

Order

IN THE MATTER OF

GIMBEL BROTHERS, INC., AND MORRIS KAPLAN & SON,
INC.

MODIFIED CEASE AND DESIST ORDER

Docket 3364. Order, May 8, 1941

Modified order, pursuant to provisions of Section 5 (i) of Federal Trade Commission Act, and in accordance with decree below set forth, in proceeding in question, in which original order issued on Dec. 29, 1939, 30 F. T. C. 328, and in which Circuit Court of Appeals for Second Circuit, on Jan. 6, 1941, in *Gimbel Brothers, Inc. v. Federal Trade Commission*, 116 F. (2d) 578, rendered its opinion, and on Jan. 22 issued its final decree, affirming aforesaid order of Commission by modifying same in certain particulars—

Requiring respondent, its officers, etc., in connection with offer, etc., in commerce, of textile fabrics, to forthwith cease and desist from (1) using word "wool" or "woolens," or other word or term descriptive of wool, to describe, etc., any fabric, etc., not composed wholly thereof, and subject to proviso set forth with respect to fabrics, etc., composed in part only thereof, and (2) representing in any manner that fabrics, etc., offered or sold by it contain wool in greater quantities than is actually the case.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission and it appearing that on December 29, 1939, the Commission made its findings as to the facts herein and concluded therefrom that the respondent Gimbel Bros., Inc., a corporation, had violated the provisions of Section 5 of the Federal Trade Commission Act and issued and subsequently served its order to cease and desist; and it further appearing that on January 6, 1941, the United States Circuit Court on Appeals for the Second Circuit rendered its opinion and on January 22, 1941, issued its final decree affirming the aforesaid order of the Commission by modifying said order in certain particulars;

Now, therefore, Pursuant to the provisions of subsection (i) of section 5 of the Federal Trade Commission Act, the Commission issues this its modified order to cease and desist in conformity with the said decree:

It is ordered, That the respondent Gimbel Bros., Inc., 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 textile fabrics in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Order

32 F. T. C.

1. Using the word "wool," or "woolens," or any other word or term descriptive of wool, to describe, designate, or in any way refer to any fabric or product which is not composed wholly of wool; provided, however, that in the case of fabrics or products composed in part of wool and in part of other fibers such words may be used as descriptive of the wool content, if there is used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing and designating each constituent fiber or material thereof.

2. Representing in any manner whatsoever that fabrics or products offered for sale or sold by it contain wool in greater quantity than is actually the case.

It is further ordered, That the respondent Gimbel Bros., Inc., shall, within 30 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.

It is further ordered, That the complaint be dismissed as to the respondent Morris Kaplan & Son, Inc., a corporation.

Syllabus

IN THE MATTER OF

CHARLES J. McCLENNON AND LILLIE M. McCLENNON,
COPARTNERS, TRADING AS EMPIRE MONUMENT
COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3939. Complaint, Nov. 2, 1939—Decision, May 8, 1941*

Where an individual engaged in the manufacture and competitive interstate sale and distribution of tombstones, monuments, and footstones, designated as "Marble Durastone" and "Granite Durastone" and made, respectively, by mixing cement with marble aggregate or with granite dust and copper slag; in advertising her said products in periodicals and in catalogs, circulars, price lists, and other advertising material—

- (a) Represented that they would not fade, crumble, or deteriorate from natural causes, were impervious to the effects of heat, cold, dampness, or dryness, and would retain their original beauty throughout the years;

Facts being that, as shown by tests, the average compressive strength of her said products was relatively much less than the minimum required for acceptability of cast stone under Federal specifications; average absorption of water by her said products was likewise in excess of such minimum requirements; freezing and thawing tests also indicated that products in question were of relatively poor quality and proved aforesaid claims to be without foundation; under exposure to natural weather conditions such products would show deterioration in from 10 to 20 years, and her "Granite Durastone" was not genuine granite aggregate in that the mixture included material other than natural granite and necessary binder or cement;

- (b) Represented that tombstones, monuments, and footstones were being offered at special sale prices, through such statements as "Tombstone Sale," "Special Sale Prices," "Take Advantage of This Great Sale and Act Promptly Now. You will save from one-third to one-half the usual price. Don't wait. Beat the price rise"; and

- (c) Represented that footstones would be given free with purchases of tombstones or monuments;

Facts being that the prices at which her said products were offered for sale and sold by her were her usual and customary prices, footstones were not given free as above set forth, but the cost thereof was included in the price charged for the tombstone or monument;

With effect of misleading and deceiving a substantial part of the purchasing public into an erroneous and mistaken belief as to the durability, quality, and price of her said products, whereby they bought a substantial portion thereof, and trade was unfairly diverted to her from competitors:

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.