

Complaint.

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FEDERAL TRADE COMMISSION.

v.

THE AEOLIAN COMPANY.

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

Docket 268—November 23, 1920.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of organs, player pianos, music rolls, phonographs, records, and other accessories,

- (a) Fixed prices at which its products should be resold, making written agreements with dealers handling its phonographs and records, and furnishing dealers handling its player pianos with rules governing their resale at prices fixed by it from time to time;
- (b) Made it a condition of such written agreements that if the dealer should handle competing commodities, then such dealer would advertise and sell its phonographs and any parts and accessories thereof, and records "as its best and unqualified leader" :

Held, That such practices, 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 Aeolian Co., hereinafter referred to as 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 respondent, The Aeolian 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 New York, having its principal office and place of business located in the city and State of New York and for more than two years last past engaged in the business of manufacturing and selling pipe organs and perforated music rolls, musical instruments of the phonograph type, known as "Aeolian-Vocalion," and parts and accessories thereto and phonograph records, throughout the various 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 course of its said business the respondent, The Aeolian Co., has adopted and maintains a system of fixing prices at which its product shall be resold by dealers, with the effect of securing the trade of dealers, 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 resale prices of their product, and with the effect of eliminating competition in price among dealers in this product, and thereby depriving dealers of their right to sell such product at such prices as they may deem adequate and warranted by their selling efficiency; and that for the purpose of maintaining said standard resale price and of inducing and compelling its customers to maintain and keep such standard prices respondent has for more than two years last past refused, and is still refusing, to sell its product to customers or dealers who will not agree to maintain such specified standard resale prices or who do not sell such product at the specified standard selling prices so fixed and determined by the respondent as aforesaid.

PAR. 3. That said respondent has inaugurated and maintains a system of requiring dealers who purchase from respondent for resale musical instruments of the phonograph type and parts and accessories thereto, and phonograph records, to agree that if such dealers handle, deal in, or sell any other type or make of phonograph instruments, phonograph records, or talking machines, or parts or accessories thereto, than those so purchased from respondent, then such dealers will directly and indirectly advertise, market, promote, and sell the instruments, parts, and accessories so purchased from respondent as the best and unqualified leaders of any and all goods of the phonograph type.

PAR. 4. That said respondent has refused to sell Aeolian pipe-organ music rolls manufactured by it except to purchasers of pipe organs manufactured by respondent, and has prohibited dealers who sell Aeolian instruments, parts, and accessories from selling such rolls to any one other than the purchaser of an Aeolian pipe organ for use on such organ, although it is possible and practicable to use such rolls on pipe organs other than those manufactured and sold by respondent.

Findings.

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REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having served its complaint herein wherein it alleged that it had reason to believe that the above-named respondent, The Aeolian 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 violations would be to the interest of the public, and fully stating its charges in that respect, and the respondent having entered its appearance by George D. Beattys, Esq., its attorney, and having duly filed its answer admitting certain allegations of the complaint and denying certain others, and the attorneys for both parties having signed and filed an agreed statement of facts wherein and whereby it was stipulated and agreed that said statement of facts should be taken and considered by the Commission in lieu of testimony, and with the same force and effect as if testified to upon a hearing regularly had in this proceeding, and that the Commission should forthwith proceed upon said statement of facts to make and enter its report and findings as to the facts, its conclusions, and its order disposing of this proceeding; the Commission having duly considered the record and being fully advised in the premises now makes this report and findings as to the facts and its conclusions, as follows:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, The Aeolian Co., is now and was at all the times hereinafter mentioned, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, and having its principal office and place of business located in the city and State of New York, and for more than three years last past has been and still is engaged in the business of manufacturing, selling, and shipping player pianos, pipe organs, and perforated music rolls, phonographs known as "Aeolian-Vocalions," parts thereof and accessories thereto, and phonograph records throughout the various States and Territories of the United States and the District of Columbia, in direct competition with other individuals, firms, and corporations similarly engaged.

PAR. 2. That within a period of more than three years last past respondent made a practice in its said business in the course of interstate commerce, as aforesaid, of fixing and establishing certain specified standard prices at which its various products enumerated above

should be resold by dealers generally throughout the United States who purchased the same from respondent.

PAR. 3. That in the case of dealers handling respondent's phonographs and phonograph records a regular printed form of agreement, designated as Aeolian-Vocalion Dealer's Agreement, was generally executed by and between respondent and each of the dealers designated as respondent's agents in various localities throughout the United States. For a number of years these agreements were in force between respondent and most of the dealers handling phonographs and phonograph records manufactured and sold by respondent.

PAR. 4. That these dealers' agreements contained the following provisions relating to the resale prices to be observed by such dealers in the sale of phonographs, parts, and accessories, and phonograph records purchased by them from the respondent:

In consideration of the limited number of and restricted class of said first party's [respondent's] representatives and of their careful selection by said first party with a view of securing high-class trade, said second party [dealer] shall sell said Aeolian-Vocalion instruments and all parts and accessories and Aeolian-Vocalion records at retail only, and for the prices fixed from time to time by said first party and set forth on the accompanying schedule of prices and on such schedules as may be issued from time to time. * * * Said second party further expressly agrees that he will not in any event during the continuance of this agreement sell records at second-hand or reduced prices or at any prices less than those fixed by said first party from time to time.

PAR. 5. That from time to time respondent furnished to all of the dealers handling said phonographs and phonograph records retail price lists, in accordance with which the said dealers agreed to and did resell said goods to the public, and said resale prices were almost universally observed and adhered to by the dealers handling said phonographs and records throughout the United States.

PAR. 6. That except in a few instances written contracts were not entered into between respondent and dealers handling the player pianos manufactured by respondent, but, within the period afore-said, respondent made a practice in the course of interstate commerce of supplying such dealers with a set of rules governing the resale of such player pianos and including provisions for the adherence by such dealers to resale prices fixed and established from time to time by respondent.

PAR. 7. That in all of said dealers' agreements above mentioned it was provided that the same could be terminated at any time by either party by giving written notice to the other, and respondent avers that in or about the month of June, 1918, all of its then outstanding dealers' agreements were terminated and canceled by it and new agreements issued and substituted therefor from which said

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provisions providing for the maintenance of resale prices by said dealers respectively were eliminated, and that no written agreements containing the same or similar provisions have since been entered into by respondent.

PAR. 8. That all of said dealers' agreements heretofore entered into between respondent and dealers handling its phonographs and phonograph records contained, and the agreements substituted for those previously in force, as well as new agreements entered into since June, 1918, and now in force, still contain the following provisions:

Said second party [dealer] agrees that if it handles, deals in, or sells any other type or make of phonograph instruments, phonograph records, or talking machines than those of said first party's [respondent] make hereinbefore referred to, or parts and accessories of the same, it and its representatives will, directly and indirectly advertise, market, promote, and sell said Aeolian-Vocallion instruments of said first party, and any parts and accessories thereof, and records, as its best and unqualified leader of any and all goods of the phonograph type.

CONCLUSIONS.

That the practices set forth in the foregoing findings as to the facts constitute, 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 served its complaint herein, wherein it alleged that it had reason to believe that the above-named respondent, The Aeolian 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 violations would be to the interest of the public, and fully stating its charges in that respect, and the respondent having entered its appearance by George B. Beattys, Esq., its attorney, and having duly filed its answer admitting certain allegations of the complaint and denying certain others, and the attorneys for both parties having signed and filed an agreed statement of facts wherein and whereby it was stipulated and agreed that said statement of facts should be taken and considered by the Commission in lieu of testimony, and with the same force and effect

as if testified to upon a hearing regularly had in this proceeding, and that the Commission should forthwith proceed upon said statement of facts to make and enter its report and findings as to the facts, its conclusions, and its order disposing of this proceeding; and the Commission, on the date hereof, having made and filed its report containing these findings as to the facts and its conclusions that the 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 the respondent, The Aeolian Co., its officers, directors, and agents cease and desist from:

(1) Requiring purchasers of respondent's player pianos, phonographs, parts and accessories thereof, and phonograph records to enter into any contracts or agreements to resell said articles, or any of them, at prices fixed or established, or to be fixed or established, by respondent;

(2) Issuing rules or directions requiring dealers to adhere to resale prices fixed or established by respondent;

(3) Entering into any contracts or enforcing any contracts previously entered into whereby dealers in respondent's phonographs and records are or have been required to advertise and sell the same as such dealers' best and unqualified leader of any and all goods of the phonograph type.

And it is further ordered, That the charges contained in paragraph 4 of the complaint herein be and the same hereby are dismissed, without prejudice.

And it is further ordered, That said respondent, The Aeolian Co., shall within 60 days from date of service of this order file with the Commission a report setting forth in detail the manner and form in which it has complied with the order of the Commission herein set forth.

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FEDERAL TRADE COMMISSION DECISIONS.

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