

IN THE MATTER OF

CHICAGO CORRESPONDENCE SCHOOL OF MUSIC
AND J. PETER BERINGER

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 1506. Complaint, Mar. 25, 1928—Decision, Jan. 17, 1929

Where a corporation engaged in the sale of correspondence courses in instrumental music; and its president and manager; in their advertisements in magazines of general circulation and in the blanks, circular letters, and other printed or mimeographed matter sent to those making inquiry,

- (a) Represented that the appropriate musical instrument was given to the student without compensation to the school or cost to the pupil, making such statements as "We will give you free a \$20 quality Violin, Tenor Banjo", etc. "Our FREE distribution of 1,000 high-grade musical instruments is already started. Your chances to get one of them without a cent of cost depends upon how quickly you can decide and act", the fact being that the usual price of the various instruments, excepting the piano and organ, was included in and constituted a part of the specified selling price of the course; and
- (b) Represented their courses as offered at a special price, lower than that regularly charged, making such statements as "VIOLIN FREE with complete course of 56 lessons. Regular price of course \$42; now * * * \$36"; the fact being that the purported reduced price was the usual charge;

With the capacity and tendency to deceive the public and to induce persons to enroll as students in reliance upon the truth and accuracy of the aforesaid representations:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Alfred M. Craven for the Commission.

Mr. John A. Nash, of Chicago, Ill., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Chicago Correspondence School of Music, Inc., an Illinois corporation engaged in furnishing courses of instruction in music, by correspondence, to persons or pupils at various places in the several States, and respondent J. Peter Beringer, its president, actively engaged in the management and control thereof, with advertising falsely or misleadingly in violation of the provisions of section 5

of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent school, as charged, engaged as above set forth in furnishing written, mimeographed, or printed information and instruction in the particular art or upon the particular instrument chosen by the pupil, together with any one of the musical instruments open to the choice of the pupil,¹ as a part of the whole transaction and contract, in its advertisements of its courses and of the articles and musical instruments supplied as incidental and accessory thereto, in newspapers, magazines, periodicals, and other publications of general circulation in the United States and in the several parts thereof, and in enrollment and other blanks, catalogues, pamphlets, letters, circulars, and other forms of printed, written, or mimeographed matter falsely and misleadingly promises, states and represents that—

(1) Its usual full cash tuition price for its course, together with the articles and musical instruments incidental thereto as chosen by the pupil, is a certain sum set out in its advertisements, enrollment blanks, or other printed matter, and that it is offering prospective pupils such course, articles, and instrument at a reduced and special price, a substantially lower figure likewise set out and specified as above set forth, the fact being that the pretended regular price is fictitious, and that the lower figure is its usual full selling price for the course, articles, and instruments to be chosen;

(2) Its pretended reduced price, as immediately above set forth, is offered to the public and to prospective pupils only for a certain limited time, as specifically set forth, the fact being that the pretended reduced price is its usual full price and that said time limit is fictitious;

(3) The musical instruments in question are given to the pupils freely and without any compensation to respondent school, and, conditioned on the prospective pupil contracting for the course within a certain specified time limit, as set out, respondent will include with such free instrument a beautiful carrying case therefor also without charge to the pupil or compensation to respondent, the fact being that such pretended time limit is fictitious and that said carrying case is incidental to the instrument and treated as a part of its ordinary equipment and that the usual and ordinary selling price for the instrument and case are at all times included in respondent's usual tuition or selling price for its course, and that said instrument and

¹ Violin, tenor banjo, Hawaiian guitar, banjo, cornet, ukulele, guitar, mandolin, or banjo mandolin.

case are furnished only to pupils who have enrolled and paid or agreed to pay respondents' price for its course, together with the articles and things and instrument and case incidental and accessory thereto.

The use by respondent school, under the control and management of respondent individual, as above set forth, of said trade practice and method of competition, to wit, the making of said false statements and representations, as charged, "has the tendency and capacity to mislead and deceive the public and prospective pupils, and will probably mislead and deceive the public and prospective pupils, into the erroneous belief" that such statements and representations are true, that respondent school is offering its course, together with the articles and things, and the musical instrument and carrying case, of the value of the pretended regular tuition or selling price, at and for a substantially lower figure, as specified, to the financial saving and advantage of the prospective pupil, in the amount of the pretended reduction, that the pretended reduced price and pretended gift of the case are offered only for a limited time, at specified prices, that respondent offers and gives the instruments and case to its pupils without cost to them or compensation to it, and that "therefore, respondents' said school, for the time so specified, and because of such pretended reduced or special tuition or selling price, and because such pupils receive said musical instruments without price or compensation to said respondent, and without cost or expense to such pupils, offers the best available opportunity to procure the education represented by said course of instruction and to procure said musical instruments and carrying cases."

Said acts and practices of respondents, as charged, "are all to the prejudice of the public and of competitors of respondents, Chicago Correspondence School of Music, Inc., and J. Peter Beringer, and constitute unfair methods of competition in commerce within the intent and meaning of section 5."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

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 on the 23d day of March, 1928, issued and thereafter served upon the respondents, Chicago Correspondence School of Music and J. Peter Beringer, a complaint charging them with the use of unfair methods of competition in commerce, in vio-

lation of the provisions of section 5 of said act of Congress. The respondents having entered their appearances and filed their answer herein, a hearing was had and evidence was thereupon introduced and received on behalf of both the Commission and the respondents before an examiner of the Commission theretofore duly appointed. Thereafter this proceeding came on for decision upon the record and the briefs of counsel for the Commission and counsel for the respondents, and the Commission having duly considered the matter and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Chicago Correspondence School of Music, is a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago, Ill. The respondent, J. Peter Beringer, is president of said corporation and is, and has been for a long period of time engaged in the management of said corporation. The business of said corporation consists in offering for sale and selling by correspondence courses of instruction in instrumental music such as violin, banjo, mandolin, guitar, piano, and organ. To all students enrolled by respondent, except those taking courses of instruction in piano and organ, there is furnished as a part of the course, if the student desires, the musical instrument upon which the instruction is furnished. The price of such instrument is included in the price specified and agreed upon as the price of the course of instruction. The school has students in practically every State of the United States.

PAR. 2. In the course and conduct of said business, respondent upon the enrollment of its students, causes to be transported by mail and otherwise the course of instruction in several printed or mimeographed lessons and the musical instrument accompanying the course, from Chicago, Ill., into and through States other than Illinois in interstate commerce to the several students at their respective points of location.

PAR. 3. Respondent corporation is in competition with other persons and corporations in the United States engaged in furnishing instruction by correspondence in instrumental music and in sending and transporting lessons and other printed matter into and through the various States of the United States in interstate commerce. Respondent corporation is also in competition with numerous manufacturers and dealers in musical instruments of the kind and character dealt in by respondent school, which manufacturers and deal-

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ers sell and transport such musical instruments between and among the various States of the United States in interstate commerce.

PAR. 4. In the course and conduct of its said business, respondent corporation for the purpose of inducing persons to enroll as pupils and to pay the tuition specified by the school and the price of the instruments included in such specified tuition, advertises in magazines of general circulation in the United States, and sends to persons answering said advertisements, blanks, circular letters, and other forms of printed or mimeographed matter.

PAR. 5. In such magazines, advertisements, circular letters, and other forms of advertising matter mentioned in paragraph 4, respondents advertise, state, and represent that the musical instrument, upon which the course of instruction is furnished, is given to the student freely and without price, or compensation to said respondent or cost or expense to such pupils. For example, respondents state in an advertisement which has been and is now extensively placed in magazines of national circulation as follows:

Yes, we will give you free a \$20 quality Violin, Tenor Banjo, Hawaiian Guitar, Banjo, Banjo-Guitar, Cornet, Guitar, Mandolin, or Banjo-Mandolin.

In a circular letter sent by respondents since October, 1927, to persons answering its magazine advertisements respondents state:

Our FREE distribution of 1,000 high-grade musical instruments is already started. Your chances to get one of them without a cent of cost depends upon how quickly you can decide and act.

Said representation is false and misleading for the reason that the musical instrument is not furnished free to the student, but the ordinary and usual price thereof is included in and constitutes a part of the specified selling price of the course of instruction.

PAR. 6. In such magazines, advertisements, circular letters, and other forms of advertising matter mentioned in paragraph 4, respondents also advertise and represent that the course of instruction is being offered to the prospective student at a special price and a lower price than that usually and regularly charged by the respondent. For example, in the enrollment blank, which has been in use since October, 1927, and is still in use, and which is sent to every person answering the magazine advertising, respondent states:

VIOLIN FREE with complete course of 56 lessons
Regular price of course \$42; NOW----- \$36

The same statement appears in said enrollment blank in reference to 10 musical instruments other than the violin, a certain amount being stated as the "regular" price and another lesser amount being

stated as the price at which the course is offered. Said statements and representations are false and misleading in that said prices specified as "regular" prices have never been actually charged or obtained by the respondent, and the prices specified as the present selling prices are and have been the prices obtained by the respondent in the usual, ordinary, and regular course of business.

PAR. 7. The false and misleading representations set forth in paragraphs 5 and 6 hereof each has the capacity and tendency to deceive the public and to induce persons to enroll as students of respondent school in reliance upon the truth and accuracy of such representations.

CONCLUSION

The practices of said respondents under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and respondents' competitors, and are unfair methods of competition in 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 the respondents, the testimony, evidence, and briefs, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated 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,"

It is now ordered, That respondents, Chicago Correspondence School of Music, a corporation, its officers, agents, and employees and the respondent, J. Peter Beringer, in offering for sale or selling courses of instruction or articles of merchandise, in interstate commerce, do cease and desist from:

(1) Representing to prospective students or to the public that the usual or regular selling price of any course of instruction is greater than the price at which such course of instruction is usually offered for sale.

(2) Representing that any price of the course of instruction is a special price, reduced price, or price that is lower than the price ordinarily and usually received, when such is not the fact.

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(3) Representing that any musical instrument or other article of merchandise is furnished free to students or prospective students when the price or value of such instrument or article of merchandise is included in the price specified as the price of the course of instruction.

It is further ordered, That the said respondents shall, within 30 days after the service upon them of a copy 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.

Complaint

IN THE MATTER OF
SAMUEL E. BERNSTEIN, INC.COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1545. Complaint, Nov. 3, 1928—Decision, Jan. 28, 1929*

Where silverware made in England had for many years long since past acquired a very considerable reputation for excellence in quality and come to be favorably, extensively, and distinctively known throughout the United States as a silverware of superior quality and the words "English Plate" had come to imply and indicate to the purchasing public thereof that silverware so marked was made in England and was of superior quality; and thereafter a corporation engaged in the purchase of domestic silver-plated ware made by the electroplating process, and in the sale thereof to wholesale and retail dealers in competition with manufacturers of plated ware and of solid or sterling silverware accurately and truthfully branded and marked, sold its aforesaid ware with the words "English Plate" stamped or impressed thereon, and, in smaller letters, the words "Made in U. S. A."; with the capacity and tendency to mislead and deceive the purchasing public by inducing the purchase by them of the aforesaid silverware as and for silverware made in England and of superior quality:

Held, That the sale of products stamped or branded as above set forth constituted an unfair method of competition.

Mr. William T. Kelley for the Commission.

Eyre, Scott & Keel, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation engaged in the sale of silver-plated ware made by the electroplating process, to the wholesale and retail dealers in the various States, and with principal office and place of business in New York City, with misbranding or mislabeling in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in that respondent sold said ware with the words "English Plate" stamped thereon, and in much smaller letters the words "Made in U. S. A.," with the effect of misleading and deceiving the purchasing public into believing that the ware so marked was made in England (from which ware marked "English Plate" has long been imported) and is of superior quality, and into