

Complaint

IN THE MATTER OF

THE RUDOLPH WURLITZER COMPANY

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

Docket 4525. Complaint, June 26, 1941—Decision, Aug. 5, 1942

Where a corporation, engaged in the manufacture and interstate sale and distribution at wholesale of pianos covered or finished in whole or in part with a material, made exclusively for it, and designated by it "Kordevon"—Represented or implied, through use of aforesaid, commonly pronounced "Cordovan," term, in advertisements of its said products and in the labels attached thereto, that said "Kordevon" was Cordovan leather;

The facts being that the material in question was a closely woven cotton fabric with several coats of pyroxylin plastic deposited thereon, the appearance, texture and feel of which was such as to induce the public into the belief that it was genuine leather; and subsequent use in advertising of words "Plastic Fabric," immediately after word "Kordevon," on its labels of words, parenthetically, "A plastic fabric" in small print, and on the back of each piano, the statement, "In the manufacture of the covering for this piano, 10 coats of pyroxylin plastic are used" were insufficient to correct aforesaid erroneous impression;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that the covering or finishing material on said pianos was genuine Cordovan leather; and of thereby causing it to purchase substantial quantities of said pianos, because of such mistaken belief, whereby trade was diverted to it from its competitors:

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

Mr. Eldon P. Schrup for the Commission.

Harmon, Colston, Goldsmith & Hoadly, of Cincinnati, Ohio, and *Mr. Ike Lanier* and *Mr. Elden McFarland*, of Washington, D. C., 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 The Rudolph Wurlitzer Co., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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. The respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of

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Ohio, with its principal office and place of business at 121 East Fourth Street, in the city of Cincinnati, State of Ohio. The respondent is, and for more than 2 years last past has been, engaged in the business of manufacturing pianos, covered or finished, in whole or in part, with a material designated by respondent as "Kordevon," and in selling and distributing said pianos at wholesale to dealers, to be resold by said dealers to the purchasing public. Respondent has caused, and now causes, its said pianos, when sold, to be transported from its manufacturing plant in the city of De Kalb, State of Illinois, to the purchasers thereof located in various States of the United States other than the State of Illinois, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said pianos in commerce among and between the several States of the United States, and in the District of Columbia.

Respondent is now, and has been at all times mentioned herein, in substantial competition with other corporations, firms, partnerships, and individuals engaged in the sale and distribution of pianos in commerce among and between the several States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of its said pianos, respondent has caused, and now causes, advertisements to be inserted in newspapers, magazines, and trade journals having wide interstate circulation, and has distributed; and now distributes, circulars and letters to the purchasing public in various States of the United States and in the District of Columbia. In said advertisements, circulars, and letters, so distributed, many false and misleading statements and representations are made by the respondent in which the term "Kordevon" is prominently used as the trade name for, and as being descriptive of, the material used as a covering or finishing material, in whole or in part, for respondent's pianos. Typical of the statements and representations so made and circulated by the respondent are the following:

* * * A Piano that Actually *Blends* with your Home * * * Now, at last, Wurlitzer solves this major problem for you with America's most colorful piano—a refreshingly new Wurlitzer finished in the exclusive new Kordevon.

Kordevon, with its soft, rich texture, offers you a variety of tasteful colors with which to enhance the beauty of your living room—Kordevon is durable, too—defies extremes of heat or cold, dampness or dryness—is easy to keep fresh and beautiful.

Wurlitzer is the first to use Kordevon which evokes a new epoch in luxurious piano finishing.

Finished in Kordevon, a remarkably beautiful and durable finish featured exclusively by Wurlitzer.

Finished in colorful Kordevon.

Wurlitzer is first with Kordevon, a new finish, hailed with enthusiasm by leading decorative authorities for its unique beauty, its soft, rich texture, its variety of tasteful shades.

In advertisements published in trade magazines, and intended for the trade and for respondent's dealers but not for the purchasing public, respondent has represented the covering or finishing material used on its pianos as follows:

RESEMBLES TOOLED LEATHER.

In appearance Kordevon is almost exactly like lightly tooled leather. In fact, the average layman would likely think it was leather unless told otherwise.

PAR. 3. Cordovan is the name by which, as a result of long usage and custom, an excellent grade and type of colored leather has become known to the purchasing and consuming public. Cordovan was originally manufactured in the Middle Ages at Cordova, Spain, of goatskin, and later of pigskin, and especially of fine horsehide split so as to retain its grain. This type of leather is still so made, and is used in the manufacture of men's shoes, saddles, and other products where a fine, durable, and attractive grade of leather is desired. There is a preference among members of the purchasing public for cordovan leather over other types and grades of leather owing to its superior quality and wide reputation for excellence.

PAR. 4. "Kordevon," the name by which respondent designates the covering or finishing material for its said pianos, is a product resembling tooled leather in appearance, and is manufactured exclusively for the respondent. Its basic structure is that of a closely woven cotton fabric on which are deposited several coats of pyroxylin plastic, each coat heated and dried in an oven before the next coat is applied. After the final coat has dried the so-called "Kordevon" grain is created by the application of pressure by means of an etched steel plate. An irregularity in texture is obtained by a final hand operation.

PAR. 5. By means of the use of the aforesaid term "Kordevon," which closely simulates and conforms to the spelling and pronunciation of cordovan, in describing the covering or finishing material of its said pianos, respondent has represented and implied, and now represents and implies, that said covering is cordovan, that is to say, a fine, durable, and expensive leather made from split horsehide, goatskin, or pigskin.

In truth and in fact, respondent's said covering or finishing material for its pianos is not cordovan, and does not have the qualities of cordovan leather, but is, in fact, a closely woven cotton fabric, coated

with a plastic material, and finished in such a way as to have the appearance of leather.

PAR. 6. When respondent's dealers display the said pianos, there is nothing to indicate to prospective purchasers the true composition and nature of the covering or finishing material appearing thereon. The only side of the said material exposed to the view highly resembles leather, and feels like leather when touched. It is finished so as to have the appearance of being a beautifully grained leather, and its appearance and texture have the tendency to convey the impression and induce the belief among prospective purchasers that the said covering or finishing material is genuine leather. The said material is not leather, but is, in fact, a cotton fabric coated with plastic, and is in imitation of genuine leather.

PAR. 7. The use by the respondent of the foregoing false and misleading statements, representations and implications, as aforesaid, has had, and now has, the tendency and capacity to mislead and deceive, and has misled and deceived, and does now mislead and deceive, purchasers and prospective purchasers into the erroneous and mistaken belief that such statements, representations, and implications are true, and has caused, and now causes, a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's pianos.

The use by respondent of the said false and misleading statements, representations, and implications has placed in the hands of respondent's dealers a means and instrumentality whereby said dealers have been, and are, enabled to mislead and deceive members of the purchasing public into believing that said statements and representations were and are true. As a result, trade has been diverted unfairly to respondent from respondent's competitors, who do not use "Kordevon" as a covering or finishing material for their pianos, and who do not falsely represent the quality, nature, or character of the covering or finishing material used, and injury has been done by respondent to competition in commerce.

PAR. 8. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 26, 1941, issued and subse-

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quently served its complaint in this proceeding upon the respondent, The Rudolph Wurlitzer Co., a corporation; charging it 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 that act. On August 4, 1941, the respondent filed its answer to the complaint. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts executed by the respondent through its counsel and Richard P. Whiteley, Assistant Chief Counsel for the Commission, subject to the approval of the Commission, might be made a part of the record herein and might be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the Commission might proceed upon such statement of facts to make its report, stating its findings as to the facts (including inferences which it might draw from the stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding. The stipulation further provided, however, that the right to file briefs and present oral argument on the law and on the interpretation of the facts stipulated was reserved.

Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, answer, stipulation (the stipulation having been approved and accepted by the Commission and entered of record), and briefs by counsel for the Commission and counsel for the respondent (oral argument having been waived); 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, The Rudolph Wurlitzer Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with the principal office and place of business at 121 East Fourth Street, Cincinnati, Ohio. Respondent is now and for more than 2 years last past has been engaged in the business of manufacturing pianos covered or finished in whole or in part with a material designated by respondent as "Kordevon," and in selling and distributing such pianos at wholesale to dealers to be resold by such dealers to the purchasing public.

PAR. 2. Respondent causes and has caused its pianos, when sold, to be transported from its manufacturing plant located in De Kalb,

Ill., to purchasers thereof located in various States of the United States other than the State of Illinois and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its pianos in commerce among and between the several States of the United States and in the District of Columbia.

PAR. 3. Respondent is now, and at all times mentioned herein has been, in substantial competition with other corporations and with firms, partnerships, and individuals engaged in the sale and distribution of pianos in commerce among and between the several States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business and for the purpose of inducing the purchase of its pianos, respondent causes and has caused advertisements to be inserted in newspapers, magazines, and trade journals having wide interstate circulation, and distributes and has distributed circulars and letters to the purchasing public in various States of the United States and in the District of Columbia. In these advertisements, circulars, and letters so distributed, many statements and representations are made by respondent in which the term "Kordevon" is prominently used as the trade name for, and as being descriptive of, the material used in whole or in part as a covering or finishing material for respondent's pianos. Typical of the statements and representations so made and circulated by the respondent are the following:

* * * A Piano that Actually *Blends* with your Home * * * Now, at last, Wurlitzer solves this major problem for you with America's most colorful piano—a refreshingly new Wurlitzer finished in the exclusive new Kordevon.

Kordevon, with its soft, rich texture, offers you a variety of tasteful colors with which to enhance the beauty of your living room—Kordevon is durable, too—defies extremes of heat or cold, dampness, or dryness—is easy to keep fresh and beautiful.

Wurlitzer is the first to use Kordevon which evokes a new epoch in luxurious piano finishing.

Finished in Kordevon, a remarkably beautiful and durable finish featured exclusively by Wurlitzer.

Finished in colorful Kordevon.

Wurlitzer is first with Kordevon, a new finish, hailed with enthusiasm by leading decorative authorities for its unique beauty, its soft rich texture, its variety of tasteful shades.

A piano that embodies all the variety of color, texture, and grain hitherto obtainable only in the most expensive custom-built instruments. This is made possible through the use of Kordevon, a remarkably beautiful and durable new finish featured exclusively by Wurlitzer. Though delicately grained in texture, the surface can withstand severe abuse without showing signs of scuffing or scratching.

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Introduces a new and finer finish

KORDEVON

new texture—new color—greater durability.

Finished in colorful, soft textured Kordevon, a unique new finish exclusive with Wurlitzer. Wurlitzer is the first to use luxurious, richly textured Kordevon, a finish of amazing durability. What is more, Kordevon is available in a great variety of color combinations.

PAR. 5. The definitions of Cordovan, as found in Webster's New International Dictionary, Second Edition, 1937, are as follows:

Cor' do-van (kor' dē. van; orig. accented cor' do. van') adj. [Sp. cordoban, fr. cordoba, or Cordova in Spain, fr. L. Corduba. Cf. Cordwain.] Of or pertaining to Cordova; [not cap.] made of the leather manufactured at Cordova.

Cor' do-van, n. 1. A native or inhabitant of Cordova.

2. [not cap.] Cordovan leather; esp., a soft, fine-grained, colored leather, chiefly manufactured in the Middle Ages, at Cordova, Spain, of goatskins, and afterwards of split horsehides, goatskins, pigskins, etc., and esp. of fine horsehides split so as to retain their grain.

3. [not cap.] A brown, red-yellow in hue, of low saturation and low brilliance. Called also woodland brown. Cf. Color.

PAR. 6. The word or term "Kordevon" used by respondent to describe the covering or finishing material for its pianos is commonly given a pronunciation similar to the pronunciation given the word or term "Cordovan."

PAR. 7. Cordovan leather is frequently used in the present-day manufacture of men's shoes, saddles, and other products where a fine, durable, and attractive grade of leather is desired, and there is a preference among some members of the purchasing public for articles made from cordovan leather.

PAR. 8. The material used by respondent to cover its pianos is manufactured exclusively for respondent. When applied, the material has only one side exposed to view, which side highly resembles grained leather in appearance and has the feel of leather. Its appearance, texture, and feel are such as to convey the impression and induce the belief that the material is genuine leather.

Actually, however, the material is neither cordovan leather nor leather of any kind, but is a closely woven cotton fabric on which are deposited several coats of pyroxylin plastic. Each coat is heated and dried in an oven before the next coat is applied. After the final coat has dried, the so-called "Kordevon" grain is created by the application of pressure by means of an etched steel plate. An irregularity in texture is obtained by a final hand operation.

PAR. 9. Pianos finished in "Kordevon" were first offered to the public by respondent in January 1939. Each piano offered for sale by respondent since that time has borne the following label:

NOTICE

The Finish on this piano is genuine

WURLITZER KORDEVON

It is waterproof and will maintain its beautiful finish almost indefinitely if kept properly clean.

FOR CLEANING

USE ONLY MILD (IVORY) SOAP AND A DAMP CLOTH

Avoid an excessively wet cloth as excessive moisture may run into your piano and cause damage.

DO NOT USE CLEANING FLUIDS, WAXES, POLISHES, OR HARD CAUSTIC SOAPS. DUST OFTEN WITH A CLEAN DRY CLOTH.

Since June 1939 a further label has been affixed by respondent to the back of each of its pianos, which reads as follows:

KORDEVON

BUILT BY

THE RUDOLPH WURLITZER COMPANY

DE KALB, ILLINOIS

IN THE MANUFACTURE OF THE COVERING FOR THIS PIANO, TEN COATS OF PYROXYLIN PLASTIC ARE USED

PAR. 10. The Commission finds that the use by respondent of the term "Kordevon" to designate and describe its material, particularly when viewed in the light of the appearance and feel of the material itself, is misleading to the public in that the term represents or implies that the material is cordovan leather.

Respondent since May 1940 has inserted in all of its advertising material the words "plastic fabric" immediately after the word "Kordevon," wherever such word has been used. Since that date, also, the words "a Plastic Fabric" have been added parenthetically, in small print, to the labels described above.

The Commission finds, however, that these terms are insufficient to correct the erroneous and misleading impression created by the use of the word "Kordevon." Likewise, the use by respondent on its labels of the statement, "In the manufacture of the covering for this piano, ten coats of pyroxylin plastic are used," is insufficient to correct such erroneous and misleading impression.

PAR. 11. The acts and practices of the respondent as herein described have the tendency and capacity to mislead and deceive, and have mis-

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led and deceived, a substantial portion of the purchasing public into the erroneous and mistaken belief that the covering or finishing material on respondent's pianos is genuine cordovan leather; and cause and have caused such portion of the public to purchase substantial quantities of respondent's pianos as a result of the erroneous and mistaken belief so engendered. In consequence thereof, substantial trade has been diverted to the respondent from its competitors who do not engage in similar acts and practices.

CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice 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.

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, a stipulation as to the facts entered into between the respondent through its attorney and Richard P. Whiteley, Assistant Chief Counsel for the Commission, and briefs in support of and in opposition to the complaint (oral argument having been waived), and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, The Rudolph Wurlitzer Co., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of respondent's pianos in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Kordevon," or any other word or term which simulates in spelling or phonetics the word "Cordovan," as a trade name for, or as descriptive of, any covering or finishing material for pianos which is not in fact cordovan leather.
2. Representing in any manner that the covering or finishing material used for respondent's pianos is leather, when such material is in fact other than leather.

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.

IN THE MATTER OF

BENJAMIN GOLDMAN, TRADING AS TIGER YARN COMPANY, MINNETTE YARN COMPANY, BENGU YARN SHOP, AND GOLDMAN'S YARN SHOP

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914.

Docket 4625. Complaint, Nov. 5, 1941—Decision, Aug. 5, 1942

Where an individual, engaged under various trade names in interstate sale and distribution of knitting yarns to the purchasing public direct and to retail dealers—

- (a) Made use in catalogues or on color cards and on labels attached to certain of his yarns, of such terms as "Heavy Tweed Velva," "Shetland Floss," "Camel's Hair," "Cashmere De Laine" and "Sport Angora";

The facts being the yarns thus designated were not, as understood by a substantial portion of the purchasing public from the terms "Tweed," "Shetland," "Camel's Hair," "Cashmere," and "Angora," respectively composed entirely of wool, of yarn made from the wool of Shetland sheep grown on the Shetland Islands or the contiguous mainland of Scotland, of camel's hair, or hair of the Cashmere or the Angora goat, but said "Tweed" yarns were not composed of wool or contained wool mixed with other fibers, in case of "Heavy Tweed Velva" in the proportion of about 65 percent wool and 35 percent rayon; said "Shetland" yarns were made entirely of domestic wool; said "Camel's Hair" was made principally of wool and contained little, if any, camel's hair; said "Cashmere" contained fibers other than the hair of the Cashmere goat; and said "Sport Angora" contained about 80 percent wool and 20 percent rabbit's hair; and members of public in purchasing product represented as made of said wools or hairs have a preference for the genuine article rather than a substitute for or simulation thereof;

- (b) Falsely represented yarns composed of varying mixtures of wool, cotton, and rayon as being composed in part of silk through application to such products of such legends as, "A fine silk and wool mixture of four-ply"; "A fine mixture of silk and cotton"; "Silk Flake * * * A cotton and silk combination"; "A beautiful and lustrous mixture of silk and zephyr"; and "A very attractive yarn of silk and pure wool";
- (c) Misrepresented said yarns through failure to disclose that they were composed in part of rayon which, when so made as to simulate silk or wool, has the feel and appearance thereof, and is practically indistinguishable therefrom; as a result whereof a substantial portion of the purchasing public bought said yarns as composed of the genuine product simulated;
- (d) Designated one of his yarns composed entirely of wool and rayon as "Crepe," notwithstanding fact that a substantial portion of the purchasing public understand products so designated to be made of silk, product of the cocoon of the silk worm; and
- (e) Represented, through use of words "Importers and Jobbers of Worsteds Yarns—Angoras—Cotton" in connection with his trade name "Tiger Yarn