

Complaint

103 F.T.C.

IN THE MATTER OF

NATIONAL ASSOCIATION OF SCHOOL MUSIC DEALERS, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-3134. Complaint, May 31, 1984—Decision, May 31, 1984*

This consent order requires a Coralville, Iowa trade association comprised of dealers specializing in the sale and servicing of school band instruments, among other things, to cease taking any action or encouraging its members to take any action which would interfere with how, or to whom a manufacturer distributes its products.

Appearances

For the Commission: *Thomas J. Keary and Robert G. Day*

For the respondent: *Ronald J. Dolan, Peabody, Lambert & Meyers,*
Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended (15 U.S.C. 41 et seq.), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the National Association of School Music Dealers, Inc. has violated the provisions of said Act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

1. Respondent, National Association of School Music Dealers, Inc. ("NASMD") is a non-profit corporation, organized and existing under the laws of the State of West Virginia, with its principal office located at 1212 5th Street, Coralville, Iowa.

2. NASMD is composed of both voting members, who conduct retail businesses for the promotion and sale of band musical instruments to school music departments, and non-voting members, who may be manufacturers or wholesale distributors of school musical instruments or related equipment. Respondent has approximately 200 retail dealers. NASMD was organized for, and serves its members, *inter alia*, as an instrumentality that facilitates the exchange of ideas concerning improved methods for conducting business in the sale and

distribution of musical instruments. Except to the extent that competition has been restrained as herein alleged, voting members of NASMD have been and now are in competition among themselves and with other sellers of band instruments.

3. Respondent is engaged in representing the pecuniary interests of its members. By virtue of such activities, respondent is a corporation organized to carry on business for the profit of its members within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

4. In the course and conduct of their business, members of respondent, among other things, purchase musical instruments which are shipped to them in interstate commerce. Members of respondent sell, at retail, musical instruments which they ship in interstate commerce. As a result of which the acts and practices hereinbelow alleged are in or affecting commerce within the meaning of the Federal Trade Commission Act, as amended, 15 U.S.C. 44, and respondent is subject to the jurisdiction of the Federal Trade Commission.

5. Respondent's members predominantly sell new brass and woodwind instruments to individual consumers and to institutions, such as school systems. In 1980, total retail sales of brass and woodwind instruments in the United States were approximately \$192 million.

6. Individuals and institutions typically purchase new musical instruments from retail dealers. Individual consumers normally purchase from a dealer in their local area, which they select on the basis of the dealer's price and service and the quality of the instruments offered. Institutional purchasers, such as schools, generally solicit bids from local and distant retail dealers and select the retail dealer offering the desired instruments of the desired quality at the lowest cost.

Many retail music dealers concentrate their selling efforts within their local areas. Other retail dealers, sometimes referred to as mail order dealers, both solicit business in their local areas and seek to make sales to purchasers, particularly institutional purchasers, in a broader area. When a mail order dealer makes a sale to a distant customer, the manufacturer may ship the instrument directly to the dealer's customer, rather than to the dealer's place of business.

7. Respondent's members are retail dealers who generally concentrate their selling efforts in their local areas. They face competition from mail order retail dealers, particularly for institutional purchasers. For some time past, respondent and its members have acted in concert to restrict the competition they face from mail order dealers. In furtherance of this plan, respondent and its members have acted to prevent manufacturers of musical instruments from shipping musical instruments directly to a retail dealer's customers, thereby

impeding the ability of mail order dealers to sell musical instruments to distant customers. Furthermore, respondent and its members adopted and distributed to manufacturers of musical instruments a resolution urging manufacturers to eliminate direct shipment to dealers' customers. Respondent and its members also directly or impliedly threatened to refuse to deal with manufacturers who did not comply with the resolution.

Respondent and its members have also acted to restrict competition from manufacturers selling musical instruments at retail. In furtherance of this plan, they have required as a condition of membership in the association that manufacturers agree not to engage in competition with retail dealers.

8. The acts, practices, and methods of competition alleged in paragraph seven have had, or have the tendency or capacity to have, the following effects:

- (A) Restraining competition among respondent's members;
- (B) Restraining competition between respondent's members and other retail dealers of musical instruments;
- (C) Restraining the ability of musical instrument customers, such as school systems, to receive direct shipments from manufacturers, which restraint may tend to increase the cost of musical instruments;
- (D) Restraining the ability of manufacturers of musical instruments to ship musical instruments directly to the musical instrument customers, such as school systems, which restraint, as alleged in subparagraph (C) above, may tend to increase the cost of musical instruments; and
- (E) Restraining the ability of manufacturers of musical instruments to distribute musical instruments in any manner that would place the manufacturer in competition with respondent's members and other retail dealers of musical instruments.

9. The aforesaid acts and practices of respondent constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

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

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent 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 respondent has 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 sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent National Association of School Music Dealers, Inc., sometimes hereinafter referred to as NASMD, is a non-profit corporation, organized and existing under the laws of the state of West Virginia, with its principal office located at 1212 5th Street, Coralville, Iowa.

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

ORDER

I.

It is ordered, That NASMD, its officers, directors, representatives, agents, employees, successors and assigns, and any subsidiary, committee, division or other device shall cease and desist from:

A. Taking any action, directly or indirectly, on behalf of its members, including but not limited to any actual or threatened boycott or refusal to deal, which has the purpose or effect of interfering with any musical instrument manufacturer's decision as to how or to whom it distributes its product(s).

B. Requesting, urging, recommending or suggesting that NASMD members take any action, directly or indirectly, including but not limited to any actual or threatened boycott or refusal to deal, which has the purpose or effect of interfering with any musical instrument

manufacturer's decision as to how or to whom it distributes its product(s).

II.

It is further ordered, That this Order shall not be construed to prevent NASML from merely providing information or its members' views to musical instrument manufacturers concerning the effects on NASMD members of the ways in which the manufacturers distribute their products, so long as the information or views are not provided in a manner constituting an actual or threatened boycott or refusal to deal.

III.

It is further ordered, That:

A. NASMD shall mail to each of its members and to each person to whom it sent written notification of the NASMD resolution of February 9, 1982, a copy of the Commission's Order in this matter and a letter in the form shown as "Appendix A" to this Order.

B. For a period of two (2) years after the date of service of this Order, NASMD shall also provide each new NASMD member with a copy of this Order at the time the member is accepted into membership.

IV.

It is further ordered, That, for a period of three (3) years following the effective date of the Order, NASMD shall maintain in its files a copy of the minutes of each meeting of its membership and of each meeting of its board of directors and a copy of all correspondence received from, or sent to, any mail order dealer, any manufacturers of musical instruments or any association representing manufacturers of musical instruments and that such copies of minutes and correspondence be made available for inspection by representatives of the Federal Trade Commission upon written request.

V.

It is further ordered, That, within sixty (60) days after service of this Order, respondent shall file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order. Thereafter, additional reports shall be filed at such

other times as the Commission may, by written notice to respondent, require.

VI.

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

APPENDIX A

(Respondent's Letterhead)

Dear _____

As you may be aware, the Federal Trade Commission (FTC) has been investigating certain activities of the National Association of School Music Dealers (NASMD) and NASMD has voluntarily entered into an agreement with the FTC which resulted in the issuance by the Commission on (date) of a complaint and the entry of a consent order. The order requires that you be sent a copy of the order and this letter.

In accordance with the terms of the FTC's order, you are hereby notified that NASMD will cease and desist from taking any action on behalf of its members, such as an actual or threatened boycott or refusal to deal, which has the purpose or effect of interfering with any musical instrument manufacturer's decision as to how or to whom it distributes its products. Further, NASMD will not urge, recommend or suggest that its members take such action.

A copy of the order is enclosed.

Sincerely,

President

Enclosures

Complaint

103 F.T.C.

IN THE MATTER OF

ADRIA LABORATORIES, INC.

CONSENT ORDER IN REGARD TO ALLEGED VIOLATION OF SECS. 5 AND 12
OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3135. Complaint, June 5, 1984—Decision, June 5, 1984*

This consent order requires a Dublin, Ohio manufacturer and seller of over-the-counter drugs, among other things, to cease promoting "Efficin," or any other over-the-counter internal analgesic containing magnesium salicylate, by representing that the product contains no aspirin, or by comparing the product's safety to any product containing aspirin, unless representations are accompanied by prescribed disclosure warnings and substantiated by reliable and competent scientific evidence.

Appearances

For the Commission: *T. Bringier McConnell*, Washington, D.C.

For the respondent: *Alan A. Kaplan, Kleinfeld, Kaplan & Becker*, Washington, D.C., and *Bethany A. Beck*, in-house counsel, Columbus, Ohio.

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 Adria Laboratories, Inc. a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent 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 in Dublin, Ohio.

PAR. 2. Respondent is now and for some time in the past has been engaged in the manufacture, offering for sale, and sale of over-the-counter drugs, including Efficin.

PAR. 3. Respondent has caused to be prepared and placed for publication and has caused the dissemination of advertising and promo-