

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

Docket No. 158.—April 15, 1919.

SYLLABUS.

Where a corporation engaged in the publication and sale of sheet music—

- (a) Sold the same to dealers, and by means of a "trade price list" and a "schedule of discounts to teachers," indicated the minimum prices at which such sheet music was to be resold to various classes of purchasers; and

(b) Refused to sell its sheet music to dealers who resold same below the specified minimum prices upon as favorable terms as were given to dealers who adhered to such prices:

Held, That a scheme of resale price maintenance, substantially as described, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that the Clayton F. Summy 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 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 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, Clayton F. Summy Co. is now and was at all times hereinafter mentioned, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, having its principal office and place of business located at the city of Chicago, in said State, and now and for more than two years last past engaged in the publishing and sale of sheet music among the several States of the United States, the Territories thereof, and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That in the conduct of its business the respondent produces and publishes its sheet music in the city of Chicago, State of Illinois, and then sells and transports the same to numerous customers located in different States of the United States, the Territories thereof, and the District of Columbia, and that after such sheet music is so produced or published it is continuously moved to, from, and among other States and Territories of the United States, and there is continuously and has been at all times hereinafter mentioned a constant current of trade in commerce in such sheet music between

and among the various States of the United States, the Territories thereof, and the District of Columbia.

PAR. 3. That the respondent, Clayton F. Summy Co., has adopted and maintains a system of fixing prices at which its products shall be resold by such jobbers and wholesalers, with the effect of securing the trade of jobbers and wholesalers and of enlisting their active cooperation in enlarging the sale of its price-maintained product to the prejudice of competitors who do not fix and require the maintenance of the resale prices of their product, and with the effect of eliminating competition in price among the jobbers and wholesalers of their right to sell such goods at such prices as they may deem adequate and warranted by their selling efficiency, and with other effects; and that for the purpose of maintaining said standard resale prices and of inducing and compelling its customers to maintain and keep such standard prices, the respondent for more than one year last past has refused and is still refusing to sell its products to customers or dealers who will not agree to maintain such specified standard resale prices or who do not resell such products at the specified standard selling prices so fixed and determined by the respondent as aforesaid.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein, wherein it alleged that it had reason to believe that the above-named respondent, Clayton F. Summy Co., has been and now 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 that a proceeding by it in respect of such alleged violation of section 5 of the act of September 26, 1914, would be to the interest of the public, and fully stating its charges, and the respondent having entered its appearance by Burry, Johnstone & Peters, its attorneys, and having duly filed its answer admitting certain of the allegations of said complaint and denying certain others thereof, and said

respondent and its attorneys having signed and filed an agreed statement of facts wherein and whereby it was duly stipulated and agreed that the facts therein recited are the facts in this proceeding, and that the same shall be taken by the Federal Trade Commission as the evidence herein, and shall be taken in lieu of the testimony in support of said complaint; and said respondent, Clayton F. Summy Co., and its said attorneys, having expressly waived and relinquished any and all right to the introduction of testimony, and due notice of the submission of this proceeding to the Federal Trade Commission for final disposition on the pleadings and on said agreed statement of facts having been duly served on said Burry, Johnstone & Peters, attorneys for said respondent, on March 27, 1919, and there having been no appearance or opposition on behalf of said respondent on the day named in said notice; the Commission having duly considered the record, and being fully advised in the premises, now makes its report and findings as to the facts and conclusions.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Clayton F. Summy Co., is now and for more than two years last past has been a corporation, existing and doing business under and by virtue of the law of the State of Illinois, having its principal office and place of business located at the city of Chicago, in said State.

PAR. 2. That the respondent, Clayton F. Summy Co., is now and for more than two years last past has been engaged in the business of publishing and selling sheet music generally in commerce throughout the States of the United States, Territories, and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 3. That the respondent, Clayton F. Summy Co., in the conduct of its business for more than two years last past has made a practice of issuing from time to time a "Trade Price List" and a "Schedule of Discounts to Teachers," which schedules indicate the minimum price at which particular selections of sheet music are to be sold at retail, to teachers, or at wholesale.

PAR. 4. That the respondent, Clayton F. Summy Co., has within two years last past refused to sell its sheet music to dealers, who resold the same below the specified minimum prices set forth by respondent as aforesaid, upon as favorable terms as said respondent has given to dealers who adhered to such schedules.

CONCLUSIONS.

That the methods of competition set forth in the foregoing findings are, and each of them is, under the circumstances therein set forth, unfair methods of competition in interstate commerce, in violation of 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."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaint herein, wherein it alleged that it had reason to believe that the above-named respondent, Clayton F. Summy Co., has been and now 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 that a proceeding by it in respect of such alleged violation of section 5 of the act of September 26, 1914, would be to the interest of the public, and fully stating its charges, and the respondent having entered its appearance by Burry, Johnstone & Peters, its attorneys, and having duly filed its answer admitting certain of the allegations of said complaint and denying certain others thereof, and said respondent and its attorneys have signed and filed an agreed statement of facts wherein and whereby its was duly stipulated and agreed that the facts therein recited are the facts in this proceeding, and that the same shall be taken by the Federal Trade Commission as the evidence herein, and shall be taken in lieu of testimony in support of said complaint; and said respondent, Clayton F. Summy Co., and its said attorneys, having expressly waived and relinquished any and all right to the introduction of

testimony, and due notice of the submission of this proceeding to the Federal Trade Commission for final disposition on the pleadings and on said agreed statements of facts having been duly served on said Burry, Johnstone & Peters, attorneys for said respondent, on March 27, 1919, and there having been no appearance or opposition on behalf of said respondent on the day named in said notice; and the Commission on the day hereof having made and filed its report containing its findings as to the facts and its conclusions that respondent has violated 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," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered: That respondent, Clayton F. Summy Co., and its officers, directors, agents, servants, and employees cease and desist from, directly or indirectly, indicating the minimum price at which selections of sheet music published by said respondent are to be sold at retail, to teachers, or at wholesale, according to any system of prices fixed or established by respondent; and from refusing to sell its sheet music to any dealer or dealers upon as favorable terms as said respondent gives to any other dealer or dealers, by reason of the fact that said first-named dealer or dealers has resold sheet music purchased from respondent at prices not satisfactory to said respondent.