

IN THE MATTER OF
GRIFFITH PIANO COMPANY

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

Docket 2674. Complaint, Dec. 30, 1935—Decision, July 11, 1936

Where a corporation engaged in manufacture of a square type of piano sold under trade name "SpinnetGrand," featured in colonial designs, mainly, and extensively advertised in newspapers through the United States, and with a reputation of merit because of its excellence of tone and unique design, and usually so advertised and depicted as to show the rectangular shape, short depth, and four legs, and with slogan, always, "Occupies only the space of a lounge"; and thereafter a dealer engaged in sale of its "Colonial Grand" grand piano, of conventional grand piano design in that sounding board or harp was in horizontal position and had shape of a wing or harp, with fifth leg supporting narrow tip end thereof—

- (a) Simulated in newspapers and periodical magazines, advertisements of such "SpinnetGrand" by said competitor manufacturer through so photographing its own product that only front part was visible, and impression was given that it was a square piano, and through making illusion complete by erasing fifth leg from depiction, and adopted phrase "Occupies no more space than a lounge or sofa," in imitation of aforesaid competitive slogan, with result that readers were lead into false belief that piano thus advertised by it was that made and sold by aforesaid competitor; and
- (b) Made false and disparaging statements about said competitive product, which it had placed on the floor of its showroom and which had been kept out of tune, through such salesmen's comments as "is merely an antique," and "Do you want a piece of furniture or a piano," and "The tone of this piano is not good and it has the action of the old square piano," and in various ways falsely, misleadingly, and unfairly criticized and disparaged same, including unfavorable and unjust tone comparisons between it and its own product;

With result that prospective purchasers were confused and misled by such false and misleading advertisements, and other such purchasers were diverted from its competitors by reason of such disparaging and false statements and comparisons:

Held, That such acts and practices, under the conditions and circumstances described, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Joseph A. Simpson*, trial examiner.

Mr. William L. Pencke for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commis-

sion, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that Griffith Piano Co., a corporation, has been and is now using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Griffith Piano Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business in the city of Newark and State of New Jersey.

PAR. 2. Said respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution, in commerce between and among various States of the United States, of pianos, causing said products, when sold, to be shipped from its place of business in the State of New Jersey to purchasers thereof located in a State or States of the United States other than the State of New Jersey. In the course and conduct of its business, Griffith Piano Co., Inc., was at all times herein referred to in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution in interstate commerce of similar products.

PAR. 3. Mathushek Piano Manufacturing Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, with its principal place of business located at the city of New York in the State of New York. It is now, and for more than 1 year last past has been, engaged in the manufacture of pianos and in the sale and distribution of said products, in commerce, between and among various States of the United States; causing said products when sold, to be shipped from its place of business in the State of New York to purchasers thereof located in a State or States of the United States other than the State of New York. In the course and conduct of its business Mathushek Piano Co. was at all times herein referred to in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution in interstate commerce of similar products.

PAR. 4. Mathushek Piano Co. is a manufacturer of a square type piano which it sells and distributes under the trade name of Spinet-Grand. Said piano is extensively advertised, and, among other newspapers, is carried in the Christian Science Monitor which has a large circulation throughout the United States. Said piano has had a large sale and acquired a reputation for merit among users and purchasers of pianos. By reason of its advertising expenditures, said Mathushek Piano Manufacturing Co. has acquired a valuable good-will in its

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product and in the trade name of SpinetGrand as applied thereto. In its said advertising of the said SpinetGrand, the Mathushek Piano Manufacturing Co. usually uses a picture of said piano, showing its rectangular shape, short depth or width, and the fact that it has only four legs. Said company for a long period of time has featured in its said advertising the slogan "occupies only the space of a lounge," or similar expression.

PAR. 5. The respondent advertises a certain make of pianos under the name of Colonial Grand Piano. Its advertisements which likewise appear in the Christian Science Monitor, other newspapers and magazines, simulate the advertisement of the Mathushek Piano Manufacturing Co., by showing a picture of a piano which is in fact a conventional grand piano but which has been photographed from such an angle that it gives the appearance of being a square piano, and the picture has been doctored or altered in that the fifth leg has been eliminated. Further to create the impression that said Colonial Grand Piano is a square piano, similar to the SpinetGrand, respondent uses the phrase "occupies no more space than a lounge or sofa." Such representations tend to, and do in fact, mislead the buying public by diverting purchasers who desire to buy a square piano, to respondent's establishment, and from competitors dealing in square pianos.

PAR. 6. In the course and conduct of its said business the respondent purchased one of said SpinetGrands and placed it upon the floor of its salesroom for the sole purpose of disparaging it in the eyes of its salesmen and prospective customers. The piano was placed upon the floor without being put in condition and without being tuned. Respondent's salesmen, in order to divert prospective customers from the SpinetGrand to its own product, referred to the SpinetGrand as being merely a piece of furniture and being of no use as a musical instrument. Its salesmen made statements that the SpinetGrand had been purchased by respondent for the sole purpose of showing "just how rotten it is. There is nothing like it—the worst toned piano in the world." In demonstrating the pianos the salesmen strike certain keys of the SpinetGrand in such a fashion that there is no resonance or fullness of tone, while playing cords and using the pedals in a correct manner on the Colonial Grand Piano. They also make further disparaging and untruthful statements to the effect that the bridge in the SpinetGrand is at the edge, and that there is, therefore, no vibration; that it is an old square piano put in a smaller frame; that its principle is wrong; that only one pedal on it works and that the other two are jokes. The representation is also made that the respondent is the only agent for the Mathushek Piano Co.; that there is no other agent in Newark, N. J., and that respondent does not know whether

the Mathushek Piano Co. has any agency in New York City; that respondent has sold four or five SpinetGrands, but that most of them have been returned. The statements and representations so made by the respondent's salesmen are false and disparaging because, in truth and in fact, the construction of said SpinetGrand permits full vibration; it is not an old square piano put in a smaller frame, but is of modern design and construction; it is constructed according to correct principles of piano building; all pedals on said piano function properly; the respondent has never been and is not now an agent of said Mathushek Piano Co. and is fully advised that there is an agent in the city of Newark; and the respondent also well knows that the factory and principal place of business of the Mathushek Piano Co. are now and have been for many years in the city of New York; respondent has never sold a SpinetGrand to any of its customers.

PAR. 7. The aforesaid false and misleading representations and disparaging statements so made by respondent in the course and conduct of his business, have had and do have the tendency and capacity to deceive and mislead, and do deceive and mislead, purchasers and prospective purchasers of like products of competitors of respondent and the purchasing public into the false and erroneous belief that the said statements and representations are true, thereby causing said customers and prospective customers of competitors of respondent to purchase respondent's pianos instead of the pianos advertised by the competitors of respondent, in consequence of which trade has been and is diverted to respondent from competitors who truthfully represent their products, thereby substantially injuring respondent's competitors and competition in interstate commerce.

PAR. 8. The above acts and things done by respondent are all to the injury and prejudice of the public and the competitors of respondent in interstate 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.

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 December 30, 1935, issued, and on January 2, 1936, served its complaint upon respondent, Griffith Piano Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent:

filed no answer to the complaint. Testimony and evidence in support of the allegations of said complaint were introduced by William L. Pencke, attorney for the Commission, before Joseph A. Simpson, an examiner of the Commission theretofore duly designated by it; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter, the proceedings regularly came on for final hearing before the Commission on the said complaint, testimony, and evidence, and brief in support of the complaint, the respondent having elected to file no brief; and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Griffith Piano Company, is a corporation, organized and existing under the laws of the State of New Jersey, with its principal place of business in the city of Newark, N. J. It is now, and has been for a number of years, engaged in the sale and distribution of pianos. Respondent's sales and solicitations are made principally within, but are not confined to the State of New Jersey, sales and shipments being made, in the regular course of its business, to customers in the States of New York and Pennsylvania. Respondent is in competition with other concerns likewise engaged in the sale of pianos which, when sold, are shipped by said competitors, into and through the various States of the United States and the District of Columbia, to purchasers thereof.

PAR. 2. Among respondent's competitors, is a manufacturer and distributor of pianos whose factory and principal place of business is located in the city and State of New York. Said competitor manufactures a square type of piano which it sells under the trade name of SpinetGrand. This piano is featured mainly in colonial designs, is extensively advertised in newspapers throughout the United States and has acquired a reputation of merit because of its excellence of tone and unique design. Usually the advertisements of such competitor carry an illustration of said SpinetGrand, showing the rectangular shape, the short depth, and the four legs of the piano; and the text of the advertisement always includes the slogan that the instrument "occupies only the space of a lounge." When sold, said competitor ships said SpinetGrand piano from its place of business in the State of New York to its customers into many States of the United States, including the States of Pennsylvania and New Jersey.

PAR. 3. Respondent offers for sale a grand piano under the name of "Colonial Grand." This piano is of the conventional grand piano design, in that the sounding board or harp is in a horizontal position and has the shape of a wing or harp. The instrument has five legs, the fifth leg supporting the narrow tip end of the wing. Respondent, in advertising said piano in newspapers and musical magazines, simulated the advertisements of the competitor manufacturing the SpinetGrand. Said Colonial Grand was photographed from such an angle that only the front part is visible, giving the impression that it is a square piano, and the illusion was made complete by erasing the fifth leg which originally showed in the picture, so that the observer was led to believe that the picture represents a square piano. Moreover, the respondent adopted the phrase "occupies no more space than a lounge or sofa," an obvious imitation of its competitor's "occupies only the space of a lounge." The said advertisement of respondent simulated and resembled so closely the advertisement of its said New York competitor that readers thereof were led into the false belief that the piano so advertised by respondent was the piano manufactured and sold by the said competitor.

PAR. 4. In the course and conduct of its business as aforesaid, respondent made false and misleading statements and disparaged the products of its said competitors. In one instance, respondent purchased one of the SpinetGrand pianos, manufactured and sold by its aforementioned New York competitor, and placed it on the floor of its showroom, and through its salesmen made false and disparaging comments about said SpinetGrand, such as "this is merely an antique," "do you want a piece of furniture or a piano," and "the tone of this piano is not good, and it has the action of the old square piano," and did in various and divers other ways falsely, misleadingly, and unfairly criticize and disparage the same. Unfavorable and unjust tone comparisons were made between said piano and the piano of respondent by concealing from the prospective purchaser the fact that the said competitor's piano had been kept out of tune.

PAR. 5. The proof shows that prospective purchasers were confused and misled by the respondent's false and misleading advertisements, and that other prospective purchasers were diverted from respondent's competitors by reason of the disparaging and false statements and comparisons hereinabove described.

PAR. 6. The record shows that the advertisements complained of have been discontinued, and that the disparagement of competitor's product has been abandoned; but there is no assurance in sight, that the respondent, if not prohibited, would not resume and continue its former acts and practices as hereinabove set forth.

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CONCLUSION

The acts and practices of respondent under the conditions and circumstances described in the foregoing findings were to the prejudice of the public and respondent's competitors, and were unfair methods of competition in commerce constituting a violation 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."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the testimony and evidence taken before an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint, and no evidence being offered in opposition thereto, and upon brief filed by William L. Pencke, counsel for the Commission, brief of respondent and oral argument of both counsel having been waived, and the Commission having made its findings as to the facts and its conclusion that said respondent has 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 ordered, That the respondent, Griffith Piano Company, a corporation, its agents, servants, and employees, in connection with the sale, and the advertising and offering for sale of pianos in interstate commerce, cease and desist from:

(1) altering, deleting, or changing in any manner whatsoever illustrations of pianos sold by it so as to give the impression that the piano offered for sale is a square piano of colonial design, when such is not the fact;

(2) simulating, in the advertisements or illustrations of its products, the advertisements, or illustrations of competitors in such manner as to confuse or mislead prospective purchasers as to the design, type, character, or identity of the piano so offered for sale;

(3) permitting or authorizing its agents, servants, or employees to make false and misleading statements or false, disparaging comments concerning pianos of any of its competitors.

It is further ordered, That said respondent shall, within 30 days after service upon it of a copy of this order file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinabove set forth.

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IN THE MATTER OF

ROSS KNITTING MILLS, INC., TRADING IN ITS SAID
CORPORATE NAME AND AS ROSS SPORTWEAR CO.,
AND NATHAN HIRSCH, TRADING AS ROSS SPORT-
WEAR CO.

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

Docket 2671. Complaint, Dec. 27, 1935—Decision, July 15, 1936

Where a corporation engaged in the sale and distribution of knitted garments and other wearing apparel, and its similarly engaged president, used on their letterheads, business cards, invoices, and in other ways in soliciting sale of and selling their aforesaid goods, words "Manufacturers of Sweaters, Dresses, Suits, and Skirts," and abbreviation and words "Manfrs. of Knitted Suits, Sweaters, and Skirts," and other words and representations of similar effect, notwithstanding fact they did not knit, make, or manufacture products sold or distributed in commerce by them, own, operate, or control any mill, plant, or factory knitting or making the same, and preference of certain retail merchants of knitted garments and other wearing apparel for dealing directly with mill owner and manufacturer, and their impression and belief that they can buy more cheaply and eliminate middleman's profits by so dealing;

With tendency and capacity to mislead and deceive many of their customers and prospective customers into the erroneous belief that they owned, operated, or controlled a mill, etc., making said products, and into erroneous belief that those buying said garments sold by them were purchasing same directly from the manufacturers thereof and were thereby eliminating profits of middlemen and obtaining various other advantages not to be had by purchasing goods of other than the manufacturer, and with tendency unfairly to divert business from and otherwise injure and prejudice competitors making the garments sold by them and rightfully representing themselves manufacturers thereof, and competitors purchasing said articles in which they deal and who do not thus misrepresent themselves:

Held, That such acts and practices, under the conditions and circumstances involved, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. John L. Hornor*, trial examiner.

Mr. Astor Hogg for the Commission.

COMPLAINT

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