

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.

marble and granite tombstones and monuments in commerce between and among the various States of the United States and the District of Columbia.

Respondent causes his said products, when sold, to be shipped from his place of business in the State of Florida to purchasers thereof located in various other 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, respondent is now, and for more than 1 year last past has been, in substantial competition with other individuals, partnerships, 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 his said products, the respondent has disseminated and is now disseminating false and misleading statements and representations with respect to said products. Such statements and representations are inserted in catalogues having a general circulation and in 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:

Memorials that will stand the ravages of time.

Select white, gray or blue marble.

An everlasting memorial.

Forever durable.

World's best genuine marble or granite.

Good for continuous wear.

To last for all time.

They will never fade but always retain their original brightness.

Age enduring.

These monuments will last for all time.

Quality cannot be excelled.

Gold Bond Guarantee.

The whole memorial is guaranteed to never stain nor tarnish.

Is one of the strongest guarantees ever given.

PAR. 4. By the use of the foregoing representations, together with other representations similar thereto not set out herein, the respondent represents that his memorials will stand the ravages of time forever; that they are everlasting and forever durable; that they are the world's best genuine marble or granite monuments; that they will last for all time, will never fade, stain, or tarnish and will always retain their original brightness; and that said memorials are age enduring. Re-

spondent represents or implies that through his "Gold Bond Guarantee" purchasers are assured of the everlasting quality and durability of his said products and the freedom of such products from fading, staining, or tarnishing and that said "Gold Bond Guarantee" protects purchasers of such products if respondent's claims and representations are not true and said products do stain, tarnish, fade, and lose their original brightness and are not forever durable and everlasting.

PAR. 5. The foregoing representations and implications are false, misleading, and deceptive. In truth and in fact, respondent's memorials will not stand the ravages of time forever; they are not everlasting or forever durable but they will stain, tarnish, fade, and deteriorate and will not retain their original brightness. Said memorials are not the world's best genuine marble or granite monuments as there are many other marble or granite monuments on the market which are as good as, or better than, respondent's said products. In truth and in fact, said so-called "Gold Bond Guarantee" in no wise assures purchasers of the everlasting quality and durability of said products or the freedom of such products from fading, staining, or tarnishing and does not in any wise protect purchasers of respondent's said products if respondent's claims and representations are not true because said so-called "Gold Bond Guarantee" is not supported by any fund set aside by the respondent or anyone else for the purpose of assuring fulfillment of the terms thereof.

PAR. 6. There are among the competitors of respondent, as mentioned in paragraph 2 hereof, many who sell and distribute like or similar products who do not misrepresent the respective qualities of said products or matters pertaining thereto.

PAR. 7. The use by the respondent 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 respondent's said products. As a result thereof substantial injury has been done, and is being done, by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of the respondent as herein set forth 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, MODIFIED FINDINGS AS TO THE FACTS AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 21st day of May 1940, issued and subsequently served its complaint in this proceeding upon the respondent, Asa L. Wooten, an individual, trading as United States Marble & Granite Co., 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 the 6th day of June 1940 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 the said facts. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint and the respondent's answer thereto, and the Commission, having duly considered the matter, on July 9, 1940, 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 9, 1940, 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. Respondent, Asa L. Wooten, is an individual, trading as United States Marble & 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 marble and granite tombstones and monuments in commerce between and among the various States of the United States and the District of Columbia.

Respondent causes his said products, when sold, to be shipped from his place of business in the State of Florida to purchasers thereof

located in various other 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, respondent is now, and for more than 1 year last past has been, in substantial competition with other individuals, partnerships, 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 his said marble tombstones and monuments, respondent has disseminated, and is now disseminating, false and misleading statements and representations with respect to said marble products. Such statements and representations are inserted in catalogs having a general circulation and in 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:

Memorials that will stand the ravages of time.

Select white, gray or blue marble.

An everlasting memorial.

Forever durable.

Good for continuous wear.

To last for all time.

They will never fade but always retain their original brightness.

Age enduring.

These monuments will last for all time.

Quality cannot be excelled.

Gold Bond Guarantee.

The whole memorial is guaranteed to never stain or tarnish.

Is one of the strongest guarantees ever given.

PAR. 4. By the use of the foregoing representations, together with other representations similar thereto not set out herein, the respondent represents that his memorials composed of marble will stand the ravages of time forever; that they are everlasting and forever durable; that they will last for all time, will never fade, stain, or tarnish and will always retain their original brightness; and that said memorials are age enduring. Respondent represents or implies that through his "Gold Bond Guarantee" purchasers are assured of the everlasting quality and durability of his said products and the freedom of such products from fading, staining, or tarnishing and that said "Gold Bond Guarantee" protects purchasers of such products if respondent's claims and representations are not true and said products do stain, tarnish,

fade, and lose their original brightness and are not forever durable and everlasting.

PAR. 5. The foregoing representations and implications are, false, misleading, and deceptive. In truth and in fact, respondent's memorials composed of marble will not stand the ravages of time forever; they are not everlasting or forever durable but they will stain, tarnish, fade and deteriorate and will not retain their original brightness. In truth and in fact, said so-called "Gold Bond Guarantee" in no wise assures purchasers of the everlasting quality and durability of said products or the freedom of such products from fading, staining, or tarnishing and does not in any wise protect purchasers of respondent's said products if respondent's claims and representations are not true because said so-called "Gold Bond Guarantee" is not supported by any fund set aside by the respondent or anyone else for the purpose of assuring fulfillment of the terms thereof.

PAR. 6. There are among the competitors of respondent, as mentioned in paragraph 2 hereof, many who sell and distribute like or similar products who do not misrepresent the respective qualities of said products or matters pertaining thereto.

PAR. 7. The use by the respondent 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 respondent's said products. As a result thereof substantial injury has been done, and is being done, by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

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 and unfair and deceptive acts and practices 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,

Order

36 F. T. C.

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, Asa L. Wooten, an individual, trading as United States Marble & Granite Co., or under any other trade name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of marble tombstones and monuments in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That respondent's memorials composed of marble will stand the ravages of time forever, or that they are everlasting or forever durable, or that they will never fade, stain, or tarnish.

2. That respondent's said marble tombstones and monuments will always retain their original brightness or that said memorials are age enduring.

3. The respondent has posted a "Gold Bond Guarantee" assuring purchasers of the everlasting quality and durability of his said marble tombstones and monuments and the freedom of such products from fading, staining, or tarnishing and that said "Gold Bond Guarantee" protects purchasers of such products if respondent's claims and representations are not true.

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

IN THE MATTER OF

PASADENA PRODUCTS, INC.

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

Docket 3945. Complaint, Nov. 8, 1939—Decision, Feb. 17, 1943

Where a corporation, engaged in interstate sale and distribution of its "Sal-Ro-Cin" medicinal preparation containing analgesics acetylsalicylic acid and acetphenetidin which give temporary relief from pain associated with such conditions as neuritis, sciatica, arthritis, neuralgia, and headaches; through advertisements in newspapers and periodicals, circulars and other matter, and radio broadcasts—

Failed to reveal facts material with respect to the consequences which might result from the use of said "Sal-Ro-Cin" under prescribed or usual conditions, in that the drug acetphenetidin, when used in excessive doses or over a long period of time, causes tissue suffocation accompanied by toxic manifestations, and may cause damage to such organs as the liver, kidney, and spleen and produce circulatory failure; and persons suffering from pain might take preparation in excessive doses or continuously over long periods with resulting possible injury to health;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that said preparation was not injurious, and of causing its purchase thereof by reason of such mistaken belief:

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. John P. Bramhall*, *Mr. Randolph Preston*, and *Mr. Edward E. Reardon*, trial examiners.

Mr. Charles S. Cox and *Mr. Robt. N. McMillen* for the Commission.
Ticknor & Maxwell, of Pasadena, Calif., 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 Pasadena Products, Inc., a corporation, 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:

PARAGRAPH 1. Respondent, Pasadena Products, Inc., is a corporation, organized and existing and doing business under and by virtue of the laws of the State of California and having its principal office and place of business at 300 North Lake Avenue, Pasadena, Calif.