

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

THE HOOVER COMPANY
101 E. Maple Street
North Canton, Ohio 44720

Plaintiff

v.

BISSELL HOMECARE
, INC..
2325 Walker Road, NW
Grand Rapids, Michigan 49501

Defendant

Case No.: 5:03-cv-674

Judge Economus

FIRST AMENDED
COMPLAINT FOR
PATENT AND TRADE DRESS
INFRINGEMENTS,
UNFAIR COMPETITION AND
UNJUST ENRICHMENT

JURY TRIAL DEMANDED

Now comes The Hoover Company ("Hoover") and for its Complaint against BISSELL Homecare, Inc. ("Bissell") asserts the following.

THE PARTIES

1. Plaintiff Hoover is a corporation of Delaware, having its principal place of business in this district in North Canton, Ohio, as set forth in the caption, above.

2. Upon information and belief, defendant Bissell is a corporation of Michigan, having a principal place of business in Grand Rapids, Michigan, as set forth in the caption, above.

JURISDICTION AND VENUE

3. This is an action brought under the patent, trademark, and unfair competition laws of the United States. This Court has jurisdiction of the matters asserted herein pursuant to 28 U.S.C. §§1331, 1338 and 1367, and under the doctrine of pendent jurisdiction. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400 in that defendant resides or may be found in this district and has committed acts complained of herein within this district and has further caused injury within this district by acts complained of herein outside this district.

FACTS COMMON TO ALL COUNTS

Patents

4. In 1997, Hoover began marketing and selling a line of upright vacuum cleaners employing what has become known as Hoover's Wind Tunnel technology.

5. The HOOVER Wind Tunnel vacuum cleaners have enjoyed outstanding commercial success.

6. The outstanding commercial success of the Hoover Wind Tunnel vacuum cleaners is due, in large part, to the technology employed by the Wind Tunnel vacuum cleaners, much of which has been patented by Hoover. A number of United States patents have been duly and legally issued to Hoover

respecting various aspects of the utility and design of the Hoover Wind Tunnel vacuum cleaners, including, but not limited to:

U.S. Patent 5,513,418 (“ ‘418 patent”), for Suction Nozzle With Ducting, a copy of which is attached at Exhibit A; and

U.S. Patent 6,237,189 (“ ‘189 patent”), for Vacuum Cleaner Suction Nozzle Configuration, a copy of which is attached as Exhibit B.

7. Hoover has marked various products pursuant to 35 U.S.C. § 287.

Trade Dress

8. Since at least as early as 1997, a distinctive feature of certain of Hoover’s vacuum cleaners, including certain of its Wind Tunnel vacuum cleaners, has been the implementation of a visually apparent brush roll in association with the floor nozzle or base of the vacuum cleaner. The bristles of the brush and the roll itself are of contrasting colors, providing a distinctive appearance that constitutes a trade dress that is a valuable asset of Hoover, identifying Hoover as a particular source or origin for products having such trade dress. Representative illustrations of the Hoover Wind Tunnel product line having such distinctive trade dress are attached as Exhibit C.

9. Hoover’s trade dress of a visually apparent brush roll, wherein the bristles and the roll itself are of contrasting color, is inherently distinctive.

10. Hoover has promoted the goods with which it uses the aforesaid trade dress through extensive advertising and promotional activities within its trade (the floorcare product industry) and geographic area (the United States).

11. Because of the nature and extent of the use of such trade dress, the purchasing public

has come to identify Hoover as the source of the goods with which Hoover uses the trade dress.

12. Hoover has experienced outstanding sales success as to the goods with which it uses the aforesaid trade dress.

13. Hoover's trade dress has acquired secondary meaning as a result of the nature and extent of Hoover's advertising and sales of its goods with which the trade dress is used.

14. As a result of its long term, extensive advertising and promotional activities and sales success, Hoover's trade dress of a visually apparent brush roll, in which the brush and roll itself are of contrasting colors, has developed substantial secondary meaning such that the trade dress has become a source identifier.

Bissell's Activities

15. Since at least 2002 and continuing to date, Bissell has made and/or had made and/or sold and/or offered for sale certain upright vacuum cleaners including, but not limited to, the Bissell Cleanview Bagless (Model 3591) vacuum cleaner (hereinafter collectively referred to as "first accused vacuum cleaners") that:

- a. are covered by Hoover's '418 patent; and/or
- b. are covered by Hoover's '189 patent; and/or
- c. employ the trade dress of a visually apparent brush roll in association with a floor nozzle or base of the vacuum cleaner and wherein the bristles and roll are of contrasting colors.

16. Since at least 2001 and continuing to date, Bissell has made and/or had made and/or sold and/or offered for sale certain upright vacuum cleaners including, but not limited to, the Bissell Power Glide Plus (Model 3545) vacuum cleaner and the Bissell Cleanview Bagless (Models 8990 and 3590) vacuum

cleaners (all hereinafter collectively referred to as “second accused vacuum cleaners”) that:

- a. are covered by Hoover’s ‘418 patent; and/or
- b. are covered by Hoover’s ‘189 patent.

COUNT I
INFRINGEMENT OF PATENT 5,513,418

17. Hoover reasserts the allegations set forth in paragraphs 1-16 as though fully rewritten.

18. The first accused vacuum cleaners and second accused vacuum cleaners made by or on behalf of Bissell and/or sold and/or offered for sale by Bissell infringe at least certain of the claims of Hoover’s U.S. Patent 5,513,418.

19. Bissell's infringement of Hoover’s ‘418 patent has been willful.

20. Upon information and belief, Bissell will continue to infringe Hoover's ‘418 patent unless enjoined by this Court, giving rise to this cause of action under 35 U.S.C. § 271.

COUNT II
INFRINGEMENT OF PATENT 6,237,189

21. Hoover reasserts the allegations set forth in paragraphs 1-20, as though fully rewritten.

22. The first accused vacuum cleaners and second accused vacuum cleaners made by or on behalf of Bissell and/or sold and/or offered by sale by Bissell, infringe at least certain of the claims of Hoover’s ‘189 patent.

23. Bissell’s infringement of Hoover’s ‘189 patent has been willful.

24. Upon information and belief, Bissell will continue to infringe Hoover’s ‘189 patent unless enjoined by this Court, giving rise to this cause of action under 35 U.S.C. § 271.

COUNT III
TRADE DRESS INFRINGEMENT

25. Hoover reasserts the allegations set forth in paragraphs 1-24, as though fully rewritten.

26. The first accused vacuum cleaners of Bissell infringe the trade dress rights of Hoover in the use of a visually apparent brush roll in which the roll and bristles are of contrasting colors, such that consumers, seeing the first accused vacuum cleaners of Bissell, would erroneously believe that the Bissell products come from the same source or origin as the Hoover products, or that there is some association, affiliation, sponsorship or relationship between such products and/or their sources. Such deception or confusion is the natural consequence of Bissell's adoption and use of Hoover's trade dress.

27. The first accused vacuum cleaners of Bissell are sold in interstate commerce and, as such, have and will continue to significantly and adversely impact the sale of Hoover products in interstate commerce, giving rise to this cause of action under 15 U.S.C. § 1125(a).

28. Bissell's infringement of Hoover's trade dress rights has been willful.

COUNT IV
COMMONLAW UNFAIR COMPETITION

29. Hoover reasserts the allegations set forth in paragraphs 1-28, as though fully rewritten.

30. Bissell's use of the trade dress of a visually apparent brush roll of contrasting colors in connection with the sale of the first accused vacuum cleaners without Hoover's consent and with the knowledge of Hoover's rights in and to the trade dress constitutes the use of a colorable imitation of Hoover's trade dress for purposes of deceiving Hoover's customers and potential customers.

31. Bissell's use of the aforesaid trade dress in connection with the sale of the first accused

vacuum cleaners of Bissell constitutes “palming off.”

32. Bissell’s use of the aforesaid trade dress in connection with the sale of the first accused vacuum cleaners without the consent of Hoover and with the knowledge of Hoover’s rights in and to Hoover’s trade dress is willful, wanton, and in bad faith.

**COUNT V
UNJUST ENRICHMENT**

33. Hoover reasserts the allegations set forth in paragraphs 1-32, as though fully rewritten.

34. By using colorable imitations of Hoover’s trade dress of a visually apparent brush roll of contrasting colors in connection with the sale of the first accused vacuum cleaners, Bissell has sold products at the expense of Hoover.

35. By using colorable imitations of Hoover’s aforesaid trade dress in connection with the sale of the first accused vacuum cleaners, Bissell has been unjustly enriched at the expense of Hoover.

PRAYER FOR RELIEF

THEREFORE, Hoover prays for the following relief:

- A. An accounting of Hoover's damages as a consequence of the wrongful acts set forth above.
- B. That the damages determined from paragraph A, above, be trebled, or that some form of exemplary damages be awarded, as a consequence of Bissell's willful wrongful acts.
- C. That the infringing products be delivered up and be destroyed.
- D. That Hoover be granted injunctions against Bissell, enjoining Bissell from its infringing and otherwise wrongful activities, and particularly from manufacturing, distributing, using, selling, or offering for

sale any product that infringes any of Hoover's patents or trade dress as set forth herein.

- E. For an award of attorney fees and costs herein.
- F. For additional relief as this Court may deem just and proper.

JURY DEMAND

Hoover requests a jury trial herein.

s:Ray L. Weber

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing FIRST AMENDED COMPLAINT FOR PATENT AND TRADE DRESS INFRINGEMENTS, UNFAIR COMPETITION AND UNJUST ENRICHMENT was electronically filed on June 25, 2003. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s:Ray L. Weber