

IN THE MATTER OF
ROY D. BURNSED, TRADING AS SOUTHERN ART STONE
COMPANY

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

Docket 3697. Complaint, Feb. 2, 1939—Decision, Jan. 26, 1940

Where an individual engaged in manufacture of imitation marble and granite tombstones and memorials which (1) were produced from a mixture of crushed marble or granite, cement and other ingredients, called "Marble-texture" and "Granitexture," respectively, and (2) simulated in shape, design, color and appearance memorials carved from natural marble or granite, and in sale and distribution of said products, depictions of which in his catalogs had general appearance of natural marble and granite memorials similarly pictured, to purchasers, who did not usually see samples thereof until ordered and paid for, and who were situated in other States and in the District of Columbia, in substantial competition in commerce among the various States and in said District with others engaged in sale and distribution of tombstones and memorials made of similar materials and with those engaged in sale and distribution of such products made from natural marble and granite; in advertising his said tombstones and memorials in catalogs, circular letters, mail order solicitations, magazines, and farm papers—

- (a) Represented that they were natural marble or granite, and would retain as high a polish as said substances, and were superior to and would last longer than the natural or ordinary marble or granite, and would not crack, crumble or disintegrate from natural causes, and were everlasting, through such statements as "* * * manufactured from the finest marble and granite * * *," "* * * will outlast ordinary marble and granite," "* * * the marble or granite monument that is so beautiful today, may in a few short years discolor, crumble or crack. * * *," "* * * withstands all the elements, it does not absorb moisture and is not susceptible to influences which so often cause gradual decomposition, loss of polish * * *," etc., facts being his said products were not natural marble or granite, would not take or retain as high a polish as the other or last as long, and were not superior thereto or less porous, etc., but were in fact inferior in every particular and would crack, crumble and disintegrate under ordinary weather conditions; and
- (b) Represented that a footstone was given free by him with every order for tombstone or memorial, and that his products were from 33½ percent to 50 percent lower in price, through so stating, and through such statements as "FREE Footstone with Every Order Without additional cost to you, we include with each order a footstone to match," facts being a footstone was not given free, as above set forth, but price thereof was included in that asked for tombstone or memorial, so-called "free" offer was in fact a continuing combination offer regularly made by him, and prices of his said products were not 33½ percent to 50 percent lower than those asked by his competitors for products of the same or substantially the same quality and weight, but were approximately the same;

With effect of leading members of purchasing public to believe that his said memorials were carved from natural marble and granite, and of causing substantial part of purchasing public, through such various false and misleading statements and representations concerning his said memorials, to buy said products in preference to those of his competitors, and of thereby diverting trade in commerce unfairly to him from his competitors aforesaid:

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

Before *Mr. John W. Addison*, trial examiner.

Mr. J. M. Russell and *Mr. Morton Nesmith* for the Commission.

Mr. Marvin G. Russell, 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 Roy D. Burnsed, an individual, trading as Southern Art Stone Co., hereinafter referred to as respondent, has violated the provisions of 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 respondent, Roy D. Burnsed, is an individual, trading as Southern Art Stone Co., having his office and principal place of business located at 1927 Piedmont Road, N. E., Atlanta, Ga.

He is now and for several years last past has been engaged in the business of manufacturing and selling imitation marble and granite tombstones and memorials produced from a mixture of crushed marble or granite, cement and other ingredients called Marbletexture and Granitexture, respectively. Respondent causes said products when sold to be transported from his place of business in the State of Georgia to purchasers thereof located in other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said Marbletexture and Granitexture tombstones and monuments in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of said business, respondent is now, and for the time mentioned herein, has been in substantial competition with other individuals, firms, partnerships, and corporations engaged in the sale and distribution of tombstones and memorials

made of materials, and in a manner, similar to the said products of respondent, and of tombstones and memorials made of other materials other than marble and granite, who do not misrepresent their said products and their prices in the manner respondent is hereinafter alleged to misrepresent his products and their prices; and in the sale and distribution of tombstones and memorials made of natural marble and granite; doing such business 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 the respondent, in connection with the promotion of the sale and the sale of his said products in such commerce, and as an inducement for the purchase thereof, has caused and is now causing many false and misleading statements and representations respecting the nature and price of his said products and as to his alleged guarantee of his claims therefor to be inserted in catalogs, circular letters, mail order solicitations, magazines, and farm papers, such as Progressive Farmer, Southern Ruralist, Southern Planter and Grit, which are circulated in the various States of the United States. Among and typical of the statements and representations contained in said false advertisements so used and disseminated as aforesaid, are the following:

* * * our products are manufactured from the finest marble and granite * * *.

* * * Artstone is given permanence that will outlast ordinary marble and granite. Artstone Marble texture and Grain texture Monuments are very hard, very dense, but are not porous or brittle * * *.

Located in the great marble and granite section of America * * *.

Our monuments will not crack, fade or crumble, they will stand throughout the ages * * * vastly superior * * * and cost less than ones * * * purchased from other concerns.

* * * This highly polished product will not chip, crack, crumble, fade or otherwise disintegrate from natural causes.

* * * a product that is an eternal tribute and a permanent satisfaction.

* * * The marble or granite monument that is so beautiful today, may in a few short years discolor, crumble or crack. It is a long-proven fact that genuine marble slabs suffer total destruction in less than a century.

* * * Changeable weather and temperature cause no deterioration. Artstone withstands all the elements, it does not absorb moisture and is not susceptible to influences which so often cause gradual decomposition, loss of polish, crumbling, and finally loss of character and appearance.

33⅓% to 50%

Lower in Price

Besides the fact that Artstone is more beautiful and durable than other monuments, its prices are considerably lower.

Artstone will outlast ordinary marble and granite. Our monuments are not affected by weather or temperature, and will not deteriorate, discolor or decompose from any natural causes.

FREE Footstone with Every Order

Without additional cost to you, we include with each order a footstone to match.

We guarantee our monuments conform exactly with all descriptions and specifications.

PAR. 4. In all of said statements, together with similar statements not herein set out, the respondent has represented that his said synthetic products are genuine natural marble and granite tombstones and memorials; that they take and retain a higher polish and luster than natural marble or granite; that they will last forever; that they are superior to natural marble or granite in that they are less porous and stronger and more enduring; that they are sold to customers by respondent for from $33\frac{1}{3}$ to 50 percent less than similar products of the same quality and weight are sold by respondent's competitors; that a footstone is given free by respondent with every order for a tombstone or memorial.

PAR. 5. The statements and representations so made and used by respondent in connection with the promotion of the sale and sale of his said products are false and misleading. In truth and in fact Marbletexture and Granitexture tombstones and memorials which respondent advertises for sale and sells as aforesaid are not natural marble or granite, but are manufactured by respondent from cement and other ingredients and are known as cast stone. They will not take or retain as high a polish as natural marble or granite. They will not last forever, or as long as natural marble or granite. They are not superior to natural marble or granite, or less porous or stronger or more enduring. They are in fact inferior in every particular thereto and will crack, crumble and disintegrate under ordinary weather conditions. The prices asked for respondent's said products are not $33\frac{1}{3}$ to 50 percent lower than those asked by his competitors for products of the same or substantially the same quality and weight, but are approximately the same. A footstone is not given "free" with each order, but the price thereof is included in the price respondent asks for the tombstone or other material and the so-called "free offer" is in fact a continuing combination offer regularly made by respondent.

Respondent's tombstones and other memorials in shape, design, color and appearance simulate memorials carved from natural marble or granite. The pictures of the memorials in respondent's catalogs have the general appearance of natural marble and granite memorials similarly pictured. Nowhere in his advertisements is it disclosed

Findings

30 F. T. C.

that they are synthetic or cast stone memorials. Purchasers do not usually see samples of them before they are ordered and paid for, all of which, especially in conjunction with the respondent's misleading and false statements, is calculated to and has a tendency and capacity to, and it has, and does, lead members of the purchasing public to believe respondent's memorials are carved from natural marble or granite.

PAR. 6. Each and all of the false and misleading statements and representations disseminated as aforesaid by respondent concerning his said products, as hereinabove set out have, and have had, a tendency and capacity to and do cause a substantial part of the purchasing public to purchase respondent's said products in preference to those of his said competitors, and thus trade in said commerce has been diverted, and is being diverted, unfairly to respondent from his said competitors. As a result thereof injury has been and is now being 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 and unfair and deceptive acts and practices 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 2d day of February 1939, issued, and on the 6th day of February 1939, served its complaint in this proceeding upon respondent Roy D. Burnsed, an individual trading as Southern Art Stone Co., charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices 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 the complaint were introduced by Morton Nesmith, attorney for the Commission, and in opposition to the allegations of the complaint by Marvin G. Russell, Atlanta, Ga., attorney for the respondent, before John W. Addison, an examiner of the Commission theretofore duly designated by it, and said testimony 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 and other evidence,

and brief in support of the complaint (respondent not having filed brief, and oral argument not having been requested); 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, Roy D. Burnsed, is an individual, trading as Southern Art Stone Co., having his office and principal place of business located at 1927 Piedmont Road, N. E., Atlanta, Ga.

He is now and for several years last past has been engaged in the business of manufacturing and selling imitation marble and granite tombstones and memorials produced from a mixture of crushed marble or granite, cement and other ingredients called Marbletexture and Granitexture, respectively. Respondent causes said products when sold to be transported from his place of business in the State of Georgia to purchasers thereof located in other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said Marbletexture and Grain texture tombstones and monuments in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, the respondent is now, and has been, in substantial competition, in commerce among and between the various States of the United States and in the District of Columbia, with other individuals and with firms, partnerships, and corporations engaged in the sale and distribution of tombstones and memorials made of materials similar to those used by the respondent in his tombstones and memorials and also with individuals, firms, partnerships, and corporations engaged in the sale and distribution of tombstones and memorials made from natural marble and granite.

PAR. 3. In the course and conduct of his said business the respondent, in connection with the promotion of the sale and the sale of his said products in such commerce, and as an inducement for the purchase thereof, has caused and is now causing many statements and representations respecting the nature and price of his said products and as to his alleged guarantee of his claims therefor to be inserted in catalogs, circular letters, mail order solicitations, magazines, and farm papers, such as *Progressive Farmer*, *Southern Ruralist*, *Southern Planter* and *Grit*, which are circulated in the various States of the United States. Among and typical of the statements and representa-

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tions contained in said advertisements so used and disseminated as aforesaid, are the following:

* * * our products are manufactured from the finest marble and granite * * *.

* * * Artstone is given permanence that will outlast ordinary marble and granite. Artstone Marble texture and Granite texture Monuments are very hard, very dense, but are not porous or brittle * * *.

Located in the great marble and granite section of America * * *.

Our monuments will not crack, fade or crumble, they will stand throughout the ages * * * vastly superior * * * and cost less than ones * * * purchased from other concerns.

* * * This highly polished product will not chip, crack, crumble, fade or otherwise disintegrate from natural causes.

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* * * The marble or granite monument that is so beautiful today, may in a few short years discolor, crumble, or crack. It is a long-proven fact that genuine marble slabs suffer total destruction in less than a century.

* * * Changeable weather and temperature cause no deterioration. Artstone withstands all the elements, it does not absorb moisture and is not susceptible to influences which so often cause gradual decomposition, loss of polish, crumbling, and finally loss of character and appearance.

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Besides the fact that Artstone is more beautiful and durable than other monuments, its prices are considerably lower.

Artstone will outlast ordinary marble and granite. Our monuments are not affected by weather or temperature, and will not deteriorate, discolor or decompose from any natural causes.

Free Footstone with Every Order Without additional cost to you, we include with each order a footstone to match.

We guarantee our monuments conform exactly with all descriptions and specifications.

PAR. 4. In all of said statements, together with similar statements not herein set out, the respondent has represented that his said synthetic products are genuine natural marble and granite tombstones and memorials; that they take and retain a higher polish and luster than natural marble or granite; that they will last forever; that they are superior to natural marble or granite in that they are less porous and stronger and more enduring; that they are sold to customers by respondent for from 33½ percent to 50 percent less than similar products of the same quality and weight are sold by respondent's competitors; that a footstone is given free by respondent with every order for a tombstone or memorial.

PAR. 5. The statements and representations so made and used by respondent in connection with the promotion of the sale and sale of

his said products are false and misleading. In truth and in fact Marbletexture and Granitexture tombstones and memorials which respondent advertises for sale and sells as aforesaid are not natural marble or granite, but are manufactured by respondent from cement and other ingredients and are known as cast stone. They will not take or retain as high a polish as natural marble or granite. They will not last forever, or as long as natural marble or granite. They are not superior to natural marble or granite, or less porous or stronger or more enduring. They are in fact inferior in every particular thereto and will crack, crumble and disintegrate under ordinary weather conditions. The prices asked for respondent's said products are not 33 $\frac{1}{3}$ percent to 50 percent lower than those asked by his competitors for products of the same or substantially the same quality and weight, but are approximately the same. A footstone is not given "free" with each order, but the price thereof is included in the price respondent asks for the tombstone or other material and the so-called "free offer" is in fact a continuing combination offer regularly made by respondent.

Respondent's tombstones and other memorials in shape, design, color and appearance simulate memorials carved from natural marble or granite. The pictures of the memorials in respondent's catalogs have the general appearance of natural marble and granite memorials similarly pictured. Nowhere in his advertisements is it disclosed that they are synthetic or cast stone memorials. Purchasers do not usually see samples of them before they are ordered and paid for, all of which, especially in conjunction with the respondent's aforesaid misleading and false statements, is calculated to and has a tendency and capacity to, and does, lead members of the purchasing public to believe respondent's memorials are carved from natural marble or granite.

PAR. 6. Each and all of the false and misleading statements and representations concerning his said products disseminated by respondent as hereinabove set out have, and have had, a tendency and capacity to and do cause a substantial part of the purchasing public to purchase respondent's said products in preference to those of his said competitors. Thus trade in commerce, among and between the various States of the United States and in the District of Columbia, has been diverted, and is being diverted, unfairly to respondent from his said competitors.

CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice and injury of the public and of competitors of the respondent and constitute unfair methods of competition in commerce

and unfair and deceptive acts and practices 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 John W. Addison, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed in support of the complaint 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, Roy D. Burnsed, an individual trading as Southern Art Stone Company, or trading under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of imitation marble and granite tombstones and memorials composed of crushed marble, granite or any similar material mixed with cement and other ingredients, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that respondent's products are natural marble or granite, or that they will retain as high a polish as marble or granite, or that such products are superior to, or will last longer than natural or ordinary marble or granite.

2. Representing that respondent's products will not crack, crumble or disintegrate from natural causes, or that they are everlasting or will last forever.

3. Using the term "free" or any other term of similar import or meaning to designate, describe or in any way refer to articles of merchandise regularly included in a combination offer with tombstones or other merchandise.

4. Representing that respondent's products are from 33⅓% to 50% lower in price than similar products of comparable quality and weight sold by respondent's competitors or that they are to any extent lower in price than such products unless and until they are in fact lower to such extent, quality and weight considered.

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.

Syllabus

IN THE MATTER OF
 CHARLES V. HERRON, RYON GRAIN COMPANY, AND Mc-
 LAUGHLIN, WARD & COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
 OF SUBSEC. (c) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914,
 AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 3916. Complaint, Oct. 6, 1939—Decision, Jan. 27, 1940

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (c)—BROKERAGE OR COMMISSION
 PROVISIONS—SELLER TO BUYER PAYMENTS—SERVICES RENDERED CLAUSE—
 BROKER-DEALER OWN ACCOUNT PURCHASES.

Where broker-dealer received from sellers, on own account purchases, allowance of money in lieu of brokerage, *held*, as matter of law, no services rendered by broker-dealer on such purchases, notwithstanding denial by both broker-dealer and sellers involved. *Biddle Purchasing Company v. Federal Trade Commission*, 96 F. (2d) 687, certiorari denied 305 U. S. 634; *Oliver Brothers v. Federal Trade Commission*, 102 F. (2d) 763; *The Great Atlantic & Pacific Tea Company v. Federal Trade Commission*, 106 F. (2d) 667, certiorari denied January 2, 1940, 308 U. S. 625.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (c)—BROKERAGE OR COMMISSION
 PROVISIONS—SELLER TO BUYER PAYMENTS—BROKER-DEALER OWN ACCOUNT
 PURCHASES.

Where an individual engaged in buying and selling of beans for his own account and in business of and acting as broker in sale of foodstuffs, grocery products, canned goods and allied commodities purchased, sold, and distributed by him in commerce among the various States, and in selling and distributing own account purchases in commerce, and shipping and transporting such commodities pursuant to sales to customers in Kentucky, Illinois, and Indiana—

Received from corporate sellers engaged, from their respective Michigan places of business, in sale and distribution of beans and other foodstuffs and allied commodities in commerce among the various States, and in causing said beans, etc., to be shipped and transported from said places of business to purchasers thereof in the various States for use in resale therein, and on purchases for his own account therefrom, allowance of 6 cents per bag of beans in lieu of brokerage upon such purchases in commerce from said corporate sellers; and

Where said corporate sellers engaged, as aforesaid, in sale and distribution of said products from their respective Michigan places of business to purchasers thereof in the various States—

Paid and transmitted to said individual, on own account purchases, allowances of 6 cents per bag of beans in lieu of brokerage upon such purchases in commerce from them:

Held, (1) That said individual violated provisions of Subsection (c) of Section 2 of statute in question by receiving and accepting from said sellers allowance as aforesaid; and