

IN THE MATTER OF
THEOPHILUS J. CRAIG

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

Docket 4600. Complaint, Sept. 29, 1941—Decision, Jan. 9, 1943

Where a corporation engaged in competitive interstate sale and distribution of tombstones and monuments; through advertisements in newspapers of general circulation and in periodicals, circulars, and other advertising material—

- (a) Represented that the prices at which he offered said products were 30 percent below retail prices therefor and greatly less than competitors' prices, and that his price of \$189 was special and that the regular and customary price was \$260; when in fact his said prices were not less than the usual retail prices or 30 percent less than competitors'; and said price of \$260 was wholly fictitious, and usual price therefor was said lesser figure plus certain charges for polishing;
- (b) Represented that he quarried the granite from which his products were manufactured in quarries which he owned and operated; when, in fact, he filled orders for such products with granite produced in quarries which he did not own, operate, or control;
- (c) Represented, through picturizations, that his said product was polished in its entirety, including the front, back, top, sides, and base; when in fact he did not finish his tombstones and monuments in their entirety but made additional charges for polishing certain portions thereof; and
- (d) Represented and implied that said products were made from granite quarried in the vicinity of Barre, Vt., Quincy, Mass., or Westerly, R. I.; when in many instances they were made from granite produced in quarries in other parts of the United States;

With effect of misleading and deceiving a substantial portion of the purchasing public, which prefers to deal directly with the owner of the quarry as affording such advantages as better price, selection, and adjustments, into the mistaken belief that said misrepresentations and implications were true, and as a result, into purchasing its said products; whereby trade was diverted to him from competitors, including those who do not misrepresent their products or prices:

Held, That said acts and practices were all to the prejudice and injury of the public and competitors, and constituted unfair methods of competition.

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 Theophilus J. Craig, an individual, 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, Theophilus J. Craig, is an individual, with his office and principal place of business located at 14 Federal Avenue, Quincy, Mass. The respondent is now, and for more than 2 years last past has been, 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.

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, the respondent is in substantial competition with other individuals, and with corporations, partnerships, and firms engaged in the sale and distribution of tombstones and monuments in said commerce.

PAR. 3. To induce the purchase of his said tombstones and monuments, the respondent has disseminated, and is now disseminating, false and misleading statements and representations with respect to his said products. Such statements and representations are inserted in newspapers having a general circulation and in periodicals, circulars, and other advertising material distributed among prospective purchasers. Among and typical of the false and misleading statements and representations so made and disseminated, as aforesaid, are the following:

Better monuments at a saving of 30%

Buy directly from the quarry owner.

Monument \$189.

4 ft. 10 inches long

Regularly \$260.

Craig (Everlasting)

60 inches long \$189

Barre, Vt.; Quincy, Westerly and All

Colored Granites.

(Said statements are accompanied by a picturization of a tombstone or monument polished in its entirety, including the front, back, top, sides, and base.)

PAR. 4. Through the use of the foregoing statements and representations, together with other statements and representations similar thereto not set out herein, the respondent represents in his advertisements that the prices at which he offers his tombstones and monu-

ments for sale are 30 percent below the usual retail prices for said products and 30 percent less than competitors' prices for similar products; that respondent quarries the granite from which said tombstones and monuments are manufactured by him in quarries owned and operated by respondent; that respondent's tombstones and monuments are polished in their entirety, including the front, back, top, sides, and base; that the price of \$189 at which said monuments are offered for sale by the respondent is a special price, and that the regular and customary price at which said tombstones and monuments are offered for sale and sold is \$260. Respondent also represents and implies that said tombstones and monuments are manufactured from granite quarried in the vicinity of Barre, Vt., Quincy, Mass., or Westerly, R. I. Respondent also represents that said tombstones and monuments are "everlasting" and will last for an indefinite and indeterminate period of time.

PAR. 5. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact, the prices at which respondent offers for sale and sells his tombstones and monuments are not less than the usual retail prices for said products or 30 percent less than competitors' prices for similar products. Respondent does not quarry the granite from which said tombstones and monuments are manufactured from quarries owned and operated by him, but fills orders for such products with granite produced in quarries which respondent does not own, operate, or control. The respondent does not finish or polish his tombstones and monuments in their entirety as shown in said picturization but makes additional charges for polishing certain portions thereof. The price of \$260 represented by respondent as being the usual and customary retail price for said tombstones and monuments is wholly fictitious and does not in any sense represent the actual retail price for such tombstones and monuments. Said products have not, in the usual and regular course of trade sold for \$260. Said price of \$260 is far in excess of the price at which said products are usually and customarily sold in the normal course of business. The usual price of such products is \$189, plus certain charges for polishing.

In many instances, the tombstones and monuments represented by respondent as being made of granite produced in the vicinity of Barre, Vt., Quincy, Mass., or Westerly, R. I., are not made from granite so produced but from granite produced in quarries located in other and distant parts of the United States. Respondent's said products are not "everlasting" and will not last for an indefinite or indeterminate period of time, but will stain, tarnish, fade, and otherwise deteriorate, and show, in some form or manner, the ravages of time.

PAR. 6. A substantial portion of the purchasing public prefers to deal directly with the owner of the quarry producing the products in purchasing tombstones and monuments, under the impression and belief that by so dealing certain advantages may be obtained, such as the elimination of the profit of an intermediate dealer, selection from a more complete and higher quality line of products, and a more prompt adjustment of claims made under guarantees or warranties.

PAR. 7. There are among the competitors of respondent, as described in paragraph 2 hereof, many who sell and distribute tombstones and monuments who do not in any manner misrepresent the grade, material or quality of their said products, or the price at which their said products are sold, or other matters pertaining thereto.

PAR. 8. The use by the respondent of the aforesaid acts, practices, and methods, in connection with the offering for sale, sale, and distribution of said tombstones and monuments, has had, and now has, the tendency and capacity to mislead and deceive, and does mislead and deceive, a substantial portion of the purchasing public into the erroneous and mistaken belief that the aforesaid false, misleading, and deceptive statements, representations, and implications are true, and because of such erroneous and mistaken belief causes a substantial portion of the purchasing public to purchase respondent's said products in said commerce. As a result thereof, trade in commerce between and among the several States of the United States and the District of Columbia has been unfairly diverted to the respondent from his competitors in said commerce, to their injury and to the injury of the public.

PAR. 9. The aforesaid acts and practices of the respondent, as herein alleged, 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 September 29, 1941, issued and subsequently served its complaint in this proceeding upon respondent, Theophilus J. Craig, an individual, 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 October 22, 1941, 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 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:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Theophilus J. Craig, is an individual with his office and principal place of business located at 14 Federal Avenue, Quincy, Mass. The respondent is now, and for more than 2 years last past has been, 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.

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, the respondent is in substantial competition with other individuals, and with corporations, partnerships, and firms engaged in the sale and distribution of tombstones and monuments in said commerce.

PAR. 3. To induce the purchase of his said tombstones and monuments, the respondent has disseminated, and is now disseminating, false and misleading statements and representations with respect to his said products. Such statements and representations are inserted in newspapers having a general circulation and in periodicals, circulars, and other advertising material distributed among prospective purchasers. Among and typical of the false and misleading statements and representations so made and disseminated, as aforesaid, are the following:

Better monuments at a saving of 30% Buy directly from the quarry owner.
Monument \$189. 4 ft. 10 inches long Regularly \$260.

Craig. (Everlasting) 60 inches long \$189 Barre, Vt.; Quincy, Westerly and All Colored Granites.

(Said statements are accompanied by a picturization of a tombstone or monument polished in its entirety, including the front, back, top, sides, and base.)

PAR. 4. Through the use of the foregoing statements and representations, together with other statements and representations similar thereto not set out herein, the respondent represents in his advertisements that the prices at which he offers his tombstones and monuments for sale are 30 percent below the usual retail prices for said products

and 30 percent less than competitors' prices for similar products; that respondent quarries the granite from which said tombstones and monuments are manufactured by him in quarries owned and operated by respondent; that respondent's tombstones and monuments are polished in their entirety, including the front, back, top, sides, and base; that the price of \$189 at which said monuments are offered for sale by the respondent is a special price, and that the regular and customary price at which said tombstones and monuments are offered for sale and sold is \$260. Respondent also represents and implies that said tombstones and monuments are manufactured from granite quarried in the vicinity of Barre, Vt., Quincy, Mass., or Westerly, R. I.

PAR. 5. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact, the prices at which respondent offers for sale and sells his tombstones and monuments are not less than the usual retail prices for said products or 30 percent less than competitors' prices for similar products. Respondent does not quarry the granite from which said tombstones and monuments are manufactured from quarries owned and operated by him, but fills orders for such products with granite produced in quarries which respondent does not own, operate, or control. The respondent does not finish or polish his tombstones and monuments in their entirety as shown in said picturization but makes additional charges for polishing certain portions thereof. The price of \$260 represented by respondent as being the usual and customary retail price for said tombstones and monuments is wholly fictitious and does not in any sense represent the actual retail price for such tombstones and monuments. Said products have not, in the usual and regular course of trade, sold for \$260. Said price of \$260 is far in excess of the price at which said products are usually and customarily sold in the normal course of business. The usual price of such products is \$189, plus certain charges for polishing.

In many instances, the tombstones and monuments represented by respondent as being made of granite produced in the vicinity of Barre, Vt., Quincy, Mass., or Westerly, R. I., are not made from granite so produced but from granite produced in quarries located in other and distant parts of the United States.

PAR. 6. A substantial portion of the purchasing public prefers to deal directly with the owner of the quarry producing the products in purchasing tombstones and monuments, under the impression and belief that by so dealing certain advantages may be obtained, such as the elimination of the profit of an intermediate dealer, selection from a more complete and higher quality line of products, and a more prompt adjustment of claims made under guarantees or warranties.

PAR. 7. There are among the competitors of respondent, as described in paragraph 2 hereof, many who sell and distribute tombstones and monuments who do not in any manner misrepresent the grade, material, or quality of their said products, or the price at which their said products are sold, or other matters pertaining thereto.

PAR. 8. The use by the respondent of the aforesaid acts, practices and methods in connection with the offering for sale, sale, and distribution of said tombstones and monuments, has had, and now has, the tendency and capacity to mislead and deceive, and does mislead and deceive, a substantial portion of the purchasing public into the erroneous and mistaken belief that the aforesaid false, misleading, and deceptive statements, representations, and implications are true, and because of such erroneous and mistaken belief causes a substantial portion of the purchasing public to purchase respondent's said products in said commerce. As a result thereof, trade has been unfairly diverted to the respondent from his competitors who are engaged in the sale and distribution of tombstones and monuments in commerce between and among the various States of the United States.

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 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, Theophilus J. Craig, an individual, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of tombstones and monuments in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that the prices at which respondent offers his tombstones and monuments for sale are 30 percent below the usual retail prices for said products or any other savings in excess of the actual savings from the prices charged by respondent's competitors for similar products made of the same or comparable materials.

2. Representing that the respondent owns, operates, or controls the quarry from which granite is quarried and manufactured into tombstones and monuments, unless and until the respondent actually owns, operates, or directly and absolutely controls the quarry wherein said granite is quarried.

3. Using picturizations of tombstones and monuments which appear to be completely polished, including the front, back, top, sides, and base, when orders for the tombstones or monuments so pictured are filled with tombstones or monuments not polished in their entirety or an additional charge is made for a completely polished tombstone or monument.

4. Representing that respondent's tombstones and monuments are manufactured from granite quarried in the vicinity of Barre, Vt., Quincy, Mass., Westerly, R. I., or from any other particular granite, unless said tombstones and monuments are in fact produced or manufactured from the particular granite specified.

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

36 F. T. C.

IN THE MATTER OF
ALBERT GEORGE, TRADING AS GEORGE & THOMAS
CONE COMPANY

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

Docket 4837. Complaint, Sept. 17, 1942—Decision, Jan. 13, 1943

Where an individual, engaged in the manufacture and competitive interstate sale and distribution of ice cream cones which he assembled in 100-cone boxes or cartons—

Sold his said products to dealers, jobbers and ice cream manufacturers packed in boxes or cartons as aforesaid, concealed within each of which was enclosed by him, together with explanatory notice captioned "Save This Coupon," a black, red or green coupon, respectively redeemable for 5, 500, or 1,000 cones without further charge; and thereby

Supplied to and placed in the hands of others means of conducting lotteries, gift enterprises, or games of chance in the sale of his products in accordance with aforesaid plan, under which fact as to whether a dealer would receive a coupon good for 5, 500, or 1,000 additional cones was thus determined wholly by lot or chance; contrary to an established public policy of the United States Government, and in competition with many who do not use any such plan or method;

With the result that many persons were attracted by his method or plan and element of chance involved therein, and thereby induced to buy and sell his merchandise in preference to that offered and sold by his aforesaid competitors; and with tendency and capacity, through use of such method and because of said game of chance, to divert, unfairly, trade 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 acts and practices therein.

Mr. J. W. Brookfield, 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 Albert George, an individual, trading and doing business as George & Thomas Cone 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, Albert George, is an individual, trading and doing business as George & Thomas Cone Co., with his principal