

IN THE MATTER OF
VACU-MATIC CARBURETOR COMPANY

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

Docket 3388. Complaint, June 10, 1942¹—Decision, June 29, 1944

Where a corporation engaged in the manufacture and interstate sale and distribution of its "Vacu-matic" device for attachment between the carburetor and the intake manifold of automobile engines; through advertisements in newspapers and periodicals and circulars, letters and other advertising media, and statements on the containers of said device, directly or by implication—

Represented that use thereof on automobile engines would result in a substantial reduction in gasoline consumption and increased mileage per gallon of gasoline, and in quicker starting, faster acceleration or pick-up, more power, and a smoother-running engine;

The facts being that tests by the Bureau of Standards and a leading carburetor manufacturer, supported by the testimony of a number of outstanding figures in the automotive and carburetor engineering field established that the only cases in which it would affect the consumption of gasoline were those in which the fuel mixture, due to improper adjustment of the carburetor, contained too much gasoline in proportion to the amount of air, in which cases the small amount of additional air admitted by the device might serve to "lean" the mixture;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the results which might be accomplished through the use of said device and cause it to purchase substantial quantities as a result of the erroneous belief so engendered:

Held, That such acts and practices, under the circumstances set forth, were to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

As respects the correctness of challenged claims made in behalf of the beneficial result to be obtained from the use of a device for attachment between the carburetor and the intake manifold of an automobile engine, in which the seller relied principally upon the results of certain road tests made under the supervision of one of its expert witnesses, and other tests thereof by means of a chassis dynamometer, and in which evidence in support of the complaint consisted of tests made by the Bureau of Standards and by one of the leading carburetor manufacturers, supported by the testimony of outstanding figures in the automotive and carburetor engineering fields, as well as road tests: such road tests are recognized by engineers generally as less reliable than laboratory tests, due to the number of variables to which the former are subject such as temperature, humidity, wind resistance, road conditions, density of traffic and the human element, i.e., manner of the driver's operation, and a chassis dynamometer, while useful for testing automobiles at service stations and similar places, is not a precision instrument, comparable with the instruments and methods used by said Bureau and the manufacturer referred to; and *held*, evidence introduced as aforesaid, in behalf of said claims, was insufficient to meet that introduced in support of the complaint.

¹ Amended.

Before Mr. Arthur F. Thomas, Mr. Miles J. Furnas and Mr. Lewis C. Russell, trial examiners.

Mr. R. A. McQuat and Mr. Merle P. Lyon for the Commission.

Nash & Donnelly, Mr. Frank E. Gettleman, Mr. Arthur Gettleman and Mr. Maurice S. Cayne, of Chicago, Ill., for respondent.

AMENDED 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 the Vacu-Matic Carburetor Company, a corporation, hereinafter referred to as respondent, has violated the provisions of the 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 amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Vacu-Matic Carburetor Company, is a corporation, organized under the laws of the State of Wisconsin with its principal office at Wauwatosa, Wis. Respondent is engaged in the business of manufacturing for sale and selling an attachment to an automobile engine under the trade name "Vacu-matic." Respondent causes its said product, when sold, to be shipped or transported from its aforesaid place of business in the State of Wisconsin to the purchasers thereof at their respective places of location in States of the United States other than the State of Wisconsin and in the District of Columbia. Respondent maintains, and during all the times mentioned herein has maintained, a course of trade in said product so sold by it in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its said business as hereinabove described, and for the purpose of inducing the purchase of its product, respondent has made false, deceptive and misleading statements concerning the value, efficacy and effect of its device and the results that are achieved by using it, by means of advertisements inserted in newspapers and magazines, in radio continuities, by printed pamphlets, letters, testimonials, and statements printed on its containers. Among the false, misleading and deceptive statements and representations made by the respondent regarding its said product are the following:

To Make This UNIQUE

GAS SAVING TEST

Will you permit us to send you at our risk the Vacu-matic, a device which auto owners everywhere are praising? Install it on your car. Test it at our risk. Unless it trims dollars off your gas bills by saving up to 30% on gasoline consumption, gives more power, quicker pickup and faster acceleration, the test will cost you nothing.

AUTOMATIC SUPERCHARGE PRINCIPLE

Vacu-matic is entirely different! It operates on the supercharge principle by automatically adding a charge of extra oxygen, drawn free from the outer air into the heart of the gas mixture. It is entirely automatic and allows the motor to "breathe" at the correct time, opening and closing as required. Saves up to 30% on gas costs, with better motor performance.

AUTOMOTIVE ENGINEERS know that cars operate better and use less gasoline when the gas is properly vaporized. Thousands of motorists have learned this secret

with better vaporization and *substantial gasoline savings* with the new VACU-MATIC. Automatically, this amazing discovery instantly puts pep and increased power in any motor. It adds mileage to every gallon of gasoline—produces split-second pick-up, sensitive accelerator response, quicker starting, greater speed, and smoother running. New records are being established everywhere by Vacu-matic users!

Through the use of the aforesaid statements and representations and others of similar import and nature not specifically set out herein, all of which purport to be descriptive of the design and effectiveness of said device in use, respondent represents that said device when used on automobile engines will result in the saving of up to 30% in gasoline consumption and costs; that its use will increase mileage, result in quicker pick-up, faster acceleration, provide more power, quicker starting and a smoother running engine.

The respondent further represents that the Vacu-matic device operates on the principle of a supercharger by automatically adding a charge of extra oxygen into the heart of the gas mixture, that its device is entirely automatic and allows the motor to "breathe" at the correct time; opening and closing as required.

PAR. 3. The foregoing statements and representations are false, misleading and untrue. In truth and in fact the use of the respondent's device does not perform any useful service in carbureting gasoline or any other motor fuel used in an automobile engine. The use of the respondent's device will not result in a saving in gasoline consumption and costs of up to 30% or in any other appreciable amount. Its use will not increase mileage, result in quicker pick-up, faster acceleration, nor will its use provide more power, quicker starting or a smoother running engine. Further, the respondent's product does not operate upon the principle of a supercharger and does not add an extra charge of oxygen into the gas mixture, and the use of the respondent's device does not enable a motor to "breathe" at the correct time, as that term is generally understood.

PAR. 4. The use by the respondent of the foregoing false, misleading and deceptive statements and representations herein set forth, has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and into the purchase of substantial quantities of respondent's product, as a result of the erroneous and mistaken belief so engendered.

PAR. 5. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices 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 the Federal Trade Commission Act, the Federal Trade Commission, on April 26, 1938, issued and subsequently served its complaint in this proceeding upon the respondent, Vacu-Matic Carburetor Company, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of that act. After the filing of respondent's answer, testimony and other evidence in support of and in opposition to the allegations of the complaint were

introduced before trial examiners of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, on June 10, 1942, the Commission, upon the motion of its Assistant Chief Counsel and after due notice to respondent and consideration of respondent's brief in opposition to such motion, entered an order amending the complaint so as to charge, among other things, that the acts and practices of respondent constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act. The order further provided that the testimony and evidence theretofore introduced in support of and in opposition to the original complaint, insofar as the same might be competent and material, should have the same force and effect as if introduced at hearings held under the amended complaint. On the same date, June 10, 1942, an amended complaint embodying the amendments provided for in the Commission's order was issued and was subsequently served upon respondent. On July 22, 1942, respondent filed its answer to the amended complaint. Subsequently, a further hearing was held before one of the trial examiners, at which certain additional evidence was introduced on behalf of the Commission (no further evidence being offered by respondent). Thereafter, the matter came on for final hearing before the Commission on the amended complaint, the answer thereto, testimony and other evidence, original and supplemental reports of the trial examiners upon the evidence and the exceptions to such reports, briefs in support of and in opposition to the amended complaint, and oral argument; 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. The respondent, Vacu-Matic Carburetor Company, is a corporation, organized under the laws of the State of Wisconsin, with its principal office at Wauwatosa, Wis. Respondent is now and for a number of years last past has been engaged in the manufacture and sale of a mechanical device designed to be attached to automobile engines and designated by respondent as the "Vacu-matic."

PAR. 2. Respondent causes and has caused its product, when sold, to be transported from its place of business in the State of Wisconsin to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and has maintained a course of trade in its product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business and for the purpose of inducing the purchase of its device, respondent has made various representations to prospective purchasers with respect to the value, efficacy, and effect of the device and the results which may be obtained through the use thereof, such representations being made by means of advertisements inserted in newspapers and magazines and also by means of circulars, letters and other advertising media, including the containers in which respondent's device is packaged and sold. Among and typical of these representations are the following:

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MOTORISTS *Wanted!*
TO MAKE THIS *UNIQUE*
GAS SAVING TEST

UP
TO
30%
GAS
SAVINGS

Car Owners: You are invited to make a gas saving road test with the Vacu-matic on your own car, with the absolute understanding that unless it proves to you that it will save you up to 30% on gas and improve your car performance, the test will cost you nothing. Investigate this remarkable discovery that trims dollars off gasoline bills—gives you worthwhile gas savings—more power—quicker starting—more miles on less gas. (Com. Ex. No. 60)

and now

It's

VACU-MATIC

* * *

for

MORE POWER

GREATER SPEED

and—GAS SAVINGS! (Com. Ex. No. 63)

Car owners simply marvel at this new invention. They like the automatic, compensating feature of the Vacu-matic. They like the added power—pep—quicker pick-up. They like the smoother running, quicker starting and all-around better performance. And, most important, they like to save up to 30% on their gas bills. (Com. Ex. No. 66)

GAS SAVER!

NEW INVENTION GIVES UP

TO 30% SAVING ON GAS...

Faster Pick-Up... More Power (Com. Ex. No. 70)

PAR. 4. Through the use of these statements and others of similar import, respondent represents, directly or by implication, that the use of its device on automobile engines will result in a substantial reduction in gasoline consumption and increased mileage per gallon of gasoline, and that the use of the device will also result in quicker starting, faster acceleration or pick-up, more power, and a smoother-running engine.

PAR. 5. Respondent's device is attached to an automobile engine between the carburetor and the intake manifold. It is made in various models to fit different types of carburetors, but all of the models operate on the same principle. Essentially, the device consists of a small cylinder containing a piston which rests on a spring. When the automobile engine is running, this piston is operated by the differential pressure between the intake manifold and the atmosphere. In the side of the cylinder is a small hole, and the operation of the piston results in the opening and closing

of this hole. The opening of the hole permits a small amount of additional air to enter the intake manifold. The theory upon which respondent bases its claims for the device is that the admission of this additional air at the proper time serves to break down to some extent the vacuum of the motor, which result is reflected in lessened suction on the carburetor, and that this in turn results in less gasoline being drawn from the carburetor into the cylinders, the amount of gasoline thus eliminated being replaced by the air taken in through the Vacu-matic. It is further insisted by respondent that the additional air is admitted by the device in such manner as to increase the "turbulence" (swirl of air) within the motor, which serves to vaporize and rarefy the gasoline more finely and bring about a more explosive and more efficient mixture of gasoline and air than is produced by the carburetor alone.

PAR. 6. At the request of the Commission, tests of respondent's device were conducted by the National Bureau of Standards and also by one of the leading carburetor manufacturers in the United States. These tests appear to have been conducted in a careful and thorough manner, and in accordance with recognized engineering principles and standards. In addition to the reports on these tests, the record contains the opinions of a number of experts who are outstanding figures in the automotive and carburetor engineering field. The results of the tests establish that, except in those cases hereinafter referred to in paragraph 7, respondent's device performs no useful service in the carburetion of gasoline in an automobile engine and has no appreciable effect upon the operation of the engine. This conclusion is supported by the testimony of the experts in question. The amount of air admitted by the device is negligible when compared with the total amount of air used by the motor, and this is equally true with respect to the purported increase in the turbulence of the air. Except in those cases referred to in paragraph 7, the device affords no reduction in gasoline consumption and is incapable of increasing the mileage obtainable from a given quantity of gasoline. The use of the device will not result in quicker starting, faster acceleration or pick-up, more power, or a smoother-running engine.

Respondent relies principally upon the results of certain road tests of the device which were made under the supervision of one of its expert witnesses. If authoritative, these tests would indicate that a substantial saving in gasoline may be effected through the use of the device. It appears very doubtful, however, whether the results of the tests can be accepted at their face value, as road tests on devices of this sort are recognized by engineers generally as being less reliable than laboratory tests. The principal reason for this is that road tests are subject to a number of variable factors which are not present in laboratory tests. Among these factors are temperature, humidity, wind resistance, road conditions, density of traffic, and the human element involved—that is, the manner in which the automobile is operated by the driver. In laboratory tests these factors can be eliminated or controlled to a much greater degree than is possible in road tests.

Moreover, the various tests made of the device at the Commission's instance by the Bureau of Standards and the carburetor manufacturer included road tests as well as laboratory tests, and the results of such road tests support the results of the laboratory tests—that is, they show that the use of respondent's device has no appreciable effect upon the operation of an automobile.

Respondent also introduced in evidence the results of certain tests made of its device by means of a chassis dynamometer. The record shows, however, that an instrument of this type, while capable of serving a useful purpose for the testing of automobiles at service stations and similar places, is not a precision instrument. It is not comparable with the instruments and methods used by the Bureau of Standards and the carburetor manufacturer referred to above.

After consideration of these road and dynamometer tests and other evidence introduced by respondent, including the testimony of certain expert witnesses and of members of the public who had used the device, the Commission is of the opinion that such evidence is insufficient to meet the evidence introduced in support of the complaint.

PAR. 7. The only cases in which respondent's device will affect the consumption of gasoline are those in which the fuel mixture, due to improper adjustment of the carburetor, is excessively rich (that is, contains too much gasoline in proportion to the amount of air). In such cases the small amount of additional air admitted by the device may serve to "lean" the mixture and thereby reduce to some extent the amount of gasoline consumed. The same result could be obtained by proper adjustment of the carburetor.

PAR. 8. The Commission therefore finds that, except insofar as they refer to those cases described in paragraph 7, the representations made by respondent with respect to its device and the results which may be accomplished through the use of the device, as set forth in paragraphs 3 and 4 hereof, are erroneous and misleading.

PAR. 9. The use by respondent of these erroneous and misleading representations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondent's device and the results which may be accomplished through the use of the device, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of the device as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of the respondent, as herein found, are all to the prejudice of the public and constitute unfair and deceptive acts and practices 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 amended complaint of the Commission, the respondent's answer thereto, testimony and other evidence taken before trial examiners of the Commission theretofore duly designated by it, original and supplemental reports of the trial examiners upon the evidence and the exceptions to such reports, briefs of the attorney for the Commission and the attorneys for the respondent, and oral argument; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Vacu-Matic Carburetor Company, a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the

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offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondent's mechanical device designated "Vacu-matic," or any other device of substantially similar construction or possessing substantially similar characteristics, whether sold under the same name or under any other name, do forthwith cease and desist from representing, directly or by implication:

1. That the use of respondent's device on an automobile engine will result in quicker starting, faster acceleration or pick-up, increased power, or a smoother-running engine.

2. That the use of respondent's device on an automobile engine will result in any reduction in gasoline consumption or in any increase in mileage per unit of gasoline, unless such representation be expressly limited to those cases in which the fuel mixture, due to improper adjustment of the carburetor, is excessively rich and a small amount of additional air may serve to lean such mixture.

3. That respondent's device performs any useful service in the carburetion of gasoline in an automobile engine in excess of such effect as it may have in leaning the fuel mixture in those cases referred to in paragraph 2.

It is further ordered, That the respondent shall, within 60 days after 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
PREPARATORY TRAINING INSTITUTE

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

Docket 4454. Complaint, Jan. 28, 1941—Decision, June 29, 1944

Where a corporation engaged in interstate sale and distribution of correspondence courses of study and instruction for certain United States Civil Service positions—

- (a) Represented, directly or by implication, through circulars, and through an enumeration on its so-called "enrollment contracts," that during the period in question there were large numbers of positions available at all times in various branches of the United States Government, that examinations were being held frequently, that the specific positions listed were at that time available, and that examinations were then being held for such positions; and
- (b) Represented through agents designated as "Registrars," that it had positions in the United States Government to offer, which were under its control or which it could secure for students taking its courses, that it was connected with the United States Government and authorized by the United States Civil Service Commission to qualify applicants for Government jobs, that it had advance information with respect to the holding of Civil Service examinations or information concerning such examinations which was not readily available to prospective candidates therefor, that the applicants for its courses of training were especially selected, and that vacancies existed in certain branches of the United States Government which could be filled immediately after applicant had passed examination with respect thereto;

The facts being it had no such connections, no such positions to offer and no information with respect to places at or dates on which such examinations would be held which was not available to any person applying therefor to the Civil Service Commission; its representatives were merely salesmen and not officials of said commission, there were not then available a large number of positions as aforesaid, the names of eligibles on the register greatly exceeding the number of positions; examinations were not held frequently but often only at intervals of several years; in the case of certain positions, such as postal clerk, mail carrier, railway clerk and rural mail carrier, only those residing in the locality where the position was open were eligible for examinations; and several months usually, and often a year or more, elapsed after passing of the examination before appointment could reasonably be expected; and its so-called "Personal Report" for execution by the student along with the enrollment contract, calling for various personal matter and purporting to disclaim any connection of the school with Government agencies, or ability to promise or guarantee positions, was designed to mislead the student and did not, under the circumstances and tactics involved, serve its purported purpose; and

- (c) Falsely represented or implied, through the use of the word "Institute" in its corporate name and advertising literature, that it conducted an institution of learning offering instruction in philosophy, art, science, and other learned subjects, with a staff of competent, experienced, and qualified educators;

The facts being it offered only one course of study and instruction, which was substantially the same regardless of the examination for which a student wished to prepare; and it was not an institution of learning in the accepted sense of that term,