

Complaint

IN THE MATTER OF

MASLAND DURALEATHER COMPANY, W. & J. SLOANE

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

Docket 1311. Complaint, May 19, 1925—Decision, Mar. 22, 1929

Where the trade name "Duro" had long been used by a leather manufacturer in its labels, brands, literature, correspondence and invoices to designate its calfskin and veal skin leathers, and also in its advertising thereof at large expense; and thereafter a corporation engaged in the manufacture of an imitation or artificial leather product containing no leather, though resembling and made to resemble the same in appearance, and its sole sales agent, designated the aforesaid product "Duraleather" and the samples thereof supplied to customers or prospective customers, and conspicuously so advertised, stamped, listed, and billed said product, together with the words, after a time and in some cases, in much smaller letters and hardly discernible, "A Durable Leather Substitute"; with the result that the use of the aforesaid term to designate such imitation or artificial leather was suggested to their customers or their customers' customers in the marketing and sale of products made thereof, and there was placed in the hands of others the means of committing a fraud upon the consuming public by enabling dealers to offer and sell to said public articles made from the aforesaid product as and for articles made of real leather, and with the capacity and tendency to mislead and deceive such public into believing said imitation or artificial leather to be a product of the aforesaid leather manufacturer and to cause it to purchase articles made therefrom in such belief, and as and for articles made of genuine leather, and to divert trade from those engaged in the manufacture of real leather, and those engaged in the manufacture of imitation leather and selling and advertising the same as such:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. E. J. Hornibrook for the Commission.

Roberts & Montgomery, of Philadelphia, Pa., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Masland Duraleather Co., a Pennsylvania corporation engaged in the manufacture and sale of imitation leather, and with principal office and place of business in Philadelphia, and respondent W. & J. Sloane, a New York corporation, engaged, among other

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things, in the sale, as sole sales agent, of said imitation leather, and with principal office and place of business in New York City, with naming product misleadingly, misbranding or mislabeling and simulating trade name of competitor, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, engaged as above set forth in competition with competitors dealing in artificial leathers and competitors dealing in genuine leathers, including the A. C. Lawrence Leather Co. of Boston, which has long since sold leather made by it to manufacturers of trunks, suit cases, upholstered articles and other similar products in various States, under its well-known trade name and designation "Duro" and so advertised and referred thereto in its advertising catalogues, price lists, circulars, and other trade literature and as "Duro leather" and in correspondence with customers and prospective customers, name, designate, brand, and label their said imitation leather, consisting of a coated fabric made in imitation of, but containing no leather "Duralcather" and sell said product so named, designated, branded, and labeled to manufacturers of trunks, suit cases, satchels, upholstered articles and other similar products, by whom said trunks, etc., are sold to retailers in various States and by said retailers to the consuming public.

The use by respondents, as alleged, of the name and designation "Duralcather" places in the hands of respondents' aforesaid vendees the means of committing a fraud upon retail dealers and eventually upon the consuming public by enabling said vendees to represent and sell the products made by them in whole or in part of said artificial leather to retail dealers as and for articles made in whole or in part of real leather, and said acts and practices tend to and do divert business from and otherwise injure competitors, many of whom sell and supply real leather to manufacturers of trunks and products above set forth, correctly representing their said products to the retail trade as composed in whole or in part of real leather and others of whom sell and supply artificial leathers to such manufacturers without in anywise representing such artificial leather as composed either in whole or in part of real leather; all to the prejudice of the public and respondents' competitors.

The use, further, as charged, of the aforesaid name and designation, has the capacity and tendency to mislead and deceive the trade into the belief that respondents' said "Duralcather" is a product of the aforesaid A. C. Lawrence Leather Co., and to cause the trade

to purchase respondents' said imitation leather in such belief; all to the prejudice of the public and of respondents' said competitors.¹

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, Masland Duraleather Co. and W. & J. Sloane, charging them with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act.

Respondents having entered their appearances and filed their answers to said complaint, hearings were had before a trial examiner, theretofore duly appointed, and testimony was heard and evidence received in support of the charges stated in the complaint and in opposition thereto. Thereafter this proceeding came on regularly for decision, and the Commission having duly considered the record, and being now fully advised in the premises, makes this its report stating its findings as to the facts and conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Masland Duraleather Co., is a corporation organized under the laws of the State of Pennsylvania with its principal office and place of business in the city of Philadelphia in said State. It is engaged in the manufacture of a product which it calls "Duraleather", an imitation or artificial leather, which is hereinafter described, and the sale thereof through respondent W. & J. Sloane, as hereinbelow set forth.

PAR. 2. Respondent, W. & J. Sloane, is a corporation organized under the laws of the State of New York with its principal office and place of business in the city of New York in said State. It is engaged, among other things, in selling said imitation or artificial leather manufactured by respondent, Masland Duraleather Co., to manufacturers of automobiles, automobile bodies, trunks, suitcases, satchels, upholstered articles, and other similar products, who manufacture many of said products in whole or in part of said imitation or artificial leather. Said manufacturers are located at points in various States of the United States. Respondent, W. & J. Sloane,

¹ The complaint is in two counts, the first relating to the application of the word "Duraleather" to an imitation leather, and the second relating to the use of such a designation in the light of the Lawrence Leather Co.'s trade name and trade designation "Duro" and "Duraleather".

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distributes said imitation or artificial leather in the manner hereinafter set forth as sole sales agent for respondent, Masland Durableather Co., with the exception that within the State of Pennsylvania respondent, Masland Durableather Co., usually distributes its said product. Respondents cause said imitation or artificial leather so sold to be transported from respondent's, Masland Durableather Co., said place of business in the city of Philadelphia, State of Pennsylvania, into and through other States of the United States to the said purchasers at their respective points of location.

In the course and conduct of their said business respondents are in competition with other individuals, partnerships, and corporations engaged in the manufacture of leather and imitation or artificial leather and the sale and transportation thereof between and among the various States of the United States.

PAR. 3. "Durableather" is made from a cotton cloth base, upon which is spread a coating of nitro-cellulose solution, castor oil, and various pigments for coloring purposes. It is then painted and embossed with a leather grain so that it very closely resembles genuine leather. There is no leather in it.

About 75 per cent of this product goes into the upholstering and trimming of automobiles, 15 per cent into the upholstering of furniture, 5 per cent into the manufacture of handbags, suitcases, brief bags, and luggage, and 5 per cent into miscellaneous articles.

Respondents do an annual business of about \$500,000 in the manufacture and sale of such imitation leather.

PAR. 4. In the year 1914 Walter E. Masland, an individual, began trading under the name and style of Masland Durableather Co. and began the manufacture of an imitation or artificial leather which he designated and sold in interstate commerce as "Durableather". He continued such manufacture and continued the use of the said trade name, "Durableather", until the year 1919. In that year the said Walter E. Masland caused the respondent, Masland Durableather Co., to be incorporated as aforesaid. This corporation succeeded to the said business of Walter E. Masland and continued the manufacturing of such imitation or artificial leather and continued to trade and is now trading under the name of Masland Durableather Co. Since the date of such incorporation it has been and now is using the term "Durableather" to designate its said imitation or artificial leather in the manner hereinafter described.

PAR. 5. Prior to 1924 the respondent, Masland Durableather Co., advertised its said product as "Durableather" in the Automotive Red Book and Chilton's, being two directories of general circulation in the automobile trade, and also in Thomas' directory and the Buyer's

directory, annual publications of manufacturers of the United States, as "Duraleather" without explanation that said product was artificial or an imitation.

Up to and until the year 1924 the respondent, Masland Duraleather Co., designated and branded its said imitation leather with the word "Duraleather," without explanation that it was artificial and in imitation of genuine leather. Since the year 1924 the respondent, Masland Duraleather Co., has used the term "Duraleather" in branding, labeling, designating, and advertising its said imitation or artificial leather, which term is printed in very conspicuous type and is also accompanied with the phrase "The durable leather substitute" in letters of less conspicuous type.

"Duraleather" is generally put up in rolls containing 60 yards. The goods are from 50 to 56 inches in width. The trade name "Duraleather" is stamped on the outside of the roll and since the year 1924 such trade name has been accompanied, in much smaller letters, with the phrase: "The durable leather substitute". Also a ticket is attached to the roll, which, since the year 1924, has carried, in addition to the said trade name, the words, "The durable leather substitute" in much smaller letters than those forming said trade name.

Samples of this imitation leather are made up in small books and sent out to the customers and prospective customers of respondents. In the cases of jobber customers two to four hundred of these books are supplied to each. Prior to 1924 these samples bore the word "Duraleather" without explanation that the product was imitation or artificial. Since 1924 these samples have borne the word "Duraleather" in conspicuous letters and the words "A durable leather substitute" in letters so small as to be hardly discernible to the human eye.

This imitation or artificial leather is carried in stock by department stores and catalogue houses such as Sears, Roebuck & Co., and samples of this leather were sent to them stamped, prior to the year 1924, with the word "Duraleather" only, and since the year 1924 with the word "Duraleather", and in smaller type "A durable leather substitute". All such samples were made up and stamped by respondent, Masland Duraleather Co., and are generally distributed by the respondent, W. & J. Sloane. Price lists bearing the legend, "Duraleather" "A durable leather substitute" are prepared and circulated by respondent, W. & J. Sloane. All advertising, not herein specifically accredited to respondent, W. & J. Sloane, is done by respondent, Masland Duraleather Co. "Duraleather" is frequently billed to customers of respondents by respondent, W. & J. Sloane,

without explanation on the billing or invoice that the same is imitation or artificial.

PAR. 6. When respondent, W. & J. Sloane, receive orders from the automobile companies for this imitation or artificial leather, to be used in the trimming and upholstering of automobiles, samples of genuine leather are sent to it with the instructions to imitate genuine leather as closely as possible and respondent, Masland Duraleather Co., endeavors to make such imitations.

PAR. 7. In the year 1923 the Virginia Trunk & Bag Co. of Petersburg, Va., purchased from one of the jobber customers of respondents a quantity of "Duraleather". It used the same in the manufacture of traveling bags and suit cases. It sold and delivered the same to its customers in various States of the Union, as "Duraleather" bags, "Duraleather" suit cases, and "Duraleather" overnight bags, without explanation that the same were made of artificial or imitation leather. In said year the said Virginia Trunk & Bag Co. issued catalogues and circulars to the number of more than 10,000, in which some of its bags and suit cases were described as "black, cobra grain Duraleather", without explanation that the same were made from imitation leather.

The reason the Virginia Trunk & Bag Co. used the word "Duraleather" as above described was because such name was given to the product by the manufacturer thereof.

PAR. 8. Among said competitors of respondent is the A. C. Lawrence Leather Co., a Massachusetts corporation with its principal office and place of business in the city of Boston. It is engaged in the manufacture of genuine leather and in the sale thereof to manufacturers of shoes and luggage, such as suit cases, bags, and brief cases, upholstered furniture, automobiles, novelties and other products, located in various States of the United States. It has for more than twenty-five years last past, used the word "Duro" as a trade name and designation for calfskin and vealskin leathers made and sold by it as aforesaid, and has expended large sums in advertising said products under said name. It has so used the said trade name "Duro" in its brands, labels, sales literature, advertising, invoices, and correspondence, and in said labels, brands, literature, advertising, correspondence, and invoices it designated and referred to its said products as "Duro calf", "Duro veal" and "Duro calf leather." It registered said name "Duro" as a trade-mark for leather and finished leather in the United States Patent Office in the years 1902 and 1912, and in the year 1921 successfully opposed the registration by respondent of the word "Duraleather" as a trade-mark for its said imitation or artificial leather in said Patent

Office. There is a similarity in appearance between the products of genuine leather produced by the A. C. Lawrence Leather Co. which it calls "Duro calf", "Duro calf leather", and "Duro veal" as aforesaid, and the product "Duraleather" manufactured by the respondent, Masland Duraleather Co. The said use by respondents of the trade name "Duraleather" has the capacity and tendency to mislead and deceive the consuming public into the belief that said "Duraleather" is a product of the aforesaid competitor and to cause the consuming public to purchase articles made in whole or in part from "Duraleather" in such belief.

PAR. 9. Respondents' said use of the term "Duraleather" as applied to its said imitation or artificial leather suggests the use of said term by the customers or the customers of the customers of said respondents in the marketing and sale of products made in whole or in part of "Duraleather".

PAR. 10. The said use by respondents of the term "Duraleather" as applied to its said imitation or artificial leather and its subsequent use by said manufacturers of articles made in whole or in part therefrom has the tendency and capacity to divert trade from those who are engaged in the manufacture of real leather and those who are engaged in the manufacture of imitation leather and selling and advertising the same as such imitation leather.

PAR. 11. The aforesaid use by the respondents of the term "Duraleather" and its subsequent use by the customers of the respondents and the customers of respondents' customers has the capacity and tendency to deceive the consuming public into the belief that the articles made therefrom are made from genuine leather and to cause the consuming public to purchase the same in such belief.

PAR. 12. Respondents' said acts and practices place in the hands of others the means of committing a fraud upon the consuming public by enabling dealers to offer for sale and sell to the consuming public articles made from "Duraleather" as and for articles made of real leather.

CONCLUSION

The practices of said respondents under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and respondents' customers and are unfair methods of competition in commerce and constitute a violation of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

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ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents thereto, the testimony, evidence, briefs and arguments of counsel, and the Commission having made its findings as to the facts and its conclusions that respondents have been, and are, using unfair methods of competition in commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is now ordered, That respondents, Masland Duraleather Co. and W. & J. Sloane, their officers, agents, representatives, and employees, in connection with the advertising, offering for sale and sale, in commerce among the several States of the United States, of the product "Duraleather" or any imitation or artificial leather, or substitute for leather, shall cease and desist:

1. From using the term "Duraleather" as a trade name, brand, stamp, or label for such products.
2. From using the term "Duraleather" on letterheads, envelopes, invoices, signs, in circulars, catalogues, magazines, newspapers, or otherwise to designate or describe such products, and
3. From using the word leather or any other word or combination of words in such manner as to import or imply that such products are real leather.

It is further ordered, That the respondents, Masland Duraleather Co. and W. & J. Sloane, shall within 60 days after the service upon them of a copy of this order file with the Commission a report in writing setting forth in detail the manner and form in which each has complied with the order to cease and desist hereinbefore set forth.

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IN THE MATTER OF

N. FLUEGELMAN & COMPANY, INC.

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914;

Docket 1491. Complaint, Jan. 13, 1928—Decision, Apr. 2, 1929

Where a corporation engaged as a converter and wholesale distributor of cotton fabrics, named, advertised, offered and sold as "Satinmaid" a mercerized cotton fabric, dealt in by it as above set forth, and so labeled the board ends affixed to the cards or boards around which the fabric was wound, and the paste tickets, hanging tags, salesmen's color cards and other descriptive matter used in connection with the sale and distribution thereof, together with the words "A Satinized Fabric," and also the words, after a time, "A Cotton Fabric," in its advertisements and on the aforesaid descriptive matter used in connection with the sale thereof, but in a less conspicuous fashion; with the capacity and tendency to mislead and deceive buyers into believing said fabric to consist in whole or in part of silk and to induce its purchase in such belief, and with the effect of furnishing retailers with the means enabling them to mislead and deceive ultimate buyers into purchasing the same in the aforesaid belief, and the tendency to injure and divert trade from competitors dealing in cotton fabrics, silk fabrics, or both, or fabrics of both cotton or silk:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. James M. Brinson for the Commission.

Mr. Henry Fluegelman of New York City and *Mr. Roger O'Donnell*, of Washington, D. C., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged, respondent, a New York corporation engaged as a converter of cotton fabrics, and wholesale distributor thereof in interstate commerce, to purchasers in States other than New York, and with principal place of business in New York City, with naming product misleadingly, advertising falsely or misleadingly and misbranding or mislabeling in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, designated as "Satinmaid" a mercerized cotton fabric, prepared and sold by it, containing no satin or silk, a product of the cocoon of the silkworm,