

## Complaint

## IN THE MATTER OF

## HAMMACHER SCHLEMMER &amp; CO., INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914

*Docket 5410. Complaint, Dec. 27, 1945—Decision, Nov. 28, 1947*

Where a corporation engaged in the interstate sale and distribution of its "Gasconomy" device, designed to be clamped on the end of the exhaust pipe of automobiles and trucks, and, after discontinuing the sale thereof, in the sale and distribution of a similar exhaust pipe attachment which it called "Vacudex"; through advertisements in New York newspapers circulated generally among the purchasing public—

- (a) Falsely represented that its said device, when attached to the exhaust pipe, would save gasoline and oil and increase the mileage obtained from a gallon of gasoline 10 to 20 percent, and even more in some instances; and would cause the motor to have quicker acceleration and to give better performance; and
- (b) Represented that the device had been installed upon hundreds of New York City official cars after exhaustive tests had proven its worth; when in fact no such tests had been conducted by the city or any department thereof, nor use thereof authorized or directed upon any official cars of the city;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that such representations were true and into the consequent purchase of substantial quantities of said device:

**Held,** That such acts and practices were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

*Mr. Joseph Callaway* for the Commission.

*Mr. Irving D. Lipkowitz*, of New York City, 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 Hammacher Schlemmer & Co., Inc., a corporation, trading and doing business as Hammacher Schlemmer, 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. Hammacher Schlemmer & Co., Inc., is a corporation, organized, existing and doing business under and by virtue of the laws

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of the State of Delaware, with its principal place of business located at 145 East Fifty-seventh Street, New York, N. Y. Respondent trades and does business under the name of Hammacher Schlemmer.

PAR. 2. Respondent is now and for more than 2 years last past, has been engaged in the sale and distribution of an exhaust muffler attachment designated as "Gasconomy," advertised as a device to save gasoline and effect other economies in the operation of automobiles and trucks. The device consists of a cone-shaped metal tube which clamps on to the end of the exhaust pipe and in which are placed vanes set at angles so that as the vehicle moves forward and air is forced into the cone, it presumably creates a spiral motion of the air in the exhaust pipe.

In the course and conduct of its business, the respondent causes said product, when sold, to be transported from its place of business in the State of New York, to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said 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 said product in commerce, respondent has made, and is now making, certain false, deceptive and misleading statements and representations regarding said product by means of circulars and in advertisements inserted in New York newspapers circulated generally among the purchasing public. Typical representations are as follows:

GASCONOMY  
Will Increase Your  
Mileage per Gallon  
10% to 20%

SAVES  
GAS

\* \* \* \* \*

SAVES  
OIL

Definite tests of GASCONOMY by attaching it to all makes of autos of various ages, show increases in mileage per gallon of from 10% to 20%—and even more in some instances—also faster pick-up and smoother performance.

After exhaustive tests, several City Departments are using GASCONOMY on hundreds of their cars.

Does your car buck at low speed? Does the motor act sluggish when you want quick pickup? If so, your car is wasting gasoline. GASCONOMY attached to the exhaust pipe will correct these conditions.

PAR. 4. Through the use of the foregoing statements and representations and others similar, not specifically set out herein, respondent has represented, and is now representing, that the device designated as

"GASCONOMY" when attached to the exhaust pipe of an automobile or truck, will save gasoline and oil and increase the mileage obtained from a gallon of gasoline 10 to 20 percent and even more in some instances; that it will cause the motor to have quicker acceleration and give better performance; that the device has been installed on hundreds of New York City official cars after exhaustive tests had proven its worth.

PAR. 5. The foregoing representations are false, deceptive, and misleading in the following respects: The device does not save gasoline or oil or increase the mileage obtained from gasoline. It does not cause a motor to have quicker acceleration or give better performance. No official cars of the city of New York have been authorized or directed to use the device, nor has the city or any department thereof, conducted any tests of the device.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations, disseminated as aforesaid in connection with the offering for sale and sale of its said product, in commerce, has had, and now has, the capacity and tendency 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 said product in commerce, because of such erroneous and mistaken belief.

PAR. 7. The aforesaid acts and practices of the respondent 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 December 27, 1945, issued and subsequently served its complaint in this proceeding upon respondent Hammacher Schlemmer & Co., Inc., charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. The respondent filed its answer, and thereafter a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent and Daniel J. Murphy, assistant chief trial counsel of the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges of the complaint and in opposition thereto, and that the

Commission may proceed upon said statement of facts to make its report stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without any intervening procedure. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved, accepted, and filed; 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. Respondent Hammacher Schlemmer & Co., Inc., is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 145 East Fifty-seventh Street, New York, N. Y. Respondent trades and does business under the name Hammacher Schlemmer. For a considerable period of time immediately preceding March 1943 respondent sold and distributed an attachment for the exhaust pipes of automobiles and trucks. This attachment was designated as "Gasconomy" and was advertised by respondent as a device to save gasoline and to effect other economies in the operation of automobiles and trucks. The device consisted of a conical metal tube which was clamped on the end of the exhaust pipe. In the conical tube were vanes set at angles so that as the vehicle moved forward and air was forced into the cone, it presumably created a spiral-motion of the air in the exhaust pipe. After respondent discontinued the sale of this "Gasconomy" device in March 1943, it began and continued until 1947 the sale and distribution of another exhaust-pipe attachment of similar construction called "Vacudex."

PAR. 2. In the course and conduct of its aforesaid business, respondent caused its said "Gasconomy" device, when sold, to be transported from its place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia and, during the time said device was marketed, maintained a course of trade in said device in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In carrying on its said business, and for the purpose of inducing the purchase of said device in commerce, respondent made certain false, deceptive, and misleading statements and representations

regarding its said "Gasconomy" device by means of advertisements inserted in certain New York newspapers circulated generally among the purchasing public. Among and typical of such representations were the following:

GASCONOMY  
Will Increase Your  
Mileage Per Gallon  
10% to 20%  
SAVES                      SAVES  
GAS                         OIL  
\* \* \* \* \*

Definite tests of GASCONOMY by attaching it to all makes of autos of various ages, show increases in mileage per gallon of from 10% to 20%—and even more in some instances—also faster pick-up and smoother performance.

After exhaustive tests, several city Departments are using GASCONOMY on hundreds of their cars.

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Does your car buck at low speed? Does the motor act sluggish when you want quick pickup? If so, your car is wasting gasoline. GASCONOMY attached to the exhaust pipe will correct these conditions.

PAR. 4. Through the use of the aforesaid statements and representations, and others similar thereto but not specifically set out herein, respondent represented that its said device, when attached to the exhaust pipe of an automobile or truck, would save gasoline and oil and increase the mileage obtained from a gallon of gasoline 10 to 20 percent, and even more in some instances; that it would cause the motor to have quicker acceleration and to give better performance; and that the device had been installed upon hundreds of New York City official cars after exhaustive tests had proven its worth. These representations were false, deceptive, and misleading in that the device does not save gasoline or oil or increase the mileage which may be obtained from gasoline. It does not cause a motor to have quicker acceleration or give better performance. The use of said device has not been authorized or directed upon any official cars of the city of New York, and no tests of the device have been conducted by the city of New York or any department thereof.

PAR. 5. The use by respondent of the aforesaid false, deceptive, and misleading statements and representations in connection with the offering for sale of its "Gasconomy" device in commerce had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were true and into the purchase of substantial quantities of said device in commerce, because of such erroneous and mistaken belief.

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## CONCLUSION

The aforesaid acts and practices of respondent were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Commissioner Mason not participating.

## 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, and a stipulation as to the facts entered into between the respondent herein and Daniel J. Murphy, assistant chief trial counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon respondent herein findings as to the facts and conclusion based thereon, and an order disposing of the proceeding, 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 respondent Hammacher Schlemmer & Co., Inc., trading as Hammacher Schlemmer or under any other name, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of its device designated "Gasconomy," or any substantially similar device, whether sold under the same name or any other name, do forthwith cease and desist from representing, directly or by implication:

1. That the use of said device on an automobile or truck will result in the saving of gasoline or oil, or will increase the mileage which may be obtained per gallon of gasoline.

2. That the use of said device on an automobile or truck will cause the motor thereof to have quicker acceleration or to give better performance.

3. That the city of New York has conducted any tests of said device or authorized or directed the use of such device on any of its official cars.

*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.

Commissioner Mason not participating.

## Complaint

## IN THE MATTER OF

## JESSE C. STEWART COMPANY AND JESSE C. STEWART

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSECTION (c) OF SECTION 2 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

*Docket 5494. Complaint, May 19, 1947—Decision, Nov. 28, 1947*

Where a corporation engaged as an agent or broker in the sale and distribution of flour and other commodities, principally to commercial users, together with its president who owned about 75 percent of its stock ;

In connection with the making of purchases of such commodities for a certain macaroni and spaghetti corporation—of which, together, they owned three-quarters of the stock—under a course of action by which said macaroni concern transmitted its orders to said broker corporation, which then solicited offers from flour milling companies and other sellers in various States ; and placed the orders with the seller making the most favorable offer, who invoiced and shipped the commodities directly to said concern—  
Received and accepted from such sellers, commissions, brokerage, or allowances or discounts in lieu thereof, in substantial amounts, and thereby, in view of their financial interest in said concern, received and accepted such commissions, etc., on purchases made for their own ultimate use and benefit:

*Held*, That such receipt and acceptance, under the circumstances set forth, by said corporation and said individual, of commissions, brokerage, allowances, or discounts in lieu thereof, on sales made to said purchaser concern, were in violation of subsection 2 (c) of the Clayton Act as amended by the Robinson-Patman Act.

*Mr. Edward S. Ragsdale* for the Commission.

*Mr. Lawrence P. Monahan*, of Pittsburgh, Pa., for respondents.

## COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, have violated and are violating the provisions of subsection (c) of section 2 of the Clayton Act (U. S. C., title 15, sec. 13) as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Jesse C. Stewart Co. is a corporation organized, existing, and doing business under the laws of the State of Pennsylvania, with its office and principal place of business located at 1217 West Carson Street, Pittsburgh, Pa., and is engaged in business as agent or broker, selling and distributing various types