

Complaint

IN THE MATTER OF
REPAIR PARTS & REPLACEMENT 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 2544. Complaint, Sept. 6, 1935—Decision, Sept. 12, 1936*

Where a corporation engaged for some years past in manufacture, sale, and distribution of vacuum cleaners under name "Hoover," and in expenditure of large sums of money in advertising same, so that said name, imprinted thereon, had become widely and favorably known to the purchasing public and it had acquired a valuable goodwill therein as applied to its said products and parts, and said word in advertisement, sale, and distribution in interstate commerce of such vacuum cleaners and parts had acquired a secondary meaning and significance as denoting to buying public that cleaners and parts advertised thereunder were made and distributed by it; and thereafter a concern dealing in dust bags made by and for said concern, for use on Hoover cleaners, and of same general size, shape, and color as those made, sold, and distributed in interstate commerce by said corporation—

Sold said dust bags with word "Hoover" imprinted thereon in large and conspicuous letters, together, in some cases, with words, in very small type and much less conspicuous and legible fashion, "Mfr'd by R. P. & R. Co.—Made to Fit," so that attention of average purchaser or prospective purchaser would be drawn only to word "Hoover" in same coloring as used on said corporation's bags and in simulation of its said trade name "Hoover" as used by it;

With result that vacuum cleaner dust bags of said competitor concern were passed off as and for those made and sold by said corporation, and with capacity and tendency to deceive and mislead purchasing public into erroneous belief that dust bags sold and distributed in interstate commerce by said competitor were made by said corporation, and to divert unfairly trade to said competitor from individuals and concerns competing with it in sale and distribution in commerce of vacuum cleaners, parts, and dust bags therefor, and who did not wrongfully make use of word "Hoover" in advertising, describing, and selling their respective products; to the substantial injury of competition in commerce:

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

Before *Mr. Edward M. Averill* and *Mr. W. W. Sheppard*, trial examiners.

Mr. John W. Hildrop and *Mr. J. T. Welch* for the Commission.

Mr. Oscar A. Jordan, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Com-

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mission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that Repair Parts & Replacement Company, Inc., a corporation, has been or is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be to the public interest, the Commission hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Repair Parts & Replacement Company, Inc., hereinafter referred to as respondent, is a corporation with its principal place of business at Chicago, Ill., and is now and has been engaged in the sale of vacuum cleaners and vacuum cleaner parts, and in the repairing and rebuilding of such cleaners. In the course and conduct of its business the respondent, Repair Parts & Replacement Company, Inc., a corporation, sells and distributes its said products, vacuum cleaners and vacuum cleaner parts, in the various States of the United States, other than the State of Illinois, and ships its said products into and through said States, in interstate commerce. In the course and conduct of its said business, said respondent, Repair Parts & Replacement Company, Inc., is, and was at all times herein referred to, in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution in interstate commerce of similar products.

PAR. 2. The Hoover Company is likewise a corporation, with its principal place of business located at North Canton, Ohio, and is now and has been for some years past engaged in the manufacture of vacuum cleaners and in the sale and distribution of said products in interstate commerce. By reason of its large expenditures for advertising, said products of the said Hoover Company have become widely and favorably known to the trade and purchasing public, and it has acquired a valuable goodwill in the same and in the name of "Hoover" as applied to vacuum cleaners.

PAR. 3. In the course and conduct of its business, respondent, Repair Parts & Replacement Company, Inc., a corporation, in soliciting the sale of and selling its products in interstate commerce, issued and circulated widely among customers and prospective customers an advertising catalog and price list entitled, "The Vacuum Cleaner Encyclopedia," wherein the following statements and representations are made: "Parts Listed are Manufactured by the R. P. and R. Co. and are guaranteed to fit." The foregoing words appear prominently displayed at the top of the first page of said "The Vacuum Cleaner Encyclopedia," and respondent further caused the words, "Mfg'd. by R. P. & R. Co. Made to fit," to be placed on cer-

tain sweeper bags, which it likewise sold and distributed in interstate commerce, when in truth and in fact said respondent, Repair Parts & Replacement Company, was not and is not a manufacturer of the products it advertised and sold in interstate commerce, and did not and does not manufacture or make either the sweeper bag or the other parts listed in such advertising catalog, but purchased the same from the manufacturers thereof.

Respondent, Repair Parts & Replacement Company, Inc., a corporation, further caused to be manufactured a dust bag for use with the Hoover cleaner, of the same size, shape, and color as similar bags used by the Hoover Company of North Canton, Ohio, hereinbefore referred to in paragraph 2, bearing imprinted across it in conspicuous letters the word "Hoover," and respondent used and applied such bags, so simulating those used by the Hoover Company, to genuine Hoover cleaners which it rebuilt or repaired and sold and distributed in interstate commerce, with the result that purchasers were misled and deceived into the belief that the dust bags placed on the machines so rebuilt or repaired by respondent, Repair Parts & Replacement Company, Inc., were manufactured by the Hoover Company of North Canton, Ohio, when in truth and in fact such was not the case.

The acts and practices of the respondent described and set out hereinabove had, and have, the capacity and tendency to deceive and mislead the purchasing public into the erroneous belief that said respondent manufactures vacuum cleaners and vacuum cleaner parts, which it advertises, sells, and distributes in interstate commerce, and that the dust bag sold by respondent and distributed in interstate commerce was manufactured by the Hoover Company of North Canton, Ohio; and also have the tendency and capacity to unfairly divert trade to respondent from individuals, firms, corporations, and associations in competition with respondent, selling and distributing in interstate commerce vacuum cleaners, vacuum cleaner parts, and dust bags for vacuum cleaners, but who do not claim and represent themselves to be manufacturers, as well as from those individuals, corporations, associations, and firms actually manufacturing vacuum cleaners and vacuum cleaner parts and selling and distributing same in interstate commerce, and from those competitors of respondent engaged in the sale and distribution of dust bags for vacuum cleaners in interstate commerce who do not make use of the word "Hoover" in advertising and describing same.

PAR. 4. The above acts and things done by respondent are all to the injury and prejudice of the public and competitors of respondent in interstate commerce, within the intent and meaning of Section 5

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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 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 on the 6th day of September 1935, issued and served its complaint in this proceeding upon respondent, Repair Parts & Replacement Company, Inc., a corporation, charging it 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 respondent's answer thereto on September 26, 1935, testimony and evidence in support of the allegations of said complaint were introduced by John W. Hilldrop, attorney for the Commission, before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by Oscar A. Jordan, attorney for the respondent; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, the testimony and evidence, and briefs in support of the complaint and in defense thereto, oral argument having been waived by attorney for the respondent, 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. Repair Parts & Replacement Company, Inc., hereinafter referred to as respondent, is a corporation with its principal place of business at Chicago, Ill., and is now and has been for more than one year engaged in the sale of vacuum cleaners and vacuum cleaner parts, and in the repairing and rebuilding of such cleaners. In the course and conduct of its business, the respondent, Repair Parts & Replacement Company, Inc., a corporation, sells and distributes its said products, vacuum cleaners and vacuum cleaner parts, in the various States of the United States, other than the State of Illinois, and ships its said products into and through said States, in interstate commerce. In the course and conduct of its said business, said respondent, Repair Parts & Replacement Company, Inc.,

is, and was at all times herein referred to, in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution in interstate commerce of similar products.

PAR. 2. The Hoover Company is a corporation with its principal place of business located at North Canton, Ohio, and is now and has been for some years past engaged in the manufacture of vacuum cleaners, and in the sale and distribution of said cleaners in interstate commerce. By reason of its large expenditures for advertising, said products of the said Hoover Company, designated by the name "Hoover" imprinted on them, have become widely and favorably known to the purchasing public. Said Hoover Company has acquired a valuable goodwill in the name of "Hoover" as applied to vacuum cleaners and vacuum cleaner parts. The word "Hoover" in the advertising, sale, and distribution in interstate commerce of vacuum cleaners and vacuum cleaner parts has acquired a secondary meaning and significance to the extent that its use denotes to the buying public that vacuum cleaners and cleaner parts so advertised under the name of "Hoover" are manufactured and distributed by the Hoover Company of North Canton, Ohio. The Hoover Company of North Canton, Ohio, manufactures approximately 150,000 vacuum cleaners per annum, and it also manufactures large numbers of dust bags to be used on same; there being approximately three or four million vacuum cleaners manufactured and sold in interstate commerce by the Hoover Company of North Canton, Ohio, in the United States.

PAR. 3. Respondent, Repair Parts & Replacement Company, Inc., a corporation, for some time past has manufactured, is still manufacturing, and has had and is still having manufactured for it, a dust bag for use on Hoover cleaners of the same general size, shape, and color as similar bags manufactured, sold, and distributed in interstate commerce by the Hoover Company of North Canton, Ohio, and there is imprinted across the said dust bags of respondent in large and conspicuous letters, the word "Hoover." On some of the dust bags sold and distributed by respondent in interstate commerce, and bearing imprinted thereon the word "Hoover", there appears the statement in very small type, and much less conspicuous and legible than the word "Hoover", the words "Mfr'd. by R. P. & R. Co.—Made to Fit", but the word "Hoover", used as aforesaid, is so much larger in lettering and type than the said words "Mfr'd. by R. P. & R. Co." that the attention of the average purchaser or prospective purchaser would be drawn only to the word "Hoover." The word "Hoover" on said bags of respondent is imprinted in the

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same coloring as used on the bags manufactured and sold by the Hoover Company of North Canton, Ohio. The use of said word "Hoover" by the respondent on its dust bags for vacuum cleaners, in the manner set out herein, is a simulation of the trade name "Hoover" as used by the Hoover Company of North Canton, Ohio, and results in a passing off of the vacuum cleaner dust bags sold by it as and for vacuum cleaner dust bags manufactured and sold by the Hoover Company of North Canton, Ohio. The acts and practices of the respondent as herein described and set out have and had the capacity and tendency to deceive and mislead the purchasing public into the erroneous belief that the dust bags sold and distributed in interstate commerce by the respondent were manufactured by the Hoover Company of North Canton, Ohio, and also have the capacity and tendency to unfairly divert trade to respondent from individuals, firms, corporations and associations in competition with respondent, selling and distributing in interstate commerce, vacuum cleaners, vacuum cleaner parts, and dust bags for vacuum cleaners, who do not wrongfully make use of the word "Hoover" in advertising, describing and selling their respective products. As a consequence thereof, substantial injury has been done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondent are each and all to the prejudice of the public, and to the injury of the competitors of the respondent in interstate commerce and constitute unfair methods of competition in commerce, within the intent and meaning 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

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and evidence taken before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, and in opposition thereto, briefs filed herein, and the Commission having made its findings as to the facts and its conclusion that the said respondent has violated 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."

It is ordered, That the respondent, Repair Parts & Replacement Company, Inc., a corporation, its officers, agents, servants, and employees, in connection with the sale, offering for sale, and distribution of dust bags for vacuum cleaners in interstate commerce, or in the District of Columbia, do forthwith cease and desist from:

(a) Representing in its advertisements, in newspapers, periodicals, journals, magazines, or other publications, on its stationery, and by handbills, circulars, pamphlets, circular letters, or otherwise, that said dust bags for vacuum cleaners so sold by it are manufactured by, and are the products of, the Hoover Company of North Canton, Ohio;

(b) Imprinting or lettering, or by any means, instrumentality or device placing on said dust bags so sold by it the word "Hoover";

(c) Using the word "Hoover" on such dust bags so sold by it, either alone or in conjunction with any other words or phrases, when such dust bags bearing the word "Hoover" are not manufactured by, and are not the products of, the Hoover Company of North Canton, Ohio.

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

IN THE MATTER OF
RADUMAC MINERAL COMPANY AND A. YODER, TRADING
AS RADUMAC MINERAL COMPANY

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

Docket 2149. Complaint, Sept. 14, 1935¹—Decision, Sept. 15, 1936

Where an individual dealing through corporate entity, and, following dissolution thereof, under corporate name, in a liquid produced by "dripping off" into containers water poured four or five days theretofore over soil from his "mine", and in sale of his said so-called "Radumac", bottled, through dealers in drugs and medicines for resale to public, and direct to those desiring to purchase remedies for treatment of ailments, diseases, and conditions for which said product was advertised by him through pamphlets, circulars, and other printed matter—

- (a) Represented that same would cure or was beneficial in treatment of a large number of ailments and conditions including anemia, arthritis, high or low blood pressure, indigestion, rheumatism, kidney troubles, and many others specified;
- (b) Represented that it "does wonders", and "heals, penetrates and prevents germs", and that it "will aid in assisting in the elimination" of the diseases, ailments, afflictions, and conditions set out, and that it was a health tonic and would prevent many serious diseases; and
- (c) Represented that it contained the essential mineral elements for building new body tissues, and that all but four elements contained in the body were found therein, and that use thereof would supply minerals needed in body where there was a mineral deficiency therein;

Facts being that it would neither prevent nor cure nor be beneficial in treatment of all or any of the various diseases specified, excepting one or two percent of anemia cases, and inflamed or sore throat, and feet in certain cases, in which by reason of iron salts content, it might be of some value and soothing, and it did not possess therapeutic efficacy represented and implied in prevention, treatment, or cure of said diseases, etc., for which recommended, and would not do wonders, or heal or penetrate or prevent germs, and said various statements and representations were false;

With effect of misleading and deceiving many persons afflicted with said various diseases, etc., and of causing a substantial portion thereof to believe that said representations and implications were true and by reason thereof to buy the same, and of thereby unfairly diverting trade to him from competitors who truthfully represent their products; to their substantial injury and that of the public:

¹ Amended.