

IN THE MATTER OF

JOHN CARNER, AS OFFICER OF FRETTED INSTRUMENT
MANUFACTURING CORPORATION, ETC., ET AL.

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

Docket 4444. Complaint, Jan. 7, 1941—Decision, July 9, 1942

Where four officers of a corporation and its successor, engaged in the manufacture and interstate sale and distribution of stringed musical instruments such as guitars and mandolins, which depended upon the wood for their resonance or amplification—

Simulated the cone amplifying device with which amplifying or resonating types of guitars and mandolins are equipped, and which produces a sound from 50 to 85 percent louder than that of an instrument made entirely from wood, through affixing to the top of the body portion of their guitars and mandolins a polished perforated metal disk or plate (and, at one time, through painting the interior of their instruments with aluminum paint which, when seen through the perforations in the disk, had the appearance of the amplifying cone), result of which was to give their instruments a metallic ring, but not to increase the volume or resonance of the tone, as does the cone;

With the result that the average person, on viewing the instrument, could not distinguish between a genuine resonating or amplifying one and one of their said products decorated with a polished perforated metal disk or plate; and with consequence that a number of dealer-customers, by means of advertisements in musical magazines of general circulation, represented that their products were so equipped:

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

Before *Mr. Lewis C. Russell* and *Mr. John L. Hornor*, trial examiners.

Mr. Joseph C. Fehr and *Mr. Carrel F. Rhodes* for the Commission.

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 John Carner, individually and as an officer of Fretted Instrument Manufacturing Corporation and United Guitar Corporation; Morris Brooks, individually and as an officer of Fretted Instrument Manufacturing Corporation; Frank Solvino and Frank Masiello, individually and as officers of United Guitar Corporation; Fretted Instrument Manufacturing Corporation, a corporation; and United Guitar Corporation, a corporation,

Complaint

hereinafter referred to as respondents, have 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. Since 1928, various concerns in the United States have manufactured certain stringed instruments, such as guitars and mandolins, containing a resonating or amplifying device consisting of a delicate metal cone capped by a wooden bridge over which the strings are drawn. Stringed instruments equipped with said device produce, when played, a quality of tone different from, more resonant than, and far superior to that produced by stringed instruments not so equipped. A perforated cover plate is affixed to the top of the body portion of the instrument as a protection for the resonating or amplifying device. Since their introduction in or about the year 1928, stringed instruments embodying such resonating or amplifying devices protected by a distinctive perforated plate have attained widespread public recognition and popularity in the stringed instrument industry and among music lovers generally. Such instruments equipped with said amplifying, resonating device are preferred by a substantial number of the purchasing public over instruments not so equipped.

PAR. 2. Respondents, John Carner, Morris Brooks, Frank Solvino and Frank Masiello, are individuals, who are now, and for several years last past have been, engaged in the manufacture and sale of various kinds of musical instruments, including guitars and mandolins, with their principal office and place of business located at 45 Corneilson Avenue, in the city of Jersey City, in the State of New Jersey. Said respondent, John Carner, acting in conjunction and cooperation with said individual respondents, Morris Brooks, Frank Solvino and Frank Masiello, with a view to capitalizing upon and deriving large financial profits from the acknowledged superior quality and excellent reputation of stringed instruments equipped with the metal cone amplifying devices referred to in paragraph 1 hereof, proceeded to manufacture, to advertise and sell, and to place in the hands of various retail dealers for resale, musical instruments, including mandolins and guitars, which simulate in appearance, but do not actually possess the superior resonating or amplifying device consisting of the delicate metal cone capped by a wooden bridge over which strings are drawn, as will be more fully set forth in detail hereinafter. Said individual respondent, John Carner, acting in conjunction with said individual respondent, Morris Brooks, and with a view to obtaining a larger market for the musical instruments manufactured or to be manufactured by them, including instruments simulating, but not actually containing or em-

Complaint

35 F. T. C.

bodifying said amplifying device, in November 1935, organized a company, which was incorporated, under and by virtue of the laws of the State of New Jersey, under the name of Fretted Instrument Manufacturing Corporation, a corporate respondent herein, with its principal office and place of business located at 45 Cornelson Avenue in the city of Jersey City in the State of New Jersey. Respondent, John Carner, then became and still is the president of said corporate respondent, Fretted Instrument Manufacturing Corporation. Respondent, Morris Brooks, is vice president of said corporate respondent, Fretted Instrument Manufacturing Corporation. Respondent, John Carner, assisted by and acting in conjunction and cooperation with respondent, Morris Brooks, is and has been actively in charge of, and directs and controls, and has directed and controlled, the policies and operations of said corporate respondent, Fretted Instrument Manufacturing Corporation.

Thereafter in June 1939 said respondent, John Carner, organized another company, also incorporated under and by virtue of the laws of the State of New Jersey. This company employs and has employed the name United Guitar Corporation, and is a corporate respondent herein, with its principal office and place of business located at 45 Cornelson Avenue in the city of Jersey City, in the State of New Jersey. Respondent, John Carner, became and has continued to be the president of said corporate respondent, United Guitar Corporation. Respondents, Frank Solvino and Frank Masiello, are respectively secretary and treasurer of said corporate respondent, United Guitar Corporation. Said John Carner, assisted by and acting in conjunction and cooperation with respondents, Frank Solvino and Frank Masiello, is and has been actively in charge of, and directs and controls, and has directed and controlled the policies and operations of said corporate respondent, United Guitar Corporation.

PAR. 3. Respondents are now, and for some time past have been, engaged in manufacturing, offering for sale, and selling stringed instruments, including guitars and mandolins, in commerce between and among the various States of the United States, and in the District of Columbia. Respondents cause said products, when sold, to be transported from their respective places of business in the State of New Jersey to purchasers thereof located in States of the United States other than the State of New Jersey, and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said stringed instruments in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 4. In the course and conduct of their respective businesses as described in paragraphs 2 and 3 hereof, respondents manufacture or

Complaint

have had manufactured for them, offer for sale and sell to the musical trade located in the various States of the United States and in the District of Columbia certain stringed instruments, including guitars and mandolins, having a polished metal disk or plate affixed to the top of the body portion thereof, said disk or plate containing a number of perforations through which can be seen a part of the interior of the body portion, which is so painted or colored that it simulates in appearance the resonating or amplifying devices contained in the stringed instruments referred to in paragraph 1 hereof. The manufacture and sale in commerce, as aforesaid, of such stringed instruments constitutes and has constituted a very substantial part of the entire business of the respondents.

PAR. 5. In soliciting the sale of and in selling their said products, and for the purpose of creating a demand upon the part of the purchasing public for said products, respondents now cause, and for some time past have caused, advertisements and advertising matter to be inserted in music magazines having wide circulation among and between the various States of the United States and in the District of Columbia. Typical of the advertising statements and representations so made by the respondents concerning their said stringed instruments is the following:

\$9.90 List

GUITAR OR MANDOLIN

DISC TOP

MARVELOUS TONE

Supplied by your favorite

jobber. If not write us.

United Guitar Corporation.

In addition to and supplementing, the representations made by the respondents, as aforesaid, a number of dealers through whom said instruments ultimately reach members of the public purchasing them for use, have also advertised respondents' said products. Typical of such statements and representations so made by dealers offering for sale and selling respondents' said products, are the following:

No. 248. The Guitar which has created an all-time sales record; It has outsold all other guitars and continued a "Best Seller." Nickel plated resonator ornament adds resonance to its deep tone and richness to its appearance.

Amplifier Guitar \$0.95. Big value.

Amplifonic Mandolin, Very Good Tone \$0.95.

PAR. 6. Through the use of the perforated disk or plate in the manner hereinbefore described, and through the use of the foregoing

statements and representations regarding said perforated disk, and others similar thereto but not herein set out in detail, and by constructing and finishing the interior of their instruments so as to have them simulate instruments equipped with said amplifying or resonating device, respondents represent and have represented, directly and through implication, to members of the purchasing public that their said stringed instruments are instruments equipped with a resonating or amplifying device as set forth in paragraph 1 hereof, when such is not the fact. Respondents, further, by the use of said perforated disk or plate in the manner aforesaid, place and have placed in the hands of unscrupulous dealers a means or instrumentality by which innocent purchasers may be led to believe that they are acquiring an instrument equipped with a resonating or amplifying device, when such is not the fact.

PAR. 7. The stringed instruments thus manufactured and sold by respondents are of such general design and appearance when the polished metal disks or plates are affixed to the top of the body portion thereof which is painted or colored as set forth in paragraph 4 hereof, that they deceive the purchasing public into believing that respondents' said stringed instruments are equipped with an amplifying or resonating device, such as set forth in paragraph 1 hereof, and because of such erroneous belief, so induced into buying substantial quantities of respondents' said stringed instruments.

PAR. 8. In truth and in fact the stringed instruments manufactured and sold by respondents, as aforesaid, are not and have not been equipped with an amplifying or resonating device, nor is such a device a part of their standard equipment.

PAR. 9. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice and injury of the public and constitute 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 January 7, A. D. 1941, issued and thereafter served its complaint in this proceeding upon the respondents, John Carner, individually, and as an officer of Fretted Instrument Manufacturing Corporation and United Guitar Corporation; Morris Brooks, individually, and as an officer of Fretted Instrument Manufacturing Corporation; Frank Solvino and Frank Masiello, individually, and as officers of United Guitar Corporation; Fretted Instrument Manufacturing Corporation, a corporation, and

Findings

United Guitar Corporation, a corporation, charging them with the use of unfair and deceptive acts and practices in commerce, in violation of the provisions of the Federal Trade Commission Act.

After issuance of the complaint and the filing of a joint answer by all of the respondents, testimony and other evidence in support of the allegations of the complaint were introduced by Joseph C. Fehr, attorney for the Commission, and testimony and other evidence in opposition to the allegations of the complaint were introduced by Morris Brooks, attorney for the respondents, before duly appointed trial examiners of the Commission, designated by it to serve in this proceeding, and the 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 complaint, the joint answer thereto, the testimony and other evidence, the report of the trial examiners thereon and exceptions to said report, and briefs in support of and in opposition to the complaint. And the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the public interest and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Fretted Instrument Manufacturing Corporation, is a corporation organized under the laws of the State of New Jersey, with its office and principal place of business in Newark, N. J.

Respondent, United Guitar Corporation, is a corporation organized under the laws of the State of New Jersey, with its office and principal place of business in Jersey City, N. J.

Respondent, John Carner, is an individual, and is president of respondent corporations.

Respondent, Morris Brooks, is an individual, and is vice president and treasurer of respondent, Fretted Instrument Manufacturing Corporation.

Respondent, Frank Solvino, is an individual, and is secretary of respondent, United Guitar Corporation.

Respondent, Frank Masiello, is an individual, and is treasurer of United Guitar Corporation.

Respondents, John Carner and Morris Brooks, directed and controlled the policies of respondent, Fretted Instrument Manufacturing Corporation, and respondents, John Carner, Frank Solvino, and Frank Masiello, directed and controlled and now direct and control the policies of respondent, United Guitar Corporation. The indi-

vidual respondents, acting in conjunction and cooperation with each other, inaugurated and carried out the unfair and deceptive acts and practices hereinafter set forth.

PAR. 2. Respondent, Fretted Instrument Manufacturing Corporation, from the date of its incorporation in November 1935 to April 1939 was engaged in manufacturing and selling string musical instruments such as guitars and mandolins. This respondent discontinued manufacturing in April 1939 and since that time has been engaged in liquidating its assets.

Respondent, United Guitar Corporation, from the date of its incorporation in June 1939 has been and now is engaged in the manufacture and sale of string musical instruments, such as guitars and mandolins.

These respondents, during the periods herein mentioned, caused their products when sold, to be transported from their principal place of business in the State of New Jersey to purchasers thereof located in various States of the United States.

PAR. 3. Approximately eight concerns are engaged in manufacturing, selling, and distributing in commerce between and among various States of the United States what are known as amplifying or resonating types of guitars and mandolins. This type of instrument was first placed on the market about the year 1928. These instruments have a virgin aluminum cone which has considerable flatness on top, the lower part of the cone being set into a well of extension of the top board of the instrument, and on the upper part of the flat portion is a bridge upon which the strings are strung. In some instances the cones are inverted. A perforated metal plate on top of the instrument permits the amplifier to act in a diaphragm action and also serves as a protection to the cone. Instruments not equipped with the cone device depend entirely upon the wood for their resonance or amplification; but where the cone device is used the sound is from 50 to 85 percent louder than that of an instrument made entirely of wood.

PAR. 4. Respondent, Fretted Instrument Manufacturing Corporation, about the year 1936, equipped its musical instruments with a genuine cone amplifying device, pursuant to a license granted it by the Schireson Company for the use of its patent; but because of threatened infringement litigation, ceased using the device in the early part of 1937. Respondents, for the purpose of increasing their sales, simulated the genuine amplifying device described in paragraph 3 hereof by affixing to the top of the body portion of their guitars and mandolins a polished, perforated metal disc or plate, and at one time, to further simulate said device, painted the interior of the body of their instruments with aluminum paint, which when seen through the perforations in the disc, had the appearance of the amplifying

cone. This latter practice was discontinued about the time the complaint herein was issued and has not been resumed. The use of the metal disc or plate gives to respondents' instruments a metallic ring, but neither the volume nor resonance of the tone is increased thereby, as is the case when the cone is used. Respondents' musical instruments are not resonating and amplifying instruments as these terms are understood in the musical trade and among music-loving people. These terms, when applied to musical instruments, mean increasing the volume of the tone.

There is a preference on the part of a portion of the purchasing public for guitars and mandolins equipped with the cone amplifying device. The average person, in viewing the instrument, would not be able to distinguish between a genuine resonating or amplifying instrument and one of respondents' instruments decorated with a polished perforated metal disc or plate.

PAR. 5. Respondents, by simulating the amplifying device described in paragraph 3 hereof, have placed in the hands of dealers to whom they have sold their products the means or instrumentality by which the purchasing public may be led to believe that in purchasing respondents' instruments they are acquiring instruments equipped with a resonating or amplifying device, when such is not the fact.

A number of dealers to whom respondents have sold their products have, by means of advertisements placed in musical magazines of general circulation, represented directly or indirectly that respondents' products are equipped with a resonating or amplifying device. Typical of such advertisements are the following:

No. 248. The Guitar which has created an all-time sales record. It has outsold all other guitars and continued a "best seller." Nickel-plated "Resonator" ornament adds resonance to its deep tone and richness to its appearance.

Nickel-plated "Resonator" ornament adds resonance to the tone of this Mandolin and "pep" to its appearance.

Nickel-plated "Resonator" ornament adds resonance to its deep tone.

The melofonic tone disk built on the top of the Guitar is heavily nickel-plated and polished, and produces a tone of greater volume and remarkable quality.

The melofonic Mandolin you see pictured at the right has a sparkling tone of tremendous power * * *. The nickel-plated tone cover helps to produce a brilliant tone.

The melofonic tone disk built on the top of the Guitar is heavily nickel-plated and polished and produces a tone of greater volume and remarkable quality.

A personal memorandum book carried by one of the salesmen of respondent, Fretted Instrument Manufacturing Corporation, concerning one of its guitars, contained among others, the following entry:

New metal 9" resonator top only * * * Imitation of amplifying guitar.

Order

35 F. T. C.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice and injury of the public, and constitute 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, the joint answer of the respondents, testimony and other evidence in support of and in opposition to the allegations of the complaint introduced before duly appointed trial examiners of the Commission designated by it to serve in this proceeding, the report of the trial examiners and exceptions thereto, and briefs in support of and in opposition to the complaint, and the Commission having made its findings as to the facts and its conclusion that respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Fretted Instrument Manufacturing Corporation, a corporation, United Guitar Corporation, a corporation, their officers, directors, representatives, agents, and employees, respondents, John Carner, individually, and as an officer of respondent corporations; Morris Brooks, individually, and as an officer of respondent, Fretted Instrument Manufacturing Corporation; Frank Solvino and Frank Masiello, individually, and as officers of respondent, United Guitar Corporation, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of guitars and mandolins, or other stringed musical instruments in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Simulating genuine resonating or amplifying musical instruments by equipping their products with polished perforated disks or plates.
2. Simulating genuine resonating or amplifying musical instruments by painting the inside of their products with aluminum paint, or treating it in any other manner so as to give it the appearance of being equipped with an aluminum cone.
3. Representing directly or by implication that their products, or any of them, are equipped with a resonating or amplifying device.

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

Syllabus

IN THE MATTER OF

H. W. LEDERER, AS PRESIDENT OF THE BIBLE INSTITUTE, ETC., ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 4687. Complaint, Jan. 29, 1942—Decision, July 9, 1942

- Where the president and principal owner of the common stock of three corporations, engaged in the interstate sale and distribution of (1) Bibles, prayer books and other religious publications, which they had embossed with the names of purchasers by a stamping concern having the same office and principal place of business as themselves, and which, sold by them principally to funeral parlors, were distributed by latter to Sunday School children as a means of advertising; and (2) hand-bag mirrors purchased from a dealer in New York City which they had similarly embossed with names of purchasers, and which, sold by them to such purchasers as cafés, night clubs and banks, were distributed by latter to their own customers—
- (a) Adopted the name of "The Bible Institute, Inc.," for one of said corporations, and "The Bible Institute" for its corporate successor, to deceive the buying public into the belief that they were religious institutions dedicated to the same worthy purposes as the reputable Bible Institutes, thereby permitting them to make wide distribution of their publications at nominal prices, and to conceal the fact that they were corporations formed to buy and sell inexpensive Bibles, prayer books and other religious publications solely for profit; and
 - (b) Adopted for aforesaid third corporation the name of "American Plate Glass Co." for the purpose of deceiving the buying public into the belief that it was a manufacturer of glass products, including hand-bag mirrors, thereby enabling it to make lower prices than would be possible otherwise, when in fact it purchased such mirrors from a dealer for resale; and
- Where the salesmen and solicitors of said two "Bible Institutes," including its said president—
- (c) Falsely represented, through use of said corporations' deceptive and misleading letterheads and advertising, that said two corporations were religious institutions and identified with the reputable Bible Institutes; that a J. C. MacDonald was "trustee" therefor; and that they furnished free Sunday School distribution of religious publications; and represented falsely also that they were endowed by philanthropic interests which permitted them to make a wide distribution thereof; and
- Where the salesmen and solicitors of said third corporation, including its said president, in selling such hand-bag mirrors to the purchasing public—
- (d) Falsely represented, through the use of said "American Plate Glass Co." letterheads and advertising material, that it was a large glass manufacturer with plants and advertising offices in Pittsburgh, Chicago, and New York; and that it had a number of departments and a superintendent named J. C. MacDonald; and represented falsely also that it was affiliated with a large and well-known Pittsburgh plate-glass company, and that it manufactured said mirrors;