

Syllabus

IN THE MATTER OF

WILLIAM W. CHAMBERS DOING BUSINESS AS THE
GREATER CHAMBERS COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 3035. Complaint, Jan. 15, 1937—Decision, Apr. 3, 1939

Where an individual engaged in operating group of undertaking establishments and in selling and distributing line of caskets, vaults, accessories, and facilities usually connected with conduct of funerals and operation of such establishments, to purchasers in commerce among and between various States and in the District of Columbia, in competition with others engaged in sale and distribution of like and similar products in commerce among the various States and in said District; in advertising, through various circulars, folders, booklets, and newspapers and periodicals of national circulation, his complete funerals, caskets, vaults, accessories, and facilities—

- (a) Represented that certain undertaking facilities and merchandise were furnished free, through such statements, among others, as "The many extra services rendered by Chambers are given without charge. * * *," "Complete funerals, cars and all, use of our buildings and chapels free," "* * * None of the extra services offered * * * are charged for * * *," etc., facts being he did not furnish any articles of merchandise or undertaking facilities free, but price thereof was included in that charged on purchase of a casket or other similar merchandise;
- (b) Represented that prices charged by him were discounts or reductions from those ordinarily charged, through such statements among others, as "This \$500.00 service by Chambers for only \$265.00," and through representation that he furnished a \$300 funeral for \$165 and a \$150 funeral for \$75, and that such prices charged for complete funerals represented saving in discount to purchaser, facts being they did not represent such discount or reduction but his usual and customary prices; and
- (c) Represented that burial vaults sold by him for \$85 were of a value of \$150, and were waterproof and airtight and would answer the purpose of a "\$5,000.00 mausoleum" because of nature of their construction, facts being said vault was usually sold for sum of \$85, was not waterproof and airtight, and would not answer all the purposes of a mausoleum;

With a tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous belief that such representations were true, and with result, as direct consequence of such erroneous and mistaken belief induced by his advertising statements and representations, that number of purchasing public bought substantial quantities of his said products and trade was unfairly diverted to him from others likewise engaged in sale in commerce among the various States of complete funerals, caskets, vaults, accessories and facilities and who truthfully advertise their products and services:

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

Before *Mr. John J. Keenan*, trial examiner.

Mr. James M. Hammond for the Commission.

Mr. Leonard A. Block and *Mr. Lucius Q. C. Lamar*, of Washington, D. C., 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 Federal Trade Commission, having reason to believe that William W. Chambers, an individual doing business under the firm name and style of The Greater Chambers Co., hereinafter referred to as the respondent, has been and is using unfair methods in 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. Respondent, William W. Chambers, an individual doing business under the firm name and style of The Greater Chambers Co., is an undertaker operating a group of undertaking establishments. His main office and principal place of business is located at 1400 Chapin Street, N.W., Washington, D. C., with branches located at 517 Eleventh Street, S.E., Washington, D. C., and 918 Cleveland Avenue, Hyattsville, in the State of Maryland. He is now, and for many years last past has been, engaged in selling "complete funerals," which include among other things, caskets, vaults, and other facilities usually connected with the operation of a funeral home or undertaking establishment and in shipping said caskets, vaults, and the accessories pertaining thereto, or causing the same to be shipped, when sold from his several places of business to various places located in the District of Columbia, or the State of Maryland, or other States of the United States. There is now, and has been for more than 1 year last past, a constant current of trade and commerce among and between the various States of the United States and in the District of Columbia by the respondent in the aforesaid complete funerals, caskets, vaults, and other funeral accessories or facilities. In the course and conduct of his business the respondent is now, and has been, in substantial competition with other individuals, firms, corporations, and partnerships likewise engaged in the sale of "complete funerals" including,

among other things, caskets, vaults, and other facilities usually connected with the operation of a funeral home or undertaking establishment, in commerce, among and between the various States of the United States and in the District of Columbia.

PAR. 2. Many members of the purchasing public have a preference for purchasing merchandise including caskets, vaults, and undertaking facilities from establishments of large size, believing that in so doing they will obtain merchandise of superior quality at better prices than can be obtained elsewhere and that they will be dealing with establishments of recognized leadership in their field.

PAR. 3. In the course and conduct of his business as described in paragraph 1 hereof, and for a long time last past, the respondent herein in soliciting the sale of and selling his complete funerals, including caskets, vaults, and other funeral accessories, in commerce as herein set out, makes use in his letterheads, circulars, catalogs, trade literature, and advertising matter of statements, among others, such as the following:

One of the largest undertakers in the world.
Forty assistants, twenty-five cars,
seven chapels, fourteen parlors.

Said statements serve as representations on the part of the respondent to a substantial portion of the purchasing public that respondent is one of the largest undertakers in the world, and that in purchasing caskets, vaults, and other facilities from him the public will secure the advantages as to price, quality and service regularly and usually obtained by the public in dealing with establishments of large size.

In truth and in fact respondent is not one of the largest undertakers in the world and does not maintain 40 employees of all types, nor 40 employees of the type susceptible of classification as undertakers, assistant undertakers, or assistant funeral directors, or persons engaged in the preparation of the dead for burial, and does not own, operate, or maintain the number of cars, chapels, or parlors so represented.

PAR. 4. In the course and conduct of his business as described in paragraph 1 hereof, and for a long time last past, the respondent in soliciting the sale of and selling his complete funerals including caskets, vaults, and other funeral accessories, makes use in his letterheads, circulars, catalogs, trade literature, and advertising matter of statements, among others, such as the following:

The many extra services rendered by Chambers are given without charge. Here are just a few of the uncharged-for services that remove much of the funeral responsibility from your shoulders:

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Attending to funeral notices in all local papers.

Skilled expert to arrange floral displays.

Beautiful Chambers funeral chapel at the disposal of the family.

Attendance to all funeral details.

Lady attendants to fix hair and attend to dressing of women and children.

Plastic surgery.

Securing death certificates and burial permits, etc.

The wooden box is furnished free by CHAMBERS when a vault is not purchased.

Complete funerals, cars and all, use of our buildings and chapels free.

The unstinted luxury, comfort and convenience of its parlors and chapels are free to you! None of the extra services offered by Chambers are charged for—you are allowed every privilege of the Chambers funeral home without any additional charge.

This \$500.00 service by Chambers for only \$265.00.

The same service as all Chambers services goes with a beautiful funeral complete for only \$75.00.

How do you feel when you pay \$300.00 for something you could have bought for \$165.00—\$135.00 saved.

In truth and in fact the aforesaid statements and representations of the respondent that the services, cars, hearses, and other funeral facilities which are furnished in connection with the sale of a casket, are free, or that he renders a \$500 service in connection with every funeral or that customers at his establishment will save one-half of the usual price or one-half of the former price of a funeral, or that members of the public will receive a \$500 funeral for \$265 or a \$300 funeral for \$165, or through any similar comparison of value and cost that the public receives a higher priced funeral service than for which the public pays, are false and misleading. The respondent does not give free services or free extras in connection with the sale of his caskets, vaults, and funeral facilities but charges the full price therefor in the purported charge for the said caskets, facilities, and funeral services. The respondent does not sell his funeral services at half price, half the usual price, or half the old-time price therefor, and does not give a \$500 funeral service for \$265 or a \$300 funeral for \$165, but the said prices charged are respondent's usual and customary prices and the usual and customary market values of said caskets, vaults, facilities, and funeral services.

PAR. 5. In the course and conduct of his business as described in paragraph 1 hereof and for a long time last past the respondent herein in soliciting the sale of and selling his complete funerals including caskets, vaults, and funeral accessories in commerce as herein set out, makes use in his letterheads, circulars, catalogs, trade literature, and advertising matter of statements, among others, such as the following:

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The \$85.00 steel vault. This air-sealed vault is a perfect symbol of security—made of 12-gauge copper-bearing steel—this vault is water-proof and air-tight—very reasonably priced.

World's finest water-proof, air-tight, guaranteed steel burial vault may be had from Chambers for \$85.00.

This steel vault—400 pounds of solid steel—always sold for \$150.00 until Chambers reduced its price to \$85.00.

Answering the purpose of a \$5,000.00 mausoleum—400 pounds of solid steel burial vault, one of the best that's made—only \$85.00. For those who want the best, you will find this affords the finest burial vault you can obtain in metal protection.

The aforesaid statements serve as representations on the part of the respondent to purchasers and prospective purchasers that his steel vaults are airsealed, waterproof, and airtight; that the vault which he sells for \$85 is worth \$150; that the vault he sells for \$85 answers the purpose of a \$5,000 mausoleum and is the finest burial vault which can be obtained. In truth and in fact the aforesaid representations are false and misleading, as his burial vaults are not waterproof or air-tight, and the vault which he sells for \$85 does not now and has not heretofore sold for \$150 and does not answer the purpose of a \$5,000 mausoleum, and is not the finest burial vault which can be obtained.

PAR. 6. There are among the competitors of the respondent, as set forth in paragraph 1 hereof, other individuals, firms, corporations, or partnerships who do sell complete funerals including vaults, caskets and funeral facilities or accessories in commerce, as herein set out, who do not misrepresent the relative size of their undertaking establishments, the number of their assistants, or the extent of their facilities, or make use of misrepresentations similar to those set forth in paragraphs 2, 3, and 4 hereof, or who do not in any wise misrepresent the character, price, or extent of the commodities, services or facilities sold.

PAR. 7. The acts and practices of the respondent in making the representations herein set forth are calculated to mislead and deceive, and have and have had the capacity, tendency and effect of misleading and deceiving, and have misled and deceived, a substantial portion of the purchasing and consuming public into the erroneous belief that all of said representations are true and into the purchase of the respondent's caskets, vaults, and other facilities in reliance on said representations.

By means of the aforesaid false and misleading representations made to the purchasing public as above described, respondent has increased his own sales of said caskets, vaults, and funeral facilities, thereby lessening the market for similar caskets, vaults, and funeral facilities sold by other undertaking establishments who truthfully represent the

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price, nature, quality, or advantage of their products, or the extent of their facilities and their true size and character in the undertaking business.

As the result thereof, trade is unfairly diverted to the respondent from competitors engaged in the sale in the District of Columbia or in commerce as herein set out of similar caskets, vaults, and funeral facilities, who truthfully represent the true nature of their facilities, products and services, the true price thereof, or the true size of their business as undertakers. Further, as the result thereof, substantial injury has been and is being done by respondent to the purchasing public and to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The above and foregoing acts, practices and representations of the respondent have been and are unfair methods of competition 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."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, under date of January 15, 1937, issued and served its complaint in this proceeding upon the respondent, William W. Chambers, an individual doing business under the firm name and style of "The Greater Chambers Company," charging said respondent with the use of unfair methods of competition in commerce in violation of said act.

The respondent having entered his appearance by his attorneys, Leonard A. Block and Lucius Q. C. Lamar, filed his answer herein. The Commission is represented by James M. Hammond. Thereafter, hearings were had and evidence was thereupon introduced in support of the allegations of the complaint and on behalf of respondent before John J. Keenan, a trial examiner of the Federal Trade Commission, theretofore duly appointed. During the taking of testimony respondent entered into a stipulation of facts, which stipulation was incorporated in the record.

Thereafter this proceeding came on for final hearing before the Commission on the said complaint, answer, evidence and stipulation, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusions drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, William W. Chambers, an individual, doing business under the firm name and style of The Greater Chambers Co., is an undertaker operating a group of undertaking establishments, with his main office and principal place of business at 1400 Chapin Street, NW., Washington, D. C., and with branch offices located at 517 Eleventh Street, SE., Washington, D. C., and 918 Cleveland Avenue, Hyattsville, Md.

PAR. 2. The respondent is now, and for more than ten years last past has been, engaged in the business of selling and distributing a line of caskets, vaults, accessories and facilities usually connected with the conduct of funerals and operation of a funeral home or undertaking establishment, to purchasers thereof in commerce among and between various States of the United States and in the District of Columbia, causing his products when sold, to be shipped from his place of business in the State of Maryland to purchasers in States of the United States other than the State of Maryland and from his establishments in the District of Columbia to purchasers in said District of Columbia and other States. Respondent maintains, and during the times mentioned herein has maintained, a course of trade in caskets, vaults, accessories and facilities connected with complete funerals so sold and distributed by him in competition with other individuals, partnerships and corporations engaged in the sale and distribution of like or similar products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his said business, respondent in the sale of his caskets, vaults, accessories, and facilities connected with complete funerals, and in inducing the public to purchase said vaults, caskets, accessories and facilities, has, by means of various advertising circulars, folders, booklets, advertisements inserted in newspapers and magazines of national circulation throughout the United States, made statements and representations concerning the price, character and nature of said complete funerals, caskets, vaults, accessories and facilities, among which are the following:

The many extra services rendered by Chambers are given without charge. Here are just a few of the uncharged-for services that remove much of the funeral responsibility from your shoulders: Attending to funeral notices in all local papers; skilled expert to arrange floral display; beautiful Chambers funeral chapel at the disposal of the family; attendance to all funeral details; lady attendants to fix hair and attend to dressing of women and children; plastic surgery; securing death certificates and burial permits.

The wooden box is furnished free by CHAMBERS when a vault is not purchased.

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Complete funerals, cars and all, use of our buildings and chapels free.

The unstinted luxury, comfort and convenience of its parlors and chapels are free to you! None of the extra services offered by Chambers are charged for—you are allowed every privilege of the Chambers funeral home without any additional charge.

This \$500.00 service by Chambers for only \$265.00.

The same service as all Chambers services goes with a beautiful funeral complete for only \$75.00.

How do you feel when you pay \$300.00 for something you could have bought for \$165.00—\$135.00 saved.

Here is that \$165.00 funeral I claim old-time undertakers sell for \$300.00.

The \$85.00 steel vault. This air-sealed vault is a perfect symbol of security—made of 12-gauge copper-bearing steel—this vault is water-proof and airtight—very reasonably priced.

World's finest water-proof, airtight, guaranteed steel burial vault may be had from Chambers for \$85.00.

This steel vault—400 pounds of solid steel—always sold for \$150.00 until Chambers reduced its price to \$85.00.

Answering the purpose of a \$5,000.00 mausoleum—400 pounds of solid steel burial vault, one of the best that's made—only \$85.00. For those who want the best, you will find this affords the finest burial vault you can obtain in metal protection.

PAR. 4. By means of the foregoing and other and similar statements and representations which purport to be descriptive of respondent's complete funerals, undertaking facilities, caskets, vaults, and other similar merchandise, the respondent represents that certain undertaking facilities and merchandise are furnished free, that the respondent furnishes a \$500 funeral for \$265, a \$300 funeral for \$165 and a regular \$150 funeral for \$75, and that the prices charged by the respondent for complete funerals represent a saving and discount to the purchaser. By this means also the respondent represents that the burial vaults sold by him for \$85 are of a value of \$150 and are waterproof and airtight and will serve the purposes of a mausoleum because of the nature of their construction.

In truth and in fact, the respondent does not furnish any articles of merchandise or undertaking facilities free, but the price thereof is included in the price charged on the purchase of a casket or other similar merchandise. The respondent does not furnish a \$500 funeral for \$265, a \$300 funeral for \$165 or a regular \$150 funeral for \$75, but in truth the prices charged by the respondent are the usual and customary prices generally charged for such complete funerals. The prices so charged by the respondent are not a discount or reduction from the prices ordinarily charged by the respondent, but represent respondent's usual and customary prices. The steel burial vault sold by respondent is not of a value of \$150, but is a vault which is usually and customarily sold for the sum of

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\$85; said vault is not waterproof and airtight and will not answer all the purposes of a mausoleum.

PAR. 5. Each and all of the misleading and untrue statements and representations made by respondent in offering for sale and selling his complete funerals, caskets, vaults, accessories and facilities were, and are, calculated to and had and now have a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations are true. Further, as a direct consequence of such mistaken and erroneous belief induced by the advertising, statements and representations of respondent, as aforesaid, a number of the purchasing public have purchased a substantial quantity of said products with the result that trade has been unfairly diverted from other corporations, individuals, firms and partnerships likewise engaged in the sale in commerce among and between the various states of the United States of complete funerals, caskets, vaults, accessories and facilities, who truthfully advertise their products and services.

PAR. 6. The Commission further finds that the charges alleged in paragraph 3 of the complaint herein have not been sustained.

CONCLUSION

The aforesaid acts, representations and practices of the respondent, William W. Chambers, an individual, doing business under the firm name and style of The Greater Chambers Co., have been and are to the prejudice and injury of the public and of respondent's 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 respondent, testimony and other evidence taken before John J. Keenan, an examiner of the Commission theretofore duly designated by it in support of the allegations of said complaint and in opposition thereto, and the briefs filed herein by James M. Hammond, counsel for the Commission, and by Leonard A. Block, counsel for the respondent, and the Commission having made its findings as to the facts and conclusion, that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, William W. Chambers, individually and doing business under the name The Greater Cham-

bers Co., or under any other trade name, his agents, employees, and representatives, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of caskets, vaults, or other undertaking facilities in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing as the customary or regular prices or values for funerals, caskets, vaults or other and similar merchandise, prices and values which are in fact fictitious and greatly in excess of the prices at which said funerals, caskets, vaults or similar merchandise are regularly and customarily offered for sale and sold in the normal and usual course of business.

2. Representing that the price at which funerals, caskets, vaults or other and similar merchandise are offered for sale is a saving or discount to the purchaser when in fact said price is the usual and customary price at which the respondent sells said funerals, caskets, vaults or similar merchandise in the normal and usual course of business.

3. Using the term "free" or any other term of similar import or meaning to designate or describe articles of merchandise or undertaking facilities regularly included in a combination offer with caskets or other similar articles of merchandise.

4. Representing that the vaults or any other articles of merchandise of similar design and construction sold by the respondent are waterproof or airtight or will answer the purposes of a mausoleum when such is not the fact.

It is further ordered, That the charges set out in paragraph 3 of the complaint be, and the same hereby are, dismissed.

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

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IN THE MATTER OF
IDAHO CANDY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3130. Complaint, May 15, 1937—Decision, Apr. 3, 1939*

Where a corporation engaged in selling and distributing various packages or assortments of candy and other articles of novelty merchandise which were so packed and assembled to involve or were designed to or might involve use of a lottery scheme when sold and distributed to ultimate consumers thereof, and included, in case of all, push card or punchboard and use of same method of chance for distribution of candy or other articles to consuming public by means of said card or board and were made up as illustrative, in case of two of such assortments, of

- (a) Number of bars of candy, together with push card for use in sale and distribution of such candy to purchasing public under a plan by which purchaser received for the 5 cents paid 5, 4, 3, 2, or 1 bar of candy in accordance with success or failure in securing from card certain legends concealed thereon, and last sale of assortment entitled purchaser to four bars of candy; and of
- (b) Number of packages of candy and another article of merchandise, together with a punchboard for use in sale and distribution of such candy and other article to purchasing public under a plan and in accordance with said board's explanatory legend, by which chance receipt from board of certain specified numbers entitled persons securing same to specified packages of candy, and certain other number, or last punch entitled person securing number or making punch to other article of merchandise, and purchasers not qualifying by obtaining one of specified numbers or making last purchase received nothing for their money other than privilege of punching number from board;

Sold to wholesalers and jobbers for display and resale to purchasing public by retail dealer purchasers thereof in accordance with such sales plans said assortment and thereby supplied to and placed in the hands of others means of conducting lottery in sale of its products in accordance with such plans involving game of chance or sale of a chance to procure additional bars of candy, packages of candy, or other article of merchandise; contrary to public policy as long recognized in the common law and criminal statutes and contrary to the public policy of the United States Government, and in competition with many who sell and distribute candy and other articles of merchandise and are unwilling to offer or sell the same so packed and assembled as above found or otherwise arranged or packed for sale to purchasing public so as to involve game of chance and refrain therefrom;

With capacity and tendency to induce purchasers of its said products thereby to buy same in preference to candy and other articles offered and sold by its competitors; and with result that many dealers in and ultimate purchasers of candy and other articles were attracted by its said method and manner of packing said candy and other merchandise and by element of chance involved therein as above set forth and were thereby induced to purchase substantial quantities of said products so packed and sold by it in preference to other articles offered and sold by its competitors who do not use same or equivalent method; and