereof in drinking water produced solution identical with the mineral water as it came from the springs, and made use of so-called testimonial letters in its said advertising;

Facts being such letters were used by it without any investigation or knowledge as to whether statements therein were in fact true or as to whether writers thereof were sufficiently informed in proper diagnosis as to be able accurately to state facts of use of such product, sole constituent of which, practically, was the saline laxative and purgative Glauber's Salts, and only therapeutic effect of which was relief of temporary constipation, many of symptoms and ailments for which it represented its said product as a relief or cure arise from causes which said salts, or hydrated sodium sulphate, will not cure or relieve, but will positively aggravate, principal active constituent of such crystals was in fact a medicine, and habit-forming, and solution of crystals in drinking water does not result in product identical with the original mineral water, due to the removal and discarding of certain constituents in process of producing the crystals in question;

With effect of misleading and deceiving purchasers and prospective purchasers into the erroneous belief that such representations were true and into purchase of its said products in such belief, and of thereby unfairly diverting trade to it from competitors engaged in producing and selling saline purgatives and in shipping same in commerce among the various States, and who truthfully advertise and represent the therapeutic value of their products, and competitors who make and sell remedies for the relief of the ailments involved as above set forth and indicated, and who truthfully represent said remedies' therapeutic effect; to the substantial injury of competition in commerce:

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

Before *Mr. Robert S. Hall*, trial examiner.

Mr. John Darsey for the Commission.

Crofoot, Fraser, Connolly & Stryker, of Omaha, Nebr., for respondent.