

FEDERAL TRADE COMMISSION v. CHICAGO LINO-TABLER COMPANY.

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

Question modified December 19, 1919.

Docket No. 23—April 4, 1918.

SYLLABUS.

Where a manufacturer of devices used by printers to produce ruled lines for tabulation—

- (a) interfered with a competitor's customers by threatening to sue them for infringement of certain patents claimed to be owned by it, such threats not being made in good faith for the purpose of protecting the manufacturer's rights under said patents;
- (b) endeavored to persuade or force trade journals to refuse a competitor's advertisements, by means of false and misleading statements to the effect that said competitor's apparatus and devices infringed its patents;
- (c) endeavored to induce trade journals to refuse a competitor's advertisements, by means of false and misleading statements relative to said competitor's financial standing and condition; and
- (d) made to trade journals and customers of a competitor, false and misleading statements in reference to the defense made by said competitor to an infringement suit instituted against it by said manufacturer:

Held, That such acts transcended the rights and privileges of a patentee in the protection of its patents, and, under the circumstances set forth, constituted unfair methods of competition, in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that Chicago Lino-Tabler Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the 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, Chicago Lino-Tabler Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, having its principal office and place of business at the city of Chicago, in said State, and is now, and was at all times hereinafter mentioned, engaged in the manufacture of a certain tabular system which is used by printers to produce printed ruled lines for products requiring tabulation.

PAR. 2. That the respondent is the owner of a patent upon the said system or device, and is now and has for more than two years last past, been engaged in manufacturing, selling, and leasing the same in commerce among the several States and Territories of the United States, and in the District of Columbia.

PAR. 3. That with the intent, purpose and effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of devices and apparatus used by printers to produce printed ruled lines for tabulation, the respondent has caused for more than two years last past and still continues to cause to be issued and circulated in pamphlet form and published in trade papers among the printing trade in the several States and Territories of the United States, and in the District of Columbia, what purports to be an accurate quotation of claim No. 7 of Patent 1,168,602, on a system of ruling type forms for tabular lines, said patent being owned by said respondent, which quotation is incorrect and misleading in that the word "type" was changed to the word "printing" and the words "as for the purpose specified" were omitted, and that the effect of said change and omission was to broaden the said patent claim so as to cover devices and apparatus of respondent's competitors.

PAR. 4. That with the intent, purpose, and effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of the above-mentioned devices and apparatus, the respondent has been interfering for more than two years last past and still continues to interfere with customers of its competitors, and has endeavored and continues to endeavor to coerce them into ceasing from purchasing their supply of such devices and apparatus from its competitors, by threatening to sue its competitors' customers

for infringement of certain patents claimed to be owned by said respondent, and that such threats are not made in good faith for the purpose of protecting respondent's claim of right under said patents.

PAR. 5. That during the pendency of a certain suit in equity for alleged infringement of respondent's patent, instituted by respondent against a certain competitor's customer, and before said suit had come to trial, hearing, or final determination, the respondent, with the intent, purpose, and effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of the aforesaid devices and apparatus, for more than two years last past has been endeavoring and still continues to endeavor to persuade or force certain trade journals to refuse to accept the advertising of its aforesaid competitor by making false and misleading statements concerning the devices and apparatus of its competitors to the effect that said competitors' devices and apparatus infringed its said patent thereon.

PAR. 6. That with the intent, purpose and effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of the aforesaid devices and apparatus, the respondent for more than two years last past has been endeavoring to induce and still continues to endeavor to induce certain trade journals to refuse to accept the advertising of its aforesaid competitor by making false and misleading statements as to the financial condition of said competitor.

PAR. 7. That with the intent, purpose and effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of the aforesaid devices and apparatus, the respondent has been making for more than two years last past and still continues to make false and misleading statements concerning said competitor to certain trade journals and to certain customers of said competitor in reference to said patent litigation to the effect that the said competitor filed no defense whatsoever in said action.

PAR. 8. That while the aforesaid suit in equity against a certain customer of one of the respondent's competitors was pending, the respondent persuaded and induced the said competitor's customer (who was a defendant in said action),

its servants, agents and employees, to write and circulate among said competitor's other customers, letters containing statements in disparagement of the devices and apparatus of respondent's competitor, that said letters were so worded to encourage replies in disparagement of said competitor's devices and apparatus, and that certain alleged replies to said disparaging letters were sent and circulated among the customers and prospective customers of said competitor throughout the several States and Territories of the United States and the District of Columbia, and that the intent, purpose and effect of the circulation of said letters and the replies thereto were and are to stifle and suppress competition in interstate commerce in the manufacture and sale of the aforesaid devices and apparatus.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint herein, wherein it alleged that it had reason to believe that the above named respondent, Chicago Lino-Tabler Co., has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the 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 further stating its charges in that respect, and said respondent having made and filed its answer to said complaint and having further entered into, agreed to, and signed an agreement or stipulation as to the facts; now on this 4th day of April, A. D. 1918, on the said complaint, answer, and agreement or stipulation, the Commission makes its report and findings as to the facts and conclusions.

FINDINGS AS TO THE FACTS.

The Commission finds:

1. That the respondent, Chicago Lino-Tabler Co., is a corporation created and existing under the laws of the State of Illinois, with its principal office and place of business at Chi-

cago, in said State, and is now, and was at all times hereinafter mentioned, engaged in the manufacture and selling in interstate commerce of certain apparatus or devices used by printers in producing tabulated work.

2. That the Auto-Mat Tabular Co., of the city of Fort Worth, State of Texas, and its successor, the Matrix Ruled Form & Tabular Co., is the only competitor of said respondent in said business.

3. That the said respondent, Chicago Lino-Tabler Co., has, from January 20, 1916, for more than one year last past and up to the filing of the said complaint, continued, through the medium of circulars and letters, to threaten customers of said respondent's competitor, Auto-Mat Tabular Co., with suits for infringement of certain patents claimed to be owned by said respondent, Chicago Lino-Tabler Co.

4. That no suit was instituted by the said respondent, Chicago Lino-Tabler Co., against anyone for infringement until April 19, 1917, more than a year after said threats had first been made and more than two years after attorney for said respondent, Chicago Lino-Tabler Co., rendered an opinion, pointing out the legal remedy of said respondent, Chicago Lino-Tabler Co., of instituting a legal proceeding to enjoin the said respondent's competitor, Auto-Mat Tabular Co., from marketing the apparatus and devices of said competitor, Auto-Mat Tabular Co., and then only after repeated demands by said competitor, Auto-Mat Tabular Co., that suit be instituted and at least two warnings by the Federal Trade Commission that the threats must cease or suit be instituted by the said respondent, Chicago Lino-Tabler Co.

5. That the said threats, under all the circumstances, were not made in good faith and constituted an interference with the business of said competitor, Auto-Mat Tabular Co., by intimidation of customers of said competitor, Auto-Mat Tabular Co., and by coercing said customers of said competitor, Auto-Mat Tabular Co., into ceasing from purchasing their supplies of apparatus and devices from said competitor, Auto-Mat Tabular Co.

6. That the said respondent, Chicago Lino-Tabler Co., for the last year and more past has been endeavoring to persuade and coerce certain trade journals, to wit: Typesetting Ma-

chine Engineers' Journal, the Inland Printer and the Pacific Printer, by letters and verbal conversations, to refuse to accept the advertising of respondent's competitor, said Auto-Mat Tabular Co., such letters and conversations being (a) in the form of statements as to an alleged infringing nature of such competitor's devices; and (b) in the form of disparaging statements as to the financial condition of said competitor offering such advertisements.

7. That the said respondent, Chicago Lino-Tabler Co., has been making, for more than two years last past, and up to the time of the filing of the said complaint, continued to make, false and misleading statements concerning said competitor to certain trade journals and customers of said competitor, to wit: Typesetting Machine Engineers' Journal, the Inland Printer, and the Intertype Corporation, through the medium of verbal conversations and letters in reference to a certain suit pending as to its status and to the effect that said competitor had made practically no defense in the said suit in equity.

CONCLUSIONS.

That the said methods of competition set forth in the foregoing findings of facts, and each and all of the said methods of competition, under the circumstances therein set forth, transcend the rights and privileges of a patentee in the protection of its patents and constitute unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the said 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, and the respondent, Chicago Lino-Tabler Co., having made and filed its answer to said complaint, and having further entered into, agreed to, and signed an agreement or stipulation as to the facts, and the Commission, on the said complaint, answer, and stipulation, on the date hereof, having made and filed a report containing its findings as to the facts and its conclusions that the

respondent has violated section 5 of the 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," which said report is hereby referred to and made a part hereof; now, therefore,

It is ordered: That the said respondent, Chicago Lino-Tabler Co., forever cease and desist from—

1. Interfering, through the medium of circulars, letters, or any other method of communication whatsoever, with any customer or customers of its competitor, the Auto-Mat Tabular Co., or any customer or customers of any other competitor or competitors, that the said Chicago Lino-Tabler Co. may now or hereafter have, and endeavoring through the medium of circulars, letters, or any other method of communication whatsoever, to coerce any customer or customers of the said Auto-Mat Tabular Co., or any customer or customers of any other competitor or competitors that the said Chicago Lino-Tabler Co. may now or hereafter have, into ceasing from purchasing their supply of devices and apparatus from the said Auto-Mat Tabular Co., or any other competitor or competitors that the said Chicago Lino-Tabler Co. may now or hereafter have, by threatening to sue any customer or customers of the said Auto-Mat Tabular Co., or any customer or customers of any other competitor or competitors that the Chicago Lino-Tabler Co. may now or hereafter have, for infringement of any or all patents owned, or claimed to be owned, by the said Chicago Lino-Tabler Co., when such threats are not made in good faith for the purpose of protecting the Chicago Lino-Tabler Co.'s claims of right under any or all of its said patents.

2. Endeavoring to persuade or force by verbal conversations, circulars, letters, or by any means of communication whatsoever, any trade journals to refuse to accept the advertising of its competitor, the said Auto-Mat Tabular Co., or the advertising of any other competitor, or competitors, which said Chicago Lino-Tabler Co. may now or hereafter have, by statements to the effect that the devices and apparatus of any competitor of said Chicago Lino-Tabler Co. advertising or seeking to advertise in any trade journal infringed any or all patents owned or claimed to be owned by

the said Chicago Lino-Tabler Co.; or by statements relating to the financial standing and condition of any competitor of the said Chicago Lino-Tabler Co. advertising or seeking to advertise in any trade journal, or by any other statements calculated to interfere with the right of any competitor of the said Chicago Lino-Tabler Co. to advertise his devices or apparatus.

3. Making any statements, false, misleading, or otherwise, to any trade journal, or customer, or customers, of the said Auto-Mat Tabular Co., or any customer or customers, of any other competitor, or competitors, that the said Chicago Lino-Tabler Co. may now or hereafter have in reference to a certain suit in equity, instituted by the said Chicago Lino-Tabler Co. in the United States District Court for the Northern District of Illinois, Eastern Division, as to the defense of the Auto-Mat Tabular Co. in the aforesaid suit in equity; or indulging in the same or similar practice as to any other suit or suits hereafter brought by said Chicago Lino-Tabler Co. against any customer or customers of any competitor or competitors, or against any competitor or competitors, which the said Chicago Lino-Tabler Co. may now or hereafter have.

MODIFIED ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaint herein, and the respondent, Chicago Lino-Tabler Co., having made and filed its answer to said complaint and having further entered into, agreed to, and signed an agreement or stipulation as to the facts, and the Commission, on the said complaint, answer, and stipulation, having made and filed a report containing its finding as to the facts and its conclusions that the respondent has violated section 5 of the 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," which said report is hereby referred to and made a part hereof, and the Commission having heretofore, to wit, on the 4th day of April, 1918, entered and served its order upon the respondent requiring it to cease and desist from certain practices, as reference to the said order being had will more fully and at large appear:

And it appearing to the Commission, upon reconsideration of the matter, that said order should be modified in certain respects:

Now, therefore, the Federal Trade Commission, on its own motion, under and by virtue 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," hereby orders that the order to cease and desist heretofore made in this proceeding on the 4th day of April, 1918, be, and the same is, hereby modified so that, as modified, said order shall read as follows, to wit: Now, therefore,

It is ordered, That the respondent, Chicago Lino-Tabler Co., forever cease and desist from—

(1) Threatening, by means of circulars, letters, or any other means of communication whatsoever, any customer or customers of the Auto-Mat Tabular Co., or any customer or customers of any other competitor of the Chicago Lino-Tabler Co., with suits for infringement of any or all patents owned or claimed to be owned by the said Chicago Lino-Tabler Co., unless such said threats be made in good faith and be promptly followed by bona fide suits to protect the said Chicago Lino-Tabler Co.'s rights under such patents.

(2) Endeavoring, by verbal conversations, circulars, letters, or by any other means of communication whatsoever, to persuade, induce, or compel any trade journal to refuse to accept the advertising of its competitor, the said Auto-Mat Tabular Co., or the advertising of any other competitor or competitors of the said Chicago Lino-Tabler Co. by statements to the effect that the devices and apparatus of any competitor of the Chicago Lino-Tabler Co. advertising or seeking to advertise in any trade journal, infringe any or all patents owned or claimed to be owned by the said Chicago Lino-Tabler Co. or by false or misleading statements relating to the financial standing or condition of any competitor of the said Chicago Lino-Tabler Co. advertising or seeking to advertise in any trade journal.

(3) Making any false or misleading statements to any trade journal, or to any customer, or customers of any other competitor or competitors of the said Chicago Lino-

Tabler Co. in reference to a certain suit in equity instituted by the said Chicago Lino-Tabler Co. in the United States District Court for the Northern District of Illinois, Eastern Division, respecting the defense made by the Auto-Mat Tabular Co. in the aforesaid suit in equity, or making such statements as to any other suit or suits hereafter brought by the said Chicago Lino-Tabler Co. against any customer or customers of any competitor or competitors, or against any competitor or competitors of the said Chicago Lino-Tabler Co.

FEDERAL TRADE COMMISSION *v.* FLEISCHMANN
COMPANY.