

Complaint

It is ordered, That the fourth numbered paragraph contained in the second section of the initial decision's order to cease and desist be, and it hereby is, modified to read as follows:

"Entering into, continuing or enforcing, or threatening to enforce, any agreement or understanding which in any manner restricts or limits respondents' terminated distributors or customers from selling products like or similar to respondents' products to any other prospective purchaser or which in any manner restricts said distributors or customers from using or disclosing the names of their own customers for promoting the distribution of products other than respondents' products."

It is further ordered, That the initial decision, as so modified, be, and it hereby is, adopted as the decision of the Commission.

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 as modified.

Commissioner Tait concurring in the result.

IN THE MATTER OF
HIT-RECORD DISTRIBUTING COMPANY
OF CINCINNATI ET AL.

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

Docket 7897. Complaint, May 20, 1960—Decision, Sept. 28, 1960

Consent order requiring a distributor of phonograph records in Cincinnati, Ohio, to cease giving concealed payola to disc jockeys or other personnel of radio and television programs to induce frequent playing of their records in order to increase sales.

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 Hit-Record Distributing Company of Cincinnati, a corporation, and Isadore Nathan, individually and as an officer of said corporation, hereinafter referred to as respondents, have 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 Hit-Record Distributing Company of Cincinnati 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 3414 Colerain Avenue, in the city of Cincinnati, State of Ohio.

Respondent Isadore Nathan is an officer of the corporate respondent. He formulates, directs, and controls the 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. Respondents are now, and for some time last past have been, engaged in the distribution, offering for sale, and sale of phonograph records to various retail outlets.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said records, when sold, to be shipped from one State of the United States to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said phonograph records in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and at all times mentioned herein, respondents have been in competition, in commerce, with corporations, firms and individuals in the sale of phonograph records.

PAR. 5. After World War II when TV and radio stations shifted from "live" to recorded performances for much of their programming, the production, distribution and sale of phonograph records emerged as an important factor in the musical industry with a sales volume of approximately \$400,000,000 in 1958.

Record manufacturing companies and distributors ascertained that popular disk jockeys could, by "exposure" or the playing of a record day after day, sometimes as high as 6 to 10 times a day, substantially increase the sales of those records so "exposed." Some record manufacturers and distributors obtained and insured the "exposure" of certain records in which they were financially interested by disbursing "payola" to individuals authorized to select and "expose" records for both radio and TV programs.

"Payola", among other things, is the payment of money or other valuable consideration to disk jockeys of musical programs on radio and TV stations to induce, stimulate or motivate the disk jockey to select, broadcast, "expose" and promote certain records in which the payer has a financial interest.

Disk jockeys, in consideration of their receiving the payments heretofore described, either directly or by implication, represent to their listening public that the records "exposed" on their broadcasts

have been selected on their personal evaluation of each record's merits or its general popularity with the public, whereas, in truth and in fact, one of the principal reasons or motivations guaranteeing the record's "exposure" is the "payola" payoff.

PAR. 6. In the course and conduct of their business, in commerce, during the last several years, the respondents have engaged in unfair and deceptive acts and practices and unfair methods of competition in the following respects:

The respondents alone or with certain unnamed record distributors negotiated for and disbursed "payola" to disk jockeys broadcasting musical programs over radio or television stations broadcasting across state lines, or to other personnel who influence the selection of the records "exposed" by the disk jockeys on such programs.

Deception is inherent in "payola" inasmuch as it involves the payment of a consideration on the express or implied understanding that the disk jockey will conceal, withhold or camouflage such fact from the listening public.

The respondents by participating individually or in a joint effort with certain collaborating record distributors have aided and abetted the deception of the public by various disk jockeys by controlling or unduly influencing the "exposure" of records by disk jockeys with the payment of money or other consideration to them, or to other personnel which select or participate in the selection of the records used on such broadcasts.

Thus, "payola" is used by the respondents to mislead the public into believing that the records "exposed" were the independent and unbiased selection of the disk jockeys based either on each record's merit or public popularity. This deception of the public has the capacity and tendency to cause the public to purchase the "exposed" records which they might otherwise not have purchased and also to enhance the popularity of the "exposed" records in various popularity polls, which in turn has the capacity and tendency to substantially increase the sales of the "exposed" records.

PAR. 7. The aforesaid acts, practices and methods have the capacity and tendency to mislead and deceive the public and to hinder, restrain and suppress competition in the manufacture, sale or distribution of phonograph records, and to divert trade unfairly to the respondents from their competitors and injury has thereby been done and may continue to be done to competition in commerce.

PAR. 8. The aforesaid acts and practices of respondents, as alleged herein, were and are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition in

commerce within the intent and meaning of the Federal Trade Commission Act.

Mr. Harold A. Kennedy and *Mr. Arthur Wolter, Jr.*, for the Commission.

Mr. Earl J. Goldsmith, Jr., of Cincinnati, Ohio, for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents, who are engaged in the distribution, offering for sale, and sale of phonograph records to various retail outlets, with violation of the Federal Trade Commission Act, in that respondents, alone or with certain unnamed record distributors, 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 motive 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, Associate Director and Assistant Director of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement states that respondent Hit-Record Distributing Company of Cincinnati 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 3414 Cole-rain Avenue, Cincinnati, Ohio; and that respondent Isadore Nathan is an officer 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 said 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 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 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 hearing examiner has determined that the aforesaid agreement containing the consent order to cease and desist provides for an appropriate disposition of this proceeding in the public interest, and such agreement is hereby accepted. Therefore,

It is ordered, That respondents Hit-Record Distributing Company of Cincinnati, a corporation, and its officers, and Isadore Nathan, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation 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 any 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 any 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 considera-

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tion 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 September 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Hit-Record Distributing Company of Cincinnati, a corporation, and Isadore Nathan, 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

MERLE SCHNEIDER ET AL. DOING BUSINESS AS
S AND S DISTRIBUTING COMPANYCONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 7899. Complaint, May 20, 1960—Decision, Sept. 28, 1960

Consent order requiring distributors of phonograph records in Detroit, Mich., to cease giving concealed payola to disc jockeys or other personnel of radio and television programs to induce frequent playing of their records in order to increase sales.

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 Merle Schneider and John Shepherd, individually and as copartners, trading and doing business as S and S Distributing Company, hereinafter referred to as respondents, have 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. Individual responding Merle Schneider and John Shepherd are copartners, trading and doing business as S and S Distributing Company, with their office and principal place of busi-

ness located at 3957 Woodward Avenue, in the city of Detroit, State of Michigan.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the distribution, offering for sale, and sale, of phonograph records to various retail outlets, and jukebox operators.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said records, when sold to be shipped from one state of the United States to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a course of trade in said phonograph records in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and at all times mentioned herein, respondents have been in competition, in commerce, with corporations, firms and individuals in the sale of phonograph records.

PAR. 5. After World War II when TV and radio stations shifted from "live" to recorded performances for much of their programming, the production, distribution and sale of phonograph records emerged as an important factor in the musical industry with a sales volume of approximately \$400,000,000 in 1958.

Record manufacturing companies and distributors ascertained that popular disk jockeys could, by "exposure" or the playing of a record day after day, sometimes as high as 6 to 10 times a day, substantially increase the sales of those records so "exposed." Some record manufacturers and distributors obtained and insured the "exposure" of certain records in which they were financially interested by disbursing "payola" to individuals authorized to select and "expose" records for both radio and TV programs.

"Payola," among other things, is the payment of money or other valuable consideration to disk jockeys of musical programs on radio and TV stations to induce, stimulate or motivate the disk jockey to select, broadcast, "expose" and promote certain records in which the payer has a financial interest.

Disk jockeys, in consideration of their receiving the payments heretofore described, either directly or by implication, represent to their listening public that the records "exposed" on their broadcasts have been selected on their personal evaluation of each record's merits or its general popularity with the public, whereas, in truth and in fact, one of the principal reasons or motivations guaranteeing the record's "exposure" is the "payola" payoff.

PAR. 6. In the course and conduct of their business, in commerce, during the last several years, the respondents have engaged in unfair and deceptive acts and practices and unfair methods of competition in the following respects:

The respondents alone or with certain unnamed record distributors negotiated for and disbursed "payola" to disk jockeys broadcasting musical programs over radio or television stations broadcasting across State lines, or to other personnel who influence the selection of the records "exposed" by the disk jockeys on such programs.

Deception is inherent in "payola" inasmuch as it involves the payment of a consideration on the express or implied understanding that the disk jockey will conceal, withhold or camouflage such fact from the listening public.

The respondents by participating individually or in a joint effort with certain collaborating record distributors have aided and abetted the deception of the public by various disk jockeys by controlling or unduly influencing the "exposure" of records by disk jockeys with the payment of money or other consideration to them, or to other personnel which select or participate in the selection of the records used on such broadcasts.

Thus, "payola" is used by the respondents to mislead the public into believing that the records "exposed" were the independent and unbiased selection of the disk jockeys based either on each record's merit or public popularity. This deception of the public has the capacity and tendency to cause the public to purchase the "exposed" records which they might otherwise not have purchased and also to enhance the popularity of the "exposed" records in various popularity polls, which in turn has the capacity and tendency to substantially increase the sales of the "exposed" records.

PAR. 7. The aforesaid acts, practices and methods have the capacity and tendency to mislead and deceive the public and to hinder, restrain and suppress competition in the manufacture, sale or distribution of phonograph records, and to divert trade unfairly to the respondents from their competitors and substantial injury has thereby been done and may continue to be done to competition in commerce.

PAR. 8. The aforesaid acts and practices of respondents, as alleged herein, were and are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

Mr. Harold A. Kennedy and *Mr. Arthur Wolter, Jr.*, for the Commission.

Mr. Everett M. Behrendt, of Detroit, Mich., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents, who are engaged in the distribution, offering for sale, and sale of phonograph records to various retail outlets and jukebox operators, with violation of the Federal Trade Commission Act, in that respondents, alone or with certain unnamed record distributors, have negotiated for the 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, Associate Director and Assistant Director of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement states that individual respondents Merle Schneider and John Shepherd are copartners, trading and doing business as S and S Distributing Company, with their office and principal place of business located at 3957 Woodward Avenue, Detroit, Mich.

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 herein-

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atter included in this decision shall have the same force and effect as if entered after a full hearing.

Respondents 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 hearing examiner has determined that the aforesaid agreement containing the consent order to cease and desist provides for an appropriate disposition of this proceeding in the public interest, and such agreement is hereby accepted. Therefore,

It is ordered, That respondents Merle Schneider and John Shepherd, individually and as copartners, trading and doing business as S and S Distributing Company, or under any other name, 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 records are in consideration for compensation of some nature, directly or indirectly received by him or his employer.

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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 September 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Merle Schneider and John Shepherd, individually and as copartners, trading and doing business as S AND S Distributing Company, 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

NOEL C. GENEVAY, JR., TRADING AS CONTACT LENS
SPECIALISTSCONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 7957. Complaint, June 16, 1960—Decision, Sept. 28, 1960

Consent order requiring a retail seller of "Air Comfort" contact lenses in New Orleans, La., to cease advertising falsely in newspapers, circulars, etc., that all persons could successfully wear his said contact lenses, and with complete comfort; that the lenses were unbreakable, protected the entire eye, and would correct all defects in vision including all cases requiring bifocals.

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 Noel C. Genevay, Jr., an individual, trading under the name of Contact Lens Specialists, hereinafter referred to as the 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 Noel C. Genevay, Jr. is an individual, trading as Contact Lens Specialists, with an office located at 146 Carondelet Street, in the city of New Orleans, State of Louisiana.

PAR. 2. The respondent is now, and for some time last past has been, engaged in the sale to the public of corneal contact lenses

known as "Air Comfort". Contact lenses are designed to correct errors and deficiencies in the vision of the wearer, and are devices as "device" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of his aforesaid business, respondent has disseminated, and has caused the dissemination of, advertisements concerning his said device by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers and by means of circulars and pamphlets, for the purpose of inducing, and which were likely to induce, the purchase of the said devices; and the respondent has also disseminated, and caused the dissemination of, advertisements concerning his said products by various means, including but not restricted to the aforesaid media, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said devices in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical, but not all inclusive, of the statements contained in said advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

Through new design, persons whose imperfect vision calls for the frequent wearing of glasses can wear these tiny air comfort ventilated contact lenses easily and comfortably . . .

. . . wear contact lenses with confidence and assurance . . . from the time they get up until retiring, . . . and without discomfort under any and all conditions.

. . . wear contact lenses with complete freedom, comfort, and safety.

Now available in bifocals . . . as well as single vision.

. . . These fluidless lenses actually become a protective covering for the eye.

. . . nor need you fear breakage.

PAR. 4. By and through the statements made in said advertisements, and others of similar impact not specifically set out herein, respondent represents, and has represented, directly and by implication, that:

1. All persons in need of visual correction can successfully wear his contact lenses.

2. His contact lenses will correct all defects of vision.

3. There is no discomfort in wearing his contact lenses.

4. Said contact lenses can be worn all day in complete comfort.

5. Said contact lenses will correct defects in vision in all cases requiring bifocal lenses.

6. Said contact lenses protect the eye.

7. Said contact lenses are unbreakable.

PAR. 5. The advertisements containing the aforesaid statements are misleading in material respects and constitute "false advertise-

ment", as that term is defined in the Federal Trade Commission Act. In truth and in fact:

1. A significant number of persons in need of visual correction cannot successfully wear respondent's contact lenses.
2. Respondent's contact lenses will not correct all defects of vision.
3. Practically all persons will experience some discomfort when first wearing respondent's lenses. In a significant number of cases discomfort will be prolonged and in some cases will never be overcome.
4. Many persons cannot wear respondent's contact lenses all day without discomfort and no person can wear said lenses all day in complete comfort until he or she becomes fully adjusted thereto.
5. Said lenses will not correct defects in vision in all cases requiring bifocal lenses.
6. Said lenses protect only the small portion of the eye that is covered by them.
7. Said lenses are breakable.

PAR. 6. The dissemination by the respondent of the false advertisements, as aforesaid, constitutes unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Frederick McManus for the Commission.

Phelps, Dunbar, Marks, Claverie & Sims, by *Mr. Peter G. Burke*, of New Orleans, La., for respondent.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on June 16, 1960, charging Respondent with violation of the Federal Trade Commission Act by the dissemination of false advertisements with respect to his corneal contact lenses, known as "Air Comfort".

Thereafter, on August 1, 1960, Respondent, his counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the Director, Associate Director and Assistant Director of the Commission's Bureau of Litigation, and thereafter, on August 10, 1960, submitted to the hearing examiner for consideration.

The agreement identifies Respondent Noel C. Genevay, Jr. as an individual, trading as Contact Lens Specialists, with an office located at 146 Carondelet Street, New Orleans, La.

Respondent admits all the jurisdictional facts alleged in the complaint, and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

Respondent waives any further procedure before the hearing examiner and the Commission; the making of findings of fact and conclusions of law; and all of the rights he may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only and does not constitute an admission by Respondent that he has violated the law as alleged in the complaint.

After consideration of the allegations of the complaint, and the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the Agreement Containing Consent Order to Cease and Desist; finds that the Commission has jurisdiction over the respondent and over his acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That the respondent, Noel C. Genevay, Jr., trading under the name of Contact Lens Specialists, or any other name, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of contact lenses, do forthwith cease and desist from, directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication, that:

- (a) All persons can successfully wear his contact lenses;
- (b) His contact lenses will correct all defects of vision;
- (c) There is no discomfort in wearing his contact lenses;
- (d) All persons can wear respondent's contact lenses all day without discomfort; or that any person can wear said contact lenses all day without discomfort except after that person has become fully adjusted thereto;

(e) Said contact lenses are an adequate substitute for bi-focal eyeglasses for all persons;

(f) Said contact lenses protect the eye unless limited to the small portion of the eye that is covered thereby;

(g) Said contact lenses are unbreakable;

2. Disseminating, or causing to be disseminated, any advertisement, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representation prohibited in paragraph 1 above.

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 September 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Noel C. Genevay, Jr., an individual, trading under the name of Contact Lens Specialists, shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist.

IN THE MATTER OF

ARC DISTRIBUTING COMPANY, ET AL.

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

Docket 7959. Complaint, June 17, 1960—Decision, Sept. 28, 1960

Consent order requiring distributors of phonograph records in Detroit, Mich., to cease giving concealed payola to disc jockeys or other personnel of radio and television programs to induce frequent playing of their records in order to increase sales.

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 ARC Distributing Company, a corporation, and Henry Droz and Ralph Jewell, individually and as officers of said corporation, hereinafter referred to

as respondents, have 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 ARC Distributing Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at 40 Selden Avenue, in the City of Detroit, State of Michigan.

Respondents Henry Droz and Ralph Jewell are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the distribution, offering for sale, and sale, of phonograph records to various retail outlets.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said records, when sold, to be shipped from Michigan to northwestern Ohio, to purchasers thereof, and maintain, and at all times mentioned herein have maintained, a course of trade in said phonograph records in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and at all times mentioned herein, respondents have been in competition, in commerce, with corporations, firms and individuals in the sale of phonograph records.

PAR. 5. After World War II when TV and radio stations shifted from "live" to recorded performances for much of their programming, the production, distribution and sale of phonograph records emerged as an important factor in the musical industry with a sales volume of approximately \$400,000,000 in 1958.

Record manufacturing companies and distributors ascertained that popular disk jockeys could, by "exposure" or the playing of a record day after day, sometimes as high as 6 to 10 times a day, substantially increase the sales of those records so "exposed." Some record manufacturers and distributors obtained and insured the "exposure" of certain records in which they were financially interested by disbursing "payola" to individuals authorized to select and "expose" records for both radio and TV programs.

"Payola", among other things, is the payment of money or other valuable consideration to disk jockeys of musical programs on radio

and TV stations to induce, stimulate or motivate the disk jockey to select, broadcast, "expose" and promote certain records in which the payer has a financial interest.

Disk jockeys, in consideration of their receiving the payments heretofore described, either directly or by implication, represent to their listening public that the records "exposed" on their broadcasts have been selected on their personal evaluation of each record's merits or its general popularity with the public, whereas, in truth and in fact, one of the principal reasons or motivations guaranteeing the record's "exposure" is the "payola" payoff.

PAR. 6. In the course and conduct of their business, in commerce, during the last several years, the respondents have engaged in unfair and deceptive acts and practices and unfair methods of competition in the following respects:

The respondents alone or with certain unnamed record distributors negotiated for and disbursed "payola" to disk jockeys broadcasting musical programs over radio or television station broadcasting across state lines, or to other personnel who influence the selection of the records "exposed" by the disk jockeys on such programs.

Deception is inherent in "payola" inasmuch as it involves the payment of a consideration on the express or implied understanding the disk jockey will conceal, withhold or camouflage such fact from the listening public.

The respondents by participating individually or in a joint effort with certain collaborating record distributors have aided and abetted the deception of the public by various disk jockeys by controlling or unduly influencing the "exposure" of records by disk jockeys with the payment of money or other consideration to them, or to other personnel which select or participate in the selection of the records used on such broadcasts.

Thus, "payola" is used by the respondents to mislead the public into believing that the records "exposed" were the independent and unbiased selection of the disk jockeys based either on each record's merit or public popularity. This deception of the public has the capacity and tendency to cause the public to purchase the "exposed" records which they might otherwise not have purchased and also to enhance the popularity of the "exposed" records in various popularity polls, which in turn has the capacity and tendency to substantially increase the sales of the "exposed" records.

PAR. 7. The aforesaid acts, practices and methods have the capacity and tendency to mislead and deceive the public and to hinder, restrain and suppress competition in the manufacture, sale or

distribution of phonograph records, and to divert trade unfairly to the respondents from their competitors and injury has thereby been done and may continue to be done to competition in commerce.

PAR. 8. The aforesaid acts and practices of respondents, as alleged herein, were and are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

Mr. Harold A. Kennedy and *Mr. Arthur Wolter, Jr.*, for the Commission.

Respondents, for themselves.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents, who are engaged in the distribution, offering for sale, and sale of phonograph records to various retail outlets, with violation of the Federal Trade Commission Act, in that respondents, alone or with certain unnamed record distributors, 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 and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the Director, Associate Director and Acting Assistant Director of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement states that respondent ARC Distributing Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at 40 Selden Avenue, Detroit, Mich., and that respondents Henry Droz and Ralph Jewell are officers of the corporate respondent and formulate, direct and control the acts and practices of the corporate respondent, their 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 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 hearing examiner has determined that the aforesaid agreement containing the consent order to cease and desist provides for an appropriate disposition of this proceeding in the public interest, and such agreement is hereby accepted. Therefore,

It is ordered, That respondents ARC Distributing Company, a corporation, and its officers, and Henry Droz and Ralph Jewell, individually and as officers 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 any 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 any 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 September 1960, become the decision of the Commission; and, accordingly:

It is ordered. That respondents ARC Distributing Company, a corporation, and Henry Droz and Ralph Jewell, individually and as officers 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

ESTHER DOROTHY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS

Docket 7985. Complaint, June 24, 1960—Decision, Sept. 28, 1960

Consent order requiring New York City furriers to cease violating the Fur Products Labeling Act by advertising in the Wall Street Journal and otherwise which failed to disclose the names of animals producing the fur in certain fur products or that some products contained artificially colored fur; which represented prices as reduced from fictitious "regular" prices and used "formerly" prices without designating the time when such comparative prices were effective; and by failing to keep adequate records as a basis for such pricing claims.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Esther Dorothy, Inc., a corporation, and

Esther Dorothy Ruben and Sidney Ruben, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling 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. Esther Dorothy, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 68 East 56th Street, New York, N.Y.

Esther Dorothy Ruben is president and treasurer of said corporation. Sidney Ruben is vice president of said corporation. These individuals control, direct and formulate the acts, practices and policies of the said corporate respondents. Their office and principal place of business is the same as that of the corporate respondent.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been and are now engaged in the introduction into commerce, and in the manufacture for introduction into commerce, and in the sale, advertising, and offering for sale, in commerce, and in the transportation and distribution, in commerce, of fur products, and have manufactured for sale, sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that respondents caused the dissemination in commerce, as "commerce" is defined in said Act, of certain newspaper advertisements, concerning said products, which were not in accordance with the provisions of Section 5(a) of the said Act and the Rules and Regulations promulgated thereunder; and which advertisements were intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of said fur products.

PAR. 4. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which appeared in issues of the Wall Street Journal, a newspaper published in the city of New York, State of New York and having a wide circulation in said State and various other States of the United States.

By means of said advertisements and others of similar import and meaning, not specifically referred to herein, respondents falsely and deceptively advertised fur products in that said advertisements:

(a) Failed to disclose the name or names of the animal or animals that produced the fur contained in the fur product as set forth in the Fur Products Name Guide, in violation of Section 5(a)(1) of the Fur Products Labeling Act.

(b) Failed to disclose that fur products contained or were composed of bleached, dyed or otherwise artificially colored fur, when such was the fact, in violation of Section 5(a)(3) of the Fur Products Labeling Act.

(c) Represented prices of fur products as having been reduced from regular or usual prices where the so-called regular or usual prices were in fact fictitious in that they were not the prices at which said merchandise was usually sold by respondents in the recent regular course of business in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of said Rules and Regulations.

(d) Used earlier comparative prices by referring to said prices as "formerly" prices, without designating the time at which said comparative prices were in effect in violation of Rule 44(b) of the aforesaid Rules and Regulations.

PAR. 5. In advertising fur products for sale as aforesaid respondents made claims and representations respecting prices and values of fur products. Respondents in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based in violation of Rule 44(e) of the aforesaid Rules and Regulations.

PAR. 6. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Mr. Charles S. Cox for the Commission.

Mr. Bernard Graber of *Zweibel & Graber*, of New York, N.Y., for respondents.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

The complaint in this matter charges the respondents with violation of the Federal Trade Commission Act and the Fur Products

Labeling Act in connection with the sale, advertising and distribution in commerce of fur products.

An agreement has now been entered into by respondents, their attorney and counsel supporting the complaint which provides, among other things, that respondents admit all the jurisdictional facts alleged in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the making of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in this proceeding without further notice to the respondents and when entered shall have the same force and effect as if entered after a full hearing, respondents specifically waiving all the rights they may have to challenge or contest the validity of the order; that the order may be altered, modified or set aside in the manner provided for other orders; that the complaint may be used in construing the terms of the order; 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 agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent Esther Dorothy, Inc. is a corporation existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 68 East 56th Street, in the city of New York, State of New York.

Respondents Esther Dorothy Ruben and Sidney Ruben, are officers of the corporate respondent Esther Dorothy, Inc., and formulate, direct and control the acts and practices of corporate respondent. The address of the individual respondents is the same as that of the corporate respondent.

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.

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ORDER

It is ordered, That Esther Dorothy, Inc., a corporation, and its officers, and Esther Dorothy Ruben and Sidney Ruben, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, manufacture for introduction, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of fur products, or in connection with the sale, manufacture for sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Falsely or deceptively advertising fur products through the use of any advertisement, representation, public announcement or notice which is intended to aid, promote or assist, directly or indirectly, in the sale, or offering for sale of fur products, and which:

A. Fails to disclose:

1. The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed under the Rules and Regulations.

2. That the fur product contains or is composed of bleached, dyed or otherwise artificially colored fur when such is the fact.

B. Represents directly or by implication that the regular or usual price of any fur product is any amount which is in excess of the price at which respondents have usually and customarily sold such products in the recent regular course of business.

C. Bases comparative prices on former or original prices that are not the prevailing prices at the time of the advertisement without stating the times or dates of the compared prices.

D. Misrepresents in any manner the savings available to purchasers of respondents' fur products.

2. Making price claims and representations respecting prices and values of fur products unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims and representations are based.

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

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of September 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents herein 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

FRED BRONNER CORPORATION, ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(a)
OF THE CLAYTON ACT

Docket 7068. Complaint, Feb. 20, 1958—Order, Sept. 29, 1960

Order dismissing—lacking proof of substantial lessening of competition—complaint charging a toy importer in New York City with violating Sec. 2(a) of the Clayton Act by granting a discount of 3% off list price to some purchasers—members of March of Toys, Inc., a buying corporation for a group of toy jobbers and wholesalers—but not to others competing with them.

Mr. Lewis F. Depro and Mr. Jerome Garfinkel for the Commission.
Mr. Harry Katz, of New York, N. Y., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

The complaint herein was issued by the Commission on February 20, 1958, and charged that the respondents have violated section 2(a) of the Clayton Act, as amended. The complaint alleges that the respondents have been, and are now, discriminating in price between different purchasers of their toys by selling such toys to some purchasers at substantially higher prices than to other purchasers. Specifically, the complaint states that since 1954 a discount of three percent off the list price has been given to some purchasers but not to others, the favored purchasers being members of a corporation known as March of Toys, Inc., who are toy jobbers and wholesalers. The complaint further alleges that the discrimination in price was substantial and may have the effect of substantially lessening competition between respondents and their competitors, as well as between the favored and unfavored purchasers of respondents.

The respondents in their answer to the complaint admit that for a brief and inconsequential period after 1954, an allowance of three percent was made in some instances, but denied such allowance was

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contrary to law. The answer set forth the following affirmative defenses:

1. The discounts in question were so trivial and insignificant that the effect was not such as may substantially lessen competition or tend to create a monopoly in any line of commerce.
2. Respondents voluntarily abandoned and discontinued the granting of the discount prior to the issuance of the complaint and have not resumed, nor do they intend to resume, the granting of such discount at any time in the future.
3. The discount made only due allowance for differences in cost.
4. The discount was granted in good faith and without any intention on the part of the respondents to violate any provision of law.

Hearings were held on April 14, June 15, and August 31, 1959, in New York, N. Y. Stipulations entered into by the counsel of the parties hereto setting forth what four proposed witnesses located at Philadelphia, Pa., three proposed witnesses located at Chicago, Ill., and two proposed witnesses from New York City would have testified to had they been called and used in support of the complaint eliminated the necessity of holding further hearings in New York City and hearings at Philadelphia and Chicago. Thereafter, Proposed Findings of Fact and Conclusions were filed by all counsel. There is little, if any, dispute between the parties as to the facts of the case, the questions are as to the conclusions derived therefrom.

The hearing examiner has given consideration to the proposed findings filed by the parties hereto, and all findings of fact and conclusions not hereinafter specifically found or concluded are herewith rejected.

Upon consideration of the entire record herein, the examiner makes the following:

FINDING OF FACTS

1. Fred Bronner Corporation is a corporation organized 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 251 Fourth Avenue, New York, N. Y. Since April 1, 1956, it has been engaged in the importation of toys from abroad and the sale thereof to wholesalers, jobbers and department stores located in various parts of the United States. The respondent Fred Bronner has been the sole owner of the stock, the president of the corporation since its inception, and has controlled the policies thereof during said period. Between April 1954 and April 1, 1956, Fred Bronner, as an indi-

vidual, engaged in the same type of business as the corporate respondent has conducted since April 1, 1956.

At the outset of his business in 1954, Mr. Bronner rented one room in New York City which served as both office and storage space. He had no employees, acted as his own salesman, did all the packaging and shipping, typed all invoices and kept his own records. During his absence from the office, his telephone messages were taken by a telephone answering service. Mr. Bronner hired his first employee, a secretary, in February 1955, and two or three months later he engaged a shipping clerk. Two more employees were added sometime in 1956, one more in November 1957, and two more in February 1959, making a total of seven employees.

At no time did respondents employ salesmen to sell their wares but have used independent sales representatives who are paid the standard commission of five percent. The total of sales made by independent sales representatives in 1954 and the greater part of 1955 was inconsequential. It was not until late in 1955 that Mr. Bronner started to organize an independent sales representative force, and by January 1956 he had five such representatives soliciting orders.

One of the first lines of toys imported by Mr. Bronner was the "Matchbox" series. This is a series of tiny metal miniatures of different kinds of vehicles, such as cars and trucks, which are enclosed in boxes resembling matchboxes. Other domestic concerns also import this line. The "Matchbox" series has represented by far the major part of the respondents' business since 1954. The respondents sold the "Matchbox" series to wholesale customers for \$2.55 per dozen. Wholesalers sold these toys to retailers for \$3.60 per dozen, which is a mark-up of approximately 40 percent. The toys retail for 49 cents each.

For the year 1954, Mr. Bronner's gross sales amounted to approximately \$20,000 which increased to \$200,000 in 1955, \$350,000 in 1956 and \$450,000 in 1957.

In the conduct of their business respondents have been in competition with other corporations, partnerships and individuals in the importation, sale and distribution of toys.

In the course and conduct of their business respondents have engaged in commerce, as "commerce" is defined in the Clayton Act, as amended, having shipped their products from their places of business in the State of New York to purchasers located in other States.

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In or about December 1954, respondent Fred Bronner entered into an arrangement with an association of toy wholesalers known as March of Toys, Inc., whereby Fred Bronner agreed to grant the members of said association a three percent discount upon all toy purchases made from said individual respondent. March of Toys is a buying organization for a group of wholesalers dealing in toy products, and its principal office is located in New York, N. Y. At the time the arrangement was made for the discount, the following concerns were members of the March of Toys:

<i>Name of Concern</i>	<i>Location</i>
1 ¹ Baltimore Products Company.....	Baltimore, Md.
2 Consolidated Athletic Supply Company	Detroit, Mich.
3 Federal Wholesale Company	Los Angeles, Calif.
4 General Novelty Company	Philadelphia, Pa.
5 Universal Merchandise Co.	New Orleans, La.
(now Gotham Industries, Inc.)	
6 Greenman Brothers	Mineola, N.Y.
7 Nesson Sales Co.	Norfolk, Va.
8 Rochester Stationery Co.	Rochester, N.Y.
9 Schwarz Paper Co.	Lincoln, Nebr.
10 M. Seller Co.	San Francisco, Calif.
11 Schrage Bros.	Pittsburgh, Pa.
12 Singerman & Wasserman	St. Louis, Mo.
13 Stratton & Terstegge	Louisville, Ky.
14 Thebault Olson Corp.	Chicago, Ill.
15 Thoreson Sales Co.	Dallas, Texas
16 Watson-Triangle Co.	Miami, Fla.
17 Fellows & Co.	Boston, Mass.
18 Harold Hahn Co.	New Haven, Conn.

¹ In tabulation hereinafter set forth, the number listed above to the left of the name of the concern will be used to identify the concern.

Following the aforementioned discount arrangement, Fred Bronner received orders from, and shipped his products to, various members of March of Toys, located in the State of New York and in other States. Upon such sales the respondents allowed a discount of three percent of the wholesale price, irrespective of the size of the order. On each invoice rendered by the respondents to such purchasers the discount was noted thereon. The corporate respondents after it came into existence in April 1956, allowed the three percent discount to four members of March of Toys.

The respondents' gross sales to members of March of Toys during the period when the three percent discount was allowed, the total discounts allowed to such members and the month and year of the last discount given, were as follows:

