

Complaint

30 F. T. C.

IN THE MATTER OF
CLAYTON L. WARDELL, TRADING AS WARDELL PIANO
COMPANY

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

Docket 3967. Complaint, Dec. 9, 1939—Decision, Mar. 9, 1940

Where an individual engaged in sale and distribution of musical instruments, including pianos, to purchasers in various other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of such products in commerce as aforesaid; in statements concerning character and price of his pianos disseminated among prospective purchasers through newspaper advertisements, postcards sent through the mails, and other printed and written matter, and through his agents or representatives—

Represented, directly and indirectly, that his said products were pianos which, having been previously sold on deferred payment plan and repossessed from original purchasers because of failure to meet payments due thereon, were offered for resale at prices representing only unpaid payments due, and prices substantially less than those at which said pianos would ordinarily be sold by him in customary and normal course of business, through such typical statements as “* * * Rather than reship to the factory, we would like to sell these to responsible parties for the balance due * * *,” and to do so would “accept terms of \$6 and \$8 per month”;

Facts being many pianos thus offered for sale by him were not products previously sold and repossessed as aforesaid, but were taken from his regular stock, and prices thereof were not in any sense sacrifice prices and did not represent any balance due thereon by former purchasers, but were usual prices at which such products were customarily offered for sale and sold by him in regular and normal course of business;

With effect of misleading and deceiving purchasing public into erroneous and mistaken belief that such statements and representations were true, and of causing substantial portion thereof, because of such beliefs, to purchase his said pianos in preference to products of those competitors aforesaid, who do not falsely represent that prices quoted by them are lower than their usual or customary prices:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and competitors, and constituted unfair methods of competition and unfair and deceptive acts and practices in commerce.

Mr. Jesse D. Kash for the Commission.

Gill & Gill, of Sioux City, Ia., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Clayton L. Wardell,

an individual trading as Wardell Piano Co., hereinafter referred to as respondent, has violated the provisions of 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. Clayton L. Wardell is an individual trading and doing business under the name of Wardell Piano Co., with his principal place of business located at 909 Pierce Street, Sioux City, Iowa.

PAR. 2. In the course and conduct of his aforesaid business, respondent has been engaged for more than 1 year last past in the sale and distribution of musical instruments, including pianos. Respondent causes his products, when sold by him to be transported from his aforesaid place of business in the State of Iowa to the purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains, and has at all times mentioned herein, maintained a course of trade in said musical products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his said business, respondent is now and has been for some time last past engaged in substantial competition with other individuals and with firms and corporations also engaged in the business of selling and distributing in commerce, among and between the various States of the United States and in the District of Columbia, musical instruments, including pianos.

PAR. 4. In the course and conduct of his said business and for the purpose of inducing the purchase of his pianos the respondent makes representations concerning the character and price of his said pianos, which representations are disseminated among prospective purchasers by means of newspaper advertisements, by post cards sent through the United States mails, by other printed and written material and orally through respondent's agents and representatives. Among and typical of such representations are the following:

We have in your vicinity two small sized Baldwin-made pianos—one a small apartment Baby Grand and the other a handsome small Bungalow Upright—Rather than reship to the factory, we would like to sell these to responsible parties for the balance due. In order to do this we will accept terms of \$6 and \$8 per month.

Would you be interested in one of these instruments? If not, have you a friend or relative who would be?

Just drop a line to the address below. We will advise you where these pianos can be seen and the amount of balance due.

Wardell Piano Company,

Baldwin Factory Distributors,

Complaint

30 F. T. C.

Through the use of the representations and statements hereinabove set forth, and others similar thereto not specifically herein set out, all of which purport to be descriptive of the make, kind, character, and prices of his said pianos, the respondent has represented and does now represent, directly or indirectly, that said pianos are instruments which, having been previously sold on a deferred payment plan, have been repossessed by respondent from the original purchaser because of the failure of such purchaser to meet the payments due thereon; that said pianos are being offered by respondent for resale at prices which represent only the unpaid balances due thereon; and that such prices are sacrifice prices and are substantially less than the prices at which such pianos would ordinarily be sold by respondent in the customary and normal course of business.

PAR. 5. The aforesaid representations are grossly exaggerated, false, and misleading. In truth and in fact many of the pianos offered for sale by respondent as aforesaid are not pianos which have been previously sold by respondent and repossessed from such original purchasers, but are pianos taken from respondent's regular stock. The prices at which respondent offers said pianos for sale are in no sense sacrifice prices and do not represent any balance due thereon by former purchasers but are in fact the usual prices at which such pianos are customarily offered for sale by respondent in the regular and normal course of business.

PAR. 6. The use by the respondent of the aforesaid false, deceptive, and misleading statements and representations, with respect to his said pianos, has had and now has the tendency and capacity to, and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and causes and has caused a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's said pianos.

PAR. 7. Among the competitors of respondent as referred to in paragraph 3 herein are many who do not falsely represent the make, kind, character, and prices of their pianos.

PAR. 8. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on December 9, 1939, issued and subsequently served its complaint in this proceeding upon respondent Clayton L. Wardell, an individual trading as Wardell Piano Co., charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On January 5, 1940, the respondent filed his answer in which answer he admits all the material allegations of fact set forth in said complaint and waives all intervening procedure and further hearing as to said facts. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, 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. The respondent, Clayton L. Wardell, is an individual, trading and doing business under the name of Wardell Piano Co., with his principal place of business located at 909 Pierce Street, Sioux City, Iowa.

PAR. 2. Respondent is now, and has been for more than 1 year last past, engaged in the sale and distribution of musical instruments, including pianos. Respondent causes his products when sold by him to be transported from his aforesaid place of business in the State of Iowa to the purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains and at all times mentioned herein has maintained a course of trade in said musical instruments in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his said business, respondent is now, and has been for some time last past, engaged in substantial competition with other individuals and with firms and corporations also engaged in the business of selling and distributing musical instruments, including pianos, in commerce between and among the various States of the United States and in the District of Columbia.

Findings

30 F. T. C.

PAR. 4. In the course and conduct of his said business and for the purpose of inducing the purchase of his pianos the respondent has made and makes representations concerning the character and price of his said pianos which representations are disseminated among prospective purchasers by means of newspaper advertisements, by postcards sent through the United States mails, by other printed and written matter and orally through respondent's agents and representatives.

Among and typical of such representations are the following:

We have in your vicinity two small sized Baldwin Made Pianos—one a Small Apartment Baby Grand and the other a Handsome Small Bungalow Upright—Rather than reship to the factory, we would like to sell these to responsible parties for the balance due. In order to do this we will accept terms of \$6 and \$8 per month.

Would you be interested in one of these instruments? If not, have you a friend or relative who would be?

Just drop a line to the address below. We will advise you where these pianos can be seen and the amount of balance due.

Wardell Piano Co.

Baldwin Factory Distributors * * *.

The Commission finds that through the use of the representations and statements hereinabove set forth, and others similar thereto not herein set out the respondent has represented and does now represent, directly or indirectly that his said pianos are instruments which having been previously sold on a deferred payment plan have been repossessed by the respondent from the original purchasers thereof because of the failure of such purchasers to meet the payments due thereon; that said pianos are being offered by respondent for resale at prices which represent only the unpaid payments due thereon and which are substantially less than the prices at which such pianos would ordinarily be sold by respondent in the customary and normal course of business.

PAR. 5. The Commission finds that the aforesaid representations are grossly exaggerated, false, and misleading. In truth and in fact many of the pianos offered for sale by respondent as aforesaid are not pianos which have been previously sold by respondent and repossessed from such original purchasers but are pianos taken from respondent's regular stock. The prices at which respondent offers said pianos for sale are not in any sense sacrifice prices and do not represent any balance due thereon by former purchasers but are in fact the usual prices at which such pianos are customarily offered for sale and sold by respondent in the regular and normal course of business.

PAR. 6. The use by respondent of the aforesaid false, deceptive, and

656

Order

misleading statements and representations with regard to the said pianos have had and now have the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and cause and have caused a substantial portion of the purchasing public because of such erroneous and mistaken beliefs to purchase respondent's said pianos in preference to the pianos of those competitors of respondent referred to in paragraph 3 hereof, who do not falsely represent that prices quoted by them are lower than their usual or customary prices.

CONCLUSION

The aforesaid acts and practices of the respondent as herein set forth are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition and unfair and deceptive acts and practices 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 and the answer of respondent, in which answer the respondent admits all of the material allegations of fact set forth in said complaint and states that he waives all intervening procedure and further hearing as to the facts, and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Clayton L. Wardell, trading as Wardell Piano Co., or trading under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of pianos in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that the prices at which respondent offers for sale and sells his products constitute a discount to the purchaser, or that such prices are special or reduced prices, or that such prices represent only an unpaid balance due on such products by the original purchaser, when, in fact, such prices are the usual and customary prices at which respondent sells such products in the normal and usual course of business.

Order

30 F. T. C.

2. Representing as the customary or regular prices or values of respondent's products prices and values which are in excess of the prices at which such products are regularly and customarily sold by respondent in the normal and usual course of business.

3. Representing that pianos have been repossessed from the purchasers thereof when such pianos have not in fact been so repossessed.

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

Order

IN THE MATTER OF
ARMY AND NAVY TRADING COMPANY

MODIFIED CEASE AND DESIST ORDER

Docket 2285. Order, Mar. 13, 1940

Modified order, pursuant to provisions of Section 5 (i) of Federal Trade Commission Act, in proceeding in question, in which (1) original order issued on November 26, 1935, 21 F. T. C. 541, and in which (2) Court of Appeals for District of Columbia, on January 4, 1937, in *Federal Trade Commission v. Army and Navy Trading Co.*, 88 F. (2d) 776, 24 F. T. C. 1601, rendered its opinion and issued its order modifying Commission's order in certain particulars and affirming same in certain particulars—

Requiring, in view of said facts and further fact that more than two years have elapsed since original order with proviso permitting, for said period, certain use of words "Formerly Army and Navy Trading Company," that respondent corporation cease and desist from using, in connection with its corporate name, words "Army and Navy" or either of them, and from advertising, as below in detail set forth, and subject to provisions therein stated, words "Army or Navy" as descriptive of or in connection with their merchandise.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission and it appearing that on November 26, 1935, the Commission made its findings as to the facts herein and concluded therefrom that respondent had violated the provisions of Section 5 of the Federal Trade Commission Act and issued and subsequently served its order to cease and desist; and it further appearing that on January 4, 1937, the United States Court of Appeals for the District of Columbia rendered its opinion and issued its order modifying the aforesaid order of the Commission in certain particulars and affirming said order in other particulars; and it still further appearing that the aforesaid order to cease and desist issued by the Commission contained a proviso that for a period of 2 years from the date of the service thereof, the respondent was permitted to use in connection with such corporate or trade name as it might assume the words "Formerly Army and Navy Trading Company," and that more than 2 years have elapsed since the date of the service of the Commission's order to cease and desist.

Now, therefore, Pursuant to the provisions of subsection (i) of section 5 of the Federal Trade Commission Act, the Commission issues this its modified order to cease and desist in conformity with the said Court order: