

Syllabus

IN THE MATTER OF

DAVID F. KEMP, TRADING AS UNITED STATES SCHOOL
OF MUSICCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2943. Complaint, Oct. 15, 1936—Decision, Mar. 29, 1937*

Where an individual engaged in the sale of correspondence courses for home study in playing various musical instruments, and in the sale, as incident thereto, of books, booklets, and other articles—

- (a) Represented, in advertising folders, pamphlets, circulars, letters, and other literature circulated to customers and prospective customers in the various States and in the District of Columbia, and in advertisements in periodicals of general circulation, that he had taught 700,000 pupils to play musical instruments, and that when a pupil enrolled in his said course he, the pupil, was assured of success, and that at the end of said course the average pupil was sufficiently proficient to pass a teacher's examination; and
- (b) Represented, as aforesaid, that no talent was necessary, and that any pupil could, through his said course, learn to play any musical instrument, and that all pupils, regardless of their degree of talent, could be taught to play an instrument in half the time usually required, and that an automatic finger control of his invention limbered, trained, or guided one's fingers so that they fell in the proper place automatically, and that a pupil, regardless of his talent, could quickly learn to play any jazz or classical selection and could play real tunes perfectly by note from the very start of the course, or at any point thereof;

Facts being that not all pupils studying his said course can play real tunes perfectly by note from the very start thereof, or at any other point therein, some measure of musical talent is generally necessary in order to enable a person to play a musical instrument, his said course is not such that a pupil can learn to play any such instrument without any musical talent, and aforesaid representations were otherwise exaggerated and false;

With capacity and tendency to deceive and mislead purchasers and prospective purchasers of his said correspondence lessons and courses of instruction, and to mislead a substantial portion of purchasing public into the erroneous belief that all said representations were true, and with result that a number of the consuming public, as a direct consequence of the mistaken and erroneous beliefs induced by such acts and representations, purchased substantial volume of said correspondence lessons and courses, and trade was unfairly diverted to him from competitors similarly engaged in sale and distribution of correspondence lessons and courses and who truthfully represent the effectiveness thereof and results to be obtained from their study; to the injury of competition in commerce:

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

Mr. Joseph C. Fehr for the Commission.

R. L. P. Wallace and Co., of New York City, for respondent.

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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 Federal Trade Commission, having reason to believe that David F. Kemp, trading as United States School of Music, hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the 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, David F. Kemp, trading and doing business under the trade name United States School of Music, has his principal office and place of business located at 225 Fifth Avenue, in the city of New York, State of New York. He is now, and has been for a number of years, engaged in the business of distributing and selling, in commerce as herein set out, correspondence lessons and courses of instruction for home study in the art of playing various musical instruments to persons hereinafter referred to as pupils, and in selling to such pupils severally as incidental and accessory to the instruction in and to the learning, use and practice of such art, certain merchandise consisting of books, booklets, pamphlets, and other articles.

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said courses of instruction and accessory material, when sold, to be transported from his principal place of business in the State of New York to the respective purchasers thereof located at various points in the States of the United States other than the State of New York. Respondent, has at all times, maintained a constant current of trade in said correspondence courses and said accessory materials, sold and distributed by him, in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of his business, the respondent is now, and has been for many years, in substantial competition with other individuals and with firms and corporations likewise engaged in the business of distributing and selling correspondence lessons and courses of instruction for home study in the art of playing various musical instruments, in commerce between and among the various States of the United States.

PAR. 4. In the course of the operation of said business, and for the purpose of inducing the purchase of his correspondence lessons and courses of instruction, respondent has printed and circulated through-

out the various States to customers and prospective customers, through the United States mails and otherwise, advertising folders, pamphlets, circulars, letters, and other literature, and has made use of advertisements in newspapers, magazines, and other periodicals of widespread and interstate circulation. In all of said advertisements, and other advertising literature above referred to, the respondent has caused his trade name United States School of Music to be conspicuously displayed, together with the following statements:

(a) We have taught 700,000 people to play—more than any other school on earth.

Learn to play the United States School of Music way—more than 700,000 have done so already.

(b) At the end of the course, our average pupil is ready to pass a teacher's examination.

(c) You can actually learn to play your favorite instrument two or three times faster, this amazing short cut way.

(d) Automatic finger control—our own invention—limbers, trains and guides your fingers so that they fall in the proper place almost automatically.

(e) Quickly learn to play any jazz or classical selection.

(f) Almost before you realize it, you are able to pick up any piece of music and play it.

From the very start, you are playing real tunes perfectly by note.

You actually learn real tunes right from the very start.

(g) No talent needed. Forget the old-fashioned idea that you need talent. Just read the list of instruments and decide which one you want to play and the United States School of Music will do the rest.

(h) When you enroll for an United States School of Music course you are assured of success.

All of said statements, together with many similar statements appearing in respondent's advertising literature, and in advertisements inserted in newspapers and magazines, as herein detailed, purport to be descriptive of respondent's courses of instruction and their effectiveness in teaching pupils how to play various musical instruments. In all of his advertising literature, including said newspaper and magazine advertising, respondent represents, through the statements and representations herein set out and other statements of similar import and effect, (1) that he has taught 700,000 pupils to play musical instruments; (2) that at the end of the course, the average pupil is sufficiently proficient to pass a teacher's examination; (3) that a pupil studying respondent's course of instruction can be taught to play a musical instrument in one-half the time usually required; (4) that an automatic finger control of respondent's own invention limbers, trains or guides one's fingers so that they fall in the proper place automatically; (5) that a pupil studying respondent's course of instruction will quickly learn to play any jazz or classical selection; (6) that any pupil studying respondent's course of instruction

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can play real tunes perfectly by note from the very start of the course; (7) that no talent is necessary and that any pupil can, through respondent's course of instruction, learn to play any musical instrument; and (8) that when a pupil enrolls in the United States School of Music, he is assured of success.

PAR. 5. The representations made by the respondent, as herein set out in paragraph 4, are grossly exaggerated, false, misleading, and untrue. In truth and in fact, respondent has not taught 700,000 pupils through his courses of instruction and the average pupil completing the course is not ready to pass a teacher's examination without other training. The courses of instruction offered by the respondent are not such that all pupils can learn to play a musical instrument in *one-half the time usually required*. The respondent has not invented an automatic finger control that serves to limber, train or guide the pupil's fingers to such an extent that they automatically fall in the proper place on the instrument being played. All pupils studying respondent's course of instruction do not quickly learn to play any jazz or classical selection. Not all pupils studying respondent's course of instruction can play real tunes perfectly by note from the very start of the course. Some measure of musical talent is generally necessary in order to enable a person to play a musical instrument and respondent's course of instruction is not such that a pupil can learn to play any musical instrument without any musical talent. The mere enrollment in respondent's course of instruction is not sufficient to insure the pupil that he will successfully learn to play any musical instrument.

PAR. 6. There are among respondent's competitors many who distribute and sell correspondence lessons and courses of instruction for home study in the art of playing various musical instruments and who do not, in any way, misrepresent the character of said lessons or the result to be obtained from a study thereof.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondent, as herein set out, in offering for sale and selling his correspondence lessons and courses of instruction were, and are, calculated to, and had, and now have, a capacity and tendency to mislead a substantial portion of the purchasing public into the erroneous belief that all of said representations are true and that after taking said lessons and courses of instruction, a pupil is able to accomplish the results claimed by the respondent. Further, as a direct consequence of the mistaken and erroneous beliefs, induced by the acts and representations of the respondent as hereinabove detailed, a number of the consuming public have purchased a substantial volume of respondent's correspondence lessons and courses of instruction with

the result that trade has been unfairly diverted to the respondent from competitors likewise engaged in the business of distributing and selling correspondence lessons and courses of instruction who truthfully represent the effectiveness of said lessons and courses of instruction and the results to be obtained from a study thereof. As a result, injury has been, and is now being, done by respondent to competition in commerce among and between the various States of the United States.

PAR. 8. The above and foregoing acts, practices and representations of the respondent have been, and are, all to the prejudice of the public and respondent's competitors as aforesaid, and constitute unfair methods of competition within the meaning and intent 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."

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 15th day of October, A. D., 1936, issued and served its complaint in this proceeding upon respondent, David F. Kemp, trading as United States School of Music, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of said respondent's answer thereto a stipulation as to the facts was entered into by and between the respondent and W. T. Kelley, Chief Counsel for the Commission, by which it was agreed that, subject to the approval of the Commission, the statement of facts so agreed upon should be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto; and by which stipulation it was further agreed that the Commission might proceed upon said statement of facts to issue its report stating its findings as to the facts (including inferences which it might draw from the said stipulated facts) and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of arguments or the filing of briefs. Said stipulation as to the facts has been duly filed in the office of the Commission and approved by it. Thereafter the proceeding came on for final hearing before the Commission on said complaint, the answer thereto and the statement of facts as agreed upon in lieu of testimony, briefs and argument having been waived

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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, David F. Kemp, trading and doing business under the trade name United States School of Music, has his principal office and place of business located at 225 Fifth Avenue, in New York City, N. Y. He is now, and has been for forty years, engaged in the business of distributing and selling, in commerce as herein set out, correspondence lessons and courses of instruction for home study in the art of playing various musical instruments to persons hereinafter referred to as pupils, and in selling to such pupils severally as incidental and accessory to the instruction in and to the learning, use and practice of such art, certain merchandise consisting of books, booklets, pamphlets, and other articles.

PAR. 2. In the course and conduct of his business, as aforesaid, respondent causes said courses of instruction and accessory material, when sold, to be transported from his principal place of business in the State of New York to the respective purchasers thereof located at various points in the States of the United States other than the State of New York, and in the District of Columbia. Since the organization of the business, some forty years ago, more than 700,000 people have taken the courses. Respondent has at all times maintained a constant current of trade in said correspondence courses and said accessory materials, sold and distributed by him, in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 3. The respondent is now, and has been for many years, in substantial competition with other individuals and with firms, corporations, and partnerships likewise engaged in the business of distributing and selling correspondence lessons and courses of instruction for home study in the art of playing various musical instruments, in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 4. In directing the operation of his business, and for the purpose of inducing the purchase of his correspondence lessons and courses of instruction, respondent has printed and circulated to customers and prospective customers located in the various States and in the District of Columbia, through the United States mails and otherwise, advertising folders, pamphlets, circulars, letters, and other literature, and has also made use of advertisements in magazines of

general circulation throughout the United States. In all of the advertising literature above referred to, the respondent has caused his trade name, United States School of Music, to be conspicuously displayed, together with the following statements:

(a) We have taught 700,000 people to play—more than any other school on earth.

Learn to play the United States School of Music way—more than 700,000 have done so already.

(b) At the end of the course, our average pupil is ready to pass a teacher's examination.

(c) You can actually learn to play your favorite instrument two or three times faster, this amazing short cut way.

(d) Automatic finger control—our own invention—limbers, trains and guides your fingers so that they fall in the proper place almost automatically.

(e) Quickly learn to play any jazz or classical selection.

(f) From the very start, you are playing real tunes perfectly by note.

You actually learn real tunes right from the very start.

(g) No talent needed. Forget the old-fashioned idea that you need talent. Just read the list of instruments and decide which one you want to play and the United States School of Music will do the rest.

(h) When you enroll for an United States School of Music course you are assured of success.

Among the statements and representations made by the respondent since October 2, 1935, have been the following:

Learn to play the U. S. School of Music way. More than 700,000 have done so already.

Yes, you can actually learn to play your favorite instrument 2 to 3 times faster this amazing short-cut way.

PAR. 5. The statements and representations, as set forth in paragraph 4 hereof, and other similar thereto, serve as representations on the part of respondent to purchasers and prospective purchasers of his correspondence lessons and courses of instruction for home study in the art of playing various musical instruments as to the value of said courses and as to the results to be obtained by subscribers to said courses and have the capacity and tendency to lead purchasers and prospective purchasers of respondent's said correspondence lessons and courses of instruction into the mistaken beliefs: (1) that he has taught 700,000 pupils to play musical instruments; (2) that at the end of the course, the average pupil is sufficiently proficient to pass a teacher's examination; (3) that all pupils studying respondent's course of instruction, regardless of their degree of musical talent, can be taught to play a musical instrument in one-half the time usually required; (4) that an automatic finger control of respondent's own invention limbers, trains or guides one's fingers so that they fall in the proper place automatically; (5) that all pupils studying respondent's course of instruction will, regardless of their

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degree of musical talent, quickly learn to play any jazz or classical selection; (6) that all pupils studying respondent's course of instruction can, regardless of their degree of musical talent, play real tunes perfectly by note from the very start of the course; (7) that no talent is necessary and that any pupil can, through respondent's course of instruction, learn to play any musical instrument; and (8) that when a pupil enrolls in the United States School of Music, he is assured of success; and to purchase respondent's said correspondence lessons and courses of instruction for home study in the art of playing various musical instruments on account of such beliefs.

PAR. 6. The said statements and representations made by the respondent, as herein set out in paragraphs 4 and 5 are exaggerated and have the capacity and tendency to deceive and mislead purchasers and prospective purchasers of respondent's said correspondence lessons and courses of instruction for home study in the art of playing various musical instruments.

In truth and in fact, respondent has not actually taught 700,000 pupils through his courses of instruction and the average pupil completing the course is not ready to pass a teacher's examination without other training. The courses of instruction offered by the respondent are not such that all pupils, regardless of their degree of talent, can learn to play a musical instrument in one-half the time usually required. The respondent has not invented an automatic finger control that serves to limber, train, or guide the pupil's fingers to such an extent that they automatically fall in the proper place on the instrument being played. All pupils studying respondent's course of instruction do not quickly learn to play any jazz or classical selection. Not all pupils studying respondent's course of instruction can play real tunes perfectly by note from the very start of the course, or at any other point in the course. Some measure of musical talent is generally necessary in order to enable a person to play a musical instrument and respondent's course of instruction is not such that a pupil can learn to play any musical instrument without any musical talent. The mere enrollment in respondent's course of instruction is not sufficient to insure the pupil that he will successfully learn to play any musical instrument.

PAR. 7. There are among respondent's competitors many who distribute and sell correspondence lessons and courses of instruction for home study in the art of playing various musical instruments and who do not represent the character of said lessons or the result to be obtained from a study thereof in such a way as to mislead and

deceive purchasers or prospective purchasers into subscribing for said courses in preference to those offered by competitors.

PAR. 8. Each and all of the misleading and deceptive statements and representations made by the respondent, as herein set out, in offering for sale and selling his correspondence lessons and courses of instruction had and now have a capacity and tendency to mislead a substantial portion of the purchasing public into the erroneous belief that all of said representations are true and that after taking said lessons and courses of instruction, a pupil will be able to accomplish the results claimed by the respondent. Further, as a direct consequence of the mistaken and erroneous beliefs, induced by the acts and representations of the respondent as hereinabove detailed, a number of the consuming public have purchased a substantial volume of respondent's correspondence lessons and courses of instruction with the result that trade has been unfairly diverted to the respondent from competitors likewise engaged in the business of distributing and selling correspondence lessons and courses of instruction who truthfully represent the effectiveness of said lessons and courses of instruction and the results to be obtained from a study thereof. As a result, injury has been, and is now being done by respondent to competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent, David F. Kemp, trading as United States School of Music, are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce, within the intent and meaning 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 answer of the respondent, and the agreed stipulation of facts entered into between the respondent herein, David F. Kemp, trading as United States School of Music, and W. T. Kelley, Chief Counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceedings, and the Commission having

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made its findings as to the facts and 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, David F. Kemp, individually, and trading as United States School of Music, or trading under any other name, his representatives, agents, and employees, in connection with the advertising, offering for sale, and sale and distribution of courses of instruction for home study in the art of playing various musical instruments in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing in newspapers and magazines and through circulars, catalogues, labels, or in any other form of printed matter or by radio broadcasting, or in any other way or manner:

1. That he has taught 700,000 pupils to play musical instruments;
2. That at the end of the course, the average pupil is sufficiently proficient to pass a teacher's examination;
3. That all pupils studying respondent's course of instruction, regardless of their degree of talent, can be taught to play a musical instrument in one-half the time usually required;
4. That an automatic finger control of respondent's own invention limbers, trains or guides one's fingers so that they fall in the proper place automatically;
5. That a pupil studying respondent's course of instruction will, regardless of having musical talent, quickly learn to play any jazz or classical selection;
6. That any pupil can, regardless of having musical talent by studying respondent's course of instruction, play real tunes perfectly by note from the very start of the course or at any point in the course;
7. That no talent is necessary and that any pupil can, through respondent's course of instruction, learn to play any musical instrument;
8. That when a pupil enrolls in the United States School of Music, he is assured of success;

and from making any other representations of similar tenor or import.

And it is hereby further ordered, That the said respondent shall within 60 days from the date of the service upon it of this order file with this Commission a report, in writing, setting forth the manner and form in which it shall have complied with this order.

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GENERAL ELECTRIC COMPANY ET AL.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2941. Complaint, Nov. 13, 1936¹—Decision, Apr. 2, 1937*

Where four corporations engaged in manufacture and sale of turbine-generators, largest consumers of which included public utilities, whether public or privately owned, and municipal, State and Federal Governments, and in connection with which not only initial cost, but efficiency and performance guarantees, with their decided effect upon cost of operation, are vital factors and become inseparable from the prices to be paid therefor to prospective purchasers thereof, and constituting a group so large and influential in the manufacture of such products that they were able to influence and control the flow of trade thereof between and among various States and in the District of Columbia, and, but for the below set forth practices, and prior thereto, in competition with one another as to prices in the sale thereof; for the purpose of eliminating price competition among themselves—

Entered into and carried out an agreement, combination and understanding among themselves to fix and maintain, and by which they did fix and maintain, uniform delivered prices to be exacted from the purchasers of turbine-generators, and thus to fix delivered prices of such products entering into commerce among and between the various States and in the aforesaid District, and, pursuant thereto—

- (1) Fixed and maintained, by agreement among themselves, uniform delivered prices for such products, and adopted as their own, and adhered to, the delivered price sheets compiled by one of their number, notwithstanding the fact the same were unrelated to their respective individual costs;
- (2) Fixed and maintained, by agreement among themselves, uniform performance guarantees for such turbine-generators, and adopted as their own confidential performance data compiled by one of their number, notwithstanding the fact the same were unrelated to the actual or true theoretical performance of their said respective products; and
- (3) Conferred, compared and discussed, before submitting delivered prices in competitive bidding for turbine-generators, with each other, the delivered prices to be charged therefor, and agreed, as a result thereof, to submit identical bids, not only for such products, but for the numerous "extras" necessary for the proposed installation thereof;

With result that business of dealing in and distributing said products was monopolized in themselves, competition in industry in question was unreasonably lessened, eliminated, restrained, stifled, and hampered, and competition therein suppressed, and purchasing and consuming public was deprived of advantages in price, service and other considerations which they would receive and enjoy under conditions of normal and unobstructed or free and fair competition in said trade and industry, and said agreement, etc., and acts and practices otherwise operated as a restraint upon and a detriment to the freedom of fair and legitimate competition therein, and

¹ Amended complaint.