

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-

Complaint

28 F. T. C.

spondent is now, and has been for the past several years, engaged in the manufacture, sale, and distribution of a shield or vest which he designates "Dunrite Bullet Proof Vest." Respondent causes said vest when sold to be shipped and transported from his place of business in the city of Chicago, Ill., to purchasers thereof, located at various points in States of the United States other than the State of Illinois, and in the District of Columbia. Respondent maintains, and has at all times herein mentioned maintained, a course of trade in said product in commerce among and between the various States of the United States and the District of Columbia.

PAR. 2. Respondent in the course and conduct of his business, as aforesaid, is now, and at all times herein referred to has been, in substantial competition with other individuals and with firms, partnerships, and corporations also engaged in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia of other articles which are advertised and sold for the same and similar purposes and uses for which respondent's product is advertised and sold.

PAR. 3. In the course and conduct of his business and for the purpose of inducing members of the purchasing public to purchase his said product, respondent has caused advertisements to be inserted in newspapers, magazines, and other periodicals of general circulation throughout the United States. In all of said advertising matters, as hereinabove alleged, respondent has caused his trade name and the name of said product to be prominently and conspicuously displayed, together with the following statements:

This new Dunrite Bullet Proof Vest has stood the highest Government test of All Bullet Proof Vests.

From our laboratories has come a new invention which gives this new Dunrite Bullet Proof Vest 20% more resistance, and yet It Is Lighter, Better-Fitting and More Comfortable than any other vest.

PAR. 4. All of said statements, as above set out, together with many other similar statements appearing in the respondent's advertising and literature, purport to be descriptive of respondent's product, Dunrite Bullet Proof Vest. In all of the respondent's advertising matter and literature, the respondent represents, through the statements herein set out and other statements of like import and effect, (a) that said vest is bulletproof; (b) that said vest will effectively deflect bullets fired by or from all makes of revolvers and rifles now in use; (c) that said vest will pass all Government tests for bulletproof vests; (d) that said vest has been submitted to and has withstood the highest Government tests; (e) that the said Al Dunlap maintains a labora-

tory or laboratories for testing said product as to its efficacy and quality.

PAR. 5. All of the claims and representations made by the respondent with respect to the quality and efficacy of his said product are grossly exaggerated, false, and misleading. In truth and in fact, said vest is not bulletproof, for it will not effectively deflect bullets fired from all makes of rifles, pistols, or revolvers now in use. There are many makes of rifles, pistols, and revolvers which, when fired, propel a bullet with sufficient force to perforate said vest. Said product is not now, and never has been, capable of withstanding the highest Government test for like articles. Respondent does not now maintain, and never has maintained, a laboratory or laboratories for testing said article or similar articles. Said product is not bulletproof and never has been bulletproof.

PAR. 6. The various statements and representations made by the respondent in describing his product, Dunrite Bullet Proof Vest, and the quality and efficacy of said product when used, as hereinabove set out, were and are calculated to, and had, and now have, the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said claims and representations are true. As a direct consequence of said mistaken and erroneous beliefs induced by the acts and representations of respondent, as hereinabove set out, a substantial number of the purchasing public has purchased a substantial number of respondent's products, with the result that trade has been diverted unfairly to the respondent from competitors who are likewise engaged in manufacturing and selling so-called bulletproof vests, and who do not misrepresent the quality or efficacy of their respective products. As a direct result of the aforesaid unfair acts, and false and misleading representations of the respondent, injury has been, and is now being, done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 7. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition 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 an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Com-

Findings

28 F. T. C.

mission, to define its power and duties, and for other purposes," the Federal Trade Commission issued and served its complaint upon respondent, Al Dunlap, an individual trading as the Detective Publishing Co., charging respondent with the use of unfair methods of competition in interstate commerce in violation of section 5 of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by F. O. Collins, an attorney for the Commission, before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, and opposition to the allegations of the complaint by Emory J. Smith, attorney for the respondent, 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, the testimony and other evidence, briefs in support of the complaint and in opposition thereto; and the Commission having duly considered the same 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. The respondent is an individual, Al Dunlap, trading as Detective Publishing Co. His principal place of business is 1029 South Wabash Avenue, Chicago, Ill. He now is and has been for several years past engaged in the manufacture, sale, and distribution of a shield or vest which respondent designates "Durite Bullet Proof Vest." Respondent causes said vest, when sold, to be shipped and transported from his place of business in the city of Chicago, Ill., to purchasers thereof located at various points in States in the United States other than the State of Illinois, and in the District of Columbia. He has during such time maintained a course of trade in such product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. The respondent in the course and conduct of his business and for the purpose of inducing members of the purchasing public to purchase his product aforesaid, has caused advertisements to be inserted in periodicals of general circulation, throughout the United States. In such advertising method, respondent has caused his trade name and the name of said product to be prominently and conspicuously displayed with the following statement:

This new Durite Bullet Proof Vest has stood the highest Government test of All Bullet Proof Vests.

PAR. 3. Respondent manufactures two types of vests and designates them bulletproof vests. These types are manufactured alike. They are termed "super model" and "standard model." The latter has fewer plates than the former. They are constructed with thin layers of steel about the thickness of a razor blade. These plates are placed in overlapping pockets, then laminated together in order to conform to the shape of the body. Such compose a complete coverage of the body and are worn like unto a corset. They are calculated to repel bullets discharged from small firearms such as pistols.

PAR. 4. The Federal Bureau of Investigation of the Department of Justice requested the National Bureau of Standards to make tests of the respondent's product, and also tests of similar products manufactured and sold by competitors, and such tests disclosed the respondent's product did not stand the highest Government test of all bulletproof vests, and has never stood the highest Government test.

PAR. 5. There have been and are individuals, partnerships, and corporations, offering for sale and selling in competition with respondent in interstate commerce, bulletproof vests and such other competitors of respondent offering for sale and selling in like commerce such product truthfully describe or designate such in their course of commerce of such product.

PAR. 6. The statements and representations made by respondent in describing his product as hereinabove set out were and are calculated to, and now have, the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said claims and representations are true. As a direct consequence of said mistaken and erroneous beliefs induced by the acts and representations of respondent, as hereinabove set out, a substantial number of the purchasing public has purchased a substantial number of respondent's products, with the result that trade has been diverted unfairly to the respondent from competitors who are likewise engaged in manufacturing and selling so-called bulletproof vests, and who do not misrepresent the quality or efficacy of their respective products. As a direct result of the aforesaid unfair acts; and false and misleading representations of the respondent, injury has been, and is now being done, by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

Order

28 F. T. C.

CONCLUSION

The aforesaid acts and practices of the respondent, Al Dunlap, trading as The Detective Publishing Co., are to the prejudice of the public and of respondent's 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, the answer of respondent, testimony and other evidence taken before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and briefs filed herein (oral arguments having been waived), and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Al Dunlap, individually and trading as The Detective Publishing Co., or trading in any other manner, his representatives, agents, and employees, in connection with the offering for sale, sale and distribution of armored vests in interstate commerce or in the District of Columbia, do forthwith cease and desist:

Representing, directly or otherwise, that said armored vests have successfully stood the highest Government test of all bulletproof vests.

It is further ordered, That the respondent shall, within 60 days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

Syllabus

IN THE MATTER OF
FREDERICK LOESER & COMPANY, INC.

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

Docket 3502. Complaint, July 20, 1938—Decision, Jan. 5, 1939

Where a corporation engaged in sale of garments of various kinds, ladies' wearing apparel, fabrics, and other like articles of merchandise, to members of the purchasing and consuming public in various States and in the District of Columbia, including certain products not composed entirely of silk, product of cocoon of the silkworm, as long definitely understood in minds of purchasing and consuming public from said word, and held in high esteem and confidence for its preeminent qualities in products made thereof, but composed in part of chemical fiber or fabric rayon, which simulates other in appearance and feel and is practically indistinguishable therefrom by purchasing and consuming public, and, as thus engaged, in substantial competition with others engaged in sale and distribution of garments of various kinds, ladies' wearing apparel, fabrics, and other like products, in commerce and in said District, and including those who do not misrepresent, in any manner, the nature, character, or quality of the products offered and sold by them; in advertising its said merchandise in newspapers and other publications of general circulation among the various States—

- (a) Made use of such words as "Satin," "Taffeta," and "Crepe," and of such words as "Acetate," "Celanese," "Bemberg," "Seraceta," and "Mallinson's" in connection therewith, through such statements as "Mallinson's Pure Dye Washable Sheer Bembergs," "Acetate Crepe," "H. R. Mallinson's Washable Bemberg Printed Triple Sheers," "Seraceta Taffeta," "Silky Acetate," and "Celanese Jersey," in describing and referring, as the case might be, to various dresses, frocks, and dress fabrics, and to certain blouses and bathing suits, and thereby represented that products thus referred to were composed entirely of silk, product of cocoon of silkworm, as long associated in the public mind with dress goods and other items of wearing apparel designated, described and referred to as "satin," "taffeta," and "crepe," and, through long and favorable association on the part of a substantial portion of the purchasing and consuming public of name "Mallinson's," as standing for manufacturer of silk, facts being they were composed entirely of rayon, and words "Celanese," "Acetate," "Bemberg," and "Seraceta," used separately or in combination with other words aforesaid, were not sufficiently well-known and understood by purchasing and consuming public to inform them that merchandise thus described, designated and referred to, was made in whole or in part of rayon, and not silk;
- (b) Made use of words "Silk" and "Pure Dye," through such statements under caption "Pure Dye Silks," as "Pure Dye Woven Sport Stripes," with word "Acetate" in parentheses in small letters immediately thereafter, and words "Chalk White Plain and Novelty Sharkskin Suiting" in large type, followed immediately by word "Acetate" in parentheses and in small letters, and thereby represented that fabrics thus described were composed wholly of