

IN THE MATTER OF

W.D.I.A. CORPORATION, ET AL.

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

Docket 9258. Complaint, May 4, 1993--Decision, May 27, 1994

This consent order prohibits, among other things, an Ohio-based information corporation and two of its officers from furnishing any consumer report for any purposes not permitted under the Fair Credit Reporting Act, and requires the respondents to take certain steps to ensure subscribers have permissible purposes for accessing consumer reports in the future. In addition, the respondents are required to maintain a toll-free telephone number available to consumers who have questions regarding the purpose for which a consumer report on them was furnished.

Appearances

For the Commission: *Ronald G. Isaac, David G. Grimes, Jr. and Lucy Morris.*

For the respondents: *Arthur L. Herold and Frank M. Northam, Webster, Chamberlain & Bean, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, and the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that W.D.I.A. Corporation, a corporation, and Mark W. Hanna and Janice L. Campanello, individually and as officers of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts, 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:

DEFINITIONS

For the purpose of this complaint, the following definitions apply:

“Person,” “consumer,” “consumer report,” “consumer reporting agency,” and “employment purposes” are defined as set forth in Sections 603(b), (c), (d), (f), and (h), respectively, of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. 1681a(b), 1681a(c), 1681a(d), 1681a(f), and 1681a(h);

“Subscriber” means any person who is approved for or obtains a consumer report from respondents;

“Permissible purpose” means any of the purposes listed in section 604 of the Fair Credit Reporting Act, 15 U.S.C. 1681b, as amended, for which a consumer reporting agency may lawfully furnish a consumer report. These purposes are:

(1) In response to the order of a court having jurisdiction to issue such an order, or a subpoena issued in connection with proceedings before a Federal grand jury.

(2) In accordance with the written instructions of the consumer to whom it relates.

(3) To a person which it has reason to believe:

(A) Intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(B) Intends to use the information for employment purposes; or

(C) Intends to use the information in connection with the underwriting of insurance involving the consumer; or

(D) Intends to use the information in connection with a determination of the consumer’s eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant’s financial responsibility or status; or

(E) Otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer.

PARAGRAPH 1. Respondent W.D.I.A. Corporation, is a corporation organized, existing, and doing business under and by

virtue of the laws of the State of Ohio, with its principal office and place of business located at 7721 Hamilton Avenue, Cincinnati, Ohio.

Respondents Mark W. Hanna and Janice L. Campanello are the President and Vice President, respectively, of the corporate respondent and its sole stockholders. They formulate, direct, and control the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of said corporation.

The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time past have been, regularly engaged in the practice of procuring and assembling information on consumers for the purpose of furnishing, for monetary fees, consumer reports to third parties. Respondents furnish these consumer reports to third parties through the means and facilities of interstate commerce. Hence, respondents are consumer reporting agencies, as defined in Section 603(f) of the Fair Credit Reporting Act.

PAR. 3. Respondents regularly furnish consumer reports to subscribers under circumstances in which respondents cannot reasonably conclude that the reports will be used for a permissible purpose. Typical and illustrative, but not all inclusive, of these circumstances are the following:

A. Respondents regularly furnish consumer reports to subscribers who typically have both permissible and impermissible purposes for using consumer reports. Among such subscribers are attorneys, insurance companies, and private investigators. In numerous instances, respondents provide consumer reports to these subscribers without having reason to believe that the reports have been requested for a permissible purpose.

B. Respondents regularly furnish consumer reports to new subscribers without first having made a reasonable effort to verify the purposes for which the subscribers will use the reports.

PAR. 4. By and through the acts and practices alleged in paragraph three, and others not specifically set forth herein, respondents have violated Section 604 of the Fair Credit Reporting Act by furnishing consumer reports to persons whom respondents have no

reason to believe intend to use the information for a permissible purpose under Section 604.

PAR. 5. By and through the acts and practices alleged in paragraph three, and others not specifically set forth herein, respondents have violated Section 607(a) of the Fair Credit Reporting Act by failing to maintain reasonable procedures designed to limit the furnishing of consumer reports to the purposes listed under Section 604.

PAR. 6. Respondents regularly furnish consumer reports for employment purposes that contain items of information on consumers which are matters of public record and are likely to have an adverse effect on a consumer's ability to obtain employment.

PAR. 7. At the time respondents furnish the consumer reports described in paragraph six, respondents do not notify the subject consumers that respondents are reporting public record information about them, nor do they apprise these consumers of the names and addresses of the subscribers to whom the information is being reported.

PAR. 8. Respondents do not maintain strict procedures designed to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up to date.

PAR. 9. By and through the acts and practices alleged in paragraphs six, seven, and eight, respondents have violated Section 613 of the Fair Credit Reporting Act.

PAR. 10. The acts and practices set forth in this complaint as violations of the Fair Credit Reporting Act constitute unfair or deceptive acts or practices in commerce in violation of Section 5(a) of the Federal Trade Commission Act, pursuant to Section 621(a) of the Fair Credit Reporting Act.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violations of the Fair Credit Reporting Act and the Federal Trade Commission Act, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondents, their attorney, 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 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, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter 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 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent W.D.I.A. corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 7721 Hamilton Avenue, in the City of Cincinnati, State of Ohio.

Respondents Mark W. Hanna and Janice L. Campanello are the officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, and their principal office and place of business is located at the above stated address.

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

For the purpose of this order, the following definitions apply:

"Person," "consumer," "consumer report," "consumer reporting agency," and "employment purposes" are defined as set forth in Sections 603(b), (c), (d), (f), and (h), respectively, of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. 1681a(b), 1681a(c), 1681a(d), 1681a(f), and 1681a(h);

"Subscriber" means any person who is approved for or obtains a consumer report from respondents;

“Mixed-use subscriber” means a subscriber who in the ordinary course of business typically has both permissible and impermissible purposes for ordering consumer reports; and

“Permissible purpose” means any of the purposes listed in Section 604 of the FCRA, 15 U.S.C. 1681b, or as it might be amended in the future, for which a consumer reporting agency may lawfully furnish a consumer report.

I.

It is ordered, That respondents W.D.I.A. Corporation, a corporation, its successors and assigns, and its officers, and Mark W. Hanna and Janice L. Campanello, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the furnishing of any consumer report, do forthwith cease and desist from:

1. Furnishing any consumer report under any circumstances not permitted by Section 604 of the FCRA.

2. Failing to maintain reasonable procedures designed to limit the furnishing of consumer reports to the purposes listed under Section 604 of the FCRA, as required by Section 607(a) of the FCRA. Such procedures shall include but not be limited to respondents doing or continuing to do the following:

a. With respect to prospective subscribers, before furnishing a consumer report to any such subscriber, and with respect to current mixed-use subscribers, no later than six months after the date of this order:

(i) Obtaining from each subscriber an initial written certification stating the nature of the subscriber's business and all purposes for which the subscriber plans to obtain consumer reports from respondents. Each certification under this provision must be dated and signed, must bear the printed or typed name of the person signing it, and must state that the person signing it has direct knowledge of the facts certified and supervisory responsibility for obtaining consumer reports from respondents.

(ii) Determining, based on the information in the subscriber's written certification, and any other factors of which respondents are aware or, under the circumstances, should reasonably ascertain, that each subscriber has a permissible purpose under Section 604 for the types of reports the subscriber plans to obtain. Respondents shall create and maintain a record of the basis for this determination.

(iii) Verifying (1) the business identity of the subscriber; (2) that the subscriber is engaged in the business certified and has a permissible purpose for obtaining consumer reports; and (3) with respect to prospective subscribers, that the subscriber maintains reasonable procedures designed to prevent access to consumer reports by unauthorized persons. Respondents shall conduct an on-site visual inspection of the business premises of each subscriber that respondents have not otherwise verified (*e.g.*, through a previous on-site visual inspection of the business premises or through business directories, state or local regulatory authorities, or other reliable sources) to be a legitimate business having a "permissible purpose" for the information reported.

(iv) Providing each subscriber a summary of the permissible purposes for obtaining consumer reports under Section 604 of the FCRA that is substantially identical to the summary attached to this order as Exhibit A.

(v) Informing each subscriber in writing that the FCRA imposes criminal penalties up to \$5,000 and a year in prison against anyone who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses.

b. With respect to both current and prospective subscribers:

(i) Requiring, any time a subscriber requests a consumer report for employment purposes pursuant to Section 604(3)(B) of the FCRA, that the subscriber identify and certify that purpose, unless the subscriber has previously certified that purpose to respondents as the only purpose for which it requests consumer reports.

(ii) Requiring, any time a subscriber requests a consumer report for a "legitimate business need" pursuant to Section 604(3)(E) of the FCRA, that the subscriber identify and certify that business need. Such identification must be made in specific terms. Provided however, that a landlord requesting a consumer report in connection with rental of an apartment need not certify each request for a

consumer report if the landlord has previously certified that it will obtain consumer reports solely for that purpose.

(iii) Requiring each mixed-use subscriber to identify and certify the applicable purpose(s) each time it requests a consumer report. For example, to identify the specific credit purpose for requesting a report under Section 604(3)(A) of the FCRA, it would suffice for an attorney subscriber collecting a debt for a client to specify that as his or her purpose.

(iv) Disclosing the following message, or one substantially identical to it, on the computer screen each time a subscriber transmits requests by computer for consumer reports: "The federal Fair Credit Reporting Act imposes criminal penalties up to \$5,000 and a year in prison against anyone who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses."

(v) Verifying that each mixed-use subscriber is using consumer reports solely for permissible purposes by sending a letter by first class mail, postage prepaid, to each consumer on whom a consumer report is furnished to a mixed-use subscriber, no later than three (3) business days after furnishing the consumer report. Respondents shall send the letter to the consumer's current address in an envelope bearing respondents' company name and its return mailing address, and stating "PLEASE FORWARD". The letter shall disclose the following information in a form substantially similar to Exhibit B:

(1) That respondents have furnished a consumer report on the consumer to the person identified by the name and address stated in the letter;

(2) The identity of the end user of the report (*i.e.*, the person on whose behalf the subscriber obtained the report) if known and if different from the person to whom respondents furnished the consumer report;

(3) The purpose identified for requesting the consumer report; and

(4) That should the consumer have questions concerning the purpose for which the consumer report was furnished, the consumer may call respondents at the toll-free ("800") telephone number stated in the letter or may write to respondents at the address stated in the letter.

(vi) Maintaining a toll-free telephone number, available for consumers to call at least six hours each business day, during times to be stated in the letter required by subparagraph I.2.b.(v). Calls to that number shall be answered by an employee of respondents or by a recording. If a recording is used, within 10 seconds after it begins, it shall clearly instruct the consumer what to do if calling about the purpose for which the consumer's consumer report was furnished. Consumers who indicate they are calling about the purpose for which their consumer report was furnished shall be promptly referred to an employee of respondents, if available. If no employee is available, the recorded message shall clearly instruct the consumer to leave a message stating the consumer's name and telephone number, and the consumer's comments or questions about the purpose for which the consumer report was furnished. The recording tape shall allow at least one minute for the consumer to record a message.

(vii) Returning promptly and in good faith all telephone calls from consumers inquiring about the purpose for which their consumer report was furnished, making at least two attempts to reach the consumer. If a consumer does not answer when called, respondents shall leave a message, if possible, including a name and telephone number for the consumer to call to speak to an individual at respondents' office. When responding to these consumers' calls, respondents shall elicit and record information from the consumers bearing on whether any subscriber may have obtained a consumer report for a purpose not permitted under Section 604 of the FCRA or for a purpose different from that identified by the subscriber at the time the report was obtained. Respondents shall train their employees to comply with the procedures set forth in this subparagraph.

(viii) Requiring each subscriber to provide on an annual basis certification updating the information previously provided on the nature of the subscriber's business and all purposes for which the subscriber plans to obtain consumer reports from respondents, and also requiring the subscriber to explain the reasons for any change in the stated purposes for obtaining consumer reports. The certification for each subscriber shall be obtained either in writing and be dated and signed and bear the printed or typed name of the person signing it, or it shall be obtained by computer. If the certification is obtained by computer, the person executing it must enter on the computer screen the information described above, and the person's name, direct dial office telephone number, and occupational title. The computer

certification request may appear in a form substantially similar to Exhibit C.

(ix) Terminating access to any consumer report as to any subscriber who:

(1) Respondents learn, through the procedures described in subparagraphs I.2.b.(v), (vi) and (vii), or otherwise, has obtained, after the effective date of this order, a consumer report for any purpose other than a permissible purpose, unless that subscriber obtained such report through inadvertent error -- *i.e.*, a mechanical, electronic, or clerical error that the subscriber demonstrates was unintentional and occurred notwithstanding the maintenance of procedures reasonably designed to avoid such errors; or

(2) Respondents have reasonable grounds to believe will not use the report solely for permissible purposes.

3. Furnishing any consumer report for employment purposes that contains public record information on a consumer that is likely to have an adverse effect upon the consumer's ability to obtain employment without notifying the consumer, at the time such report is furnished, that public record information concerning the consumer is being reported, and providing the name and address of the person to whom such report is being furnished, as provided in Section 613(1) of the FCRA. The notice may be provided to the consumer in a form substantially similar to Exhibit D. Respondents are not required to provide this notification if they have either (1) received written confirmation directly or indirectly from the consumer reporting agency that supplied the consumer report that the agency provides such notification to the consumer and they have notified that agency that the report is being provided for employment purposes, or (2) received written confirmation from the consumer reporting agency that it maintains strict procedures designed to insure that such public record information is complete and up to date, as provided in Section 613(2) of the FCRA.

II.

It is further ordered, That respondents and their successors and assigns, shall maintain for five (5) years and upon request make available to the Federal Trade Commission for inspection and

copying, documents demonstrating compliance with the requirements of this order. Such documents shall include, but are not limited to, all subscriber applications and certifications, all reports prepared in connection with on-site investigations of subscribers' businesses, all written records of respondents' determinations that its subscribers have permissible purposes for obtaining consumer reports, documents reflecting respondents' mailing of letters notifying consumers when consumer reports on them are furnished and all documents pertaining to respondents' receipt and treatment of consumers' written and oral responses to those letters, and all instructions given to employees regarding compliance with the provisions of this order.

III.

It is further ordered, That respondents, and their successors and assigns, shall deliver a copy of this order, or a synopsis thereof approved by the Federal Trade Commission, to all present and future personnel, agents, or representatives having sales, advertising, or policy responsibilities with respect to the subject matter of this order.

IV.

It is further ordered, That respondents shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that might affect compliance obligations arising out of the order.

V.

It is further ordered, That each individual respondent named herein promptly notify the Federal Trade Commission of the discontinuance of his or her present business or employment and of his or her affiliation with a new business or employment. In addition, for a period of ten (10) years from the date of service of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities include assembling or evaluating information on consumers or

furnishing consumer reports or access to consumer reports to third parties, or of his or her affiliation with a new business or employment in which his or her own duties and responsibilities involve such activities. Such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of his or her duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

VI.

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

EXHIBIT A

IMPORTANT NOTICE FOR SUBSCRIBERS

The federal Fair Credit Reporting Act permits consumer reporting agencies to provide consumer reports only for certain purposes. Any subscriber who uses false pretenses to obtain a consumer report may be the subject of criminal prosecution. It is also a law violation for us to give you a consumer report unless your purpose for obtaining it is permissible under the Act. This means that you must always tell us the true reason for requesting a consumer report. If the reason is not a permissible one under the Act, we are required by law to deny your request. Listed below are the only purposes that Section 604 of the Act permits.

- (1): Pursuant to court order, or a subpoena issued by a federal grand jury.
- (2): Pursuant to the written instructions of the consumer on whom the report is sought.
- (3)(A): For use in connection with a credit transaction involving the consumer. Evaluating a consumer's credit application or reviewing or collecting on a credit account are all permissible purposes for obtaining a consumer report. It is not permissible for a creditor to obtain a report on a consumer unless the consumer has applied for credit or has an existing credit relationship with the creditor. Location or Litigation purposes are never permissible unless they involve collection of the consumer's credit account.
- (3)(B): For use in employment decisions involving the consumer. An employer (or its agent) may obtain a consumer report in order to evaluate a consumer who has applied for employment or to evaluate a consumer for promotion, reassignment or retention.

(3)(C): For use in connection with underwriting of insurance involving the consumer. Underwriting includes issuance or renewal of insurance, and its amount and terms. Consumer reports may not be obtained for insurance claims purposes.

(3)(D): For use in connection with a consumer's eligibility for a license or benefit granted by a governmental agency that is required to consider the applicant's finances in the process.

(3)(E): For use in connection with a business transaction involving the consumer. This section provides a strictly limited basis for obtaining a consumer report. To qualify, the business transaction must involve some benefit for which the consumer has applied. A consumer's application to rent an apartment or open a checking account would qualify, as would a consumer's request to pay for goods by check. The business transaction must not involve credit, employment, or insurance -- those purposes are permissible only if they meet the standards of (3)(A) - (C).

CONSUMER REPORTS WILL BE PROVIDED ONLY FOR THESE PURPOSES

EXHIBIT B

W.D.I.A. Corporation
National Credit Information Network
Post Office Box 31221
Cincinnati, Ohio 45231-0221

Date of Report: [Insert date report furnished]
Reference: Consumer credit report provided to...
Company: [Insert name, address and telephone number of subscriber who received report]

Dear Consumer:

The National Credit Information Network has provided a copy of your consumer credit report to the company listed above, at its request.

This consumer credit report is to be used for the purpose listed below: [List purpose identified by report recipient]

Should you have questions regarding the reason the above company requested a copy of your consumer credit report, feel free to contact:

National Credit Information Network
Post Office Box 31221
Cincinnati, Ohio 45231-0221

You may elect to call us at (800) 374-1400

Mon-Fri 9:00 a.m. to 12:00 Noon E.S.T.

-OR-

Mon-Fri 1:00 p.m. to 4:00 p.m. E.S.T.

[If end user is known, state the following:]

This report was requested on behalf of: [Identify end user]

Respectfully submitted
Consumer Notification Department
National Credit Information Network

EXHIBIT C

ANNUAL CERTIFICATION FOR ACCESS TO CONSUMER CREDIT REPORTS

Please answer the following:

State the nature of your business and describe what it actually does >

Enter all purposes, separated by commas, for which you plan to obtain consumer credit reports >

Please state whether your purposes for obtaining consumer credit reports have changed from a year ago and, if so, explain the reasons for the changes >

Enter your: Name >
Official business title >
Direct dial telephone number >

Do you certify, to the best of your knowledge, that the above is true and accurate?

Yes I do -OR- No I do not

EXHIBIT D

W.D.I.A. Corporation
National Credit Information Network
Post Office Box 31221
Cincinnati, Ohio 45231-0221

Date of Report: [Insert date report furnished]
Reference: Consumer credit report provided to...
Company: [Insert name, address and telephone number of subscriber who received report]

Dear Consumer:

The National Credit Information Network has provided a copy of your consumer credit report to the company listed above, at its request.

This consumer credit report is to be used for employment purposes.
The consumer credit report furnished contained public record information.
Should you have questions concerning the reason the above company requested a copy of your consumer credit report, feel free to contact:

National Credit Information Network
Post Office Box 31221
Cincinnati, Ohio 45231-0221

You may elect to call us at (800) 374-1400
Mon-Fri 9:00 a.m. to 12:00 Noon E.S.T.
-OR-
Mon-Fri 1:00 p.m. to 4:00 p.m. E.S.T.

[If end user is known, state the following:]
This report was requested on behalf of: [Identify end user]

Respectfully submitted
Consumer Notification Department
National Credit Information Network

Complaint

117 F.T.C.

IN THE MATTER OF

SAMICK MUSIC CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3496. Complaint, May 27, 1994--Decision, May 27, 1994*

This consent order prohibits, among other things, a California subsidiary of a Korean piano manufacturer from misrepresenting the composition of any of its piano soundboards or any other piano parts in the future, and requires the respondent to pay, to the U.S. Treasury, \$266,000 in disgorgement.

Appearances

For the Commission: *Darren A. Bowie, Michael C. McCarey and Christian S. White.*

For the respondent: *Hugh Grambau, Steptoe & Johnson, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Samick Music Corporation ("respondent") has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent is a California corporation, with its office and principal place of business located at 18521 Railroad Street, City of Industry, California.

PAR. 2. Respondent has advertised, labeled, offered for sale, sold and distributed pianos.

PAR. 3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PAR. 4. Respondent has disseminated or has caused the dissemination of promotional materials for its pianos to consumers and to distributors for use in promoting pianos to consumers.