

Complaint.

FEDERAL TRADE COMMISSION

v.

DR. HERMAN HEUSER.

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

Docket 950—December 19, 1923.

SYLLABUS.

Where the owner of patents covering a process for the manufacture of non-alcoholic beer wrote numerous letters notifying various concerns that they were operating under a process infringing his patents, advising them to discontinue the use thereof, and threatening legal proceedings to enforce such discontinuance and the payment to him of the profits derived from the use thereof, without in fact taking any such steps except in the case of two suits instituted more than a year after the sending of the above letters, and after the service of complaints upon him grounded upon the aforesaid course of conduct:

Held, That such threats against the customers or licensees of a competitor, under the circumstances set forth, constituted an unfair method of competition.

Mr. W. T. Roberts for the Commission.

Mr. George A. Chritton of Dyrenforth, Lee, Chritton and Wiles, Chicago, Ill., for respondent.

COMPLAINT.¹

Acting in the public interest pursuant to the provisions 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," the Federal Trade Commission charges that Dr. Herman Heuser, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. The Baltimore Process Co. is a corporation engaged in the manufacture and sale of non-alcoholic beverages, with its principal place of business located in the city of Baltimore, State of Maryland. In the course of its business the said Baltimore Process Co. causes the products manufactured by it to be transported from its place of business in the city of Baltimore, State of Maryland, to the purchasers thereof located in other States and in the conduct

¹ As amended.

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of such business is in direct and active competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. The said Baltimore Process Co. is the owner of certain letters patent issued to Alexander L. Straus in November, 1917, by United States Patent Office for the manufacture of certain non-alcoholic beverages and in the course of its said business it licenses other brewers and manufacturers located in several States of the United States to manufacture and sell non-alcoholic beverages under said letters patent, and said brewers and manufacturers, licensees, in the course of their business cause the non-alcoholic beverages so manufactured by them under such licenses to be transported from their places of business in the several States to the purchasers thereof located in States other than the places of manufacture, and in the conduct of said business are in direct and active competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. The said respondent, Dr. Herman Heuser, located at 29 South La Salle St., Chicago, Ill., was granted letters patent by United States Patent Office in May, 1919, for a process for the manufacture of certain non-alcoholic beverages and for a number of years thereafter licensed brewers and manufacturers located throughout the several States to manufacture and sell said non-alcoholic beverages under said letters patent. Pursuant to the license agreement entered into between said respondent, Dr. Herman Heuser, licensor, and said brewers and manufacturers, licensees, the said brewers and manufacturers cause the non-alcoholic beverages manufactured by them to be transported from their places of business in the several States to the purchasers thereof located in States other than the places of manufacture and in the conduct of said business are in direct and active competition with other persons, partnerships and corporations similarly engaged, including the said Baltimore Process Co. and the brewers and manufacturers who are manufacturing and selling non-alcoholic beverages as licensees under said letters patent owned by the said Baltimore Process Co.

PAR. 4. The said respondent, Dr. Herman Heuser, on June 13, 1921, and September 19, 1921, caused a letter of warning to be sent to licensees of the said Baltimore Process Co., advising them that the process they were using in the manufacture of their said non-alcoholic beverages, made under licenses granted to them by said Baltimore Process Company, was an infringement of certain patents owned by the said respondent, Dr. Herman Heuser, and threatening that unless the said brewers and manufacturers discontinued the use of the said process owned by the said Baltimore Process Co., legal

steps would be taken to compel them to discontinue the use of said process and to enforce the payment to the said respondent, Dr. Herman Heuser, of profits resulting from said use.

PAR. 5. The sending of the aforesaid letter of warning by the said respondent, Dr. Herman Heuser, in the manner and form and under the circumstances above set forth, was calculated to bring, and had the capacity and tendency of bringing the patented process of the said Baltimore Process Co. under suspicion among the brewers and manufacturers so notified as possible infringement of said letters patent owned by the said respondent, Dr. Herman Heuser; and by causing the fear of a possibility of incurring liability to said respondent in the premises, tended to intimidate and coerce said brewers and manufacturers into discontinuing the use of the process owned by the said Baltimore Process Co. and in some instances to use instead the process patented by the said respondent, Dr. Herman Heuser, and now owned by the United States Process Corporation, a corporation which was organized in January, 1922, by the said Dr. Herman Heuser and to which he assigned the said letters patent.

PAR. 6. The letters of warning and threats to sue by respondent as set out in paragraph 4 of this complaint charged that the preparations manufactured and sold by the persons holding licenses from the Baltimore Process Co. were infringements of patents held by the said respondent, such threats not being made in good faith intending to bring such suits, but for the purpose of injuring said competitors and of intimidating them, their agents, customers and prospective customers, and causing them to cease to operate under the licenses issued to them by the said Baltimore Process Co.

PAR. 7. The foregoing acts and things done by said respondent are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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, Dr. Herman Heuser, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered his appearance and filed his answer herein, hearings were had before Mr. Web Woodfill, an ex-

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aminer of the Federal Trade Commission theretofore duly appointed, at which hearings evidence was introduced in support of the allegations of said complaint and on behalf of the respondent. This proceeding coming on for final hearing and the Commission having heard argument of counsel, and having duly considered the record, and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondent, Dr. Herman Heuser, is a resident of the city of Chicago, State of Illinois, and has been for more than five (5) years last past; that the said respondent was granted certain letters patent by the United States Patent Office for a process for the manufacture of non-alcoholic beer, said letters patent being of number, subject-matter, and date as follows:

No. 1302550, manufacture of non-alcoholic hopped beverages, patented May 6, 1919.

No. 1308588, preparation of alcoholic reduced beer, patented July 1, 1919.

No. 14889, manufacture of alcoholic reduced beer, reissued, June 22, 1920.

That on January 3, 1922, the said respondent transferred and assigned the above mentioned letters patent to the United States Process Corporation, a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, having its principal office in the city of Chicago; that said United States Process Corporation under and by virtue of the above-named patents, licenses brewers and manufacturers located in the various States of the United States to manufacture, and sell non-intoxicating, hopped beverages to licensees under said above-named letters patent; that the said United States Process Corporation is controlled by the said respondent and as licensor receives as royalty from the above-mentioned licensees for the right to operate under aforesaid letters patent, the sum of twenty-five cents per barrel of thirty-one gallons of beer manufactured under said license; that the above-mentioned brewers, licensees, caused the said hopped beer so manufactured by them to be transported from the different places of manufacture through and into various other States of the United States, to purchasers located in the various other States as aforesaid; that the said brewers, manufacturers and licensees in causing their product to be transported as herein set out, are in direct competition with other persons, firms and corporations similarly engaged, including brewers, manufacturers and licensees who are manufacturing and selling

non-alcoholic beverages under letters patent owned by the Baltimore Process Co., of the city of Baltimore, State of Maryland, which letters patent were originally procured by, and issued to Alexander L. Strauss, of the city of Baltimore, and by him transferred to the Baltimore Process Co., a corporation having its principal office in the city of Baltimore, in the State of Maryland.

PAR. 2. That the said Baltimore Process Co. is now, and for several years past has been engaged in the manufacture of certain materials which are used in the manufacture of non-intoxicating beer, which product, so manufactured is placed in barrels, sold and shipped under the name of Baltimore Process Concentrates to a great many different purchasers located in a large number of the States of the United States, which said product has been for several years sold in large quantities and shipped in interstate commerce as aforesaid; that the said Baltimore Process Company receives from the above-mentioned licensees and purchasers of said product the sum of eleven cents per pound in carload lots, and thirteen cents per pound for less than carload lots for the product manufactured under said above-mentioned letters patent. That the said product known as Baltimore Process Concentrates, is used in the manufacture of non-intoxicating beer according to the formula and process set out and described in the letters patent procured by the said Alexander L. Strauss, and now owned and controlled by the Baltimore Process Company.

PAR. 3. The letters patent secured by Alexander L. Strauss, and now owned and controlled by the Baltimore Process Company, are set out and described as follows:

(1) An application filed February 23, 1917, on which letters patent issued April 17, 1917.

(2) An application for reissue filed August 4, 1917, and the re-issued letters patent granted on this application, November 6, 1917, on which patent issued May 7, 1918.

(4) An additional application was filed on November 14, 1919, 1917.

(3) An application for improvements in the process of mak-

All these letters patent set out in detail the method employed by Alexander L. Strauss in the manufacture of this product.

on which letters patent issued April 13, 1920.

PAR. 4. The respondent, on June 13, 1921, and again on September 19, 1921, caused a large number of letters to be sent to various persons, firms and corporations located in different States, notifying them that they were operating under a process for the manufacture

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of near beer, which process, so used, constituted an infringement of patents held by the said respondent, naming the patents by number, which are heretofore set out and described, said patents being held by, and the property of, the said respondent; that the said attorneys on behalf of the said respondent advised the said licensees of the said Baltimore Process Company and others to discontinue the use of the said process. That on failure of the said licensees and others so to do, said attorneys, on behalf of the said respondent, would take legal steps to compel discontinuance thereof, and force payment to the said respondent of the profits derived by said licensees from the use of the said process. That among the persons, firms and corporations receiving the above-mentioned letters were the F. W. Cook Company of Evansville, Indiana, and Schmich Brothers of Freeport, Illinois; that at the time the said F. W. Cook Company received the said letter, as aforesaid, they advised the respondent's attorneys in answer to said letter that they were not using the Baltimore Process Company's product or process, and that they had not used same for more than one year previous to the receipt of said letter; that at the time the said Schmich Brothers received said letter as heretofore set out, they had ceased manufacturing near beer and were using no process of any kind.

PAR. 5. That on December 16, 1922, the Federal Trade Commission issued a complaint against the said respondent and notice of service of said complaint issued on same date and was received by respondent, in Chicago, on December 18, 1922, and respondent filed his answer in the Federal Trade Commission office on January 10, 1923. Following the filing of this complaint against respondent on January 25, 1923, the respondent filed suit against F. W. Cook Company in the United States District Court, district of Indiana, in the name of the United States Process Corporation.

On February 2, 1923, the Federal Trade Commission issued an amended complaint, the same being the complaint under which the testimony in this case was taken, and notice of service of said amended complaint issued on the same date, and the notice of service and copy of the complaint were received by the respondent, in Chicago, on February 5, 1923, and he filed his answer in the Federal Trade Commission office on February 14, 1923. Following the issuing of this amended complaint, the respondent, on the 6th day of February, 1923, caused the United States Process Corporation to file a suit against Matthias Schmich and George Schmich, doing business under the firm name of Schmich Brothers, in the United States District Court of the Northern District of Illinois, Western Division. This suit, as well as the suit against the F. W. Cook Company before

mentioned, charges that the defendants were infringing the letters patent granted to Herman Heuser, before set out and described, which letters patent were alleged at that time to be held and owned by the United States Process Corporation. At the time evidence was taken before an examiner of the Commission under this complaint both of said suits were still pending. The two suits mentioned and described in this paragraph are the only suits filed by the respondent or the United States Process Corporation for alleged infringement of the patents issued to the said respondent.

CONCLUSION.

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings are unfair methods of competition in interstate commerce, and constitute a violation 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.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, and the testimony and evidence received by the examiner of the Commission, and the Commission having made its findings as to the facts and its conclusion that the respondent, Dr. Herman Heuser, has violated the provisions 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,"

It is now ordered, That respondent, Dr. Herman Heuser, his servants, agents, representatives and employees, cease and desist from directly or indirectly,

Threatening, by letters or otherwise to institute suits against manufacturers of non-alcoholic beer, for the infringement of the process claimed in respondent's letters patent, without in good faith intending to institute such suit or suits, and in fact following up such threat, or threats, with suit, or suits, brought within a reasonable time, unless such acts shall be desisted from.

It is further ordered, That respondent, within sixty (60) days after the service upon him of this order, shall file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist heretofore set forth.

Dissent.

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MEMORANDUM OF DISSENT BY COMMISSIONER VAN FLEET.

I do not believe the necessary element of public interest exists in this case. This is not on account of the nature of the case. An often used method by those seeking the elimination of competition has been to harass weak competitors by threats of patent litigation. But in this case it would appear that applicant and respondent are equally matched and the controversy is a private one which they may settle and which will ultimately be settled in the litigation now pending.

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