

*It is further ordered*, That the hearing examiner's initial decision as modified herein be, and it hereby is, adopted as the decision of the Commission.

*It is further ordered*, That respondents herein shall, within sixty (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 the order to cease and desist.

By the Commission, Commissioner Elman did not participate in the consideration or decision of this case.

---

IN THE MATTER OF

JAMES M. DUDLEY TRADING AS  
FIRE-PAK MANUFACTURING COMPANY

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

*Docket 8542. Complaint, Nov. 5, 1962—Decision, Jan. 15, 1964*

Order dismissing complaint charging a Jacksonville, Fla., seller of a shaker-type dry chemical fire extinguisher designated "Fire-Pak", with misrepresenting the effectiveness, purported tests, government approval, and superiority over competitive products.

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 James M. Dudley, an individual trading as Fire-Pak Manufacturing Company, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent James M. Dudley is an individual trading as Fire-Pak Manufacturing Company, with his principal office and place of business located at 2220 Southside Boulevard in the city of Jacksonville, State of Florida.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of a shaker-type dry chemical fire extinguisher designated "Fire-Pak" to the public.

## Complaint

64 F.T.C.

PAR. 3. In the course and conduct of his said business, respondent now causes, and for some time last past has caused, his said fire extinguisher, when sold, to be shipped from his place of business in the State of Florida to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of his business as aforesaid, and for the purpose of inducing the sale of his said fire extinguisher, respondent has made certain statements and representations in the advertising, packaging and labeling of his said fire extinguisher with respect to the safety, utility, and effectiveness thereof. Among and typical but not all-inclusive of the statements and representations so made are the following:

1. On the packaging:

Excellent fire protection in automobiles, boats, buses, electrical equipment, farms, garages, homes, house trailers, industrial plants, institutions, service stations, schools, trucks, tractors.

Safe \* \* \* effective

An approved extinguishing agent

2. On the label:

Safe \* \* \*

Approved extinguishing agent

3. In a promotional advertising brochure, the aforementioned representations appear in the form of a reproduction of the package and label. In addition thereto, the said brochure contains the following statements and representations:

Unequaled in \* \* \* effectiveness

Your best protection in \* \* \* boats \* \* \* homes \* \* \* house trailers  
\* \* \* automobiles \* \* \* industry \* \* \* farm equipment \* \* \* heating systems  
\* \* \* trucks \* \* \*

Safe \* \* \*

An approved extinguishing agent

Instantly puts out flaming grease, fuel oil, electrical, or even a butane or propane fire.

Fire-Paks are very practical as protection around the home, industry, boats, auto, and farms, because they are effective on grease, gasoline, over-heated stoves, electrical fires, butane and propane fires.

Fire-Paks are more effective than most extinguishers costing up to six times as much.

Fire-Paks are in use with: U. S. Department of Agriculture (Forest Div.)  
\* \* \* U. S. Army Engineers \* \* \*

Tests revealed that one Fire-Pak has more fire killing power than three one quart carbon tetrachloride extinguishers (at  $\frac{1}{3}$  the cost of only one C.T.C.) or two 5 lb. CO<sub>2</sub> extinguishers (at  $\frac{1}{7}$  the cost of one CO<sub>2</sub>)

PAR. 5. Through the use of the aforesaid statements and others similar thereto not specifically set out herein, respondent has represented and is now representing, directly and by implication, that the "Fire-Pak" fire extinguisher:

1. Is excellent fire protection for use in boats, buses, trucks, schools, service stations, institutions, and other types of vehicles and establishments.

2. Will extinguish fires of all sizes and types and is safe and effective for use on butane and propane fires.

3. Has been approved by a recognized testing laboratory or by recognized regulatory authorities for use on boats, trucks, buses, and in schools, service stations, institutions, and other types of vehicles and establishments.

4. Is in regular and continuing use with, and hence is approved for use by, the United States Department of Agriculture and the United States Army Corps of Engineers.

5. Is unequalled in effectiveness, has greater fire extinguishing capability than other types of fire extinguishers and is more effective than extinguishers costing up to six times as much.

PAR. 6. In truth and in fact, the "Fire-Pak" fire extinguisher:

1. Is not adequate protection for boats, buses, trucks, schools, service stations, institutions, or many other types of vehicles and establishments.

2. Is not effective in extinguishing any fires except certain small fires in their initial stages and is not of any value for nor safe for use on butane or propane fires.

3. Has not been tested nor approved by any testing laboratory nor approved by any regulatory authority for use on boats, trucks, buses, schools, institutions, or any other type of vehicles or establishments.

4. Is not approved by or in continuing or regular use with agencies of the United States Government as represented.

5. Is not unequalled in effectiveness and does not have greater fire extinguishing capability than other types of fire extinguishers nor is it more effective than other types of fire extinguishers.

The representations referred to in Paragraph 4 are therefore false, misleading, and deceptive.

PAR. 7. In the course and conduct of his business, at all times mentioned herein, respondent has been and is in substantial competition in commerce with corporations, firms and individuals in the sale of fire extinguishers.

PAR. 8. The use by respondent of the aforesaid false, misleading and deceptive statements and representations has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and into the purchase of substantial quantities of respondent's product by reason thereof.

PAR. 9. The aforesaid acts and practices of respondent as herein alleged, were, and are, all to the prejudice and injury of the public and of respondent's competitors and constituted and now constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

*Mr. Charles J. Connolly* for the Commission.

*Mr. James M. Dudley, pro se.*

INITIAL DECISION BY MAURICE S. BUSH, HEARING EXAMINER

ISSUED AUGUST 15, 1963

The complaint in this matter, issued November 5, 1962, charges respondent with violations of Section 5 of the Federal Trade Commission Act<sup>1</sup> through alleged misrepresentations "with respect to the safety, utility, and effectiveness" of a portable fire extinguisher sold and distributed by respondent under the trade name of "Fire-Pak."

Respondent's answer, filed December 17, 1962, generally takes issue with the charges of the complaint.

Pursuant to leave granted by the Commission to hold hearings herein at more than one place, hearings in this matter were held at Washington, D.C. and Jacksonville, Florida. The hearing at Washington took place on May 10, 1963, and that in Jacksonville on May 15 and 16, 1963. Respondent did not participate either in person or by counsel at the initial hearing of May 10, 1963, at Washington for reasons of alleged financial inability to come to Washington, hereinafter discussed. Complaint counsel presented his case-in-chief at the Washington hearing. Respondent, however, did appear and fully participate at the Jacksonville hearing where he presented his defense-in-chief and underwent cross-examination on much of the subject matter covered by the direct testimony offered by counsel supporting the complaint at the Washington hearing. The hearing set for rebuttal purposes on May 23, 1963, at Washington was waived by counsel supporting the complaint.

<sup>1</sup> Section 5(a)(1) of the Act, here pertinent, reads: "Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful."

Prior to the opening of the initial hearing herein at Washington, the undersigned received a long distance telephone call from respondent at Jacksonville advising, after some discussion, that he was prepared to settle the case by stipulating to accept the proposed cease and desist order set forth in the complaint, but by subsequent letter dated May 7, 1963, respondent notified the examiner that he was unable to go along with the proposed settlement because it called for a substitute answer admitting all the allegations of the complaint which he felt " \* \* \* is not true." His May 7 letter reads as follows:

Dear Mr. Bush:

This will acknowledge receipt of the three separate documents requiring my signature from Mr. Charles J. Connolly, counsel in support of complaint Docket No. 8542.

I regret that I have troubled you so much in this matter but I am not in position to hire needed legal counsel; therefore, I have been very awkward in handling this matter.

One document entitled Substitute Answer requests that "He admits all material allegations of the complaint to be true."

I simply cannot sign this document knowing that it is not true.

I do not have the money to appear in Washington for my defense.

Your courtesies and kindnesses in the past are most appreciated.

Yours truly,

James M. Dudley. (Tr. 55-62, 165-174.)

Under letter dated May 8, 1963, the examiner acknowledged receipt of respondent's aforementioned letter and notified respondent of his right to appear at the opening hearing of May 10, 1963, at Washington, D.C., notwithstanding his then present intention not to appear, but advised him that if he did not appear the undersigned would " \* \* \* endeavor to protect your interest at the hearing to the extent possible." The examiner also advised respondent in his said letter that: "On May 15, 1963, hearing will open in your case at Jacksonville, Florida, pursuant to official notice heretofore served upon you, to give you opportunity to appear and testify in your own behalf and to call such witnesses as you may desire in your behalf." (Tr. 166-174.)

Prior to the initial hearing herein of May 10, 1963, at Washington, D.C., respondent personally participated in a prehearing conference held in this matter in Washington on January 31, 1963. (Tr. 1-54.) The record also shows that respondent came to Washington on at least three different prior occasions for purposes of discussing possible settlement of the matter with Commission personnel. (Tr. 172.) At the aforesaid prehearing conference of January 31, 1963, respondent gave no indication to the examiner that he would be unable, for financial reasons, to attend the then orally announced initial hearing to be held at Washington to hear six proposed witnesses for the Com-

mission, all residents of the greater Washington, D.C., metropolitan area. At the same prehearing conference, the examiner also announced, subject to the approval of the Commission, that a hearing would also be held at a subsequent date at Jacksonville to take the testimony of numerous proposed witnesses for respondent who resided at Jacksonville. Respondent expressly acknowledged at the opening of the hearing in Jacksonville under questioning by the examiner that he had made no indication or claim at the prehearing conference that he would be unable for financial reasons to attend the initial hearing at Washington. (Tr. 171.)

The record as a whole, including respondent's financial statements (RX-3), establishes that respondent had the financial resources to come to Washington for the initial hearing. (Tr. 494.)

At the conclusion of the hearing at Jacksonville, respondent waived the filing of proposed findings of fact, preferring to leave the matter entirely in the hands of the examiner for decision. Although the examiner nevertheless established a common due date for the filing of proposed findings of fact, conclusions of law, and order together with reasons therefor and briefs in support thereof, these have been filed only by counsel supporting the complaint. Complaint counsel's submissions have been carefully reviewed and considered and such proposed findings and conclusions which are not herein adopted, either in the form proposed or in substance, are rejected as not supported by the record or as involving immaterial matters.

After the formal opening of the hearing in Jacksonville on the morning of May 15, 1963, the examiner made available to respondent for overnight use his personal copy of the transcript of testimony taken in the case at Washington and offered to recess the hearing until the following morning in order to give respondent opportunity to peruse the transcript and prepare his defense. The offer was declined because some of respondent's witnesses were present and he did not want to put them to the inconvenience of coming back a second time. (Tr. 172-173.) But respondent did avail himself of the use of the transcript of the Washington hearing and used it for the preparation of his defense. (Tr. 406, 449.) Similarly, complaint counsel also made available to respondent all of the Commission exhibits received in evidence at the Washington hearing. (Tr. 173.)

#### GENERAL BACKGROUND

Respondent James M. Dudley is an individual trading as Fire-Pak Manufacturing Company, with his principal office and place of business located at 2220 Southside Boulevard in the city of Jacksonville, State of Florida.

