

IN THE MATTER OF
ASA L. WOOTEN, TRADING AS UNITED STATES MARBLE
& GRANITE COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914¹

Docket 4138. Complaint, May 21, 1940—Decision, July 9, 1940

Where an individual engaged in sale and distribution of marble and granite tombstones and monuments, to purchasers in various other States and in the District of Columbia, and in substantial competition with others engaged in sale and distribution of tombstones and monuments in commerce among the various States and in said District, and including many who sell and distribute like or similar products and do not misrepresent respective qualities thereof or matters pertaining thereto; in advertising his said products in catalogs having general circulation, and in circulars, price lists, and other advertising material distributed among prospective purchasers—

- (a) Represented that his memorials would stand the ravages of time forever, that they were everlasting and forever durable, would last for all time, would never fade, stain, or tarnish and would always retain their original brightness, and that they were age enduring, facts being they would stain, tarnish, fade, and deteriorate, and would not retain their original brightness, and his said representations and implications as above set forth were false, misleading, and deceptive; and
- (b) Represented that, through his "Gold Bond Guarantee," purchasers were assured of the everlasting quality and durability of his said products and the freedom thereof from fading, staining, or tarnishing, and that said "Gold Bond Guarantee" protected purchasers of such products if his claims and representations were not true and products did stain, tarnish, fade, and lose their original brightness and were not forever durable and everlasting, facts being said so-called "Gold Bond Guarantee" was not supported by any funds set aside by him or anyone else to assure fulfillment of the terms thereof, and it accordingly in no wise assured purchasers of everlasting quality and durability of said products or freedom thereof from fading, staining, or tarnishing, and did not in any wise protect purchasers of said products if his claims and representations were not true;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements and representations were true, and with result, because of such erroneous and mistaken belief, that substantial portion of purchasing public was induced to and did purchase his said products; to the substantial injury of competition in commerce:

¹ Findings made as of date indicated are published as very slightly modified by Commission on October 11, 1940, through deleting few words theretofore included with other quoted matter in par. 3.

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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.

Mr. B. G. Wilson for the Commission.

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 Asa L. Wooten, an individual, trading as United States Marble and Granite 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. Respondent, Asa L. Wooten, is an individual trading as United States Marble and Granite Co., with his office and principal place of business located at Oneco, Fla. Respondent is now, and for some time last past has been, engaged in the sale and distribution of marble and granite tombstones and monuments in commerce between and among the various States of the United States and the District of Columbia.

Respondent causes his said products, when sold, to be shipped from his place of business in the State of Florida to purchasers thereof located in various 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 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 said business, respondent is now, and for more than 1 year last past has been, in substantial competition with other individuals, partnerships, firms, and corporations engaged in the sale and distribution of tombstones and monuments in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. To induce the purchase of his said products, the respondent has disseminated and is now disseminating false and misleading statements and representations with respect to said products. Such statements and representations are inserted in catalogs having a general circulation and in circulars, price lists, and other advertising material

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which are distributed among prospective purchasers. Among and typical of such false and misleading representations are the following:

Memorials that will stand the ravages of time.

Select white, gray or blue marble.

An everlasting memorial.

Forever durable.

World's best genuine marble or granite.

Good for continuous wear.

To last for all time.

They will never fade but always retain their original brightness.

Age enduring.

These monuments will last for all time.

Quality cannot be excelled.

Gold Bond Guarantee.

The whole memorial is guaranteed to never stain nor tarnish.

Is one of the strongest guarantees ever given.

PAR. 4. By the use of the foregoing representations, together with other representations similar thereto not set out herein, the respondent represents that his memorials will stand the ravages of time forever; that they are everlasting and forever durable; that they are the world's best genuine marble or granite monuments; that they will last for all time, will never fade, stain, or tarnish and will always retain their original brightness; and that said memorials are age enduring. Respondent represents or implies that through his "Gold Bond Guarantee" purchasers are assured of the everlasting quality and durability of his said products and the freedom of such products from fading, staining, or tarnishing and that said "Gold Bond Guarantee" protects purchasers of such products if respondent's claims and representations are not true and said products do stain, tarnish, fade, and lose their original brightness and are not forever durable and everlasting.

PAR. 5. The foregoing representations and implications are false, misleading, and deceptive. In truth and in fact, respondent's memorials will not stand the ravages of time forever; they are not everlasting or forever durable but they will stain, tarnish, fade, and deteriorate and will not retain their original brightness. Said memorials are not the world's best genuine marble or granite monuments as there are many other marble or granite monuments on the market which are as good as, or better than, respondent's said products. In truth and in fact, said so-called "Gold Bond Guarantee" in no wise assures purchasers of the everlasting quality and durability of said products or the freedom of such products from fading, staining, or tarnishing and does not in any wise protect purchasers of respondent's said products if respondent's claims and representations are not true because said so-called "Gold Bond Guarantee" is

not supported by any fund set aside by the respondent or anyone else for the purpose of assuring fulfilment of the terms thereof.

PAR. 6. There are among the competitors of respondent, as mentioned in paragraph 2 hereof, many who sell and distribute like or similar products who do not misrepresent the respective qualities of said products or matters pertaining thereto.

PAR. 7. The use by the respondent of the false and misleading statements and representations referred to herein has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and because of such erroneous and mistaken belief, a substantial portion of the purchasing public is induced to, and does, purchase respondent's said products. As a result thereof substantial injury has been done, and is being done, by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of the respondent as herein set forth are all to the prejudice and injury 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 21st day of May 1940, issued and thereafter served its complaint in this proceeding upon respondent, Asa L. Wooten, an individual, trading as United States Marble & Granite 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. On the 6th day of June 1940, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to the said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer 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.

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FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Asa L. Wooten, is an individual trading as United States Marble and Granite Co. with his office and principal place of business located at Oneco, Fla. Respondent is now, and for some time last past has been, engaged in the sale and distribution of marble and granite tombstones and monuments in commerce between and among the various States of the United States and the District of Columbia.

Respondent causes his said products, when sold, to be shipped from his place of business in the State of Florida to purchasers thereof located in various 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 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 said business, respondent is now, and for more than 1 year last past has been, in substantial competition with other individuals, partnerships, firms, and corporations engaged in the sale and distribution of tombstones and monuments in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. To induce the purchase of his said products, the respondent has disseminated and is now disseminating false and misleading statements and representations with respect to said products. Such statements and representations are inserted in catalogs having a general circulation and in circulars, price lists, and other advertising material which are distributed among prospective purchasers. Among and typical of such false and misleading representations are the following:

Memorials that will stand the ravages of time.

An everlasting memorial.

Forever durable.

Good for continuous wear.

To last for all time.

They will never fade but always retain their original brightness.

Age enduring.

These monuments will last for all time.

Quality cannot be excelled.

Gold Bond Guarantee.

The whole memorial is guaranteed to never stain nor tarnish.

Is one of the strongest guarantees ever given.

PAR. 4. By the use of the foregoing representations, together with other representations similar thereto not set out herein, the respondent represents that his memorials will stand the ravages of time forever;

that they are everlasting and forever durable; that they will last for all time, will never fade, stain, or tarnish and will always retain their original brightness; and that said memorials are age enduring. Respondent represents or implies that through his "Gold Bond Guarantee" purchasers are assured of the everlasting quality and durability of his said products and the freedom of such products from fading, staining, or tarnishing and that said "Gold Bond Guarantee" protects purchasers of such products if respondent's claims and representations are not true and said products do stain, tarnish, fade, and lose their original brightness and are not forever durable and everlasting.

PAR. 5. The foregoing representations and implications are false, misleading, and deceptive. In truth and in fact, respondent's memorials will not stand the ravages of time forever; they are not everlasting or forever durable but they will stain, tarnish, fade, and deteriorate and will not retain their original brightness. In truth and in fact, said so-called "Gold Bond Guarantee" in no wise assures purchasers of the everlasting quality and durability of said products or the freedom of such products from fading, staining, or tarnishing and does not in any wise protect purchasers of respondent's said products if respondent's claims and representations are not true because said so-called "Gold Bond Guarantee" is not supported by any fund set aside by the respondent or anyone else for the purpose of assuring fulfillment of the terms thereof.

PAR. 6. There are among the competitors of respondent, as mentioned in paragraph 2 hereof, many who sell and distribute like or similar products who do not misrepresent the respective qualities of said products or matters pertaining thereto.

PAR. 7. The use by the respondent of the false and misleading statements and representations referred to herein has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and because of such erroneous and mistaken belief a substantial portion of the purchasing public is induced to, and does, purchase respondent's said products. As a result thereof substantial injury has been done, and is being done, by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

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

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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 and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that he waives 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 respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Asa L. Wooten, an individual, trading as United States Marble & Granite Co., or under any other trade name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of marble and granite tombstones and monuments in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That respondent's memorials will stand the ravages of time forever, or that they are everlasting or forever durable, or that they will never fade, stain, or tarnish.

2. That respondent's said marble and granite tombstones and monuments will always retain their original brightness or that said memorials are age enduring.

3. That respondent has posted a "Gold Bond Guarantee" assuring purchasers of the everlasting quality and durability of his said products and the freedom of such products from fading, staining, or tarnishing and that said "Gold Bond Guarantee" protects purchasers of such products if respondent's claims and representations are not true.

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.

Complaint

IN THE MATTER OF
CECIL DWIGHT KITCHEN, TRADING AS THE REVA
COMPANY

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

Docket 4158. Complaint, June 7, 1940—Decision, July 9, 1940

Where an individual engaged in manufacture of his "Reva" cosmetic preparation for hair and scalp and in sale and distribution thereof to purchasers in various other States and in the District of Columbia; in advertisements of his said product, which he disseminated and caused to be disseminated through the mails and various other means in commerce, and otherwise, and including advertisements in newspapers and periodicals and circulars, leaflets, pamphlets, and other advertising literature, and which various advertisements were intended and likely to induce purchase of the said preparation—

- (a) Represented that his said Reva product was not a hair dye but a preparation which substituted or replaced the pigment in hair and restored natural, youthlike color thereto, facts being, product in question was a lead and sulphur dye which, among other things, contained sulphur, lead acetate, and ammonia, forming, in combination, lead sulphide, and, applied to hair, dyed exterior of hair shaft, color thus produced was artificial, and it would not supply, substitute, or replace natural pigment in the hair nor restore natural or youthlike color thereto; and
- (b) Represented that said product stimulated growth of hair and that it constituted a cure or remedy for dandruff, scalp eczema, or falling hair and a competent and effective treatment for such conditions and was safe and harmless for use in treatment of hair and scalp disorders, facts being, it would not stimulate growth of hair, was not a cure or remedy for said various conditions, and had no therapeutic value in treatment thereof in excess of affording temporary relief of itching in some instances, and was not safe or harmless, because use thereof might cause injury, in that application to skin or scalp where abrasions were present might cause absorption of lead into the system;

With capacity and tendency to and effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements and representations in advertisements were true, and to induce portion of such public, because of such erroneous and mistaken belief, to purchase his cosmetic product aforesaid:

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

Mr. Robert Mathis, Jr., for the Commission.

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 Cecil Dwight