

IN THE MATTER OF
THE HAMMOND CLOCK COMPANY

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

Docket 2930. Complaint, Sept. 26, 1936—Decision, July 9, 1938

Where a corporation engaged in manufacturing and selling in commerce an electrical musical instrument known as the "Hammond Organ"; in advertising the same in newspapers of interstate circulation and through booklets or pamphlets and other literature sent through the mails into other States—

- (a) Represented that said organ could produce or reproduce the entire range of tone coloring of a pipe organ required or necessary for the adequate rendition of great works of classical organ literature, and that it was capable of producing or reproducing a range in harmonics and partials equivalent to that of a pipe organ, and the entire range of musical tone colors or effects, and that it had available to the organist an infinite variety of tone covering the diapason, string, and reed families; and
- (b) Represented that as to pipe organ tones, the tones produced by said instrument were an improvement over those of any modern organ of recognized merit and that its said instrument was comparable in the production of pipe organ music to the ordinary \$10,000 pipe organ;

The facts being that, excepting flute tones, said instrument, as constructed, motivated, and operated, was incapable of producing or reproducing (1) faithfully the musical tones of a pipe organ required and necessary for the rendition, without sacrifice, of the great works of classical organ literature; (2) range in harmonics equivalent to that of a pipe organ or all tones that are sustained tones; or (3) of producing such range of tone colors or effects that it could properly and adequately interpret, without sacrifice, the pipe organ works of the great classical musicians; and (4) did not have instantly available and could not produce an infinite variety of tones covering diapason, string, and reed families nor produce tones which were in any way an improvement over or superior to those produced by any modern pipe organ of recognized merit; and (5) was not comparable in production of pipe organ music to an ordinary \$10,000 pipe organ or to such organs selling for considerably less;

With tendency and capacity to deceive and mislead a substantial portion of the purchasing public into the mistaken and erroneous belief that said representations were true and into purchase of its said instruments as a result thereof, and with effect that trade in organs was diverted unfairly thereby to it and from those of its competitors who were engaged in making, distributing, and selling pipe organs in commerce among and between the various States and in the District of Columbia and who do not promote or attempt to promote sale thereof by false and misleading advertisements and representations:

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

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

Mr. Wm. T. Chantland and *Mr. Bryan H. Jacques* for the Commission.

Williams, Bradbury, McCaleb & Hinkle, of Chicago, Ill., 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 The Hammond Clock Co., a corporation, hereafter referred to as respondent, has been, and is now, 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, The Hammond Clock Co., is a Delaware corporation with its office and principal place of business at 2915 North Western Avenue, in Chicago, State of Illinois. Said respondent is now, and since early in the year 1935 has been, engaged in the business of manufacturing and selling in commerce, as herein set out, musical instruments known as "The Hammond Organ."

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said musical instruments when sold, to be transported from its place of business in the State of Illinois to purchasers thereof located at various points in States of the United States other than the State from which shipments are made. Respondent now maintains a constant current of trade and commerce in said musical instruments distributed and sold by it between and among the various States of the United States.

PAR. 3. In the course and conduct of its said business, respondent is now and has been in substantial competition with other individuals and firms and corporations engaged in the business of distributing and selling pipe organs in commerce among and between the various States of the United States.

PAR. 4. In the course and operation of said business, and with the purpose of inducing the purchase of its said "Hammond Organ," respondent advertised in newspapers having an interstate circulation and by booklets or pamphlets, and other literature sent through the mail from its place of business in Illinois, into other States of the United States, to prospective purchasers. In such advertising

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matter there appeared statements and representations in words or effect as follows in reference to the said "Hammond Organ":

Produces the entire range of tone coloring necessary for the rendition, without sacrifice, of the great works of classical organ literature.

It covers the entire range of musical tone colors.

Any tone that is a sustained tone can be reproduced on this marvelous instrument.

An infinite variety of tones, covering the flute, diapason, string, and reed families, are instantly available to the organist.

Its introduction means that real organ music of unbelievably beautiful quality is now possible in any home at an expense no greater than that of a good piano. It means that the space limitation has been entirely removed and the cost is only a fraction of what a pipe organ would cost.

Organ music at one-tenth the cost formerly necessary.

Its price is a small fraction of what another instrument at all comparable would cost.

Many organists agree that it is comparable to pipe organs which cost as much as \$10,000.

Said advertising is replete with representations to the effect that the instrument produces "real organ music," "fine organ music," "beautiful organ music," and that it "can fill a vaulted church with a thunderous diapason."

Said advertising also represents that respondent's "Hammond Organ" can supply "a thunderous diapason," and that "there is no sacrifice of quality," and that it interprets "without sacrifice, the great works of literature," and that "it covers the entire range of musical tones," and that "any tone that is a sustained tone can be reproduced on this marvelous instrument" and "there is no sacrifice of quality but rather a noticeable improvement."

Said statements and representations are deceptive, misleading, and false in the following particulars:

(a) Said instrument is not capable of producing the entire range of musical tone colors or effects or of producing such range of tone colors or effects that it can properly and adequately interpret, without sacrifice, the works of all the great classical musicians who have composed music for the pipe organ.

(b) With the exception of the flute tones, said instrument is not capable of producing faithfully the musical tones of a pipe organ necessary for the proper and adequate rendition of the great compositions of organ music.

(c) Said instrument is not capable of producing a range in harmonics equivalent to the range in harmonics of a pipe organ.

(d) The tone produced by said instrument is not an improvement over that of any modern organ of recognized merit.

(e) When the tones desired to be produced on said instrument go beyond a certain range, or when the volume of tone is increased beyond a certain point, the tones of said instrument are not faithful but sometime break and sometime are produced with suddenness and attack and do not permit the gradual smooth and musical crescendo or diminuendo of tones comparable to those actually obtained in a pipe organ and necessary for the adequate and faithful rendition of classical music.

(f) The instrument is not comparable to a \$10,000 pipe organ or to any pipe organ.

PAR. 5. The false and misleading statements and representations made by the respondent, as hereinabove set out, in offering for sale and selling its musical instruments known as "The Hammond Organ" were calculated to, and had, and now have, the tendency and capacity to deceive and mislead a substantial portion of the purchasing public into the belief that said representations are true and into the purchase of respondent's products as a result of such beliefs. As a result of said respondent's false and misleading advertising and representations as above set out, trade in musical instruments, especially pipe organs, has been unfairly diverted to respondent from those of its competitors who are engaged in the business of making, distributing and selling pipe organs in interstate commerce, and who do not promote or attempt to promote the sale thereof by such false and misleading advertising and representations, and as a result thereof, substantial injury has been, and is now being, done by respondent to competitors in commerce among and between the various States of the United States.

PAR. 6. 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 have been, and are, 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 the Federal Trade Commission Act, the Federal Trade Commission on the 26th day of September A. D. 1936, issued and served its complaint in this proceeding upon respondent, The Hammond Clock Co., a corporation, 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

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and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by William T. Chantland and Bryan H. Jacques, attorneys for the Commission, and in opposition to the allegations of the complaint by Williams, Bradbury, McCaleb & Hinkle, attorneys for respondent, before John L. Hornor, 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 regularly 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 oral arguments of counsel aforesaid; and the Commission having duly considered the matter and being now 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. Respondent, The Hammond Clock Co., is a Delaware corporation with its office and principal place of business at 2915 North Western Avenue in Chicago, State of Illinois. Said respondent is now, and since early in the year 1935 has been, engaged in the business of manufacturing and selling in commerce, as herein set out, an electrical musical instrument known as "The Hammond Organ."

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said musical instruments, when sold, to be transported from its place of business in the State of Illinois to the respective purchasers thereof located at various points in States of the United States other than the State from which such shipments are made and also in the District of Columbia. Respondent now maintains, and during all the times mentioned herein has maintained, a course of trade in said musical instruments distributed and sold by it in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of its said business, respondent is now, and has been, in substantial competition with other corporations and with individuals and firms engaged in the business of distributing and selling pipe organs in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and operation of said business, and for the purpose of inducing the purchase of its said "Hammond Organ,"

respondent advertised in newspapers having an interstate circulation and made use of advertising booklets or pamphlets, and other literature sent through the mails from its place of business in Illinois, into other States of the United States, to prospective purchasers. In such advertising matter there appeared, among others, statements and representations in words or effect as follows in reference to the said "Hammond Organ":

Produces the entire range of tone coloring necessary for the rendition, without sacrifice, of the great works of classical organ literature.

It covers the entire range of musical tone colors.

Any tone that is a sustained tone can be produced on this marvelous instrument.

An infinite variety of tones, covering the flute, diapason, string, and reed families, are instantly available to the organist.

Its introduction means that real organ music of unbelievably beautiful quality is now possible in any home at an expense no greater than that of a good piano. It means that the space limitation has been entirely removed and the cost is only a fraction of what a pipe organ would cost.

Organ music at one-tenth the cost formerly necessary.

Its price is a small fraction of what another instrument at all comparable would cost.

Many organists agree that it is comparable to pipe organs which cost as much as \$10,000.

Said advertising also contains representations to the effect that the instrument produces "real organ music," "fine organ music," "beautiful organ music," and that it "can fill a vaulted church with a thunderous diapason."

PAR. 5. The elements of a musical tone consist of a fundamental and a number of harmonics. Its quality depends to a large extent on the number and amplitude of these harmonics. In order to produce a specific tone the fundamental must be accompanied by a characteristic number of harmonics of certain audible amplitudes. Flute tone pipes of an organ produce tones which have comparatively few harmonics while the string, reed, and diapason toned pipes of an organ produce tones which have a great many harmonics of substantial audible amplitude. The number of harmonics present and the amplitudes thereof in the tones produced by typical organ pipes were comparatively analyzed with those produced by respondent's instrument and claimed by respondent to simulate the same characteristic tone quality of organ pipes. These comparative analyses were made by a very accurate modern factory re-calibrated tone analyser which is capable of accurately determining the number of harmonics present in each tone analysed and the audible amplitude thereof. The pipes used in the tests were typical organ pipes and many of them were taken from an organ selling for less than \$5,000

and for less than respondent's instrument. These analyses were concerned only with sustained tones, that is, tones which have reached their full tonal build-up and resonance.

It is unnecessary to the disposition of this proceeding to decide whether or not the characteristic tones of organ pipes or of other musical instruments can be reproduced by electrical synthetic methods. It is obvious that such characteristic tones cannot be recreated unless all of the harmonics present in the original tone are also available in the electrical synthesis and of the proper audible amplitude. In the Hammond organ only seven harmonics and two sub-harmonics are available in controllable quantities. Other harmonics mentioned herein are present in small and uncontrolled quantities. The degree of amplitude of the first, second, third, fourth, fifth, sixth, and eighth harmonics may be controlled within reasonable limits but the third, fifth, and sixth harmonics are not in accurate phase with the other controlled harmonics. Since flute tones are made up of a fundamental and only a comparatively few harmonics of audible amplitude, respondent's instrument can duplicate with a reasonable degree of accuracy the harmonic constituents of the flute tones of a pipe organ. These analyses further disclosed that respondent's instrument cannot produce reed, string, or diapason tones with a sufficient number of harmonics present in audible amplitudes to be comparable to the tones produced by the reed, string, or diapason pipes of a pipe organ. Since reed, string, and diapason tones are made up of a fundamental and a great many harmonics of audible amplitude and respondent's instrument cannot produce many of these harmonics in audible amplitude or at all, respondent's instrument cannot duplicate with any reasonable degree of accuracy or fidelity the harmonic constituents of the reed, string, or diapason tones of a pipe organ, and therefore cannot produce these characteristic tones of organ pipes.

The following illustrations taken from these analytical tests accurately demonstrate the extent to which respondent's instrument failed to produce tones possessing harmonics of audible amplitude comparable to those possessed by tones of various organ pipes:

(a) *String tones.*

A violoncelle organ pipe produced a tone which had present in appreciable audible amplitudes harmonics up to and including the thirtieth, while respondent's instrument, in simulating this tone, had present in appreciable audible amplitudes the first four harmonics, the sixth, the eighth, tenth, twelfth, and sixteenth, and had less than one-third of 1 percent amplitude for the fifth, seventh, and

ninth harmonics, one-half of 1 percent for the fourteenth harmonic, with the eleventh, thirteenth, fifteenth, and all above the sixteenth harmonic entirely absent.

A salicional pipe from an organ priced at \$820 produced a tone which had present all harmonics up to and including the thirteenth in amplitudes of over 1 percent, and the fourteenth, fifteenth, sixteenth, seventeenth, nineteenth, twentieth, and twenty-third harmonics in audible amplitudes. Respondent's instrument, in simulating this tone, had present in audible quantities only the first six and the eighth harmonics.

(b) *Reed tones.*

An oboe pipe of a small pipe organ produced a tone which had present in appreciable audible amplitudes, harmonics up to and including the fourteenth. Respondent's instrument, in simulating this tone, had comparable amplitudes only in the first, second, third, fourth, sixth, and eighth harmonics, with the fifth present if the tenth and twelfth are not, and the tenth and twelfth present if the fifth is not.

A corneopau pipe from the same organ produced a tone which had present all harmonics up to and including the sixteenth, and also the twenty-third and twenty-fourth in appreciable audible amplitudes and had audible amplitudes in the eighteenth, twenty-fifth, twenty-sixth, twenty-seventh, twenty-eighth, and thirtieth. In simulating this tone, respondent's instrument had comparable amplitudes in the first, second, third, fourth, sixth, and eighth harmonics only, with the fifth present if the tenth and twelfth are not, and the tenth and twelfth present if the fifth is not, and the note played an octave above normal so as to employ the two subharmonics available on the Hammond as a fundamental and a fifth.

A trumpet of another pipe organ produced a tone which had present harmonics up to and including the thirteenth in appreciable audible amplitudes, and also the fourteenth to the eighteenth harmonic, inclusive, and the twentieth and twenty-first harmonics with audible amplitudes. In simulating this tone the respondent's instrument produced a tone having comparable amplitudes in only the first, second, third, fourth, sixth, eighth, and sixteenth harmonics, with the fifth present if the tenth and twelfth are not, and the tenth and twelfth present if the fifth is not.

An organ pedal trombone pipe produced a tone which had present in appreciable audible amplitudes, harmonics up to and including the twentieth except the thirteenth which was missing. The respondent's instrument when played on the pedal produced a tone

which had present amplitudes in any degree in only the first 10 and the twelfth harmonics. When played on the manual it produced a tone which had present audible amplitudes in only the first eight and the tenth, twelfth, and sixteenth harmonics. The amplitude of the fifth harmonic on respondent's instrument was present only to the extent of 1 percent, whereas in the tone produced by the organ pipe, this harmonic was present to the extent of 40 percent amplitude. The amplitude of the seventh harmonic on respondent's instrument was present to the extent of less than 1 percent, whereas in the tone produced by the organ pipe, this harmonic was present to the extent of 30 percent amplitude.

(c) *Diapasons*.¹

Diapasons of various pitches are combined to form the characteristic organ effect called a "diapason chorus." Such a chorus, in an outdoor test, produced a tone which had present, with exceptions, harmonics in appreciable audible amplitudes up to the eightieth harmonic. The respondent's instrument, in simulating this tone, has any audible amplitudes only to the twenty-fourth harmonic, with the nineteenth, twenty-first, and twenty-second harmonics entirely absent. The fifth, seventh, fourteenth, fifteenth, seventeenth, eighteenth, twentieth, and twenty-fourth were present in amplitudes of less than 1 percent.

Outdoor tests, free of all interference, of a Geigen diapason organ pipe produced tones which had present in appreciable audible amplitudes all harmonics up to the thirteenth for low G and for first and second G's above middle C, and up to and including the tenth harmonic for the third G above middle C. Respondent's instrument, in simulating these tones, had present the first six and the eighth harmonics for middle C and for the first C above middle C. For the second C above middle C, it had present audible amplitudes up to the fourth harmonic and for the third C above middle C it had present only the fundamental and one harmonic.

A diapason pipe tone from a small organ produced tones having present harmonics in audible amplitudes up to and including the thirteenth and the sixteenth and seventeenth. In simulating these tones, respondent's instrument produced tones having present harmonics in audible amplitudes up to the sixth and also the eighth with the fifth present in over 1 percent if the tenth and twelfth were not present, and the tenth and twelfth in less than 1 percent if the fifth was not present.

¹ Note: "An organ without a diapason is not an organ at all," Barnes, "The Contemporary American Organ" (1933), p. 44.

PAR. 6. In addition to sustained tones, the approach of build-up of these tones and the decay or fade-out of the tones are essential to the proper rendition of pipe organ music. Respondent's instrument possesses neither in any appreciable amount, because of the suddenness of its attack or starting and the abrupt stopping due to its electrical motivation.

Respondent's instrument cannot produce the entire range of tone coloring necessary for the rendition of many of the great works of classical organ literature. The proper rendition of such literature depends to a very marked degree on the ability of the instrument used to simultaneously produce tones of widely divergent character, and pitch, in such a manner as to preserve their respective identities and characteristics as well as other essential tonal shadings and variations. The "Hammond Organ," because of the rigidity and constant fixed relationships of its mechanical set-up and actuation, is incapable of preserving the respective identities and characteristics of several tones produced simultaneously or of permitting other tonal shadings and variations.

In respondent's instrument, there is but one source of sound, a loud-speaker, and regardless of the number of loud-speakers used, all that results is increase in volume, as identical tones issue from each loud-speaker. In pipe organs the various tones and pitches issue from each of numerous pipes that are placed over a broad front, which fact, of necessity, produces a very different tonal quality and result.

The foregoing deficiencies render it physically impossible for the "Hammond Organ" as now constructed, motivated, and operated, to produce or reproduce pipe organ music of the kind and character claimed in respondent's advertising. The foregoing findings are based on the results of the tests with the tone analyser, supported by the results of comparative auditory tests, and the testimony of expert witnesses of the highest standing in the musical field.

PAR. 7. Respondent offered certain testimony as to tones which, in fact, did not relate to its tones as emanating from the loud speaker at all, but to the visual representations of electrical waves intended to produce tones. The apparatus was so set up and connected to the visual result exhibited that only the visual representation of electrical waves and not the visual representation of resulting tones were seen and testified about. The respondent offered no testimony with respect to an analysis of any tones which actually issued from the loudspeaker used in connection with its instrument.

Respondent also offered testimony with respect to the results of a comparative auditory test conducted by it. In this test the pipe

organ used was registered, not in the normal manner desirable to bring out a rendition of the musical selection being played in conformity with the author's interpretation and the fullest tonal potentialities thereof, but in such a manner that in many of the pieces the flute tones predominated, even though the normal rendition of the particular piece of music called for the use of little or no flute tone. Thus the pipe organ was registered in such a manner as to make its tones simulate the flute tones of the respondent's instrument, irrespective of the registration which is properly and customarily used for the particular piece being played. In addition, the excerpts played from the various selections were usually only from four to eight measures in length, requiring 15 seconds and less to play, and did not give the auditor-witnesses proper opportunity upon which to pass competent judgment as to the instrument used in playing the various selections.

The unusual and improper registration of the pipe organ in connection with these tests served the purpose of confusing the auditor-witnesses and served only to demonstrate that a pipe organ could be registered in such a manner as to simulate the flute like tones produced by respondent's instrument and afforded no proof that respondent's instrument was comparable with respect to tonal qualities with the pipe organ used in the comparative test.

PAR. 8. The statements and representations as set forth in paragraph 4 above, are deceptive, misleading, and false in the following particulars:

(a) With the exception of the flute tones, respondent's said instrument as now constructed, motivated, and operated, is physically incapable of producing or reproducing faithfully the musical tones of a pipe organ which are required and necessary for the rendition, without sacrifice, of the great works of classical organ literature.

(b) Respondent's said instrument, as now constructed, motivated, and operated, is not capable of producing or reproducing a range in harmonics equivalent to the range in harmonics of a pipe organ, or produce or reproduce all tones that are sustained tones.

(c) Respondent's said instrument as now constructed, motivated, and operated, is not capable of producing the entire range of musical tone colors or effects or of producing such range of tone colors or effects that it can properly and adequately interpret, without sacrifice, the works of all the great classical musicians who have composed music for the pipe organ.

(d) Respondent's said instrument does not have instantly available and cannot produce an infinite variety of tones covering the diapason, string and reed families.

(e) Respondent's said instrument does not produce tones which are in any way an improvement over or superior to the tones produced by any modern pipe organ of recognized merit.

(f) Respondent's said instrument is not comparable in the production of pipe organ music to the ordinary \$10,000 pipe organ or to pipe organs selling for considerably less than that sum.

PAR. 9. The false and misleading statements and representations made by the respondent, as hereinabove set out, in offering for sale and selling its musical instruments known as "The Hammond Organ" were calculated to, and had, and now have, the tendency and capacity to deceive and mislead a substantial portion of the purchasing public into the mistaken and erroneous belief that said representations are true and into the purchase of respondent's instruments as a result of such beliefs. As a result of said respondent's false and misleading advertising and representations as above set out, trade in organs has been diverted unfairly to respondent from those of its competitors who are engaged in the business of making, distributing, and selling pipe organs in commerce among and between the various States of the United States and in the District of Columbia, who do not promote or attempt to promote the sale thereof by false and misleading advertising and representations.

CONCLUSION

The above and foregoing acts, practices, and representations of the respondent have been, and are all to the prejudice and injury of the public and of respondent's competitors as aforesaid, and have been, and are, unfair methods of competition in commerce in violation 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 the respondent, testimony and evidence taken before John L. Horner, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by William T. Chantland, attorney for the Commission, and by Lynn A. Williams of counsel for respondent, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Hammond Clock Co., a corporation, its officers, representatives, agents, and employees, either

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directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of electrical musical instruments now designated as "Hammond" organs in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing, directly or indirectly:

1. That respondent's said electrical musical instrument designated as a "Hammond Organ," as now constructed, motivated and operated,

(a) Can produce or reproduce the entire range of tone coloring of a pipe organ, which is required or necessary for the proper or adequate rendition of the great works of classical organ literature;

(b) Is capable of producing or reproducing a range in harmonics or partials equivalent to the range in harmonics of a pipe organ;

(c) Is capable of producing or reproducing the entire range of musical tone colors or effects;

(d) Has available to the organist an infinite variety of tones covering the diapason, string, and reed families;

2. That, as to pipe organ tones, the tones produced by respondent's said instrument are an improvement over those of any modern organ of recognized merit;

3. That respondent's said instrument is comparable in the production of pipe organ music to the ordinary \$10,000 pipe organ;

4. And from making any claims or representations of like or similar import.

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 in which it has complied with this order.

Syllabus

IN THE MATTER OF
UNITED FENCE MANUFACTURERS ASSOCIATION, ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 3305. Complaint, Jan. 18, 1938—Decision, July 13, 1938

Where an unincorporated association, and the eight member producers thereof, engaged in manufacture and sale of snow fence, carriage charges of which, largely sold in carload lots constituted a substantial element of the average product costs of such members, in competition with one another in sale and delivery of their said products but for acts and practices set forth, and sellers of from 90 percent to 95 percent of snow fence products purchased in 14 States in the northeastern part of the United States—

- (a) Entered into and maintained an agreement, understanding or conspiracy among themselves unduly to hinder, lessen, frustrate, and restrain or suppress competition in price in course of their commerce, and to maintain higher initial and resale prices than would otherwise prevail, within area of said States; and, with intent and effect of making such agreement, etc., more effective—
- (1) Combined or conspired and continued to combine or conspire, to follow and mutually maintain therein a system of delivered prices for quotation and sale of snow fence to customers living within said States, under which each producer member made same delivered prices at location of every such customer from whom such member accepted business, irrespective of carriage charges, either for carload or less than carload lots, necessary for delivery to respective destinations;
- (2) Entered into agreements to file, and filed with association's executive secretary, delivered price lists, discounts and terms of said members, to be maintained pending filing of revised delivered price list and for not less than 10 days thereafter, and concertedly adopted and filed, for both carload and less than carload quantities, lists of identical delivered prices and identical discounts and terms of sale for snow fence products of each standard type, and made it their practice to cause such respective revised price lists to be filed for their products shortly following member's filing thereof, and, notwithstanding formal and pretended exception from said price filing rule of governmental purchasers, pursued same price policy as respects both public and private buyers, to the end that public and governmental purchasing bodies were deprived of the benefits of competition in price among said members and among their vendees in buying said products;
- (3) Maintained said filed delivered prices without direct or indirect concession to any buyer, and abstained from shipments on consignment, and brought instances of suspected member price cutting to attention of said executive secretary, who undertook to negotiate matter with such member and thereby eliminate further price concessions, and variously agreed that any member charged with violation of their said price undertaking would