

Complaint

57 F.T.C.

FINAL ORDER

This matter having been heard by the Commission upon respondent's appeal from the hearing examiner's initial decision, and upon briefs in support thereof and in opposition thereto, and the Commission having rendered its decision denying the appeal:

It is ordered, That the initial decision of the hearing examiner be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondent, Exquisite Form Brassiere, Inc., shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist.

Commissioner Tait dissenting in part.

IN THE MATTER OF

E & J CORPORATION TRADING AS CITY AUTO SALES
ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 7911. Complaint, June 3, 1960—Decision, Oct. 31, 1960

Consent order requiring used car dealers in Washington, D.C., to cease misrepresenting down payments, monthly terms, and guarantees on their used cars, made by such typical statements in newspaper and radio advertising as "1.00 Down", "No Money Down As Low as \$15 Per Mo.", "All Cars Guaranteed".

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 E & J Corporation, a corporation trading as City Auto Sales, and Arthur J. Bisogne, also known as Sonny Bisogne, 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 E & J Corporation, is a corporation organized and existing under and by virtue of the laws of the Dis-

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trict of Columbia. Its office and principal place of business is located at 401 Massachusetts Avenue, N.W., Washington, D.C. Said corporation trades under the name of City Auto Sales.

Respondent Arthur J. Bisogne, also known as Sonny Bisogne, is an officer and the principal stockholder of the respondent corporation. He formulates, directs and controls the acts and practices of the corporate respondent, as hereinafter set forth. His business 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 advertising, offering for sale, sale and distribution of used automobiles in the District of Columbia. Their volume of business is substantial.

PAR. 3. In the course and conduct of their business, and for the purpose of inducing the sale of their used automobiles, respondents have made certain statements in newspapers published in the District of Columbia, and in radio broadcasts emanating from the District of Columbia, concerning their said automobiles and their method of doing business. Typical, but not all inclusive, of said statements are the following:

\$1.00 Down

No Money Down on Approved Credit

\$25 Down is all you Need to Ride

No Money Down As Low as \$15 Per Mo.

As Low as \$5.00 Down

All Cars Guaranteed

Drive Today! Nothing Down. Ride Today . . . No Money Needed!

Name Your Own Terms on a Guaranteed Automobile Delivered to You This Very Day, with Little or No Money Down. . . .

PAR. 4. Through the use of the aforesaid statements, respondents represent:

(a) That they sell used automobiles on credit accounts, with little or no down payment.

(b) That their cars are guaranteed.

PAR. 5. Said statements and representations are false, misleading and deceptive. In truth and in fact:

(a) Respondents do not sell used cars on credit, with little or no down payment. When a minimum or token sum is accepted by the respondents in connection with a car order or bill of sale, it is not, in fact, a down payment but is received for the purpose of providing a consideration for a contract of purchase. Frequently, purchasers of respondents' used cars are required to contract for small loans, mostly with sources outside of the District of Columbia, in order to meet respondents' down payment requirements, in addi-

tion to installment financing. The represented low monthly payments do not include said small loan charges.

(b) Respondents, in most instances, sell their used cars "as is", and no guarantee or warranty is made. In fact, a provision is incorporated in each car order and bill of sale to that effect. In those cases where a purported guarantee or warranty is made, it is limited in nature and the limitations are not fully disclosed.

PAR. 6. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of used automobiles.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and into the purchase of a substantial number of respondents' used automobiles by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now 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. Ames W. Williams and *Mr. Michael P. Hughes* for the Commission.

Mr. Ralph H. Deckelbaum, of Washington, D.C., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents, who are engaged in the advertising, offering for sale, sale and distribution of used automobiles in the District of Columbia, with violation of the Federal Trade Commission Act, in that respondents have made certain false, misleading and deceptive statements in newspapers published in the District of Columbia, and in radio broadcasts emanating from the District of Columbia, concerning their said automobiles and their method of doing business.

After the issuance of the complaint, respondents, their counsel, and counsel supporting the complaint entered into an agreement

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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 E & J Corporation is a corporation organized and existing under and by virtue of the laws of the District of Columbia, with its office and principal place of business located at 401 Massachusetts Avenue, N.W., Washington, D.C.; that said corporation trades under the name of City Auto Sales; and that respondent Arthur J. Bisogne, also known as Sonny Bisogne, is an officer and the principal stockholder of the respondent corporation, his business 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 E & J Corporation, a corporation, trading as City Auto Sales, or under any other name, and its officers, and Arthur J. Bisogne, also known as Sonny Bisogne, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any cor-

porate or other device, in connection with the offering for sale, sale or distribution of used automobiles in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. Their used automobiles can be purchased with a minimum down payment of one dollar or any other amount not in accord with the facts;

2. Their used automobiles are guaranteed when no guarantee is given to the purchaser;

3. Their used automobiles are guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and truthfully set forth:

4. Terms as low as \$15.00 per month or any other amount per month are available to purchasers, unless such is the fact.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The hearing examiner on August 31, 1960, having filed an initial decision in this proceeding wherein he accepted an agreement containing a consent order theretofore executed by the respondents and counsel in support of the complaint, and entered an order to cease and desist in conformity with said agreement; and

The Commission by order entered October 12, 1960, having extended until further order the date on which the initial decision otherwise would have become the decision of the Commission, and having now determined that said initial decision is adequate and appropriate to dispose of this matter:

It is ordered, That the hearing examiner's initial decision be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondents, E & J Corporation, a corporation, and Arthur J. Bisogne, also known as Sonny Bisogne, 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 contained in the aforesaid initial decision.

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IN THE MATTER OF

TRIUMPH RECORDS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 7964. Complaint, June 22, 1960—Decision, Nov. 3, 1960*

Consent order requiring New York City manufacturers of phonograph records to cease giving concealed "payola" to disc jockeys and 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 Triumph Records, Inc., a corporation, and Herbert C. Abramson, 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 Triumph Records, 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 54 West 74th Street, New York, New York.

Respondent Herbert C. Abramson is president of the corporate respondent, and formulates, directs and controls the acts and practices of said corporate respondent. The address of the individual respondent is the same as that of said corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture, distribution and sale of phonograph records to independent distributors for resale to retail outlets in various states of the United States.

In the course and conduct of their business, respondents now cause, and for some time last past have caused, the records they manufacture, sell and distribute to be shipped from their place of business in the State of New York, 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 phonograph records in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business, at all times mentioned herein, respondents have been, and are now, in substantial competition, in commerce, with corporations, firms and individuals in the manufacture, sale and distribution of phonograph records.

PAR. 4. After World War II, when television 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 six to ten times a day, substantially increase the sale 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 television programs.

"Payola", among other things, is 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 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. 5. In the course and conduct of their business, in commerce, the respondents have engaged in unfair and deceptive acts and practices and unfair methods of competition in the following respects.

The respondents negotiated for and disbursed "payola" to disk jockeys broadcasting musical programs over radio or television stations broadcasting across state lines.

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 have aided and abetted the deception of the public by various disk jockeys by controlling or unduly influencing the

