

Complaint

IN THE MATTER OF

JAMES J. COLLINS, CHARLES J. HEPP AND CATHERINE
HEPP, TRADING AS ROCKDALE MONUMENT COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4404. Complaint, Dec. 6, 1940—Decision, Aug. 22, 1941*

Where a firm engaged in the interstate sale and distribution of imitation granite monuments and markers; by means of advertisements in periodicals of general circulation and in circulars, catalogs and other advertising media, directly and by implication—

(a) Represented that the prices at which they offered their products were wholesale and special or reduced, and substantially lower than those at which they sold said products in the usual course of business, and that they were the only dealers offering a plan by which monuments and markers could be purchased at low prices on the installment plan; facts being the prices in question were the regular and customary prices, and many other dealers sold such products at low prices and on installments;

(b) Represented that their said products were of natural granite, of a permanent nature, and of certain specified weights; when they were not natural granite, monuments and markers of which have an established reputation for beauty, durability, and other preeminent qualities and are consequently decidedly preferred over those of cast or artificial stone, but were made of a mixture of cement and granite chips molded into the desired form and ground and polished to resemble natural granite, would deteriorate much more rapidly than natural granite, and in many instances were substantially less in weight than represented; and

(c) Made use in their advertising literature of drawings and cuts purporting to show the size, color, nature, and quality of their monuments, when in fact said products were not of the size, color, nature, and quality illustrated; With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, and of causing it, because of such belief, to purchase substantial quantities of their said products:

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.

Before *Mr. Andrew B. Duvall*, trial examiner.

Mr. B. G. Wilson for the Commission.

Mr. Frank E. & Arthur Gettleman, of Chicago, Ill., for respondents

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 James J. Collins, Charles J. Hepp, and Catherine Hepp, individually and trading as

Complaint

33 F. T. C.

Rockdale Monument Co., hereinafter referred to as respondents, have 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 its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, James J. Collins, Charles J. Hepp, and Catherine Hepp, are individuals trading as Rockdale Monument Co., with their office and principal place of business in Joliet, Ill. Respondents are now, and for more than 2 years last past have been, engaged in the business of manufacturing and selling imitation granite monuments and markers in commerce between and among the various States of the United States and in the District of Columbia.

Respondents cause their said products, when sold, to be shipped from their said place of business in the State of Illinois 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 their said monuments and markers 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 business, and to induce the purchase of their said products, the respondents have disseminated false and misleading statements and representations with respect to said products, such statements and representations being inserted in magazines having a general circulation and in circulars, catalogs, and other advertising matter, distributed among prospective purchasers. Among and typical of such false and misleading representations, are the following:

You buy from us at wholesale prices.

Special Offer. Rockdale marker (as illustrated) specially priced, \$12.50—\$25.00 value.

We are the only company offering an easy payment plan on the purchase of monuments or markers by mail at the low prices as shown in our catalog.

Rockdale monuments and markers have been skillfully designed and executed by expert stone cutters.

They have been styled and cut by expert artisans.

Dignified beauty and dependable durability.

Flint-like hardness. Made of the finest grades of granite aggregates.

A lasting memorial that will endure through the years.

Model A-10 * * * Approximate weight, 470 lbs.

Model A-11 * * * Approximate weight, 600 lbs.

PAR. 3. Through the use of the foregoing representations, and others of similar import not specifically set out herein, the respondents represent and have represented, directly or by implications, that the prices at which respondents offer their products for sale are

wholesale prices and are special or reduced prices, being substantially lower than the prices at which such products are sold by respondents in the usual course of business; that respondents are the only dealers offering a plan by which monuments and markers may be purchased at low prices on the installment plan; that respondents' products are of natural granite; that said products are of a permanent nature; that said monuments and markers are of certain specified weights.

PAR. 4. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, the prices at which respondents offer their products for sale are not wholesale prices, nor are said prices special or reduced prices but are the regular and customary prices at which such products are offered for sale and sold by respondents in the usual and ordinary course of business. Respondents are not the only dealers offering monuments and markers for sale at low prices on the installment or partial payment plan, there being many other dealers who sell such products at low prices and on the installment plan. Respondents' products are not of natural granite but are cast stone or artificial stone, said products being made of a mixture of cement and granite chips molded into the desired forms, and ground and polished to resemble natural granite. Respondents' products are not of a permanent nature but deteriorate much more rapidly than natural granite. In many instances the monuments and markers represented by respondents as being of certain specified weights are substantially lighter in weight than represented.

A further practice on the part of the respondents is the use in their advertising literature of drawings, cuts, and picturizations purporting to represent the size, color, nature, and quality of respondents' products, when in fact such products are not of the size, color, nature, or quality so represented.

PAR. 5. Monuments and markers of natural granite have established among the members of the purchasing public a reputation for beauty, durability, and other preeminent qualities, and as a result of such reputation the purchasing public has a decided preference for such products over monuments and markers which are cast stone or artificial stone.

PAR. 6. The use by the respondents of the aforesaid false and misleading statements and representations 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 to cause the public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' products.

PAR. 7. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and constitute 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 December 6, 1940, issued, and subsequently served its complaint in this proceeding upon the respondents James J. Collins, Charles J. Hepp, and Catherine Hepp, individually and trading as Rockdale Monument Co., charging them with unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On December 26, 1940, the respondents filed their answer in this proceeding. Thereafter, at a hearing held in Chicago, Ill., on May 22, 1941, before Andrew B. Duvall, an examiner of the Commission, theretofore duly designated by it, certain testimony was received and a stipulation was entered into whereby it was stipulated and agreed that, subject to the approval of the Commission, a statement of facts read into the record may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the Commission may proceed upon said statement of facts to make its findings as to the facts (including the inferences which it may draw from the said stipulated facts) and its conclusion based thereon, and issue its order disposing of this proceeding without the presentation of argument or the filing of briefs. Counsel for respondents expressly waived the filing of the trial examiner's report upon the evidence. Thereafter, this proceeding came on for final hearing before the Commission on said complaint, answer, testimony, and stipulation as to the facts, said stipulation having been approved, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Charles J. Hepp, Catherine Hepp, and James J. Collins, are individuals who, prior to October 15, 1940, composed a partnership trading under the name Rockdale Monument Co., with their office and principal place of business at Joliet, Ill. On October 15, 1940, respondent James J. Collins severed his connection with the partnership and he has not since that date been inter-

1123

Findings

ested in the business conducted under the name Rockdale Monument Co. All of said individuals, for more than 2 years prior to October 15, 1940, had been engaged in, and the respondents Charles J. Hepp and Catherine Hepp are now engaged in, the business of manufacturing and offering for sale and selling imitation granite monuments and markers in commerce between and among the various States of the United States and in the District of Columbia.

Respondents Charles J. Hepp and Catherine Hepp now cause their said products, and all of said respondents prior to October 15, 1940, caused their said products, when sold, to be shipped from said place of business in the State of Illinois to the purchasers thereof located in the various other States of the United States and in the District of Columbia. Respondents, during the respective periods of time above mentioned, maintained a course of trade in said monuments and markers 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, prior to October 15, 1940, and for the purpose of inducing the purchase of said products, the respondents disseminated false and misleading statements and representations with respect to said products. Such statements and representations were inserted in magazines having a general circulation and in circulars, catalogs, and other advertising media distributed among prospective purchasers. Among and typical of such false and misleading representations are the following:

You buy from us at wholesale prices.

Special Offer. Rockdale marker (as illustrated) specially priced, \$12.50—\$25.00 value.

We are the only company offering an easy payment plan on the purchase of monuments or markers by mail at the low prices as shown in our catalog.

Rockdale monuments and markers have been skillfully designed and executed by expert stone cutters.

They have been styled and cut by expert artisans.

Dignified beauty and dependable durability.

Flint-like hardness. Made of the finest grades of granite aggregates.

A lasting memorial that will endure through the years.

Model A-10 * * * Approximate weight, 470 lbs.

Model A-11 * * * Approximate weight, 600 lbs.

PAR. 3. Through the use of the foregoing representations, and others of similar import and meaning not specifically set out herein, the respondents represented, directly and by implication, that the prices at which respondents offered their products for sale were wholesale prices and were special or reduced prices, substantially lower than the prices at which such products were sold by respondents in the usual course of business; that respondents were the only dealers offering a

plan by which monuments and markers could be purchased at low prices on the installment plan; that respondents' products were of natural granite; that said products were of a permanent nature; and that said monuments and markers were of certain specified weights.

PAR. 4. The foregoing representations were false and misleading. In truth and in fact, the prices at which respondents offered their products for sale were not wholesale prices, nor were said prices special or reduced prices but the regular and customary prices at which such products were offered for sale and sold by respondents in the usual and ordinary course of business. Respondents were not the only dealers offering monuments and markers for sale at low prices on the installment or partial payment plan, there being many other dealers who sell such products at low prices and on the installment plan. Respondents' products were not natural granite but were cast stone or artificial stone; said products were made of a mixture of cement and granite chips molded into the desired forms, and ground and polished to resemble natural granite. Respondents' products were not of a permanent nature but would deteriorate much more rapidly than natural granite. In many instances, the monuments and markers represented by respondents as being of certain specified weights were substantially less in weight than represented.

A further practice on the part of respondents was the use in their advertising literature of drawings, cuts, and picturizations purporting to show the size, color, nature, and quality of respondents' products, when in fact respondents' products were not of the size, color, nature, and quality illustrated in said drawings, cuts, and picturizations.

PAR. 5. Monuments and markers of natural granite have established among the members of the purchasing public a reputation for beauty, durability, and other preeminent qualities, and as a result of such reputation the purchasing public has a decided preference for such products over monuments and markers which are cast stone or artificial stone.

PAR. 6. The use by the respondents of the aforesaid false and misleading statements and representations had the tendency and capacity to, and did, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were true, and caused the public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' products.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all to the prejudice and injury of the public and constitute unfair

1123

Order

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 respondents, testimony and a stipulation as to the facts entered into which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondents herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, James J. Collins, Charles J. Hepp, and Catherine Hepp, individually and trading as Rockdale Monument Co., or trading under any other name or names, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of monuments and markers in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that usual and customary prices at which said products are sold are "wholesale," special or reduced prices or anything other than the regular retail prices for said products.

2. Representing that respondents are the only dealers in monuments offering such products for sale at low prices on the installment plan.

3. Representing that said products are natural granite, or that said products are of permanent nature.

4. Representing that the weight of any of said monuments is greater than the actual weight of such monument.

5. Using cuts, drawings, or picturizations of monuments to show the size, color, nature, or quality of respondents' products which do not accurately reflect the actual size, color, nature, or quality of the monuments so illustrated.

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

IN THE MATTER OF
SCIENTIFIC APPARATUS MAKERS OF AMERICA, ET AL.¹

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

Docket 3092. Complaint, Mar 29, 1937—Decision, Aug. 25, 1941

Where a number of corporations and concerns which controlled and dominated the manufacture, sale, and distribution of products used by surveyors, engineers, builders, the drafting profession and others, such as prepared tracing papers, tracing cloth, blueprint papers and cloths, other reproduction papers and cloths, field books for engineers, drawing instruments and tools, blueprinting machines and equipment, surveying instruments, forestry instruments, current meters, and water-stage registers, etc.; doing the majority of the volume of such business in the United States and especially of that in blueprint and other reproduction papers and cloths, and prior to the acts and practices below set forth, in active and substantial competition with each other and with others in the interstate sale of their products; and which subsequently became members of an association organized for the purpose, among others, of conducting scientific research relating to the production and improvement of scientific instruments, promotion and betterment of the industry involved, prevention of unfair methods of competition, etc., and, by virtue of being engaged as aforesaid, were members of the "Surveying-Drafting-Coaters Section" of said association—

- (a) Entered into various agreements and understandings directed to the fixing, enhancing, and maintenance of prices, beginning with a meeting in June or July 1932, at which adherence to a certain price list involving substantially higher prices than those then prevailing, and the division

¹ Parties in instant proceeding were substituted by Commission order dated September 28, 1938, as follows:

This matter coming on to be heard by the Commission upon the motion of Charles W. Spidel and Walter A. Kohn, copartners trading as Chas. W. Spidel & Co., requesting that they be substituted as parties respondent in lieu and instead of Chas. W. Spidel & Co., a corporation, and for permission to withdraw their answer to the complaint herein filed on June 22, 1937, and in lieu thereof to substitute the answer dated September 19, 1938, and annexed to said motion, and it appearing to the Commission that Chas. W. Spidel & Co. is erroneously described in said complaint as a corporation; that Charles W. Spidel and Walter A. Kohn are copartners trading as Chas. W. Spidel & Co.; and that said copartners have accepted service of the complaint issued herein erroneously directed to Chas. W. Spidel & Co., a corporation, and that the said Charles W. Spidel and Walter A. Kohn have heretofore entered their appearance in this proceeding, and the Commission having duly considered the said motion and the record herein, and being now fully advised in the premises;

It is ordered, That the motion of Charles W. Spidel and Walter A. Kohn, copartners trading as Chas. W. Spidel & Co., that they be substituted as parties respondent in this proceeding in lieu and instead of Chas. W. Spidel & Co., a corporation, be, and the same hereby is, granted, and the said Charles W. Spidel and Walter A. Kohn are substituted as parties respondent in this proceeding in lieu and instead of Chas. W. Spidel & Co., a corporation; and

It is further ordered, That the motion of respondents Charles W. Spidel and Walter A. Kohn, copartners trading as Chas. W. Spidel & Co., that they be permitted to withdraw their answer filed herein on June 22, 1937, and to file in lieu thereof their answer dated September 19, 1938, and annexed to said motion, be, and the same hereby is, granted.