

Syllabus

IN THE MATTER OF

LEOPOLD LEVOY AND NATHAN C. BLACHER TRADING
AS SUNBEAM LABORATORIESCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3267. Complaint, Nov. 16, 1937—Decision, Jan. 5, 1939 .*

Where two individuals engaged in sale of a cosmetic designated "Nailife" and composed of about 90 percent lanolin and 10 percent wax, along with very small amount of coloring and perfuming matter, and in distribution of said product to retail dealers for resale to members of the purchasing public, directly and through its brokers or agents, in substantial competition with others engaged in sale and distribution of preparations designed and intended for and used for same general purposes, and including those who do not, in any manner, misrepresent their preparations or properties thereof and do not make any other false statements in connection with sale and distribution thereof; in advertising their said products on display cards distributed to retailer dealer purchasers in various States—

Represented, through use of "Before" and "After" pictures and statements thereon made, that said "Nailife" was a scientific preparation which would transform irregular, broken nails into well-formed, symmetrical ones, and was beneficial for dry or splitting nails and the perfect nail food, and would make nails strong and healthy, facts being nails of the fingers cannot be fed by an external application such as preparation aforesaid, which was not a scientific one, use thereof would not make nails strong and healthy, value thereof was limited to forming a protective coating for the nails, and said various claims were grossly exaggerated, false, and misleading and greatly exceeded any claims as to the efficacy of said product which might truthfully be made;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations, and advertisements were true, and that said preparation possessed the properties claimed and represented, and would accomplish the results indicated, and of causing substantial portion of such public, because of such erroneous and mistaken belief, to purchase substantial quantities of its said preparation, and with result of thereby diverting unfairly trade to them from competitors who truthfully advertise the effectiveness in use of their respective products; to the injury of competition in commerce:

Held, That such acts and practices were all to the prejudice and injury of the public and competitors and constituted unfair methods of competition.

Before *Mr. Charles P. Vicini*, trial examiner.

Mr. S. Brogdyne Teu, II and *Mr. Clarence T. Sadler* for the Commission.

Mr. A. Frederick Lamken, of Los Angeles, Calif., for respondents.

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COMPLAINT

Pursuant to the provisions 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," the Federal Trade Commission having reason to believe that Leopold Levoy and Nathan C. Blacher, individually and trading under the trade name "Sunbeam Laboratories," hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce as "commerce" is defined in said act of Congress, and it appearing to said 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. Respondents, Leopold Levoy and Nathan C. Blacher, are individuals trading under the trade name Sunbeam Laboratories, and having their principal place of business in the city of Los Angeles, State of California. They are now, and for more than 1 year last past have been, engaged in the manufacture, sale, and distribution of a certain cosmetic commodity known as "Nailife" in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. When said product is sold respondents transport or cause the same to be transported from their principal place of business in the city of Los Angeles, State of California, to purchasers thereof located in other States of the United States and in the District of Columbia.

There is now, and has been at all times mentioned herein, a constant current of trade and commerce in said above-described product sold by respondents, between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business respondents are now, and have been, in substantial competition with other partnerships, and with individuals, firms, and corporations likewise engaged in the business of manufacturing, selling, and distributing like and similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their said business, and for the purpose of inducing the purchase of their product, respondents have caused to be printed and circulated through the United States mails, and by other means, to their customers and prospective customers in the various States of the United States price lists and other printed matter.

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The respondents have caused, and still cause, advertisements to be inserted in newspapers and magazines having a general interstate circulation. And further, they have caused, and still cause, to be imprinted on their display cards and on the containers in which said product is sold, words and phrases purporting to be descriptive of the said product. Among the statements made in the aforesaid catalogs, price lists, and newspaper and magazine advertisements, and among the words and phrases imprinted on respondents' display cards and the containers in which said product is sold, the following are representative:

FOR DRY BRITTLE
SPLITTING NAILS USE
Nailife
THE PERFECT
NAIL FOOD

BEFORE

AFTER

(Pictorial representation of
hand showing condition of
nails before and after the
use of Nailife)

BE PROUD OF YOUR NAILS
NAILIFE, A SCIENTIFIC
PREPARATION WILL TRANSFORM
IRREGULAR BROKEN NAILS INTO
WELL FORMED SYMMETRICAL ONES.
MAKE YOUR NAILS
STRONG AND HEALTHY

(C) 1936 by

SUNBEAM LABORATORIES LOS ANGELES, CALIFORNIA.

The foregoing statements and representations made by the respondents are false and misleading. They serve as representations to customers and prospective customers:

That respondents' said product constitutes a competent and effective treatment for dry, brittle, and splitting nails; that Nailife is the perfect nail food and is actually a food for nails and nourishes nails; that Nailife is a scientific preparation; that Nailife will transform irregular, broken nails into well-formed symmetrical ones; and that Nailife will make nails strong and healthy.

In truth and in fact the respondents' product has no value whatever in the treatment of dry, brittle, and splitting nails, and does not constitute a competent and effective treatment for nails. Said product is not the perfect nail food, and has no value as a nail food. It is not a scientific preparation, and it will not transform irregular broken nails into well-formed symmetrical ones. Said product does

not make nails strong and healthy or have any value other than a protective covering for nails or as a nail polish.

PAR. 5. There are among the competitors of respondents as herein set out manufacturers and distributors of like and similar products who truthfully advertise and represent the nature and merit of their respective products, and who refrain from advertising or representing through their catalogs, brand marks, and other advertising media that the merchandise offered for sale by them has a nature and merit that it does not have.

PAR. 6. Each and all of the false and misleading statements made by the respondents in designating or describing their product, and in offering for sale and selling the same, were and are calculated to, and had, and now have, a tendency and capacity to, and do mislead a substantial part of the consuming public into the erroneous belief that all of the said representations are true, and into the purchase of respondents' said product on account of said erroneous belief.

PAR. 7. As a result thereof trade has been unfairly diverted from those competitors of respondents engaged in similar businesses herein referred to. As a consequence thereof substantial injury has been and is being done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 8. The aforementioned methods, acts, and practices of respondents are all to the prejudice of the public and of respondents' competitors as hereinabove alleged. Said methods, acts, and practices constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 16th day of November 1937, issued and subsequently served its complaint in this proceeding upon respondents, Leopold Levoy and Nathan C. Blacher, individually and trading as Sunbeam Laboratories, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Clarence T. Sadler, attorney for the Commission, and in opposition to the allegations of the complaint by A. Frederick Lamken, attorney for the

respondents, before Charles P. Vicini, 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, and brief in support of the complaint, respondents not having filed brief, and oral argument not having been requested; 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. Respondents, Leopold Levoy and Nathan C. Blacher, are individuals trading as Sunbeam Laboratories and having their principal place of business in the city of Los Angeles, State of California.

PAR. 2. Respondents are now and have been for more than 1 year last past engaged in the business of selling and distributing a cosmetic designated as "Nailife." Respondents sell said preparation direct to retail dealers for ultimate resale to members of the purchasing public and also cause said preparation to be sold to such retail dealers by respondents' brokers located in Chicago, Ill., and New York City, N. Y. Respondents cause said preparation, when sold by them, to be transported from their aforesaid place of business in the State of California or from the State of origin of shipment thereof to the purchasers thereof at their respective points of location in various States of the United States other than the State of the origin of the shipment thereof.

PAR. 3. Respondents are engaged in substantial competition in commerce among and between the various States of the United States with other individuals and with corporations, firms, and partnerships engaged in the business of selling and distributing preparations designed and intended for, and used for, the same general purposes for which respondents recommend the use of their said preparation. Among such competitors in said commerce are many who do not in any manner misrepresent their preparations or the properties thereof and who do not make any other false statements in connection with the sale and distribution of their respective preparations.

PAR. 4. In the course and conduct of their said business and for the purpose of inducing the purchase of their said preparation, respondents cause advertisements containing representations and

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claims with respect to the properties of said preparation and the results which may be expected to be obtained from the use thereof to be inserted on display cards which the respondents distribute to retail dealers, purchasers of said preparation, situated in various states of the United States, for the use of such retail dealers in inducing members of the public to purchase such preparation. Among and typical of the representations contained in said advertisements so used and disseminated as aforesaid are the following:

Use Nailife. The perfect nail food for dry brittle splitting or soft nails.

For dry brittle splitting nails use Nailife the perfect nail food. Be proud of your nails. Nailife, a scientific preparation, will transform irregular broken nails into well formed symmetrical ones.

Use Nailife. The perfect nail food for dry brittle splitting or soft nails.

On various of the aforesaid display cards used and disseminated as aforesaid, the respondents caused to be pictorially represented two human hands. On one of such hands the nails of the fingers are irregular and under which appears the word "Before." On the other of such hands the nails of the fingers are perfectly regular and under which appears the word "After."

PAR. 5. Through the use of the statements and representations hereinabove set forth and others similar thereto not herein set out, all of which purport to be descriptive of respondents' preparation and its effectiveness in use, the respondents have represented directly and by implication, among other things, that the use of said preparation constitutes a competent and effective treatment for dry, brittle, and splitting nails; that such preparation is the perfect nail food and nourishes the nails; that such preparation is a scientific preparation; that such preparation will transform irregular, broken nails into well-formed, symmetrical nails; and that such preparation will make nails strong and healthy.

PAR. 6. "Nailife" is the trade name for respondents' preparation which is a liquid paste composed of lanolin, wax, perfume, and coloring. Such preparation contains approximately 90 percent lanolin, 10 percent wax, and a very small amount of coloring and perfuming matter.

PAR. 7. The aforesaid representations, used and disseminated by the respondents in the manner above described, are grossly exaggerated, misleading, and untrue and constitute false advertisements. In truth and in fact, the use of such preparation is not a competent and effective treatment for dry, brittle, and splitting nails. Such preparation is not the perfect nail food. Such preparation has no value as a nail food. The nails of the fingers cannot be fed by an external application such as respondents' preparation. Such preparation is

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not a scientific preparation. The use of such preparation will not transform irregular, broken nails into well-formed, symmetrical nails. The use of such preparation does not make nails strong and healthy. The value of the use of such preparation is limited to forming a protective covering for nails. The claims of the respondents as to the efficacy in use of the said preparation are grossly exaggerated, false, and misleading and greatly exceed any claims as to the efficacy of said preparation which might truthfully be made.

PAR. 8. The use by the respondents of the foregoing false and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to said preparation 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 respondents' said preparation possesses the properties claimed and represented and will accomplish the results indicated, and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of respondents' said preparation. As a result, trade has been diverted unfairly to the respondents from their competitors in said commerce who truthfully advertise the effectiveness in use of their respective preparations. In consequence thereof, injury has been, and is now being, done by respondents to competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the 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 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 and the answer of the respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

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It is ordered, That respondents, Leopold Levoy and Nathan C. Blacher, individually and trading as Sunbeam Laboratories, or trading under any other name, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of a cosmetic preparation for use on finger nails now known as "Nailife," whether sold under that name or under any other name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing that said preparation is beneficial for dry or splitting nails.
2. Representing that said preparation is the perfect nail food.
3. Representing that "Nailife" is a scientific preparation which will transform irregular, broken nails into well-formed, symmetrical ones.
4. Representing that said preparation will make nails strong and healthy.

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

Complaint

IN THE MATTER OF
AL DUNLAP, TRADING AS THE DETECTIVE PUBLISHING
COMPANY

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

Docket 3402. Complaint, May 5, 1938—Decision, Jan. 5, 1939

Where an individual engaged in the manufacture of a shield or vest designated by him "Durite Bullet Proof Vest," and in sale and distribution thereof to purchasers in other States and in the District of Columbia, and in competition with those engaged in offer and sale of similar products, who truthfully describe or designate the same; in advertising his said vests in periodicals of general circulation throughout the United States—

Represented that said "new Durite Bullet Proof Vest" had "stood the highest Government test of *All Bullet Proof Vests*," facts being his said product did not, upon tests thereof by Government agencies, stand the highest test of all such products, and never had stood the highest Government test;

With effect of misleading and deceiving a substantial portion of purchasing public into erroneous belief that all said claims and representations were true, and with the result, as a direct consequence of such mistaken and erroneous belief thus induced, that a substantial number of such public bought substantial quantity of his said products and trade was diverted unfairly to him from competitors engaged in manufacture and sale of so-called bullet proof vests and who do not misrepresent quality or efficacy thereof; to the injury of competition in commerce;

Held, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Robert S. Hall*, trial examiner.

Mr. Floyd O. Collins for the Commission.

Smith, Marx & Smith, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Al Dunlap, trading as The Detective Publishing Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be to the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Al Dunlap, is an individual trading as The Detective Publishing Co. The principal place of business of the said respondent is 1029 South Wabash Avenue, Chicago, Ill. Re-