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Decision

a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF
FIELD MUSIC SALES, INC., ET AL.

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

Docket 7831. Complaint, Mar. 18, 1960—Decision, June 28, 1960

Consent order requiring San Francisco, Calif., distributors for several record manufacturers to retail outlets and jukebox operators, to cease paying concealed "payola" to television and radio disc jockeys to have their records broadcast day after day in order to increase sales.

*Mr. John T. Walker and Mr. James H. Kelley for the Commission.
Mr. Raymond H. Levy, of San Francisco, Calif., for respondents.*

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents, who are engaged in the offering for sale, sale and distribution of phonograph records as independent distributors for several record manufacturers to retail outlets and jukebox operators in various states of the United States, with violation of the Federal Trade Commission Act, in that respondents, alone or with certain unnamed record manufacturers, have negotiated for and disbursed "payola," i.e., the payment of money or other valuable consideration to disk jockeys of musical programs on radio and television stations, to induce, stimulate or motivate the disk jockeys to select, broadcast, "expose" and promote certain records, in which respondents are financially interested, on the express or implied understanding that the disk jockeys will conceal, withhold or camouflage the fact of such payment from the listening public.

After the issuance of the complaint, respondents, their counsel, and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the Director, the Associate Director and the Assistant Director of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement states that respondent Field Music Sales, Inc., is a corporation organized, existing and doing business under the laws of the State of California, with its principal office and place

of business located at 1480 Howard Street, San Francisco, California, and that respondent Richard Field is President of said corporate respondent and formulates, directs and controls the acts and practices of the corporate respondent, his address being the same as that of the corporate respondent.

The agreement provides, among other things, that respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the complaint may be used in construing the terms of the order agreed upon, which may be altered, modified or set aside in the manner provided for other orders; that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint; and that the order set forth in the agreement and hereinafter included in this decision shall have the same force and effect as if entered after a full hearing.

Respondents may waive any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The order agreed upon fully disposes of all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein, as being in violation of the Federal Trade Commission Act. Accordingly, the hearing examiner finds this proceeding to be in the public interest, and accepts the agreement containing consent order to cease and desist as part of the record upon which this decision is based. Therefore,

It is ordered, That respondent Field Music Sales, Inc., a corporation, and its officers, and respondent Richard Field, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with phonograph records which have been distributed in commerce, or which are used by radio or television stations in broadcasting programs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Giving or offering to give, without requiring public disclosure, any sum of money or other material consideration, to any

person, directly or indirectly, to induce that person to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or either of them, have a financial interest of any nature;

(2) Giving or offering to give, without requiring public disclosure, any sum of money, or other material consideration, to any person, directly or indirectly, as an inducement to influence any employee of a radio or television broadcasting station, or any other person, in any manner, to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or either of them, have a financial interest of any nature.

There shall be "public disclosure" within the meaning of this order, by any employee of a radio or television broadcasting station, or any other person, who selects or participates in the selection and broadcasting of a record when he shall disclose, or cause to have disclosed, to the listening public at the time the record is played, that his selection and broadcasting of such record are in consideration for compensation of some nature, directly or indirectly received by him or his employer.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 28th day of June, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Field Music Sales, Inc., a corporation, and Richard Field, individually and as an officer 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 the order to cease and desist.

IN THE MATTER OF
THE ROBERTS CO. ET AL.

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

Docket 6943. Complaint, Nov. 18, 1957—Decision, June 30, 1960

Order requiring two manufacturers of tackless carpet grippers, tools, and accessories, and their marketing associate, to cease engaging in a price-

Findings

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fixing conspiracy with their distributors effectuated by establishing geographical zones of distribution, requiring distributors to submit copies of resale invoices, and threatening discontinuance of distributorships; and to cease coercing other manufacturers of such products to sell at their fixed prices and to refrain from selling to disapproved purchasers, threatening to bring patent infringement suits against competitors, and extending terms of license agreements beyond expiration of patents; and requiring said companies and two others licensed to manufacture their products to cease conspiring to lessen competition by price fixing and intimidation and coercion of unlicensed competitors.

Mr. Lewis F. Depro supporting the complaint.

Gibson, Dunn & Crutcher, Mr. Julian O. Von Kalinowski; Mr. John J. Hanson and Mr. William G. Tucker, all of Los Angeles, Calif., for The Roberts Co., Roberts Manufacturing Co. and Roberts Corporation.

Mr. Edward T. Connors, of New York City, for Ace Tackless Corporation and United States Tackless, Inc.

No appearance for respondent Wenlyn Associates, Inc.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

This proceeding was based upon complaint issued November 18, 1957, answers thereto by all respondents except Wenlyn Associates, Inc., which respondent was adjudged a bankrupt on November 15, 1957, evidence taken at a number of hearings and proposed findings, conclusions and orders submitted by all parties except said Wenlyn Associates, Inc. All proposed findings, conclusions and orders not hereinafter adopted are hereby specifically rejected.

Upon the entire record and his observation of the witnesses while testifying, the hearing examiner makes the following findings of fact, conclusions and order:

FINDINGS AS TO THE FACTS AND CONCLUSIONS

1. Respondents The Roberts Co. and Roberts Manufacturing Co. are corporations organized, existing and doing business under and by virtue of the laws of the State of California with the principal office and place of business of each said respondent being located at 600 North Baldwin Park Boulevard, City of Industry, California.

2. Respondent Roberts Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Puerto Rico, with its principal office and place of business located in Rio Piedras, Puerto Rico.

3. The history of these concerns is as follows:

The original Roberts Co. was incorporated in California in 1946 to carry on the business of the manufacture and sale of tackless

carpet gripper, tools and accessories, formerly conducted as a partnership by Roy Roberts, Hugh S. Livie and Kenneth M. Bishop. In 1953 The Roberts Co. name was changed to Roberts Manufacturing Co., one of the respondents herein, which took over the manufacturing operations. A new company was organized under the laws of California as The Roberts Co. another respondent which confined its operations to sales, taking the out put of Roberts Manufacturing Co. and also of another respondent the Roberts Corporation. This last mentioned respondent was organized in 1953 also, under the laws of Puerto Rico, with its principal place of business located in Rio Piedras, Puerto Rico to manufacture tackless carpet gripper. Both the Roberts Manufacturing Co. and Roberts Corporation are obligated to market their entire out put through the Roberts Co. It is evident that Roberts Corporation was established in Puerto Rico so that the Roberts Companies could compete on the eastern seaboard without the handicap of paying freight from the West Coast.

4. The respondents, The Roberts Co., Roberts Manufacturing Co. and Roberts Corporation are under the control of a common ownership. The three individuals Hugh S. Livie, Charles E. Hopping and Kenneth M. Bishop each own 16,667 shares out of 50,001 shares issued and outstanding of the Roberts Corporation. These three individuals each own 250 shares out of a total of 750 shares outstanding or 100% of the stock of the Roberts Manufacturing Co. These three individuals between them own 62% of the outstanding stock of the Roberts Co. The other shares are owned by 15 individuals. Hugh S. Livie has been president of Roberts Manufacturing Co. since 1953. Charles E. Hopping has been president of The Roberts Co. and Kenneth M. Bishop has been president of Roberts Corporation since 1953.

5. Respondent Ace Tackless Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 1825 Pacific Street, Brooklyn, New York.

6. Respondent United States Tackless, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 181 Walnut Avenue, Bronx, New York.

7. Respondent Wenlyn Associates, Inc., was a corporation organized under the laws of the State of Connecticut with its principal office and place of business having been located at 32 Grove Street, New Canaan, Connecticut. Said respondent's name was changed to Wenlyn Industries, Inc., and it was engaged in the business of

the manufacture, sale and distribution of tackless carpet gripper throughout the United States until the year 1957 when said respondent was adjudged a bankrupt. Although not stated, it is fairly inferable from the record that its assets were sold and its business wound up.

8. These companies will be referred to hereafter as follows: The three Roberts Companies as Roberts Respondents; Roberts Manufacturing Co. as Robman; Roberts Corporation as Robcorp; The Roberts Co. as Robco; Ace Tackless Corporation as Ace; United States Tackless, Inc., as UST and Wenlyn Associates, Inc., as Wenlyn.

9. Physical exhibits of the product called tackless carpet gripper and another product involved in this proceeding called "Gripperege" are in evidence as Com. Ex. 302, 303 and 304. In addition to that Com. Ex. 305 and 306 contain pictures of these two products and show how they are used in the installation of wall-to-wall carpeting. Robman had a patent on its tackless carpet gripper which expired in April 1958; also a patent on Gripperege which has not expired. In addition to that Gripperege is a name protected by trade mark. Smoothedge is the trade mark name under which the tackless carpet gripper of the Roberts Respondents is marketed.

10. Tackless carpet gripper consists of two kinds, standard and pre-nailed with the latter being the most expensive. Each kind consists of four types, A, B, C and D. With Type A being a short-pinned thinner plywood; Type B, short-pinned thicker plywood; Type C, long-pinned and thinner plywood and Type D, long-pinned and thicker plywood.

11. All of the respondents follow the above product classification in marketing their products, which classification was first set up by the original Roberts Co.

12. A "distributor" is defined as a firm or corporation identified with the carpet trade, maintaining warehouse facilities, operating its own selling organization, purchasing solely for resale to the trade and listed as a distributor (or wholesaler) in Dun & Bradstreet or other nationally accredited directory.

13. A "dealer" is defined as one who is a merchant or floor covering contractor regularly engaged in the sale and/or installation of floor covering products.

14. All of the respondents have been and all except respondent Wenlyn are now engaged in interstate commerce within the meaning of the Federal Trade Commission Act in that they ship or cause to be shipped products manufactured or handled by them, including tackless carpet gripper, tools and accessories used in the installa-

tion of wall-to-wall carpeting, from the several places of production in the States of California, New York and Connecticut and in the Commonwealth of Puerto Rico to customers and purchasers thereof located in states other than the places of production or origin of shipment and there has been a constant current and course of trade and commerce in such products between and among the several States of the United States and in the District of Columbia.

15. Respondent Robman has been and is now engaged in interstate commerce in that the products manufactured by it are and have been shipped by it on order of respondent Robco to various purchasers (distributors of respondent Robco) throughout the United States. Said respondent Robman has been further engaged in interstate commerce in that it has shipped or caused to be shipped the product "gripperege" to various distributors of respondents Ace, UST, and Wenlyn, located in various States through the United States.

16. Respondent Robcorp has been and is now engaged in interstate commerce in that the tackless carpet gripper manufactured by it is and has been shipped by it on order of respondent Robco to various purchasers (distributors of respondent Robco) throughout the States located in the eastern part of the United States.

17. Respondent Robco enjoys the largest volume of sales of any company in the tackless carpet gripper industry and accounts for a greater volume of business than all of its competitors combined. For the year 1957 the total volume of sales of Robco amounted to approximately \$3,500,000. More than 80% of such sales were derived from products manufactured by respondents Robman and Robcorp.

18. Respondent Robco, since about 1948, has been and is now engaged in the sale and distribution of its products through distributors located throughout the United States, the number of which was about 146 in 1957. Said distributors in turn resell the same products to various dealers.

19. In Los Angeles the products of respondent Robman are sold through a distributor, Tri-State Distributing Co., as well as several other distributors with the Tri-State Distributing Co., being under the same ownership as respondent Robman.

20. Respondent Robco has three groups of distributors: (1) those carrying the full Roberts' line of tools, accessories and tackless carpet gripper; (2) those handling tools only and (3) those handling tackless carpet gripper only.

21. Respondent Ace is now and has been since about 1953 engaged in the production, sale and distribution of tackless carpet gripper,

