

CONSTRUCTION CO.

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

Docket No. 9.—April 16, 1918.

SYLLABUS.

Where two corporations engaged in the manufacture, sale, and lease of tank cars used for the transportation of oil, alcohol, acids, and other liquid commodities, for the purpose and with the effect of unduly harassing and embarrassing competitors, maliciously enticed away employees of such competitors; and,

Where one of such corporations, engaged in the business of leasing such tank cars, acquired from a person then in its employ but formerly employed by a competitor in a confidential capacity, confidential information of said competitor, consisting among other things of a list of customers and prospective customers, and data pertaining to their leases and prospective leases, and used the same in competition with said competitor:

Held, That such enticement of employees and such acquisition and use of confidential information 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 the Standard Car Equipment Co. and the Standard Car Construction Co., hereinafter referred to as respondents, have been, and

are, 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 amended complaint, stating its charges in that respect, on information and belief as follows:

PARAGRAPH 1. That the Standard Car Equipment Co., one of the respondents, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, having its principal office and place of business at the city of Philadelphia, State of Pennsylvania, and is now, and was at all times hereinafter mentioned, engaged in commerce among the several States and Territories of the United States, in leasing tank cars used for the transportation of oil, alcohol, acids, etc.; that the other respondent, the Standard Car Construction Co., is a corporation organized and created under the laws of the State of Delaware, and is engaged, and was at all times hereinafter mentioned engaged, in commerce among the several States and Territories of the United States in the manufacture and sale of tanks and tank cars used for the transportation of oil, alcohol, acids, etc.; that the Standard Car Equipment Co. wholly owns and controls the capital stock of said Standard Car Construction Co., and by reason of such ownership and control, the same directors are elected on both boards of directors and the members thereof operate and cooperate in the management and in the operation of both concerns.

PAR. 2. That, with the effect of stifling and suppressing competition in interstate commerce in the leasing of tank cars, the Standard Car Equipment Co. is now and for more than a year last past has been systematically and on a large scale inducing employees of one of its competitors to leave their employment by offering such employees employment with respondent, and that said employment with respondent is and has been given at times when respondent had no occasion for the service of many of such employees; that the Standard Car Construction Co., the other respondent, en-

gaged in the manufacture and sale of tank cars for the Standard Car Equipment Co. as aforesaid and for other customers, and being operated and controlled as aforesaid, has been for a long time past, and is now systematically, and on a large scale, inducing employees of its competitors to leave their employment by offering such employees employment with said respondent, many of said employees having been in the service of said competitor for many years and were highly skilled in and about the business of said competitor, with the intent and purpose of injuring the business of said competitor, and demoralizing and breaking down the organization of said competitor's employees to such an extent that the output of competitor's plant was and has been greatly and materially reduced, thereby suppressing and stifling competition in the manufacture and sale of tanks and tank cars as aforesaid.

PAR. 3. That, with the effect of stifling and suppressing competition in interstate commerce in the leasing of tank cars, the Standard Car Equipment Co., one of the respondents, is now, and for more than a year last past has been, making representations to users or prospective users of tank cars, that it is closely affiliated with one of its competitors; that the respondent and this competitor have common financial connections and that it and said competitor will soon be under one control and management, said representations being made, at times, in connection with the submittal of blue-print specifications for tank cars, said specifications embodying certain features theretofore generally associated in the trade with said competitor's product, when, in truth and in fact, the respondent and said competitor are now, and have, for a year last past, been independent concerns and in no way connected financially or otherwise.

PAR. 4. That the Standard Car Equipment Co., one of the respondents, has acquired information of trade secrets and business confidences of a certain competitor from persons heretofore employed by said competitor but now employed by the respondent, such information consisting, among other things, of a list of customers and data pertaining to such customers' leases, etc., and that the respondent is now using said information, thus acquired, in competition with said competitor.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondents, Standard Car Equipment Co., and Standard Car Construction Co., have been and now are using unfair methods of competition in interstate commerce in violation 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," and that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in that respect, and the respondents having entered their appearance by H. B. Gill, their attorney, and the Commission having offered testimony in support of its charges in said complaint, and the respondents having offered testimony in denial of said charges in said complaint, and the attorneys for the Commission and the respondents having submitted their briefs as to the law and the facts in said proceeding, and the same having been argued before an examiner of the Commission, and the said examiner having made and presented to the Commission his proposed findings as to the facts, and the respondents having entered exceptions to said examiner's proposed findings as to the facts, and said exceptions having been duly argued before the Commission by counsel for the Commission and the respondents, the Commission makes this report and findings as to the facts and conclusions.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the Standard Car Equipment Co., one of the respondents, is a corporation organized and existing under and by virtue of the laws of the State of Delaware having its principal office and place of business at the city of Philadelphia, State of Pennsylvania; that the Standard Car Construction Co. is a corporation organized and existing under by virtue of the laws of the State of Delaware, having its works and place of business at the city of Masury, State of Ohio; that said corporations are now and were at

all times hereinafter mentioned, engaged in commerce among the several States and Territories of the United States, in the manufacture, sale, and leasing of tank cars, used for the transportation of oil, alcohol, acids and other liquid commodities.

PAR. 2. That within three years last past respondents, for the purpose and with the effect of unduly harassing and embarrassing a competitor in the manufacture, sale, and leasing of tank cars in commerce as aforesaid, maliciously enticed away employees of said competitor.

PAR. 3. That the Standard Car Equipment Co., one of the respondents, within the three years last past acquired information of trade secrets and business confidences of a competitor through and by a person formerly employed in a confidential capacity by said competitor, but now employed by the respondent, such information consisting, among other things, of a list of customers and prospective customers and data pertaining to such customers' leases and prospective leases, and that said respondent has used and is now using said information, thus acquired, in competition with said competitor.

CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts in paragraphs 2 and 3, and each and all of them are, under the circumstances therein set forth, unfair methods of competition in interstate commerce, in violation 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."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaint, herein, and the respondents, Standard Car Equipment Co. and Standard Car Construction Co., having entered their appearance by H. B. Gill, their attorney, and the Commission having offered testimony in support of its charges in the said complaint, and the respondents having offered testimony in the denial of said charges in said complaint, and the attorneys for the Commission and the re-

spondents having submitted their briefs as to the law and the facts in said proceedings, and the same having been argued before an examiner of the Commission, and said examiner having made and presented to the Commission his proposed findings as to the facts, and the respondents having entered exceptions to said examiner's proposed findings as to the facts, and said exceptions having been duly argued before the Commission by counsel for the Commission and the respondents, and the Commission on the date hereof having made and filed a report containing its findings as to the facts and conclusions that the respondents have violated 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," which said report is hereby referred to and made a part hereof: Therefore,

It is ordered, that the respondents, Standard Car Equipment Co. and Standard Car Construction Co., their officers and agents, cease and desist from—

1. Maliciously enticing away employees of the Petroleum Iron Works Co., Pennsylvania Tank Line, and Pennsylvania Tank Car Co.

2. Using information of trade secrets and business confidences of a competitor, such trade secrets and business confidences consisting of a list of customers and prospective customers and data pertaining to such customers' leases and prospective leases, which information was obtained by a person formerly employed in a confidential capacity by said competitors but now employed by the respondent.

FEDERAL TRADE COMMISSION *v.* CHESTER KENT
& CO., INC.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SEC-