

IN THE MATTER OF

WILBERT W. HAASE COMPANY, INC., NATIONAL AFFILIATION OF WILBERT VAULT MANUFACTURERS, AND ITS MEMBERS, ET AL.

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

Docket 3808. Complaint, June 6, 1939—Decision, July 15, 1941

Where three corporations and three individuals engaged variously in the licensing of others to construct and sell concrete burial vaults made under letters patent, in the manufacture of supplies and materials for such vaults and of the vaults themselves, and in interstate sale and distribution thereof, to wit:

I. A corporation which (1) was engaged in licensing others to construct and sell its Wilbert vaults, and in the lease or sale to such licensees of various materials and supplies for use in said manufacture, and, under the trade name of "National Affiliation of Wilbert Vault Manufacturers," in conducting advertising programs to promote the sale of its vaults, (2) sold, and furnished without charge, to its eighty-odd licensees located in many of the States, advertising brochures, pamphlets, advertising mats, circulars, catalogs, leaflets, printed, and illustrated materials, and placed advertisements of its said vaults in magazines and other publications of general circulation, (3) sold and distributed, also, to its licensees, miniature Wilbert vaults for display completely submerged in water, with arrangement for lighting and inspection of the interior, with the intent of causing purchasers to believe that said vaults had the characteristics below represented and (4) undertook, through periodical inspections of the plants of licensees, to maintain similar standards of manufacturing by all;

II. A corporation which was engaged as licensee of former in making and selling said vaults, and also in manufacturing or providing the materials and supplies leased or sold by former to other licensees; an individual who was president of and majority stockholder in both said corporations, and in active charge of their businesses; and a second individual who was secretary and treasurer of former corporation and actively engaged in the conduct of its business and of aforesaid advertising program; and

III. A corporation engaged as licensee of first concern in the manufacture and sale of said vaults, and an individual similarly engaged as licensee, which caused advertising materials to be transported from the Chicago place of business of said first-named licensing concern and from their places of business in Maryland, to prospective customers;

In said advertising material, circulated and displayed by said corporations and individuals, furnished by the licensees to their undertaker customers, and displayed by them to the purchasing public, and in other advertising materials prepared and circulated by the licensees themselves—

(a) Represented said Wilbert vaults as asphalt, through such statements as "Asphalt Waterproof Vault," and in the marking and designation thereof made use of phrase "Wilbert Asphalt Waterproof Inner Vault" in large letters, with words "United with Reinforced Concrete Outer Vault" in type

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so small as frequently to be illegible, and referred to the $\frac{3}{8}$ -inch asphalt lining attached to the concrete portion of the vault, as an "inner vault," and sometimes to the vault itself as a "Dual Vault";

Facts being vault in question was of concrete lined with asphalt, and not, as implied, made in major part, if not entirely, of the more expensive asphalt, and said asphalt lining thereof was not, as implied, separately suitable for use as a burial chamber, nor was the entire product a dual vault;

(b) Represented that their said vault was "breakproof" and that "earth weight will not crush it," that it was sweatproof and constituted an eternal, dry, underground mausoleum;

Facts being concrete, in thickness used in said vaults, will permit slow passage of water, tending to carry with it chemicals from the soil, and gradually to separate from the inner surface any asphalt or bituminous material attached thereto; deterioration of concrete may be quite rapid in soils containing an alkali and dependent also upon a variety of other conditions, including quality of the concrete, amount of moisture, etc.; and vault in question, under varying conditions of interment, would not be either airtight or waterproof eternally or for 50 years, or for any other fixed period of time, but might easily fail and permit entrance of water, as in fact occurred in some instances within a few years; and product in question had no distinctive feature making it sweatproof, but did have a tendency to permit progressive passage of water into the interior between protruding metal parts and the concrete;

(c) Represented that their vault was guaranteed "Insured for Fifty Years," as airtight and water resisting, watertight if cover was properly placed and sealed, and as against being crushed by earth weight, and that said guarantee was insured by one of the large insurance companies;

The facts being that the insurance in question, as respects insurer, was based on fact or assumption that chance of disinterment was remote, and as respects various vault concerns and individuals herein involved, was primarily a sales plan, and not, as implied, an insurance of the manufacturers' guarantee for the benefit of purchasers of vaults, but was for the benefit of the licensees and to reimburse them for any payments they might be required to make as a result of the guarantee as issued by them; and advertising thereof failed to disclose that the insurance might be canceled at any time by either said licensing company or the insurer, implying that it was primarily for the benefit of purchasers and was unqualified for the full period of 50 years; and

(d) Stated that the well-known insurance company in question had "investigated every phase of the Wilbert organization before accepting the responsibility of underwriting Wilbert Vault Guarantees," and that "Their acceptance is a remarkable endorsement of the vault and the organization behind it";

Facts being that no such investigation was made, and acceptance of underwriting risk by said insurance company did not constitute such an endorsement, being based, as above indicated, not upon probable performance of the vault, but principally upon the fact that in the normal course there would be relatively few disinterments;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such false advertisements were true, and of causing it, because of such belief, to purchase large numbers of

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said vaults, whereby trade was unfairly diverted to them from their competitors:

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.

Before *Mr. Randolph Preston*, trial examiner.

Mr. Curtis C. Shears and *Mr. William L. Pencke* for the Commission.

Mr. Eugene Meacham, of Washington, D. C., and *Mr. Harold C. Osburn* and *Mr. Bernard W. Vinissky*, 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 the respondents in the caption hereof and hereinafter more particularly designated and described, have violated, and are now violating, 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. (a) Respondent Wilbert W. Haase Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business at 1015 Troost Avenue, Forest Park, Ill. It is owner of certain letters patent of the United States relating to the construction, manufacture, and use of a certain kind or kinds of cement burial vaults used to encase or enclose coffins in the burial of the dead. Said patented vaults are hereinafter designated and referred to as Wilbert vaults. Said respondent is now, and for some time last past has been, engaged in the business of licensing other corporations, individuals, partnerships, and firms to construct and sell Wilbert vaults made and manufactured under said patents and in selling and distributing certain supplies, services, and materials, hereinafter more fully designated and described, to said licensees. It grants licenses under said patents to some 80 manufacturers of Wilbert vaults located throughout the United States under a licensing agreement. Said licensing agreement provides, in part, that the licensees shall have the right to manufacture and sell said Wilbert vaults in a specified territory designated therein. The licensee agrees to manufacture said vaults in accordance with specifications as contained in said letters patent governing same, and to purchase or rent from respondent Wilbert W. Haase Co., Inc., the metallic

molds, asphalt cooker, reinforcing for covers and boxes, handles, clevises, rods, asphalt and asphalt paint, Wilbert stenciling and decorating devices, an electric spraying outfit and all other materials used in the construction of said Wilbert vaults excepting cement, sand, and gravel. Respondent Wilbert W. Haase Co., Inc., will be hereinafter designated and referred to as licensor. Said licensor sells, supplies, and renders certain services to said licensee manufacturers of said Wilbert vaults, including the selling, renting and supplying of various materials, equipment, tools, forms, brochures, advertising mats, circulars, letters, booklets, pamphlets, catalogs, leaflets, and other printed and illustrated materials, and other supplies, hereinafter designated and referred to as supplies, services, and materials, used in connection with the manufacture, promotion, sale, and use of said Wilbert vaults under said licensing agreements, and incident to and connected with purchasing, manufacturing, sales promotion, advertising, planning, publication and insurance of said Wilbert vaults, directly or indirectly for said licensees. Said license agreement provides for a royalty on each vault sold by a licensee. Licensor, directly or indirectly, conducts a national advertising service for the benefit of its licensees, who are hereinafter more fully described and designated.

(b) Respondent, National Affiliation of Wilbert Vault Manufacturers, is an unincorporated association having its principal place of business at 1015 Troost Avenue, in the city of Forest Park, State of Illinois. It is hereinafter referred to as the "association" and its members are burial vault manufacturers located in various sections of the United States, engaged in the manufacture of said Wilbert vaults under said licensing agreements based on said letters patent held by said licensor. Said licensor is the operating agency for said association and, as such, acts on behalf of said association in conducting among other services a national advertising campaign, directly or through said association in promoting the sale of said Wilbert vaults.

(c) Respondent members of said association are about 80 in number and they are located in various sections of the United States. Said members are corporations, partnerships, and individuals engaged in the business of manufacturing said Wilbert vaults. All of the members of said association are not known to the Commission. Those of its officers and representative members who are known and who can be conveniently reached are specifically named as respondents herein. All the other members of said association are hereby made respondents without being individually named because they constitute a class or group too numerous to be brought before the

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Commission in this proceeding without manifest inconvenience and delay. The following named representative members of said association are made respondents herein both individually and in their said representative capacity: American Vault Works, Inc., an Illinois corporation, having its principal place of business at 1015 Troost Avenue, Forest Park, Ill.; Baltimore Concrete Products Co., a Maryland corporation, trading and doing business under the name and style of Baltimore Wilbert Vault Works, with its principal place of business located at 3025 Cold Spring Lane, Baltimore, Md.; Leo Wolfkill, an individual trading and doing business under the name and style of Washington Vault Works, having his principal place of business at Rockville, Md. Respondent members of the association, both named and unnamed, are hereinafter collectively referred to as "licensees." Membership in said association is obtained solely by virtue of said licensing agreements entered into by and between said members and said licensor.

(d) Respondent American Vault Works, Inc., one of said licensees and a member of said association, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois having its office and principal place of business at the same local address in the city of Forest Park, State of Illinois, as respondent licensor. It is now, and for several years last past has been, engaged in the business of manufacturing and selling in interstate commerce said Wilbert vaults and manufacturing forms, equipment, supplies, and materials used in the making of said Wilbert vaults under said licensing agreements for said licensor. Said licensor, in turn, sells and distributes said forms, equipment, supplies, and materials to and among said licensees located in various States of the United States and in the District of Columbia.

(e) Respondent Wilbert W. Haase is an individual having his office at 1015 Troost Avenue, Forest Park, Ill. He is, and for some time last past has been, the president of respondent licensor and of respondent American Vault Works, Inc., and is and has been majority stockholder of such corporate respondents and in active charge of their businesses, controlling and directing their acts, practices, and policies. He organized or caused to be organized respondent association and directly or indirectly controls and directs its acts, practices, and policies. Sydney L. Schultz is an individual having his office at 1015 Troost Avenue, Forest Park, Ill. He is, and for some time last past has been, secretary and treasurer of the respondent licensor and secretary of respondent association, and has been actively engaged in the conduct of the businesses of said respondents.

PAR. 2. Respondent association and many of its members, including respondent licensees named herein individually and in a representative capacity, in the usual course and conduct of their respective businesses, are engaged in interstate commerce, transporting and causing to be transported said Wilbert vaults and burial supplies, equipment, advertising matter, and other materials used in the promotion, sale, distribution and use of said Wilbert vaults from the respective States of their production to the respective consumers thereof located in other States of the United States and in the District of Columbia. Said licensor, in the regular course and conduct of its business, acting for and on behalf of the association and its members in its merchandising and advertising activities referred to in paragraph 1 hereof, is engaged in selling and distributing said materials, supplies, and services and causing the same to be transported from the State of Illinois to, through and into other States of the United States wherein the various licensees are located. There is now, and has been for some time last past, a course of trade in said Wilbert vaults and said materials, supplies, and services by said respondents in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of their businesses respondents are now, and for several years last past have been, in active and substantial competition with other corporations, individuals, partnerships, and firms engaged in the manufacture, sale, and transportation in commerce between and among various States of the United States and in the District of Columbia, of steel, stone, concrete, cement, and other vaults and supplies, services, and materials used in connection with the manufacture, sale, and distribution of said vaults, used in the burial of the dead.

PAR. 3. In the course and conduct of their businesses as described in paragraph 1 hereof, respondents in soliciting the sale, selling, and reselling said Wilbert vaults, and said supplies, materials, and services, and as an incident to and a means of inducing and procuring the sale of said Wilbert vaults are now causing, and for some time last past have caused, advertisements and advertising matter relating to said vaults to be inserted, published, and displayed in magazines, newspapers, circulars, pamphlets, letters, stationery, booklets, forms, catalogs, leaflets, and other printed and illustrated material circulated or distributed among prospective purchasers of such vaults, and they have affixed advertising matter to vaults, buildings, trucks, and other media for dissemination of information, directly or indirectly to the public, all of which said advertising matter is hereinafter designated and referred to as "advertising." Said licensor cooperates and has

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cooperated with said licensees in the sale of said Wilbert vaults in said commerce as aforesaid through advertising circulated among the various States of the United States and in the District of Columbia, and which said licensor has caused directly or through said association to be inserted, published, and displayed in publications circulated throughout the various States of the United States and in the District of Columbia. Said licensor also supplies advertising mats and other advertising matter to licensees, who, in turn, cause and have caused said mats and other advertising matter to be inserted, published, and displayed in various publications, circulated as aforesaid. Licensor also sells and distributes directly or indirectly said advertising to said licensees. Said licensees, in turn, furnish said advertising to their undertaker customers for use in aid of the sale of said Wilbert vaults to the ultimate purchasers thereof. Said undertakers publish, distribute, display, and expose said advertising directly or indirectly to the ultimate purchasing public. In the aforesaid manner said licensor, said association and its members and said licensees, have cooperated with each other and acted together in distributing said advertising and advertising matter under the control and direction as aforesaid of Wilbert W. Haase and Sydney L. Schultz. All of said respondents are now, and have been, acting in concert in promoting the sale of said Wilbert vaults in the manner and through the methods herein alleged.

PAR. 4. Respondents, in advertising or causing said advertising to be published, distributed, displayed, or exposed, as aforesaid, are making and have made many false and misleading representations, in and through such media, to the effect that said Wilbert vaults, when manufactured, are made and constructed, in whole or in part, of asphalt; consist of an inner vault of asphalt united with an outer vault of reinforced concrete; are waterproof, airtight, and of enduring, break-proof strength, and are guaranteed for 50 years. Another representation is and has been made by or through the means of tests and demonstrations which were and are calculated, and have had and now have the tendency and capacity, to and do in fact mislead and deceive the consuming public into the erroneous and mistaken belief that said Wilbert vaults are waterproof and airtight at the time of burial, that they will endure as waterproof and airtight under actual burial conditions, and that every said vault manufactured by any of said licensees affords eternal or long enduring protection to bodies encased or enclosed therein, against contact with water and other destructive agents in the soil where said Wilbert vault is interred.

Among and typical of said representations used and caused to be used by said respondents are the following:

1. Wilbert Waterproof Burial Vaults.

The burial vault with an insured guarantee.

Wilbert vault guarantees insured for 50 years.

Eternal.

Dry Underground Mausoleum.

Insured guarantees—Wilbert Vault Manufacturers provide a liberal and well-defined waterproof and break-proof vault guarantee that is insured for a period of 50 years by the Aetna Insurance Company of Hartford, Conn., Incorporated 1819.

Wilbert Waterproof Dual Vault.

We hereby guarantee * * * WILBERT ASPHALT WATERPROOF INNER VAULT UNITED WITH REINFORCED CONCRETE OUTER VAULT * * * that said vault interred in said cemetery is airtight and water-resistant; that earth weight will not crush it, no water from the outside will enter it after cover has been properly placed and sealed.

The Aetna Insurance Company investigated every phase of the Wilbert organization before accepting the responsibility of underwriting Wilbert Burial Vault guarantees. Their acceptance is a remarkable endorsement of the vault and the organization behind it.

2. Wilbert Asphalt Waterproof Vault.

Wilbert Asphalt Waterproof Burial Vault.

Thick Asphalt Inner Vault.

Pure cast Asphalt for Waterproof protection; reinforced concrete scientifically moulded for enduring strength.

When you explain asphalt protection to your client and sell a Wilbert vault with its insured guarantee, you have accomplished the ultimate for his "PEACE OF MIND" and your own Wilbert Waterproof Burial Vault.

3. Mr. Haase's supreme desire was to produce a vault that would give full protection regardless of varying conditions of burial. Taking a tip from the ancient Egyptian embalmers he started experimenting with asphalt. Realizing that pure asphalt must have a supporting agent, he decided to unite a thick cast asphalt inner vault to an outer vault of enduring concrete, a material which he knew would stand the test of time.

In addition to the advertisements and representations hereinabove set out, miniature vaults are sold and distributed by licensor to said licensees for advertising purposes. These miniature vaults are constructed in substantially the same manner as said Wilbert vaults and like said Wilbert vaults contain licensor's trade-mark moulded into the side and ends of same. Said licensees who purchase said miniature vaults display them or cause them to be displayed submerged in water with an arrangement provided for the lighting, inspection, and testing of their interiors by prospective ultimate purchasers of same, for the purpose of leading said ultimate purchasers to believe that said Wilbert vaults have the characteristics listed above in this paragraph under actual burial conditions. Respondents instruct their undertaker customers to make said test and demonstration and it is often made by said undertaker customers for said purpose.

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PAR. 5. In truth and in fact, the statements and representations set forth in paragraph 4 hereof are false and misleading in that respondents' vaults and so-called inner vaults are not waterproof and eternally dry, nor do they insure enduring strength, nor are they always waterproof, airtight or breakproof at the time of installation or for a period of 50 years or any other stated period of time; the so-called inner vault is not itself a vault nor is it composed of thick asphalt, nor is the vault properly described and designated as an asphalt vault.

Said miniature vaults are not displayed under nor subjected to actual burial conditions. The tests and demonstrations referred to above are misleading and deceptive for the reason that the same physical conditions do not prevail when the tests are being made as would and do prevail when the vaults of the respondents are buried in the ground and such tests do not prove that said vaults are airtight, waterproof, or watertight.

Said representations regarding insured guarantees infer absolute protection but in truth and in fact the master policy insuring said licensor for the benefit of said licensees contains two or more saving clauses, one conditional upon the cover being properly placed and sealed, and another retaining to the insurance company the right to cancel said master policy if losses under said policy amount to more than 25 percent of the total premium paid for same, all of which is not disclosed to the ultimate consuming public. Disinterment after burial is so rare as to make the said certificate of guarantee worthless to the vast majority of purchasers of respondents' said vaults for the reason that no opportunity is afforded them in which to ascertain whether the vault is waterproof or not.

The term waterproof as used by respondents in their advertising as aforesaid means to the consuming public a watertight vault, a vault which will not permit water to enter it, and respondents' said vault is not waterproof as the term is so understood by the consuming public, and water will seep into it through the joints and the walls thereof, when used in the burial of the dead.

No test has been made or can be made to prove that said vaults will endure eternally or for 50 years from disintegration, electrolysis, oxidation, corrosion, and erosion, under all burial conditions. The so-called asphalt inner vault cast as a part of said Wilbert vault is now and has been constructed of an approximate thickness of $\frac{3}{8}$ of an inch of asphalt. Respondents, who directly or indirectly manufacture, sell, and distribute said Wilbert concrete vaults with asphalt inner lining do not know that a specific vault buried in a particular place is waterproof, airtight and breakproof at the time of

interment; and moreover respondents do not know that a certain vault buried in a particular place will endure as a waterproof, airtight and breakproof structure for a period of 50 years, or for any long-enduring period.

PAR. 6. The use by respondents of the foregoing advertisements, statements, representations, tests, and demonstrations and others similar thereto in advertising, soliciting, and offering for sale and selling said Wilbert vaults, and said supplies, services, and materials used in connection with the advertising, sale, and use of said vaults, as herein set out, was and is calculated to and has had and now has the tendency and capacity to and does in fact, mislead and deceive a substantial portion of the purchasers and prospective purchasers thereof into the erroneous and mistaken belief that the aforesaid representations are true, and induces them to purchase said vaults on account of said erroneous and mistaken belief. Thereby trade has been and is now unfairly diverted to said licensees from competitors engaged in the sale in commerce between and among the various States of the United States and in the District of Columbia who do not make use of similar misrepresentations with respect to their products of the same general kind as those offered by respondents.

As a result of respondents' said practices, as herein set out, substantial injury has been and is now being done by said respondents to the public and to competitors engaged in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 7. The above alleged acts and practices of respondents are each and all to the injury and prejudice of the public and of competitors of respondents 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 June 6, 1939, issued and subsequently served its complaint upon the respondents named in the caption hereof charging them with unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer, testimony and other evidence in support of the allegations of said complaint were introduced by attorneys for the Commission and in opposition thereto by attorneys for respondents, before Randolph

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Preston, an examiner of the Commission theretofore duly designated by it, and said testimony 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 and other evidence, report of the trial examiner and exceptions thereto, briefs in support of the complaint and in opposition thereto, and oral argument by counsel; 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 Wilbert W. Haase Co., Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Illinois, having its principal place of business at 1015 Troost Avenue, Forest Park, Ill. This respondent is the owner of certain United States letters patent relating to the construction and manufacture of concrete burial vaults. For a number of years respondent has been, and is now, engaged in the business of licensing individuals, partnerships, and other corporations to construct and sell concrete burial vaults manufactured under said letters patent, and in the lease or sale to such licensees of various materials and supplies used in or in connection with the manufacture of concrete burial vaults which are designated and described as "Wilbert" vaults.

Respondent National Affiliation of Wilbert Vault Manufacturers, alleged in the complaint to be an unincorporated association, has no officers, by-laws, or formal organization, and is in fact a trade name and style used by respondent Wilbert W. Haase Co., Inc., individually and in cooperation with its licensees, in conducting advertising programs for the benefit of itself and of its licensees in promoting the sale of Wilbert vaults. Some advertising material is sold to licensees by Wilbert W. Haase Co., Inc., and other such material is furnished to licensees without specific charge therefor. Advertisements to publicize Wilbert vaults and induce their purchase are placed by Wilbert W. Haase Co., Inc., and by licensees in magazines and other publications circulating in and among the several States of the United States and in the District of Columbia. This advertising program is in part supported by royalty payments of licensees and in part by a further payment by such licensees of 25 cents per vault sold, which payments are directly devoted to advertising carried on under the aforesaid name of National Affiliation of Wilbert Vault Manufacturers.

Respondent American Vault Works, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Illinois, having its principal place of business at 1015 Troost Avenue, Forest Park, Ill. This respondent has been, and is now, engaged in the business of manufacturing and selling Wilbert vaults as a licensee of respondent Wilbert W. Haase Co., Inc., and in addition manufacturers or otherwise provides the materials and supplies leased or sold by respondent Wilbert W. Haase Co., Inc., to other licensees.

Respondent Wilbert W. Haase, an individual, has been, and is now, president of respondent Wilbert W. Haase Co., Inc., and of respondent American Vault Works, Inc., and has been, and is now, the holder of a majority of the stock in both of said corporate respondents and has been and is, in active charge of their respective businesses, controlling and directing their policies, acts, and practices.

Respondent Sidney L. Schultz, an individual, has been, and is now, secretary and treasurer of respondent Wilbert W. Haase Co., Inc., and has been, and is now, actively engaged in the conduct of its business and in the conduct of the advertising program carried out under the name of National Affiliation of Wilbert Vault Manufacturers in aid of and in cooperation with the other respondents and other licensees not specifically named in said complaint.

Respondent Baltimore Concrete Products Co. is a corporation organized under and doing business by virtue of the laws of the State of Maryland, having its principal place of business at 3025 Cold Spring Lane, Baltimore, Md. This respondent in its capacity as a licensee of respondent Wilbert W. Haase Co., Inc., trades under the name and style of Baltimore Wilbert Vault Co. and is engaged, among other things, in the manufacture, offering for sale, and sale of Wilbert vaults.

Respondent referred to in the caption hereof as Leo Wolfkill is in fact Lee A. Wolfkill, an individual having his place of business in Rockville, Md., and trading under the name and style of Washington Vault Works, is a licensee of respondent Wilbert W. Haase Co., Inc., and is engaged, among other things, in the manufacture, offering for sale, and sale of Wilbert vaults.

PAR. 2. Respondent Wilbert W. Haase Co., Inc., trading under its own name and under the name and style of National Affiliation of Wilbert Vault Manufacturers, sells and also furnishes without charge to its licensees, some 80 in number, located in many States of the United States, various advertising brochures, pamphlets, advertising mats, circulars, catalogs, leaflets, printed and illustrated materials for the use of such licensees in promoting and inducing the sale of

Wilbert vaults, and causes such materials to be transported from its place of business to licensees in other States of the United States, and causes advertisements intended to, and which do, promote and induce the sale of Wilbert vaults to be inserted in magazines and other publications having circulation in and among the several States of the United States and in the District of Columbia. This respondent, in conjunction with respondent American Vault Works, Inc., sells and causes to be transported from Illinois through and into other States of the United States various materials and supplies sold to licensees for use in or in connection with the manufacture of Wilbert vaults and maintains a constant course of trade in commerce in such materials and supplies in and among the several States of the United States and in the District of Columbia.

Respondents Baltimore Concrete Products Co., a corporation, trading as Baltimore Wilbert Vault Co., and Lee A. Wolfkill, an individual trading as Washington Vault Works, cause brochures, circulars, letters, pamphlets, leaflets, and their printed and illustrated materials intended to promote their sales of Wilbert vaults to be transported from the place of business of Wilbert W. Haase Co., Inc., in Illinois and from their respective places of business in Maryland to customers and prospective customers in other States and in the District of Columbia, and further cause to be transported from their respective places of business in Maryland into other States of the United States and in the District of Columbia Wilbert vaults manufactured and sold by them to purchasers in such other States and in the District of Columbia. Said respondents maintain a course of trade in commerce in and among various States of the United States and in the District of Columbia of said advertising materials and Wilbert vaults.

PAR. 3. In the course and conduct of their respective businesses, in order to induce the purchase of Wilbert vaults, respondents circulate and display the advertising material heretofore referred to and the licensees of respondents in turn furnish said advertising material to their undertaker customers and prospective customers for use in aiding and promoting the sale of Wilbert vaults to the ultimate purchasers thereof, and such advertising material is distributed, displayed, and exposed to the purchasing public. In addition to the advertising materials purchased from or furnished by Wilbert W. Haase Co., Inc., licensees also prepare and circulate advertising representations of their own with respect to Wilbert vaults.

Among and typical of the representations made and caused to be made or used by respondents are:

Wilbert Waterproof Burial Vaults.

THE BURIAL VAULT WITH AN INSURED GUARANTEE.

Wilbert Vault Guarantees Insured For Fifty Years.

Eternal, Dry Underground Mausoleum.

Insured Guarantees—Wilbert Vault Manufacturers provide a liberal and well defined waterproof and breakproof vault guarantee that is insured for a period of fifty years by the Aetna Insurance Company of Hartford, Conn., Incorporated 1819.

Wilbert Waterproof Dual Vault.

WE HEREBY GUARANTEE * * * Wilbert Asphalt Waterproof Inner Vault United with Reinforced Concrete Outer Vault * * * that said vault interred in said cemetery is Air Tight and Water Resisting, that earth weight will not crush it, and that no water from the outside will enter it after the cover has been properly placed and sealed.

The Aetna Insurance Company investigated every phase of the Wilbert organization before accepting the responsibility of underwriting Wilbert Vault Guarantees. Their acceptance is a remarkable endorsement of the vault and the organization behind it.

Wilbert Asphalt Waterproof Vault.

Wilbert Asphalt Waterproof Burial Vault.

Thick Asphalt Inner Vault.

Pure Cast Asphalt for Waterproof protection; Reinforced Concrete scientifically molded for enduring strength.

When you explain asphalt protection to your client and sell a Wilbert Vault with its Insured Guarantee, you have accomplished the ultimate for his "PEACE OF MIND" and your own.

Mr. Haase's supreme desire was to produce a vault that would give full protection regardless of the varied conditions of burial. Taking a tip from the ancient Egyptian embalmers, he started experimenting with asphalt. Realizing that pure asphalt must have a supporting agent, he decided to unite a thick cast asphalt inner vault to an outer vault of enduring concrete; a material which he knew would stand the test of time.

In addition to representations such as those set out above, miniature vaults are sold and distributed by respondent Wilbert W. Haase Co., Inc., to its licensees for advertising purposes. These vaults are constructed in substantially the same manner as the adult size Wilbert vaults. They are intended to be, and are, displayed by the licensees and by their customers to prospective purchasers in the condition of being completely submerged in water with an arrangement provided for lighting and inspection of the interior thereof. This advertisement or demonstration is intended to cause prospective purchasers to believe that Wilbert vaults have the characteristics which they are represented to have.

PAR. 4. The terms of the license granted by Wilbert W. Haase Co., Inc., for the manufacture of Wilbert vaults provides that licensees secure equipment and supplies other than the Portland cement, sand, and gravel or crushed stone for use in the manufacture of such vaults from the licensor, and by periodical inspections of the plants of

licensees the licensor attempts to maintain similar standards of manufacturing by all licensees. The Wilbert burial vault in substance consists of a box of sufficient size to hold a casket and having a separate top or cover, both box and cover being made of reinforced concrete and having an inner lining of asphalt. In general the method of manufacture is to construct the vaults in two pieces, one the box and the other the top or cover. The procedure in making the box is to set up metal forms in an inverted position leaving a $\frac{3}{8}$ -inch space between inner and outer forms which is poured full of hot asphalt. When cool the outer part of the form is removed, the surface of the asphalt is treated with a solvent, the reinforcing metal put in position, and an outer form put in place, leaving a space between the asphalt and the outer form of $1\frac{1}{2}$ inches on the sides and $2\frac{1}{2}$ inches at the top which, when the box is placed in the expected position, is the bottom. This space is then filled with concrete which is vibrated for the purpose of increasing its density, and when the concrete has set the inner and outer forms are removed, the outer surface pointed up, painted with an asphalt compound and the vault put aside for a curing period. The purpose of using a solvent on the asphalt inner lining prior to pouring the concrete around it is to create a bond between the asphalt and the concrete and cause the asphalt to adhere firmly to the concrete. The top or cover is made by a similar process. Before delivery of the vault to a purchaser its exterior is painted with bronze or other paint for decorative purposes.

In order to assist in moving the vault, suitable metal handles are placed in position before the concrete is poured so that they are imbedded in and become a part of the vault. For the purpose of making a tight joint between the box and the top or cover, they are cast with a tongue along the top edge of the sides and ends of the box and a groove along the edge of the cover intended to fit the tongue on the box. The groove is filled with asphalt, usually in three layers, the first being of a firmer consistency than the succeeding layers, and the top is intended to be accurately placed over the sides of the box in order that the weight of the cover and the earth placed upon it will gradually force the tongue and groove together and the asphalt will create a seal between the two parts of the vault. Where the regulations of the cemetery permit, it is the practice of the licensor to have a licensee or an employee attend to the placement of the top of the vault at the time of burial in order to assure, so far as possible, the sealing of the top to the box in the manner intended.

PAR. 5. The annual volume of business in Wilbert vaults manufactured by the some 80 licensees approximate \$2,500,000. Out of the thousands of Wilbert vaults sold each year relatively few are

disinterred, and consequently it is seldom that the condition of the vault after it has been put into use is accurately ascertained. There have been, however, a number of disinterments of Wilbert vaults, some of which were found to be in excellent condition and some of which were not. The first so-called Wilbert vault was manufactured about 1928 and various modifications were made during a period of several years. Wilbert vaults of the type now being made have been sold for approximately 6 or 7 years. As a result the disinterments which have occurred were of vaults that have been in use for a relatively short period of time. Among the disinterments in which Wilbert vaults were found to be in good condition was one which had been underground for about 32 months, and on removal from a wet grave and opening the interior of the vault was found to be dry; another was disinterred at Waldheim, Forest Park, Ill., after having been underground some 8 months, and on removal from a wet grave the interior of the vault showed no evidence of dampness; another was disinterred at River View Cemetery, Essex, Conn., after having been underground for some 8 months and the interior of the vault was dry and in good condition; and there were other similar instances. Among the instances of disinterments where a failure of the Wilbert vault had occurred was one at Mount Carmel Cemetery, Hillside, Ill., which had been underground some 14 months, and upon disinterment the cover of the vault was found to be cracked and the vault itself contained a large quantity of water; a disinterment of a vault at Middletown, Conn., which had been underground some 11 months disclosed cracks in the top of the vault, a quantity of water in it, and the asphalt inner lining separated from the concrete and collapsed upon the casket; a disinterment of a vault at Holy Cross Cemetery, Yearden, Pa., which had been underground some 19 months, disclosed that the top of the vault had cracked and collapsed toward the center; and other similar instances have been found. Respondents contend by way of explanation for failures of the Wilbert vaults that in some instances they have resulted because of the custom in some localities of making several interments one above the other in the same grave, thus placing more weight upon the vault than it was originally designed to bear; that in others they resulted from the vaults being manufactured by a licensee who had just commenced the production of Wilbert vaults and the cause of failures was subsequently corrected; and that in the instance where the asphalt inner lining was found to be separated from the concrete it was probably caused by failure of the licensee to use respondents' solvent preparation on the asphalt inner lining before casting the concrete about it.

PAR. 6. Considerable expert testimony was introduced by the Commission and by the respondents bearing upon whether or not Wilbert vaults are airtight, sweatproof, waterproof, and subject to being crushed by earth weight, and whether such vaults afford eternal or long-enduring protection, constitute a dry underground mausoleum, or will endure without failure for 50 years or any other fixed period of time. There is much direct conflict between the testimony of the expert witnesses produced by the Commission and those produced by the respondent.

The Commission finds that concrete is not an airtight material and in the thickness used in Wilbert vaults will permit the slow passage of water. Water passing through the concrete has the tendency to carry with it certain chemicals in the soil in which it may be interred and such water and chemicals in solution tend to gradually separate from the inner surface of the concrete any asphalt or bituminous material which may have been attached thereto and to cause such material to buckle away from that surface or crack if the temperature is low. In the absence of the support given by being attached to other material the asphalt used in Wilbert vaults will not permanently support itself but will gradually flow in response to the pull of gravity. Placing a waterproofing material such as asphalt on the inner surface of a cement structure instead of on the side exposed to water is not a good practice. The maintenance of a Wilbert vault in a substantially airtight and waterproof condition is dependent upon the accomplishment of a complete seal between the two parts of the vault at the time of interment, upon the asphalt lining remaining securely attached to the interior of the vault, upon the concrete portion of the vault remaining unbroken by earth pressure or deterioration resulting from conditions encountered when interred, and upon other conditions. Any failure of the concrete portion of the vault will result also in failure of the asphalt inner lining and such inner lining may also fail as a result of water penetration of the concrete portion of the vault without an actual structural failure thereof.

Concrete is susceptible to deterioration, and in soils containing an alkali, which condition exists in many parts of the United States, this deterioration may be quite rapid, and deterioration may be caused by alternate freezing and thawing in the presence of moisture. The use of reinforcing materials such as are placed in the Wilbert vault adds little, if anything, to the strength of the vault, its principal value being to prevent the concrete from falling apart if fractured. The resistance to deterioration of concrete buried in the earth is determined by the quality of the concrete, the type of soil, the amount of moisture, temperatures to which subjected, and other

factors which vary widely throughout the country. There is a limit to the resistance of the vault to earth pressure, as demonstrated by the vault failures hereinbefore mentioned. The quality of any concrete structure is greatly affected by the quality, quantity, and type of materials used, and by the manner in which it is made and cured after manufacture. How long any given vault will endure without cracking, crushing, or otherwise failing is necessarily dependent not only upon the vault itself but upon whether it is placed in a favorable or unfavorable situation after interment, and it is concluded that the Wilbert vault under varying conditions of interment would not invariably be either airtight or waterproof, eternally or for 50 years or any other fixed period of time, and that if the concrete happened to be of poor quality or the vault interred under unfavorable conditions it might easily fail and permit the entrance of water, as is shown to have actually occurred, within a period of a few years or less.

It is further found that the Wilbert vault has no distinctive feature making it sweatproof, in that the condition referred to as sweating is caused by condensation of moisture to as sweating is caused by condensation of moisture in the air upon a surface with which it is in contact as a result of changing temperatures. The metal parts of the Wilbert vault which protrude on the outside of said vault are, when interred, exposed to conditions which cause rusting and will rust, creating a tendency to permit the progressive passage of water between them and the concrete into the interior of the vault.

Respondents in their advertising and sales representations refer to the $\frac{3}{8}$ -inch inner lining made of asphalt and attached to the concrete portion of the Wilbert vault as an "inner" vault, and sometimes to the vault itself as a "dual" vault. The term "vault" in the connection used by respondents imports and implies a burial chamber suitable for the purpose intended. The $\frac{3}{8}$ -inch asphalt lining of the Wilbert vault is not separately suitable or adapted for use as a burial chamber and reference to it as an inner vault, or to the entire Wilbert vault as a dual vault, is misleading and has the capacity and tendency to mislead and deceive.

Respondents frequently in marking and designating the Wilbert vault use the phrase "Wilbert Asphalt Waterproof Inner Vault" in large letters with thereunder the words "United with Reinforced Concrete Outer Vault" in type so small as frequently to be illegible.

Respondents, in order to induce the purchase of Wilbert vaults, have advertised and represented such vaults as "Asphalt Waterproof Vaults" and such references are misleading and deceptive in that in substance the Wilbert vault is a concrete vault lined with asphalt, whereas the term "Asphalt Waterproof Vault" imports and implies

that the entire vault is in major part, if not entirely, made of asphalt, which is a substantially more expensive material than concrete.

PAR. 7. Respondent Wilbert W. Haase Co., Inc., in February 1938 entered into an arrangement with the Aetna Insurance Co. of Hartford, Conn., respecting indemnification for losses under a guarantee of Wilbert burial vaults and subsequently entered into contracts with its licensees under which a standard form of guarantee would be issued to purchasers of Wilbert vaults warranting:

* * * that said vault interred in said cemetery is Air Tight and Water Resisting, that earth weight will not crush it, and that no water from the outside will enter it after the cover has been properly placed and sealed. Should this vault, after proper installation, be crushed by earth weight, or if water should enter it, then the National Affiliation of Wilbert Vault Manufacturers will pay actual damages to repair or replace vault, casket, and clothing to a maximum gross cost not to exceed \$500.00. The National Affiliation of Wilbert Vault Manufacturers hereby reserve the right to inspect and pass on all replacements made in accordance with its promise hereinbefore stated, * * *.

The contract between respondent Wilbert W. Haase Co., Inc., and Aetna Insurance Co., provided that the latter would indemnify the former, for the benefit of its licensees within the limits of the contract, for such sum or sums as they might be required to pay under the terms of the above guarantee. This contract of insurance contains a provision:

If at any time the losses paid hereunder should amount to more than 25% of the total paid premium, this Company retains the right to cancel any and all certificates of insurance issued hereunder (in accordance with the provisions thereof). Pro rata return premium, if any, shall be allowed the Assured on demand on all certificates cancelled by this Company.

The policy also contains a provision permitting cancelation by the assured.

The above-stated form of guarantee signed by respondent Wilbert W. Haase Co., Inc., and by the manufacturing licensee, accompanied by a so-called certificate of insurance under the master policy above mentioned, is issued to purchasers of Wilbert vaults and the licensee pays a premium of 1 percent of the sale price of each vault, except that the minimum in any event is 50 cents, and in addition the licensee pays certain costs in connection with each certificate so issued. The contract of insurance contains a provision permitting the insurer to pay any loss to the Wilbert W. Haase Co., Inc., or to the holder of the certificate with respect to which the loss occurred. Each certificate issued to a purchaser contains the statement that the insurer under the terms of the master policy "retains the right to cancel this Certificate by delivering or mailing sixty (60) days written notice of such cancellation to such Certificate holder."

An official of the Aetna Insurance Co. testified with respect to the considerations taken into account before the issuance of the policy to Wilbert W. Haase Co., Inc., in part as follows:

Q. Did you personally or any one in your company to your knowledge, believe the Wilbert vault would remain waterproof, air-tight and moisture proof for 50 years?

A. I do not know as I cannot speak for the others and not being an engineer, myself, I do not know as that was given a great deal of thought at the time.

Q. What was given the most thought with relation to the issuance of the policy?

A. That the chance of disinterment was rather remote and on the law of averages we could make a little money on them.

Q. That was true whether the vaults performed for 50 years or not?

A. Yes.

So far as respondents are concerned the arrangement for insuring against loss on the guarantee issued by the manufacturing licensee was considered primarily as a sales plan or means of inducing and promoting the sale of Wilbert vaults, and such insurance has been featured in the advertising representations of respondents. Certain advertising representations made or procured to be made by respondents to purchasers or prospective purchasers of Wilbert burial vaults refer to the above-described insurance as "Wilbert Vault Guarantees Insured for Fifty Years," "The Burial Vault with an Insured Guarantee"; and similar representations import and imply that the manufacturers' guarantee has been insured for the benefit of purchasers of Wilbert vaults, whereas the contract with the Aetna Insurance Co. provides for indemnification of respondent Wilbert W. Haase Co., Inc., for the benefit of its licensees, for any payments they are required to make as a result of the guarantees issued by them and, as aforesaid, any such payment may at the election of the insurer be made to Wilbert W. Haase Co., Inc., or to the certificate holder. Said advertising representations do not disclose the fact that the insurance may be canceled at any time by Wilbert W. Haase Co., Inc., or that upon certain contingencies it may be canceled by the insurer, and in either event the so-called certificates of insurance issued to purchasers may then be canceled; but such representations import and imply that the insurance is primarily for the benefit of purchasers of Wilbert vaults and is unqualified to the extent of the guarantee for the full period of 50 years.

Respondents further advertise and represent that "The Aetna Insurance Co. investigated every phase of the Wilbert organization

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before accepting the responsibility of underwriting Wilbert Burial Vault guarantees. Their acceptance is a remarkable endorsement of the vault and the organization behind it." An official of the Aetna Insurance Co. testified that his company did not investigate "every phase of the Wilbert organization before accepting the responsibility of underwriting Wilbert burial vault guarantees." It is concluded from the above-quoted testimony and other evidence that the acceptance of the underwriting risk by the insurance company did not constitute "a remarkable endorsement of the vault" and such acceptance was based not upon the probable performance of the vault but principally upon the fact that in normal course relatively few disinterments might be expected to occur.

PAR. 8. The use by respondents of the foregoing false, deceptive, and misleading statements, representations, and advertisements disseminated as aforesaid with respect to Wilbert burial vaults has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and that said Wilbert burial vaults possess the qualities claimed and represented and cause a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase large numbers of said Wilbert burial vaults. As a result trade has been unfairly diverted to respondents from their competitors.

CONCLUSION

The aforesaid acts and practices of respondents as herein found are all to the prejudice and injury of the public and of respondents' 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, the answer of respondents, testimony and other evidence in support of the allegations of said complaint and in opposition thereto taken before an examiner of the Commission theretofore duly designated by it, report of the trial examiner and exceptions thereto, briefs in support of the complaint and in opposition thereto, and oral arguments of counsel, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondents Wilbert W. Haase Co., Inc., a corporation, American Vault Works, Inc., a corporation, and Baltimore

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Concrete Products Co., a corporation trading as Baltimore Wilbert Vault Co., their officers representatives, agents, and employees; and Lee A. Wolfkill, referred to in the caption hereof as Leo Wolfkill, an individual trading as Washington Vault Works, Wilbert W. Haase, an individual, and Sidney L. Schultz, an individual, and their representatives, agents, and employees, either jointly or severally, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of burial vaults designated as Wilbert vaults, or any substantially similar burial vaults, 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 such burial vaults composed in major part of concrete or materials other than asphalt are "asphalt" vaults.

2. That such burial vaults are "dual" vaults or that the asphalt inner lining of such vaults is an "inner vault" either by the use of the terms stated or any other term or terms of similar import or meaning.

3. That any such vault is "breakproof," or that "earth weight will not crush it," either by the use of the terms stated or any other term or terms importing or implying that such vaults are not subject to being broken or crushed under any conditions of interment.

4. That any such vault is "sweatproof"; or that any such vault constitutes an "eternal, dry underground mausoleum," either by the use of the terms stated or by in any manner representing, importing, or implying that such vault under any burial conditions will remain in sound waterproof condition, eternally or permanently, for 50 years or for any fixed or stated period of time.

5. That "the Aetna Insurance Co. investigated every phase of the Wilbert organization" before entering into a contract of insurance with respect to such vaults or that the issuance of the insurance "constitutes a remarkable endorsement of the vault," either by the use of the terms stated or any other term or terms of similar import or meaning.

6. That insurance of the guarantee of such vaults under which any protection to the vault purchaser may be terminated at the will of respondents or, upon certain contingencies, by the insurer constitutes insurance of such guarantee for 50 years or for any other fixed or stated period of time.

It is further ordered, That respondents shall, within 60 days after the 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.