

Syllabus

IN THE MATTER OF

PERFECTION STEEL BODY COMPANY, TRADING AS
PERFECTION BURIAL 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 AN ACT OF CONGRESS APPROVED JUNE 16, 1933¹

Docket 2325. Complaint, Mar. 12, 1935—Decision, Apr. 12, 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 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; and

(b) Made use of warranties or guaranties, 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 to the purchaser "upon proof of claim that this vault failed to give protection";

Facts being that, while (1) its said vaults 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 rust

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

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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 air-tight 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 Perfection Burial 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, Perfection Burial Vault Company, is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its factory and principal place of business located in the city of Galion in said State. It is now, and for several years last past, has been engaged in the business of manufacturing and selling metal grave vaults used to encase a coffin in the burial of the dead, to purchasers thereof, many of whom reside outside the State of Ohio, and when orders are received therefor,

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they are filled by respondent by shipping the same from the said city of Galion, State of Ohio, into and through other States of the United States to the respective places of business or residences of such purchasers.

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

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

PAR. 4. Respondent issues with each vault for delivery to ultimate purchasers thereof and they are so delivered, a written purported warranty which provides in substance:

Perfection Burial Vault Company

Fifty Year (50) Warranty Certificate No ----

The Perfection Steel Body Company, manufacturer of Perfection Steel Burial Vaults, hereby warrants that:

1. This vault is made of 12 gauge metal, has been constructed by skilled workmen, has been tested by being submerged under pressure, and upon careful inspection was found to be free from any defects in material and workmanship, and to be waterproof and airtight.

2. When properly closed, it will protect the casket and its contents against entrance of water from external sources for a period of fifty years, and the underground service and protection to the contents of this vault will not be impaired by rust or corrosion for at least fifty years.

3. Upon proof of claim that this vault within fifty years from the date of interment failed to give this protection against the effects of rust, or corrosion and the entrance of water from external sources, the manufacturer will replace it without cost to the purchaser.

This agreement is a valid warranty of protection and replacement as applied to vault ----- interred ----- day of ----- 19-----, from the date of said interment as countersigned by the funeral director below.

In witness whereof the corporate seal and signature of the President, duly authorized by the Board of Directors are affixed.

Countersigned The Perfection Burial Vault Company,

Funeral Director

Division of the Perfection Steel Body Company,

Galion, Crawford County, Ohio.

II. COHEN, *President*.

PAR. 5. The statements and representations described in the preceding paragraph are false and misleading in that respondent's said grave vaults will not remain waterproof and airtight for a period of fifty years; that in many instances said vaults are not waterproof and airtight or either at the time of sale to the ultimate purchasers

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thereof; that in many instances when closed as directed it will not protect the casket and its contents against entrance of water from external sources for a period of fifty years; that the underground service and protection to the contents of said vaults will often become impaired by rust and corrosion in many soils of the United States within a period of fifty years; 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 corrode and pit in a period of from three to ten years and in others from ten to twenty years; whether respondent's said vaults or the materials of which they are made will last under burial conditions in any soil for a period of fifty years has never been determined; in many soils respondent's vaults will corrode and pit so as to let water into them; in many soils they will corrode and rust so as to cave-in or collapse; respondent's said vaults when buried underground are not airtight and waterproof and will, and often do, permit air and water to enter therein. Either air or water entering respondent's vault, when buried underground, 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 their said vaults will not at all times prevent the entrance of water into the same.

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 which will endure as such under burial conditions. The respondent's said vaults are not waterproof or airtight as the terms are understood by ultimate purchasers thereof. Water or air may seep into or enter the said vaults through the joints, holes, fastenings, or flanges thereof, or through pit holes due to rust or corrosion, or due to collapse or bending of the vaults. One hole the size of a pin appearing in the hood of said vaults will destroy the sealing thereof and permit water, if there is water in the grave, to enter the same. The exhumation of bodies after burial is so rare as to make these certificates of warranty worthless to a vast majority of purchasers of these vaults for the reason that no opportunity is afforded them in which to ascertain whether such vaults are or have been airtight or waterproof, or whether same will corrode, pit, or rust. 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 in instances where the same are entirely defective, not waterproof or airtight. It is false and misleading for respondent to call them warranties or to issue them at all.

PAR. 6. Each and all of the said false and misleading statements and representations used by respondent as set out in paragraph 4 herein have and have had the capacity and tendency to induce the public to purchase and use said respondent's said grave vaults in the belief that they are true, and have and have had the tendency and capacity to divert trade from said competitors of respondent.

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

Count 2

PARAGRAPH 1. Respondent is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its factory and principal place of business located in the city of Galion, in said State. Respondent is now and for several years last past, has been engaged in the business of manufacturing, selling, and distributing metal grave vaults, used to encase 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 of business in the city of Galion, State of Ohio, to the purchasers thereof in the State of Ohio and to other purchasers thereof in other States of the United States and in the District of Columbia at their respective places of business, and there is now and has been for several years last past a course of trade and commerce by the said respondent in said products in the State of Ohio and between and among the States of the United States and in the District of Columbia.

PAR. 2. As grounds for this paragraph of this complaint, the Federal Trade Commission reiterates, adopts, and relies upon all matters and things set out in paragraphs 2 to 7, inclusive, of count 1 hereof to the same extent as though each and all of the allegations thereof were set out at length and in full in this paragraph.

PAR. 3. On November 4, 1933, under and pursuant to the provisions of the National Industrial Recovery Act, the President of the United States made, issued, and approved a Code of Fair Competition for the Funeral Supply Industry, which became effective on the tenth day thereafter. The respondent herein was a party to and signatory of

such Code of Fair Competition, and such Code is now in full force and effect as to this respondent.

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

If the President shall have approved any such Code, the provisions of such Code shall be the standards of fair competition for such trade or industry, or supervision thereof. Any violation of such standards in transaction in or 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 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 practices of misrepresentations 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 Commis-

sion, 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, Perfection Steel Body Company, a corporation, trading as Perfection Burial Vault Company, 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 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 arguments having been waived, and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent named above as Perfection Burial Vault Company, is in truth the Perfection Steel Body Company, a corporation organized and existing under and by virtue of the laws of the State of Ohio. The lawful trade name of respondent is Perfection Burial Vault Company. Respondent's factory and principal place of business is located in the city of Galion in said State. It is now, and for several years last past has been engaged, among other things, 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 Galion, State of Ohio, into and through other States of the United States to the respective places of business or

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residences of such purchasers. Respondent calls its said vaults the "Perfection Steel Burial Vaults." Respondent has built up a very substantial business in this product.

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

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

PAR. 4. A 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 Perfection Burial Vault Company are made with great care by skilled workmen, of United States Standard 12 gauge metal. 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 can not 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 subsurface drainage conditions in various sections of the country.

PAR. 8. All burial vaults made of ferrous metals will rust and corrode after burial underground. No ferrous 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, vermin proof 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 United States Standard 12 gauge 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 Perfection 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 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, 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 conditions 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 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:

1. This Vault is made of 12 gauge metal, has been constructed by skilled workmen, has been tested by being submerged under pressure, and upon careful inspection was found to be free from any defects in material and workmanship.

2. Upon proof of claim that this Vault failed to give protection, the manufacturer will replace it without cost to the purchaser.

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 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 certificates of warranty.

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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 to resist corrosion, exclude water and other substances, and vermin from entrance from the grave into the casket.

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 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 a stated period of fifty years, or 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. Or any other representation of like import;

4. And the use of certificates of warranty such as described in paragraph 20 hereof in aid of the sale of said vaults,

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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 under the erroneous belief that said statements and representations are true and have and have had the tendency and capacity to unfairly divert trade to respondent from its 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, Perfection Steel Body Company, a corporation, trading as Perfection Burial Vault Company, 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 a stated period of 50 years, or 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 waterproof for any fixed or stated period of 50 years, or for any fixed or stated period of time, after being placed underground.
- (c) Or any other representation, of like import.

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2. 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
PAUL GREENBERG, DOING BUSINESS AS BEVERLY
PRODUCTS COMPANY

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

Docket 2644. Complaint, Dec. 5, 1935—Decision, Apr. 14, 1937

Where an individual engaged in the sale and distribution among the various States of certain medicinal preparations known and described, respectively, as "Beverly Femin Tablets" and "Beverly Menses Tablets," in substantial competition with others engaged in sale and distribution among the various States and in the District of Columbia of various preparations similar in kind, and of preparations intended for and adapted to the purposes and uses for which his said products were adapted, and including among his said competitors those who do not make such false and misleading representations as made by said individual as hereinbelow set forth, but truthfully and accurately state the purposes for which their said products may be used and the effects thereof; in advertising his said preparations in newspapers and magazines circulated to the purchasing public in various parts of the United States, and, chiefly, through circular letters and other advertising material distributed to purchasing public in the various States by mail or otherwise—

- (a) Represented that said "Beverly Femin Tablets" preparation constituted an effective, potent, and powerful antiseptic and germicide for use by women in preventing and destroying germ life causative of female and sexual diseases, and for use in promoting feminine hygiene by reason of such properties, and was a cure, remedy, or competent and adequate treatment for leucorrhea and cervicitis, and could be used safely and without fear of harmful results, and, by innuendo and suggestion, that said preparation was a contraceptive which gave absolute protection and could be depended upon for such purpose without limitation, and that one "Prof. John R. Baker, M. A., Ph. D., of Oxford University" had established the fact, through investigations as to the antiseptic powers of feminine hygiene preparations on the market, that said tablets represented the furthest advance in vaginal therapy, and, through statements attributed to them by purported quotations, that physicians had endorsed and recommended such tablets, facts being said preparation was not an effective, potent, and powerful germicide under conditions of use when employed by women to prevent and destroy germ life, nor a proper or effective treatment for aforesaid diseases, and could not be used safely and without fear of harmful results as a germicide, due to fact that infection, preventable through use of an effective germicide, might result by reason of said preparation's ineffective and limited action in such respect, and said preparation was not a dependable contraceptive under all conditions or in all cases, and did not afford positive protection as such, in view of the nature of the circumstances attending the use thereof, and representations and intimations that it might be depended upon absolutely in such respect were inaccurate, greatly overdrawn and misleading; and