

FEDERAL TRADE COMMISSION

v.

THE GREAT REPUBLIC TIRE & RUBBER MANUFACTURING CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION
5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 492.—August 10, 1920.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of automobile tires and inner tubes as the "Republic Rubber Company," sold and advertised the same under the brand name "Republic," so that they became widely and favorably known as such and it acquired a valuable good will in the tires and tubes and in the brand name; and thereafter a competitor

- (a) Adopted the name "The Great Republic Tire and Rubber Manufacturing Company";
- (b) Used the same (1) in its stock subscription blanks, certificates, pamphlets, prospectuses, letters, etc., and (2) on its tires, inner tubes, and other products;
- (c) Extensively so advertised the same; and
- (d) Branded its tires, inner tubes, and other products as "Great Republic," using said brand name in addition to its corporate name, on all its products and in its business generally;

Thereby deceiving and misleading the purchasing public to a substantial extent and causing it embarrassment and confusion respecting the identity of the two concerns and of their respective products:

Held, That such simulation of name, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that The Great Republic Tire & Rubber Manufacturing Co., hereinafter referred to as respondent, is now and for more than a year last past has been using unfair methods of competition in interstate 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," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, The Great Republic Tire & Rubber Manufacturing Co., is now and at all times hereinafter mentioned was a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, having its principal office and place of business in the city of Muskogee, State of Oklahoma, and is now and for more than two years last past has been engaged in the sale of automobile tires and inner tubes, and in the transportation of the same from their place of manufacture to purchasers thereof in other States of the United States, in competition with other individuals, copartnerships, and corporations similarly engaged.

PAR. 2. That the Republic Rubber Co. is now and ever since the year 1901 has been a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, and for more than 10 years last past has been engaged in the manufacture and sale of automobile tires and inner tubes which are manufactured by it in the city of Youngstown, Ohio, and are sold through dealers, distributors, and agents extensively throughout the United States under the brand name "Republic"; that the said the Republic Rubber Co. has at all said times extensively advertised its said automobile tires and inner tubes so that they have become widely and favorably known by the said brand name, and that a valuable good will has been created throughout the United States for the automobile tires and inner tubes of the Republic Rubber Co. and for the brand name "Republic" under which they are sold as aforesaid.

PAR. 3. That the respondent, well knowing that the automobile tires and inner tubes manufactured by the Republic Rubber Co. had been for years extensively advertised throughout the United States under the brand name "Republic," and well knowing that said brand name and the automobile tires and inner tubes to which it was applied had acquired a wide reputation for good quality throughout the United States, at the time of its incorporation in 1919 adopted, and ever since has continued to use, as its corporate title, "The Great Republic Tire & Rubber Manufacturing Company," and has adopted and used as a brand name on automobile tires and inner tubes sold by it the words "Great Republic," which corporate title and brand name so closely resemble and simulate the aforesaid corporate title and brand name of the Republic Rubber Co. as to deceive and mislead the purchasing public and cause them to believe that the respondent and the Republic Rubber Co. are one and the same, and that the automobile tires and inner tubes advertised for sale by the respondent under its aforesaid brand name were and are the products of the Republic Rubber Co., with the effect of securing for the respondent the benefits and advantages of the extensive adver-

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tising previously done by the Republic Rubber Co. and the good will attaching to the brand name, "Republic," and with the further effect among others of embarrassing and hindering the Republic Rubber Co. in the operation of its business.

PAR. 4. That the respondent, for more than two years last past, in the conduct of its business of selling automobile tires and inner tubes in interstate commerce, as aforesaid, by means of advertising and by statements embossed and printed upon its said automobile tires and inner tubes and by various other means, has represented to the purchasing public that the respondent was a manufacturer of automobile tires and inner tubes, when in fact the respondent was not a manufacturer of automobile tires and inner tubes, but had caused the said automobile tires and inner tubes to be manufactured for it by other manufacturers from whom respondent obtained said automobile tires and inner tubes and sold them in interstate commerce as aforesaid; and that the effect thereof, in addition to identifying the respondent with the Republic Rubber Co., as hereinbefore set forth, was to induce the public to give to the respondent such preference as might be given by them to manufacturers over dealers in the purchase of the products of the respondent or in investing in its corporate stock.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondent, The Great Republic Tire & Rubber Manufacturing Co., has been and now is using unfair methods of competition in interstate 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," and that a proceeding by it in respect of such alleged violation would be to the interest of the public, and fully stating its charges in that respect, and the respondent having entered its appearance by E. C. Marianelli, its attorney, and having fully filed its answer admitting certain of the allegations of said complaint and denying certain others thereof, and attorneys for both parties having signed and filed an agreed statement of facts wherein and whereby it was stipulated and agreed that said statement of facts should be taken as the facts for this proceeding by the Commission and in lieu of testimony herein and that the Commission should forthwith proceed upon such agreed statement of facts to make and enter its report stating its findings as

to the facts and its order disposing of this proceeding without the introduction of testimony in support of the same, and the parties having waived any and all rights they may have to require the introduction of such testimony or to file briefs or make oral argument in the above-entitled matter, and the Commission having duly considered the record and being fully advised in the premises, now makes its report and findings as to the facts and conclusions.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, The Great Republic Tire & Rubber Manufacturing Co., is now and for more than a year last past has been a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, having its principal office and place of business in the city of Muskogee, State of Oklahoma, and is now and for more than one year last past, has been engaged in the sale of automobile tires and inner tubes, and in the transportation of the same from their place of manufacture to purchasers thereof in other States of the United States, in competition with other individuals, copartnerships, and corporations similarly engaged.

PAR. 2. That the Republic Rubber Co. is now, and has continuously been since the year 1901, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, and for more than 10 years last past has been engaged in the manufacture and sale of automobile tires and inner tubes, which are manufactured by it in the city of Youngstown, Ohio, and have been and are sold through dealers, distributors, and agents extensively throughout the United States under the brand name "Republic." That the said Republic Rubber Co. has, during the said 10 years last past, extensively advertised said automobile tires and inner tubes so that they have become, and now are, widely and favorably known by the said brand name "Republic," and that a valuable good will has been created through the United States for the automobile tires and inner tubes of the Republic Rubber Co. and for the brand name "Republic," under which they have been and are sold as aforesaid, and which brand name has come to signify and mean, and does now signify and mean, in the mind of the public that the article upon which it appears is the product of the Republic Rubber Co., of Youngstown, Ohio, and possesses the quality and is capable of the services attributed to the products of said Republic Rubber Co., and associated therewith by the public.

Conclusions.

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PAR. 3. That the respondent in the year 1919 adopted and began to use and ever since has continued to use as its corporate title, "The Great Republic Tire & Rubber Manufacturing Company," employing said name and using it on, upon, and in connection with any and all pamphlets, prospectuses, letters, bills, stationery, and literature of any kind published, circulated, and distributed or used by respondent in the conduct of its business, in the course of interstate commerce and otherwise, including its certificates of stock and contracts for sale thereof used by its agents and salesmen in various parts of the country, and has extensively advertised its business and its products in and through various States of the United States under and by said name, "The Great Republic Tire & Rubber Manufacturing Company," and has adopted and used as a brand name on automobile tires and inner tubes produced or sold by it, the words "Great Republic," and in addition to the use of said brand words, "Great Republic" on said tires and other products, it has adopted the practice of placing thereon its said corporate name and title, to wit: "The Great Republic Tire & Rubber Manufacturing Company," using said corporate name and designation as well as said brand name, "Great Republic," in connection with each and all of its products, and in all kinds of business transacted by it in the course of interstate commerce or otherwise, which corporate title and brand name closely resemble the aforesaid corporate title and brand name of the Republic Rubber Co., and the effect of such close resemblance between said corporate names, as well as between said brand names, has been to mislead the purchasing public to a substantial extent and cause them to believe that the respondent and the Republic Rubber Co. are one and the same, and that the automobile tires and inner tubes advertised for sale by the respondent under its aforesaid brand name were and are the products of the Republic Rubber Co., and with the further effect of producing embarrassment and confusion among the purchasing public, and in the conduct of the business of respondent and of the Republic Rubber Co., of Youngstown, Ohio, respectively; and that the natural and probable effect of such close similarity between the corporate names and brand names of respondent and the Republic Rubber Co. of Ohio has been and must continue to be deceptive and misleading so long as such method of competition is practiced by respondent.

CONCLUSIONS.

That the methods of competition set forth in the foregoing findings are, and each of them is, under the circumstances therein set forth, unfair methods of competition in interstate commerce in viola-

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Order.

tion 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."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondent, The Great Republic Tire & Rubber Manufacturing Co., has been and now is using unfair methods of competition in interstate 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," and that a proceeding by it in respect of such alleged violation would be to the interest of the public, and fully stating its charges, and the respondent having duly entered its appearance by E. C. Marianelli, its attorney, and having duly filed its answer admitting certain of the allegations of said complaint and denying certain others thereof, and said attorney having signed and filed an agreed statement of facts wherein and whereby it was duly stipulated and agreed that said statement of facts should be taken by the Commission in lieu of testimony herein, and that the Commission might forthwith proceed upon such agreed statement of facts to enter its report and findings as to the facts and its order disposing of this proceeding, and the Commission on the date hereof having made and filed its report containing its findings as to the facts and its conclusions that respondent has violated 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," and which said report is hereby referred to and made part hereof: Now, therefore,

It is ordered, That respondent, The Great Republic Tire & Rubber Manufacturing Co., and its officers, directors, agents, servants, and employees cease and desist from using or applying directly or indirectly the brand name "Great Republic" or any word or words, group of words, phrase or phrases, in which the word "Republic" appears, or any name, character or sign, indicative or suggestive thereof, in, on, upon, or in connection with its tires, tubes, or other products or articles of merchandise sold, or offered for sale, by it, or through or by any of its officers, agents, or employees, or in, on, upon, or in connection with its stationery, prospectuses, pamphlets, advertisements, certificates of stock, contracts of sale, or literature of any kind or nature, and from applying thereto, or thereon, or using in connection therewith, directly or indirectly, the corporate name of

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respondent, "The Great Republic Tire & Rubber Manufacturing Company," except in connection with the words " of Muskogee, Oklahoma," and unless there is substituted in the place and stead of the brand name "Great Republic," heretofore used by respondent, another brand or trade name, equally as conspicuous and in nowise similar thereto or calculated or likely to mislead or cause the public to believe that the automobile tires, inner tubes, or other products or articles sold or offered for sale by the respondent are the automobile tires, inner tubes, or products or articles sold or offered for sale by the Republic Rubber Co. of Ohio.

It is further ordered, That the respondent make and file with the Federal Trade Commission not later than the 15th day of October, 1920, a report in detail of the manner and form in which it has complied with this order.

LIBERTY PAPER CO. (H. NORWOOD EWING).

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Complaint.

FEDERAL TRADE COMMISSION

v.

H. NORWOOD EWING, DOING BUSINESS UNDER THE
FIRM NAME AND STYLE OF LIBERTY PAPER CO.