

IN THE MATTER OF
BATESVILLE CASKET COMPANY, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3240. Complaint, Oct. 4, 1988—Decision, Oct. 4, 1988

This consent order prohibits, among other things, a Batesville, Ind. casket company from making future misrepresentations and unsubstantiated claims concerning casket durability and also prohibits false claims that the Commission or any other government agency endorses its products, warranty, or programs.

Appearances

For the Commission: *Rachel Miller.*

For the respondent: *Calvin J. Collier, Hughes, Hubbard & Reed,*
Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Batesville Casket Company, Inc., a corporation, 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 Batesville Casket Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana. Its office and principal place of business is located at Highway 46 East, Batesville, Indiana.

PAR. 2. Respondent is now, and for some time past has been, engaged in the manufacture, marketing, sale and distribution of funeral caskets.

PAR. 3. In the course and conduct of its business, respondent causes and has caused its caskets to be sold and distributed in the various states of the United States and the District of Columbia. Respondent therefore maintains and has maintained a substantial course of

business in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business, respondent has disseminated and caused the dissemination of advertising, product brochures and other sales literature concerning its caskets to distributors and retailers for display and for distribution to consumers prior to or at the time of sale.

PAR. 5. Typical and illustrative of statements contained in said advertisements and promotional materials, but not necessarily all-inclusive thereof, are the statements set forth below:

"Batesville's Steel Monoseal is a protective casket, designed to completely resist the entrance of all outside elements."

"Every Batesville Monoseal Casket carries a fully insured warranty that the casket has successfully passed the vacuum test before shipment and will remain completely resistant to the entrance of air and water for a period of 50 years. If not, Batesville, will replace it at no cost upon notification."

"The Monoseal has been a source of comfort and consolation to families for more than 40 years. To make sure the trust families have shown in us is always deserved, Batesville builds into each one the qualities necessary for lasting protection.

"In addition to testing of components during manufacture, every Batesville protective casket is vacuum tested as a complete unit at the factory before shipment. Each casket must hold a perfect seal in this vacuum test or it does not leave the factory. These precautions are why Batesville is able to supply a full warranty on their caskets against the entrance of air or water. This warranty covers a period of 20 years on the Monogard caskets, and a period of 50 years on the Monoseal."

"Every protective casket manufactured by Batesville is subjected to a scientific performance test. This test, designed to simulate actual burial conditions, involves creating a partial vacuum on the inside of the casket to check if air comes into the casket from any spot."

"Batesville Casket Company provides a full warranty on both its Monoseal and Monogard caskets. These caskets are warranted to have successfully passed the vacuum test before leaving the factory and to be completely resistant to the entrance of air and water. The warranty period is 20 years on the Monogard and 50 years on the Monoseal. The warranty specifies that should the product be found not to perform as designed within that stated period, that upon notice of this fact Batesville will, within 10 days, replace the casket with one of similar quality."

PAR. 6. Furthermore, in the course and conduct of its business, respondent has offered, disseminated and caused to be disseminated, written warranties against the entry of air or water into its caskets for specified periods of time after interment. These warranties provide, typically but not all-inclusively:

"That upon notice to it, Batesville will within ten days replace this casket with one

of similar quality if, at any time within 50 years after the date of interment, it has failed in any way to resist the entrance of air, water, or any element found in the soil in which it is interred, provided it was properly sealed and not damaged after leaving Batesville factory, and an opportunity is afforded for examination of the casket by Batesville representatives and/or impartial experts designated by them." ("Monoseal" caskets.)

"That upon notice to it, Batesville will within ten days replace this casket with one of similar quality if, at any time within 20 years after the date of interment, it has failed in any way to resist the entrance of air, water, or any element found in the soil in which it is interred, provided it was properly sealed and not damaged after leaving Batesville factory, and an opportunity is afforded for examination of the casket by Batesville representatives and/or impartial experts designated by them." ("Monogard" caskets.)

PAR. 7. Through the use of the advertisements, promotional materials and warranties referred to in paragraphs four through six above, and others not specifically set forth in this complaint, respondent has represented, directly or by implication, that:

Respondent's "Monoseal" caskets are designed, and in the ordinary course of events can reasonably be expected, to completely resist the entrance of air, water, or any other gravesite substance for a period of fifty (50) years after interment, when sealed according to directions and interred normally anywhere in the United States, and in the absence of damage between shipment from the factory and interment.

Respondent's "Monogard" caskets are designed, and in the ordinary course of events can reasonably be expected, to completely resist the entrance of air, water, or any other gravesite substance for a period of twenty (20) years after interment, when sealed according to directions and interred normally anywhere in the United States, and in the absence of damage between shipment from the factory and interment.

PAR. 8. In truth and in fact, contrary to the above representations:

(a) Respondent's "Monoseal" caskets cannot reasonably be expected, in the ordinary course of events, to completely resist the entrance of air, water, or any other gravesite substance, for a period of fifty (50) years after interment, when sealed according to directions and interred normally anywhere in the United States, and in the absence of damage between shipment from the factory and interment; rather, when directly interred, they can reasonably be expected to perform as described only for a substantially shorter period than fifty years in the majority of soil conditions normally encountered in the United States; and

(b) Respondent's "Monogard" caskets cannot reasonably be expected, in the ordinary course of events, to completely resist the entrance of air, water, or any other gravesite substance for a period of twenty (20) years after interment, when sealed according to directions and interred normally anywhere in the United States, and in the absence of damage between shipment from the factory and interment; rather, when directly interred, they can reasonably be expected to perform as described only for a substantially shorter period than twenty years in the majority of soil conditions normally encountered in the United States.

Therefore, the representations described in paragraph seven above are false and misleading.

PAR. 9. In making the representations described in paragraph seven above, respondent has represented, directly or by implication, that at the times of making those representations respondent possessed and relied upon a reasonable basis for those representations.

PAR. 10. In truth and in fact, at such times respondent did not possess and rely upon a reasonable basis for those representations, because, *inter alia*, respondent either did not conduct appropriate tests or did not properly interpret tests by generally accepted procedures in light of varying, reasonably anticipated conditions of use. Therefore, the representation described in paragraph nine above was and is false and misleading.

PAR. 11. Furthermore, in the course and conduct of its business, respondent has disseminated and caused the dissemination of product brochures containing the following statements:

"Thus, to satisfy the concern of the FTC . . . we now offer a totally new 'progressive' approach to casket warranties. . . . our exclusive Cathodic Protection feature, a benefit found only on Batesville caskets. . . . Throughout the development of this warranty program with the FTC, Cathodic Protection was verified as the single most-important factor in casket durability."

PAR. 12. Through the use of the statements referred to in paragraph eleven above, respondent has represented, directly or by implication, that:

The Federal Trade Commission has endorsed or approved respondent's new "progressive" warranty program.

The Federal Trade Commission has endorsed or approved cathodic protection as the most important factor in casket durability.

The Federal Trade Commission has endorsed or approved respondent's exclusive design for cathodic protection.

PAR. 13. In truth and in fact, contrary to the above representations:

The Federal Trade Commission has not endorsed or approved respondent's new "progressive" warranty program.

The Federal Trade Commission has not endorsed or approved cathodic protection as the most important factor in casket durability.

The Federal Trade Commission has not endorsed or approved respondent's exclusive design for cathodic protection.

Therefore, the representations described in paragraph twelve above were and are false and misleading.

PAR. 14. The acts and practices of respondent as herein alleged are all to the prejudice and injury of the public, and constitute unfair and deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the

comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Batesville Casket Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana. Its office and principal place of business is located at Highway 46 East, Batesville, Indiana.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

The following definitions shall apply to this order:

1. A "*casket*" is a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal, or like material, and ornamented and lined with fabric.

2. "*Funeral goods*" are the goods which are sold or offered for sale directly to the public for use in connection with funeral services.

3. A "*funeral provider*" is any person, partnership or corporation that sells or offers to sell funeral goods and funeral services to the public.

4. "*Funeral services*" are any services which may be used to care for and prepare deceased human bodies for burial, cremation or other final disposition; and arrange, supervise or conduct the funeral ceremony or the final disposition of deceased human bodies.

PART I

It is ordered, That respondent Batesville Casket Company, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the marketing, offering for sale, sale or distribution of any casket in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting, directly or by implication, the durability or expected life of any casket, including but not limited to any

misrepresentation of the period of time after interment, whether stated as a specific number of years or generally, during which any casket is designed, or in the ordinary course of events can reasonably be expected, to prevent the entrance of air, water, or other gravesite substance; and

B. Making any representation, directly or by implication, about the durability or expected life of any casket, unless at the time of making the representation respondent possesses and relies upon a reasonable basis for such representation. For purposes of this order, a reasonable basis shall consist of competent and reliable scientific evidence which substantiates such representation. To the extent that such evidence consists of technical, engineering or other professional tests, experiments, analyses, research, studies, surveys, or expert opinions, such evidence shall be "competent and reliable" for purposes of this paragraph only if those tests, experiments, analyses, research, studies, surveys, or opinions are conducted and evaluated in an objective manner by persons qualified to do so, using only procedures that are generally accepted in the profession or science as yielding accurate and reliable results, and making only inferences and extrapolations that are generally accepted in the profession or science as reasonable and reliable.

C. Misrepresenting, directly or by implication, that the Federal Trade Commission or any other government agency has endorsed or approved any product or product characteristic, or any warranty or service program.

For purposes of this order, any representation for which the applicable conditions of interment are not specifically disclosed will be construed as a representation of casket performance in the majority of interment conditions found in the United States.

Also for purposes of this order, whenever a written warranty offering a remedy for any casket failure for a specified period of time is issued, or the duration of such a warranty is advertised, this shall be construed as a representation that the casket is designed, and in the ordinary course of events can reasonably be expected, to perform without that failure for that specified time period, *unless*, that warranty or advertising clearly and prominently discloses that the above representation is not made. (An example of such a disclosure would be: "Batesville makes no claim that its caskets will ordinarily remain protective for the entire warranty period. However, if this casket does not, we will . . .") Nothing in this order requires that such

a disclosure be made when issuing or advertising a written warranty if each representation made according to this paragraph is substantiated, and is not misrepresented, in compliance with this part of this order.

PART II

It is further ordered, That respondent and its successors and assigns shall maintain for three years after the date of the last dissemination of the representation, and upon request shall make available to the Federal Trade Commission for inspection and copying:

1. Copies of all materials relied upon for each representation covered by this order;
2. Copies of all materials relating to any test, experiment, analysis, research, study, survey, or expert opinion in the possession of the respondent that may contradict, qualify, or call into question any representation covered by this order.

PART III

It is further ordered, That respondent shall forthwith distribute a copy of Attachment A to this order to each funeral provider and each casket showroom that purchased a casket from respondent during calendar year 1987, to each funeral provider and each casket showroom that received any marketing material from respondent during calendar year 1987, and to each journal, newspaper, magazine or other media outlet with which respondent has placed any advertisement concerning any casket during calendar year 1987, except that respondent need not send a copy of Attachment A to anyone to whom, prior to the date of service of this order, respondent has sent a copy of Attachment B together with a brochure incorporating the following language:

The Federal Trade Commission staff has informed Batesville of its belief that Batesville's pre-1988 warranties to replace caskets may have been understood to mean that the caskets would have remained protective throughout the warranty period under typical conditions of interment. Because of this concern, Batesville's New Progressive Warranty establishes warranty periods that more closely relate to the expected periods during which its caskets can be expected to remain protective.

PART IV

It is further ordered, That respondent shall forthwith distribute a copy of this order, together with Attachment A to this order, to each of its operating divisions, and to each of its officers, agents, representatives or employees engaged in the preparation or placement of advertisements or other sales materials.

PART V

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent such as dissolution, assignment or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

PART VI

It is further ordered, That respondent shall, within sixty (60) days after this order becomes final, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order.

ATTACHMENT A

NOTICE ABOUT BATESVILLE'S PROTECTIVE CLAIMS

The Federal Trade Commission has indicated that it has reason to believe that Batesville's warranty language could be understood to mean that most Batesville caskets will remain protective throughout the warranty period under typical conditions of interment.

Batesville's pre-1988 warranties should not have been understood to make any claims about normal or ordinary casket durability. Pursuant to an agreement with the Federal Trade Commission, Batesville wishes to remind Funeral Directors that those warranties constituted no more than a promise to replace any of its metal caskets which are found to have failed to completely resist the entrance of air, water or any outside element during the stated warranty period.

Batesville has revised its product warranties so that, unless otherwise stated on the warranty, the replacement periods shall more closely relate to the average or typical period during which the products can be expected to remain protective under varying interment conditions.

HOW THIS AFFECTS FUNERAL DIRECTORS

Although Funeral Directors are not covered by this agreement, Funeral Directors are prohibited from making any untrue protective claims for caskets, under the Commission's Funeral Rule.

Signed:

Batesville Casket Company, Inc.

ATTACHMENT B

Batesville Casket Company
Batesville, Indiana

Dear

Within the past few months we provided to you materials explaining our new warranty program. At the request of the Federal Trade Commission staff, we are replacing those materials with the enclosed materials, to remove any implication that the FTC has approved Batesville's products or warranty program. The FTC, of course, does not approve the products or programs of any company. We would appreciate your substituting the new materials for the old ones.

Please understand that the new warranties themselves remain in effect, and will be honored.

Sincerely,

Batesville Casket Company

Enclosures

Complaint

111 F.T.C.

IN THE MATTER OF

SIOUX FALLS OBSTETRICIANS, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3241. Complaint, Oct. 11, 1988—Decision, Oct. 11, 1988

This consent order prohibits, among other things, certain physicians practicing in the Sioux Falls, S.D. area from continuing to act in combination to interfere with the operation of the University of South Dakota School of Medicine, obstetrical/gynecological (OB/GYN) program, and from further restricting competition for the provision of OB/GYN care in the Sioux Falls area.

Appearances

For the Commission: *Paul J. Nolan.*

For the respondents: *Charles D. Gullikson, Devenport, Evans, Hurwitz & Smith, Sioux Falls, S.D., Karen L. Crew, Sioux Falls, S.D., Merle A. Johnson, Woods, Fuller, Shultz & Smith, Sioux Falls, S.D. and Thomas J. Welk, Boyce, Murphy, McDonnell & Greenfield, Sioux Falls, S.D.*

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 respondents have violated Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, 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 as follows:

PARAGRAPH 1.

(a) The address of respondents James P. Ingvolstad, M.D.; Russell T. Orr, M.D.; C. Roger Stoltz, M.D.; and Patricia S. Wirtz, M.D. is Central Plains Clinic, 2727 South Kiwanis Avenue, Sioux Falls, South Dakota.

(b) The address of respondents Milton G. Mutch, Jr., M.D., Thomas L. Looby, M.D. and Dean L. Madison, M.D., is Obstetrics and