

Syllabus

IN THE MATTER OF

TILLER-FAITH PIANO COMPANY, INC. ET AL.

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

Docket 5967. Complaint, Mar. 17, 1952—Decision, Oct. 3, 1952

Where a corporation and two officers thereof, engaged in the interstate sale and distribution of pianos; in carrying on their business under a plan whereby in their advertising in rural newspapers, over such names as "Finance Manager", "Collection Department", and "Finance Department", they made such typical statements as "FORCED TO SELL SPINET PIANO LIKE NEW. We are forced by circumstances over which we have no control to sell in this section Gorgeous little spinet piano. Party with good credit can pay minimum down payment and assume few monthly payments. Considerable has already been paid. Write to Manager Collection Department", etc.; and sent to those replying an agent who, after placing on a truck a new piano, to which a price tag, usually in the amount of \$795, had been attached, proceeded to the residence of the inquirer—

- (a) Represented through statements in their said advertisements and orally through their said agents that they were forced to sell the pianos involved, which they had previously sold to a purchaser for the usual price of \$795 and had repossessed due to financial difficulties of the purchaser, etc.; that the pianos were not new and substantial amounts had been paid on their purchase price by others; and that they were being offered at a substantial discount from the usual price in order to save time and expense of transporting them back to the store;

The facts being that they were not in any manner forced to sell said products, which had not been repossessed but were new and had been acquired through ordinary purchase from their suppliers; the \$795 or such other sums as were shown on the price tags or stated by their agents to be usual prices were fictitious; and the prices actually charged under their aforesaid plan were those at which the pianos were usually and regularly sold;

With tendency and capacity to mislead and deceive members of the purchasing public into the erroneous belief that such statements and claims were true, and with the result that a substantial number purchased said pianos, and trade in commerce was thereby unfairly diverted to them from their competitors, to the injury of the latter and the public:

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, and unfair methods of competition therein.

Before *Mr. John Lewis*, hearing examiner.

Mr. Jesse D. Kash for the Commission.

Warren, Merrell & Combs, of Evansville, Ind., for respondents.

Complaint

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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 Tiller-Faith Piano Company, Inc., a corporation; B. T. Faith Piano Company, Inc., a corporation; and Benjamin T. Faith, Armand A. Tiller, Mary Woodburn Faith, and Mona Frances Tiller, individually and as officers of said corporations, 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. Respondent Tiller-Faith Piano Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Indiana with its office and principal place of business located at 16 N. W. Second Street, Evansville, Indiana.

B. T. Faith Piano Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Tennessee with its office and principal place of business located at 911 Church Street, Nashville, Tennessee.

Respondents Benjamin T. Faith, Armand A. Tiller, Mary Woodburn Faith and Mona Frances Tiller are individuals and officers of corporate respondents Tiller-Faith Piano Company, Inc., and B. T. Faith Piano Company, Inc., with their office and principal place of business the same as that of corporate respondent, Tiller-Faith Piano Company, Inc.

The individual respondents formulate, direct and control, the business acts and policies of the corporate respondents named herein, including the acts and practices hereinafter set forth.

PAR. 2. Respondents are now and for more than two years last past have been engaged in the sale and distribution of pianos. Corporate respondents cause and have caused their pianos to be transported from the aforesaid places of business in the States of Tennessee and Indiana to purchasers thereof located in various other States of the United States.

Respondents maintain and have maintained at all times mentioned herein a course of trade in said products among and between various States of the United States. Respondents' business in said commerce has been substantial.

PAR. 3. Respondents' plan of operation in selling their pianos is in substance as follows: Respondents advertise in rural newspapers in the midwest in the trade territory in which their business extends

over such names as "Finance Manager," "Collection Department," and "Finance Department." Typical but not all inclusive of said advertisements are the following:

Spinnet piano bargain. Circumstances beyond our control force us to offer for sale in your community a lovely Spinnet piano. Standard make and keyboard. Fully guaranteed. Some lucky party with good credit can make small down payment and assume monthly payments. Quick action necessary. We will tell you where to see Spinnet. Write Finance Manager, 16 N. W. Second Street, Evansville, Indiana.

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like new. We are forced by circumstances over which we have no control, to sell in this section Gorgeous little spinet piano. Plays and looks like new. Party with good credit can pay minimum down payment and assume few monthly payments. Considerable has already been paid. Write to Manager Collection Dept. P. O. Box 543 and we will notify where to see Spinnet. Quick action necessary. Tiller-Faith Piano Co., Inc., Evansville, Ind.

WANTED party with good credit interested in buying extra nice little Spinnet piano. Standard make and keyboard. Condition of case and interior AA1. Require small down payment and assume several monthly installments. Write Collection Dept. Window "B" 16 N. W. Second Street, Evansville, Ind. We will notify where to see instrument.

When an inquiry or reply is received from the rural advertisement, an agent or representative of the respondent takes from the stockroom, either at Nashville, Tennessee, or Evansville, Indiana, a new piano, places same on a truck and proceeds to the residence of the inquirer, located in many instances in States other than the States of Tennessee and Indiana. Some of these pianos have price marks or tags attached, usually in the amount of \$795.00.

In furtherance of their scheme to sell and dispose of their product, the representative makes certain oral statements to the prospective purchaser, among them being that said piano had been previously sold to a purchaser for \$795.00, which was the regular price; that said purchaser, on account of financial difficulties or other matters beyond his or her control, was unable to continue payments on the piano and said piano had been repossessed; that in order to save the time and expense of transporting from the territory at which it was located to respondent's stores, either in Evansville or Nashville, that same would be sold at the reduced price of \$500.00 or some other figure considerably less than \$795.00.

PAR. 4. By means of the statements contained in the aforesaid advertisements, respondents represented that they were forced to sell the pianos mentioned therein; that they had come into possession of said pianos through repossession or in some other manner other than through normal channels of purchase; that the pianos were not new

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and substantial amounts had been paid on the purchase price by others, and for these reasons said pianos were offered for sale at a substantial discount from \$795.00 or some other figure which was the price usually and regularly charged.

PAR. 5. The aforesaid representations made by respondents in their newspaper advertising and by means of oral statements made by their agents or representatives were false, misleading and deceptive. In truth and in fact, respondents were not in any manner forced to sell their pianos and the sales made were not forced sales. In most instances the pianos offered for sale had not been repossessed but came into the possession of respondents through ordinary purchases made from their suppliers and were new pianos. The sum of \$795.00 or such other sums as may have been shown on price tags or stated by respondents' agents or representatives to be the usual and regular prices were fictitious and were not the usual and regular prices at which said pianos were ordinarily sold. Actually the prices charged were the prices at which said pianos were usually and regularly sold.

PAR. 6. In the course and conduct of their business respondents have been and are now engaged in substantial competition in commerce with other corporations and with partnerships and individuals likewise engaged in the sale and distribution of pianos in commerce.

PAR. 7. The use by respondents of the acts, practices and methods aforesaid in connection with the offering for sale and selling of pianos have had and now have the tendency and capacity to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that the aforesaid statements and claims were true.

As a result of such erroneous and mistaken belief a substantial number of the purchasing public have purchased said pianos in commerce thereby unfairly diverting trade in said commerce to the respondents from their competitors to the injury of said competitors and the public.

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

CONSENT SETTLEMENT¹

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 17th day of March, 1952, issued

¹ The Commission's "Notice" announcing and promulgating the consent settlement as published herewith, follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on October 3, 1952 and ordered entered

and subsequently served its complaint on the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce and unfair methods of competition in commerce in violation of the provisions of the Federal Trade Commission Act. The respondents, Tiller-Faith Piano Company, Inc., Armand A. Tiller, and Mona Frances Tiller, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purpose of this proceeding and review thereof and enforcement of the order consented to and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of answer to said complaint filed April 18, 1952, hereby:

1. Admit all of the jurisdictional allegations set forth in the complaint.

2. Consent that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order to cease and desist. It is understood that the respondents named in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrain from admitting or denying that they have engaged in any of the acts or practices stated therein to be in violation of law.

3. Agree that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission had reason to believe were unlawful, the conclusion based thereon, and the order to cease and desist, all of which the said respondents consent may be entered herein in final disposition of this proceeding, are as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Tiller-Faith Piano Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Indiana with its office and principal place of business located at 16 N. W. Second Street, Evansville, Indiana.

Respondent B. T. Faith Piano Company, Inc., is a corporation organized and existing under and by virtue of the laws of Tennessee, with its office and principal place of business located at 911 Church Street, Nashville, Tennessee.

of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

The time for filing report of compliance pursuant to the aforesaid order runs from the date of service hereof.

Findings

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Respondents Armand A. Tiller and Mona Frances Tiller are individuals and officers of corporate respondents Tiller-Faith Piano Company, Inc., and B. T. Faith Piano Company, Inc., with their office and principal place of business in Louisville, Kentucky.

Individual respondent Benjamin T. Faith was, prior to his death on October 29, 1951, the President and General Manager of the corporate respondents and as such President and General Manager, he formulated, directed, and controlled the business, acts, and policies of the corporate respondent.

Respondents Armand A. Tiller and Mona Frances Tiller assisted in formulating, directing, and controlling the business, acts and policies of the corporate respondent Tiller-Faith Piano Company, Inc.

In December 1951, individual respondent Mary Woodburn Faith, widow of Benjamin T. Faith, deceased, sold her stock in said respondent corporations to said corporations pursuant to the terms of stock purchase agreements, and since said date, has not been engaged in or connected in any manner with the sale and distribution of pianos or other musical instruments, either individually or as an officer, stockholder, or employee of respondent corporations or any other corporations.

Subsequent to the death of Benjamin T. Faith, Phillip Manfre purchased 50% of the outstanding stock of corporate respondent Tiller-Faith Piano Company, Inc., and is now President and General Manager of said corporate respondent and formulates, directs, and controls the business, acts and policies of said corporate respondent.

PAR. 2. Respondents, Tiller-Faith Piano Company, Inc., a corporation, Armand A. Tiller, and Mona Frances Tiller, hereinafter referred to as respondents are now and for more than two years last past have been engaged in the sale and distribution of pianos. Said respondents cause and have caused their pianos to be transported from their aforesaid place of business in the State of Indiana to purchasers thereof located in various other States of the United States.

Said respondents maintain and have maintained at all times mentioned herein a course of trade in said products among and between various States of the United States. Respondents' business in said commerce has been substantial.

PAR. 3. Respondents' plan of operation in selling their pianos is in substance as follows: Respondents advertise in rural newspapers in the Midwest in the trade territory in which their business extends over such names as "Finance Manager," "Collection Department," and "Finance Department." Typical, but not all-inclusive, of said advertisements are the following:

Spinnet piano bargain. Circumstances beyond our control force us to offer for sale in your community a lovely Spinnet Piano. Standard make and keyboard. Fully guaranteed. Some lucky party with good credit can make small down payment and assume monthly payments. Quick action necessary. We will tell you where to see Spinnet. Write Finance Manager, 16 N. W. Second Street, Evansville, Indiana.

FORCED TO SELL SPINET PIANO

like new. We are forced by circumstances over which we have no control, to sell in this section Gorgeous little spinnet piano. Plays and looks like new. Party with good credit can pay minimum down payment and assume few monthly payments. Considerable has already been paid. Write to Manager Collection Dept. P. O. Box 543 and we will notify where to see Spinnet. Quick action necessary. Tiller-Faith Piano Co., Inc., Evansville, Ind.

WANTED party with good credit interested in buying extra nice little Spinnet piano. Standard make and keyboard. Condition of case and interior AA1. Require small down payment and assume several monthly installments. Write Collection Dept. Window "B" 16 N. W. Second Street, Evansville, Ind. We will notify where to see instrument.

When an inquiry or reply is received from the rural advertisement, an agent or representative of the respondents takes from the stock-room in Evansville, Indiana, a new piano, places same on a truck and proceeds to the residence of the inquirer, located in many instances in States other than the State of Indiana. Some of these pianos have price marks or tags attached, usually in the amount of \$795.00.

In furtherance of its scheme to sell and dispose of its product, the representative makes certain oral statements to the prospective purchaser, among them being that said piano had been previously sold to a purchaser for \$795.00, which was the regular price; that said purchaser, on account of financial difficulties or other matters beyond his or her control, was unable to continue payments on the piano and said piano had been repossessed; that in order to save the time and expense of transporting same from the territory at which it was located to respondents' store in Evansville, Indiana, that same would be sold at the reduced price of \$500.00 or some other figure considerably less than \$795.00.

PAR. 4. By means of the statements contained in the aforesaid advertisements, respondents represented that they were forced to sell the pianos mentioned therein; that they had come into possession of said pianos through repossession or in some other manner other than through normal channels of purchase; that the pianos were not new and substantial amounts had been paid on the purchase price by others, and for these reasons said pianos were offered for sale at a substantial discount from \$795.00 or some other figure which was the price usually and regularly charged.

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PAR. 5. The aforesaid representations made by respondents in their newspaper advertising and by means of oral statements made by their agents or representatives were false, misleading, and deceptive. In truth and in fact, respondents were not in any manner forced to sell their pianos and the sales made were not forced sales. In most instances, the pianos offered for sale had not been repossessed but came into the possession of respondents through ordinary purchases made from its suppliers and were new pianos. The sum of \$795.00 or such other sums as may have been shown on price tags or stated by respondents' agents or representatives to be the usual and regular prices were fictitious and were not the usual and regular prices at which said pianos were ordinarily sold. Actually, the prices charged were the prices at which said pianos were usually and regularly sold.

PAR. 6. In the course and conduct of their business, respondents have been and are now engaged in substantial competition in commerce with other corporations and with partnerships and individuals likewise engaged in the sale and distribution of pianos in commerce.

PAR. 7. The use by respondents of the acts, practices and methods of aforesaid in connection with the offering for sale and selling of pianos has had and now has the tendency and capacity to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that the aforesaid statements and claims were true.

As a result of such erroneous and mistaken belief, a substantial number of the purchasing public have purchased said pianos in commerce thereby unfairly diverting trade in said commerce to the respondents from their competitors to the injury of said competitors and the public.

CONCLUSION

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

ORDER TO CEASE AND DESIST

It is ordered. That respondent Tiller-Faith Piano Company, Inc., a corporation, Armand A. Tiller, and Mona Frances Tiller, individually and as officers of said corporate respondent, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the solicitation or the offering for sale, sale, and distribution of pianos in commerce, as "commerce" is

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defined in the Federal Trade Commission Act, do forthwith cease and desist from representing:

1. That they are forced to sell their pianos;
2. That pianos offered for sale have been repossessed from the purchasers thereof or obtained in any manner other than through normal channels of purchase when such pianos have not in fact been so repossessed or obtained;
3. That any amount has been paid by others on the purchase price of said pianos;
4. That prices at which their pianos are offered for sale are special or reduced prices when such prices are in fact the regular and customary prices at which such pianos are sold by respondents;
5. That the customary or regular prices at which their pianos are sold by the respondents are in excess of the prices at which such pianos are advertised or offered for sale.

It is further ordered, That the complaint, insofar as it affects B. T. Faith Piano Company, Inc., a corporation, Benjamin T. Faith, and Mary Woodburn Faith, be, and it hereby is, dismissed.

It is further ordered, That the respondent, Tiller-Faith Piano Company, Inc., a corporation, and Armand A. Tiller, and Mona Frances Tiller, individually and as officers of said corporation, shall, within sixty (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.

TILLER-FAITH PIANO COMPANY, INC.,

A CORPORATION,

By PHILLIP MANFRE, *President*.

S Armand A. Tiller,

ARMAND A. TILLER.

S Mona Frances Tiller,

MONA FRANCES TILLER.

Dated: September 5, 1952.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this 3rd day of October, 1952.

IN THE MATTER OF
HATO COMPANY, INC., ET AL.

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

Docket 5087. Complaint, Sept. 6, 1950—Decision, Oct. 6, 1952

Diabetes is incurable and cannot be self-diagnosed or self-treated by the layman, and the sale of a preparation therefor to the lay public under representations and claims which are false is a public danger to the several million diabetics in the United States.

As respects the treatment of such conditions as retinopathy or retinitis, and increased capillary fragility, which accompany diabetes, treatment of the former is still in the research field, and cause or cure of the latter is unknown, so that it is inimical to the health of a large and unfortunate segment of the public to offer relief for such conditions through the purchase of a preparation calculated to lull the taker into a false sense of security which may, notwithstanding the wrapper and its directions, lead him to throw off the onerous diet restrictions and use of insulin, and thus inevitably hasten his death.

With regard to the authority of the Commission in a proceeding under Section 5 to direct its orders to the officers, agents, representatives, and employees of a named corporate respondent in the absence of any findings other than those directed solely at the corporate respondent: the Commission was of the opinion that the decision in *R. J. Reynolds Tobacco Co. v. F. T. C.*, 192 F. (2d) 535, 539-540, to the effect that the Commission was without such authority was erroneous in the light of that of the Supreme Court in *Regal Knitwear Co. v. N. L. R. B.*, 325 U. S. 9, there relied on, and in the light of other pertinent holdings of the courts including those in six other circuits, and that the earlier decision of the same court, overruled by it in the *Reynolds case*, in *Sebrone Co. et al. v. F. T. C.*, 135 F. (2d) 676, 678, was right.

It has long been the practice of the Commission to make its orders run against the officers, agents, representatives, and employees of corporate respondents and against their agents, etc., as individual respondents, such phrasing being regarded by it as a proper method of advising respondents that they are forbidden to undertake the interdicted act indirectly through some representative or subordinate, and the Commission has always understood that it not only had the right but the duty of making such inclusion in its orders.

A representation in an advertisement that a certain medicinal preparation would relieve "certain conditions often accompanying diabetes" was false, misleading and deceptive in its breadth and lack of qualification where it appeared that there was no claim that the product would relieve any except two of said conditions, and there was indirect evidence that the product would not relieve any of the others including acidosis, leg ulcers, cataracts, kidney complications and gangrene.

Where a corporation and its president, engaged in the offer and sale of a drug tablet designated "Celparux", in advertising in newspapers—