FEDERAL TRADE COMMISSION

v.

THE MUSIC PUBLISHERS' ASSOCIATION OF THE UNITED STATES ET AL.

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

Docket 400—February 8, 1923.

SYLLABUS.

Where an association of music publishers, an association of retail dealers in sheet music which included in its membership most of the members of the former association, and their officers, directors, and members, in the accomplishment of a conspiracy entered into for the purpose of fixing and maintaining resale prices, jointly and severally.

(*a*) Held their annual meetings during the same week in the same city, usually on alternate days, the members and committees of each association respectively participating in the proceedings of the other, and conferring with one another or with other individuals and concerns similarly engaged relative to the object of said conspiracy;

(*b*) Passed resolutions recommending action by the other association and its members, calculated and intended to result in increased prices to the public and to the music profession;

(*c*) Ratified, approved and carried out the resolutions so recommended;

(*d*) Met, agreed upon, and put into effect, policies of uniform increases in prices, schedules and rates of certain classes of competitive musical publications;

(*e*) Prepared and distributed among dealers generally circulars, pamphlets, and other papers calculated to induce nonmember dealers to conform to the enhanced or increased prices sought to be enforced, and thereby and by letters and other communications, and by personal solicitation, endeavored to and did induce such dealers to conform to such prices;

With the result that price competition in the sale of musical publications was largely eliminated and prices to the public and the music profession were greatly enhanced:

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 Music Publishers' Association of the United States, National Association of Sheet Music Dealers, Thomas F. Delaney, individually and as president, E. Grant Ege, individually and as vice president, J. M. Priaulx, individually and as secretary and treasurer of the National Association of Sheet Music Dealers, and Walter Fischer, J. Elmer Har-

vey, Charles W. Homeyer, William J. Kearney, Edward P. Little, Holmes T. Maddox, L. W. Miller, Harold Orth, Gustav Schirmer, S. Ernest Philpitt, Paul A. Schmitt, Clayton F. Summy, Charles H. Willis, W. H. Witt, Harvey J. Wood, individually and as directors of the National Association of Sheet Music Dealers, and all the members of said association, hereinafter referred to as respondents, have been for more than three years last past, 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 its complaint stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That The Music Publishers' Association of the United States is a membership corporation organized under the laws of the State of New York about the year 1907 and is composed of 41 members, more or less, being publishers of music and engaged in the business of publishing music in the various States of the United States and selling both at wholesale and retail and transporting the same in and among the various States and the District of Columbia; that respondent National Association of Sheet Music Dealers is an unincorporated association organized about the year 1914, having 100 members, more or less, who are and have been engaged in the business of dealing in and selling musical publications at retail in and among the several States of the United States and the District of Columbia; that Thomas P. Delaney, Chicago, Illinois, is the president of the National Association of Sheet Music Dealers and is interested and engaged in the business of publishing music and is also interested in and engaged in the business of selling music at retail, that E. Grant Ege is vice president of the National Association of Sheet Music Dealers and is engaged in the business of selling musical publications at retail, that J. M. Priaulx is secretary and treasurer of the National Association of Sheet Music Dealers and is connected with the firm of Charles H. Ditson & Company, publishers of and dealers in music; that Walter Fischer, J. Elmer Harvey, Charles W. Homeyer, William J. Kearney, Edward P. Little, Holmes T. Maddox, L. W. Miller, Harold Orth, Gustav Schirmer, S. Ernest Philpitt, Paul A. Schmitt, Clayton F. Summy, Charles H. Willis, W. H. Witt, Harvey J. Wood, and ex-officio, the officers above named of said National Association of Sheet Music Dealers, are directors and members of the said association.

PAR. 2. That for many years it has been the custom for publishers of music to print a price on the title page, which price as printed on the title page of the music was many years ago the price at which the music was sold to the public generally by publishers and retail dealers; that in the course of time as the result of competition it became a general custom to sell such music at 50% or one-half of the price printed on the title page of the sheet. Many dealers and publishers sold music to the public at less than 50% of the price printed on the title page, and dealers and publishers sold music to schools, convents, colleges and music teachers at discounts much in excess of 50%.

PAR. 3. That with the intent, purpose and effect of stifling competition in interstate commerce in the business of selling musical publications in, and throughout the United States and the District of Columbia to the public generally and to schools, convents, colleges and the faculties thereof, and to music teachers, the respondent National Association of Sheet Music Dealers and the members thereof and each of them did conspire together and with the respondent The Music Publishers' Association of the United States and with publishers of musical publications to fix and maintain specific standard resale prices of musical publications in the various States of the United States and in the District of Columbia by the members of the National Association of Sheet Music Dealers and other dealers and publishers selling musical publications to the public, and that as a result of said conspiracy and the acts of the respondents the prices of musical publications to the public and to the music profession have been enhanced generally throughout the United States.

PAR. 4. That for the purpose and with the intent and effect mentioned in paragraph 3 of this complaint the respondents, The Music Publishers' Association of the United States and the National Association of Sheet Music Dealers, for more than three years last past have held, and do hold, annual meetings during the same week and in the same city, that such meetings of said associations are usually held on alternate days, that the meetings of each association are attended by members of the other association who take part in such meetings; that committees representing one association confer with committees representing the other association and with others, persons, firms, corporations or associations interested in or engaged in publishing or dealing in musical publications in connection with and in relation to the matters herein alleged; that most of the members of The Music Publishers' Association of the United States are also members of the National Association of Sheet Music Dealers; that resolutions calculated or intended to result in increased prices to the

public and to the music profession have been and are passed by one of said associations and at times by its members or by part of them acting together, recommending action by the other association and its members, and that such resolutions have been, and are, ratified and approved by such other association or by its members, or some of them, and agreed to and carried out by its members or a part of them.

PAR. 5. That in connection with the general conspiracy and plans above alleged, and for the purpose of supplementing and making more effective the work of the associations of increasing and enhancing the price which the public and the musical profession should be required to pay for musical publications, certain members of said associations, while gathered together at times during the periods fixed for the holding of the meetings of said Associations met and agreed together upon policies of increase of price and upon uniform rates and schedules of prices of certain classes of competitive musical publications and that pursuant to and as a result of such agreements and understandings the rates and the prices of such musical publications were so increased and advanced.

PAR. 6. That pursuant to the general conspiracy, plans and resolutions adopted by the said associations and agreed to by members thereof, the said National Association of Sheet Music Dealers prepared and distributed among the dealers of musical publications generally throughout the United States and the District of Columbia, circulars, pamphlets and other papers calculated to induce dealers, not members of the said National Association of Sheet Music Dealers to conform to the enhanced, or increased prices sought to be enforced by the said associations and the members of said National Association of Sheet Music Dealers, and thereby and by various letters and other communications and by personal solicitation endeavored to, and did, persuade and induce music dealers not members of such National Association of Sheet Music Dealers to conform to such standard of resale prices as fixed and agreed to by the respondents as aforesaid.

PAR. 7. That as a result of said conspiracy and cooperation between said two associations and the members of said two associations, competition has been largely eliminated and the price required to be paid by the public and the musical profession for musical publications has been greatly enhanced.

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 respondents charging them with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

All of the respondents named in the complaint have entered their appearances and filed their answers herein, and hearings were had and evidence introduced, and an agreed statement of facts and a stipulation as to the facts were entered into, executed by attorneys for all the respondents, and filed. In said stipulation as to the facts it was stipulated and agreed that the Federal Trade Commission might take the statement of facts contained therein as the facts in this case and in lieu of testimony and might forthwith proceed further upon said statement to make its report in said proceedings, stating its findings as to the facts and conclusions, and entering its order disposing of the proceeding. Respondents expressly waived their right to present the matter upon brief and oral argument.

The Federal Trade Commission being now fully advised in the premises, makes this its report, stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That at the time of and immediately prior to the issuing of the complaint, the respondent, The Music Publishers' Association of the United States, was a membership corporation organized under the laws of the State of New York, and was composed of 41 members, more or less, being publishers of music and engaged in the business of publishing music in the various States of the United States, and selling both at wholesale and retail and transporting the same in and among the various States and the District of Columbia; that the respondent National Association of Sheet Music Dealers, was an unincorporated Association organized about the year 1914, having 100 members, more or less, who are engaged in the business of dealing in and selling musical publications at retail in and among the several States of the United States and the District of Columbia; and that all of the other respondents were officers, directors or members of the said National Association of Sheet Music Dealers, as more specifically set out in the complaint and admitted in the stipulation as to facts above mentioned.

PAR. 2. That the respondents and each and all of them conspired together for the purpose of fixing and maintaining specific standard resale prices of musical publications in the various States of the United States and the District of Columbia by the members of the National Association of Sheet Music Dealers and other dealers and

publishers selling musical publications to the public, and that as a result of said conspiracy and the acts of the respondents done in pursuance thereof, the prices of musical publications to the public and to the music profession were enhanced generally throughout the United States.

PAR. 3. That in accomplishing said purpose the respondents the Music Publishers Association of the United States and the National Association of Sheet Music Dealers for more than three years next preceding the filing of the complaint herein, held annual meetings during the same week and in the same city, usually on alternate days. Members of each Association attended and participated in meetings of the other association, and committees representing one association conferred with committees representing the other association and with other persons, firms, corporations and associations interested in or engaged in publishing or dealing in musical publications in connection with and in relation to said conspiracy and the enhancement and maintenance of prices. Most of the members of the Music Publishers' Association of the United States were also members of the National Association of Sheet Music Dealers. Resolutions calculated and intended to result in increased prices to the public and to the music profession were passed by one of said associations and at times by its members or by part of them acting together, recommending action by the other association and its members, and such resolutions were ratified and approved by the other association and by its members, or some of them, and agreed to and carried out by its members or a part of them.

PAR. 4. In the furtherance of the general conspiracy and plans above mentioned certain respondents and other members of said associations, while gathered together at times during the periods fixed for the holding of the meetings of said associations, met and agreed together upon and put into effect policies of uniform increases of prices, schedules, and rates of certain classes of competitive musical publications.

PAR. 5. Pursuant to the general conspiracy, plans, and resolutions adopted by the said associations and agreed to by members thereof, the said National Association of Sheet Music Dealers prepared and distributed among the dealers in musical publications generally throughout the United States and the District of Columbia, circulars, pamphlets, and other papers calculated to induce dealers, not members of the said National Association of Sheet Music Dealers, to conform to the enhanced or increased prices sought to be enforced by the said associations and the members of said National Association of

Sheet Music Dealers, and thereby and by various letters and other communications and by personal solicitation endeavored to, and did, persuade and induce music dealers not members of such National Association of Sheet Music Dealers to conform to such standard of resale prices as fixed and agreed to by respondents as aforesaid.

PAR. 6. As a result of said conspiracy and cooperation among the respondents herein, price competition in the sale of musical publications was largely eliminated, and the prices required to be paid by the public and the musical profession for such publications were greatly enhanced.

CONCLUSION.

That the acts, agreements, understandings, policies, and practices of the respondents set forth in the foregoing findings as to the facts and each and all thereof, under the circumstances therein stated, constitute 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."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, the evidence and stipulations as to facts wherein and whereby it was agreed by said respondents that the Commission might forthwith proceed further upon said statement to make its report in said proceeding, stating its findings as to the facts and conclusion, and entering its order disposing of the proceeding, respondents' right to file brief and present oral argument herein being expressly waived; and the Commission having made its findings as to the facts and its conclusion 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, therefore, ordered, That the respondents, The Music Publishers' Association of the United States, National Association of Sheet Music Dealers, Thomas F. Delaney, E. Grant Ege, J. M. Priaulx, Walter Fischer, J. Elmer Harvey, Charles W. Homeyer, William J. Kearney, Edward P. Little, Holmes T. Maddox, L. W. Miller, Harold Orth, Gustav Schirmer, S. Ernest Philpitt, Paul A. Schmitt, Clayton F. Summy, Charles H. Willis, W. H. Witt, Harvey

J. Wood, and each of them, their officers, directors, agents, representatives and employees, cease and desist from:

1. Combining and conspiring among themselves or with others to fix or increase the prices of musical publications published or sold by them or any of them;

2. Combining and conspiring among themselves or with others to maintain standard or fixed resale prices for musical publications;

3. Using any other device or means whatsoever to accomplish either a general increase in the prices of musical publications, or the maintenance of fixed or standard resale prices for such publications.

It is further ordered, That the respondents herein named, and each of them, shall within sixty (60) days after the service upon them of this order file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.