

Syllabus

IN THE MATTER OF

MORTIMER ALFRED GERSTEN AND LEE GERSTEN,
DOING BUSINESS AS GERSTEN BROTHERSCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2810. Complaint, May 18, 1936—Decision, Feb. 16, 1939*

Where two individuals engaged as partners in the manufacture of storage receptacles, chests, and closets for storing clothing and other materials against ravages of moths and deterioration caused by exposure to light and dust, and which were made of corrugated paper between thin sheets of fiber, about one-eighth of an inch thick, were supplied, in case of closets, with metal clothes hangers to support weight of 100 pounds of stored articles, and were provided, in case of both closets and chests, with built-in receptacle to hold chemicals or moth bullets or ant moth pellets placed therein prior to sale, and in selling said storage receptacles, closets, and chests to retail and wholesale dealers in such articles in the District of Columbia and in the various States, and in selling also, separately, for use in their storage receptacles, said so-called moth bullets or "Anti-Moth Pellets" and "Closet Moth Proofer," which contained, among other things, not more than about 2 ounces of a compound of cedar leaf and pine oils in about equal proportions, and, as thus engaged in selling as aforesaid their various articles, in substantial competition with those engaged in sale for similar purposes of various storage receptacles such as garment bags, closets, and chests—

- (a) Branded or marked their said storage receptacles "Cedarol Closets" and "Cedarol Chests," in large letters, and receptacles used therein "Cedarol Closet Moth Proofer" and "Mothador," and caused said storage receptacles, thus branded or marked, and said receptacles, to be offered and sold by wholesale and retail dealers to public, and thereby falsely represented, through use of said first-named word, to wholesale and retail dealers and public, that such "Cedarol" closets and chests were effective storage receptacles against ravages of moths because of presence of cedar oil in their construction, and that such "Cedarol Closet Moth Proofer" were provided with sufficient cedar oil so as to give storage receptacles or other storage places in which used same qualities for storage purposes as possessed by efficient cedar wood storage receptacles, as long made in accordance with accepted and recognized practice, and as associated by public with such qualities and efficiency for storage purposes of such practically air-tight cedar wood receptacles as thus made, and falsely represented, through use of word "Mothador," to wholesale and retail dealers and public, that such contrivances, attached to or contained in its said storage receptacles, made the same, or others when supplied with its so-called moth bullets or other chemicals or oil compounds, efficient protection to contents thereof against ravages of moths;

Facts being loose construction of said receptacles, when in use for storage purposes, tended to and did cause seams thereof to spread and permit ingress

and egress of air and moths, and the fiber or cardboard material of which same were made was permeable to air and to vapor of gas from oils of chemicals used in moth bullets or other chemicals or oil materials supplied by them for protection of materials against such ravages, so that they not only permitted ingress of moths and air, but were useless for purpose of causing concentration of vapor or gas from chemicals or oils used therein to become sufficient as a fumigant to protect materials therein stored from said ravages and, in consequence, they did not afford protection to stored clothing and other materials in aforesaid respect, and from deterioration from exposure to dust and light;

- (b) Caused false and misleading statements to appear in advertisements concerning their storage receptacles, and "Mothadors" and "Closet Moth Proofers" used in connection therewith, in newspapers, trade papers, magazines, and other publications, to the effect that their closets and chests were "Cedarol" closets and chests, and that their "Cedarol Closet Moth Proofers," with moth bullets, protected clothes of user, when employed in respondents' storage receptacles or in cabinets and closets of members of the public, from the ravages of moths or moth larvae, and that they destroyed moths and kept the same out of the storage receptacles, and that use of one such moth proofer loaded with moth bullets for each 40 cubic feet of confined closed space, when placed in wardrobes in which clothing was stored, was insurance against moth damage, and that it destroyed moths, and that their said receptacles were efficient and sufficient protection to articles stored therein against aforesaid ravages; and
- (c) Caused wholesalers and retailers and others to make, in turn, statements similar to those above referred to, both in advertisements in newspapers, trade papers, and other publications, and verbally to members of the public, concerning their aforesaid products;

With effect of deceiving and misleading dealers in storage receptacles through such marking or branding, and such other false and fraudulent statements and representations, into the belief that they were true, and of causing them, in turn, to pass on such false and misleading representations to members of public, and of deceiving and misleading wholesalers and retailers and members of the public into the mistaken and erroneous belief that such false and fraudulent statements and representations were true, and, in reliance thereon, into purchasing their said receptacles for sums of 89 cents, more or less, and their said moth proofer for use in such receptacles, in place of storage receptacles of competitors which were efficient and sufficient protection against ravages of moth larvae to materials stored therein, and were customarily sold to public, according to size and other qualities, at prices ranging from approximately \$1 to \$10, and upwards, and trade in storage receptacles was thereby diverted to them from competitors:

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

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. John N. Wheelock for the Commission.

Mock & Blum and *Mr. Abraham H. Brown*, of New York City, for respondents.

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COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Mortimer Alfred Gersten and Lee Gersten, copartners, doing business under the trade name Gersten Brothers, hereinafter referred to as respondents, have been and now are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondents, Mortimer Alfred Gersten and Lee Gersten, are and have been copartners doing business under the trade name, Gersten Brothers, at all times since more than 5 years immediately prior to the date hereof, having a place of business during said times and now at 516 West Thirty-fourth Street, Borough of Manhattan, city of New York, N. Y.

PAR. 2. During all the times above mentioned the respondents are and have been engaged in the business of the manufacture and in the business of the sale, among other things, of storage receptacles, chests, and closets made of corrugated fiber for use for the protection in storage, among other things, of clothing and other materials against the ravages of clothes' moths and the deterioration caused by exposure to light and dust.

PAR. 3. The respondents, during all the times above mentioned and referred to, have sold their storage receptacles, closets, and chests, to retail and wholesale dealers in such articles, purchasers thereof, located in the District of Columbia and in the various States of the United States other than New York, or the State of origin of the shipment, for resale to members of the public, users thereof, and the respondents have caused their storage receptacles, when so sold by them, to be transported from New York or from the State of origin of the shipment to, into, and through the District of Columbia and States other than New York or the State of origin of the shipment, to the purchasers there located.

PAR. 4. During all the times above mentioned and referred to, other individuals, firms, and corporations, located in the various States of the United States, hereinafter called sellers, are and have been engaged in the business of the sale of various storage receptacles, such as garment bags, boxes, closets, cabinets, and chests, for use in

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the storage of clothing and other materials subject to the ravages of clothes' moths and to deterioration from exposure to light and dust, to retail and wholesale dealers therein, purchasers thereof, located in States other than the State of the seller or State of origin of the shipment, for resale to members of the public, users of such storage receptacles. The sellers, respectively, caused the storage receptacles, when so sold by them, to be transported from the State of the seller or from the State of origin of the shipment to, into, and through the District of Columbia and the other States, to the purchasers there located.

PAR. 5. The respondents during all the times above mentioned or referred to are, and have been, in substantial competition in interstate commerce with the other individuals, firms, and corporations referred to as sellers in paragraph 4 hereof in the sale of their storage receptacles, chests, and closets.

PAR. 6. The aroma or odor of cedar oil is not a repellent and does not act as a repellent so as to prevent clothes' moths from entering closed storage receptacles, the interiors of which contain or are impregnated with cedar oil. The aroma or odor of cedar oil has no effect on any stage of moth life. As a fumigant, however, the vapor or gas from cedar oil, if of sufficient concentration, will kill young moth larvae and some of the older larvae, and it will also cause the activity of the older larvae to be suspended.

PAR. 7. Storage receptacles, garment bags, boxes, closets, cabinets, and chests are used for the storage of clothing and other materials ordinarily during a continuous period of seven months in a year.

In order to be effective upon moth larvae as a fumigant during the above storage period or any part thereof, cedar oil or other volatile oils or chemicals, must be held in practically airtight container in order that the evaporating gas or vapor therefrom may be confined and thereby become of sufficient concentration for that purpose.

PAR. 8. Storage receptacles, closets, cabinets, and chests made of wood and practically airtight and containing in the body proper (top, sides, and bottom) as much as 70 percent of $\frac{3}{4}$ -inch red cedar wood, furnish an atmosphere within them when in use and closed that does not permit the eggs of clothes moths in such receptacles to develop into larvae which can cause damage to stored material and later develop into clothes moths. Such storage receptacles by tests and by experience in their use as storage receptacles, are, and have been, definitely established as efficient preventives of moth damage to clothing and other materials stored in them.

PAR. 9. For more than 25 years last past manufacturers in the cedar wood chest industry in the United States have produced and

sold, in interstate commerce, storage receptacles made in part or entirely of red cedar wood, and marked, branded, or otherwise described and advertised as cedar chests, cedar closets and cedar cabinets when offered for sale and when sold.

PAR. 10. On December 2, 1932, the industry, engaged in the United States in the manufacture of cedar wood chests, held a Trade Practice Conference under the auspices of the Federal Trade Commission, to consider, among other things, the prevention of the practice in the sale of wood chests in interstate commerce, of representing such chests as cedar chests, when they contained in their body proper only cedar veneer, or cedar wood of only one-twentieth inch in thickness, and the said industry made and passed the resolutions or rules mentioned and referred to in paragraphs 11 and 12 hereof.

PAR. 11. On May 12, 1933, the Federal Trade Commission issued an official statement to the effect, among other things, that the rules as adopted by the Industry at the Trade Practice Conference mentioned in paragraph 10 hereof, and as set forth in Group I of the Commission's official statement were approved and accepted by the Commission.

PAR. 12. Among the Rules of the Trade Practice Conference of the Cedar Chest Industry, referred to in paragraph 10 hereof, and contained in Group I of the Federal Trade Commission's official statement, are Rules 1, 2, 3, and 14 as approved by the Federal Trade Commission, as follows:

Rule 1.—The use in advertising, selling, or offering for sale of such expressions as "moth proof," "moth killing," "moth repelling," "cedarized," or similar misleading representations, in describing any cedar chest, cedar container, or cedar receptacle which is not tightly constructed and which does not contain in the body proper (top, sides, ends, and bottom) at least seventy (70) percent of three-quarter inch red cedar (*Juniperus virginiana*), is an unfair trade practice.

Rule 2.—The making or causing or permitting to be made or published any false, untrue, or deceptive statement by way of advertisement or otherwise concerning the grade, quality, quantity, substance, character, nature, origin, size, or preparation of any product of the industry, having the tendency and capacity to mislead or deceive purchasers or prospective purchasers, is an unfair trade practice.

Rule 3.—The false marking or branding of products of the industry with the effect of misleading or deceiving purchasers or prospective purchasers with respect to the quantity, quality, grade, substance or moth-killing, or moth-repelling properties of the goods purchased, is an unfair trade practice.

Rule 14.—Advertising, selling, or offering for sale as cedar chests, cedar containers, or cedar receptacles, chest containers, or receptacles which contain in the body proper (top, sides, ends, and bottom) more than thirty (30) percent by weight of wood or woods other than cedar (*Juniperus virginiana*) is an unfair trade practice.

At all times since on or about the year 1932 the said manufacturers in the cedar wood chest industry have made such storage receptacles from red cedar wood with a minimum of 70 percent (top, sides, and bottom) of three-quarter inch red cedar wood.

PAR. 13. During all the times above mentioned, the respondents' said storage receptacles were made of corrugated paper between thin sheets of fiber or cardboard of a total thickness of approximately one-eighth of an inch. The closets were supplied with metal clothes hangers intended to support a weight of 100 pounds of stored articles. Both closets and chests were provided with a built-in receptacle called a "Mothador" or "Cedarol Closet Moth Proofer" for the purpose of holding chemicals or moth bullets or Anti-Moth Pellets, one or more of which was placed in such receptacles when the closets and chests were sold by respondents to the wholesale and retail dealers above referred to for resale to the public.

PAR. 14. During the times above mentioned, the respondents also sold separately the so-called moth bullets or Anti-Moth Pellets and their "Closet Moth Proofer" for use in their storage receptacles. During said times the moth bullets or Anti-Moth Pellets or other such chemical material contained, among other things, not more than approximately two ounces of a compound of cedar leaf and pine oils in the proportions of about 50 percent of each.

PAR. 15. The respondents' storage receptacles, above referred to, when in use for storage purposes were of loose construction. The pressure from the bulk and weight of garments or other materials, which they were expected to accommodate for storage, when stored in them, tended to and did cause the seams of the receptacles to spread and permit the ingress and egress of air and moths. The fiber or cardboard material of which they were made was permeable to air and the vapor or gas from the oils or chemicals used in the moth bullets or other chemical or oil materials supplied by the respondents for protection of materials against the ravages of moths. Because of their loose construction, the permeability of the material of which they were made, and the tendency of their seams to spread when in use and the respondents' storage receptacles not only permitted the ingress of moths and air, but were useless for the purpose of causing concentration of the vapor or gas from the chemicals or oils used in them to become sufficient, as a fumigant, to protect stored materials therein from the ravages of clothes' moths. In consequence of the foregoing the respondents' storage receptacles were not a protection to stored clothing and other materials against the ravages of moth larvae and from deterioration from exposure to dust and light.

PAR. 16. During all the times above mentioned the respondents branded or marked their storage receptacles "Cedarol Closets" and "Cedarol Chests" in large letters before they were sold by them as above set forth, and branded or marked the receptacles used therein for chemicals or oils or moth bullets with the words "Mothador" and "Cedarol Closet Moth Proofer," and the so-marked or branded storage receptacles and so-called "Mothadors" and "Cedarol Closet Moth Proofers" were caused by respondents to be, in turn, offered for sale and sold by wholesale and retail dealers to the public.

PAR. 17. During all the times above mentioned the respondents, in advertisements, concerning their storage receptacles, "Mothadors" and "Closet Moth Proofers" used in connection therewith which were published in newspapers, trade papers, magazines and in other publications, caused statements to appear, among many others similar and of the same effect thereto, that their closets and chests were Cedarol closets and chests; that their Cedarol Closet Moth Proofers with the moth bullets protected the clothes of the user when used in respondents' storage receptacles or in cabinets or closets of members of the public from the ravages of moths or moth larvae; that they destroyed moths; that they kept moths out of the storage receptacles; that the use of one Cedarol Closet Moth Proofer loaded with moth bullets for each 40 cubic feet of confined closed space, when placed in a wardrobe in which clothing was stored was an insurance against moth damage; that it destroyed moths; and that their storage receptacles were efficient and sufficient protection to stored articles against the ravages of moths, or moth larvae.

The respondents caused wholesale and retail dealers and others to make, in turn, statements the same as those above mentioned and referred to and many others similar thereto, both in advertisements published in newspapers, trade papers, and other publications, as well as verbally to members of the public concerning its storage receptacles and its moth bullets, Anti-Moth Pellets, and Cedarol Closet Moth Proofers.

PAR. 18. During all the times above mentioned and long prior thereto the public, users of storage receptacles, knew of the use of storage receptacles made of cedar wood and of their efficiency for storage purposes, and that, not only because they were practically airtight and thereby prevented the ingress of moths, but more particularly because members of the public knew or believed that the vapor from the oil in the cedar wood of which they were composed furnished within such closed receptacles an atmosphere such as referred to in paragraph 8 hereof that was of further and complete

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protection to the articles stored therein against the ravages of moths in case the articles stored were infested with moths or moth larvae at the time they were placed in such receptacles.

PAR. 19. The marking or branding by the respondents of their storage receptacles, closets, and chests, using the word "Cedarol" and the use of the word "Cedarol" in branding its so-called "Closet Moth Proofers" was false and falsely represented to wholesale and retail dealers and to the public that the closets and chests were effective storage receptacles against the ravages of moths, because of the presence of cedar oil in their construction; that the "Cedarol Moth Proofers" were provided with sufficient cedar oil and in such a manner as to give the storage receptacles, or other storage places where they were used, the same qualities for storage purposes that efficient cedar wood storage receptacles had by reason of the presence of cedar oil which they contained. The marking or branding of respondents so-called "Closet Moth Proofer" with the word "Cedarol" likewise caused wholesale and retail dealers and members of the public to believe that the use of such contrivances was an efficient protection against the ravages of clothes' moths by reason of the presence in them of a sufficient quantity of cedar oil for that purpose. The marking or branding by the respondents of the contrivances called by them "Mothadors" was a representation by the respondents to wholesale and retail dealers and to the public that such contrivances attached to or contained in the respondents' storage receptacles when supplied with the so-called moth bullets or other chemical or oil compounds made the respondents', or others, storage receptacles efficient protection to stored materials against the ravages of clothes' moths.

PAR. 20. The marking or branding of their storage receptacles and of their closet moth proofer and the statements and representations made by the respondents and caused to be made verbally by their agents and in advertisements, as set forth above, were false and fraudulent statements and representations, and they had the capacity and tendency to deceive and mislead, and they did deceive and mislead, dealers in storage receptacles to whom they were made into believing that they were true; and, to cause wholesale and retail dealers, in turn, to pass on such false and misleading representations to members of the public. The said false statements and representations, as above set forth, had the capacity and tendency to deceive and mislead, and they did deceive and mislead, wholesale and retail dealers and members of the public into the mistaken and erroneous

belief that they were true, and, into relying upon such belief and purchasing the respondents said storage receptacles, which were sold for sums of approximately 89 cents, more or less, and into purchasing respondents' so-called "Cedarol Closet Moth Proofer" for use in storage receptacles in place of purchasing the storage receptacles of competitors of the respondents which were efficient and sufficient protection against the ravages of moth larvae to stored materials, and which were customarily sold to the public according to their size and other qualities at prices ranging from approximately \$1 to \$10 and upwards, and trade in storage receptacles was thereby diverted to the respondents from competitors.

PAR. 21. The above acts and things done and caused to be done by the respondents were and are each and all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the meaning and intent of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 18th day of May 1936, issued its complaint in this proceeding and caused it to be served upon the respondents, Mortimer Alfred Gersten and Lee Gersten, copartners, doing business under the trade name Gersten Brothers, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

After the issuance of the complaint and the filing of the respondents' answer, the Commission, by order entered herein, granted respondents' motion for permission to withdraw their answer and to substitute therefor an answer admitting all of the material allegations of fact set forth in the complaint and waiving all intervening procedure and further hearing as to the said facts, and the substitute answer was duly filed November 29, 1938, in the office of the Commission.

Thereafter, this proceeding regularly came on for final hearing before the Commission on the complaint and substitute answer, and the Commission, having duly considered the matter and being now fully advised in the premises, advises 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 respondents, Mortimer Alfred Gersten and Lee Gersten, are and have been copartners doing business under the trade name, Gersten Brothers, at all times since more than 5 years immediately prior to the date hereof, having a place of business during said times and now at 516 West Thirty-fourth Street, Borough of Manhattan, City of New York, N. Y.

PAR. 2. During all the times above mentioned the respondents are and have been engaged in the business of the manufacture and in the business of the sale, among other things, of storage receptacles, chests, and closets made of corrugated fiber for use for the protection in storage, among other things, of clothing and other materials against the ravages of clothes moths and the deterioration caused by exposure to light and dust.

PAR. 3. The respondents, during all the times above mentioned and referred to, have sold their storage receptacles, closets, and chests, to retail and wholesale dealers in such articles, purchasers thereof, located in the District of Columbia and in the various States of the United States other than New York, or the State of origin of the shipment, for resale to members of the public, users thereof, and the respondents have caused their storage receptacles, when so sold by them, to be transported from New York or from the State of origin of the shipment to, into, and through the District of Columbia and States other than New York or the State of origin of the shipment, to the purchasers there located.

PAR. 4. The respondents during all the times above mentioned or referred to are, and have been, in substantial competition in interstate commerce with the other individuals, firms, and corporations referred to as sellers in paragraph 4 in the complaint filed in this cause, in the sale of their storage receptacles, chests, and closets.

PAR. 5. The aroma or odor of cedar oil is not a repellent and does not act as a repellent so as to prevent clothes moths from entering closed storage receptacles, the interiors of which contain or are impregnated with cedar oil. The aroma or odor of cedar oil has no effect on any stage of moth life. As a fumigant, however, the vapor or gas from cedar oil, if of sufficient concentration, will kill young moth larvae and some of the older larvae, and it will also cause the activity of the older larvae to be suspended.

PAR. 6. Storage receptacles, garment bags, boxes, closets, cabinets, and chests are used for the storage of clothing and other materials ordinarily during a continuous period of 7 months in a year.

In order to be effective upon moth larvae as a fumigant during the

above storage period or any part thereof, cedar oil or other volatile oils or chemicals, must be held in practically airtight container in order that the evaporating gas or vapor therefrom may be confined and thereby become of sufficient concentration for that purpose.

PAR. 7. Storage receptacles, closets, cabinets, and chests made of wood and practically airtight and containing in the body proper (top, sides, and bottom) as much as 70 percent of three-quarter-inch red cedar wood, furnish an atmosphere within them when in use and closed that does not permit the eggs of clothes moths in such receptacles to develop into larvae which can cause damage to stored material and later develop into clothes moths. Such storage receptacles by tests and by experience in their use as storage receptacles, are, and have been, definitely established as efficient preventatives of moth damage to clothing and other materials stored in them.

PAR. 8. For more than 25 years last past manufacturers in the cedar wood chest industry in the United States have produced and sold, in interstate commerce, storage receptacles made in part or entirely of red cedar wood, and marked, branded, or otherwise described and advertised as cedar chests, cedar closets, and cedar cabinets when offered for sale and when sold.

PAR. 9. On December 2, 1932, the industry, engaged in the United States in the manufacture of cedar wood chests, held a Trade Practice Conference under the auspices of the Federal Trade Commission, to consider, among other things, the prevention of the practice in the sale of wood chests in interstate commerce, of representing such chests as cedar chests, when they contained in their body proper only cedar veneer, or cedar wood of only one-twentieth inch in thickness, and the said industry made and passed the resolutions or rules mentioned and referred to in paragraphs 10 and 11 hereof.

PAR. 10. On May 12, 1933, the Federal Trade Commission issued an official statement to the effect, among other things, that the rules as adopted by the Industry at the Trade Practice Conference mentioned in paragraph 9 hereof, and as set forth in Group I of the Commission's official statement were approved and accepted by the Commission.

PAR. 11. Among the rules of the Trade Practice Conference of the Cedar Chest Industry, referred to in paragraph 9 hereof, and contained in Group I of the Federal Trade Commission's official statement, are Rules 1, 2, 3, and 14 as approved by the Federal Trade Commission, as follows:

Rule 1.—The use in advertising, selling or offering for sale of such expressions as "moth proof," "moth killing," "moth repelling," "cedarized," or similar misleading representations, in describing any cedar chest, cedar container, or cedar receptacle which is not tightly constructed and which does not contain in the

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body proper (top, sides, ends, and bottom) at least seventy (70) percent of three-quarter inch red cedar (*Juniperus virginiana*) is an unfair trade practice.

Rule 2.—The making or causing or permitting to be made or published any false, untrue, or deceptive statement by way of advertisement or otherwise concerning the grade, quality, quantity, substance, character, nature, origin, size, or preparation of any product of the industry, having the tendency and capacity to mislead or deceive purchasers or prospective purchasers, is an unfair trade practice.

Rule 3.—The false marking or branding of products of the industry with the effect of misleading or deceiving purchasers or prospective purchasers with respect to the quantity, quality, grade, substance or moth-killing or moth-repelling properties of the goods purchased, is an unfair trade practice.

Rule 14.—Advertising, selling, or offering for sale as cedar chests, cedar containers, or cedar receptacles, chest containers, or receptacles which contain in the body proper (top, sides, ends, and bottom) more than thirty (30) percent by weight of wood or woods other than cedar (*Juniperus virginiana*) is an unfair trade practice.

PAR. 12. At all times since on or about the year 1932 the said manufacturers in the cedar wood chest industry have made such storage receptacles from red cedar wood with a minimum of 70 percent (top, sides, and bottom) of three-fourths inch red cedar wood.

PAR. 13. During all the times above-mentioned, the respondents' said storage receptacles were made of corrugated paper between thin sheets of fiber or cardboard of a total thickness of approximately one-eighth of an inch. The closets were supplied with metal clothes hangers intended to support a weight of 100 pounds of stored articles. Both closets and chests were provided with a built-in receptacle called a "Mothador" or "Cedarol Closet Moth Proofer" for the purpose of holding chemicals or moth bullets or Anti-Moth Pellets, one or more of which was placed in such receptacles when the closets and chests were sold by respondents to the wholesale and retail dealers above referred to for resale to the public.

PAR. 14. During the times above-mentioned, the respondents also sold separately the so-called moth bullets or Anti-Moth Pellets and their "Closet Moth Proofer" for use in their storage receptacles. During said times the moth bullets or Anti-Moth Pellets or other such chemical material contained, among other things, not more than approximately 2 ounces of a compound of cedar leaf and pine oils in the proportions of about 50 percent of each.

PAR. 15. The respondents' storage receptacles, above referred to, when in use for storage purposes were of loose construction. The pressure from the bulk and weight of garments or other materials, which they were expected to accommodate for storage, when stored in them, tended to and did cause the seams of the receptacles to spread and permit the ingress and egress of air and moths. The fiber or

cardboard material of which they were made was permeable to air and to the vapor or gas from the oils or chemicals used in the moth bullets or other chemical or oil materials supplied by the respondents for protection of materials against the ravages of moths. Because of their loose construction, the permeability of the material of which they were made, and the tendency of their seams to spread when in use, the respondents' storage receptacles not only permitted the ingress of moths and air, but were useless for the purpose of causing concentration of the vapor or gas from the chemicals or oils used in them to become sufficient, as a fumigant, to protect stored materials therein from the ravages of clothes moths. In consequence of the foregoing the respondents' storage receptacles were not a protection to stored clothing and other materials against the ravages of moth larvae and from deterioration from exposure to dust and light.

PAR. 16. During all the times above mentioned the respondents branded or marked their storage receptacles "Cedarol Closets" and "Cedarol Chests" in large letters before they were sold by them as above set forth, and branded or marked the receptacles used therein for chemicals or oils or moth bullets with the words "Mothador" and "Cedarol Closet Moth Proofer," and the so-called branded or marked storage receptacles and so-called "Mothadors" and "Cedarol Closet Moth Proofers" were caused by respondents to be, in turn, offered for sale and sold by wholesale and retail dealers to the public.

PAR. 17. During all the times above mentioned the respondents, in advertisements, concerning their storage receptacles, "Mothadors" and "Closet Moth Proofers" used in connection therewith which were published in newspapers, trade papers, magazines, and in other publications, caused statements to appear, among many others similar and of the same effect thereto that their closets and chests were Cedarol closets and chests; that their Cedarol Closet Moth Proofers with the moth bullets protected the clothes of the user when used in respondents' storage receptacles or in cabinets or closets of members of the public from the ravages of moths or moth larvae; that they destroyed moths; that they kept moths out of the storage receptacles; that the use of one Cedarol Closet Moth Proofer loaded with moth bullets for each 40 cubic feet of confined closed space, when placed in a wardrobe in which clothing was stored was an insurance against moth damage; that it destroyed moths; and that their storage receptacles were efficient and sufficient protection to stored articles against the ravages of moths, or moth larvae.

The respondents caused wholesale and retail dealers and others to make, in turn, statements the same as those above mentioned and referred to and many other statements similar thereto, both in adver-

tisements published in newspapers, trade papers, and other publications, as well as verbally to members of the public concerning their storage receptacles and their moth bullets, Anti-Moth Pellets, and Cedarol Closet Moth Proofers.

PAR. 18. During all the times above mentioned and long prior thereto the public, users of storage receptacles, knew of the use of storage receptacles made of cedar wood and of their efficiency for storage purposes, and that they were efficient, not only because they were practically airtight, and thereby prevented the ingress of moths, but, more particularly, because members of the public knew or believed that the vapor from the oil in the cedar wood of which they were composed furnished within such closed receptacles an atmosphere such as referred to in paragraph 7 hereof that was of further and complete protection to the articles stored therein against the ravages of moths in case the articles stored were infested with moths or moth larvae at the time they were placed in such receptacles.

PAR. 19. The marking or branding by the respondents of their storage receptacles, closets and chests, using the word "Cedarol" and the use of the word "Cedarol" in branding their so-called "Closet Moth Proofers" was false and falsely represented to wholesale and retail dealers and the public that the closets and chests were effective storage receptacles against the ravages of moths, because of the presence of cedar oil in their construction; that the "Cedarol Moth Proofers" were provided with sufficient cedar oil and in such a manner as to give the storage receptacles, or other storage places where they were used, the same qualities for storage purposes that efficient cedar wood storage receptacles had by reason of the presence of cedar oil which they contained. The marking or branding of respondents' so-called "Closet Moth Proofer" with the word "Cedarol" likewise caused wholesale and retail dealers and members of the public to believe that the use of such contrivances was an efficient protection against the ravages of clothes moths by reason of the presence in them of a sufficient quantity of cedar oil for that purpose. The marking or branding by the respondents of the contrivances called by them "Mothadors" was a representation by the respondents to wholesale and retail dealers and to the public that such contrivances attached to or contained in the respondents' storage receptacles when supplied with the so-called moth bullets or other chemical or oil compounds made the respondents' or others, storage receptacles efficient protection to stored materials against the ravages of clothes moths.

PAR. 20. The marking or branding of their storage receptacles and of their closet moth proofer and the statements and representations made by the respondents and caused to be made verbally by their

agents and in advertisements, as set forth above, were false and fraudulent statements and representations, and they had the capacity and tendency to deceive and mislead, and they did deceive and mislead, dealers in storage receptacles to whom they were made into believing that they were true; and, to cause wholesale and retail dealers, in turn, to pass on such false and misleading representations to members of the public. The said false statements and representations, as above set forth, had the capacity and tendency to deceive and mislead, and they did deceive and mislead, wholesale and retail dealers and members of the public into the mistaken and erroneous belief that they were true, and, into relying upon such belief and purchasing the respondents' said storage receptacles, which were sold for sums of approximately 89 cents, more or less, and into purchasing respondents' so-called "Cedarol Closet Moth Proofer" for use in storage receptacles in place of purchasing the storage receptacles of competitors of the respondents which were efficient and sufficient protection against the ravages of moth larvae to stored materials, and which were customarily sold to the public according to their size and other qualities at prices ranging from approximately one dollar to ten dollars and upwards, and trade in storage receptacles was thereby diverted to the respondents from competitors.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all to the injury and prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Mortimer Alfred Gersten and Lee Gersten, individually and as copartners doing business under the trade name Gersten Brothers, or under any other name or names, their representatives, agents, and employees, directly or through any

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corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as commerce is defined in the Federal Trade Commission Act, of storage receptacles, and devices and preparations intended for use in storage receptacles and closets to protect articles stored therein from moths, do forthwith cease and desist from:

1. Marking, branding, or in any other manner designating or describing, through advertisements or otherwise, such storage receptacles, or any part or accessory to the use thereof, with the word "cedar" or with any derivation of the word "cedar" such as the word "cedarol," either alone or in association with any other word or words, unless and until such storage receptacles shall be so constructed and be so provided with cedar oil that when used for storage, such receptacles

(a) will not afford access to clothes moths to articles stored therein; and

(b) will, when closed, cause and maintain within them concentration of the vapor or gas from the cedar oil sufficient as a fumigant to kill young moth larvae within a reasonable time after articles infested with such larvae are deposited in such receptacles.

2. Marking, branding, or in any other manner designating or describing, through advertisements or otherwise, such devices and preparations, or any part or accessory to the use thereof, with the word "cedar" or with any derivation of the word "cedar," such as the word "cedarol," either alone or in association with any other word or words, unless and until such devices and preparations shall be so provided with cedar oil that, when they are placed within the storage receptacles and closets of the size in which respondents represent that such devices and preparations will be effective in use, such devices and preparations will cause and maintain within such receptacles and closets concentration of the vapor or gas from the cedar oil sufficient as a fumigant to kill young moth larvae within a reasonable time after articles infested with such larvae are deposited within such storage receptacles and closets.

3. Representing, directly or by implication, through advertisements or in any other manner, that clothes moths or their eggs or moth larvae which may infest articles stored in respondents' said storage receptacles will be killed, or that their activities with respect to moth damage to such articles will be allayed or suspended by reason of any oil or oils or chemicals with which such receptacles may be provided, unless and until such is the fact.

4. Representing, directly or by implication, through advertisements or otherwise, by the use of the words "moth proofer," "mothador,"

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or any other word or words, or in any other manner, that clothes moths or their eggs or moth larvae, which may infest articles stored in the receptacles or closets in which respondents represent such devices or preparations to be effective in use, will be killed, or that their activities with respect to moth damage to such articles will be delayed or suspended, by reason of any oil or oils or chemicals with which such devices and preparations may be provided, unless and until such is the fact.

5. Representing directly or by implication, through advertisements or in any other manner, that such storage receptacles are of a construction that is proof against the access of clothes moths to materials stored therein, unless and until such storage receptacles shall be in fact so constructed.

It is further ordered, That the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

HAY & PEABODY CEMENT VAULT COMPANY

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

Docket 3157. Complaint, June 18, 1937—Decision, Feb. 16, 1939

Where a corporation engaged in manufacture of cement burial vaults, and in sale thereof to purchasers at various points in other States, in substantial competition with others engaged in manufacture, sale, and distribution of steel, stone, concrete, and other vaults, and including those who, engaged in such manufacture and sale, truthfully advertise their products—

Represented in its advertising of its cement vaults that they afforded positive protection for all time, endured for all time, and were everlasting, and were absolutely waterproof, sweatproof, watertight, airtight, and vermin-proof, and would not disintegrate but would become stronger and better the longer they remained in the ground;

Facts being concrete, in presence of water, sulphides or alkalies, will corrode and eventually disintegrate, certain amount of moisture is always present in soil at depth at which such vaults are placed, varying from time to time, sulphides and alkalies are also present in soils in varying amounts, and soil conditions vary both as to particular locality and from locality to locality, and while said vaults are carefully and scientifically constructed so as to increase durability in use, and will exclude air, moisture, vermin, and water until natural process of corrosion, which they will resist but cannot prevent, has advanced to stage of producing disintegration permitting penetration, they are not everlasting, absolutely waterproof, sweatproof, verminproof, or airtight when sold and placed in the ground in accordance with practice used, and richer composition of cover than balance of vault may result in causing severance of cover from base;

With effect of misleading substantial portion of purchasing public into erroneous and mistaken belief that all such representations were true and with result that public, acting under mistaken and erroneous beliefs induced by such false and misleading statements and representations, purchased substantial volume of its vaults, and trade was unfairly diverted to it from its competitors who truthfully advertise their products:

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

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. William L. Pencke for the Commission.

Mr. M. E. Sturtevant and *Mr. David T. Montague*, of Somerville, Mass., and *Mr. Hazen K. Sturtevant*, of Plymouth, N. H., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the