

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright

_____)
In the Matter of)
)
Music Teachers National Association, Inc.,) Docket No. C-4448
a corporation.)
_____)

DECISION AND ORDER

The Federal Trade Commission, having initiated an investigation of certain acts and practices of Music Teachers National Association, Inc. (“Respondent” or “MTNA”) and Respondent having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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, 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 Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Acts, and that a complaint should issue stating its charges in that respect, and having accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order (“Order”):

1. Respondent Music Teachers National Association, Inc., is a non-profit 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 441 Vine Street, Suite 3100, Cincinnati, Ohio 45202.

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 HEREBY ORDERED that, as used in this Order, the following definitions, shall apply:

- A. “Respondent” or “MTNA” means Music Teachers National Association, Inc., its directors, boards, officers, employees, agents, representatives, councils, committees, foundations, divisions, successors, and assigns.
- B. “Affiliate” means any state or local music teachers association that is affiliated with MTNA.
- C. “Antitrust Compliance Officer” means a person appointed under Paragraph IV.A. of this Order.
- D. “Antitrust Counsel” means a lawyer admitted to practice law in one or more of the judicial districts of the courts of the United States.
- E. “Antitrust Laws” means the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 *et seq.*, the Sherman Act, 15 U.S.C. § 1 *et seq.*, and the Clayton Act, 15 U.S.C. § 12 *et seq.*
- F. “Certification” means the document attached to this Order as Appendix A.
- G. “Code of Ethics” means a statement setting forth the principles, values, standards, or rules of behavior that guide the conduct of an organization and its members.
- H. “Extension of Time” means the document attached to this Order as Appendix B.
- I. “FTC Settlement Statement” means the statement attached to this Order as Appendix C.
- J. “Leaders” means MTNA’s board of directors, officers, committee chairs, council chairs, and state presidents.
- K. “Member” means a member of MTNA, including active, state, local, collegiate, international, corporate, institutional, international, patron, retired, and six-month members.

- L. “Notification Date” means the date on which Respondent makes the notification required by Paragraph III.A.3. of this Order.
- M. “Organization Documents” means any documents relating to the governance, management, or direction of the relevant organization, including, but not limited to, bylaws, rules, regulations, Codes of Ethics, policy statements, interpretations, commentaries, or guidelines.
- N. “Prohibited Practice” means Regulating, restricting, restraining, impeding, declaring unethical or unprofessional, interfering with or advising against any of the activities described in Paragraph II.B.1, II.B.2., and II.B.3.
- O. “Regulating” means (1) adopting, maintaining, recommending, or encouraging that Members follow any rule, regulation, interpretation, ethical ruling, policy, commentary, or guideline; (2) taking or threatening to take formal or informal disciplinary action; or (3) conducting formal or informal investigations or inquiries.

II.

IT IS FURTHER ORDERED that Respondent, directly or indirectly, or through any corporate or other device, in or in connection with Respondent’s activities as a professional association in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, do forthwith cease and desist from:

- A. Regulating, restricting, restraining, impeding, declaring unethical or unprofessional, interfering with or advising against solicitation of teaching work, through any means, by any Member or any organization with which Members are affiliated; and
- B. Accepting as an Affiliate, or maintaining a relationship with any Affiliate, that MTNA knows engages in conduct Regulating, restricting, restraining, impeding, declaring unethical or unprofessional, interfering with or advising against:
 - 1. Solicitation of teaching work, through any means, by any Member or any organization with which Members are affiliated;
 - 2. Advertising or publishing the prices, terms or conditions of sale of teaching services, or information about teaching services that are offered for sale or made available by Members or by any organization with which Members are affiliated; and
 - 3. Price-related competition by its Members, including, but not limited to, restricting the provision of free or discounted services, restricting terms of payment, or restricting Members from offering their services unless they conform to rules established by MTNA;

PROVIDED, HOWEVER, that nothing in this Paragraph II shall prohibit Respondent from adopting and enforcing, or accepting as an Affiliate or maintaining an affiliate relationship with any Affiliate that adopts and enforces, reasonable principles, rules, guidelines, or policies governing: (i) the conduct of its Members with respect to representations that Respondent reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act or (ii) the conduct of judges during music competitions sponsored or held by Respondent or any Affiliate.

III.

IT IS FURTHER ORDERED that:

- A. No later than thirty (30) days from the date this Order is issued, Respondent shall:
1. Post and maintain for five years on the Code of Ethics page of MTNA's website, together with a link from Respondent's home or menu page that is entitled "Anti-trust Compliance," the following items:
 - (a) An announcement that states "MTNA agreed to change its Code of Ethics and will not adopt, encourage its members to follow, or enforce any Code of Ethics provision relating to solicitation of teaching work that does not comply with the FTC Consent Order,"
 - (b) The FTC Settlement Statement; and
 - (c) A link to the Federal Trade Commission's website that contains the press release issued by the Commission in this matter; and
 2. Distribute electronically or by other means a copy of the FTC Settlement Statement to its Leaders, employees, and Affiliates; and
 3. Notify each Affiliate that, as a condition of continued affiliation with MTNA, such Affiliate must execute and return a Certification to Respondent no later than one hundred twenty (120) days from the date Respondent notifies such Affiliate.
- B. No later than sixty (60) days from the date this Order is issued Respondent shall:
1. Remove from MTNA's Organization Documents and MTNA's website any statement that is inconsistent with Paragraph II. of this Order, and
 2. Publish on MTNA's website any revisions of MTNA's Organization Documents, the press release issued by the Commission in this matter, and the FTC Settlement Statement.
- C. Respondent shall publish, in the font that is customarily used for feature articles:

1. Any revisions of MTNA's Organization Documents, the press release issued by the Commission in this matter, and the FTC Settlement Statement in the next available edition of the "American Music Teacher" magazine; and
 2. The FTC Settlement Statement in the edition of the "American Music Teacher" magazine, or any successor publication, on or as close as possible to the first and second anniversary dates of first publication of the FTC Settlement Statement.
- D. For a period of five (5) years after this Order is issued, distribute electronically or by other means, a copy of the FTC Settlement Statement to each:
1. New Affiliate no later than thirty (30) days after the date the organization becomes an Affiliate;
 2. New Member no later than thirty (30) days after the date of commencement of the membership; and
 3. Member who receives a membership renewal notice at the time the Member receives such notice.
- E. Respondent shall:
1. Immediately terminate any Affiliate that fails to provide an executed Certification no later than one hundred twenty (120) days from the Notification Date and shall not permit the terminated Affiliate to use the phrase "Affiliated with Music Teachers National Association" until such time as the Affiliate provides an executed Certification;

PROVIDED, HOWEVER, that Respondent may allow an Affiliate to file an Extension of Time to provide Respondent an executed Certification no later than than two hundred fifty (250) days from the Notification Date ("Extended Time Period");

PROVIDED FURTHER that if such Affiliate does not provide Respondent the executed Certification within the Extended Time Period, Respondent shall proceed against the Affiliate pursuant to Paragraph III.E.2. of this Order; and
 2. Terminate for a period of one (1) year, no later than one hundred twenty (120) days after Respondent learns or obtains information that would lead a reasonable person to conclude that the Affiliate has, following the date this Order is issued, engaged in any Prohibited Practice; unless, prior to the expiration of the one hundred twenty (120) day period, said Affiliate informs Respondent in a verified written statement of an officer that the Affiliate has eliminated and will not re-engage in such Prohibited Practice, and Respondent has no reasonable grounds to believe otherwise.

- F. Respondent shall include with the 2014-2015 dues statement sent to each Member a copy of the FTC Settlement Statement.
- G. Respondent shall maintain and make available to Commission staff for inspection and copying upon reasonable notice records adequate to describe in detail any:
 - 1. Action against any Member or Affiliate taken in connection with the activities covered by Paragraph II. of this Order, including but not limited to enforcement, advisory opinions, advice or interpretations rendered; and
 - 2. Complaint received from any person relating to Respondent's compliance with this Order.

IV.

IT IS FURTHER ORDERED that Respondent shall design, maintain, and operate an antitrust compliance program to assure compliance with this Order and the Antitrust Laws:

- A. No later than thirty (30) days from the date this Order is issued, Respondent shall appoint and retain an Antitrust Compliance Officer for the duration of this Order to supervise Respondent's antitrust compliance program.
- B. For a period of three (3) years from the date this Order is issued, the Antitrust Compliance Officer shall be the Chief Executive Officer of Respondent after which a new Antitrust Compliance Officer may be appointed who shall be Antitrust Counsel, a member of the Board of Directors, or employee of Respondent.
- C. For a period of five (5) years from the date this Order is issued, Respondent shall provide in-person annual training to its Leaders and employees concerning Respondent's obligations under this Order and an overview of the Antitrust Laws as they apply to Respondent's activities, behavior, and conduct.
- D. Respondent shall implement policies and procedures to:
 - 1. Enable persons (including, but not limited to, its Leaders, employees, Members, and agents) to ask questions about, and report violations of, this Order and the Antitrust Laws, confidentially and without fear of retaliation of any kind; and
 - 2. Discipline Leaders, employees, and agents for failure to comply fully with this Order.
- E. For a period of five (5) years from the date this Order is issued, Respondent shall:
 - 1. Conduct a presentation at each annual meeting of (i) MTNA, and (ii) the State Presidents Advisory Council, that summarizes Respondent's obligations under

this Order and provides context-appropriate guidance on compliance with the Antitrust Laws; and

2. Provide an antitrust compliance guide to Affiliates to use at each annual meeting of such Affiliates that summarizes Respondent's obligations under this Order and provides context-appropriate guidance on compliance with the Antitrust Laws.

V.

IT IS FURTHER ORDERED that Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order:

- A. No later than (i) ninety (90) days after the date this Order is issued, (ii) one hundred eighty (180) days after the date this Order is issued; and
- B. No later than one (1) year after the date this Order is issued and annually thereafter for four (4) years on the anniversary of the date on which this Order is issued, and at such other times as the Commission staff may request.

VI.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed:

- A. Dissolution of Respondent;
- B. Acquisition, merger, or consolidation of Respondent; or
- C. Any other change in Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

VII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to Respondent, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities, and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession, or under the control, of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at its expense; and

- B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate on April 3, 2034.

By the Commission.

Donald S. Clark
Secretary

SEAL:

ISSUED: April 3, 2014