

FEDERAL TRADE COMMISSION

v.

THE OAKES COMPANY.

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

Docket 344.—September 9, 1920.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of fans for automobiles, motor trucks, and tractors, the largest output of which was of the cup-and-cone type, in competition with a concern similarly engaged, the largest output of which was a fan of the roller-bearing type,

- (a) Secured, through a detective whom it caused to be employed by said competitor, the names and addresses of persons to whom said competitor was shipping its product, the amount so shipped, and other information relative to its business;
- (b) Falsely represented to the trade that the roller-bearing type of fan costs less to manufacture than the cup-and-cone type and does not work satisfactorily; and
- (c) Manufactured and offered to the trade a fan similar to competitor's at a lower price, not in good faith for the purpose of sale, but solely to depreciate the value of its competitor's fan and induce the trade and the public to believe that said competitor was selling its fan at more than a fair price:

Held, That such course of conduct, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe, from a preliminary investigation made by it, that The Oakes 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 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 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, The Oakes Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, having its principal office and place of business at the city of Indianapolis, in said State, and is now, and

at all times hereinafter mentioned has been, engaged in the manufacture and sale of pressed steel fans for automobiles, trucks, and tractors among the several States and Territories of the United States and the District of Columbia in direct competition with other persons, firms, copartnerships, and corporations similarly engaged; and there is continuously, and has been at all times hereinafter mentioned, a constant current of trade and commerce in said products between and among the various States and Territories of the United States and the District of Columbia, and especially to and through the city of Indianapolis, State of Indiana, and therefrom to and through other States and Territories of the United States and the District of Columbia.

PAR. 2. That the respondent, The Oakes Co., for more than one year last past, with the effect of hindering and embarrassing competitors in the conduct of their business and suppressing competition, has engaged the services of a private detective agency to spy upon the business of one of its competitors, said detective agency at the request and solicitation of respondent placing its operatives in the manufacturing plant of said competitor, and making daily reports to respondent of the names and addresses of customers of said competitor, amount of goods shipped, and other trade secrets and information belonging to and concerning the business of said competitor.

PAR. 3. That respondent, The Oakes Co., for more than one year last past attempted to induce a certain manufacturer to refrain from selling its products to a competitor of respondent, by statements to the said manufacturer that a salesman of said manufacturer was selling supplies to the competitor of respondent at too low a price and by intimating that there was collusion between the salesman and said competitor; and by threats that if said manufacturer continued selling respondent's competitor at such prices, that respondent would engage in the same line of business as said manufacturer; all with the purpose of cutting off the source from which said competitor obtained supplies, and with the effect of stifling and suppressing competition, and with other effects.

PAR. 4. That respondent, The Oakes Co., until recently has manufactured exclusively an automobile fan known in the trade as the cup-and-cone type of fan; that a certain competitor of respondent manufactures exclusively what is known as the roller-bearing type of fan, of which respondent was well aware; that it costs less to manufacture the cup-and-cone type of fan than it does the roller-bearing type of fan; that, with the purpose and effect of putting its competitor out of business, respondent thereafter began the manufacture of the roller-bearing type of fan, and has through its sales-

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men, agents, and other means represented to the trade that it costs less to manufacture the roller-bearing type of fan than it does the cup-and-cone type, such representations being false and misleading and made with the intent and purpose of depreciating the value of the roller-bearing fan in the opinion of the trade and causing the public to believe that its competitors who manufacture the roller-bearing type of fan are selling the same at more than a fair price.

PAR. 5. That respondent, the Oakes Co., until recently has manufactured exclusively an automobile fan known in the trade as the cup-and-cone type of fan; that a certain competitor of respondent manufactures exclusively what is known as the roller-bearing type of fan, of which the respondent was well aware; that it costs less to manufacture the cup-and-cone type of fan than it does the roller-bearing type of fan; that with the purpose and effect of putting its competitor out of business respondent thereafter began the manufacture of a roller-bearing fan, and has through its salesmen, agents, and other means offered to sell, and does sell, said roller-bearing type of fan for considerably less than the cup-and-cone type, and has offered to sell, and does sell, said roller-bearing type of fan at less than cost.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, The Oakes Co., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered its appearance by its attorneys, Gavin & Gavin, and filed its answer herein, hearings were had and evidence was thereupon introduced in support of the allegations of said complaint and on behalf of the respondent in support of its answer before an examiner of the Federal Trade Commission theretofore duly appointed.

And thereupon this proceeding came on for final hearing, and the Commission, having heard argument of counsel and duly considered the record, and being now fully advised in the premises, makes this its findings as to the facts and conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent is and was at the times mentioned in the complaint a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, having its principal office and factory in the city of Indianapolis, in said State, and is and was at all of said times engaged in manufacturing radiator fans for

automobiles, motor trucks, and tractors, and in selling and transporting its product in and among the several States of the United States and foreign countries.

PAR. 2. All of respondent's products, whether intended for interstate shipments or intrastate shipments, are and were at all of said times delivered f. o. b. cars at Indianapolis, Ind., and are and were so delivered by respondent to such carriers to be transported and delivered by such carriers to the purchasers in the State of Indiana and in other States of the United States.

PAR. 3. The Automotive Parts Co. is a corporation organized under the laws of the State of Indiana, having its office and factory in the city of Indianapolis, in said State, and is and has been since the month of February, 1918, engaged in manufacturing radiator fans for automobiles, motor trucks, and tractors, 85 per cent of which fans are of the roller-bearing type of fan equipped with Hyatt roller bearings. Its product is sold and transported into every State of the United States and into Canada and Australia.

PAR. 4. The respondent manufactures several types of fans for automobiles, motor trucks, and tractors; that is to say, hub-driven fans, shaft-driven fans, ball-bearing fans, plain bearing fans, and Timkin fans, its largest output being a type of fan known to the trade as the cup-and-cone fan.

PAR. 5. During the month of April, 1918, respondent hired and caused to be placed in the manufacturing plant of the Automotive Parts Co. a detective; that such detective applied to the superintendent of the Automotive Parts Co., and was hired as an employee of that company, and remained with the Automotive Parts Co. and worked in its plant continuously until about September 14, 1918, at which time it was discovered that he was in fact a detective in the employ of respondent, and was thereupon discharged by the Automotive Parts Co.

PAR. 6. During the months of August, September, and a part of the month of October, 1918, said detective made reports two or three times weekly, either to the respondent or to the Webster Detective Agency, with which he was connected, which reports were forwarded by said detective agency to respondent. These reports, among other information relative to the business of the Automotive Parts Co., contained the names and post-office addresses of the persons to whom the Automotive Parts Co. was shipping its product and the amount of such products shipped to each person.

PAR. 7. Said detective at the time he applied to the Automotive Parts Co. for employment asked to be assigned to a position on what is known as the assembly bench, and was given such position. The

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assembly bench is the place where the fans manufactured by the Automotive Parts Co. are prepared for shipment. After the fans are assembled they are placed on the floor a few feet from the assembly bench in the same room, and are there packed in boxes or crated for shipment, and marked with the name and post-office address of the purchaser. The packing and marking is done within the view of persons working at the assembly bench, and said detective frequently examined the boxes in which the fans were packed, and saw the names and post-office addresses of the purchasers.

PAR. 8. After said detective was discharged from the employ of the Automotive Parts Co. (Sept. 14, 1918), he hired one John Davis, an employee of the Automotive Parts Co., to furnish him with information as to the materials which came into and which went out of the plant of the Automotive Parts Co., and also the names and post-office addresses of the persons to whom the Automotive Parts Co. shipped its product. Said detective paid said John Davis for such services each night as the information was delivered.

PAR. 9. Respondent claims that there was a "leak" in its office by which the Automotive Parts Co. was obtaining information as to its business and that the detective was placed in the plant of the Automotive Parts Co. for the purpose of discovering such "leak."

PAR. 10. Louis Schwitzer is and has been since its organization the president of the Automotive Parts Co. He was, from October 1, 1916, to February 16, 1918, engineer and productive manager of respondent, and designed the roller-bearing type of fan manufactured by the Automotive Parts Co. He is an Austrian by birth and at the time of the hearing in this proceeding was not a citizen of the United States.

PAR. 11. The roller-bearing type of fan as manufactured by the Automotive Parts Co. costs approximately 48 cents more to manufacture than the cup-and-cone type of fan.

PAR. 12. The roller-bearing type of fan as made by the Automotive Parts Co. satisfactorily performs the work for which it was designed.

PAR. 13. Respondent has represented to the trade that the roller-bearing type of fan costs less to manufacture than the cup-and-cone type of fan and that the roller-bearing type of fan would not work satisfactorily.

PAR. 14. Respondent makes and offers to the trade a roller-bearing type of fan similar to the fan manufactured by the Automotive Parts Co. and offers it at a price less than the price charged by the Automotive Parts Co.

PAR. 15. Respondent does not offer its roller-bearing fan to the trade in good faith for the purpose of selling it, but solely for the

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purpose of depreciating the value of the roller-bearing type of fan as manufactured by its competitor and inducing the trade and the public to believe that its competitor is selling its roller-bearing type of fan at more than a fair price.

CONCLUSIONS.

The several acts and conduct of the respondent as set forth in the foregoing findings as to the facts are, and each of them is, in the circumstances therein set forth, violations 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 the methods of competition set forth in said findings are, and each of them is, in the circumstances therein set forth, unfair methods of competition in interstate commerce.

ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, and the respondent, The Oakes Co., having entered its appearance by Gavin & Gavin, its attorneys, and having served and filed its answer to said complaint, and testimony having been taken in support of said complaint and on behalf of said respondent in support of its answer, and the Commission having made its findings as to the facts and its conclusions in this proceeding, and 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: Therefore,

It is hereby ordered, That the respondent, The Oakes Co., its officers, agents, servants, and employees, cease and desist from placing or causing to be placed in the manufacturing plant of the Automotive Parts Co. a detective or detectives, or any other person, agent, or employee of the respondent, for the purpose of ascertaining any information relative to the business of said Automotive Parts Co., and particularly the names and post-office addresses of the persons to whom the Automotive Parts Co. ships its product and the amount of such product shipped to each such person, and from practicing any system of espionage upon the business of said Automotive Parts Co.

It is further ordered, That within 60 days from the date of the service of this order upon you you report to the Commission how and in what manner you have complied with the terms of this order.

Complaint.

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FEDERAL TRADE COMMISSION

LEWIS PELSTRING.