

Syllabus

IN THE MATTER OF
CHAMPION 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 AN ACT OF CONGRESS APPROVED JUNE 16, 1933¹

Docket 2322. Complaint, Mar. 12, 1935—Decision, Apr. 10, 1937

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

- (a) Represented, through certificates of warranty and through magazines, booklets, circulars, and other advertising media having wide circulation among its customers and prospective customers in the several States, prior to, but not since, year 1932, that its said vaults were rust-resisting and waterproof and verminproof and had the capacity, for unstated, but indefinite, period of time, to resist corrosion and exclude water and other substances and vermin from entrance from the grave into the casket, and that its said vaults afforded perfect protection; and
- (b) Made use of warranties or guarantees, in connection with sale and offer of said vaults, under which, prior to, but not since, the year 1932, it undertook, irrespective of location or conditions in any plot of a cemetery where original vault was buried, and regardless of care or lack of care with which same was originally placed in the grave, to furnish a new vault without cost, if contents of original were damaged by water or other elements admitted from the grave because of failure of vault due to defective material or workmanship;

Facts being that, while its said vaults (1) were made by it with great care, by skilled workmen, of specially processed and considerably more costly metals of highest grade and quality obtainable in domestic market, and, by their very nature, exclusive of air, moisture, vermin, and water until the natural process of rust and corrosion, to which they were resistant but which they could not prevent, had advanced to stage of producing tiny holes or pits permitting penetration, (2) were equal to standard metal vaults made by responsible and reputable members of the industry in question, and were an established part of the funeral supply industry and a lawful subject for sale, purchase and transportation in interstate commerce, and (3) at time of sealing were capable of sustaining weight of earth incident to burial and protecting remains from accelerated decay due to entrance of moisture, air, water, and vermin and other deleterious agents for period of years, depending upon underground and climatic conditions in particular locality, and below set forth conjunction of circumstances, no ferreous metal, buried, has absolute or predictable rate of corrosion, which varies with locality, particular underground conditions, and qualities and chemical content of different soils, all ferreous metal burial vaults will

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

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rust and corrode after burial, irrespective of type of construction, corrosive properties of soil and other conditions so vary in different sections that, while given metal vault, buried, would resist penetration for more than one hundred years in some sections, such resistance would not exceed more than eight or ten in highly corrosive soils, ideal conjunction of conditions, which frequently does not obtain, must exist for air-seal principle to function as intended, and, due to climatic, geographical, chemical and mineralogical conditions not subject to its control, no prediction could be made by anyone as to the period during which such vaults would continue to protect casket and contents, as above set forth;

With capacity to mislead purchasers of said products, and with capacity and tendency to induce public to purchase and use same in the erroneous belief that the aforesaid various statements and representations as to resistance of metals involved to rust and corrosion, etc., and as to airtight and other qualities of said products, and protection afforded, were true, and to divert trade unfairly to it from its said 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.

Mr. Herman L. Weisman, of New York City, 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 Champion 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 Champion 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 Springfield, 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 coffins in 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 Springfield, 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 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 the 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 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 said vaults to said ultimate purchasers, the following and similar false and misleading claims, statements, and representations as to respondent's said vaults are made:

That its said vaults when buried under ground are waterproof and airtight, free from corrosion or rust, and will remain so for a period of more than fifty (50) years; that the metal of which they are made is impervious to corrosion.

(B) Respondent issues with each vault for delivery to the ultimate purchaser thereof, and they are so delivered, a written, purported warranty which provides in substance that The Champion Company warrants that the vault above-mentioned has been tested and inspected by skilled workmen and found to be free from all defects in materials and workmanship, and to be airtight and waterproof; that, when properly enclosed it will protect the casket and its contents from all outside elements. The Champion Company hereby agrees that if within fifty (50) years from the date of interment the contents of the above vault are damaged by vermin, water, or other elements admitted from the outside, that it will replace said vault free of charge, but it does not warrant against damage to the casket and its contents due to dehydration of the remains.

PAR. 5. The statements and representations described in subdivision (A) of the preceding paragraph are false and misleading in that respondent's said grave vaults are not always airtight and waterproof when buried under ground; that said grave vaults in

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many instances will not remain waterproof and airtight when buried under ground for a period of fifty (50) years; that said grave vaults when buried under ground are not impervious to corrosion or to rust; that the metal from which said vaults are made, when buried under ground is not impervious to rust or corrosion. Respondent's said vaults are made of materials which will corrode and rust; 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 (3) to ten (10) years and in others from ten (10) to twenty (20) years; in many soils respondent's said vaults will corrode and pit in a period of less than fifty (50) years, so as to let water into them; in many instances they will corrode or rust so as to cave in or collapse. Respondent's said vaults made with the materials now used have never been tested as to their corroding for a period of fifty (50) years or more, nor has the metal of which they are made been so tested; respondent's said vaults when buried under ground will, and often do permit water and air to enter them. Either air or water entering respondent's vaults when buried under ground promote and cause disintegration of the coffin and body encased therein. Water often enters the graves of the dead. The mechanism provided by respondent for sealing said vaults will not at all times prevent the entrance of water into said vaults with resulting damage to the coffin and body placed therein.

The statements and representations described in subdivision (B) of paragraph 4 hereof are false, misleading and deceptive in that the terms "waterproof" and "airtight" as used by respondent as aforesaid mean to the ultimate purchasers thereof a watertight, airtight vault, a vault which will not permit water or air to enter the same, and that will endure as such under burial conditions for a period of fifty (50) years or more. The respondent's said vaults are not waterproof or airtight as the terms are understood by the ultimate purchasers thereof. Water or air may seep into or enter these said vaults through the joints, holes, fastenings, or flanges thereof or through pit holes due to corrosion or due to corrosion or bending of such vaults.

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. The exhumation of bodies after burial is so rare as to make these certificates or warranties worthless to the purchasers of these vaults for the reason that no opportunity is offered them 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 the said vaults. It is false and misleading for respondent to call them warranties or to issue them at all.

PAR. 6. Each and all of the false and misleading representations used by respondent as set forth and referred to 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 capacity and tendency 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 by virtue of the laws of the State of Ohio, with its factory and principal place of business located in the city of Springfield, 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 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 said principal place of business in the city of Springfield, 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 Competi-

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tion for the Funeral Supply Industry, which became effective on the tenth day thereafter. The respondent herein was a party to and signatory of such Code of Fair Competition, and such Code is now in full force and effect as to this respondent.

The said National Industrial Recovery Act, Section (3), Paragraph (B) provides:

If the President shall have approved any such Code, the provisions of such Code shall be the standards of Fair Competition for such trade or industry, or supervision thereof. Any violation of such standards in transaction in or affecting interstate or foreign commerce shall be deemed an unfair method of competition of commerce within the meaning of the Federal Trade Commission Act, as amended; but nothing in this title shall be construed to impair the powers of the Federal Trade Commission under such Act, as amended.

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

1. The following practices constitute unfair methods of competition and are prohibited: To resort to or indulge in practices which are prejudicial to the public interest such as

Misbranding,

Misrepresentation in branding,

Labeling,

Selling, and

Advertising.

(W) Nothing in this Code shall limit the effect of any adjudication by the courts or holdings by the Federal Trade Commission on complaint, finding and order, that any practice or method is unfair providing that such adjudication herewith is not inconsistent of any provision of the Act or of this Code.

Notwithstanding the said provisions of said Code of Fair Competition respondent has continued to and does, use said methods of competition hereinabove alleged and described, and has resorted to or indulged in the practice of misrepresentation in branding, labeling, selling, and advertising its said vaults in the manner hereinabove set forth.

PAR. 4. The above alleged methods, acts, and practices of the respondent are and have been in violation of the standards of fair competition as set forth in said Code of Fair Competition for the said Funeral Supply Industry of the United States. Such violation of such standards in the aforesaid transactions in interstate commerce and in other transactions which affect interstate commerce in the manner set forth above are in violation of Section (3) of the National Industrial Recovery Act and they are unfair methods of competition in commerce within the meaning of the Federal Trade Commission Act, as amended.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on the 12th day of March 1935, issued and served its complaint in this proceeding upon respondent, Champion 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 Federal Trade 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 proceedings came on for final hearing before the Commission on said complaint, the answer thereto and the statement of facts as agreed upon in lieu of testimony, briefs and argument having been waived, and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, the Champion 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 Springfield in said State. It is now, and for the past fifty years has been, engaged in the business of manufacturing and selling metal grave vaults used to encase coffins in the burial of the dead, to purchasers thereof, many of whom reside outside of the State of Ohio. When orders are received therefor they are filled by respondent by shipping the vaults from the said city of Springfield, State of Ohio, into and through other States of the

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United States to the respective places of business or residences of such purchasers. These vaults are called the "Champion Burial Vaults." Respondent has built up a very substantial business in this product.

PAR. 2. 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 commerce between and among the 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 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 only for a temporary period of time, not permanently. The function of a metal burial vault is further to delay such process of decay and disintegration by preventing acceleration of such process through the entrance of water and other deleterious substances from the grave into the casket.

PAR. 5. The burial vaults manufactured by the Champion Company are made with great care by skilled workmen, of United States Standard 12 gauge metals. They are useful, proper and suitable receptacles for the interment of the dead; and are equal to the standard metal vaults manufactured by the reputable and responsible members of the metal vault industry. Such metal vaults are an established part of the funeral supply industry and may be lawfully sold, bought, and transported in interstate commerce.

PAR. 6. Ferreous metals called Armco Ingot Iron and Copper Bearing Steel are used by respondent in the manufacture of its said burial vaults. These metals are specially processed and rolled from the highest grade and quality of metals which can be obtained by respondent in the domestic market for the manufacture of its burial vaults. Their cost is considerably higher than the cost of ordinary commercial steel. They are fabricated under the best, modern, scientifically controlled steel-making processes which reduce impurities and tend to increase their durability in underground service. Their manufacturers are of recognized responsibility and integrity and make rigid inspection and tests of each sheet of said metal before shipment to the respondent. These metals, by their very nature, will exclude air, moisture, vermin and water until the

natural process of rust and corrosion, which these metals will resist but cannot prevent, has advanced to the stage of producing tiny holes or pits which will permit penetration of said metals.

PAR. 7. There is a vast difference in the corrosive properties of soils found in the cemeteries in the various parts of the United States and also a great difference in the surface and sub-surface drainage conditions in various sections of the country.

PAR. 8. All burial vaults made of ferreous metals will rust and corrode after burial underground. No ferreous metal, buried underground, has an absolute or predictable rate of corrosion. Such rate will vary with the locality, with particular underground conditions and with the qualities and chemical content of different soils.

PAR. 9. There is no material yet known or devised, adaptable for construction into a receptacle useful in the burial of the dead, which when placed underground would not in time deteriorate and cease to resist penetration of air, moisture, water, or vermin. The rate of deterioration would be slow in some soils and more rapid in others, depending upon the climatic conditions of the locality and the chemical and mineral composition and content of the soil in a particular place.

PAR. 10. The process of deterioration above referred to would affect every type of metal vault irrespective of whether its type of construction involved closing upon the so-called air-sealing or diving-bell principle, or depended upon mechanical locks or clamps. No principle of mechanics or physics, no process of construction and joinder of metals and no method for sealing metal burial vaults are available to enable any manufacturer thereof to warrant or predict that such vaults when placed underground would endure as airtight, verminproof and waterproof for any fixed or stated period of time.

PAR. 11. In many sections of the United States, the corrosive properties of the soil and other conditions are such that a 12 United States Standard guage metal vault placed underground would resist penetration for a period of more than one hundred years; in some of the more corrosive soils in the United States a similar vault would resist such penetration by corrosion for only fifty years, while in still other highly corrosive soils penetration would be accomplished within eight to ten years.

PAR. 12. The Champion Burial Vault is what is known in the trade as an air-seal vault. It consists of two parts: (1) a pan (or base), and (2) a hood (dome or top) and operates on the principle of a diving bell. The confined air in the inverted airtight dome is supposed to resist the entrance of water rising from below. The top

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and sides of the hood are made of one piece of iron. The pan is also made of one piece of iron. The entire base resembles an inverted pan. Small raised portions, or bosses, hold the bottom of the casket a fraction of an inch above the top of the pan. The bottom rim or flange of the hood (dome or top) rests on the outside flange of the pan, the width of the metal from the grave floor. This type of vault is not airtight or waterproof until sealed by water to the level of the highest point on the rim of the inverted dome which rests on the flange of the pan. Water rising from the bottom in the grave forces the air from the cavity under the base through holes at each corner of the pan, into the hood. As the pressure of the outside water increases, the resistance of the compressed air increases, and, in theory the vault is sealed against the further entrance of water to the extent that it will not reach the casket within. The mechanism provided by respondent for sealing said vaults will not at all times prevent the entrance of water into said vaults with resulting damage to the coffin and body placed therein. In addition, in order for them to remain waterproof for any considerable length of time, they must be buried and remain buried under ideal conditions, which are:

1. An airtight hood,
2. A level base,
3. The air space underneath the pan must not be occupied by dirt or other materials that will reduce the amount of air to be forced into the dome.
4. There must be no appreciable change of temperature in the grave from that obtaining when the vault is first buried.
5. There must be no appreciable changes in atmospheric pressure.

These said "ideal" conditions do not obtain in a large number of cases of burial where said vaults are used.

PAR. 13. Respondent's metal vaults, at the time of their sale, are capable of sustaining and will sustain the weight of earth incident to burial.

PAR. 14. Respondent's metal vaults at the time of their sale are capable of protecting and will protect the remains within the casket from accelerated decay and decomposition due to the entrance from the grave into the casket of moisture, water, vermin, or other deleterious agents for a period of years depending upon the underground and climatic conditions in the locality where any such vault is used and the conditions mentioned in paragraph 12 above.

PAR. 15. No prediction can be made by anybody as to the period within which respondent's vaults will continue after burial to protect the casket and its contents from accelerated decay and decomposition because climatic, geographic, chemical and mineralogical conditions

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not subject to respondent's control determine the duration of such period.

PAR. 16. Instances of disinterments are rare when compared with the total number of burials, but disinterments are not unusual occurrences. Changes in a cemetery, or removal of a section of a cemetery or even of an entire cemetery necessitates disinterments followed by reburial in some other cemetery. Disinterments are often brought about by the wishes of surviving relatives to change to better or differently located burial plots or to some different plot or cemetery where other members of the same family are buried. Such disinterments are followed by reburial. Irrespective of the actual state of decay and disintegration of the remains within the casket when disinterment of the vault takes place, surviving relatives concerned in the reburial have a proper interest as to whether the condition of the original vault makes reburial thereof practical or whether such receptacle needs to be replaced.

PAR. 17. At the time when the complaint herein (dated March 12, 1935) was issued and since on or about May 1, 1932, respondent offered to issue and from time to time did issue, incident to the sale of its burial vaults, a warranty offering under stated conditions to furnish a new vault, without cost, irrespective of the location of or conditions in any plot or cemetery where the original vault was buried and regardless of the care or lack of care with which the same was originally placed in the grave; said warranty reciting that:

The Champion Company warrants that the vault, above mentioned, 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.

The Champion Company will replace this Champion Burial Vault, without cost, if its contents are damaged by water or other elements admitted from the grave because of the failure of the vault due to defective material or workmanship, but damage to the casket or contents caused by dehydration of the remains is excepted.

PAR. 18. Respondent has a legitimate interest in making known to the undertakers and dealers in funeral supplies who purchase its burial vaults for resale and to the ultimate purchasers of said vaults, its willingness, without cost, to furnish a new vault under the conditions stated in such warranty.

Such warranty is of value to the recipients thereof, any one of whom may some time after the original burial, find it necessary to arrange for reburial, after disinterment, in some other plot or cemetery.

PAR. 19. Respondent has made and issued said certificates of warranty in good faith and is, and at all times has been, financially able,

ready and willing to comply fully with, and perform the full terms of, its certificate of warranty.

PAR. 20. Prior to 1932, but not since that year, including the period since the filing of the complaint herein, respondent did represent in certificates of warranty, substantially different from the certificate above referred to, and in magazines, booklets, circulars, and other advertising media, having a wide interstate circulation among its customers and prospective customers residing in the several States of the United States, in connection with the sale and promotion of the sale of its said burial vaults, in substance, that its said vaults were rust-resisting, waterproof and verminproof and had the capacity for an unstated but indefinite period of time to resist corrosion, exclude water and other substances and vermin from entrance from the grave into the casket and that its said vaults afforded "perfect protection."

Respondent in 1932, and prior to the issuance of the complaint herein dated March 12, 1935, has voluntarily abandoned, and in the usual course of business ceased to use, and it does not now make, issue or use, the above representations or statements or any of them, either in certificates of warranty or in any advertising media or in any other manner.

PAR. 21. Respondent's use of representations to the effect that its burial vaults would, under all underground conditions, remain waterproof, rust-resisting, and verminproof, had the capacity to mislead the purchasers of said vaults. Because of the great variation in the corrosive properties of soils in different sections of the country and in the subterranean water-level conditions and the surface drainage conditions, and also because of the conditions set forth in paragraph 12 hereof, any universal representation as to the endurance qualities of said vaults in underground service is inaccurate and misleading.

PAR. 22. 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 of the types of ferrous metal burial vaults, above described, in certificates of warranty and in advertising, to the effect that:

1. The metal of which respondent's vaults are made is able for any fixed or stated period of time to resist rust and corrosion or the effects thereof when placed underground;

2. The said vaults will remain airtight, verminproof or waterproof for any fixed or stated period of time after being placed underground;

3. Said vaults afford perfect protection;

4. Or any other representations of like import;

5. And the use of certificates of warranty such as described in paragraph 20 hereof in aid of the sale of said vaults; are untrue, 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 erroneous 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, Champion Company, a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of ferrous metal burial vaults in interstate commerce or in the District of Columbia, forthwith cease and desist from:

1. The use of representations in certificates of warranty or guaranty, in advertising, or in any other manner, to the effect that:

- (a) The metal of which respondent's vaults are made is able for any fixed or stated period of time to resist rust and corrosion or the effects thereof when placed underground;
- (b) The said vaults will remain airtight, verminproof or water-proof for any fixed or stated period of time after being placed underground;
- (c) Said vaults afford perfect protection.

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

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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.

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IN THE MATTER OF

ANNA R. BARLETTA, TRADING AS BARLETTA MANUFACTURING AND PACKING COMPANY, AND HERCULES A. BARLETTA

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

Docket 2907. Complaint, Aug. 21, 1936—Decision, Apr. 10, 1937

Where two individuals engaged in manufacturing, compounding, selling, and distributing a variety of flavoring extracts, in substantial competition with others engaged in the sale and distribution of such products—

Represented, through labels affixed to the bottles of their said products, and containing Italian words and coat of arms, and through counter display cards furnished to purchasers thereof, upon which display cards were likewise contained such words, that their said extracts were made, compounded and packaged by the Modern Italian Laboratory at Milan, Italy, and were imported into the United States, and that they had won a gold medal at an exposition held in Florence, Italy, in 1934 on account of excellence of their said products, and they were distributors of Italian-made extracts, facts being that, while samples compounded and made up by them in the United States and sent to exposition in Florence, Italy, in year in question were there displayed and awarded certificate of merit, their said extracts, labeled as aforesaid, were not made, prepared, compounded, or packed in Italy by any company, nor imported into the United States, but were made by said individuals at their place of business in New York City, and they were not distributors of extracts of Italian origin;

With effect of misleading large number of Italian-Americans among the purchasing public, who distinctly prefer, as superior to such products produced in this country, flavoring extracts produced in Italy, into belief that in buying such domestic products, labeled and described as above set forth, they were purchasing the preferred imported extracts of Italian origin, and with capacity and tendency to mislead and deceive purchasing public into the belief that such extracts were prepared, compounded and packaged in Italy and imported into the United States, and to induce such public, acting in such erroneous belief, to buy their said products and thereby unfairly divert trade to them from competitors who rightly and truthfully represent their merchandise and do not, in any wise, falsely represent the same; 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. W. W. Sheppard*, trial examiner.

Mr. Astor Hogg for the Commission.

Mr. Joseph M. Ficco, of New York City, for respondents.