

Syllabus

IN THE MATTER OF
AMERICAN MEMORIAL COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3369. Complaint, Mar. 31, 1938—Decision, July 11, 1939*

Where a corporation engaged in sale and distribution of marble and granite monuments, tombstones, and footstones, to members of purchasing public in various States and in District of Columbia, in substantial competition with others engaged in sale and distribution of such, and similar, products designed, intended, and used for same or similar purposes, including many who do not in any manner misrepresent their business status or the life and duration of their respective granite and marble tombstones, monuments, and like products; in its advertisements in magazines and newspapers circulating among the various States, and in catalogs, pamphlets, bulletins, and other literature which it disseminated to members of purchasing public in various States and in District of Columbia—

- (a) Represented, directed and by implication, that its marble monuments were everlasting, and that tombstone selling for certain price was a 400-pound stone, facts being its said products were not everlasting and it offered and sold many stones which it represented as weighing said amount which, in truth and in fact, weighed substantially less;
- (b) Represented that it had executed a bond which was available to purchasers as a guarantee of the quality of its products, and that such guarantee insured full satisfaction on the part of the purchaser and conformed to the rules and regulations of the United States postal laws, facts being it had not posted any such bond nor obtained any approval from Government or Post Office Department for any guarantee made incident to sale of its product, nor posted any bond with Government or anyone else which insured satisfaction on part of its customers or conformity by it with rules and regulations of the postal laws; and
- (c) Represented that it was the manufacturer of both its marble and granite tombstones and that all profits of middlemen or commission firms were eliminated by reason of purchase of granite or marble monuments from it, facts being it did not manufacture monuments sold and distributed by it, but was merely jobber thereof, profits of middlemen and commission firms were not eliminated by reason of purchase of granite monuments from it, and it was not a manufacturer, for dealing directly with which there is preference on part of a substantial number of members of purchasing public as securing more advantageous prices and other benefits;

With effect of misleading and deceiving substantial number of members of such public into erroneous belief that said false and misleading statements and representations were true, and into purchase of its products because of such belief, and with result as direct consequence thereof, that trade in commerce, as aforesaid, was diverted unfairly to it from its competitors engaged in sale and distribution of similar products and who do not falsely represent the same or their business status:

Complaint

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Held, That such acts and practices as above set forth were all to the prejudice and injury of the public and competitors and constituted unfair methods of competition in commerce.

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

Mr. John Darsey and *Mr. Carrel F. Rhodes* for the Commission.

Douglas, Andrews & Cole, of Atlanta, Ga., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that American Memorial Co., hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, American Memorial Co., is a corporation organized and existing under the laws of the State of Georgia, having an office and principal place of business at 2135 Piedmont Road, Atlanta, Ga. It is now, and for several years last past has been, engaged in the business of manufacturing and selling marble and granite monuments. To a substantial extent, sales of said products have been made by respondent to corporations, partnerships, firms, and individuals located in States other than the State of Georgia, pursuant to which sales, and as a part thereof, shipments are, and have been, made by the respondent from the State of Georgia through and into other States of the United States to such purchasers.

PAR. 2. There are other corporations, partnerships, firms, and individuals engaged in the sale of similar products, or products to be used for the same and similar purposes, who cause their said products, when sold, to be transported from their respective places of business to purchasers thereof located in the various other States of the United States, and with such corporations, partnerships, firms, and individuals, the respondent is, and has been at all times herein named, in competition in commerce as herein described.

PAR. 3. In connection with the promotion of sale, and sale of the said products in interstate commerce as aforesaid, and as an inducement for the purchase thereof, the respondent causes many false and misleading statements and representations respecting the quality and weight of its said products, and the guarantees issued and executed incident to the sales thereof to be inserted in newspapers, periodicals, and circulars which are distributed in the various States of the United States. The following statements and representations are typical,

but not all inclusive, of those made by the respondent to the foregoing effect and meaning:

This monument is built of genuine, natural quarried marble guaranteed by us to be everlasting;

400-lb. tombstone, \$17.95, genuine marble and granite footstone free, lettering free;

Our bond of guarantee protects you in quality and safe delivery to destination;

One of the strongest guarantees ever given on monuments;

Buy the direct way and save the difference;

Buy direct from our factory with no middleman or commission firm involved;

This guarantee is given to you to conform to the rules and regulations of the United States mail laws, which in effect say, "you must be fully satisfied or your money back" on anything ordered by mail.

PAR. 4. Through the foregoing statements and representations, and through other similar statements not herein set-out in full, the respondent has represented that its marble monuments are everlasting; that its tombstone selling for \$17.95 is a 400-pound stone; that a genuine granite footstone is furnished free in connection with the \$17.95 tombstone; that respondent has executed a bond which is available to purchasers as a guarantee of the quality of respondent's products; that respondent's guarantee insures full satisfaction on the part of the purchaser and conforms to the rules and regulations of the United States postal laws; that respondent is the manufacturer of both its marble and granite tombstones; and that all profits of a middleman or commission firm are eliminated by purchasing granite or marble monuments from the respondent.

The foregoing statements and representations made by the respondent in connection with the promotion of sale and sale of its said products are false and misleading. The said monuments made from marble are not everlasting. The tombstone selling for \$17.95 is not a 400-pound stone and does not weigh within a hundred pounds or more of the amount represented, and no granite footstone is furnished free in connection with the purchase of the \$17.95 tombstone. The respondent has not posted any bond which insures and guarantees to its customers the quality of its products. The guarantee issued by the respondent does not insure satisfaction on the part of purchasers and does not insure conformity to the rules and regulations of the postal laws of the United States Government. Respondent is not the manufacturer of the granite monuments which it sells, but on the contrary, is merely a jobber thereof.

PAR. 5. There is on the part of the general purchasing public a preference for dealing direct with the manufacturer of the product

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being purchased rather than with any middleman or broker, said members of the purchasing public believing that in so doing they secure superior quality, more advantageous prices and other benefits.

PAR. 6. Respondent's false and misleading representations of and concerning its said products and its status, as hereinabove set forth, have the capacity and tendency to, and do, mislead and deceive purchasers and prospective purchasers of said products into the erroneous belief that such representations are true, and have caused a substantial portion of such purchasers, because of such erroneous belief, to purchase respondent's products, thereby unfairly diverting trade in said commerce to the respondent from competitors who truthfully represent their products. As a result thereof, injury is now, and has been, done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 7. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 31st day of March 1938, issued and thereafter served its complaint in this proceeding upon said respondent, American Memorial Co., 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, testimony and other evidence in support of the allegations of said complaint were introduced by John Darsey, attorney for the Commission, and in opposition to the allegations of the complaint by Hamilton Douglas, attorney for the respondent, before Edward E. Reardon, an examiner of the Commission theretofore duly designated by it. Stipulations as to certain facts were made a part of the record herein by agreement of counsel of record. Said testimony, stipulations, and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony, stipulations, and other evidence, and briefs in support of the complaint and in opposition thereto, 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 conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, American Memorial Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, and having its principal office and place of business located at 2135 Piedmont Road, Atlanta, Ga.

PAR. 2. Respondent is now, and has been for more than 2 years last past, engaged in the business of selling and distributing marble and granite monuments, tombstones, and footstones. Respondent sells its said monuments, tombstones, and footstones to members of the purchasing public located in the various States of the United States and in the District of Columbia, and causes said products when sold by it to be transported from its aforesaid place of business in Georgia to purchasers thereof at their respective points of location in the various States of the United States other than Georgia, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is, and has been during all the times mentioned herein, engaged in substantial competition in commerce among and between the various States of the United States and in the District of Columbia, with other corporations and with firms and partnerships and individuals selling and distributing marble and granite tombstones, monuments, and like products designed, intended, and used for the same or similar purposes. Among such competitors in said commerce are many who do not in any manner misrepresent their business status or the life and duration of their respective granite and marble tombstones, monuments, and like products.

PAR. 4. In the course and conduct of its said business and for the purpose of inducing the purchase of its said products, the respondent has caused false and misleading representations with respect to its business status, the life and duration of its tombstones, monuments, and footstones, and the guarantees executed incident to the sale thereof, to be inserted in magazines and newspapers having a circulation among and between the various States of the United States, and in catalogs, pamphlets, bulletins, and other literature disseminated by respondent to the members of the purchasing public located in the various States of the United States and in the District

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of Columbia. Among and typical of such representations so used and disseminated as aforesaid are the following:

This monument is built of genuine natural quarried marble guaranteed by us to be everlasting.

400-lb. tombstone—\$17.95—Genuine marble and granite foot-stone free—lettering free.

Our bond of guarantee protects you in quality and safe delivery to destination.

One of the strongest guarantees ever given on monuments.

This guarantee is given to you to conform to the rules and regulations of the United States mail laws which in effect say "you must be fully satisfied or your money back" on anything ordered by mail.

Buy direct from our factory with no middle man or commission firm involved.

PAR. 5. Through the use of the aforesaid statements and representations and others of similar import or meaning not herein set out, the respondent has represented directly and by implication that its marble monuments are everlasting; that its tombstone selling for \$17.95 is a 400-pound stone; that respondent has executed a bond which is available to purchasers as a guarantee of the quality of respondent's products; that respondent's guarantee insures full satisfaction on the part of the purchaser and conforms to the rules and regulations of the United States postal laws; that respondent is the manufacturer of both its marble and granite tombstones; and that all profits of middlemen or commission firms are eliminated by reason of the purchase of granite or marble monuments from the respondent.

PAR. 6. The said statements and representations by the respondent, used and disseminated in the manner aforesaid, are false, misleading, and deceptive. In truth and in fact the tombstones, monuments, and footstones offered for sale and sold by respondent are not everlasting. The respondent has offered for sale and sold many stones which it represented to weigh 400 pounds, which stones in truth and in fact weighed substantially less than 400 pounds. The respondent has not posted a bond which insures and guarantees to its customers the quality of its products, and has not obtained any approval from the United States Government or the Post Office Department thereof for any guarantee made incident to the sale of its said products; nor has the respondent posted any bond with the United States Government or with anyone else which insures satisfaction on the part of its customers, or which insures conformity by the respondent with the rules and regulations of the postal laws of the United States Government. Respondent does not manufacture the granite monuments which it sells and distributes, but is merely a jobber thereof. The profits of middlemen and commission firms are not eliminated by reason of the purchase of granite monuments from respondent.

PAR. 7. There is now, and has been during all the times mentioned herein, a preference on the part of a substantial number of members of the purchasing public for dealing directly with the manufacturer of a product rather than with a middleman or jobber because of the belief that in dealing with the manufacturer they secure more advantageous prices and other benefits.

PAR. 8. The use by the respondent of the aforesaid false and misleading statements and representations has the capacity and tendency to, and does, mislead and deceive a substantial number of members of the purchasing public into the erroneous and mistaken belief that said false and misleading statements and representations are true and into the purchase of respondent's products because of said erroneous and mistaken belief. As a direct result thereof, trade in commerce among and between the various States of the United States and in the District of Columbia has been diverted unfairly to the respondent from its competitors engaged in the sale of and distribution of similar products and who do not falsely represent their respective products or their business status.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, are all 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, the answer of respondent, testimony and other evidence taken before Edward E. Reardon, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and briefs filed herein, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, American Memorial Co., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of granite or marble monuments, tombstones, or footstones in commerce between and among the various States of the United States and in the District of Columbia, do forthwith cease and desist from:

1. Representing by the use of the words "everlasting" or "eternal," or any other word of similar import or meaning, or in any other man-

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ner, that respondent's monuments, tombstones, or footstones are everlasting.

2. Representing that respondent's monuments or tombstones weigh 400 pounds or any other specified weight or weights unless and until such is the fact.

3. Representing that the respondent has posted a bond guaranteeing the quality of its products, or has posted a bond which insures conformity by the respondent with the laws of the United States Government or with the rules and regulations of any agency thereof, or has posted any other bond, unless and until such is the fact.

4. Representing, by means of pictorial or other representations of a factory or manufacturing plant, or in any other manner, that respondent makes or manufactures its granite monuments or tombstones unless and until it owns and operates or directly and absolutely controls the factory or plant wherein such monuments or tombstones are made or manufactured by it.

It is further ordered, That the 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.

Syllabus

IN THE MATTER OF

MAX BERGMAN, TRADING AS INTERSTATE PREMIUM
NOVELTY COMPANY

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

Docket 3577. Complaint, Sept. 8, 1938—Decision, July 11, 1939

Where an individual engaged in sale and distribution of dresser sets, watches, bedspreads, cameras, silverware, and numerous other articles of merchandise to purchasers in the various States and in the District of Columbia—

Sold and distributed said articles by means of a game of chance, gift enterprise or lottery scheme under which he distributed to representatives and prospective representatives certain advertising literature including a sales circular listing number of items of merchandise and prices thereof, and including pull card for use in distribution and sale of products in question under plan in accordance with which item of merchandise secured and price paid therefor and value or apparent value secured were determined by chance, in accordance with item and price disclosed by separation of particular tab selected from said card, and person operating card was compensated, after sale of all tabs or chances and remission of amounts, by premium; and

Supplied thereby and placed in the hands of others means of conducting lotteries in the sale of his merchandise in accordance with aforesaid or similar plans varying therefrom in detail only and under which members of purchasing public were induced by apparent greater value and regular prices of some of said articles as compared to price prospective purchaser would be required to pay in event he secured one, to purchase tabs or chances in hope of receiving article of merchandise of far greater value than designated price to be paid therefor, and under which fact as to whether purchaser of said tabs received article of apparent greater value and higher regular price than that designated on such tab and which of said articles purchaser was to receive and amount to be paid therefor were determined wholly by lot or chance, and involving game of chance or sale of a chance to procure an article of merchandise at price much less than apparent normal price thereof, contrary to an established public policy of the United States Government and in violation of criminal laws and in competition with many who are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win something by a chance or any method contrary to public policy and refrain therefrom;

With result that many persons were attracted by his said method and by element of chance involved in sale of such merchandise as above described and were thereby induced to buy and sell such merchandise in preference to that offered and sold by competitors aforesaid who do not use such or equivalent method and with effect, by reason of the use of said method and because of said game of chance, of unfairly diverting trade and