

Complaint.

FEDERAL TRADE COMMISSION

v.

CHAMPION BLOWER & FORGE COMPANY.

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

Docket 513.—November 30, 1920.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of blowers, forges, and drills,

- (a) Circulated and displayed in its catalogues cuts of certain unpatented machines in its "400" line of blowers and forges, with statements that the machines were patented, and a list of numbers of certain expired patents; thereby tending to mislead and deceive the public into believing that the machines were still protected by patents;
- (b) Falsely wrote a wholesaler that said line was fully protected by patents, stating that it had secured a verdict against a competitor for infringement; thereby inducing him to cease buying said competitor's forges and drills; and
- (c) Falsely stated to another wholesaler, and thereby misled him to believe that all its products and particularly its "400" line of blowers and forges and "200" line of drills were covered by patents, which he would infringe by dealing in said competitor's corresponding products:

Held, That such misrepresentations, under the circumstances set forth, constituted unfair methods of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Champion Blower & Forge Co., hereinafter referred to as the 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 Champion Blower & Forge Co. is now, and, at all times hereinafter mentioned was, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, having its principal office and place of manufacture in the city of Lancaster, in said State, and is now and for more than

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a year last past has been engaged in the manufacture and sale of blowers, forges, drills, and other like machinery, and in the shipment thereof from the city of Lancaster, in the State of Pennsylvania, to purchasers in other States of the United States, in direct competition with other individuals, copartnerships and corporations similarly engaged.

PAR. 2. That the respondent, its officers, agents, servants, and employees, in connection with the manufacture and sale of blowers, forges, drills, and other like machinery, in interstate commerce as aforesaid, for more than a year last past have threatened and are threatening to institute, against customers of its competitors, suits for alleged infringements of patents of the respondent; that said threats of litigation, on account of such alleged infringement of patents, are couched in vague, indefinite, and general terms, and are not made in good faith, but are made with the intent, purpose, and effect of intimidating customers of competitors, so that said customers will cease to purchase competitors' goods, and that the effect of such threats and intimidations, made in bad faith as aforesaid, has been and is to embarrass said competitors.

PAR. 3. That the respondent, in the manufacture and sale of blowers, forges, drills, and other like machinery, in interstate commerce as aforesaid, for more than a year last past has caused the word "Patented" to be imprinted upon its said products, and statements to that effect, together with a list of numbers of United States patents purporting to cover said products of respondents, to be printed in its catalogues in connection with the illustration and description of its products, for the purpose, and with the effect of causing the purchasing public to believe that said products are covered by letters patent of the United States, owned and controlled by the respondent, whereas, in truth and fact, said patents have long since expired and have no legal force or effect.

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 respondent, Champion Blower & Forge Co., had been and then was 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 respondent having entered its appearance by attorneys, and having duly filed its answer, admitting certain of the allegations of the said complaint, and denying certain others thereof; and thereafter testimony having been taken before B. L. Shinn, an examiner for the Federal Trade Commission, in New York, N. Y., on April 22, 1920; and thereafter the attorneys for both parties having signed and filed an agreed statement of facts wherein and whereby it was stipulated and agreed that said agreed statement of facts, together with the testimony taken at the said hearing before the said examiner, should be taken as the evidence in this case and in lieu of further testimony, and that the Commission should forthwith proceed upon such agreed statement of facts and the record of said hearing, to make and enter its report, stating its findings as to the facts and its conclusion, and an order disposing of the proceeding; and the Commission having duly considered the same and being fully advised in the premises, makes this its report and findings of facts and conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondent is now, and at all times hereinafter mentioned has been, a corporation, organized and existing under and by virtue of the laws of the State of Pennsylvania, having its principal office and place of manufacture in the city of Lancaster, in said State; and respondent is now, and at all times hereinafter mentioned has been, engaged in the manufacture and sale of blowers, forges, drills, and similar machinery, and in the shipment thereof from Lancaster, Pa., to the purchasers thereof in other States of the United States; that respondent has been and is in direct competition with other individuals, copartnerships, and corporations similarly engaged, and particularly in direct competition with the Buffalo Forge Co., of Buffalo, N. Y., said Buffalo Forge Co. being also engaged in the manufacture of similar machinery, and in the shipment and sale thereof in interstate commerce.

PAR. 2. That some of the machines so manufactured and sold by the respondent as aforesaid, had become known to the trade and purchasing public as the respondent's "400" line of blowers and forges, and others as respondent's "200" line of drills; that the said Buffalo Forge Co. manufactures and sells a line of blowers and forges similar to the No. "400" line of blowers and forges so manufactured and sold by respondent as aforesaid, and that said Buffalo Forge Co. manufactures and sells a line of drills similar to the No. "200" line of drills so manufactured and sold by respondent as aforesaid.

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PAR. 3. That respondent has been and still is the owner of certain patents, under which it has been operating in the manufacture and sale of the machines aforesaid; that among such patents, which pertain to the "400" line of blowers and forges, are a number which have expired, to-wit, patents numbered 676322, 676323, and 676324, dated June 11, 1901, and No. 697629, dated April 15, 1902, and design patents, Nos. 34880, 34881, 34882, 34883, 34884, and 34885, dated July 30, 1901; that among such patents, under which respondent has been operating in the manufacture and sale of its "400" line of blowers and forges, as aforesaid, are a number which have not expired, namely, No. 804860, dated November 21, 1905; No. 869247, dated October 29, 1907; No. 874893, dated December 24, 1907; and No. 1221187, dated April 3, 1917; that such patents now subsisting do not cover several of the machines in the "400" line of blowers and forges aforesaid, and several of such "400" blowers and forges are not covered nor affected in any manner whatsoever by any valid subsisting patent.

PAR. 4. That respondent issued a printed catalogue during the years 1918 and 1919, which catalogue was called its "1918 catalogue"; that said catalogue was distributed to respondent's customers and prospective customers and the purchasing public generally; that said catalogue contained cuts or pictures of certain machines, in the so-called "400" line of blowers and forges, which machines are not now and were not during such years, covered or affected by any valid subsisting patent, with the exception of patent No. 697629, for a combined gearing and casing, which patent expired April 15, 1918, and prior to the wrongful acts of respondent hereinafter set forth; that in connection with said cuts or pictures statements were made in said catalogue that such machines were "patented," and a list of numbers of patents was also given, said numbers being the numbers of the aforesaid patents which had expired; all of which purported to show that such machines were and are still patented, and tended to mislead and deceive the public into the belief that said machines of the so-called "400" line, were protected by letters patent.

PAR. 5. That respondent by its treasurer, Charles B. Long, informed the Fairbanks Co., a wholesale distributor and jobber of New York, N. Y., by letter dated July 22, 1919, as follows: .

Please be advised that we retain in active condition, design patents covering every portion of our No. "400" blower—not to mention the trade-mark "No. 400," all of which are in active condition and which must be respected."

And also informed the Fairbanks Co. aforesaid, by letter dated July 15, 1919, that respondent had secured a verdict in its favor, after suit had gone through the patent courts, against the Buffalo Forge

Co., of Buffalo, N. Y., for infringements of respondent's patents on the No. "400" blower and forge line; that such letters induced the Fairbanks Co. aforesaid to cease buying the forges and drills of the Buffalo Co. and that the Fairbanks Co. aforesaid instructed its branch houses to cease buying the Buffalo Co.'s forges and drills similar to the "400" line of forges and "200" line of drills made by the respondent, said action on the part of the Fairbanks Co. aforesaid being taken in July, 1919; that the Fairbanks Co. aforesaid had theretofore bought such blowers and forges and drills from both the Buffalo Forge Co. and the respondent, and had done a considerable business with the Buffalo Forge Co. in such products; that such statements given to the Fairbanks Co. as aforesaid were false and misleading, inasmuch as there was a considerable part of respondent's "400" line of blowers and forges which were not covered by any valid and subsisting patents.

PAR. 6. That in May, 1919, respondent's president, Henry B. Keiper, with the ostensible purpose of warning against infringement of certain patents on certain drills manufactured and sold by respondent, called upon certain of the officers of the Baker, Hamilton & Pacific Co., a wholesale distributor and jobber of San Francisco, Calif., and by his, the said Keiper's, statements and conduct induced the said officers to believe that respondent's patents covered all the products manufactured by it, and especially the "400" line of blowers and forges and the "200" line of drills, and to believe that it, the said Baker, Hamilton & Pacific Co., would infringe said patents if it handled any of the blowers and forges and drills manufactured by the aforesaid Buffalo Forge Co. That thereafter, when requested so to do by one C. F. Sharrocks, the manager of the purchasing department of the said Baker, Hamilton & Pacific Co., by letters dated June 15, 1919, July 14, 1919, and August 21, 1919, said Keiper refused to indicate what products of the said Buffalo Co. infringed any of the patents on the products of respondent, or to answer any questions in regard to same. That said conduct and statements of said Keiper were false and misleading inasmuch as there was a considerable part of respondent's "400" line of blowers and forges which were not and are not now covered by any valid, subsisting patent or patents.

CONCLUSIONS.

Under the conditions and circumstances set forth in the foregoing findings of facts, the acts and practices of the respondent constitute 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."

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ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein; and the respondent, Champion Blower & Forge Co., having entered its appearance by its attorneys, Julian C. Dowell, Esq., and Thurman, Bulkley & Quigley, duly authorized and empowered to act in the premises; and having filed its answer; and thereafter testimony having been taken before an examiner for the Federal Trade Commission on April 22, 1920, in New York, N. Y.; and thereafter an agreed statement of facts having been executed by counsel for the respondent and counsel for the Commission, which agreed statement of facts has been filed in this said cause, it being stipulated and agreed therein that the Federal Trade Commission shall take such agreed statement of facts, together with testimony taken at said hearing in New York City, as the evidence in this case; and the Federal Trade Commission having made and entered its report, stating its findings as to the facts, and its conclusions that the respondent has violated section 5 of the Federal Trade Commission act, which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, its officers, directors, members, representatives, agents, and servants cease and desist:

1. From stating or holding out to the public, or any member, thereof, that respondent owns or controls any valid subsisting patent or patents, when it in truth has no such patent or patents, or when, if it at any time had such patent or patents, the same has or have expired.

2. From threatening to bring any action at law or suit in equity against any person, copartnership, or corporation, for the alleged infringement of any patent or patents upon any of its products, unless:

- (a) Respondent owns or controls a valid subsisting patent or patents, which it in good faith believes to be actually infringed by the party so threatened; and

- (b) Respondent clearly and plainly sets forth, in the course of such notice, the specific patent or patents which respondent in good faith believes to be actually infringed by the person, copartnership, or corporation so threatened; and, at the same time, clearly and plainly sets forth the nature and respect of such alleged infringement; and

- (c) Respondent has at such time a bona fide intention to institute the threatened action at law or suit in equity against the person, copartnership, or corporation so threatened in case the alleged infringement continues; and, in case the alleged infringement continues, does actually bring such action at law or suit in equity against the person,

copartnership, or corporation so threatened, with reasonable expedition thereafter, and with all reasonable expedition prosecutes such action or suit to a final judgment or decree.

3. From stating in its catalogues, advertisements, or other printed matter, distributed or displayed to the public, that any of its products is "patented" unless such product, or some essential part thereof, is actually covered by a valid subsisting patent owned or controlled by respondent; *Provided*, That this shall not prevent respondent from making such statements as aforesaid in connection with any of its products upon which, or upon any essential part of which, letters patent have been issued and have expired, if the fact that such patent has expired be clearly and plainly indicated in connection with such statement in such catalogue, advertisement, or other printed matter.

It is further ordered, That the respondent shall file with the Commission within 90 days from the date of this order its report in writing, stating in detail the manner and form in which this order, and in particular paragraph 3 of this order, has been conformed to, and shall attach to such report true copies of all catalogues, advertisements, or other printed matter, distributed or displayed to the public by respondent, subsequent to the date of this order, in which any statement is made in respect to any patent or patents owned or controlled by the respondent.

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