

The aforesaid duty to disclose the corrective statement shall continue until respondent has expended on Listerine advertising a sum equal to the average annual Listerine advertising budget for the period of April 1962 to March 1972.

PART IV

It is further ordered, That the allegations of Paragraphs Nine and Ten of the complaint be, and they hereby are, *dismissed*.

PART V

It is further ordered, That respondent shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in its structure such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

It is further ordered, That respondent shall, within sixty (60) days after the effective date of this order, file with the Commission a written report, setting forth in detail the manner and form of its compliance with this order.

IN THE MATTER OF

MAGNETIC VIDEO CORPORATION, ET AL.

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

Docket C-2767. Complaint, Dec. 12, 1975 — Decision, Dec. 12, 1975

Consent order requiring a Farmington Hills, Mich., manufacturer and distributor of various tape products, including compilations of hits and sound alike recordings, among other things to cease using any advertisement or promotional material which misrepresents that any tape product has been recorded by the original artist(s). Further, respondents must either disclose the name of the actual recording artist or print a warning advising prospective purchasers that the product "is not an original artist recording."

Appearances

For the Commission: *Paul K. Trause*.

For the respondents: *Charles Tathem, Merrill, Tathem & Rosati*,
Detroit, Mich.

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 Magnetic Video Corporation, a corporation, and Andre Blay, individually and as an officer of said corporation, hereinafter sometimes 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. For the purposes of this proceeding, the following definitions shall apply:

Original Artist: The original artist is the person who originally recorded and made popular the song(s) or album in question, or with whom the public generally identifies the song(s) in question.

Sound Alike Recording: A sound alike recording is a recording of a hit song(s) or a hit album recorded by one other than the original artist and performed in the style and manner of the original artist.

Compilation of Hits: A compilation of hits is a tape product featuring a variety of songs originally recorded and made popular by various artists.

Tape Products: Tape products include tape cartridges or tape cassettes; or, insofar as Magnetic Video Corporation produces or distributes them, phonograph records.

PAR. 2. Respondent Magnetic Video Corporation is a corporation organized, existing, and doing business under and by virtue of the Laws of the State of Michigan, with its office and principal place of business located at 24380 Indoplex Circle, Farmington Hills, Mich.

Respondent Andre Blay is an individual and 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. 3. Respondents are now, and for some time last past have been, engaged in the manufacture and distribution of various tape products, including compilations of hits and sound alike recordings.

PAR. 4. In the course and conduct of their business as aforesaid, respondents now cause, and for sometime last past have caused, their products when sold to be shipped from their place of business located in the State of Michigan 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 products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of their business, and for the purpose of inducing the purchase of their sound alike tape products, respondents have caused, and are now causing:

(A) Certain labels to be used on the aforesaid tape products employing the name of the original artist.

Typical of these labels, but not all inclusive thereof, are the following:

The Carole King/Gilbert O'Sullivan Sound-Alike Collection

* * * * *

The Sounds of Neil Diamond

* * * * *

The Hits of Simon & Garfunkle

* * * * *

Performed in the Donna Fargo Style

* * * * *

(B) Certain labels to be used on the aforesaid tape products bearing the likeness of the original artist, or depicting drawings similar to those appearing on the album cover of the original recording.

(C) Certain labels to be used on the aforesaid tape products which state that the album contains a compilation of hit songs.

Typical of these labels, but not all inclusive thereof, are the following:

The Best Non-Stop Hits of 1973
"Summer Breeze"

* * * * *

Solid Gold Hits of 1973,

Volumes I and II

* * * * *

Grammy Hits of 1973

* * * * *

(D) Certain statements and representations to appear in promotional literature, including catalogues and point-of-sale material, and in advertisements inserted in newspapers, on television and radio, to prospective purchasers and to purchasers thereof with respect to the nature of the aforesaid tape products.

Typical of such statements and representations, but not all inclusive thereof, are the following:

Charm Tapes, over 150 current

hit tapes to choose from

* * * * *

The Hits of Loretta Lynn

* * * * *

The Hits of Andy Williams

* * * * *

Carole King, Fantasy

* * * * *

20 Hit Songs of 1973

All "Grammy" Award Finalists

* * * * *

Performed in the Style that Made

the Songs and the Artists Famous

* * * * *

PAR. 6. By and through the use of the aforesaid labels, catalogues, advertisements, and other promotional materials, and statements and representations of similar import and meaning, respondents have represented, and are now representing, directly or by implication, that the aforesaid tape products feature the original artists.

PAR. 7. In truth and in fact, the aforesaid tape products are not original artist recordings.

PAR. 8. By the aforesaid practices, respondents have placed, and are now placing, in the hands of distributors and retailers the means and instrumentalities by and through which the respondents may mislead

and deceive the public in the manner and as to the matters herein alleged.

PAR. 9. The use by respondents of the aforesaid false, misleading, and deceptive statements, representations, acts, 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 substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of respondents as herein alleged were and are all to the prejudice and injury of the public and constituted, and now constitute, unfair and deceptive acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Cleveland Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its rules, the Commission hereby issued its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Magnetic Video Corporation is a corporation organized, existing, and doing business under and by virtue of the Laws of

the State of Michigan, with its office and principal place of business located at 24380 Indoplex Circle, Farmington Hills, Mich.

Respondent Andre Blay is an officer of said corporation. He formulates, directs, and controls the policies, acts, and practices of said corporation, and his address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Magnetic Video Corporation, a corporation, its successors and assigns, and its officers, and Andre Blay, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any other corporation, subsidiary, division, or other device in connection with the sale of tape products recorded by a person or persons other than the original artist(s), in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using any label, package, catalogue, or any form of advertising, promotional material or point of sale material which:

- (a) Contains any likeness of an original artist(s);
- (b) Contains any illustration similar to that on the album cover or tape label used in the original artist(s) recording;
- (c) Implies, in any manner, that the tape product has been recorded by an original artist(s).

2. Offering for sale, selling, or distributing any tape product recorded by one other than the original artist(s), unless the tape product's package or label contains either the name(s) of the actual artist(s) or a clear and conspicuous disclosure which reads:

THIS IS NOT AN ORIGINAL ARTIST RECORDING.

(a) If the legend "THIS IS NOT AN ORIGINAL ARTIST RECORDING" is employed, that legend shall appear on the front and spine of the tape product's label in capital letters and in boldface type set in type of at least the following sizes:

Front of the package — 12-point type

Spine of the package — 8-point type

(b) If the name(s) of the actual artist(s) is(are) used in conjunction with the name(s) of the original artist(s), the name(s) of the actual artist(s) shall appear in capital letters and in boldface type on the same surface of the tape product as the name(s) of the original artist(s) appear(s). The name(s) of the actual artist(s) shall be printed in type

which is at least the same size as the type size employed for the name(s) of the original artist(s).

(c) If the name(s) of the actual artist(s) is(are) not used in conjunction with the name(s) of the original artist(s), the disclosure shall comply with the requirements of Paragraph 2(a).

(d) The disclosure employed shall be a separate element of the label set in contrasting type on a solid-color background and shall not include any part of any picture design, illustration or other text; *Provided*, That if the name(s) of the original artist(s) is(are) used, the name of the actual artist(s) may be placed directly under or adjacent to the name(s) of the original artist(s).

3. Offering for sale, selling, or distributing any sound alike tape product, the title of which does not either name the actual artist or clearly disclose that the tape product is a sound alike recording, by incorporating the words, "Sounds like" or "Sound alike," or words of similar import and meaning.

4. Advertising any tape product not recorded by the original artist(s), unless respondents, in all advertisements of such tape products, either disclose clearly and conspicuously the name(s) of the actual artist(s) for each such recording, or make one clear and conspicuous disclosure which reads:

THIS IS NOT AN ORIGINAL ARTIST RECORDING

For the purposes of this section of the order, the term "advertisement" shall mean all advertising in newspapers, magazines, and other printed periodicals; advertisements appearing on television and radio, and catalogues.

(a) If the name of each actual artist is not clearly and conspicuously disclosed, respondents shall set forth the disclosure, "This Is Not An Original Artist Recording," in all printed advertisements, in capital letters and in boldface type, set in type of at least the following sizes:

Advertisements of a trim size larger than 144 square inches ———
24-point type

Advertisements of a trim size larger than 65 square inches but not
larger than 143 square inches ——— 14-point type

Advertisements of a trim size larger than 36 square inches but not
larger than 64 square inches ——— 12-point type

Advertisements of a trim size not larger than 35 square inches ———
— 10-point type

The disclosure shall comply with the requirements of paragraph 2(c) of this order.

