

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.

Complaint

32 F. T. C.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. B. G. Wilson for the Commission.

Sutherland, Tuttle & Brennan, of Atlanta, Ga., for Lillie M. McClennon.

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 Charles J. McClennon and Lillie M. McClennon, copartners, trading as Empire Monument Co., hereinafter referred to as respondents, have 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. Respondents Charles J. McClennon and Lillie M. McClennon are copartners, trading as Empire Monument Co., with their office and principal place of business at 108 East Rock Springs Road NE., Atlanta, Ga. Respondents are now, and for some time last past have been, engaged in the business of manufacturing and selling imitation marble and granite tombstones and monuments in commerce between and among the various States of the United States and the District of Columbia.

Respondents cause their said products, when sold, to be shipped from their place of business in the State of Georgia to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have 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 their said business, respondents are now, and for more than 1 year last past have been, in substantial competition with other partnerships, and with individuals, 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 their said product, the respondents have disseminated and are now disseminating false and misleading statements and representations with respect to said products and the purchase price thereof. Such statements and representations are inserted in periodicals having a general circulation and in catalogs, 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:

"Marble Durastone" and "Granite Durastone."

The great durability and lasting qualities of our beautiful genuine marble and granite aggregate monuments.

Our guarantee! they will neither fade, crumble nor deteriorate in any way from natural causes but will retain their original beauty throughout the years.

Impervious to bad effects from either great heat or cold, dampness or dryness; therefore able to withstand extreme climates of all kinds.

A lasting tribute of love—will retain its beauty and carry its message of remembrance to coming generations.

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 prices—Don't wait! Beat the price rise.

Made under a formula used by our company for many, many years and has stood the test of engineers and time.

Footstone free.

PAR. 4. By the use of the foregoing representations, together with other representations similar thereto not specifically set out herein, the respondents represent that their said products are genuine natural marble and granite tombstones and monuments; that such stones will not fade, crumble, or deteriorate in any way from natural causes but will retain their original condition through many years; that they are impervious to both extreme heat and extreme cold and to dampness and dryness; that the prices at which such stones are advertised are much less than the customary and usual prices at which such stones are sold by respondents; that such stones have withstood tests made by engineers; that a footstone is given free by respondents with every order for a tombstone or monument.

PAR. 5. The foregoing representations are false, misleading, and untrue. In truth and in fact respondents' tombstones and monuments are not genuine marble or granite tombstones and monuments, but are manufactured by respondents from cement and other ingredients and are known as cast stone or artificial stone. Such stones will not retain their original condition through the years but will fade, crack, and deteriorate. They are not impervious to heat or cold or to dampness or dryness, but will crack, crumble, and deteriorate under ordinary weather conditions. The prices at which respondents' products are advertised for sale are not in fact reduced or "sale" prices and do not represent any saving to the purchaser, but are the prices at which such products are usually and customarily sold by respondents. Such stones have not been tested by

engineers. The footstone represented by respondents as being awarded free with each order is not in fact free, but the price thereof is included in the price paid for the tombstone or memorial.

PAR. 6. Tombstones and monuments carved from natural marble or granite have established among the members of the purchasing public a reputation for their beauty, durability, and other preeminent qualities, and as a result of such reputation the purchasing public has a decided preference for such products above tombstones and memorials which are cast stone or artificial stone.

PAR. 7. There are among the competitors of respondents, as mentioned in paragraph 2 hereof, many who do not misrepresent the composition or qualities of their products or the prices at which their products are advertised and sold.

PAR. 8. The use by the respondents 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 respondents' said products. As a result thereof substantial injury has been done and is being done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 9. The aforesaid acts and practices of the respondents as herein set forth are all to the prejudice and injury of the public and of respondents' 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 November 2, 1939, issued and subsequently served its complaint in this proceeding upon respondent Lillie M. McClennon, an individual trading as Empire Monument Co., charging her 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 said complaint

were introduced by attorneys for the Commission and in opposition to the allegations of the complaint by attorneys for the respondent before Miles J. Furnas, 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 said complaint, the answer thereto, testimony and other evidence, report of the trial examiner, and briefs in support of the complaint and in opposition thereto (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 business carried on under the trade name, Empire Monument Co., at one time was a partnership composed of Mrs. Lillie M. McClennon and her then husband, Charles J. McClennon. This partnership existed for a few months and was dissolved in 1937 when Mrs. Lillie M. McClennon separated from her husband, Charles J. McClennon, and acquired his interest in the partnership. Since such separation Charles J. McClennon has had no interest in or control over said business. Mrs. Lillie M. McClennon subsequently was divorced and remarried and is now Mrs. Lillie M. Sentell, and is an individual trading as the Empire Monument Co. Respondent Lillie M. Sentell is now, and at all times named in the complaint has been, engaged in the business of manufacturing, offering for sale, and selling tombstones, monuments, and footstones. Respondent has caused said products, when sold, to be shipped from her place of business in the State of Georgia to purchasers located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned in the complaint has maintained, a course of trade in said tombstones, monuments, and footstones 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 during all times mentioned in the complaint has been, in substantial competition with individuals, firms, and corporations engaged in the sale and distribution of tombstones, monuments, and footstones in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. The tombstones, monuments, and footstones manufactured and sold by respondent are described and designated as "Marble Durastone" and as "Granite Durastone." Those designated as "Marble Durastone" are manufactured by mixing approximately one part of cement with three parts of marble aggregate, moistening this mixture and compacting it in a container or mold. Thereafter the so-called cast stone is removed from the mold and kept in a moist condition for approximately four weeks, or until the mixture has cured or hardened. A similar process is used to produce the tombstones, monuments, and footstones designated as "Granite Durastone," except that these are composed of a mixture of approximately one part cement and three parts of granite dust and copper slag.

PAR. 4. In order to induce the purchase of said products the respondent causes and has caused advertisements to be inserted in periodicals which circulate in many States and has distributed catalogs, circulars, price lists, and other advertising material among customers and prospective customers located in the several States. Among the representations contained in said advertisements are the following:

"Marble Durastone" and "Granite Durastone."

The great durability and lasting qualities of our beautiful genuine marble and granite aggregate monuments.

Our guarantee! They will neither fade, crumble nor deteriorate in any way from natural causes but will retain their original beauty throughout the years.

Impervious to bad effects from either great heat or cold, dampness or dryness; therefore able to withstand extreme climates of all kinds.

A lasting tribute of love—will retain its beauty and carry its message of remembrance to coming generations.

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 prices—Don't wait! Beat the price rise.

Made under a formula used by our company for many, many years and has stood the test of engineers and time.

Footstone free.

PAR. 5. Specimens of respondent's "Marble Durastone" and "Granite Durastone" were submitted to and tested by the National Bureau of Standards of the United States Department of Commerce to determine their strength and durability. The tests conducted by said Bureau showed that the average compressive strength of three specimens of respondent's "Marble Durastone" was 3,640 pounds per square inch, and the average of three samples of respondent's "Granite Durastone" was 3,710 pounds per square inch. These contract with a minimum compressive strength of 5,000 pounds per square inch required for

acceptability of cast stone under Federal specifications. The average absorption of water by respondent's products was also in excess of the minimum requirements of the specifications mentioned. The failure of respondent's cast stone products to meet such minimum requirements demonstrated that these products were of relatively poor quality.

Three specimens of each of respondent's products were also tested by the said Bureau by alternate freezing and thawing, and under this test pitting of some specimens became apparent after 40 cycles, one specimen split into two parts at 125 cycles, and crumbling commenced at 150 cycles.

There is no foundation in fact for respondent's representations that such products will not fade, crumble, or deteriorate in any way from natural causes but will retain their original beauty throughout the years; that they are impervious to bad effects from either heat or cold, dampness or dryness; or that they will retain their beauty for coming generations. Exposure of these products to natural weather conditions would result in their showing deterioration in from 10 to 20 years.

Respondent's representations that the product designated as "granite Durastone" is a genuine granite aggregate are false in that the mixture from which such products are, and have been, made includes materials other than particles or fragments of natural granite and the necessary binder or cement.

Respondent's representations that tombstones, monuments, and footstones were being offered at special sale prices are not true. The prices at which such products were offered for sale and sold by respondent were, and are, the usual and customary prices charged by respondent for such products.

Respondent's representation that footstones will be given free with purchases of tombstones or monuments is not a fact in that the cost of the footstone is included in the price charged for the tombstone or monument.

PAR. 6. The use by respondent of the statements and representations above set forth has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial part of the purchasing public into an erroneous and mistaken belief as to the durability, qualities, and prices of such products. And, further, as a result of this erroneous and mistaken belief members of the purchasing public have bought a substantial portion of respondent's products, and trade has been unfairly diverted to respondent from her competitors.

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CONCLUSION

The aforesaid acts and practices of the 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 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 the respondent, testimony and other evidence in support of the allegations of said complaint and in opposition thereto taken before an examiner of the Commission theretofore duly designated by it, report of the trial examiner, briefs in support of the complaint and in opposition thereto (oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That respondent Lillie M. Sentell (formerly Lillie M. McClennon), an individual, trading as Empire Monument Co., or trading under any other name or names, her representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of cast stone tombstones, monuments, footstones, or other grave markers in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or by implication:

1. Representing that such products will not fade, crumble, or deteriorate from natural causes; or are impervious to the effects of heat, cold, dampness, or dryness; or will retain their original beauty throughout the years.

2. Misrepresenting in any manner or by any means the durability of such products or their resistance to the effects of exposure to natural weather conditions.

3. Representing as "free," either by the use of the word stated or any other word or term of similar import or meaning, any article the cost of which is included in the purchase price of other merchandise in connection with which such article is offered.

4. Representing that the usual and customary prices at which respondent offers to sell or sells such products are "sale" or "special

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sale," or other special or reduced prices, either by the use of the terms stated or any other term or terms of similar import or meaning.

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

It is further ordered, That the complaint be, and the same is, hereby dismissed as to respondent Charles J. McClennon.

IN THE MATTER OF
HEARST MAGAZINES, INC.

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

Docket 3872. Complaint, Aug. 17, 1939—Decision, May 13, 1941

Where a corporation engaged in publication, among other periodicals, of its "Good Housekeeping" magazine, and in competitive interstate sale and distribution thereof, and of various "seals of approval" to manufacturers and distributors, and in operation, prior to recent discontinuance thereof, of a "shopping service"; and in maintaining, incident to its activities, its Good Housekeeping Bureau for investigation of food, drugs, and cosmetics, and its Good Housekeeping Institute for investigation of mechanical devices and articles of household equipment; in its said magazine publicizing such testing services, and from time to time issuing buyers' guides for general distribution listing products or other commercial offerings represented by it as having been tested and approved by aforesaid Bureau and Institute—

(a) Represented that all products, services or other commercial offerings advertised in its said magazine were guaranteed by it, through statement, on certain page of each issue, "Good Housekeeping's GUARANTY PAGE Every Product Guaranteed as Advertised," and statements at the bottom of each page carrying advertisements, "Every product guaranteed as advertised—see page 6" or "Every product advertised is guaranteed—see page 6," and extensively publicized its guaranty, with tendency to cause readers to believe that guaranty in question was an unlimited one;

Facts being the undertaking, as stated on page referred to, was to investigate any advertised product found unsatisfactory by purchasers within 1 year and to replace product or refund money if product was defective;

(b) Authorized advertisers in its said magazine to publicize said guarantee in other publications and on labels attached to their products and on containers thereof, through use of emblems or shields reading "Guaranteed by Good Housekeeping as advertised therein" or "Guaranteed as advertised in Good Housekeeping," with result that through such use, independent of explanation above set forth, there was a tendency and capacity to cause members of the purchasing public to believe that products in question were unconditionally guaranteed by it;

(c) Represented that various products had been adequately and thoroughly tested in such a manner as to insure quality, material and properties thereof in relation to their intended usage and the fulfillment of the claims made therefor, through the use of seals of approval which it both authorized and recommended for merchandise of those who had applied to it for such service—following issuance of certificate certifying that product had been tested and approved—reproduction of which it likewise authorized in various advertising and circulars, and upon which seals, usually elliptical, appeared words "Tested and approved by Good Housekeeping Institute (or Bureau)," followed by notation "Conducted by Good Housekeeping Magazine" (or, in case of meat products, with word "Recommended" in place of words "Tested and