

Syllabus

IN THE MATTER OF
THE CLARK GRAVE VAULT COMPANY

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

Docket 2323. Complaint, Mar. 12, 1935—Decision, Mar. 19, 1937

Where a corporation engaged in the manufacture of air-seal type, ferrous metal burial vaults and in the sale thereof to jobbers and funeral directors and undertakers, in competition with those engaged in sale and transportation of metal, stone, concrete, cement and other burial vaults in commerce between and among the various States—

- (a) Represented through warranties issued by it and through advertisements in periodicals of wide interstate circulation, and through booklets, circulars, pamphlets, letters, photographs, testimonials, and other advertising matter, and through its customers, authorized by it so to state in the sale and promotion of sale of its said vaults, that same would remain waterproof and airtight under ground for fifty years, and were so warranted, and that they were made of rust and corrosion resisting metal, proof against moisture and crumbling, and were waterproof and airtight and verminproof, and, buried, had an impenetrable seal and would afford positive and permanent protection to the coffin and body encased therein; and
- (b) Made use of "warranties" or "guarantees" in connection with sale and offer of its said vaults, which were issued by it through the jobber or funeral director and were intended to be, and in many cases were, delivered to ultimate purchasers of said product, and which guaranteed same for fifty years against entrance of water due to defective construction, rust or corrosion, and undertook therein to replace any vault, without cost to purchaser, found defective within the terms of such warranty within such fifty-year period, etc.;

The facts being that, while its said vaults were manufactured by it of highly refined grades of metal of high quality, made as carefully, accurately and thoroughly as possible by exact control of furnacing operations to make the best ferrous metal, that would resist, but not prevent, corrosion and tend to increase durability of such metals for a longer period of time than if impurities had not been removed therefrom, and said metals, by their very nature and texture, would not permit passage of water or air unless punctured, broken or partially destroyed by corrosion, said vaults, by virtue of the circumstances involved, would not, nevertheless, be entirely without moisture after burial, all soils are more or less corrosive and will eventually cause all ferrous metals to pit or corrode, and water, frequently present in graves due to many conditions, will, when present, touch said vaults and in time produce rust, beginning of corrosion, which, once started, will usually continue until puncture of metal, and said vaults were not rust or corrosion proof or rust or corrosion resistant to the extent

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

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that they would never rust or corrode after burial, nor wholly proof against moisture, or against crumbling after burial, conjunction of conditions, as respects airseal principle employed in vaults in question, which does not always exist, must obtain in order for same to provide protection from entering water, and said vaults were not waterproof in the sense that no water whatsoever could enter same, nor impenetrable, except for period prior to the puncture of the metal by rust and corrosion or other causes, depending, in variable conditions, on character of soil and climatic and other conditions prevailing in territory involved, and were not airtight or verminproof, and would not give lasting protection to contents thereof for any known period of time;

With capacity and tendency to induce public to purchase and use its said vaults in the belief that such statements and representations were true, and unfairly to divert trade to it from its aforesaid competitors:

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

Mr. E. J. Hornibrook for the Commission.

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

Count 1

PARAGRAPH 1. The respondent is the Clark Grave Vault Company, 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 Columbus in said State. It is now and has been for several years last past engaged in the business of manufacturing, and selling metal grave vaults used to encase coffins for the burial of the dead to purchasers thereof, many of whom reside outside of the State of Ohio, and when orders are received therefor they are filled by respondent by shipping the same from the said

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

PAR. 2. In 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 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 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, the following false and misleading claims, statements and representations as to respondent's said vaults are made:

That the said grave vaults will remain waterproof and airtight when placed under ground for a period of fifty (50) years; that they afford positive and permanent protection to the coffin and body encased therein; that Clark created the waterproof, all-metal vault with its impenetrable air-seal; that the Clark vault is an accepted part of the modern burial service; that it is complete and lasting protection; that it assures comfort and peace of mind to those who must "carry on"; that Clark's vaults are made of specially processed, rust and corrosion resisting metal which is proof against moisture and against crumbling; that each Clark vault is critically tested under 5,000 pounds of water for air- and water-tightness, and is warranted for fifty (50) 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 every Clark vault is submitted to a rigid test by being completely submerged under two and one-half (2½) tons of water to prove that it is absolutely water- and air-tight, and that:

In consideration of the purchase and payment for the vault with which this warranty is issued, to be indorsed hereon as indicated below, THE CLARK GRAVE VAULT COMPANY does hereby warrant such vault for a period of fifty (50) years from the date of purchase indorsed hereon below against water

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entering such vault from the grave due to defective construction, rust or corrosion.

Any such vault found to be defective within the terms of this warranty will be replaced within said fifty-year period without cost to the purchaser. It is understood that cinders and other highly corrosive material must not be used in filling grave and that vault must be buried level.

PAR. 5. The statements and representations described in subdivision (A) of the preceding paragraph are false and misleading in that respondent's said grave vaults will not always remain watertight or airtight for a period of fifty (50) years or any definite period when buried under ground; that respondent's said vaults when buried under ground do not always afford positive or permanent protection to the body or coffin encased therein; that the air-seal of respondent's vaults is not impenetrable; that the Clark vault is not an accepted part of the modern funeral service; that the Clark vault does not afford complete and lasting protection; that the Clark vaults are not made of rust and corrosion resisting metal; that the metal of which Clark's vaults are made is not proof against crumpling; that the tests made of the Clark vaults before shipment are not sufficient to assure that they will remain in all cases watertight or airtight; that respondent's said vaults are made of metals which will corrode; there is a vast difference in the corrosive properties of soils throughout the United States; in some soils respondent's said vaults will pit and corrode in a period of from three (3) to ten (10) years, and in others from ten (10) to twenty (20) years; that respondent's said vaults have not been tested under ground for a period of fifty (50) years, nor has the metal of which they are made been so tested; that respondent's said vaults will corrode and pit so as to let water into them; that in many instances they will corrode and rust so as to cave in or collapse; that respondent's said vaults when buried under ground are not airtight or waterproof and will, and often do permit water or air to enter therein. Either air or water entering respondent's vaults when buried underground promote and cause disintegration of the coffin and body encased in said vaults. Water often enters the graves of the dead. The mechanism provided by respondent for sealing its said vaults will not at all times prevent the entrance of water into said vaults to an extent where the coffin is damaged.

The statements and representations described in subdivision (B) of paragraph 4 hereof are false and misleading and deceptive in that the terms "waterproof" and "airtight" as used by respondent as aforesaid mean to the ultimate purchaser thereof a watertight, airtight vault; a vault which will not permit water or air to enter the same and that will endure as such under burial conditions. The re-

spondent's said vaults are not waterproof nor airtight as the terms are understood by the ultimate purchaser thereof. Water or air may seep into or enter the said vaults through the walls, joints, weldings, and flanges thereof, or pin holes due to rust or corrosion, or due to collapse or bending of the vault.

These said warranties contain a clause to the effect that the Clark Grave Vault Company warrant such vaults for a period of fifty (50) years from the date of purchase thereof against water entering such vault from the grave due to defective construction, rust or corrosion. The exhumations of bodies after burial are so rare as to make these certificates or warranties worthless to the purchasers of such vaults for the reason that no opportunity is afforded them to ascertain whether such vaults have or have not been airtight or waterproof. These said purported warranties are not warranties, but are merely sales persuaders under the terms of which respondent will rarely, if ever be called upon to replace said vaults. It is false and misleading for respondent to call them warranties or to issue them. Ultimate purchasers are induced to buy respondent's said vaults because of said warranties.

PAR. 6. Each and all of the said false and misleading representations used by respondent as set out in paragraph 4 hereof have and have had the capacity and tendency to induce the public to purchase and use respondent's said grave vaults in the belief that they are true, and have and have had the tendency and capacity to divert trade from said 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 Columbus in said State. Respondent is now, and for several years last past has been enegaged in the business of manufacturing, selling, and distributing metal grave vaults used to encase coffins in the burial of the dead, to purchasers thereof located at points in the State of Ohio, and at points in various other States of the United States, and causes said products when so sold to be transported from its principal place

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of business in the City of Columbus, Ohio, to the purchasers thereof in the State of Ohio, and to other purchasers thereof in other States of the United States and in the District of Columbia at their respective places of business, and there is now, and has been for several years last past, a course of trade and commerce by the said respondent in said product in the State of Ohio, and between and among the States of the United States and in the District of Columbia:

PAR. 2. As grounds for this paragraph of its 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, as each and all of the allegations of same were set out in full in said 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 Supplies Industries, 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:

After 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 any transaction in or affecting interstate or foreign commerce shall be deemed an unfair method of competition in commerce within the meaning of the Federal Trade Commission Act, as amended; but nothing in this title shall be construed to impair the power of the Federal Trade Commission under such Act, as amended.

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

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

* * * * *

(r) 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 holding by the Federal Trade Commission on complaint, finding, and order, that any practice or method is unfair; providing, that such adjudication or holding is not inconsistent with 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 such methods of competition herein alleged and described and has resorted to or indulged in the practice of misrepresentation in branding and labeling and selling, or advertising his said vaults in the manner hereinabove set forth.

The above alleged methods, acts, and practices of 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 Supplies Industry of the United States. Such violations 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on the 12th day of March, A. D., 1935, issued and served its complaint in this proceeding upon respondent, The Clark Grave Vault Company, a corporation, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, a stipulation as to the facts was agreed upon by and between W. T. Kelley, Chief Counsel for the Commission, and respondent, by which it was agreed that, subject to the approval of the Commission, the statement of facts so agreed upon should be taken as the facts in this proceeding, and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto. It was further agreed that the said Commission might proceed upon such statement of facts, including inferences drawn from said stipulated facts, to issue its report stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding, without the presentation of argument or the filing of briefs. Said stipulation as to the facts has been duly filed in the office of the Commission, and approved by it.

Thereafter the proceeding came on for final hearing before the Commission on said complaint, the answer thereto, and the statement of facts as agreed upon in lieu of testimony, briefs and argument

having been waived, and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPHS 1. Respondent, The Clark Grave Vault Company, is 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 Columbus, in said State. It is now, and has been for several years last past, engaged in the business of manufacturing and selling metal grave vaults, used to encase coffins for the burial of the dead, to purchasers thereof, many of whom reside outside of the State of Ohio. Orders received for such burial vaults are filled by respondent shipping the same from the said city of Columbus, in the State of Ohio, into and through other States of the United States to such purchasers.

PAR. 2. In the sale and transportation of its burial vaults, respondent is in competition with other individuals, copartnerships, and corporations engaged in the sale and transportation of metal, stone, concrete, cement, and other burial vaults in commerce between and among various States of the United States.

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

PAR. 4. Respondent has used advertisements in magazines having a wide interstate circulation, and has used booklets, circulars, pamphlets, letters, photographs, testimonials, and other advertising media, which it has circulated, or caused to be circulated, among its said customers and prospective customers, in which the statements and representations set forth and described in paragraph 5 hereof were made.

PAR. 5. In addition to the warranty described in paragraph 18 hereof, respondent's customers, prior to filing of complaint, used, and were authorized by respondent to use, in the sale and in the promotion of the sale of its said vaults, the following claims, statements, and representations as to its said vaults:

(a) Said grave vaults will remain water-proof and air-tight when placed underground for a period of fifty (50) years;

(b) Said grave vaults afford positive and permanent protection to the coffin and body incased therein;

(c) Clark created the water-proof, all-metal vault with its impenetrable air seal;

- (d) Clark vault is an accepted part of the modern burial service;
- (e) The Clark vault is a complete and lasting protection;
- (f) The Clark vault assures comfort and peace of mind to those who must "carry on";
- (g) Clark vaults are made of specially processed rust and corrosion-resisting metal, which is proof against moisture and against crumbling;
- (h) Each Clark vault is critically tested under 500 pounds of water for air- and water-tightness, and is warranted for 50 years or more.

PAR. 6. 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 a method of injecting certain fluids into the corpse for the purpose of delaying or retarding such decay and disintegration of the corpse for a temporary period of time, not permanently.

PAR. 7. Respondent's air-seal vaults are intended to protect the corpse, contained therein, during the life of the metal of which they are made, against accelerated decay and disintegration through damage produced or caused by water entering such vault and rising therein to such height as to touch the bottom of the casket.

PAR. 8. Respondent has been engaged in the manufacture and sale of air-seal type, sometimes commonly referred to as the "diving bell" principle, ferrous metal burial vaults, for about thirty-five (35) years. It is now using, and has used, 12 gauge Armco Ingot Iron, manufactured and processed by The American Rolling Mill Company, of Middletown, Ohio, and 12 gauge Keystone Copper Steel manufactured and processed by The American Sheet and Tinplate Company, of Pittsburgh, Pa. These metals purchased by the respondent, and used in the manufacture of its said vaults, are highly refined grades of metal, carefully made under the best modern scientifically controlled iron and steel making processes. They are high quality metals made as carefully, accurately and thoroughly as they can be made by exact control of furnacing operations to make the best ferrous metal that will resist, but not prevent, corrosion in the sense that the high quality of these metals tends to retard and slow the rate of corrosion and tends to increase their durability under ground for a longer period of time than if the impurities were not removed from the metal and if the metal had not been so highly refined and freed from those impurities which accelerate the process of rusting or corrosion.

These metals, by their very nature and texture, will not permit the passage of water or air through them during the life thereof unless they are punctured, broken or partially destroyed by rust or corrosion.

PAR. 9. The dome of the vaults of respondent, before being placed upon the market, is tested by being submerged under six (6) feet of water in an upright position without the pan being placed under it,

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to determine that there are no defects in its manufacture by which air is permitted to escape from, or water to enter through, the metal of which the dome is made. No vault is shipped by respondent until the dome of said vault has been so tested and found to have no defect in its material or its welds, by which air escapes from or water enters through said metal.

PAR. 10. Respondent's metal burial vaults, after burial, will not be entirely without moisture in them, because the human body, whether dead or alive, is composed largely of water and other fluids, and the air in the dome contains moisture; therefore, moisture to a certain extent will be present in every burial vault used in the burial of the dead.

PAR. 11. Respondent's vaults, made of ferrous metals, are not rust-proof, corrosionproof, rust resisting, or corrosion resisting to the extent that they will never rust or corrode after burial underground.

PAR. 12. Respondent's vaults, made of ferrous metals, are not always proof against moisture entering said vaults, or forever proof against crumbling after burial underground.

PAR. 13. Respondent's vault, made of ferrous metals, have not and will not always give positive, permanent, complete or lasting protection to the casket therein, or remain waterproof and airtight, under every burial condition, for any definitely known fixed or stated period of time.

PAR. 14. When the dome or hood of said vaults has been punctured, due to corrosion or other causes, they cease to be waterproof.

PAR. 15. Respondent's vaults after burial in the earth are not waterproof in the sense that no water whatsoever can enter within the vault underneath the bottom of the casket and are not impenetrable except for the period before rust and corrosion or other causes have punctured the metal, under every burial condition, as the life of metal burial vaults depends upon the character of the soil in which they are interred and upon the climatic and other conditions prevailing in the territory where interment is made.

Also, in order for 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 said vaults are used.

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

PAR. 16. Respondent has ceased to use, and is not now using the terms "rust proof," "positive and permanent protection," "absolute protection," "absolute waterproof," and "complete and lasting protection."

PAR. 17. The respondent's vault, made of ferrous metals, is a receptacle consisting of two parts, (1) a pan or base and (2) a hood, dome or top, and is constructed and manufactured to operate on the principle of the diving bell or air-seal principle, when sealed by surface of water flowing across or rising to the edge or rim of the dome on all four sides, by which the air confined thereby in the inverted airtight dome resists and prevents the rise of the water level within the hood to a height sufficient to touch and damage the casket or its contents. It is constructed of one continuous piece of metal—made so by double welding. The pan or base, at the time of filing complaint, was made of one piece of metal, and consisted of a raised metal portion three (3) inches above the plane of the lower surface of a flat edge or flange, approximately $1\frac{1}{2}$ to $1\frac{3}{4}$ inches wide which extends entirely around the bottom of the vault and rests on the ground for support. The entire base resembles an inverted pan with holes pierced through it near its top edge. Raised portions, or bosses, hold the bottom of the casket $\frac{5}{8}$ of an inch above the top of the pan and $3\frac{5}{8}$ inches above the grave floor. The bottom rim or flange of the hood, top or dome rests on this outside flange of the pan the thickness of the metal from the grave floor.

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Respondent's vault is made on the same general principle as the air-seal vault made by the trade generally, including Gallion, Springfield, Champion, Perfection, National, and others, but varies in dimensions, workmanship, and design. This vault is not airtight until sealed by resisting water at a level flowing or standing across the bottom edge of dome from side to side and end to end, or at a level that reaches its highest point along the bottom edge of the vault. Water rising from the bottom of the grave compresses the air in the cavity, under the base and the dome or hood, and as the pressure of the outside water head increases the resistance of the compressed air in the dome or hood increases. Circulation of air from cavity under base into hood is provided by holes along the sides of and near the top of base, thereby there is but one body of air.

PAR. 18. The warranty issued by respondent at the time of the filing of the complaint herein is in the words and figures, following, to wit:

THE CLARK GRAVE VAULT COMPANY FIFTY YEAR WARRANTY

Superior Clark Grave Vaults made of Keystone copper steel or Armco Ingot Iron and to which the warranty below applies, may be identified by this imprint which appears on them, and which is our trademark of quality.

Every Clark Grave Vault—with bottom open is submitted to a rigid inspection and test by being completely submerged under two-and-one-half (2½) tons of water to prove it is absolutely water and airtight.

In consideration of the purchase and payment for the vault with which this warranty is issued, to be indorsed hereon as indicated below, The Clark Grave Vault Company does hereby warrant such vault for a period of fifty (50) years from the date of purchase indorsed hereon below against water entering such vault from the grave due to defective construction, rust or corrosion.

Any such vault found to be defective within the terms of this warranty will be replaced within said fifty-year period without cost to the purchaser. It is understood that cinders and other highly corrosive material must not be used in filling grave and that the vault must be buried level.

This warranty shall be valid only when dated and countersigned by funeral director at time of sale of such vault and nothing contained herein shall constitute a warranty on behalf of the company against damage to the casket from dehydration of the remains or any other cause not herein specifically mentioned.

In witness whereof, The Clark Grave Vault Company has hereunto subscribed its name by its President duly authorized thereunto by resolution of its Board of Directors.

The Clark Grave Vault Company
By Allen F. Beck, President.

Name of Purchaser _____
Funeral Director _____ Date _____
Interment of _____ in _____

The foregoing warranty is issued by respondent through the jobber of said vaults, or funeral directors, and is intended to be, and in many

cases is, delivered to ultimate purchasers thereof by funeral directors, undertakers, morticians, or other persons selling the vaults.

PAR. 19. Respondent's vault, after burial level in a grave approximately six feet deep, so long as the metal is not punctured by rust or corrosion, is intended to prevent the water level in the surrounding ground from rising within the dome of such vault to such a height as to reach, touch, or damage the casket and its contents. The dome of the vault is not intended to be, and never is, airtight in the sense that there is, and can be, no air in it.

PAR. 20. Water frequently appears in graves due to many conditions, including weather. Where cemeteries are located on flat or low ground, water often will be found in graves thereof, particularly during the rainy seasons. Water in graves will touch these said vaults, and in time will produce rust thereon.

PAR. 21. Rust is the beginning of corrosion. Corrosion, once started on the vault, will usually continue until the metal is punctured, at which time the hood or dome will admit water through the hole created by such puncture.

PAR. 22. All soils are more or less corrosive and will eventually cause all ferrous metals to pit or corrode.

PAR. 23. The following statements and representations made by the respondent, its agents, employees, and representatives, in connection with the offering for sale, or selling in interstate commerce, the types of air-seal burial vaults manufactured by it at the time of filing of complaint herein, in certificates of warranty and in advertising, that:

(1) They will remain waterproof and airtight when placed underground for a period of fifty years;

(2) They will afford positive and permanent protection to the coffin and body encased therein;

(3) They are waterproof and have an impenetrable seal, when buried;

(4) They give complete and lasting protection;

(5) Clark vaults are made of rust and corrosion resisting metal, which is proof against moisture and against crumbling;

(6) They are absolutely waterproof and airtight;

(7) The Clark Grave Vault Company does hereby warrant such vault for a period of fifty (50) years against water entering such vault due to rust or corrosion;

(8) That such vaults are airtight, vermin proof, or waterproof, and give lasting protection to the corpse therein contained for any definitely known fixed or stated period of time when used for burial purposes;

And other statements or representations of like import are deceptive and have and have had the capacity and tendency to induce the public to purchase and use respondent's vault under the belief that said statements and representations are true, and have and have

had the tendency and capacity to unfairly divert trade to the respondent from its said competitors.

CONCLUSION

The aforesaid acts and practices of the respondent, under the conditions described in the foregoing findings, are to the prejudice of the public and of respondent's competitors; they are unfair methods of competition in commerce and constitute violations of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, 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, The Clark Grave Vault Company, a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of the types of air-seal burial vaults manufactured by it at the time of filing of complaint herein, or any type of burial vault made of ferrous metal, in interstate commerce or in the District of Columbia, forthwith cease and desist from:

1. Representing, in purported certificates of warranty, or guaranty, in advertising, or in any other manner, that its burial vaults, made of ferrous metal:

(a) Will remain waterproof and airtight when placed underground for a period of fifty (50) years, or for any fixed or stated period of time;

(b) Will afford positive and permanent protection to the coffin and body encased therein;

(c) Are waterproof and have an impenetrable seal, when buried;

(d) Will give complete and lasting protection;

(e) Are made of rust and corrosion resisting metal, which is proof against moisture and against crumbling;

(f) Are absolutely waterproof and airtight;

(g) Are warranted for a period of fifty (50) years against water entering such vault due to rust or corrosion;

(h) Are airtight, verminproof or waterproof, and give lasting protection to the corpse therein contained for any definitely known, fixed, or stated period of time, when used for burial purposes.

(2) From making other representations of like import; and

(3) 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
HAVANA-FLORIDA CIGAR COMPANY, INC.

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

Docket 2667. Complaint, Aug. 5, 1936¹—Decision, Mar. 29, 1937

Where the finest quality of cigar tobacco was grown in Cuba near Havana, and the word "Havana," or "Habana," had been used and understood since time immemorial by cigar purchasing and consuming public and cigar manufacturers and dealers of the United States as meaning said tobacco, which had long been imported therein and was widely and extensively there used and consumed in cigars made in whole, and in part only, from such tobacco, and which had the reputation, among the cigar consuming and purchasing public of the United States, as cigar tobacco of highest quality and excellence, with cigars made in whole or in part therefrom in large demand, and preferentially purchased by many cigar dealers and many of the consuming public, with many believing that use of such tobacco in cigars increases the quality and desirability thereof; and thereafter a corporation engaged in Florida in the manufacture, packing, branding, and labeling of various brands of cigars, for sale and distribution by it and its dealers to the purchasing and consuming public in the United States, through personal solicitation, circulars, and other communications with customers and prospective customers, and in competition with many who sell and distribute cigars composed in whole, and also cigars composed in part only, of Havana tobacco, and who rightfully and truthfully advertise, represent and label their said cigars as containing such tobacco, and with many who sell and distribute among the States cigars containing no such tobacco, but composed wholly of said product grown in the United States, or elsewhere than on the Island of Cuba, and who do not brand, label, advertise, or otherwise represent their said cigars as made of Havana or Cuban tobacco—

Sold and distributed, through personal solicitation of salesmen and through circulars and written correspondence, in large and substantial quantities, under such names and brands as "Garcia's Havana Smoker," cigars made by it to be sold at a price of two or five cents, and featured said name on the labels of the paper cigar bands and on various places upon the cigar boxes or containers in which sold in varying quantities, and so packed its two-for-five-cents "Hav-a-Good Cigar" in containers that word "Havana" in its corporate name appeared in juxtaposition with letters "Hav-a" of said last-named cigar's brand name, notwithstanding fact that cigars thus branded, labeled, and sold were made from a cheap grade of tobacco alleged to contain 1 percent of Cuban, but purchased ready-mixed from factories and dealers and consisting largely of clippings gathered from cigars in process of manufacture, and aforesaid cigars, thus branded, labeled, described, and advertised, contained no Havana tobacco nor tobacco grown on Island of Cuba in appreciable amount;

¹ Amended and supplemental.