

IN THE MATTER OF
CLINE MUSIC COMPANY, INC.

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

Docket 2944. Complaint, Oct. 15, 1936—Decision, Apr. 21, 1938

Where a corporation engaged in sale and distribution of pianos and other musical instruments—

(a) Represented, through "stock ads" sent to it by piano companies and inserted by it in newspapers, and through salesmen in dealing with prospective purchasers contacted by it through means of said advertisements, that it was offering used or repossessed pianos on which a balance was due, and on which payments, for one reason or another, as variously assigned by its salesmen, had been discontinued by prior purchasers, and that it would sacrifice said instruments or store them with reliable parties, rather than incur expense of returning pianos, and offered said instruments, in accordance with such representations, as repossessed, used, or secondhand;

Facts being that real purpose of such advertisements was not to sell any particular piano offered, but to contact prospective customer, said various representations were false, and it did not have any particular used or repossessed instruments, as represented, in aforesaid locality, and pianos sold were cheap, new instruments.

(b) Exhibited and sold pianos on which were stamped or burned retail price at which, purportedly, instrument was to be sold, and represented, in offering and selling product in question, that such purported prices were regular or customary retail prices for the particular products;

Facts being said supposed prices, thus burned or stamped on the particular instruments by the manufacturers from whom said corporation purchased same, were not and never had been the actual retail selling prices thereof, but were highly excessive, false, and misleading, and none of said pianos were ever sold for any such prices, thus stamped on said cheap instruments in accordance with practice of few, but not highest grade manufacturers;

With tendency and capacity, through use of such "come on" or "blind" ads, and fictitious and exaggerated pretended retail prices and representations, to cause members of purchasing public to form erroneous belief that it was offering high-class, used and repossessed pianos at a sacrifice or for balance alleged to be due thereon, rather than incur expense of returning same to factory, and with result that various members of public, acting in such erroneous beliefs, and induced by said various misrepresentations, bought said pianos, and with capacity and tendency thereby unfairly to divert trade to it from competitors engaged in selling in interstate commerce pianos truthfully advertised and represented; to the substantial 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.

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. Marshall Morgan for the Commission.

Mr. Curry Carter, of Staunton, Va., for respondent.

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 Cline Music Company, Inc., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act of Congress, and it appearing to 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, Cline Music Company, Inc., is a corporation duly organized, created, and existing under and by virtue of the laws of the State of Virginia, with its principal place of business located at 126 West Beverly Street, in the city of Staunton, Va. It is now and has been for more than one year last past engaged in the business of selling and distributing pianos to members of the purchasing public as herein set out.

PAR. 2. The respondent, being engaged in business as aforesaid, caused and causes said pianos when sold by it to be transported from its principal place of business in the city of Staunton, Va., to purchasers thereof located in the various States of the United States other than the State of Virginia, and in the District of Columbia. There is now, and has been at all times mentioned herein, a constant current of trade and commerce in said pianos sold and distributed by said respondent between and among the various States of the United States, and in the District of Columbia.

PAR. 3. Respondent, in the course and conduct of its business, is now, and has been at all times mentioned herein, engaged in substantial competition with other corporations and with partnerships, firms, and individuals engaged in the sale and distribution of similar products in commerce among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business as hereinabove described, respondent, in offering for sale and selling its said pianos in interstate commerce, caused and causes advertisements and advertising matters concerning said pianos to be inserted in various periodicals having a wide circulation in various States of the United States. In such advertisements and advertising matter the following statements and representations have been and are made:

FOR SALE—PIANOS, WE learn we must take back from two customers who have moved to this vicinity, their pianos on account of inability to finish payments. To return these pianos, would be very expensive. Will sacrifice them

Complaint

26 F. T. C.

for balances due, or store them with reliable parties until sold. Both pianos are almost new. Terms if desired. One Baby Grand; One Midget upright; full 88 note keyboards. If interested, write to * * *.

In answer to inquiries from members of the purchasing public concerning the pianos so advertised and offered for sale, respondent in its usual course of business transports its pianos from its place of business to the inquiring person and exhibits said pianos to the inquiring person and offers the same for sale to said person, each piano having a price burned or stamped on its sounding board, said price so stamped or burned purporting to be the regular retail price of the piano.

The statements contained in the above set out advertising matter together with the price marks stamped or burned on the said pianos are intended to and do serve as representations on the part of the respondent that:

(a) The pianos referred to in said advertisements and exhibited to the prospective purchaser are of high quality and superior workmanship.

(b) They were originally sold at and for prices closely approximating the prices stamped or burned thereon.

(c) Said pianos had been repossessed and that prices at which said pianos were actually offered for sale are sacrificed prices made for the purpose of eliminating shipping and other repossession charges.

In truth and in fact said pianos were not instruments which had been sold for prices approximating the prices burned or stamped thereon and which had been repossessed by respondent. Said instruments were not being sacrificed for balances due, but the said pianos were new instruments of inferior quality, and the prices asked therefore were not in fact sacrifice prices. The retail prices so stamped or burned on said pianos are and were many times in excess of the actual selling price of the said pianos by the retailer to the consuming public, and are and were many times in excess of their true and actual value. The retail prices so stamped or branded, as aforesaid, are false and fictitious, and in no sense represent either the true value or the true selling price of the pianos so marked. The prices stamped or marked on said pianos were not and are not the prices at which the same were or are expected or intended to be sold, but were and are greatly in excess of the prices at which the same were sold or intended to be sold in the usual course of trade.

PAR. 5. Over a period of many years manufacturers have, in many trades, formed the custom of marking or stamping on the article or item of manufacture, or on the container thereof, the retail price at which said manufacturers suggest the retailer should sell the item or

articles to the ultimate consumer purchaser. This suggested retail price, so stamped or marked, is intended to represent the cost of the manufacture of the article plus a reasonable profit for the manufacturer and retailer, and consequently to represent the approximate retail sale value of the item. The retail price so stamped or marked is intended by the manufacturer to be indicative of the quality and character of the products and the process of manufacture. The public generally understands the custom herein detailed and has been led to, and does, place its confidence in the price markings so stamped and the representations thereby made as to the quality of the product to the extent that it purchases a substantial volume of merchandise in reliance on this aforesaid custom. For many years a substantial portion of the purchasing public has expressed, and has had, a marked preference for pianos of high quality and workmanship that are produced by the manufacturer with the intent and design of selling said pianos for prices in excess of the general and usual range of prices for similar products manufactured from inferior materials and by inferior workmanship. Said manufacturers, following the custom herein detailed, have marked or stamped the suggested retail prices on said products as an indication of the superior quality and character of such pianos and their resulting higher value. Whenever a genuinely superior product, so stamped or marked with the retail price thereof, is offered for sale at a substantially reduced price, the general purchasing public has been led to believe, and does believe, that in purchasing said product it is securing a bargain not ordinarily obtainable in the usual course of trade. The purchasing public has a preference for purchasing genuinely superior products sold at less than the customary retail value thereof, over ordinary products sold for the regular price which is lower than the normal retail price of the superior product in the customary course of trade.

PAR. 6. The effect of the false and misleading representations, hereinabove set out, together with the false and fictitious price markings, herein set out, on the part of the respondent, in the sale and offering for sale of pianos, as hereinabove referred to, is to mislead and deceive a substantial portion of the consuming public in the several States of the United States by inducing them to believe:

1. That the pianos were and are superior products and had been sold by the manufacturer thereof to the respondent with the intent and purpose that said pianos would be originally sold at retail at a price closely approximating the price stamped thereon:

2. That the pianos so offered for sale and sold were ones that had been repossessed on account of the failure or inability of the pur-

chasers to meet the payments thereon, and that such pianos were being sacrificed for balances due.

3. That the price burned or stamped on the back of said pianos was the usual or customary price at which the said pianos were sold or intended to be sold in the course of the regular retail trade; and that such pianos were made of superior workmanship and materials.

PAR. 7. The aforesaid acts and practices of the respondent have a tendency and capacity to unfairly divert a substantial volume of trade from competitors of respondent engaged in similar businesses, which competitors rightfully and truthfully represent the material, merit, and value of their products and which said competitors do not in any wise misrepresent the material, merit, and value of such products. Thereby, substantial injury has been and is being done by respondent to competition in interstate commerce.

PAR. 8. Said acts and practices of respondent are all to the prejudice of the public and respondent's competitors and constitute unfair methods 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 15, 1936, issued and thereafter served its original complaint in this proceeding on respondent, Cline Music Company, Inc., charging it 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 respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by Marshall Morgan, attorney for the Commission, and in opposition to the allegations of the complaint by Curry Carter, attorney for the respondent, before W. W. Sheppard, an examiner of the Commission, theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence and briefs in support of the complaint and in opposition thereto; and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes these its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Cline Music Company, Inc., hereinafter referred to as respondent, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its principal office and place of business located at 126 West Beverley Street in the city of Staunton, Va. Respondent is now, and for several years last past has been, engaged in the business of selling and distributing pianos and other musical instruments.

PAR. 2. In the course and conduct of its said business as described in paragraph 1 hereof, respondent has offered its said products for sale and has sold and transported and caused the same to be transported in commerce among the several States, of the United States direct from its aforesaid place of business in the city of Staunton, Va., to customers located at points in States of the United States other than the State of Virginia.

In the course and conduct of such selling, respondent has been, and now is, engaged in competition with corporations, firms, partnerships, and individuals offering for sale and selling in like commerce, pianos and musical instruments.

PAR. 3. Respondent, in connection with the sale and distribution of its pianos as aforesaid, has advertised the same in papers having interstate circulation. In said advertisements respondent has represented that it was taking back from two customers in "this vicinity" two pianos "almost new," on which customers were unable to complete payments, and that these pianos would be sacrificed for "the balance due" on them rather than incur the expense of returning them. Typical of these advertisements was the following inserted by respondent in the "Bristol News Bulletin," a daily paper published at Bristol, Va.-Tenn., on January 6, 1936:

"FOR SALE—PIANOS, WE learn we must take back from two customers who have moved to this vicinity, their pianos on account of their inability to finish payments. To return these pianos would be very expensive. Will sacrifice them for balances due, or store them with reliable parties until sold. Both pianos are almost new, Terms if desired. One Baby Grand, One Midget upright; full 88 note keyboards. If interested, write to * * *."

Other advertisements, almost identical in wording, were run by the respondent in the "Bristol Herald Courier" of November 19 and December 11, 1935. In a further advertisement inserted by respondent in the February 1, 1936 issue of the "Bristol News Bulletin," describing two small-size nationally known pianos "we have in your vicinity," it was stated: "* * * Rather than reship to the factory, we would like to sell these to responsible parties for balances due * * *."

Findings

28 F. T. C.

Three out of four advertisements inserted by respondent in Bristol papers announced and explained that it was necessary for respondent to "take back" two pianos from customers "who have moved to this vicinity" because of their "inability to finish payments," and a fourth advertisement referred to two small-sized pianos "we have in your vicinity." All advertisements were so worded as to emphasize in the mind of the prospective customer the idea that the company was anxious to avoid the expense of moving these pianos from that vicinity and would for this reason sacrifice the instruments for balances due.

The "Bristol Herald Courier" is a daily morning paper and the "News Bulletin," a daily afternoon paper, each published by the Bristol Publishing Corporation at Bristol, Va. These two papers circulate in eastern Tennessee, western North Carolina, southwestern Virginia, and southeastern Kentucky. Advertising matter inserted in these Bristol papers will reach all four of these States. When persons living in the vicinity of Bristol answered these advertisements they received a card from an agent of respondent acknowledging the inquiry to the advertisement and advising that he would be "in your vicinity" in the near future with a very unusual proposition.

Various persons living in the State of Tennessee answered these advertisements and eventually bought pianos as a result of the contacts obtained by respondent through these advertisements.

PAR. 4. Respondent's agents in sales talks followed out the representation made in the advertisements that the pianos were repossessed or used instruments. One purchaser was told that the piano in question had been used by a couple that "broke up," and that it was being sold for the sum due on it. This customer understood that the piano was offered in pursuance of these advertisements and corresponded to the pianos mentioned in the advertisements. The outside appearance of the piano was that of a new piano. There were no marks or scratches on it.

Another customer in Tennessee who answered one of respondent's advertisements was told that pianos shown her were "slightly used" and that a particular one the agent was showing her was being sold at a sacrifice "rather than take it back to the company." This customer understood she would get the benefit of the reduction in price because the piano had been used. She thought it was a used piano in splendid condition.

Still another Tennessee customer who answered one of respondent's advertisements was given to understand that the piano the agent was showing her had been bought by a newly married couple who were divorcing and they didn't have any more use for it. The couple had owned it but a short time and the company was taking it back.

PAR. 5. The advertisements run by respondent in newspapers were "stock ads" sent to respondent by piano companies. The advertisements were used by respondent company and its agents to obtain contacts with prospective purchasers. The real purpose of the advertisements was not to sell any two particular pianos but to get the attention of the customer, to get a contact. The important thing was to locate prospective customers and contact them. The ads were primarily inserted for selling pianos. These ads are known to the advertising men as "come-on" advertisements and "blind ads." A "come-on" advertisement is defined in the record as an advertisement "inserted to bring in customers." A "blind" ad is defined in the record as one that would lead a prospective purchaser to believe that he was getting a piano that had been partially paid for and he does not get that kind of a piano.

In the view of one large New York manufacturer, the "come-on" ads are misleading in that "they do not represent repossessed pianos but are merely bait to get prospects." Another large New York manufacturer terms these "blind ads," those which do not state the truth; one that is "misleading and gets a prospective customer by not telling the truth." This type of advertising is "used by certain types of manufacturers, not the higher grade of manufacturers."

PAR. 6. In truth and in fact the representations made by respondent company in its advertisements and by salesmen who contacted customers by the use of such advertisements were false, deceptive, and misleading in that the advertisements run by respondent were employed for the purpose of obtaining initial contacts with prospective customers and not for the purpose of selling any particular used or repossessed piano. The respondent did not have and has not had at Bristol, Tenn., or in the vicinity of Bristol, or at any place or locality reached and served by daily papers published at Bristol, any two particular repossessed and used pianos, and at least three out of four of the pianos sold by respondent to parties living at Bristol, Tenn., sold through the use of respondent's advertisements, were cheap, new pianos.

The inference or impression sought to be conveyed by respondent in its advertisements, and by respondent's salesmen after obtaining contacts through such advertisements, was that because the pianos had been used, had belonged to someone else, and would have to be reclaimed, they would thereby be sold at a reduction and could be bought at a bargain. Neither the respondent nor any of its salesmen could state where or from whom any piano had been repossessed. Respondent was unable to "run these pianos down, to get the actual facts as to just whether they were brand new pianos, and whether

they were repossessed pianos, or whether they were obsolete pianos." Efforts to locate in the vicinity of Bristol any piano that belonged to Cline Music Company, or its agents, were unsuccessful. Respondent company does not own or operate a "factory" to which a piano could have been returned.

The pianos sold to Mr. W. H. Williams, Mrs. W. G. Dutton, and Mr. Robert Speer could not be identified by respondent as having been repossessed at any of several points in Virginia served by the "Bristol Herald Courier," nor did respondent ever identify any such pianos as having been repossessed at Bristol or in the vicinity of Bristol, and no salesmen for respondent could give the name of any person living in that vicinity who formerly owned one of the pianos figuring in this record.

Respondent's salesmen preferred to sell new pianos as they get a commission on those, and endeavored to get in touch with customers to sell them new pianos. The piano sold to Mrs. W. G. Dutton looked new but looked like it might possibly have been demonstrated. The piano sold to Mrs. Rucker looked brand new. The piano showed to and bought by Mr. Williams looked brand new. The outside appearance of the piano sold to Robert Speer was that of a new piano.

PAR. 7. Respondent, in further connection with the sale and the offering for sale of its pianos, exhibited and sold pianos on which were stamped or burned a retail price at which the piano was to be sold. This alleged retail sales price was burned into or stamped on the lid that raises in front of the player of the instrument or on the back part of the piano. About 50 percent of the pianos handled by respondent company have contained this burned-in price mark. These constitute the cheaper grades. The prices are and were burned or stamped on the piano by certain manufacturers from whom respondent company buys and has bought its pianos. All pianos figuring in the present case bear such a stamp. The practice of so burning or stamping prices on pianos originated during the World War. These prices were stamped or burned on the instrument at a time when prices were high and labor was scarce. Some of the manufacturers are still using these World War prices, prices which they used 23 years ago.

The so-called stamped or burned-in price on respondent's pianos is not, and never has been, the actual retail selling price for such pianos and neither respondent nor any of its sales representatives have ever sold any of respondent's pianos for such prices. This stamping or burning of the price on pianos is not a common practice in the industry, being done by few companies, not by the highest-grade manufacturers.

The customary mark-up price on a piano for the dealer is approximately 100 percent of the invoice. The manufacturer sells to a dealer at a given figure and the dealer expects to double that in his retail price. Out of this retail price will also come the dealer's expenses.

Where a Melville Clark piano shipped from Chicago, Ill., to Bristol, Va., with a price of \$425 burned on the board, was invoiced to the dealer for \$97, such stamped or burned-in price would represent an excessive mark-up.

In the light of the foregoing rule that the dealer's resale price is double that of the invoice to him, it is ascertained that all of the pianos sold by respondent as disclosed in this record bore excessive suggested retail prices stamped or burned on them, as the following table discloses:

Purchaser	Make, style, and number of piano	Burned-in-board price	Invoice price to dealer	Dealer's retail sales price
Robert Speer and Wife.....	Wurlitzer Co., Melville Clark, Upright Mahogany Style 39, No. 140668.	\$425. 00	\$97. 00	\$230. 00
W. G. Dutton and Wife.....	Story & Clark Spinet Mahogany Style C, No. 135188.	525. 00	145. 00	285. 00
W. H. Williams and Wife.....	Wurlitzer Co., Melville Clark Style Grand Mahogany, No. 136229.	750. 00	167. 50	495. 00
Mrs. Julia C. Rucker.....	Wurlitzer Co., Melville Clark Style 39 Mahogany, No. 140547.	425. 00	97. 00	225. 00

Purchaser	Invoice price percentage of burned-in-board price	Retail price percentage of burned-in-board price	Invoice price percentage of retail sales price	Retail price more than double invoice price
Robert Speer and Wife.....	22%	54%	42%	Yes.
W. G. Dutton and Wife.....	27%	54%	50%	No.
W. H. Williams and Wife.....	22%	66%	33%	Yes.
Mrs. Julia C. Rucker.....	22%	52%	43%	Yes.

It is disclosed from the above table that even had the pianos sold by respondent actually been used or repossessed pianos as claimed, and resold as such, three out of four of such pianos were resold for prices well above the retail sales prices of the pianos new, that is, well above the figure representing double the invoice price to the dealer. In only one instance does the record disclose or intimate any previous sale or use of any piano.

The prices that were burned in or stamped on the pianos sold by the respondent were adopted and employed by sales representatives of respondent in their sales talks to customers.

The agent selling the piano to Mrs. W. H. Williams represented to her that the price on the piano in raised numbers, namely \$750,

Findings

26 F. T. C.

was the price of the instrument. If this piano had been, in fact, a second-hand piano, it would follow that it was resold for \$160 more than the customary price of a new piano, that is, for \$160 more than the invoice price to the dealer, doubled.

The factory price appearing on the "slightly used" piano sold to Mrs. Julia Rucker was \$425. Respondent's agent assured her that this was the factory price and that, because it had been sold to respondent as a used piano, it was being resold at a reduction. This piano was invoiced to the respondent for \$97 and was sold (or allegedly resold) by respondent for \$225. Assuming that this one piano out of four appearing in the record was actually a used piano, it follows that it was resold by respondent for \$31 more than the regular price of the piano brand-new, that is, for \$31 more than the amount of the invoice doubled.

The agent selling the piano to Robert Speer and wife showed them a price of \$425 that was burned or stamped on the back of the piano, and these purchasers understood from the agent that this sum represented the real selling price of the piano. Assuming that this piano was a used piano as represented, the piano was resold for \$36 in excess of the invoice price, doubled, and the burned-in retail price on the board of the piano is nearly five times the amount of the invoice.

Respondent's sales agents frankly admitted that they adopted and employed in their sales talks to customers these burned-in or stamped prices on instruments sold by them. This price stamped on or burned into the piano the agent would show to a customer. The customer was told this was the retail price; that this was the stamped price put on by the factory; that this was the general retail price of the piano as sold in various places. Respondent's agents did not and do not know of any instance where respondent or anyone else ever sold a piano, old or new, for the price stamped or burned on the board.

PAR. 8. In truth and in fact, the prices stamped upon or burned on the pianos sold by respondent in commerce do not represent and have not represented the actual or proper retail sales prices for said pianos, but are and were, on the contrary, false and fictitious prices at which respondent's said pianos are not and never were sold or intended to be sold.

PAR. 9. The various statements and representations made by respondent through the medium of newspaper advertising, mail matter, and sales talks of its agents or sales representatives, in selling and offering for sale its pianos in the respective States of the United States, as shown in paragraphs 3 to 7 herein, are false, decep-

tive and misleading. Respondent did not have and has not had at any time at Bristol, Tenn., or in the vicinity thereof, any two particular repossessed pianos. The purpose of respondent's said advertising was not to sell to anyone at Bristol, Tenn., or in that vicinity, used or repossessed pianos, but, on the contrary, the admitted purpose of respondent's newspaper advertising was to make contacts with prospective new customers with a view to selling them new pianos.

The pianos sold by respondent were in at least three instances cheap new pianos and the representations of respondent's sales representatives that such instruments were used or repossessed pianos were false, deceptive and misleading.

The retail selling prices burned in or stamped on all of the pianos sold by respondent were and are fictitious and highly excessive, false and misleading. Respondent does not sell and never has sold pianos for any such prices. Respondent, through its various sales representatives, has, nevertheless, adopted and employed these false and fictitious retail prices in connection with the sale and the offering for sale of its pianos, and has falsely and deceptively represented that such prices were and are the correct and proper retail sales prices of its said pianos.

PAR. 10. There are among the competitors of respondent, as referred to hereinbefore, corporations, partnerships, firms, and persons who are engaged in the sale of pianos in commerce and who truthfully represent their products and honestly vend the same.

PAR. 11. The use of the aforesaid false and misleading representations and practices on the part of respondent in the sale and offering of its pianos for sale has had, and now has, the tendency and capacity to cause members of the purchasing public to form the erroneous belief that respondent was offering high-class used and repossessed pianos at a sacrifice price or for the balance alleged to be due on them, rather than incur the expense of returning the pianos to the factory. Acting under such erroneous beliefs, induced by the various misrepresentations of the respondent as herein detailed, various members of the public have purchased respondent's pianos. The aforesaid representations and practices on the part of respondent have, and have had, the capacity and tendency unfairly to divert trade to respondent from competitors engaged in selling in interstate commerce pianos which are truthfully advertised and represented. Thereby, substantial injury has been done and is being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

Order

26 F. T. C.

CONCLUSION

The aforesaid acts and practices of the respondent, Cline Music Company, Inc., 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 the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent thereto, testimony and other evidence in support of the allegations of the said complaint and in opposition thereto, taken before W. W. Sheppard, an examiner of the Commission theretofore designated by it, and briefs filed herein, 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 said respondent, Cline Music Company, Inc., a corporation, its officers, servants, employees, or agents, individual, or corporate, in connection with the advertising, describing, offering for sale, and sale in interstate commerce, or in the District of Columbia, of pianos or other musical instruments, do forthwith cease and desist from:

1. Representing that respondent has, and is offering for sale at any particular place, locality, or community, or in the vicinity thereof, as indicated by, or may be fairly inferred from, respondent's advertising or sales talks in connection therewith, any used or repossessed piano or other musical instrument on which a balance is stated to be due, unless and until respondent, or a duly accredited agent or representative of respondent, actually has, and is offering for sale at such place, locality, or community, or in the said vicinity thereof, such used or repossessed piano, or other musical instrument, on which there is a balance due respondent as alleged and represented;

2. Representing that pianos or other musical instruments are used, second-hand, or repossessed unless such pianos or other musical instruments are, in fact, used, second-hand, or repossessed instruments;

3. Representing, through fictitious prices stamped or burned upon or affixed to pianos or other musical instruments, or by sales talks, or through other means or device, or in any manner, that said prices so stamped, burned, or affixed are the regular or customary retail prices for such products;

1158

Order

4. Representing, as the customary or regular retail prices for pianos or other musical instruments, prices which are, in fact, fictitious and greatly in excess of the prices at which said products are regularly and customarily offered for sale and sold at retail.

It is further ordered, That the respondent shall, within 60 days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form with which it has complied with this order.

IN THE MATTER OF
LAVOPTIK COMPANY, INC.

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

Docket 3188. Complaint, July 24, 1937—Decision, Apr. 21, 1938¹

Where a corporation engaged in sale and distribution of its "Lavoptik" preparation, to consumers in other States, in competition with others engaged in offer and sale in like commerce of similar preparations and preparations used for same and similar purposes; in advertising its said products,—

- (a) Made such representations and statements as that "6,000 eyesight specialists endorse it", and that it is "Advised by 6,000 eyesight specialists"; and
- (b) Made such statements and representations, among others, as that "A daily eye bath" with it "will be a constant protection to your eyes from the incessant strain that modern living places upon them," and that it "will bring eye strength," and that it "heals";

Notwithstanding fact said preparation, composed of a boric base combined in distilled water with camphor, sodium chloride and hydrastine hydrochloride, was not a cure for diseases of the eye or impaired vision;

With capacity to mislead members of the purchasing public into the mistaken and erroneous beliefs that "eyesight specialists" meant graduate medical doctors who specialized in treatment of the diseases and ailments of the eye, and that "a daily eye bath" with said preparation, as above set forth, would prevent eye strain, and that it would make weak eyes strong and would cure or remedy permanently diseases of the eyes and impaired vision, to the prejudice of the public and competitors, and with capacity and tendency unfairly to divert to it trade of latter, engaged in selling in interstate commerce preparations truthfully advertised and represented and used for same purposes for which it recommended its said product: to their substantial injury in commerce:

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

Before *Mr. William C. Reeves*, trial examiner.

Mr. Carrel F. Rhodes for the Commission.

Sanborn, Graves, Appel, Andre & Morton, of St. Paul, Minn., for respondent.

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 Lavoptik Company, Inc., a corporation, hereinafter referred to as respondent, has been and now is using unfair methods of competition in com-

¹ See, for original findings and order, 25 F. T. C. 1380.