

IN THE MATTER OF
AMERICAN MEMORIAL COMPANY

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

Docket 3369. Complaint, Mar. 31, 1938—Decision, Feb. 16, 1943

Where a corporation, engaged in competitive interstate sale and distribution of marble and granite monuments, tombstones, and footstones; in advertisements in periodicals and newspapers, catalogs, pamphlets, booklets, and other literatures; directly or by implication—

- (a) Represented that its marble monuments were everlasting and that a tombstone selling for \$17.50 was a 400-pound stone; the facts being the marble tombstones, monuments, and footstones it sold were not everlasting, and many stones, represented by it to weigh 400 pounds, in fact weighed substantially less;
- (b) Represented falsely that it had executed a bond as a guaranty of the quality of its products, which insured full satisfaction on the part of the purchaser and conformed to the rules and regulations of the postal laws;
- (c) Represented that it was the manufacturer of both its marble and granite tombstones and that all profits of middlemen or commission firms were eliminated in purchase of such products from it; the facts being it was merely a jobber of its granite monuments, and profits referred to were not eliminated in purchase thereof;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that said false representations were true, and into purchase of its products because of said mistaken belief; whereby trade was diverted unfairly to it from competitors who do not falsely represent their business status or products:

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.

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. John Darsey and *Mr. Carrel F. Rhodes* for the Commission.

Douglas, Andrews & Cole, of Atlanta, Ga., for respondent.

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 American Memorial Co., hereinafter referred to as respondent, has 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:

¹ The original findings and order published in 29 F. T. C. 323.

PARAGRAPH 1. The respondent, American Memorial Co., is a corporation organized and existing under the laws of the State of Georgia, having an office and principal place of business at 2135 Piedmont Road, Atlanta, Ga. It is now, and for several years last past has been, engaged in the business of manufacturing and selling marble and granite monuments. To a substantial extent, sales of said products have been made by respondent to corporations, partnerships, firms, and individuals located in States other than the State of Georgia, pursuant to which sales, and as a part thereof, shipments are, and have been, made by the respondent from the State of Georgia through and into other States of the United States to such purchasers.

PAR. 2. There are other corporations, partnerships, firms, and individuals engaged in the sale of similar products, or products to be used for the same and similar purposes, who cause their said products, when sold, to be transported from their respective places of business to purchasers thereof located in the various other States of the United States, and with such corporations, partnerships, firms, and individuals, the respondent is, and has been at all times herein named, in competition in commerce as herein described.

PAR. 3. In connection with the promotion of sale, and sale of the said products in interstate commerce as aforesaid, and as an inducement for the purchase thereof, the respondent causes many false and misleading statements and representations respecting the quality and weight of its said products, and the guarantees issued and executed incident to the sales thereof to be inserted in newspapers, periodicals, and circulars which are distributed in the various States of the United States. The following statements and representations are typical, but not all-inclusive, of those made by the respondent to the foregoing effect and meaning:

This monument is built of genuine, natural quarried marble guaranteed by us to be everlasting;

400-lb. tombstone, \$17.95, genuine marble and granite footstone free, lettering free;

Our bond of guarantee protects you in quality and safe delivery to destination;
One of the strongest guarantees ever given on monuments;

Buy the direct way and save the difference;

Buy direct from our factory with no middleman or commission firm involved;

This guarantee is given to you to conform to the rules and regulations of the United States mail laws, which in effect say, "you must be fully satisfied or your money back" on anything ordered by mail.

PAR. 4. Through the foregoing statements and representations, and through other similar statements not herein set out in full, the respondent has represented that its marble monuments are everlasting; that is tombstone selling for \$17.95 is a 400-pound stone; that a genuine

granite footstone is furnished free in connection with the \$17.95 tombstone; that respondent has executed a bond which is available to purchasers as a guaranty of the quality of respondent's products; that respondent's guaranty insures full satisfaction on the part of the purchaser and conforms to the rules and regulations of the United States postal laws; that respondent is the manufacturer of both its marble and granite tombstones; and that all profits of a middleman or commission firm are eliminated by purchasing granite or marble monuments from the respondent.

The foregoing statements and representations made by the respondent in connection with the promotion of sale, and sale, of its said products are false and misleading. The said monuments made from marble are not everlasting. The tombstone selling for \$17.95 is not a 400-pound stone and does not weigh within a hundred pounds or more of the amount represented, and no granite footstone is furnished free in connection with the purchase of the \$17.95 tombstone. The respondent has not posted any bond which insures and guarantees to its customers the quality of its products. The guaranty issued by the respondent does not insure satisfaction on the part of purchasers and does not insure conformity to the rules and regulations of the postal laws of the United States Government. Respondent is not the manufacturer of the granite monuments which it sells but, on the contrary, is merely a jobber thereof.

PAR. 5. There is on the part of the general purchasing public a preference for dealing direct with the manufacturer of the product being purchased rather than with any middleman or broker, said members of the purchasing public believing that in so doing they secure superior quality, more advantageous prices, and other benefits.

PAR. 6. Respondent's false and misleading representations of and concerning its said products and its status, as hereinabove set forth, have the capacity and tendency to, and do, mislead and deceive purchasers and prospective purchasers of said products into the erroneous belief that such representations are true, and have caused a substantial portion of such purchasers, because of such erroneous belief, to purchase respondent's products, thereby unfairly diverting trade in said commerce to the respondent from competitors who truthfully represent their products. As a result thereof, injury is now, and has been, done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 7. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, MODIFIED FINDINGS AS TO THE FACTS AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 31st day of March 1938, issued and subsequently served its complaint in this proceeding upon the respondent, American Memorial Co., a corporation, charging it with the use of unfair methods of competition 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 and in opposition thereto were introduced before a trial examiner of the Commission theretofore duly designated by it. Stipulations as to certain facts were made a part of the record herein by agreement of counsel of record. Said testimony, stipulations, 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 the said complaint, the answer thereto, testimony, stipulations and other evidence, and briefs in support of the complaint and in opposition thereto; and the Commission, having duly considered the matter, on July 11, 1939, issued and subsequently served upon said respondent its findings as to the facts and conclusion based thereon and its order requiring the respondent to cease and desist from the practices charged in the complaint.

Subsequent thereto, having further considered the findings as to the facts and order to cease and desist issued in this case on July 11, 1939, and being of the opinion that public interest required that the findings as to the facts heretofore issued be modified, the Commission issued and subsequently served upon the respondent an order to show cause why this case should not be reopened for the purpose of issuing a modified findings as to the facts and a modified order to cease and desist, and set the matter for hearing upon said order to show cause on January 27, 1943.

Thereafter, on January 27, 1943, this cause came on for hearing before the Commission, and the Commission, having duly considered the matter and the record herein and being now fully advised in the premises, makes this its modified findings as to the facts and its conclusion drawn therefrom:

MODIFIED FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, American Memorial Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Georgia and having its principal office and place of business located at 2135 Piedmont Road, Atlanta, Ga.

PAR. 2. Respondent is now, and has been for more than 2 years last past, engaged in the business of selling and distributing marble and granite monuments, tombstones, and footstones. Respondent sells its said monuments, tombstones, and footstones to members of the purchasing public located in the various States of the United States and in the District of Columbia and causes said products when sold by it to be transported from its aforesaid place of business in Georgia to purchasers thereof at their respective points of location in the various States of the United States other than Georgia and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is, and has been during all the times mentioned herein, engaged in substantial competition in commerce among and between the various States of the United States and in the District of Columbia, with other corporations and with firms and partnerships and individuals selling and distributing marble and granite tombstones, monuments, and like products designed, intended, and used for the same or similar purposes. Among such competitors in said commerce are many who do not in any manner misrepresent their business status or the life and duration of their respective granite and marble tombstones, monuments, and like products.

PAR. 4. In the course and conduct of its said business, and for the purpose of inducing the purchase of its said products, the respondent has caused false and misleading representations with respect to its business status, the life and duration of its tombstones, monuments, and footstones, and the guaranties executed incident to the sale thereof, to be inserted in magazines and newspapers having a circulation among and between the various States of the United States, and in catalogs, pamphlets, bulletins, and other literature disseminated by respondent to the members of the purchasing public located in the various States of the United States and in the District of Columbia. Among and typical of such representations so used and disseminated as aforesaid are the following:

This monument is built of genuine natural quarried marble guaranteed by us to be everlasting.

400-lb. tombstone—\$17.95—Genuine marble and granite foot-stone free—lettering free.

Our bond of guarantee protects you in quality and safe delivery to destination.

One of the strongest guarantees ever given on monuments.

This guarantee is given to you to conform to the rules and regulations of the United States mail laws which in effect say "you must be fully satisfied or your money back" on anything ordered by mail.

Buy direct from our factory with no middle man or commission firm involved.

PAR. 5. Through the use of the aforesaid statements and representations and others of similar import or meaning not herein set out, the respondent has represented directly and by implication that its marble monuments are everlasting; that its tombstone selling for \$17.95 is a 400-pound stone; that respondent has executed a bond which is available to purchasers as a guaranty of the quality of respondent's products; that respondent's guaranty insures full satisfaction on the part of the purchaser and conforms to the rules and regulations of the United States postal laws; that respondent is the manufacturer of both its marble and granite tombstones; and that all profits of middlemen or commission firms are eliminated by reason of the purchase of granite or marble monuments from the respondent.

PAR. 6. The said statements and representations by the respondent, used and disseminated in the manner aforesaid, are false, misleading, and deceptive. In truth and in fact, the tombstones, monuments, and footstones composed of marble offered for sale and sold by respondent are not everlasting. The respondent has offered for sale and sold many stones which it represented to weigh 400 pounds which stones in truth and in fact weighed substantially less than 400 pounds. The respondent has not posted a bond which insures and guarantees to its customers the quality of its products and has not obtained any approval from the United States Government or the Post Office Department thereof for any guaranty made incident to the sale of its said products; nor has the respondent posted any bond with the United States Government or with anyone else which insures satisfaction on the part of its customers, or which insures conformity by the respondent with the rules and regulations of the postal laws of the United States Government. Respondent does not manufacture the granite monuments which it sells and distributes but is merely a jobber thereof. The profits of middlemen and commission firms are not eliminated by reason of the purchase of granite monuments from respondent.

PAR. 7. There is now, and has been during all the times mentioned herein, a preference on the part of a substantial number of members of the purchasing public for dealing directly with the manufacturer of a product rather than with a middleman or jobber, because of the belief that in dealing with the manufacturer they secure more advantageous prices and other benefits.

PAR. 8. The use by the respondent of the aforesaid false and misleading statements and representations has the capacity and tendency to, and does, mislead and deceive a substantial number of members of the purchasing public into the erroneous and mistaken belief that said

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false and misleading statements and representations are true and into the purchase of respondent's products because of said erroneous and mistaken belief. As a direct result thereof, trade in commerce among and between the various States of the United States and in the District of Columbia has been diverted unfairly to the respondent from its competitors engaged in the sale of and distribution of similar products and who do not falsely represent their respective products or their business status.

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 within the intent and meaning of the Federal Trade Commission Act.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon order to show cause why this case should not be reopened for the purpose of issuing a modified order to cease and desist, which order came on for hearing before the Commission on January 27, 1943, and the respondent having been duly served with a certified copy of said order prior to said hearing, and the Commission having considered the matter and the record herein and being now fully advised in the premises.

It is ordered, That the respondent, American Memorial Co., 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 granite or marble monuments, tombstones, or footstones in commerce between and among the various States of the United States and in the District of Columbia, do forthwith cease and desist from:

1. Representing by the use of the words "everlasting" or "eternal," or any other word of similar import or meaning, or in any other manner, that any monument, tombstone, or footstone composed of marble is everlasting.

2. Representing that respondent's monuments or tombstones weigh 400 pounds or any other specified weight or weights unless and until such is the fact.

3. Representing that the respondent has posted a bond guaranteeing the quality of its products, or has posted a bond which insures conformity by the respondent with the laws of the United States Government or with the rules and regulations of any agency thereof, or has posted any other bond, unless and until such is the fact.

4. Representing, by means of pictorial or other representations of a factory or manufacturing plant, or in any other manner, that respondent makes or manufactures its granite monuments or tombstones unless and until it owns and operates or directly and absolutely controls the factory or plant wherein such monuments or tombstones are made or manufactured by it.

It is further ordered, That the respondent shall, within 60 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.

IN THE MATTER OF

ASA L. WOOTEN, TRADING AS UNITED STATES MARBLE
& GRANITE COMPANY

COMPLAINT, MODIFIED 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, Feb. 16, 1943

Where an individual, engaged in competitive interstate sale and distribution of tombstones and monuments; in advertisements in catalogues, price lists, and other advertising material—

- (a) Represented and implied falsely that his marble memorials would stand the ravages of time forever, were everlasting and forever durable, would never fade, stain, or tarnish, would always retain their original brightness and were "age enduring"; and
- (b) Represented and implied, through his "Gold Bond Guarantee," that purchasers were assured of the everlasting quality and durability of his said products, the freedom thereof from fading, staining, or tarnishing, and were protected if his said representations were not true; the facts being purchasers were not thus assured, or in any wise protected, because said so-called "Gold Bond Guarantee" was not supported by any fund set aside by him or anyone else to assure fulfillment of the terms thereof;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such representations were true, thereby inducing its purchase of said products; whereby substantial injury was done to competitors, many of whom do not misrepresent their products:

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

¹ The original findings and order are published in 31 F. T. C. 508.