v.

BROWN PORTABLE CONVEYING MACHINERY CO.

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

Docket 235.—November 29, 1919.

SYLLABUS.

Where an agent of a corporation engaged in the manufacture and sale of portable conveying machinery, while attempting to make sales, represented to customers and prospective customers of the corporation's competitors, without such corporation's knowledge, that—

(*a*) the corporation would, or was about to, institute legal proceedings for infringement of its letters patent by portable conveying machinery manufactured and sold by a competitor;

(*b*) a suit at law was pending which had been instituted by the corporation against one of its competitors for infringement of a patent owned and controlled by the corporation;

(*c*) a certain competitor was misleading its (the corporation's) competitors and customers and prospective customers by falsely stating to them that a certain Eugene Brown was the inventor of the portable elevator manufactured and sold by said competitor; and that

(*d*) said Brown was not the inventor of the machinery sold by such competitor and was not in any way connected with the manufacture of any elevator, but that he had been employed by such competitor since the corporation's patent was obtained;

Whereas, in fact—

(*a*) said Brown was the inventor of a portable warehouse elevator upon which letters patent duly issued to him, and for some years had been an officer of a corporation engaged in the manufacture and sale of portable conveying machines; and

(*b*) the suit referred to had been dismissed some three years before and no appeal prayed for or taken from such decision, nor any further proceedings instituted for the alleged infringement of said patent either by the corporation or its predecessor:

Held, That such false and misleading statements, 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 the Brown Portable Conveying Machinery Co., hereinafter referred to as the respondent, has been and is using unfair methods of competition in interstate commerce in violation 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 it appearing that a proceeding by it in respect thereto 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, Brown Portable Conveying Machinery Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at the city of Chicago, in said State, now and for

several years last past engaged in the manufacture, sale, and shipment of portable conveying machinery throughout the States of the United States, the Territories thereof, the District of Columbia, and foreign countries in trade competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, Brown Portable Conveying Machinery Co., in the conduct of its business manufactures the portable conveying machinery so sold by it in its factory located in the State of Illinois and purchases and enters into contracts of purchase for the necessary component materials needed therefor in the different States of the United States and foreign countries, transporting the same through other States of the United States in and to its factory aforesaid, where they are made and manufactured into the finished product and sold and shipped to the purchasers thereof; that after such machinery is so manufactured it is continuously moved to, from, and among other States of the United States, the Territories thereof, the District of Columbia, and foreign countries, and there is continuously and has been at all times hereinafter mentioned a constant current of trade and commerce in said portable conveying machinery between and among the various States of the United States, the Territories thereof, the District of Columbia, and foreign countries, and especially to and through the city of Chicago, State of Illinois, and therefrom to and through other States of the United States, the District of Columbia, and foreign countries.

PAR. 3. That the respondent, Brown Portable Conveying Machinery Co., during the three years last past, with the purpose, intent, and effect of stifling and suppressing competition in the manufacture and sale of portable conveying machinery in commerce aforesaid, has threatened certain of its competitors and the customers of its competitors with suits for infringement of respondent's alleged letters patent; that such threats were not made in good faith, and when so made respondent had no intention of instituting any such suits, and in fact has not instituted any such suits, and that the same were calculated and designed to and did hinder, em-

barrass, and restrain competitors of respondent in the conduct of their business.

PAR. 4. That the respondent, Brown Portable Conveying Machinery Co., its agents, servants, and employees, within the three years last past with the intent, purpose, and effect of stifling and suppressing competition in the manufacture and sale of portable conveying machinery in commerce aforesaid has held out, stated, and represented to the customers of its competitors that—

1. There was a suit at law pending which had been instituted by the respondent against a certain competitor for infringement of a patent alleged to be owned and controlled by the respondent;

2. A certain competitor of the respondent was misleading its competitors and the customers and prospective customers of the respondent by falsely and erroneously stating to such customers and prospective customers that one Eugene Brown was the inventor of the portable elevator manufactured and sold by said competitor;

3. The said Eugene Brown was not the inventor of the machinery sold by his company and was not in any way connected with the manufacture of any elevator, but that he had been picked up by the said competitor's company since respondent's alleged patent was obtained;

that such statements and representations were false and misleading and calculated and designed to and did hinder, embarrass, and restrain respondent's competitors and their customers and prospective customers in the conduct of their business.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint, wherein it is alleged that the above-named respondent, Brown Portable Conveying Machinery Co., has been and is violating section 5 of the Federal Trade Commission act, and said respondent having thereafter appeared and filed its answer admitting certain of the matters and

things as therein alleged and set forth and denying others contained therein, and thereafter having made and entered into an agreed statement of facts with Claude R. Porter, chief counsel of the said Commission, wherein it is stipulated and agreed that the Federal Trade Commission shall take such agreed statement of facts as the evidence in this case, and in lieu of testimony, and proceed forthwith upon the same to make and enter its report stating its findings as to the facts and its conclusions without the introduction of testimony or the presentation of argument, and the Commission having considered the same, and being duly advised in the premises, now makes and enters this, its report, stating its findings as to the facts and its conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Brown Portable Conveying Machinery Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at the city of Chicago, in said State, now and for several years last past engaged in the manufacture, sale, and shipment of portable conveying machinery throughout the various States of the United States and foreign countries in trade competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, Brown Portable Conveying Machinery Co., manufactures portable conveying machinery at its factory in Illinois out of materials it purchases in the different States of the United States and transports through other States of the United States in and to its factory in Illinois, and there makes and manufactures the same into finished product, and sells the machinery so manufactured to purchasers thereof; that after such machinery is so manufactured the same is continuously moved to, from, and among other States of the United States and foreign countries, and that there has been a constant current of trade and commerce in said machinery between and among the various States of the United States and foreign countries by respondent since July, 1912, and by its predecessor, the

Brown Portable Elevator Co. (an Oregon corporation) since 1907, and especially to and through Chicago, Ill., and therefrom to and from other States of the United States and foreign countries.

PAR. 3. That one Eugene Brown, of Colfax, State of Washington, is the inventor of a portable warehouse elevator, upon which the United States Patent Office on the 26th day of February, 1901, issued to him letters patent, the same being numbered 668971.

PAR. 4. That since the year 1912 the aforesaid Eugene Brown has been connected with, and is an officer of, the Colfax Manufacturing Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its principal office, factory, and place of business located at the town of Colfax, in said State, engaged in the business of manufacturing and selling portable conveying machines.

PAR. 5. That in the year 1915 the Brown Portable Elevator Co., part of whose assets the respondent herein thereafter acquired, instituted a proceeding in equity in the United States District Court of the District of Oregon against Interior Warehouse Co. to enjoin the infringement of the aforesaid patent, No. 668971, and thereafter, to wit, on August 7, 1916, the court dismissed the said proceeding, from which decision the respondent, Brown Portable Elevator Co., has neither prayed for or perfected an appeal either in law or equity, and that neither said Brown Portable Elevator Co. nor the respondent herein has since said date instituted any proceeding against any person, firm, copartnership, or corporation for the alleged infringement of said patent.

PAR. 6. That one Mailler Searles was within the three years last past the representative on the Pacific coast of the respondent herein, and as such representative, while selling and offering to sell portable conveying machines of the Brown Portable Conveying Machinery Co., and while attempting to make such sales, circulated reports among customers and prospective customers of competitors of the respondent—

1. That the respondent herein would or was about to institute legal proceedings for the infringement of letters patent upon portable conveying machinery manufactured and sold by a competitor;

2. That there was a suit at law then pending which had been instituted by the respondent against a certain competitor for infringement of a patent alleged to be owned and controlled by the respondent;

3. That a certain competitor of the respondent was misleading its competitors and the customers and prospective customers of the respondent by falsely and erroneously stating to such customers and prospective customers that one Eugene Brown was the inventor of the portable elevator manufactured and sold by said competitor;

4. That said Eugene Brown was not the inventor of the machinery sold by his company and was not in any way connected with the manufacture of any elevator, but that he had been picked up by the said competitor's company since respondent's alleged patent was obtained;

but that all of such representations were made without the knowledge of the respondent herein.

CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts in paragraph 6, 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 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."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein. and the respondent, Brown Portable Conveying Machinery Co., having entered its appearance and filed its answer and thereafter made and entered into an agreed statement of facts with Claude R. Porter, chief

counsel for the Federal Trade Commission, wherein it was stipulated and agreed that the said Commission should take such agreed statement of facts as the evidence in this proceeding and in lieu of testimony and proceed forthwith upon the same and enter its report stating its findings as to the facts and its conclusion without the introduction of testimony or the presentation of argument, and the Commission having made and filed its report containing its findings as to the facts and its conclusions that the respondent has 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: Now, therefore,

It is ordered, That the respondent, Brown Portable Conveying Machinery Co., of Chicago, State of Illinois, its officers, agents, servants, representatives, and employees cease and desist from directly or indirectly making statements or circulating reports among its customers and prospective customers and the customers and prospective customers of its competitors:

(1) That the respondent, Brown Portable Conveying Machinery Co. has or is about to institute legal proceedings for the infringement of letters patent upon portable conveying machinery manufactured and sold by Colfax Manufacturing Co., of the town of Colfax, State of Washington.

(2) That there is a suit at law pending which has been instituted by the respondent, Brown Portable Conveying Machinery Co., against Colfax Manufacturing Co., of the town of Colfax, State of Washington, for the infringement of a patent alleged to be owned and controlled by the said respondent.

(3) That the Colfax Manufacturing Co., of the town of Colfax, State of Washington, is misleading its competitors and the customers and prospective customers of the respondent, Brown Portable Conveying Machinery Co., by falsely and erroneously stating to such customers and prospective customers that one Eugene Brown was the inventor of the portable elevator manufactured and sold by said Colfax Manufacturing Co.

(4) That Eugene Brown, an officer of the Colfax Manufacturing Co., of the town of Colfax, State of Washington, is not the inventor of the machinery sold by his company and is not in any way connected with the manufacture of any elevator, but that he has been picked up by the said Colfax Manufacturing Co. since respondent's, Brown Portable Conveying Machinery Co.'s alleged patent was obtained.

FEDERAL TRADE COMMISSION

v.

WESTERN SUGAR REFINERY ET AL.