

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

FORCE PARTNERS, LLC,)	
)	
Plaintiff,)	Case No. 19 CV 7776
vs.)	
)	Hon. Mary M. Rowland
KSA LIGHTING & CONTROLS, INC.;)	
ACUITY BRANDS, INC., JIM WILLIAMS;)	
and ASHLEY WILLIAMS,)	
)	
Defendants.)	

JOINT INITIAL STATUS REPORT

I. The Nature of the Case

A. Attorneys of Record

1. Sarah R. Marmor, Theodore L. Banks, and George D. Sax, of Scharf Banks Marmor LLC, represent the Plaintiff, Force Partners, LLC (“Force Partners”). Sarah R. Marmor will act as lead trial attorney.

2. James F. Herbison, Michael P. Mayer, and Michael P. Toomey of Winston & Strawn, LLP represent Defendants KSA Lighting & Controls, Inc., Jim Williams, and Ashley Williams (collectively, the “KSA Defendants”). Roberta F. Howell, Susan Poll Klaessy, and Benjamin R. Dryden of Foley & Lardner LLP represent Defendant Acuity Brands, Inc. (“Acuity”) and are expected to be attorneys of record. James F. Herbison will act as lead trial attorney for the KSA Defendants, and Roberta F. Howell will act as lead trial attorney for Acuity. Acuity intends to enter appearances and file *pro hac vice* motions in advance of the initial status hearing.

B. Jurisdiction. The basis of federal jurisdiction is original jurisdiction under 28 U.S.C. 1131 and 28 U.S.C. 1337, because some of Plaintiff’s causes of action arise under the

Sherman Antitrust Act, 15 U.S.C. 1-7 (“Sherman Act”) as well as under the Clayton Antitrust Act, 15 U.S.C. 12-27 (“Clayton Act”).

C. Nature of Claims Asserted in the Complaint. Plaintiff alleges (1) unreasonable restraint of trade in violation of Section 1 of the Sherman Act based on an anticompetitive and illegal group boycott orchestrated by Defendants against Plaintiff; (2) unreasonable restraint of trade in violation of Section 1 of the Sherman Act for a horizontal or “hub and spoke” conspiracy; (3) attempted monopolization of the market in violation of Section 2 of the Sherman Act; (4) exclusive dealing agreements in violation of Section 3 of the Clayton Act; (5) violation of the Illinois Antitrust Act, 740 Ill. Comp. Stat. 10/3; (6) violation of the Uniform Deceptive Trade Practices Act, 815 Ill. Comp. Stat. 510/2; (“UDTPA”) and (7) tortious interference.

Defendants plan to file motions to dismiss and reserve the right to file counterclaims.

D. Factual and Legal Issues. The major legal and factual issues anticipated are:

1. Plaintiff’s position: Plaintiff Force Partners, is a sales representative engaged in the lighting and controls agency business in the greater Chicagoland electrical lighting market. Defendant KSA is a competing agency with dominant market power in the area. KSA represents defendant Acuity, a leading manufacturer of electrical lighting products, in the greater Chicagoland market. Plaintiff represents manufacturers who compete with Acuity.

In the second half of 2019, the Defendants conspired to force plaintiff out of the greater Chicagoland market. KSA, with the active involvement and approval of Acuity officers, approached most of the electrical lighting distributors in the greater Chicagoland market and demanded the distributors stop doing business with plaintiff – if not, KSA and Acuity would stop doing business with the distributors, or charge the distributors higher prices. Defendants’ campaign against plaintiff included a PowerPoint presentation that KSA prepared with Acuity’s

knowledge and approval, and which KSA presented to each distributor, and laid out the terms that required them to stop doing business with plaintiff or face loss of business and/or higher prices from KSA. In addition, the PowerPoint made material misrepresentations about plaintiff's lighting products and those of plaintiff's clients. The defendants' campaign to force a group boycott of plaintiff's business had a devastating effect on plaintiff, with distributors abandoning plaintiff because they were cowed into doing so by KSA.

Plaintiff expects that the major factual and legal issues are whether KSA had market power in the relevant market; whether the defendants all participated in a conspiracy to force Force Partners out of the greater Chicagoland market; whether the conspiracy was to foreclose competition and raise barriers to entry in this market; and whether consumer choice will be reduced and prices will rise as a consequence of defendants' conspiracy. Plaintiff expects to prove that defendants' conduct violated the Sherman Act and Clayton Act, as well as the Illinois Antitrust Act, UDTPA, and the common law of tortious interference, causing plaintiff to suffer damages. Plaintiff seeks compensatory and punitive damages.

2. Defendants' position. Plaintiff, a sales agent for a lighting company, brought this federal antitrust suit against a competing sales agent (KSA), its owners (James and Ashley Williams), and a lighting manufacturer (Acuity) as a result of KSA's attempts to offer incentives and lower prices to its customer base. But rather than compete on the merits of KSA's proposed incentive program (it has not been implemented yet), Plaintiff instead asserts baseless "antitrust" and tort claims. None of Plaintiff's claims are actionable, and therefore, Defendants will be filing a Rule 12(b)(6) motion to dismiss. Defendants anticipate the major issues to include: (1) whether any Defendant entered into an anticompetitive "agreement;" (2) whether Plaintiff has alleged any such agreement (to the extent they exist) resulted in an unreasonable restraint of trade under the

antitrust laws; (3) whether Plaintiff has adequately alleged a relevant antitrust market; (4) whether Plaintiff has alleged exclusionary conduct that can support an attempted monopolization claim; (5) whether the Illinois Antitrust Act applies to any alleged conduct not actionable under the federal antitrust laws; (6) whether Plaintiff has any actionable statements under the UDTPA; and (7) whether Plaintiff has alleged any improper interference with prospective business relations.

E. Status of service. All Defendants have returned waivers of service.

II. Discovery And Case Plan

A. General Type of Discovery Needed. Both fact and expert discovery will be needed. Plaintiff expects that it will need more than ten depositions in this case, up to thirty. Defendants contend that no discovery should be permitted until the Court rules on their anticipated motions to dismiss, and Plaintiff agrees that the pendency of the 12(b)(6) motion to dismiss would preclude MIDP disclosures prior to a Rule 12(a) responsive pleading. Plaintiff reserves the right to seek discovery to respond to the anticipated motions to dismiss.

B. Fact Discovery. The parties' positions on discovery are:

1. Initial Discovery. This case is governed by the Standing Order Regarding Mandatory Initial Discovery Pilot Project ("MIDP Order"). The MIDP response period will not be triggered during the pendency of the motions to dismiss. Plaintiff reserves the right to seek discovery in order to respond to the anticipated motions to dismiss.

2. Discovery Dates. The parties propose that, within 14 days after the Court issues a decision on Defendants' anticipated motion to dismiss, the Parties submit a proposed discovery schedule for the first date to issue written discovery requests, fact discovery completion, expert report disclosure, expert discovery completion, and submission of any dispositive motions.

C. Pending and Anticipated Motions. There currently are no pending motions before the Court. The Defendants anticipate filing motions to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). Acuity also anticipates filing motions for *pro hac vice* admission of attorneys Roberta F. Howell and Benjamin R. Dryden.

D. Electronic Service. The parties agree to service of pleadings and other papers by electronic means under Fed. R. Civ. P. 5(b)(2)(E).

E. MIDP Order. The parties have reviewed and will comply with the MIDP Order.

III. Trial

A. Jury Demand. Plaintiff has demanded a jury trial.

B. Trial Date. Plaintiff anticipates being ready for trial by March 29, 2021. Defendants believe that the allegations in the Complaint are insufficient to state a claim, and therefore, Defendants believe it is premature to estimate a date when the case will be ready for trial.

C. Trial Length. Plaintiff anticipates the length of trial will be 10 days. Because Defendants believe that the allegations in the Complaint are insufficient to state a claim, Defendants cannot provide a reasonable estimate of the length of any trial.

IV. Consent and Settlement Discussions

A. Magistrate Judge. The parties do not unanimously consent to proceed before a Magistrate Judge for all purposes.

B. Settlement discussions. There have been no settlement discussions.

C. Settlement conference. The parties do not request a settlement conference at this time.

Respectfully submitted,

/s/ Sarah R. Marmor

Sarah R. Marmor

Attorney for Plaintiff Force Partners LLC

/s/ James F. Herbison

James F. Herbison

*Attorney for Defendants KSA Lighting
& Controls, Inc., James Williams, and
Ashley Williams*

/s/ Susan Poll Klaessy

Susan Poll Klaessy

Attorney for Defendant Acuity Brands, Inc.

Report Filed By:

/s/ Sarah R. Marmor

Sarah R. Marmor

Theodore L. Banks

George D. Sax

SCHARF BANKS MARMOR LLC

333 West Wacker Drive, Suite 450

Chicago, IL 60606

Ph. 312-726-6000

smarmor@scharfbanks.com

tbanks@scharfbanks.com

gsax@scharfbanks.com

Counsel for Plaintiff Force Partners, LLC