IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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BRIGGS & STRATTON CORP.,

Plaintiff,

v.

KOHLER CO.,

Defendant.

OPINION AND ORDER

05-C-0025-C

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In this patent infringement suit, plaintiff Briggs & Stratton Corp. accuses defendant Kohler Co. of manufacturing and selling a single-cylinder internal combustion engine that infringes plaintiff's U.S. Patents Nos. 6,382,166 and 6,460,502. In response to the lawsuit, defendant has filed six counterclaims, alleging noninfringement, patent invalidity, violations of 15 U.S.C. §§ 1 and 2 of the Sherman Act, Wisconsin antitrust laws, Wis. Stat. §§ 133.03, 133.04, 133.04, 133.14 and 133.18, and Wisconsin common law of unfair competition. Now before the court is plaintiff's motion to dismiss defendant's antitrust and unfair competition counterclaims. Jurisdiction is present. 28 U.S.C. §§ 1331 and 1338.

The crux of plaintiff's motion is whether defendant's counterclaims meet the liberal pleading standards under Fed. R. Civ. P. 8(a). Plaintiff argues that because defendant has

alleged no injury to the competitive process and because it fails to plead the elements of any recognized federal or state antitrust claim, this court should grant plaintiff's motion to dismiss defendant's antitrust and unfair competition counterclaims under Fed. R. Civ. P. 12(b)(6). In the alternative, plaintiff asks the court to sever the patent claims from the antitrust claims pursuant to Rule 21. In response, defendant contends that its counterclaims meet the notice pleading requirements of Rule 8(a) and that the court can meet plaintiff's concerns about delay, increased complexity of trial and juror confusion by bifurcating the patent and antitrust cases under Rule 42(b), rather than severing them under Rule 21. Because defendant's counterclaims meet the minimal pleading requirements of Rule 8(a), I will deny plaintiff's motion to dismiss. In addition, because both parties agree to bifurcation of the patent and antitrust cases, I will deny plaintiff's motion to sever the antitrust claims under Rule 21 and bifurcate the cases pursuant to Rule 42(b).

For the sole purpose of deciding the motion to dismiss, I find that the well-pleaded allegations of plaintiff's complaint and defendant's answer fairly allege the following.

ALLEGATIONS OF FACT

A. Factual Allegations of Complaint

Plaintiff Briggs & Stratton Corporation and defendant Kohler Co. are competitors in the market for the manufacture and sale in the United States of engines used in consumer

lawn tractors.

On May 7, 2002, the U.S. Patent and Trademark Office issued U.S. Pat. No. 6,382,166 (the '166 patent) to Daniel L. Klika and John H. Thiermann for an invention entitled "Balancing System Using Reciprocating Counterbalance Weight." On October 8, 2002, the United States Patent and Trademark Office issued U.S. Pat. No. 6,460,502 (the '502 patent) to Gary J. Gracyalny for an invention entitled "Engine Cylinder Head Assembly." By virtue of assignment, plaintiff acquired and continues to maintain all rights, title and interest in the '166 and '502 patents.

Without the permission of plaintiff, defendant manufactures, sells and offers for sale deliberately and willfully in the United States a single-cylinder internal combustion engine that infringes the claims of the '166 patent. In addition, defendant manufactures, sells and offers for sale deliberately and willfully in the United States a single-cylinder internal combustion engine that infringes the claims of the '502 patent.

B. Factual Allegations of Answer and Counterclaim

According to defendant, the '166 and '502 patents are invalid and void for failing to meet one or more of the conditions for patentability specified in 35 U.S.C. §§ 102, 103 and 112. In addition, plaintiff has monopoly power in the consumer lawn tractor market,

as demonstrated by plaintiff's market share as well as by significant barriers to entry, including the investment, technology and business reputation necessary to manufacture and market the products in the consumer lawn tractor market. Plaintiff has willfully maintained its monopoly power in the consumer lawn tractor market by illegal anticompetitive and exclusionary acts and by engaging in unreasonable agreements in restraint of trade affecting a substantial volume of commerce, including, but not limited to the following: 1) bundling rebates that defendant pays to both its direct purchasers (original equipment manufacturers that incorporate engines into a consumer lawn tractor) and to retailers that sell completed consumer lawn tractors directly to consumers; and 2) entering into exclusionary contracts that expressly or effectively require direct purchasers or retailers to deal exclusively with plaintiff and not with its competitors, including defendant. Plaintiff has acted for the purpose and with the effect of obtaining and maintaining monopoly power in the market for engines for consumer lawn tractors and it has excluded competition from that market in violation of the Sherman Act §§ 1 & 2, Wis. Stat. §§ 133.03, 133.04, 133.05, 133.14 and 133.18 and Wisconsin unfair competition laws. Plaintiff's monopoly power has not resulted from superior products or business acumen or competition on the merits, but rather from unlawful anticompetitive conduct.

As a result of plaintiff's conduct, consumers have been harmed by having to pay higher prices for products in the consumer lawn tractor market and by being denied choice.

In addition, plaintiff's conduct has harmed defendant in its business or property through lost sales and profits. Defendant had a reasonable probability of deriving economic benefit from ongoing and prospective business relationships with third parties involving the sale of products to those parties. Plaintiff interfered with defendant's relationships with its customers and prospective customers knowingly and without justification or excuse, causing harm to those relationships and economic loss to defendant.

DISCUSSION

A. Motion to Dismiss

A motion to dismiss under Fed. R. Civ. P. 12(b)(6) will be granted only if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations" of the complaint. Cook v. Winfrey, 141 F.3d 322, 327 (7th Cir. 1998) (citing Hishon v. King & Spalding, 467 U.S. 69, 73, (1984)); Gossmeyer v. McDonald, 128 F.3d 481, 489 (7th Cir. 1997)). In deciding a Rule 12(b)(6) motion to dismiss, the court takes as true all well-pleaded facts, drawing all inferences and resolving all ambiguities in favor of the non-moving party. Dawson v. General Motors Corp., 977 F.2d 369, 372 (7th Cir. 1992).

The Federal Rules of Civil Procedure provide for a system of notice pleading pursuant to Rule 8, which requires only that the plaintiff set out a "short and plain statement of the

claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). "The primary purpose of [Rule 8] is rooted in fair notice: under Rule 8, a complaint must be presented with intelligibility sufficient for a court or opposing party to understand whether a valid claim is alleged and if so what it is." Vicom, Inc. v. Harbridge Merchant Services, Inc., 20 F.3d 771, 775 (7th Cir. 1994) (citations omitted). In light of this liberal standard, a party can resist a 12(b)(6) motion to dismiss by setting out facts sufficient to outline the basis of its claim. Panaras v. Liquid Carbonic Indus. Corp., 74 F.3d 786, 792 (7th Cir. 1996).

Plaintiff raises two related arguments: 1) defendant lacks standing to bring antitrust claims because it failed to allege injury to the competitive process and instead alleged that it lost business, which is not an antitrust injury; and 2) even if defendant had standing, it failed to allege any facts that amount to a violation of antitrust law. Specifically, according to plaintiff, defendant failed to allege what market share plaintiff has, what shares its competitors have or what barriers it has erected to expansion by existing firms such as defendant. Defendant points out correctly that Rule 8(a) requires notice pleading only and therefore, its allegations are sufficient. Defendant's counterclaims identify the laws under which it is suing and the anticompetitive actions in which plaintiff is engaged, namely 1) bundling rebates that defendant pays to both its direct purchasers and to retailers that sell completed consumer lawn tractors directly to consumers; and 2) entering into exclusionary contracts that expressly or effectively require direct purchasers or retailers to deal exclusively

with plaintiff and not with its competitors, including defendant. These allegations are sufficient to put plaintiff on notice of the counterclaims and allow it to file an answer. See, e.g., Beanstalk Group, Inc. v. AM General Corp., 283 F.3d 856, 863 (7th Cir. 2002) (federal pleading rules require that complaint only give notice of plaintiff's claim and not that it spell out facts underlying claim) (citing Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit, 507 U.S. 163, 168 (1993); Kirksey v. R.J. Reynolds Tobacco Co., 168 F. 3d 1039, 1041 (7th Cir. 1999)) ("The courts keep reminding plaintiffs that they don't have to file long complaints, don't have to plead facts, don't have to plead legal theories.") (citing Johnson v. Hondo, Inc., 125 F.3d 408, 417 (7th Cir. 1997)). Whether defendant will be able to prove facts consistent with its allegations that reveal a violation of antitrust law is a matter for summary judgment.

B. Motion to Sever

As an alternative to its motion to dismiss, plaintiff asks the court to sever the antitrust claims from the patent claims pursuant to Rule 21 because the antitrust claims raise different issues and will require different proof. Rule 21 allows a court to sever any claim against a party. According to plaintiff, without severance, the jury may become confused regarding damages incurred from the patent infringement claims and the antitrust claims. Furthermore, plaintiff contends, without severance and upon appeal, the Court of Appeals

for the Federal Circuit will have to apply the antitrust laws of the Court of Appeals for the Seventh Circuit; severance would allow the Seventh Circuit to hear any appeals regarding the antitrust claims.

Defendant points out that plaintiff's concerns can be addressed by separating the patent and antitrust trials pursuant to Rule 42(b), which allows a court to conduct separate trials on claims in furtherance of convenience or to avoid prejudice and which defendant would be willing to accept. Defendant is correct when it contends that the Federal Circuit's jurisdiction does not change upon severance of claims; the court's jurisdiction is based on the allegations in the complaint. Apotex, Inc. v. Thompson, 347 F.3d 1335, 1343 (Fed. Cir. 2003). Because the complaint in this case alleges patent infringement claims, the Federal Circuit has jurisdiction. Id. (Federal Circuit has appellate jurisdiction if district court's original jurisdiction was based in part on 28 U.S.C. § 1338, as determined by plaintiff's well-pleaded complaint). In addition, separating trials of patent and antitrust claims pursuant to Rule 42(b) is typical. See, e.g., Brandt, Inc. v. Crane, 97 F.R.D. 707, 708 (N.D. Ill. 1983) ("As a general rule, separate trials of patent and antitrust claims further the interests of convenience, expediency and economy.") In its reply brief, plaintiff appears to concede that it would be satisfied with a separate trial and separate discovery and pre-trial schedules for the antitrust claims. Plt.'s Reply Br., dkt. #31, at 3. Therefore, I will order the clerk of court to set a scheduling conference to arrange a separate trial date and discovery schedule

for defendant's antitrust and unfair competition claims and deny plaintiff's motion to sever those claims from the patent claims as unnecessary.

ORDER

IT IS ORDERED that

1. Plaintiff Briggs & Stratton Corporation's motion to dismiss plaintiff Kohler Co.'s antitrust and unfair competition counterclaims pursuant to Fed. R. Civ. P. 12(b)(6) is DENIED;

2. Plaintiff's motion to sever defendant's antitrust counterclaims from the patent claims pursuant to Fed. R. Civ. P. 21 is DENIED as unnecessary;

3. The clerk of court is directed to set a scheduling conference before the magistrate judge to address bifurcation of the antitrust claims from the patent claims.

Entered this 20th day of July, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge