

Syllabus.

7 F. T. C.

FEDERAL TRADE COMMISSION

v.

THE Q. R. S. MUSIC COMPANY.

COMPLAINT, FINDINGS AND ORDER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914, AND OF SECTION 3 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Docket 793—April 8, 1924.

SYLLABUS.

Where a corporation engaged in the manufacture of music rolls for player pianos, and in the sale thereof to retail dealers including the largest dealers in player rolls in the several states, and doing over 50 per cent of the total business done in the country in such products; in pursuance of a plan or policy directed to the maintenance of the prices which it (1) fixed for the resale by said dealers of the rolls which it sold under its own trade name and advertised nationally and locally, and which were well and favorably known and in demand, and (2) placed upon the labels of its said rolls and their containers, and made known through catalogues, price lists, etc., together with the advice that it regarded the maintenance of said prices as a matter vital to its business and one to be enforced by the refusal of sales to dealers who failed to respect the same:

- (a) Requested dealer customers to report the names of price cutting competitors;
- (b) Sought to induce price cutters brought to its attention through its customer dealers and its own agents and employees, to agree thereafter to observe its prices, under penalty of refusal of further sales; and to restore and observe its said prices;
- (c) Refused to make further sales to persistent price cutters or to those who would not agree to respect its prices; and
- (d) Withdrew the assistance which it extended to its customers under a system of cooperative advertising and selling helps, from those who failed to respect such prices;

With the result that said prices were maintained by substantially all of its dealer customers, it secured for its said rolls an advantage over the products of competitors who did not require their dealer customers to maintain resale prices, dealers in its rolls were prevented from selling the same at such lower prices as they might find adequate and warranted by their respective selling costs and efficiency, and competition among those dealer customers in the sale of said rolls was lessened or eliminated; and

Where said corporation,

- (e) Entered into agreements with its dealer customers whereby said dealers bound themselves to deal in its rolls to the exclusion of competitive products, in consideration of the privilege of returning and receiving credit for, rolls which they were unable to sell, with the effect of causing dealers to discontinue or refrain from handling competitive products, and of supplementing its price maintenance policy above set forth and aiding therein, and of substantially lessening competition in the sale and distribution of such rolls; and

All with a dangerous tendency unduly to hinder competition and to create a monopoly in the manufacture and sale of music rolls for player pianos; *Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition in violation of Section 5 of the Act of Congress approved September 26, 1914, and that the making of such contracts constituted a violation of Section 3 of the Act of Congress approved October 15, 1914.

Mr. John H. Bass and *Mr. Walter B. Wooden* for the Commission.

Mr. Charles L. Mahony and *Mr. Maurice J. Moriarty* of Chicago, Ill., for respondent.

COMPLAINT.¹

I.

Acting in the public interest pursuant to 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," the Federal Trade Commission charges that the Q. R. S. Music Company has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPHS 1. That respondent, the Q. R. S. Music Company, is a corporation organized under the laws of the State of Illinois, with its principal place of business in Chicago, in said State.

PAR. 2. That respondent for more than two years last past has been engaged, and is engaged, in the business of manufacturing and selling rolls for player pianos and has caused, and causes its products, known as player rolls, sold by it to be transported to the purchasers thereof from the State of Illinois through and into other States of the United States, and has carried on, and carries on, such business in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 3. That the respondent produces and sells approximately 60 per cent in volume, or 70 per cent in value, of player piano rolls sold in this country; that in or about the month of January, 1922, respondent acquired the physical property of the Imperial Player Roll Company used by that company in the manufacture of music rolls; that prior thereto the said Imperial Player Roll Company did the next largest business to respondent in the sale of player piano rolls in this country, namely, approximately 25 per cent thereof.

PAR. 4. That respondent in the course of its business as described in the preceding paragraphs has employed and enforced in the

¹ As amended.

Complaint.

7 F. T. C.

marketing of its player rolls, and still employs and enforces a policy and practice of fixing and prescribing from time to time specified prices at which player rolls manufactured and sold by it shall be resold by the retail dealers through whom such player rolls are resold to the purchasing public.

PAR. 5. That as a means of enforcing the observance and maintenance of respondent's policy and practice of fixing and prescribing resale prices for its product as described in the preceding paragraph, by the retail dealers through whom player rolls manufactured and sold by respondent are distributed, respondent has announced and made it understood generally to the trade that it would refuse to sell player rolls manufactured by it to any and all dealers who failed to observe and maintain the retail prices specified by it from time to time, as aforesaid, for player rolls manufactured by it; that pursuant to such announcement and understanding, respondent has refused to sell player rolls manufactured by it, to dealers who have failed or refused in the course of the resale of such rolls to the public, to observe and maintain the resale prices specified by respondent for such player rolls; and respondent has refused to sell player rolls to such dealers as did not give assurances that they would in the future so observe and maintain said resale prices.

PAR. 6. That, as a further means of enforcing its policy and practice of maintaining resale prices prescribed by it, respondent has employed, among others, the following methods:

(a) has requested and instructed its salesmen and agents to report dealers who sell its rolls for less than the prices prescribed by it;

(b) has requested its customers to report such price cutting by their competitors;

(c) has used the information so furnished to bring pressure to bear on such dealers, reported as cutting prices, to restore and agree to maintain the prices prescribed by it, by representations that respondent will refuse to sell to them unless they maintain its resale prices;

(d) through such information of price cutters from its salesmen, agents and customers, has induced price cutting dealers to restore its resale prices and promise to maintain them; and

(e) has used other cooperative means of securing the maintenance of its resale prices.

PAR. 7. The foregoing things done by respondent tend to constrain all retail dealers handling respondents product to uniformly sell the same to the consuming public at said resale prices prescribed by respondent and to prevent them from selling said product at such

lower prices that they deemed to be adequate and warranted by their respective selling costs and efficiency, and thus tend to suppress competition in the said product and unduly to hinder competition and obstruct the free and natural flow of commerce in the channels of interstate trade.

PAR. 8. The above alleged acts and things done by respondent constitute an unfair method of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

II.

Acting in the public interest pursuant to the provisions 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," the Federal Trade Commission charges the Q. R. S. Music Company with practices in violation of the provisions of Section 3 of said Act and states its charges in that respect as follows:

PARAGRAPH 1. For its charges under this count, said Commission relies upon the matters and things set out in paragraphs 1, 2, and 3 of Count I of this amended complaint to the same extent as though the allegations thereof were set out in full herein, and said paragraphs 1, 2, and 3 are incorporated herein by reference and made a part of the allegations of this count.

PAR. 2. That respondent in the course of its business as prescribed in paragraph 2 of Count I herein, enters into contracts and agreements with dealers for the sale of players rolls manufactured by it by which said dealers agree and bind themselves not to buy or sell or deal in player rolls manufactured and sold by any competitor of respondent, and to deal exclusively in player rolls manufactured and sold by respondent.

PAR. 3. That the effect of such contracts and agreements, under the conditions and circumstances as alleged in the preceding paragraphs, may be to substantially lessen competition and tend to create a monopoly in the line of commerce herein described in violation of the provisions of Section 3 of an Act of Congress, entitled, "An Act To supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to an Act of Congress, approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon

Findings.

7 F. T. C.

the respondent herein, charging it with unfair methods of competition in commerce in violation of the provisions of said act; and further charging the respondent herein with a violation of the provisions of Section 3 of an Act of Congress approved October 15, 1914.

The respondent having entered its appearance by its attorney, Maurice J. Moriarity, and respondent having duly filed its answer admitting certain allegations of said complaint and denying others, and setting up certain new matter in defense, and hearings having been held before an examiner of the Federal Trade Commission theretofore duly appointed, and the Commission having offered evidence in support of the said charges of the complaint, and said respondent having offered evidence in its defense, which evidence was recorded, duly certified, and duly transmitted to the Commission, and the Commission having carefully examined and fully considered the testimony and documentary evidence offered and received, as heretofore set out, hereby makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent, The Q. R. S. Music Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business in the city of Chicago, in said State.

(a) "Q. R. S." are letters of the alphabet adopted arbitrarily as part of the name or title and are not abbreviations of a longer title. Prior to 1910, when it was absorbed by the Melville-Clark Piano Company, Q. R. S. Music Company was an independent concern. Subsequent to that time, until 1920, Melville-Clark Piano Company conducted its player roll business under the name Q. R. S. Music Company. February 9, 1920, Melville-Clark Piano Company changed its corporate name to The Q. R. S. Music Company, the respondent herein.

(b) While The Q. R. S. Music Company has about three hundred stockholders, it is essentially a close corporation, since a majority of its capital stock is owned and held by four persons: Alfred N. Page, secretary; Thomas M. Fletcher, president; Mr. Kisselhorst and Mr. Roberts.

PAR. 2. Respondent is engaged in the business of manufacturing and selling music rolls for player pianos. It has factories for the manufacture of such rolls in Chicago, New York, San Francisco, and Toronto, and sales offices at each of these points from which it sells and distributes its said music roll products in the several States of the United States and also in foreign countries.

(a) The great bulk of the music roll product manufactured, sold, and distributed by respondent in the several States of the United States has been known as Q. R. S. player rolls, the letters Q. R. S. having been copyrighted as a trade designation for such rolls.

PAR. 3. In the course and conduct of its said business as set forth in paragraph 2 hereof, respondent has been and is in competition with other persons, partnerships, firms, and corporations engaged in the manufacture and sale of similar products in interstate commerce.

PAR. 4. (a) The commercial production and sale of player rolls have developed largely in the past twenty-five years. Since 1910 such development has been extremely rapid, as shown by the growth of respondent's annual production. According to records produced by respondent, its output in 1910 was approximately 157,000 rolls valued at \$73,752; and in 1920, the banner year of its production, respondent manufactured in excess of 6,200,000 rolls valued at \$3,690,601.

(b) By its rapid strides in the manufacture of music rolls, respondent has become the leading manufacturer of music rolls for player pianos in the United States, as shown by a comparison of respondent's annual output with the output of the entire industry. The estimated output of music rolls of the entire industry at the date of hearing herein was between ten and twelve million. This annual production contrasted with respondent's production in 1920 of 6,200,000 rolls, gives the respondent a control of well over 50% of the industry.

(c) Respondent's rolls sell generally at higher prices than the rolls of competitors, so that its percentage of the gross business in dollars and cents is substantially larger than in numbers of rolls.

(d) Respondent's Q. R. S. music rolls are considered in the trade as of high quality and the fact that they are nationally advertised creates a brisk demand for them. Dealers in music rolls for player pianos find their business success in this line promoted by ability to furnish their customers with Q. R. S. player rolls.

PAR. 5. Respondent sells the great bulk of its player rolls above mentioned through retail dealers in music or musical instruments, and in kindred lines permitting the stocking and sale of such accessories as music rolls, sheet music, and phonograph records. These dealers are located in the several States of the United States and in foreign countries, and are estimated to number in all about 7,500.

(a) Customers of respondent east of the Allegheny Mountains are largely served from its factory and sales office in New York City. Customers of respondent in the Ohio and Mississippi valleys are largely served from its factory and sales office in Chicago. Customers west of the Rocky Mountains are largely served by respondent.

Findings.

7 F. T. C.

ent from its factory and sales office in San Francisco. Export business is conducted largely from the factory and sales office of respondent in New York City. Some customers in territory ordinarily served by the New York and San Francisco offices are served from the factory and sales offices in Chicago.

(b) Respondent also sells its player rolls through several jobbers, but not more than five to ten per cent of its total product is thus distributed.

(c) Respondent employs about thirty-five salesmen who sell its product to dealers and make preliminary arrangements with dealers as to the exchange of its player rolls.

(d) Respondent issues catalogs, bulletins, or price lists from time to time, listing its said player rolls. It also advertises its products nationally and locally. In its local advertisements it furnishes literature to dealers handling its player rolls, or supervises and directs advertisements of such player rolls by dealers, in local advertising mediums.

(e) Respondent sells its rolls f. o. b. factories or point of shipment to the dealers who become its distributors. Such dealers, as well as the officers of respondent consider the title to such rolls passes to the dealer purchaser as soon as respondent makes shipment and remains in said dealer while he retains possession.

(f) Respondent's Q. R. S. player rolls are priced to dealers by means of price lists and discount sheets; "Confidential Discount Sheet, 1920 Q. R. S. Rolls" provides that "on purchases under 5,000 rolls in one year the discount is 40 per cent; on purchases of 5,000 rolls within one year the discount will be 40 per cent and 10 per cent. The extra 10 will be retroactive and credited to all purchases in 1920. On purchases amounting to 12,000 rolls or more per year the discount will be 50 per cent, applicable as above."

Terms to the dealers are 30 days net with an extra 2 per cent discount allowed on all purchases paid for by the 10th of the month following the purchase. Dealers make payments ordinarily for respondent's player rolls upon these terms, such payments being in no way contingent upon the sale of the rolls by dealers.

PAR. 6. Respondent has employed in the sale of its Q. R. S. player rolls, a policy and practice of fixing and prescribing from time to time the prices at which said player rolls shall be resold by retail dealers to consumers.

(a) In connection with such resale price maintenance policy and as a means of carrying it out and enforcing it in connection with the sale and distribution of Q. R. S. player rolls, respondent has issued catalogs, price lists, and other literature in which resale prices are suggested for respondent's Q. R. S. player rolls. Re-

spondent has caused such resale prices to be placed upon the labels of Q. R. S. player rolls and upon the boxes containing such rolls.

(b) Respondent has advised dealers and has let it be known to the music roll trade generally, that it regards its resale price maintenance policy with regard to its Q. R. S. player rolls as vital to its business, and that to enforce such policy respondent would refuse to sell to any dealer who had cut the resale price of Q. R. S. rolls fixed by respondent.

(c) Such references to its resale price maintenance policy have been made by respondent in its application blanks used by dealers in initiating their purchases of Q. R. S. player rolls, in circular letters and in correspondence with the respondent's customers and its salesmen.

(d) Before listing dealers as "authorized" and before selling them Q. R. S. player rolls, respondent asks them to fill out and sign a blank application indicating the sort of merchandise carried by applicant, the distance away of the nearest Q. R. S. dealer, the number of dealers in the city where applicant is located, whether applicant has theretofore carried or sold Q. R. S. rolls, what lines of rolls are then carried by applicant, whether applicant carries player pianos and if so, what kind and from whom purchased. The applicant is asked to give three references, and near the end of the blank occurs this printed statement:

IMPORTANT.

The policies of Q. R. S. Music Company must be strictly adhered to in the marketing and retailing of rolls.

(e) This application is transmitted by respondent to the dealer with a letter requesting the applicant to fill out, sign, and return it to respondent. When the dealer is accepted by respondent as a customer he is sent a form letter in which this paragraph occurs:

Our list price insures a fair profit only, and the protection of that profit is vital to us both. We will be glad to have your cooperation in advising us of any sale of our products that comes to your notice, that is detrimental to our mutual interests.

(f) Pursuant to the aforesaid policy of resale price maintenance respondent has requested its customers to report to it competing dealers who sell Q. R. S. player rolls for less than the resale price named by respondent in its catalogs, and its customers have in fact so reported such dealers to respondent. Respondent has also received from its salesmen and agents reports concerning dealers who sell Q. R. S. rolls for less than the resale prices named by it in its catalogs.

Findings.

7 F. T. C.

(g) Following such reports and with such reports as a foundation, respondent has endeavored to secure from the dealers reported agreements and promises to maintain respondent's resale prices upon Q. R. S. player rolls, giving such dealers to understand that unless they did so they could no longer buy Q. R. S. player rolls from respondent.

(h) Acting upon information as to price cutting by competing dealers, received from customers, salesmen, or agents, respondent has sought and secured from such competing dealers, agreements to restore, observe, and maintain the resale prices upon Q. R. S. player rolls named by respondent in its catalogs.

(i) At the demand of a customer who was a competitor of other customers of respondent in the sale of Q. R. S. player rolls, respondent has brought pressure to bear upon such other customers to restore, observe, and maintain the resale prices upon Q. R. S. player rolls named by respondent in its catalogs, and such action has been taken as a condition upon which the demanding customer promised to continue to observe and maintain such resale prices.

(j) At the demand of customers who were competitors of other customers in the sale of Q. R. S. player rolls respondent has cut off or refused to sell such other customers, because such other customers had failed or refused to observe and maintain the resale price of Q. R. S. player rolls named by respondent in its catalogs, and such action was taken as a condition upon which such demanding customers continued to observe and maintain the resale prices named by respondent on Q. R. S. player rolls.

(k) In carrying out its aforesaid policy of resale price maintenance, respondent has refused to sell to dealers who persisted in cutting the resale price fixed by respondent for Q. R. S. player rolls.

(l) In the course of its said business respondent has refused to sell to dealers who would not promise to observe and maintain its resale price upon Q. R. S. player rolls.

(m) The resale price suggested by respondent is maintained by 99 per cent of its dealers, and the number of respondent's dealers who have cut respondent's resale price during the last ten years and who were known by respondent to have done so, has not exceeded fifty in all.

(n) In the maintenance of said resale prices upon Q. R. S. player rolls, respondent has a system of cooperative advertising and selling helps for dealers, these selling helps being extended only to dealers who maintain the resale prices named by respondent for Q. R. S. player rolls, and this cooperation is withdrawn from such dealers

as respondent refuses to sell because of their failure to maintain said resale prices.

(o) Respondent's adoption and enforcement of its policy of resale price maintenance as hereinabove set forth has secured for Q. R. S. rolls advantages in competition over the music rolls of other manufacturers, because of the fact that dealers in such rolls prefer to sell and distribute music rolls upon which the manufacturer suggests, maintains, and enforces uniform resale prices and because of the fact that certain other manufacturers, competitors of respondent, do not require their dealers to maintain resale prices.

PAR. 7. Respondent's policy of maintaining resale prices upon Q. R. S. player rolls in the manner and by the methods hereinabove set forth have had the effect of establishing a uniform price upon such rolls purchased by the consumer from any dealer; said policy has also had the effect of preventing dealers from selling such rolls at lower prices such as might be found by them adequate and warranted by their respective selling costs and efficiency. Respondent's resale price policy has also had the effect of lessening or eliminating competition between and among such dealers in the sale of Q. R. S. player rolls.

PAR. 8. Respondent, in the course of its business as hereinabove described, has entered into agreements with dealers for the sale and distribution of Q. R. S. rolls, by which such dealers undertake to deal exclusively in player rolls made and sold by respondent, and not to buy, sell, or deal in player rolls made by any competitor of respondent except such character, class, or kind of roll as is not made or sold by respondent and cannot be secured from it.

(a) During the space of about a year running from March 29, 1920, to July 21, 1921, respondent entered into such exclusive dealing agreements with numerous dealers scattered through various States of the United States, and business in Q. R. S. player rolls was carried on between respondent and such dealers pursuant to such agreements. The making of such agreements with dealers distributing Q. R. S. player rolls made and sold by respondent was the regular practice and policy of respondent.

(b) Respondent's salesmen, when calling upon such dealers, advised them that exclusive dealing arrangements might be made with respondent, and solicited them to make such arrangements. These talks of the salesmen of respondent with the dealers were often followed by respondent's sending such dealers memoranda giving specifically the conditions upon which exclusive dealing arrangements might be made.

(c) In many instances such dealers addressed letters to respondent incorporating more or less specifically in their offers of exclusive

Findings.

7 F. T. C.

dealing, the conditions set forth in respondent's aforesaid memorandum. These offers were accepted by respondent as made, or with modifications, and resulted in exclusive dealing arrangements between such dealers and respondent, under which were conducted the sale and distribution of Q. R. S. music rolls.

(d) This method of initiating exclusive dealing agreements was adopted to cover up the fact that such agreements were solicited by respondent and to give the impression that they were made in response to spontaneous offers from customers.

(e) The consideration flowing from respondent to such dealers for exclusive dealing in Q. R. S. player rolls in most instances included a so-called unlimited exchange privilege, by which respondent agreed to credit against future orders from the dealer the amount paid by such dealer for Q. R. S. player rolls which the dealer was unable to sell and which he returned with seals unbroken or in a salable condition, to respondent. Such return and exchange was limited by respondent in 1921 to rolls purchased from respondent within the previous four months. In some cases, also, the unlimited privilege was curtailed and the exchange privilege of the dealer was confined to a percentage of the dealer's purchases. Exchange privileges could be exercised but once a month.

(f) Such unlimited exchange as was granted its exclusive dealers by respondent, as herein described, was equivalent to a rebate upon the purchase price paid for said goods by said dealers to respondent.

(g) In addition to the unlimited exchange privilege based upon exclusive dealing, respondent gave to dealers selling and distributing both Q. R. S. player rolls and the rolls of other manufacturers, a limited exchange privilege by which such dealers were permitted to return to respondent once a month five per cent of the quantity of Q. R. S. player rolls purchased by such dealers during the previous month. In each case the return of such rolls was coupled with an exchange and the number of rolls returned was not permitted to exceed the number of new rolls ordered at the time of the return. Credit for the rolls returned applied not to accounts already contracted by the dealer making the return but only to purchases made at or after the time of the return. The limited return or exchange privilege could be exercised but once each month, and if not exercised for any one month, lapsed and could not thereafter be exercised as to purchases made for the month that had been neglected.

(h) Regulations for exchanges under the unlimited exchange privilege and under the limited exchange privilege were sent by respondent to dealers in Q. R. S. player rolls in the form of a blank

designated "Application for exchange." On the front of such blank appeared forms for listing and numbering the rolls to be exchanged, and on the reverse side appeared printed conditions or regulations, under which the exchange was made. These printed conditions or regulations, however, did not include any reference to exclusive dealing with respondent.

(i) About 1921 respondent purchased the plant and property of the Rythmodic Company, which, as a branch of the American Piano Company, was at that time manufacturing in New York City about 500,000 player rolls a year. In 1922 respondent acquired the roll business of the Cable Piano Company of Chicago, which was being conducted under the name of Imperial Player Roll Company with headquarters in the city of Chicago. Imperial Player Roll Company had been in business since 1904, and at the time of its acquisition by respondent was manufacturing about 1,000,000 player rolls a year. Respondent, after its acquisition of the Rythmodic and Imperial player roll businesses, offered to dealers with whom it had exclusive agreements for handling Q. R. S. player rolls, Rythmodic and Imperial rolls covering such selections as could be furnished in Q. R. S. player rolls. Upon Rythmodic and Imperial rolls no resale price was named and said dealers were advised that upon such rolls they might sell at any price they choose, and thus meet the demand for rolls which were lower-priced than Q. R. S. rolls, without patronizing competitors of respondent. Said Rythmodic and Imperial rolls were also sold by respondent to dealers generally without restriction as to the resale price.

PAR. 9. Such agreements for exclusive dealing as set forth in paragraph 8 hereof, under the conditions and in the circumstances therein set forth, have had the effect of causing dealers in player rolls to discontinue the handling of player rolls manufactured and sold by competitors of respondent and to prevent such dealers in player rolls from selling or distributing player rolls made by manufacturers who were competing with respondent.

(a) Respondent's unlimited exchange plan as hereinabove set forth, has caused dealers in music rolls who have exclusive trading agreements with respondent to refuse to buy, sell, deal in, or distribute the music rolls made by respondent's competitors.

(b) The agreements for exclusive dealings, as set forth in paragraph 8 hereof, have applied at various times to some 475 dealers in player rolls in the several States of the United States, and such dealers were and are in general the largest dealers in player rolls in the several States, and are distributors for a substantial part of respondent's business.

Order.

7 F. T. C.

PAR. 10. Such agreements for exclusive dealing, as set forth in paragraphs 8 and 9 hereof, under the conditions and in the circumstances therein set forth, have supplemented, and supplement, the policy of respondent in naming and maintaining its resale price for Q. R. S. music rolls, and in fact have been and are a factor aiding in such resale price maintenance.

PAR. 11. The agreements for exclusive dealing, as set forth in paragraphs 8 and 9 hereof, under the conditions and in the circumstances therein set forth, have a capacity and tendency substantially to lessen competition, and do in fact substantially lessen competition in the sale and distribution of player rolls in the course of interstate commerce. The resale price maintenance policy and practice of respondent as applied to Q. R. S. player rolls, as hereinabove set forth, taken in connection with the exclusive dealing agreements as aforesaid, have a dangerous tendency unduly to hinder competition and to create a monopoly in the manufacture and sale of music rolls for player pianos in the United States.

CONCLUSION.

1. That the practices of the respondent as set forth in the foregoing findings as to the facts are, in the circumstances therein set forth, unfair methods of competition in interstate commerce in violation of Section 5 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."

2. That the practices of said respondent as hereinbefore set forth and recited, in the circumstances and under the conditions hereinbefore set forth, are in violation of Section 3 of the Act of Congress entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, 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 the respondent, the testimony and evidence, the trial examiner's report upon the facts and the exceptions thereto, and upon briefs submitted by counsel and oral argument, and the Commission having made its findings as to the facts and reached its conclusion that the respondent has violated 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 that respondent has violated Section 3 of the Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,"

Now, therefore, it is ordered, That the respondent, The Q. R. S. Music Company, its officers, directors, agents, servants and employees cease and desist from carrying into effect a policy of fixing and maintaining uniform prices at which the articles manufactured by it shall be resold by its distributors and dealers by—

1. Entering into contracts, agreements and understandings with distributors or dealers requiring or providing for the maintenance of specified resale prices on products manufactured by respondent.

2. Attaching any condition, express or implied, to purchases made by distributors or dealers to the effect that such distributors or dealers shall maintain resale prices specified by respondent.

3. Requesting dealers to report competitors who do not observe the resale price suggested by respondent, or acting on reports so obtained by refusing or threatening to refuse sales to dealers so reported.

4. Requesting or employing salesmen or agents to assist in such policy by reporting dealers who do not observe the suggested resale price, or acting on reports so obtained by refusing or threatening to refuse sales to dealers so reported.

5. Requiring from dealers previously cut off promises or assurances of the maintenance of respondent's resale prices as a condition or reinstatement.

6. Utilizing any other equivalent cooperative means of accomplishing the maintenance of uniform resale prices fixed by the respondent.

It is further ordered, That respondent, The Q. R. S. Music Company, its officers, directors, agents, servants and employees cease and desist from entering into contracts, agreements or understandings or making sales or fixing a price charged therefor or discount from or rebate upon such price subject to the condition, agreement or understanding that the purchaser of respondent's product shall not deal in the goods, wares or merchandise of any competitor of respondent; and

It is further ordered, That the respondent, The Q. R. S. Music Company, shall file with the Commission, within sixty (60) days after the service upon it of a copy of this order, its report in writing stating in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

426

FEDERAL TRADE COMMISSION DECISIONS.

Complaint.

7 F. T. C.