

## Complaint

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*It is further ordered,* That the respondents 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 the order to cease and desist contained herein.

## IN THE MATTER OF

## BENGE CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION ACT

*Docket C-2069. Complaint, Oct. 26, 1971—Decision, Oct. 26, 1971*

Consent order requiring a Los Angeles, Calif., manufacturer and seller of musical instruments to cease requiring their dealers to maintain respondents specified resale prices as a condition of buying respondents' products, and requiring dealers to report others who do not maintain respondents' prices; respondents are also required to advise a terminated dealer that he may apply for reinstatement.

## 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 Benge Corporation, a corporation, and Donald Benge, individually and as an officer of said corporation, and more particularly described and referred to herein-after as respondents, have violated and are now violating the provisions of Section 5 of said Act (15 U.S.C. 45), 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 respect thereto as follows:

1. Respondent Benge Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 1239 South Olive Street, Los Angeles, California.

Respondent Donald Benge is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation and his address is the same as that of said corporation.

2. Respondents have been and are now engaged in the manufacture, sale and distribution of musical instruments and accessories with net sales in fiscal year 1970 in excess of \$146,000. Respondents manufacture musical instruments and accessories at its plant located in Los

Angeles, California, and sell such products directly to approximately 51 dealers located throughout the United States.

3. In the course and conduct of its business as aforesaid respondents have been and are now engaged in commerce as "commerce" is defined in the Federal Trade Commission Act in that respondents have caused and now cause its various products to be shipped from the state of manufacture thereof to other States of the United States for resale and distribution through retail dealers.

4. Except to the extent that competition has been hindered, frustrated, lessened and eliminated as set forth in this complaint, respondents have been and are now in competition with other persons, firms and corporations engaged in the manufacture, sale and distribution of musical instruments and accessories.

5. Respondents in combination, agreement, understanding and conspiracy with some of its dealers or with the cooperation or acquiescence of other of its dealers have for the last several years been engaged in a planned course of action to fix, establish and maintain certain specified uniform prices at which its products are resold. In furtherance of said planned course of action respondents have for the past several years engaged in the following acts and practices among others:

(a) regularly furnishing all its dealers with price lists and necessary supplements thereto containing the established resale price;

(b) establishing agreements, understandings and arrangements with its dealers, some of whom are located in states which do not have fair trade laws, as a condition precedent to the granting of a dealership that such dealers will maintain its resale prices;

(c) informing its dealers by direct and indirect means that it expects and requires all of its dealers to maintain and enforce its resale price or such dealership will be terminated;

(d) soliciting and obtaining from its dealers cooperation and assistance in identifying and reporting dealers who have advertised, offered to sell, or sell respondents products at prices lower than its established resale price;

(e) directing its salesmen, representatives and other employees to secure and report information identifying any dealer who fails to adhere to and maintain its established resale price; and

(f) threatening to terminate and terminating its dealers who fail or refuse to observe and maintain respondents established resale price:

6. By means of the aforesaid acts and practices and more, respondents in combination, agreement, understanding and conspiracy with

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certain of its dealers and with the acquiescence of others of its dealers, have established, maintained and pursued a planned course of action to fix and maintain certain specified uniform prices at which respondents' products will be sold.

7. The acts and practices of respondents as hereinabove described have been and are now having the effect of hindering, lessening, restricting, restraining and eliminating competition in the resale and distribution of respondents' musical instruments and accessories and constitute unfair methods of competition in commerce all in derogation of the public interest and in violation of Section 5 of the Federal Trade Commission Act.

## DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and respondents having been furnished thereafter with a copy of the draft of complaint which the Los Angeles Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents had violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedures prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, making the following jurisdictional findings, and enters the following order:

PARAGRAPH 1. Respondent Bengé Corporation is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 1239 South Olive Street, Los Angeles, California.

Respondent Donald Benge is an officer of the corporate respondent. He formulates, directs and controls the policies, acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

## ORDER

*It is ordered,* That respondent Benge Corporation, a corporation, its subsidiaries, successors, assigns, officers, directors, agents, representatives and employees individually or in concert, directly or through any corporate or other device, and Donald Benge, individually and as an officer of said corporation, in connection with the manufacture, distribution, offering for sale or sale of musical instruments and accessories in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from hindering, suppressing, or eliminating competition or from attempting to hinder, suppress, or eliminate competition between or among dealers handling respondents' products by:

1. Requiring dealers to agree that they will resell at prices specified by respondents or that they will not resell below or above specified prices;
2. Requiring prospective dealers to agree, through direct or indirect means, that they will maintain respondents' specified resale price as a condition of buying respondents' products;
3. Requiring dealers, either directly or indirectly, to report any person or firm who does not observe the resale prices suggested by respondents or acting on reports so obtained by refusing or threatening to refuse sales to the dealer so reported;
4. Harassing and intimidating, coercing or threatening dealers, either directly or indirectly, to observe, maintain or advertise established retail prices;
5. Directing or requiring respondents' salesmen or any other agents, representatives or employees, directly or indirectly, as part of any plan or program of requiring its dealers to adhere to its suggested resale prices to report dealers who do not observe such suggested resale prices or to act on such reports by refusing or threatening to refuse sales to dealers so reported;
6. Requiring from dealers charged with price cutting or failure to observe suggested resale prices, promises or assurances of ob-

servance of respondents' resale prices as a condition precedent to future sales to said dealer;

7. Publishing, disseminating, or circulating to any dealer any price lists, price books, price tags or other documents indicating any resale or retail prices without stating on such lists, books, tags or other documents that the prices are suggested or approximate;

8. Utilizing any other corporate means of accomplishing the maintenance of resale prices established by respondents.

*Provided however*, nothing herein shall be construed to waive, limit or otherwise affect the right of respondents to enter into, establish, maintain and enforce, in any lawful manner, any price maintenance agreement excepted from the provisions of Section 5 of the Federal Trade Commission Act by virtue of the McGuire Act Amendments to said Act and any other applicable statutes, whether now in effect or hereinafter enacted.

*It is further ordered*, That the respondents herein shall within sixty (60) days after service upon it of this order, mail a copy of the letter annexed hereto as Exhibit A to each of its dealers in the several states and furnish the Commission proof of the mailing thereof.

*It is further ordered*, That the respondents herein shall:

1. Within sixty (60) days after service upon it of this order send the dealer terminated between January 1, 1968, and the date hereof and listed in Exhibit B annexed hereto (such list of terminated dealer having been previously verified by the staff of the Federal Trade Commission) a letter advising him that he may apply within thirty (30) days from receipt of that letter for reinstatement as a dealer;

2. Upon receipt of such application promptly reinstate such dealer.

*It is further ordered*, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions and to all of its sales personnel and shall instruct each sales person employed by it now or in the future to read this order and to be familiar with its provisions.

*It is further ordered*, That respondent Bengel Corporation notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent which may affect compliance obligations arising out of this order such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation of or dissolution of subsidiaries, or any other change in the corporation.

*It is further ordered*, That the respondent herein shall within sixty (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 the order.

## EXHIBIT A

(Benge letterhead)

DEAR (DEALER) : We would like to take this opportunity to welcome you as an authorized dealer and representative for the BENGÉ Trumpet. Our efforts will constantly be directed toward providing you with the finest instruments available in the brass field.

I would like to tell you something about our distributing and pricing policies. We may, from time to time, suggest prices for our products, but we will not ask or induce you to adhere to those suggested prices; we will not encourage dealers to report any person not following our suggested prices and we will not act on any such reports that might be received; and furthermore we will not require or induce you to refrain from advertising or selling our products at any price and to any person you may choose.

We'll look forward to serving you. Let us know if you need any additional information regarding the BENGÉ line.

Very truly yours,

DONALD BENGÉ,  
*President.*

## EXHIBIT B

BRINGE &amp; WILSEY

822 Central Avenue

St. Petersburg, Florida

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IN THE MATTER OF

## COMPUTER CREDIT SYSTEMS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION AND THE TRUTH IN LENDING ACTS

*Docket C-2070. Complaint, Oct. 26, 1971—Decision, Oct. 26, 1971*

Consent order requiring an Atlanta, Ga., seller of credit card services to franchisees who in turn sell retail merchants memberships in respondents' services to cease violating the Truth in Lending Act by failing to make the disclosures required by Regulation Z of the Act; respondents are also required to cease misrepresenting the number of sales a franchisee can make in a given geo-