FEDERAL TRADE COMMISSION

v.

BOSTON PIANO & MUSIC COMPANY.

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

Docket 277.—December 30, 1920.

SYLLABUS.

Where a corporation engaged in the purchase, and sale to retailers, of talking machines, as a part of its sales plan or scheme, and acting through its agents,

(*a*) Used a printed paper or instrument, consisting in part of a contract and in part of a promissory note, which printed instrument (1) was falsely and deceptively worded; (2) contained the false and misleading word "order" in large type on that part of the instrument or paper constituting the contract; (3) contained the words "Masterphone Talking Machine Co., Owned and Operated by Boston Piano & Music Co. (Inc.)," in large type on that part of the instrument constituting the contract, the fact being that "Masterphone Talking Machine Co." was a mere trade name used by said corporation for the purpose and with the effect of misleading its customers into believing it engaged in manufacturing;

(*b*) Falsely represented that (1) said printed instruments were merely orders for machines to be sent on approval; (2) its advertising and service campaign would of itself sell the machines; (3) its agents would personally canvass retail merchants' trade and lend personal service in a selling campaign; (4) if customers failed to sell the machines so ordered, the corporation would return their money; and (5) customers took no risk and could not lose on the transaction;

(*c*) Misrepresented (1) the kind and quality of the machines, (2) their purchase price and terms of payment; (3) the amount, quality, and character of advertising matter and advertising service furnished; and (4) terms and conditions under which the machines would be taken back;

(*d*) Published and circulated among customers, as a part of its plan for securing the signatures to said printed instruments, a catalogue containing a cut representing a manufacturing plant, together with the words "Home of the Masterphone, Adrian, Mich.," for the purpose and with a tendency and capacity to mislead said customers into believing that the corporation manufactured the machines sold by it, the fact being that it did not manufacture, and did not own, lease, occupy or operate the plant represented;

With the effect that, as a result of the various misrepresentations above set forth, said corporation continuously secured signatures of customers to said printed instruments;

(*e*) Stated to customers seeking to cancel their contracts that such action was impossible because commissions had been paid agents and printing charges incurred, which statements were false; and

(f) Acting in collusion with, and using the name of, a third party, wrote such customers that the promissory notes were now in the hands of an innocent third party for value, and that payment thereof was demanded under penalty of suit, and thereby enforced the provisions of said printed instruments, and deceived customers into acquiescence therein, the fact being that the notes in the hands of said third party were subject to the same defenses by the maker as though they had remained in the hands of the payee:

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 Boston Piano & Music 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 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. The respondent is now, and for more than two years last past has been, a corporation duly organized and existing under and by virtue of the laws of the State of Iowa, with its principal office and place of business at Iowa City, in said State, and engaged in the business of buying, selling, and shipping talking machines and talking-machine records generally in commerce to retail merchants located in the various States of the United States, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. The respondent in carrying on its business, purchases talking machines with the name "Masterphone" imprinted thereon and talking-machine records from manufacturers thereof, and under the trade name Masterphone Talking Machine Co. sells and ships the machines and records so purchased and certain advertising matter to be used in advertising the same to various retail merchants located in numerous States of the United States. That respondent is now, and for more than two years last past has been, negotiating, effecting, and consummating such sales and shipments as the result, and by the use of, a sales plan consisting of false representations, fraudulent schemes, devices, and practices, among which are the following:

Respondent employs numerous traveling salesmen, who travel throughout the various States, calling upon retail merchants and soliciting orders for respondent's machines, records, and advertising

matter. Respondent supplies its salesmen with printed forms that appear to be orders or offers to purchase, but which, in fact, are, when signed by the prospective purchaser and the respondent's salesman, written contracts. Such contracts contain, among other things, a detailed description of the kind, quality, and dimensions of the machine, the number and kind of records, and the quantity and character of advertising matter and advertising service to be furnished by the respondent thereunder; a statement of the amount of the purchase price and the terms of payment thereof; the price, terms, and conditions under which subsequent purchases may be made; an enumeration of various acts agreed to be performed by the parties thereto; and recitals to the effect that any changes of the printed contract to be binding on the respondent must appear in writing thereon; that all of the terms and conditions under which the machines and records are purchased appear therein, and that the purchaser has read and understands the same.

Respondent's salesmen, with the knowledge, acquiescence, and active cooperation of respondent, its officers, and employees, and for the purpose and with the effect of selling respondent's machines, records, and advertising matter, and inducing purchasers thereof to sign such contracts without reading or understanding the nature, terms, and conditions thereof, misrepresent, among other things, the kind, quality, and dimensions of respondent's machines, the quantity and character of the advertising matter and advertising service that will be furnished by respondent to purchasers thereof, the amount of the purchase price and the terms of payment thereof, the price at and the terms under which subsequent purchases may be made, the various acts to be performed by the respondent and said purchasers; and falsely represent, among other things, that such printed forms are merely orders, and that the machines ordered therein would be sent on approval, that respondent operates its own factory and manufactures the machines sold by it, that the purchaser can lose no money on the transaction, that respondent's machines are better than the standard makes of machines, and that dealers are abandoning the sale of Victor, Edison, and other standard talking machines and engaging in the sale of respondent's; that such purchasers will be granted the exclusive selling rights for their respective territories, that the kinds, quality, and value of the machines, records, advertising matter, and advertising service to be sold are as described and the purchase price is as stated by such salesman, that respondent will conduct an advertising campaign that will in itself sell the machines for the purchaser, and that such salesman will return and lend his personal aid in a selling campaign.

That the effects, among other effects, produced by respondent's acts in negotiating, effecting, and consummating the sale of its talking machines in the manner hereinbefore described is to stifle and suppress competition in the sale and shipment of talking machines in interstate commerce and to deceive and mislead purchasers and prospective purchasers of such talking machines.

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, Boston Piano & Music Co., charging it with the use of unfair competition in commerce in violation of the provisions of said act.

The respondent having entered its appearance by its attorney, and having filed its answer herein, hearings were had and evidence was thereupon introduced in support of the allegations of said complaint, before John R. Dowlan, an examiner of the Federal Trade Commission, theretofore duly appointed, the respondent appearing before said examiner, but declining to introduce evidence in denial thereof.

And thereupon this proceeding came on for final hearing, and the Commission, having heard argument of counsel and duly considered the record, and being now fully advised in the premises, makes this its findings as to the facts and conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent is a corporation organized and existing under and by virtue of the laws of the State of Iowa, having its principal office and place of business located at the city of Iowa City, in said State, and is now, and since April, 1917, has been, engaged in the business of purchasing talking machines from the Manophone Corporation, of Adrian, Mich.; the Vitanola Talking Machine Co., of Chicago, Ill., and the Knittel Co., of Quincy, Ill., and in selling and shipping said talking machines, together with certain talking machine records and advertising matter, in interstate commerce, to purchasers thereof, located throughout the different States of the United States, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, in the conduct of its business, is now, and since April, 1917, has been, selling and shipping to retail merchants located throughout the different States of the United States its talking machines, talking-machine records, and advertising matter by the use and as the result of a sales plan or scheme conceived and

devised by respondent; that respondent, as a part of said sales plan or scheme, employed agents who, acting within the scope of their employment, traveled throughout the different States of the United States and secured signatures of said retail merchants to certain printed instruments supplied said agents by respondent; that said printed instruments consisted of one paper, part of which consisted of a form of contract and part of which consisted of a form of promissory note; that said printed instruments are hereinafter referred to and designated "printed instruments"; that said "printed instruments" are identical with or similar to Commission's Exhibits Nos. 1 and 15, in evidence in the record herein.

PAR. 3. That the "printed instruments" designed and used by respondent in the conduct of its business, as aforesaid, are falsely and deceptively worded and are surrounded with language that conceals and covers the real meaning, character, nature, and effect of said "printed instruments"; that said respondent, through the acts of its agents acting within the scope of their employment, has continuously secured signatures to said "printed instruments" as the result of the deceptive and misleading character and nature of said "printed instruments" and as the result of false and misleading statements and representations of its said agents concerning the character, nature, terms, and provisions of said "printed instruments."

PAR. 4. That respondent, for the purpose and with the intent of deceiving and misleading retail merchants into signing "printed instruments," printed or caused to be printed and appear in large type on the parts of said "printed instruments" constituting forms of contracts the word "order"; that said "printed instruments" constituting forms of contracts are not orders; that the word "order" appearing in said "printed instruments" is false and misleading and has resulted in deceiving and misleading said retail merchants and has enabled respondent to secure signatures of said retail merchants to said "printed instruments."

PAR. 5. That the respondent, for the purpose and with the intent of deceiving and misleading retail merchants into signing "printed instruments," printed or caused to be printed and appear in large type on the parts of said "printed instruments," constituting forms of contracts, the following statement or representation—

Masterphone Talking Machine Co., owned and operated by Boston Piano & Music Co., Inc.—

which statement or misrepresentation is misleading and has resulted in leading said retail merchants to believe that respondent was engaged in manufacturing talking machines, whereas, in truth and in

fact, respondent has never manufactured talking machines, and in truth and in fact the "Masterphone Talking Machine Co." is not a company operated by respondent, but is a mere trade name used by respondent for the purpose and with the intent as aforesaid.

PAR. 6. That the respondent, for the purpose and with the intent of deceiving and misleading retail merchants into signing "printed instruments," is now, and since April, 1917, has been, publishing and circulating among retail merchants catalogues in which appeared a certain cut or picture representing a manufacturing plant, and in which appeared the following statement or representation: "Home of the Masterphone, Adrian, Mich."; that said cut or picture, and statement or representation are designed and calculated, and have a tendency and capacity to deceive and mislead said retail merchants into believing that respondent manufactured the talking machines sold by it, whereas, in truth and in fact, respondent, during the time in which it published and circulated said catalogues, had no manufacturing plant and did not manufacture talking machines and did not own, lease, occupy, or operate the manufacturing plant represented and indicated by said cut or picture, and in truth and in fact the word "Masterphone" is a mere trade name, imprinted or stenciled on talking machines purchased by respondent from independent manufacturers thereof.

PAR. 7. That respondent's agents, acting within the scope of their employment, and with the knowledge, acquiescence, and support of respondent, have continuously secured signatures of retail merchants to "printed instruments" as the result of the following statements and representations, all of which were, in truth and in fact, false, misleading, and deceptive; that "printed instruments" were merely orders and that talking machines ordered therein would be sent on approval and could be returned if not satisfactory; that respondent's advertising and service campaign would itself sell talking machines; that respondent's agents would personally canvass retail merchant's trade and lend personal service in a selling campaign; that if retail merchants failed to sell talking machines ordered under "printed instruments," respondent would return the money paid for same; that retail merchants took absolutely no risk and could not lose money on the transaction.

PAR. 8. That respondent's agents, acting within the scope of their employment, and with the knowledge, acquiescence, and support of respondent, have continuously secured signatures of retail merchants to respondent's "printed instruments" as the result of false and misleading statements and representations concerning (*a*) the kinds

and quality of respondent's talking machines; (*b*) the purchase price and the terms of payment of respondent's talking machines; (*c*) the amount, the quality, and the character of the advertising matter and the advertising service respondent furnishes; (*d*) the terms and the conditions under which respondent will repurchase or buy back talking machines.

PAR. 9. That the respondent, as a part of its sales plan, after receiving the executed "printed instruments," detached that part thereof which constituted the promissory notes and delivered them to one O. A. Byington, whose office is on the same floor of the same building as that of respondent, under pretence of sale for valuable consideration; that O. A. Byington knew the methods and pretences by which the execution of said notes was procured and that the notes in his hands were subject to the same defenses by the maker as though they had remained in the hands of the payee.

PAR. 10. That by agreement between Byington and the respondent, the latter was responsible to Byington for the notes if and when actually discounted by the said Byington and the respondent was permitted by Byington to act in Byington's name and stead for the purpose of enforcing payment of such notes by the makers thereof; that pursuant to such agreement it was the practice of the respondent by its president to write letters to retail merchants who desired to cancel their contracts, stating that the cancellation of the contract was impossible because commissions had been paid to the agent thereon and printing charges incurred, which statements were false, and in conjunction therewith to write to the same merchants letters signed with the name of O. A. Byington and purporting to be expressions by him as a holder of the merchants' notes, for value and without notice of any defects therein or defenses thereto, in which payment was demanded under penalty of suit, which letters were false representations made by the respondent company; that as a result of such false representations respondent enforced the provisions of its said "printed instruments" and deceived its customers into an acquiescence therein.

CONCLUSIONS.

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 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."

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, testimony and evidence, and the argument of counsel, and the Commission having made its findings as to the facts with its conclusions, that the respondent has violated the provisions 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,"

It is now ordered, That the respondent, Boston Piano & Music Co., and its officers, representatives, agents, servants, and employees, do cease and desist from directly or indirectly:

(1) Using any instrument or document or instruments or documents identical with or similar to those it made use of in negotiating and consummating sales of its talking machines, talking-machine records, and advertising matter without fully explaining to purchasers the true nature, character, terms, and conditions thereof.

(2) Defrauding or misleading or attempting to defraud or mislead purchasers by making any false or misleading oral statement or representation, or by circulating any false or misleading statement or representation, in any letter, advertisement, catalogue, or any other printed matter whatsoever; (*a*) concerning the terms or the conditions or the provisions of any contract, order, note, or other instrument used by respondent in negotiating and consummating the sales of its talking machines; (*b*) concerning the purchase price or the terms of payment of the kind or the quality of the respondent's talking machines; (*c*) concerning the amount or the quality or the character of respondent's advertising matter and advertising service; (*d*) that respondent is engaged in the business of manufacturing talking machines or that conveys the impression that respondent is engaged in the business of manufacturing talking machines.

(3) Defrauding or misleading or attempting to defraud or mislead purchasers by writing, sending forth, or forwarding, as the agent of, or on behalf of, any person or persons any letter or other communication containing any false, misleading, or deceptive statement or representation.

(4) Using cuts or prints or pictures in advertisements, catalogues, letterheads, or other printed matter whatsoever, wherein respondent represents to purchasers or leads purchasers to believe that respondent is engaged in the business of manufacturing talking machines.

Respondent is further ordered to file a report in writing with the Commission 60 days from notice hereof, stating in detail the manner in which this order has been complied with and conformed to.

FEDERAL TRADE COMMISSION
v.
ATLANTIC REFINING COMPANY.

Docket 131.—December 31, 1920.

ORDER OF RESCISSION.

WHEREAS a complaint was heretofore, to wit, on the 13th day of May, 1918, issued by the Federal Trade Commission against the respondent named above, charging certain violations 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 charging further that the respondent has violated section 2 of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," and

WHEREAS testimony was taken in said cause, and it appears that the complaint should have been amended in order to conform to the evidence and that such action was not taken: It is, therefore,

Ordered, That the findings and conclusions and the order to cease and desist, dated April 27, 1920,* in the above-entitled cause be, and the same are hereby, rescinded and vacated.

* See 11 F. T. C. 357.