

*It is further ordered*, That Lumar, Inc., a corporation, and its officers, and respondent's representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of woolen interlining material or any other materials in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or indirectly, misrepresenting the constituent fibers of which their products are composed or the percentages or amounts thereof in sales invoices, shipping memoranda or in any other manner.

*It is further ordered*, That the complaint herein, in so far as it relates to respondent Martin Rosenbaum, individually and as an officer of Lumar, Inc., be, and the same hereby is, dismissed.

## 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 26th day of May, 1960, become the decision of the Commission; and, accordingly:

*It is ordered*, That respondent Lumar, Inc., a corporation, 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.

## IN THE MATTER OF

## JAMES H. MARTIN, INC., ET AL.

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

*Docket 7738. Complaint, Jan. 8, 1960—Decision, May 26, 1960*

Consent order requiring Chicago distributors of phonograph records to cease giving concealed "payola" to television and radio disc jockeys to induce playing their records in order to increase sales.

*Mr. John T. Walker* and *Mr. James H. Kelley* for the Commission.  
*Mr. Warren E. King*, of Chicago, Ill., for respondents.

## INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On January 8, 1960, the Federal Trade Commission issued its complaint against the above-named respondents charging them with violating the provisions of the Federal Trade Commission Act in

connection with the offering for sale, sale and distribution of phonograph records as independent distributors for several record manufacturers to retail outlets and jukebox operators in various states of the United States. On March 21, 1960, the respondents and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist in accordance with section 3.25(a) of the Rules of Practice and Procedure of the Commission.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint and agree among other things, that the cease and desist order there set forth may be entered without further notice and shall have the same force and effect as if entered after a full hearing. The agreement includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith; and recites that the said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, and that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint. The hearing examiner finds that the content of the said agreement meets all the requirements of section 3.25(b) of the Rules of Practice.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent order, and it appearing that said agreement provides for an appropriate disposition of this proceeding, the aforesaid agreement is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with section 3.21 of the Rules of Practice; and in consonance with the terms of said agreement, the hearing examiner makes the following jurisdictional findings and order:

1. Respondents James H. Martin, Inc. and Music Distributors, Inc. are corporations organized, existing and doing business under and by virtue of the laws of the State of Illinois, with their principal offices and places of business located, respectively, at 2419 South Michigan Avenue, and 1343 South Michigan Avenue, in the City of Chicago, State of Illinois.

Respondent James H. Martin is the sole owner and president of both corporate respondents, and formulates, directs and controls the acts and practices of said corporate respondents. The address of the individual respondent is 2419 South Michigan Avenue, Chicago, Illinois.

2. The Federal Trade Commission has jurisdiction of the subject

matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

## ORDER

*It is ordered*, That respondents James H. Martin, Inc., a corporation, and Music Distributors, Inc., a corporation, and their officers, and James H. Martin, individually, and as an officer of said corporations, 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 an 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 26th day of May, 1960, become the decision of the Commission; and, accordingly:

*It is ordered*, That the 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.

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IN THE MATTER OF

A-1 RECORD DISTRIBUTORS, INC., ET AL.

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

*Docket 7752. Complaint, Jan. 19, 1960—Decision, May 26, 1960*

Consent order requiring New Orleans, La., distributors of phonograph records to cease giving concealed "payola" to television and radio disc jockeys to induce playing their records in order to increase sales.

*Mr. John T. Walker and Mr. James H. Kelley* for the Commission.  
*Mr. Dudley Yoedicke*, of New Orleans, La., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

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

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

The agreement states that respondent A-1 Record Distributors, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana, with its prin-

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cipal office and place of business located at 628 Baronne Street, New Orleans, Louisiana; that individual respondents Joseph J. Banashak and Bobbie G. Banashak are president and secretary treasurer, respectively, of the corporate respondent; and that said individual respondents formulate, direct and control the acts and practices of said 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 order agreed upon fully disposes of all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein as being in violation of the Federal Trade Commission Act. Accordingly, the hearing examiner finds this proceeding to be in the public interest, and accepts the agreement containing consent order to cease and desist as part of the record upon which this decision is based. Therefore,

*It is ordered,* That respondent A-1 Record Distributors, Inc., a corporation, and its officers, and respondents Joseph J. Banashak and Bobbie G. Banashak, 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 26th day of May, 1960, become the decision of the Commission; and, accordingly:

*It is ordered*, That the above-named 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.

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IN THE MATTER OF

HERALD MUSIC CORP. ET AL.

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

*Docket 7777. Complaint, Feb. 5, 1960—Decision, May 26, 1960*

Consent order requiring New York City manufacturers and distributors of phonograph records to cease giving concealed "payola" to television and radio disc jockeys to induce playing their records in order to increase sales.

*Mr. John T. Walker* and *Mr. James H. Kelley* supporting the complaint.

The corporate respondents: Herald Music Corp., Ember Records, Inc., Ember Distributors, Inc., all by Al Silver, president of each and all said corporate respondents, appearing *pro se*.

Al Silver, individual respondent, appearing *pro se*.

Jack Braverman, individual respondent, appearing *pro se*.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

The complaint in this proceeding was issued by the Federal Trade Commission on February 5, 1960, charging respondents with violating the Federal Trade Commission Act by paying money or other valuable consideration to disc jockeys who conduct musical programs on radio and television stations so as to induce, stimulate or motivate the said disc jockeys to select, broadcast, "expose" and promote certain recordings in which respondents have a direct financial interest.

The complaint alleges further that the said disc jockeys, in consideration of the said payments, did represent, either directly or by implication, to their listening public that the recordings "exposed" on their broadcasts had been selected as the result of their general evaluation of each such recording'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," was the payments described above.

The complaint further alleges that such action deceived the public because it resulted in unduly influencing such exposures of the recordings and misled the public into believing that the recordings so "exposed" were the independent and unbiased selection of the disc jockeys based either on the record's merit or its public popularity.

After being duly served with a correct copy of the complaint as required by law, respondents appeared and negotiated an Agreement Containing Consent Order to Cease and Desist dated April 7, 1960, which purports to dispose of all of this proceeding as to all of the parties without the necessity of conducting a formal hearing. The Agreement for a Consent Order to Cease and Desist was accompanied by a Waiver signed by all of the respondents wherein and whereby respondents waive the application of Rules 3.21 and 3.25 of the Commission's Rules of Practice and agree that the Federal Trade Commission may proceed to act immediately on this initial decision without waiting thirty days as contemplated by Rule 3.25(f). The Agreement Containing Consent Order to Cease

and Desist, and Waiver, were received by the hearing examiner on April 18, 1960. The agreement of April 7, 1960, has been signed by the respondents, by counsel supporting the complaint, and has been approved by the Director, the Associate Director, and the Assistant Director of the Bureau of Litigation of the Federal Trade Commission. This agreement contains the form of a consent cease and desist order which the parties have agreed is dispositive of the issues involved in this proceeding. The agreement has been submitted to the hearing examiner in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that 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 the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement. Said agreement provides further that: The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and said agreement; 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 order to cease and desist set forth in the agreement may be entered in this proceeding by the Commission without further notice to the respondents and that, when so entered, said order shall have the same force and effect as if entered after a full hearing; said cease and desist order may be altered, modified or set aside in the manner provided for other orders; and the complaint may be used in construing the terms of the order. The agreement provides that it is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement of April 7, 1960, containing consent order, and it appearing that the order provided for in said agreement covers all of the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, the agreement of April 7, 1960, is hereby accepted and ordered filed at the same time that this decision becomes the decision of the Federal Trade Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings. The undersigned hearing examiner having considered

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the agreement and proposed order, and being of the opinion that the acceptance thereof will be in the public interest, makes the following jurisdictional findings, and issues the following order:

## JURISDICTIONAL FINDINGS

1. The Federal Trade Commission has jurisdiction over the parties and the subject matter of this proceeding;

2. Respondent Herald Music Corp., Ember Records, Inc., and Ember Distributors, Inc., are corporations, organized, existing and doing business under and by virtue of the laws of the State of New York with their office and principal place of business located at 150 West 55th Street, in the City of New York, State of New York;

Individual respondents Al Silver and Jack Braverman are president and secretary-treasurer, respectively, of each of the corporate respondents, and formulate, direct and control the acts and practices of said corporate respondents. The address of the individual respondents is the same as that of the corporate respondents;

3. Respondents are engaged in commerce as "commerce" is defined in the Federal Trade Commission Act;

4. The complaint herein states a cause of action against said respondents under the Federal Trade Commission Act, and this proceeding is in the public interest.

## ORDER

*It is ordered*, That respondents Herald Music Corp., a corporation, Ember Records, Inc., a corporation, and Ember Distributors, Inc., a corporation, and their officers, and respondents Al Silver and Jack Braverman, individually and as officers of said corporations, 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

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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 did, on the 26th day of May, 1960, become the decision of the Commission; and, accordingly:

*It is ordered,* That the 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

OPTI-RAY, INC., ET AL.

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

*Docket 7235. Order, May 27, 1960*

Order modifying desist order of May 6, 1959,<sup>1</sup> by including a proviso in subparagraph (a) of paragraph 1.

Before *Mr. Harry R. Hinkes*, hearing examiner.

*Mr. Morton Nesmith* and *Mr. John J. Mathias* for the Commission.

*Blumberg, Singer, Ross & Gordon*, of New York City, for respondents.

ORDER MODIFYING ORDER TO CEASE AND DESIST

This matter having been heard on the respondents' motion filed September 4, 1959, requesting modification in certain respects of the outstanding order to cease and desist herein; and

<sup>1</sup> 55 F.T.C. 1729.

It appearing from the motion and from evidence adduced at a hearing held pursuant to the Commission's order of September 30, 1959, reopening the proceeding and referring the case to a hearing examiner, that the present public interest requires a modification of the order as hereinafter indicated:

*It is ordered*, That the order to cease and desist included in the hearing examiner's initial decision filed February 26, 1959, and adopted by the Commission as of May 6, 1959, be, and it hereby is, modified by substituting for subparagraph (a) of paragraph 1 thereof the following:

"(a) That their lenses have a given diopter curve unless such is the fact; provided, however, that in the case of ground and polished sunglass lenses a tolerance not to exceed minus or plus  $\frac{1}{16}$ th diopters in any meridian and a difference in power between any two meridians not to exceed  $\frac{1}{16}$ th diopter and a prismatic effect not to exceed  $\frac{1}{8}$ th diopter shall be allowed."

*It is further ordered*, That the respondents, Opti-Ray, Inc., a corporation, and Leo Goldgram and Irving Goldgram, 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 so modified.

Commissioner Tait not participating.

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IN THE MATTER OF  
ENDEAVOR PRESS ET AL.

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

*Docket 7602. Complaint, Oct. 1, 1959—Decision, May 27, 1960*

Consent order requiring a New York City concern engaged in selling to the public written material consisting of slogans, titles, names, compositions and answers, together with box tops, labels, and entry blanks, to cease advertising falsely that users of their said material would win large amounts of cash, homes, cars, annuities, and other substantial awards or prizes in competitive contests; and that they sold their said material to a limited number of selected persons.

*Mr. Frederick McManus* for the Commission.

*Mr. Jacob Friedman*, 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 in connection with the offering for sale, sale and distribution of written material designed to win prizes in competitive contests.

An agreement has now been entered into by the respondents, their counsel and counsel supporting the complaint which provides, among other things, that the principal office and place of business of all respondents is not as stated in the complaint but is instead located at 33 East 74th Street, New York, New York; 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 Endeavor Press is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondents Rebecca B. Roberts and Nancy Roberts 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.

Respondent Rebecca B. Roberts does business under the names of

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Betty Davis, R. B. Roberts, Contest Editor and National Contest Headquarters.

The principal office and place of business of all respondents is located at 33 East 74th Street, in the City of New York, State of New York.

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 Endeavor Press, a corporation, and its officers, and Nancy Roberts, individually and as an officer of said corporation, and Rebecca B. Roberts, individually and as an officer of said corporation, and doing business under the names of Betty Davis, R. B. Roberts, Contest Editor, National Contest Headquarters and any other name or names, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of written material consisting of slogans, titles, names, compositions and answers, designed to win prizes or awards in competitive contests, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from disseminating, or causing to be disseminated any advertisement, which represents directly or by implication that:

1. Users of said written material, as entries in competitive contests, can win homes, cars, annuities, substantial sums of money or any other awards or prizes without clearly disclosing that said entries are subject to invalidation under competitive contest rules and practices which require that all entries be the original creation of the entrant.

2. The sale of said written material is limited to a small number of persons.

## 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 27th day of May, 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.

Complaint

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IN THE MATTER OF

ELMER CANDY COMPANY, INC.

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

*Docket 7678. Complaint, Dec. 3, 1959—Decision, May 27, 1960*

Consent order requiring a New Orleans candy manufacturer to cease discriminating in price in violation of Sec. 2(a) of the Clayton Act by selling its products to some purchasers at higher prices than it sold to their competitors; for example, granting 10% and 20% price discounts to certain drugstores but none to competing drugstores, some of which sold more of its products than those favored.

## COMPLAINT

The Federal Trade Commission, having reason to believe that Elmer Candy Company, Inc., hereinafter referred to as "respondent" and more particularly designated and described, has violated and is now violating the provisions of subsection (a) of Section 2 of the Clayton Act, as amended (U.S.C., Title 15, Section 13), hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Louisiana with its principal office and place of business at 540 Magazine Street, New Orleans, Louisiana.

PAR. 2. Respondent is engaged in the business of manufacturing and selling candy and related products. Respondent's total sales for the fiscal year ending August 31, 1958, were approximately \$2,500,000.00.

PAR. 3. Respondent has for several years last past maintained and operated, and still maintains and operates, a plant in New Orleans, Louisiana, at which are manufactured the aforesaid products.

PAR. 4. These products were, and are, sold by respondent for use, consumption, or resale within the United States, and when so sold respondent either ships or causes said products to be shipped and transported from the State of Louisiana to purchasers thereof located in other states of the United States, including the State of Mississippi. Respondent has maintained for the last several years, and still does maintain, a course of trade in commerce in said products, as "commerce" is defined in the aforesaid Clayton Act, as amended.

PAR. 5. In the course and conduct of its business in such commerce, as aforesaid, respondent has for many years last past, and more particularly since 1958, been discriminating in price between purchasers of its products by selling such products to some of its purchasers at higher prices than it sells such products of like grade and quality to other purchasers. Some of such favored purchasers are engaged competitively with less favored purchasers in the resale of respondent's products.

For example, respondent has granted a 10% price discount to Grant Drug Store and none to Kimbrough & Quint, a competing customer in the Biloxi trade area. In Gulfport, Mississippi, respondent has granted a price discount of 10% to Brumfield Drug Store and none to Hover Drug Store, although the latter purchased slightly more of the respondent's products than the former in 1958, and was a competing customer in the resale of such products. In Jackson, Mississippi, the respondent granted a 20% price discount to the Walgreen Drug Store, and none to the Brent Drug Store, a competing customer in the Jackson trade area. In Meridian, Mississippi, respondent granted a 10% price discount to the Post Office Drug Store and none to the Rayner Drug & Paint Store, although the latter purchased more than twice the volume of the former in 1958 and competed in the resale of respondent's products.

PAR. 6. In the course and conduct of its business in commerce respondent has been, and is, competitively engaged with other corporations, individuals, partnerships and firms in the manufacture, distribution and sale of, and in attempting to sell, its products.

PAR. 7. The effect of the aforesaid discriminations, or any appreciable part thereof, has been or may be to substantially lessen competition, or tend to create a monopoly, in the lines of commerce in which the respondent and its purchasers are engaged, and to injure, destroy or prevent competition, with respondent and with those of its customers who receive the benefit of said discriminations.

PAR. 8. The aforesaid acts and practices of respondent as hereinbefore alleged are in violation of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C., Title 15, Section 13).

*Mr. Franklin A. Snyder* for the Commission.

*Coe, Nowalsky and Lambert*, of New Orleans, La., by *Mr. A. Miles Coe*, for respondent.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondent with price discrimination in violation of the Robinson-Patman Act. An agree-

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ment has now been entered into by respondent and counsel supporting the complaint which provides, among other things, that respondent admits all of the jurisdictional allegations 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 agreement; that the inclusion 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 disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondent specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint.

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 Elmer Candy Company, Inc., is a corporation existing and doing business under the laws of the State of Louisiana, with its office and principal place of business located at 540 Magazine Street, New Orleans, Louisiana.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

## ORDER

*It is ordered.* That respondent Elmer Candy Company, Inc., a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in, or in connection with, the sale of candy and related products of like grade and quality in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from discriminating, directly or indirectly, in the price of such products of like grade and quality by selling to any purchaser at net prices higher than the net prices charged to any other purchaser who, in fact, competes in the resale and distribution of the respondent's products with the purchaser paying the higher price.

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Decision

## 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 27th day of May, 1960, become the decision of the Commission; and, accordingly:

*It is ordered*, That the respondent herein 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.

## IN THE MATTER OF

## THE GRAND UNION COMPANY ET AL.

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

*Docket 7344. Complaint, Dec. 30, 1958—Decision, June 1, 1960*

Consent order requiring two subsidiaries of a large supermarket chain to cease representing falsely that margarine was a dairy product, by listing it with cheese and butter under the headings "Dairy Department" and "Ultra-Fresh Dairy Department," in newspaper advertising.

The complaint was dismissed as to the parent company for lack of proof.

*Mr. Morton Nesmith* for the Commission.

*Mr. Bernard Margolius* and *Mr. Ralph H. Deckelbaum*, of Washington, D.C., for respondents.

## INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated December 30, 1958, amended on December 1, 1959, the respondents are charged with violating the provisions of the Federal Trade Commission Act.

On March 21, 1960, respondents Square Deal Market Co., Inc., a corporation, trading as Food Fair and Supermarket Wholesalers, Inc., a corporation, and their attorneys, entered into an agreement with counsel in support of the complaint for a consent order.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint, as amended. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondents of all rights to challenge or

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contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

The hearing examiner finds that the content of the agreement meets all of the requirements of section 3.25(b) of the Rules of the Commission.

The agreement provides that the complaint, as amended, insofar as concerns respondent The Grand Union Company, should be dismissed for the reason that there is no proof to be adduced to bind said corporation.

The hearing examiner being of the opinion that the agreement and the proposed order provide an appropriate basis for disposition of this proceeding as to all of the parties, the agreement is hereby accepted and it is ordered that the agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Respondent Square Deal Market Co., Inc., trading as Food Fair, is a corporation organized and existing under the laws of the State of Delaware. Respondent Supermarket Wholesalers, Inc., is a corporation organized and existing under the laws of the State of Delaware. The principal office and place of both corporate respondents is located at 2060 West Virginia Avenue, N.E., Washington, D.C.

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 the complaint be and the same is hereby dismissed as to The Grand Union Company, a corporation.

*It is further ordered,* That respondents, Square Deal Market Co., Inc., a corporation, trading as Food Fair, or trading under any other name, and Supermarket Wholesalers, Inc., a corporation, and their officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of oleomargarine or margarine, do forthwith cease and desist from, directly or indirectly:

1. Disseminating, or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any statement, word, grade designation, design, device, symbol, sound, or any combination thereof, which represents or suggests that said product is a dairy product;

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## Complaint

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

## 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 1st day of June, 1960, become the decision of the Commission; and, accordingly:

*It is ordered,* That respondents Square Deal Market Co., Inc., a corporation, trading as Food Fair, and Supermarket Wholesalers, Inc., a 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

## LANSTON INDUSTRIES, INC.

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

*Docket 7699. Complaint, Dec. 21, 1959—Decision, June 1, 1960*

Consent order requiring a Philadelphia manufacturer of typesetting, typesetting, photomechanical, and platemaking equipment for the graphic arts industry, to cease violating Sec. 2(d) of the Clayton Act by paying compensation for services to some of its customers but not to their competitors on proportionally equal terms, such as paying \$6,500 for advertising to a Philadelphia company.

## COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly described, has violated the provisions of subsection (d) of Section 2 of the Clayton Act (U.S.C. Title 15, Section 13), as amended by the Robinson-Patman Act, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its office and principal place of business located at

24th and Locust Streets in the City of Philadelphia, State of Pennsylvania.

PAR. 2. Respondent is now and has been engaged in the manufacture and sale of type-setting, type-casting, photomechanical and platemaking equipment for the graphic arts industry. Graphic arts equipment, manufactured by the respondent, is eventually purchased and used by lithographic letter pressmen, gravure and engraving establishments in the United States, Canada and South America. Total sales for the year 1958 were approximately \$3,000,000. Respondent's platemaking and photomechanical equipment is sold through its franchise distributors, of which there are fourteen, with a total of thirty-five offices throughout the United States. Said distributors are in competition with each other and each sells respondent's products in whatever part of the country it may find buyers. Respondent is a substantial competitive factor in the United States, 90% of its sales being domestic.

PAR. 3. In the course and conduct of its business, respondent has engaged, and is now engaging, in commerce, as "commerce" is defined in the Clayton Act, as amended. Respondent causes its products to be transported to the customers of its distributors in various states throughout the United States and the District of Columbia.

PAR. 4. In the course and conduct of its business in commerce, respondent paid, or contracted for the payment of, something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by said respondent and such payments were not made available on proportionally equal terms to all customers competing in the sale and distribution of respondent's products.

PAR. 5. For example, during the period between July 1, 1958 and June 30, 1959, respondent contracted to pay and did pay to Foster Type and Equipment Company, Inc., Philadelphia, Pennsylvania, \$6,500 as compensation or as an allowance for advertising or other service or facilities furnished by or through Foster Type and Equipment Company, Inc. in connection with its offering for sale or sale of products sold to it by respondent. Such compensation or allowance was not offered or otherwise made available on proportionally equal terms to all other customers competing with Foster Type and Equipment Company, Inc. in the sale and distribution of respondent's products.

PAR. 6. The acts and practices of respondent, as alleged above, violate subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

*Mr. Fredric Suss* for the Commission.

*Mr. William J. vanden Heuvel*, of New York, N.Y., for respondent.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On December 21, 1959, the Federal Trade Commission issued its complaint against the above-named respondent charging it with violating the provisions of subsection (d) of section 2 of the Clayton Act, as amended, in connection with the manufacture and sale of type-setting, type-casting, photomechanical and platemaking equipment for the graphic arts industry. On March 2, 1960, the respondent and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist in accordance with section 3.25(a) of the Rules of Practice and Procedure of the Commission.

Under the foregoing agreement, the respondent admits the jurisdictional facts alleged in the complaint and agrees among other things, that the cease and desist order there set forth may be entered without further notice and shall have the same force and effect as if entered after a full hearing. The agreement includes a waiver by the respondent of all rights to challenge or contest the validity of the order issuing in accordance therewith; and recites that the said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, and that it is for settlement purposes only and does not constitute an admission by the respondent that it has violated the law as alleged in the complaint. The hearing examiner finds that the content of the said agreement meets all the requirements of section 3.25(b) of the Rules of Practice.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent order, and it appearing that said agreement provides for an appropriate disposition of this proceeding, the aforesaid agreement is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with section 3.21 of the Rules of Practice; and in consonance with the terms of said agreement, the hearing examiner makes the following jurisdictional findings and order:

1. Respondent Lanston Industries, Inc. is a corporation existing and doing business under and by virtue of the laws of the State of Virginia, with its office and principal place of business located at 24th and Locust Streets in the City of Philadelphia, State of Pennsylvania.

2. The Federal Trade Commission has jurisdiction of the subject

matter of this proceeding and of the respondent hereinabove named. The complaint states a cause of action against said respondent under subsection (d) of section 2 of the Clayton Act, as amended.

## ORDER

*It is ordered*, That respondent Lanston Industries, Inc., its officers, employees, agents and representatives, directly or through any corporate or other device, in the course of its business in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Making or contracting to make, to or for the benefit of any customer, any payment of anything of value as compensation or in consideration for any advertising or other services or facilities furnished by or through such customer, in connection with the handling, resale or offering for resale of products manufactured, sold, or offered for sale by respondent, unless such payment or consideration is affirmatively offered or otherwise made available on proportionally equal terms to all other customers competing in the resale or distribution of such products.

## 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 1st day of June, 1960, become the decision of the Commission; and, accordingly:

*It is ordered*, That the respondent herein 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.

## IN THE MATTER OF

## SCOTT-MITCHELL HOUSE, INC., ET AL.

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

*Docket 7705. Complaint, Dec. 22, 1959—Decision, June 1, 1960*

Consent order requiring Yonkers, N.Y., distributors of housewares, tools, etc., to cease making such false representations in advertising as that defective, scrapped, manufacturers' reject high speed drills were "BRAND NEW! . . . TOP GRADE!", and advertising usual prices of various merchandise as reduced from "Reg." prices which were excessive and fictitious.

*Mr. Berryman Davis* for the Commission.  
Respondents, *pro se*.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission issued and subsequently served its complaint in this proceeding against the above-named respondents charging them with violation of the Federal Trade Commission Act in connection with the sale and distribution of housewares, novelties and miscellaneous merchandise.

On April 1, 1960 there was submitted to the undersigned hearing examiner an agreement between the respondents and counsel supporting the complaint providing for the entry of a consent order.

Under the foregoing agreement the respondents admit all the jurisdictional allegations in the complaint. The agreement also provides 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 inclusion 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 disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, the respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

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

1. Respondent Scott-Mitchell House, Inc. is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 415 South Broadway, in the City of Yonkers, State of New York. Respondent Abraham Linet is secretary treasurer of the corporate respondent. The address of the individual respondent is the same as that of the corporate respondent.

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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 Scott-Mitchell House, Inc., a corporation, and its officers, and Abraham Linet, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale or distribution of housewares, novelties, tools, instruments, accessories or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "new" or any other word or words of similar import or meaning to describe merchandise previously discarded or rejected as unfit by the manufacturer thereof.

2. Using the words "top grade" or any other word or words of similar import or meaning to describe merchandise previously discarded or rejected as unfit by the manufacturer thereof or to describe merchandise which is not the best product of the manufacturer.

3. Representing in any manner that merchandise discarded or rejected as unfit by the manufacturer thereof is new or of top grade or quality.

4. Offering for sale or selling a manufacturer's reject product without clearly disclosing on the article, or on the container in which such merchandise is packaged when sold this way, and in advertising, invoices, and shipping memoranda, that such merchandise is a manufacturer's reject.

5. Representing, directly or by implication, that the price at which such merchandise is offered for sale constitutes a reduction from the usual and customary price charged for such merchandise by respondents in the recent, regular course of their business in the area or areas where the representation is made.

6. Representing that any savings are afforded in the purchase of merchandise unless the prices at which it is offered constitute a reduction from the prices at which said merchandise is usually and customarily sold by respondents in the normal course of their business.

7. Misrepresenting in any manner the amount of savings available to purchasers of respondents' merchandise, or the amount by which the price of said merchandise is reduced from the price at which it is usually and customarily sold by respondents in the normal course of their business.

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Decision

## 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 1st day of June, 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

## STANDARD BRANDS, INC., ET AL.

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

*Docket 7737. Complaint, Jan. 8, 1960—Decision, June 1, 1960*

Consent order requiring manufacturers of Blue Bonnet oleomargarine and their advertising agency to cease representing falsely in television broadcasts that moisture drops or "Flavor Gems"—actually magnified drops of a non-volatile liquid applied for the demonstration—on Blue Bonnet oleomargarine caused it to taste more like butter than competitive margarines.

*Mr. John W. Brookfield, Jr.*, supporting the complaint.

*Mr. H. Thomas Austern* and *Mr. Henry P. Sailer* of Covington & Burling, of Washington, D.C., and *Mr. James E. Sapp, Jr.*, of New York, N.Y., for Standard Brands, Inc.

*Mr. Joseph A. McManus*, of New York and *Mr. Percy A. Shay*, of Washington, D.C., of *Coudert Brothers*, and *Mr. A. M. Frothingham*, of New York, N.Y., for Ted Bates & Company, Inc.

## INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding alleges that Standard Brands, Inc., a corporation, and Ted Bates & Company, Inc., a corporation, hereinafter referred to as respondents, have violated the Federal Trade Commission Act by using false, misleading and deceptive statements, practices, and pictorial presentations in television commercial broadcasts advertising the product "Blue Bonnet" oleomargarine.

After issuance and service of the complaint, the above-named respondents, their attorneys, and counsel supporting the complaint entered into an agreement for a consent order. The agreement disposes of the matters complained about.

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The pertinent provisions of said agreement are as follows: Respondents admit all jurisdictional facts; the complaint may be used in construing the terms of the order; the order shall have the same force and effect as if entered after a full hearing and the said agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission; the record herein shall consist solely of the complaint and the agreement; respondents waive the requirement that the decision must contain a statement of findings of fact and conclusions of law; respondents waive further procedural steps before the hearing examiner and the Commission, and the order may be altered, modified, or set aside in the manner provided by statute for other orders; respondents waive any right to challenge or contest the validity of the order entered in accordance with the agreement and the signing of said 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.

The undersigned hearing examiner having considered the agreement and proposed order hereby accepts such agreement, makes the following jurisdictional findings, and issues the following order:

#### JURISDICTIONAL FINDINGS

1. Respondent Standard Brands, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 625 Madison Avenue, New York, New York.

2. Respondent Ted Bates & Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 666 Fifth Avenue, New York, New York.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named and the proceeding is in the public interest.

#### ORDER

*It is ordered.* That respondents Standard Brands, Inc., a corporation, and its officers, and Ted Bates & Company, Inc., a corporation, and its officers, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of "Blue Bonnet" oleomargarine or any other oleomargarine, whether offered for sale or sold under the same or any other name, in commerce, as

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"commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using any pictorial presentation or demonstration purporting to prove, or representing in any manner, that moisture drops appearing on said oleomargarine cause such oleomargarine to taste more like butter, or to be more similar in flavor to butter, than competitive oleomargarine.

## 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 1st day of June, 1960, become the decision of the Commission; and, accordingly:

*It is ordered*, That the 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

## HARRY KAUFMAN, INC., ET AL.

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

*Docket 7756. Complaint, Jan. 26, 1960—Decision, June 1, 1960*

Consent order requiring Washington, D.C., retailers to cease violating the Wool Products Labeling Act by failing to label girls' and teenage wool coats as required; and to cease representing falsely in bids submitted to the General Services Administration of the United States Government that said coats were "100% virgin wool."

*Mr. Frederick McManus* supporting the complaint.

*Donohue & Kaufmann*, by *Mr. F. Joseph Donohue*, of Washington, D.C., for respondents.

## INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on January 26, 1960, charging them with having violated the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act, through the misbranding of certain wool products and misrepresenting the fiber content of certain of their products. After being served with said complaint, respondents ap-

peared by counsel and entered into an agreement containing consent order to cease and desist, dated March 29, 1960, purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by all respondents, by counsel for said respondents, and by counsel supporting the complaint, and approved by the Director and Assistant Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint, and have agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that 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 said agreement. It has been agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing and that the complaint may be used in construing the terms of said order. It has also been agreed that the aforesaid 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.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all of the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Respondent Harry Kaufman, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia with its place of business located at 1312 Seventh Street, N.W., Washington, D.C.

Individual respondents Bertram Wise and David Wise are officers of the corporate respondent, being President and Vice President and Treasurer, respectively. Said individual respondents cooperate in formulating, directing and controlling the acts, policies and prac-

tices of the said corporation. Their address and place of business 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 hereinabove named. The complaint states a cause of action against said respondents under the Wool Products Labeling Act of 1939 and the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

*It is ordered,* That the respondents Harry Kaufman, Inc., a corporation, and its officers, and Bertram Wise and David Wise, 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 into commerce, or the offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, of girls' and teenage coats or other wool products, as such products are defined in and subject to said Wool Products Labeling Act, do forthwith cease and desist from misbranding such products by failing to affix labels to such products showing each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

*It is further ordered,* That the respondents, Harry Kaufman, Inc., a corporation, its officers, and Bertram Wise and David Wise, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of girls' and teenage coats, or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the character or amount of the constituent fibers contained in said products in bids, or in any other manner.

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 1st day of June, 1960, become the decision of the Commission; and, accordingly:

*It is ordered,* That the 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  
GONE RECORDING CORP. ET AL.

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

*Docket 7766. Complaint, Jan. 27, 1960—Decision, June 1, 1960*

Consent order requiring New York City manufacturers and distributors of phonograph records to cease giving concealed "payola" to television and radio disc jockeys to induce playing their records in order to increase sales.

*Mr. John T. Walker and Mr. James H. Kelley for the Commission.  
Mr. M. Warren Troob, of New York, N.Y., for respondents.*

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The respondents are, individually and/or jointly, engaged in the manufacture, distribution and sale of phonograph records to independent distributors for resale, and in the offering for sale, sale and distribution of phonograph records as an independent distributor for several record manufacturers, to retail outlets and jukebox operators in various states of the United States. They are charged with violation of the Federal Trade Commission Act, in that, alone or in collaboration with certain record manufacturers or distributors, they have aided and abetted the deception of the public by various disk jockeys by controlling or unduly influencing their "exposure" of records by the use of "payola," i.e., the payment of money or other consideration to such disk jockeys, or to other personnel participating in the selection of the records used on such broadcasts. It is alleged that "payola" is thus used by respondents to mislead the public into believing that the records "exposed" were the independent and unbiased selections of the disk jockeys based either on each record's merit or public popularity. This deception has the capacity and tendency to enhance the popularity of the "exposed" records and to substantially increase their sales.

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

The agreement states that respondents Gone Recording Corp. and End Music, Inc. are corporations organized, existing and doing business under and by virtue of the laws of the State of New York,

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with their office and principal place of business located at 1650 Broadway, New York, New York; individual respondent George Goldner is president of both corporate respondents and is a co-partner in the general partnership trading as Co-Op Distributing Company; individual respondent Jack Waxman is vice-president of corporate respondent Gone Recording Corp., and is a co-partner in the general partnership trading as Co-Op Distributing Company; individual respondent Jerome G. Roth is a co-partner in said general partnership; and the address of all of the above-named individual respondents is the same as that of the corporate respondents.

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

*It is ordered,* That respondents Gone Recording Corp., a corporation, and End Music, Inc., a corporation, and their officers, and George Goldner and Jack Waxman, individually, and as officers of said corporations, and as co-partners, trading as Co-Op Distributing Company, or by any other name, and Jerome G. Roth, individually,

and as co-partner, trading as Co-Op Distributing Company, or by 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 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

The Commission having considered the hearing examiner's initial decision, filed April 7, 1960, accepting an agreement containing a consent order theretofore executed by the respondents and counsel in support of the complaint; and

It appearing that the initial decision contains certain statements which are not based upon the aforesaid agreement and is, to that extent, at variance with such agreement; and

The Commission being of the opinion that this departure from the agreement of the parties should be corrected:

*It is ordered.* That the initial decision be, and it hereby is, amended by substituting for the first paragraph thereof the following:

The Federal Trade Commission issued its complaint against re-

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spondents on January 27, 1960, charging them with having violated the provisions of the Federal Trade Commission Act by unfairly paying money or other valuable consideration to induce the playing of phonograph records over radio and television stations in order to enhance the popularity of such records.

*It is further ordered,* That the initial decision, as so amended, shall, on the 1st day of June, 1960, become 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 contained in the aforesaid initial decision, as amended.

## IN THE MATTER OF

## UNITED TELEFILM RECORDS, INC., ET AL.

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

*Docket 7744. Complaint, Jan. 12, 1960—Decision, June 9, 1960*

Consent order requiring a New York City manufacturer of phonograph records to cease paying concealed "payola" to television and radio disc jockeys as inducement to have its records broadcast frequently in order to increase sales.

*Mr. John T. Walker* and *Mr. James H. Kelley* for the Commission.

*Mr. Martin J. Machat*, of New York, N.Y., for respondents.

## INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents, who are engaged in the manufacture, distribution and sale of phonograph records to independent distributors for resale to retail outlets and jukebox operators in various States of the United States, with violation of the Federal Trade Commission Act, in that respondents, alone or with certain unnamed record 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, 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 United Telefilm Records, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware (erroneously designated in the complaint as 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 701 Seventh Avenue, New York, N.Y.

Respondent Morton Craft is the 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.

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 order agreed upon fully disposes of all the issues raised in the complaint, and adequately prohibits the acts and practices

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charged therein as being in violation of the Federal Trade Commission Act. Accordingly, the hearing examiner finds this proceeding to be in the public interest, and accepts the agreement containing consent order to cease and desist as part of the record upon which this decision is based. Therefore,

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

(1) Giving or offering to give, without requiring public disclosure, any sum of money or other material consideration, to any person, directly or indirectly, to induce that person to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or either of them, have a financial interest of any nature;

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

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 9th day of June, 1960, become the decision of the Commission; and, accordingly:

*It is ordered*, That the above-named 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.

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IN THE MATTER OF  
CHARLES LAMPE ET AL. TRADING AS  
COMMERCIAL MUSIC COMPANY

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

*Docket 7795. Complaint, Feb. 25, 1960—Decision, June 9, 1960*

Consent order requiring a St. Louis, Mo., distributor of phonograph records to cease paying concealed "payola" to television and radio disc jockeys as inducement to have his records broadcast frequently in order to increase sales.

*Mr. John T. Walker and Mr. James H. Kelley* for the Commission.

*Mr. Robert Mass*, of St. Louis, Mo., for respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued February 25, 1960, charges the respondents Charles Lampe, Edward A. Ockel (erroneously referred to in the complaint as Edward A. Ochel), and John Pohl, individually, and as co-partners, trading as Commercial Music Company, with their principal office and place of business located at 2338 Olive Street, St. Louis, Missouri, with violation of the provisions of the Federal Trade Commission Act in the sale and distribution of phonograph records by negotiating for and disbursing "payola" (money and other valuable consideration) to disk jockeys broadcasting musical programs, and causing such fact to be withheld from the public.

After the issuance of the complaint, respondents entered into an agreement containing consent order to cease and desist with counsel in support of the complaint, disposing of all the issues as to all parties in this proceeding.

It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the respondents admitted all the jurisdictional facts alleged in the complaint and agreed that the

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record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with the allegations.

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

Respondents further agreed that the order to cease and desist, issued in accordance with said agreement, shall have the same force and effect as if made after a full hearing.

It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order issued pursuant to said agreement; and that said order may be altered, modified or set aside in the manner prescribed by the statute for orders of the Commission.

The hearing examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provides for an appropriate disposition of this proceeding, the same is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, and, in consonance with the terms of said agreement, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein, that this proceeding is in the interest of the public, and issues the following order:

## ORDER

*It is ordered*, That respondents Charles Lampe, Edward A. Ockel (erroneously designated in the complaint as Edward A. Ochel) and John Pohl, individually and as co-partners trading as Commercial Music 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 rec-

ords 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 9th day of June, 1960, become the decision of the Commission; and, accordingly:

*It is ordered.* That respondents Charles Lampe, Edward A. Ockel (erroneously referred to in the complaint as Edward A. Ochel), and John Pohl, individually, and as co-partners trading as Commercial Music 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.

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IN THE MATTER OF

INTERSTATE SUPPLY CO. ET AL.

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

*Docket 7799. Complaint, Mar. 2, 1960—Decision, June 9, 1960*

Consent order requiring St. Louis, Mo., distributors of phonograph records to cease paying concealed "payola" to television and radio disc jockeys as inducement to have their records broadcast frequently in order to increase sales.

*Mr. John T. Walker and Mr. James H. Kelley* for the Commission.  
*Bryan, Cave, McPheeters & McRoberts*, by *Mr. Gaylord C. Burke*,  
of St. Louis, Mo., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on March 2, 1960, issued its complaint herein, charging the above-named respondents, who are engaged in the offering for sale, sale and distribution of phonograph records to independent distributors for resale to retail outlets and jukebox operators in various states of the United States, with violation of the Federal Trade Commission Act, in that respondents, alone or with certain unnamed record manufacturers, have negotiated for and disbursed "payola," i.e., the payment of money or other valuable consideration to disk jockeys of musical programs on radio and television stations, to induce, stimulate or motivate the disk jockeys to select, broadcast, "expose" and promote certain records, in which respondents are financially interested, on the express or implied understanding that the disk jockeys will conceal, withhold or camouflage the fact of such payment from the listening public. Respondents were duly served with process.

On April 29, 1960, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order To Cease And Desist," which had been entered into by respondents, their counsel, and counsel supporting the complaint, under date of April 21, 1960, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondent Interstate Supply Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 4445 Gustine Avenue, St. Louis, Missouri. Respondents Dale E. Neiswander, James A. Hertzler, and Clarence W. Mangels are president, secretary, and treasurer, respectively, of the corporate respondent, and formulate, direct and control the acts and practices of said corporate respondent. The address of the individual respondents is the same as that of said corporate respondent.

2. 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.

3. This agreement disposes of all of this proceeding as to all parties.

4. Respondents waive:

(a) Any further procedural steps before the hearing examiner and the Commission;

(b) The making of findings of fact or conclusions of law; and

(c) All of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

5. 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.

6. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

7. This 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.

8. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondents. When so entered it shall have the same force and effect as if entered after a full hearing. It may be altered, modified or set aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order To Cease And Desist," the latter is hereby approved, accepted and ordered filed. The hearing examiner finds from the complaint and the said "Agreement Containing Consent Order To Cease And Desist" that the Commission has jurisdiction of the subject-matter of this proceeding and of the respondents herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act against the respondents, both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the just disposition of all of the issues in this proceeding as to all of the parties hereto; and that said order therefore should be, and hereby is, entered as follows:

*It is ordered.* That respondents Interstate Supply Company, a corporation, and its officers, and Dale E. Neiswander, James A. Hertzler and Clarence W. Mangels, 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 9th day of June, 1960, become the decision of the Commission; and, accordingly:

*It is ordered.* That the above-named 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.

## IN THE MATTER OF

RIC RECORDS, INC., ALSO DOING BUSINESS AS  
RIC RECORD CO., ETC.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION ACT

*Docket 7801. Complaint, Mar. 2, 1960—Decision, June 9, 1960*

Consent order requiring New Orleans, La., manufacturers of phonograph records to cease paying concealed "payola" to television and radio disc jockeys as inducement to have their records broadcast frequently in order to increase sales.

*Mr. John T. Walker and Mr. James H. Kelley* for the Commission.  
*Mr. Joseph V. DiRosa*, of New Orleans, La., for respondents.

## INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with violation of the Federal Trade Commission Act in the sale and distribution of phonograph records by negotiating for and disbursing "payola" (money and other valuable consideration) to disk jockeys broadcasting musical programs, and causing such fact to be withheld from the public. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations 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 agreement; that the inclusion 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 disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and 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.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an ade-

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quate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent Ric Records, Inc., is a corporation, also doing business as Ric Record Co., and Ron Record Co., organized, existing and doing business under the laws of the State of Louisiana, with its principal office and place of business located at 630½ Baronne Street, New Orleans, Louisiana. Individual respondent Joseph S. Ruffino is president of the corporate respondent, and formulates, directs and controls the acts and practices of said corporate respondent. The address of said individual respondent is the same as that of said 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.

## ORDER

*It is ordered,* That respondent Ric Records, Inc., a corporation, also doing business as Ric Record Co. and Ron Record Co., and its officers, and respondent Joseph S. Ruffino, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with phonograph records which have been distributed, in commerce, or which are used by radio or television stations in broadcasting programs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Giving or offering to give, without requiring public disclosure, any sum of money or other material consideration, to any person, directly or indirectly, to induce that person to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or either of them, have a financial interest of any nature.

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

There shall be "public disclosure" within the meaning of this order, by any employee of a radio or television broadcasting station, or any other person, who selects or participates in the selection and broadcasting of a record when he shall disclose, or cause to have

disclosed, to the listening public at the time the record is played, that his selection and broadcasting of such record are in consideration for compensation of some nature, directly or indirectly, received by him or his employer.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 9th day of June, 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.

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IN THE MATTER OF

ASTOR RECORDS, INC.

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

*Docket 7802. Complaint, Mar. 2, 1960—Decision, June 9, 1960*

Consent order requiring a Pittsburgh distributor of phonograph records to cease paying concealed "payola" to television and radio disc jockeys as inducement to have its records broadcast frequently in order to increase sales.

*John T. Walker, Esq., and James H. Kelley, Esq.,* for the Commission.

*David M. Kaufman, Esq.,* of Pittsburgh, Pa., for respondent.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission on March 2, 1960, issued its complaint against the above-named respondent, who is engaged in the offering for sale, sale and distribution of phonograph records to independent distributors for resale to retail outlets and jukebox operators in various states of the United States, charging it with violation of the Federal Trade Commission Act, in that respondent, alone or with certain unnamed record distributors, has 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

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respondent is 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.

Respondent appeared and entered into an agreement dated April 8, 1960, containing a consent order to cease and desist, disposing of all the issues in this proceeding without further hearings, which agreement has been duly approved by the Director, Associate Director, and Assistant Director of the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with §3.25 of the Rules of Practice of the Commission.

Respondent, pursuant to the aforesaid agreement, has admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been made duly in accordance with such allegations. Said agreement further provides that respondent waives all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said 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 said agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint, that said order to cease and desist 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, and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order, and it appearing that the order and agreement cover all of the allegations of the complaint and provide for appropriate disposition of this proceeding, the agreement is hereby accepted and ordered filed upon this decision and said agreement becoming part of the Commission's decision pursuant to §§3.21 and 3.25 of the Rules of Practice, and the hearing examiner accordingly makes the following findings, for jurisdictional purposes, and order:

1. Respondent Astor Records, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located

at 1711 Fifth Avenue, in the City of Pittsburgh, State of Pennsylvania.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent hereinabove named. The complaint states a cause of action against said respondent under the Federal Trade Commission Act, and this proceeding is in the interest of the public. Therefore,

*It is ordered*, That respondent Astor Records, Inc., a corporation, and its officers, and respondent's 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 respondent has 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 respondent has 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 9th day of June, 1960, become the decision of the Commission; and, accordingly:

*It is ordered*, That respondent Astor Records, Inc., a corporation, shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing, setting forth in detail

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the manner and form in which it has complied with the order to cease and desist.

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IN THE MATTER OF  
MERCURY RECORD CORPORATION ET AL.

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

*Docket 7846. Complaint, Mar. 28, 1960—Decision, June 9, 1960*

Consent order requiring a Chicago manufacturer of phonograph records and its sales subsidiaries to cease paying concealed "payola" to television and radio disc jockeys as inducement to have their records broadcast frequently in order to increase sales.

*Mr. John T. Walker and Mr. James H. Kelley* supporting the complaint.

*Goldberg & Levin*, of Chicago, Ill., for respondents.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on March 28, 1960, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act, by negotiating for and disbursing "payola" (money and other valuable consideration) to disk jockeys broadcasting musical programs, and causing such fact to be withheld from the public. After being served with said complaint respondents appeared by counsel and entered into an agreement, dated April 26, 1960, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by all respondents, by counsel for said respondents, and by counsel supporting the complaint, and approved by the Director and Assistant Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that 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 such agreement. It has been agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing, and that the complaint may be used in construing the terms of said order. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, and that said 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.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Respondent Mercury Record Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 35 East Wacker Drive, Chicago, Illinois.

Respondent Mercury Record Distributors Inc. of Ohio 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 1737 Chester Avenue, Cleveland, Ohio.

Respondent Mercury Record Sales Corp. 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 549 West 52nd Street, New York, New York.

Respondent Midwest Mercury Record Distributors, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 2021 South Michigan Avenue, Chicago, Illinois.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

## ORDER

*It is ordered,* That respondents Mercury Record Corporation, a corporation, Mercury Record Distributors Inc. of Ohio, a corporation, Mercury Record Sales Corp., a corporation, and Midwest Mercury Record Distributors, Inc., a corporation, and their officers, 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 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 9th day of June, 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

SAMUEL I. VULCAN DOING BUSINESS AS  
BRANTON WATCH COMPANYORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION ACT

*Docket 7617. Complaint, Oct. 19, 1959—Decision, June 11, 1960*

Order requiring a New York City importer of watch movements from Switzerland which he assembled with cases from separate sources, to cease preticketing said watches, and furnishing his customers, with false price tickets representing the retail sales price to be much more than was the fact.

*Mr. Ames W. Williams* supporting the complaint.

Respondent, *pro se*.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

## PRELIMINARY STATEMENT

The complaint issued in these proceedings on October 19, 1959, charges the respondent, Samuel I. Vulcan, an individual, trading and doing business as the Branton Watch Company, with a violation of the Federal Trade Commission Act by preticketing watches which respondent sells in interstate commerce, so as to furnish customers the means and instrumentalities by which the purchasing public may be misled as to the regular and usual retail prices of respondent's watches. A prehearing conference was convened on December 18, 1959, in New York, New York, for the purpose of ascertaining whether the hearings in this matter might not be expedited. Thereafter, hearings were set for New York, New York, and other cities, but as a result of an agreement as to what the testimony in the other cities would be, said hearings, other than those in New York, New York, were cancelled.

The record in this case consists of 58 pages, and Commission's Exhibits 1 through 20-P were offered and received in evidence. The respondent Samuel I. Vulcan, stated to the hearing examiner that he is a licensed attorney. He represented himself. No answer was filed by the respondent.

Testimony in this proceeding was taken on January 25, 1960. At the conclusion of that hearing respondent stated, "It seems to me it would almost be pointless to put in any sort of defense. I

don't know what it can possibly be. We can either close it or sign a consent of some sort, because actually I see no—from what I understand—off the record?" (Tr. p. 57) As a result of that statement, respondent was requested to notify counsel supporting the complaint, and the hearing examiner, if he desired to put in any defense, and February 25, 1960, was set for such additional hearing. On February 16, 1960, respondent wrote a letter to the hearing examiner stating, *inter alia*, "After giving this considerable thought, I have come to the conclusion that any evidence I could present would in the main be in the nature of similar testimony produced by the Federal Trade Commission and in the cross-examination of the witnesses produced in its behalf.

"In view of the foregoing I have decided not to produce any evidence in my behalf and to let the record stand as is. I would like, however, that I be granted a reasonable period, say about 30 days in which to present my findings and conclusions for your decision.

"I assume that the hearing set for February 25th will be cancelled and that you will enter an order to such effect. May I ask that this letter serve as a request on my part for time to submit findings and conclusions."

Thereafter, by order dated February 18, 1960, the examiner cancelled the hearing set for February 25, 1960, and fixed March 18, 1960, as the time for all parties to file with the hearing examiner proposed findings of fact, conclusions of law, and recommended order.

On March 18, 1960, the respondent wrote the hearing examiner, *inter alia*, "I have given this matter considerable thought as a result of the hearing held and the interpretations of the facts and law as applied in my case."

"Accordingly, I have decided to sign the consent order, handed me earlier by Mr. Williams, and enclose it herewith so signed. I understand that this is in order."

Thereafter, on March 21, 1960 the hearing examiner transmitted to counsel supporting the complaint a photostatic copy of respondent's letter of March 18, 1960 and the Agreement for Consent Cease and Desist Order which had been enclosed with that letter. This agreement had been signed by respondent, but had not been signed by counsel supporting the complaint, or approved by the Director, or the Assistant Director of the Bureau of Litigation. On March 25, 1960, counsel supporting the complaint returned the proposed Agreement for Consent Cease and Desist Order to the hearing ex-

aminer, with a memoranda stating, "I am instructed to state that it is the considered opinion of the Bureau of Litigation that the decision set forth in Dockets 6354, 6375 and 6520 is not controlling in the premises and that the requirements of Rule 3.25 of the Rules of Practice and Procedure should be observed.

"Accordingly, there is returned herewith the signed agreement by respondent Vulcan which was forwarded with your above-cited memorandum, without the approval of the Bureau of Litigation."

In view of the fact that the Bureau of Litigation, Federal Trade Commission, has elected not to accept the Agreement Containing Consent Order to Cease and Desist, which was signed by the respondent on March 18, 1960, the hearing examiner is issuing this, his formal initial decision based upon the record, including the exhibits which are received in evidence.

There is not in this proceeding, as in almost every other contested proceeding before this Commission, an "issue" which may be articulated, because the respondent has stated in the record quoted above, "It would almost be pointless to put in any sort of defense." (Tr. p. 57) Respondent's letter of March 18, 1960, expressed the wish that the matter could be disposed as in other proceedings where an agreement containing a consent order to cease and desist has been accepted by all of the parties.

By order dated April 20, 1960, the hearing examiner made respondent's letters of February 16, 1960, and March 18, 1960, a part of the record in this proceeding in lieu of respondent's proposed findings of fact and conclusions of law. In view of the Bureau of Litigation's unwillingness to accept respondent's proffered Agreement for Consent Cease and Desist Order, the hearing examiner in this, his initial decision, makes the findings of fact which he deems to be justified by the record, and enters an order granting the relief requested by counsel supporting the complaint.

Findings requested by counsel which are not specifically adopted and incorporated herein are rejected and refused. The fact that the examiner has not incorporated in this decision nor rejected, nor dismissed specifically, evidence which is in the record should not be construed as indicating that such evidence has not been fully considered by the examiner in preparing this initial decision. It indicates merely that the evidence which the examiner has incorporated in his findings of fact is sufficiently preponderant, reliable, probative and substantial to support the order being entered.

## FINDINGS OF FACT

Counsel supporting the complaint has proven the essential allegations of the complaint by a preponderance of reliable, probative and substantial evidence in the record.

Respondent, Samuel I. Vulcan is an individual trading and doing business as the Branton Watch Company, with its office and principal place of business located at 580 Fifth Avenue, New York, New York. Respondent is now, and since November 1950 has been engaged in the assembly and sale of watches, the movements of which are imported from Switzerland. In the course and conduct of his business, the respondent causes, and since November 1950 has caused his watches, when sold, to be shipped from his place of business in New York to purchasers thereof located in various states of the United States, and respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said watches in commerce, as "commerce" is defined in the Federal Trade Commission Act.

The Federal Trade Commission has jurisdiction of and over the respondent, as well as the subject matter of this proceeding.

In the course and conduct of his business respondent is in competition with firms and individuals likewise engaged in the sale of watches in commerce.

Respondent has testified, and the examiner finds that the respondent imports his watch movements from Switzerland, purchases the watch cases from separate sources, assembles the completed watch in New York, New York, and ships the completed watch, when sold, in interstate commerce throughout the states adjacent to and bordering New York. Respondent's gross sales for the year 1958 were approximately \$78,000. The gross sales for the year 1959 were about the same amount, or possibly a couple of thousand dollars less.

At the time that respondent assembles his watches and packages them for sale, he affixes to them price tags, some of which are in evidence as Commission's Exhibits 2-A through 2-J inclusive, showing varying prices and bearing the name "Branton" on the tag. Prices of \$49.95, \$59.50, \$71.50, \$87.50, \$100, \$112.50, \$125, \$150 and \$200 appear on different watches. These watches are advertised for sale by merchants through the media, among others, of catalogues, such as Commission's Exhibit 3, 4, 5, 19 and 20 in evidence. Page No. 4 of CX 3 is illustrative of the manner in which the preticketing by respondent of his watches operates. On that page, a watch which is preticketed by respondent at a price of \$87.50 is actually

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sold at a dealer's wholesale price of \$15.35. Some other advertised, preticketed, and dealers' prices for respondent's watches are:

Watch model designation	Preticketed price	Dealers' wholesale price
Aqua Maid.....	\$77.50	\$18.00
Golden Maid.....	100.00	22.50
Audrey.....	100.00	17.75
Nanette.....	100.00	18.75
Golden Girl.....	100.00	18.75
Neptune.....	71.50	14.75
Golden Neptune.....	87.50	18.75
Bruce.....	87.50	15.35
Brant-o-Matic.....	100.00	21.00
Harvard.....	100.00	17.80
Gregory.....	150.00	31.00
Lady Laura.....	100.00	18.75
Mr. & Mrs. Harvard.....	150.00	33.00
Lord Inwood.....	100.00	18.75
Diamond Lynn.....	112.50	20.75
Diamond Phyllis.....	150.00	37.50
Diamond Sue.....	137.50	28.50
Diamond Gloria.....	200.00	59.50
Diamond Prince.....	200.00	39.50

The price billed to the Conelle Products Company for the Aqua Maid was \$15.50, for the Gregory was \$22.50, for the Diamond Gloria was \$40.00 and for the Diamond Phyllis \$27.00. This list does not summarize all the price evidence, but is sufficiently representative to demonstrate the tremendous discrepancy between the price which respondent's customers pay respondent for the watches, the price at which the watches are sold, and the false, misleading and deceptive price which respondent places upon the watches by respondent's preticketing practices.

Respondent not only preticketed the watches, but he furnishes glossy prints of the watches for the sales catalogues, together with the descriptive sales matter. On separate sheets respondent makes up a listing for his customer with the name of the watch, the listing, list price, suggested price, and their cost. (Tr. p. 10) At the time of CX 3, a catalogue of Conelle Products, was issued, respondent's watches were sold by respondent's customers on the basis of 20% mark up over cost. (Tr. p. 13)

As an example, a watch preticketed by respondent at \$71.50 (Item No. W332A), actually sold for \$22.50.

Maurice Elk, one of the respondent's customers testified that he did not ever sell respondent's watches at the prices preticketed on them, but as an example, sold for \$18.50 a watch which was preticketed at \$87.50.

Respondent stipulated on page 55 of the record that if Robert Marcus of the H. and H. Distributing Company, 2021 Prospect Avenue, Cleveland, Ohio; Ben Wilkoff, of Ben Wilkoff Company, 100 West Commerce Street, Youngstown, Ohio; Morris Kitman of

the G. and G. Distributing Company, 1208 Forbes Avenue, Pittsburgh, Pennsylvania; Morris B. Marcus of L. and G. Furniture and Appliance Company, 2014 Penn Avenue, Pittsburgh, Pennsylvania; and Edwin R. Krasnow of the Key Distributing Company, 601 Lysle Boulevard, McKeesport, Pennsylvania, were duly sworn and should testify in this proceeding they would testify very similarly to the manner in which Maurice Elk testified: That they sell respondent's watches by catalogue, mail, and street trade; that such watches are preticketed by respondent; and they do not sell such watches for the prices appearing on the price tags and in their catalogues, but for substantially less; that they all buy the watches direct from Branton Watch Company, with the exception of L. and G. Furniture and Appliance Company and Key Distributing Company, who purchase the Branton watches from H. and H. Distributing Company of Cleveland, Ohio. It is further stipulated, that respondent knows, at the time he sells watches to his customers, that they are going to sell them for less than the preticketed prices and knows that his customers' sales prices will represent a substantial discount from the regular price.

Respondent's practice of preticketing his watches in fact represents their sales price to be considerably more than the sale price actually is. This practice has had, and now has, and will have the capacity and tendency to mislead and deceive a substantial portion of the purchasing public concerning the true price and the true value of respondent's watches. Respondent's false, misleading and deceptive preticketing of his watches induces the public to purchase a substantial quantity of the respondent's watches because of such erroneous and mistaken belief as to their true price. As a result thereof, trade in watches has been and is being unfairly diverted to the respondent from his competitors, and substantial injury has been and is being done to such competitors, in commerce.

By preticketing his merchandise, as aforesaid, and by furnishing his customers with false price tickets, respondent supplies the means and instrumentalities by which others may mislead the purchasing public as to the regular and retail prices of respondent's merchandise. Respondent knows at the time he pretickets his watches that they will be sold for substantially less than the price at which preticketed.

The acts and practices of the respondent in preticketing his watches at a price which he knows is not the price for which the watches will sell, but is substantially lower, is to the prejudice and injury of the public, and constitutes unfair and deceptive acts and practices and unfair methods in competition in commerce, within

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the intent and meaning of the Federal Trade Commission Act, and is proscribed thereby.

## CONCLUSIONS OF LAW

1. The Federal Trade Commission has jurisdiction of and over the respondent and the subject matter of this proceeding;

2. The complaint filed herein states a cause of action, and this proceeding is in the public interest.

3. Counsel supporting the complaint has proved by reliable, probative, and substantial evidence that respondent, by preticketing his watches with false price tags before he sells them in interstate commerce, deceives and misleads a substantial portion of the purchasing public, and puts other persons who buy the watches from him in a position where such other persons, may mislead and deceive a substantial portion of the purchasing public, into purchasing such watches. Respondent's practices violate the Federal Trade Commission Act, and the court decisions interpreting said Act.

Inasmuch as respondent's preticketing practices are misleading and deceptive under the provisions of the Federal Trade Commission Act, and are proscribed thereby, therefore,

*It is ordered*, That Samuel I. Vulcan, an individual trading and doing business as the Branton Watch Company, and under any other name or names, and his representatives, agents and employees, directly or through any corporate or other device, in connection with the sale of watches, or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do further cease and desist from:

1. Representing by preticketing, or in any other manner, that any amount is the usual and regular retail price of merchandise at which said merchandise is usually and regularly sold at retail in the trade area or areas where the representations are made; and

2. Furnishing any means or instrumentality to others by and through which such others may mislead the public as to the usual and customary prices of respondent's merchandise.

ORDER MODIFYING INITIAL DECISION, ADOPTING INITIAL DECISION AS MODIFIED AS COMMISSION'S DECISION, AND DIRECTING THAT REPORT OF COMPLIANCE BE FILED

This matter having come on to be heard by the Commission upon its review of the hearing examiner's initial decision herein; and

The Commission being of the opinion that the order to cease and desist contained in the initial decision is not appropriate in all respects to dispose of this matter:

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## Syllabus

*It is ordered*, That the initial decision be, and it hereby is, modified by substituting for the order to cease and desist contained therein the following:

*It is ordered*, That Samuel I. Vulcan, an individual doing business as Branton Watch Company, or under any other name or names, and his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of watches, or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing by preticketing or in any other manner, that any amount is the usual and regular retail price of any product when such amount is in excess of the price at which such product is usually and regularly sold at retail in the trade area or areas where the representation is made; and

2. Furnishing any means or instrumentality to others by and through which they may misrepresent the usual and regular retail price of any of respondent's products.

*It is further ordered*, That the initial decision, as so modified, shall, on the 11th day of June 1960, become the decision of the Commission.

*It is further ordered*, That respondent Samuel I. Vulcan 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.

Commissioner Tait not participating.

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IN THE MATTER OF

## VEE-JAY RECORDS, INC., ET AL.

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

*Docket 7767. Complaint, Jan. 27, 1960—Decision, June 14, 1960*

Consent order requiring Chicago manufacturers of phonograph records to cease paying concealed "payola" to television and radio disc jockeys as inducement to have their records broadcast frequently in order to increase sales.

*Mr. John T. Walker and Mr. James H. Kelley, for the Commission.*

Respondents, *pro se*.

## INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On January 27, 1960, the Federal Trade Commission issued its complaint against the above-named respondents charging them with violating the provisions of the Federal Trade Commission Act in connection with the manufacture, distribution and sale of phonograph records to independent distributors for resale to retail outlets and jukebox operators in various states of the United States.

On April 20, 1960, the respondents and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist in accordance with section 3.25(a) of the Rules of Practice and Procedure of the Commission.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint and agree, among other things, that the cease and desist order there set forth may be entered without further notice and shall have the same force and effect as if entered after a full hearing. The agreement includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith; and recites that the said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, and that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint. The hearing examiner finds that the content of the said agreement meets all the requirements of section 3.25(b) of the Rules of Practice.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent order, and it appearing that said agreement provides for an appropriate disposition of this proceeding, the aforesaid agreement is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with section 3.21 of the Rules of Practice; and in consonance with the terms of said agreement, the hearing examiner makes the following jurisdictional findings and order:

1. Respondent Vee-Jay Records, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 1449 South Michigan Avenue, Chicago, Illinois.

Respondents James Bracken and Ewart G. Abner, Jr., are president and treasurer, and executive vice president, respectively, of the corporate respondent. Said individual respondents formulate, direct and control the acts and practices of said corporate respondent. The

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## Decision

address of the individual respondents is the same as that of said corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

## ORDER

*It is ordered*, That respondent Vee-Jay Records, Inc., a corporation, and its officers, and respondents James Bracken and Ewart G. Abner, Jr., 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 did on the 14th day of June, 1960, become the decision of the Commission; and, accordingly:

*It is ordered*, That the 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.

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IN THE MATTER OF

MIDWEST DISTRIBUTING COMPANY ET AL.

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

*Docket 7794. Complaint, Feb. 25, 1960—Decision, June 14, 1960*

Consent order requiring a St. Louis, Mo., distributor of phonograph records to cease paying concealed "payola" to television and radio disc jockeys as inducement to have its records broadcast frequently in order to increase sales.

*Mr. John T. Walker* and *Mr. James H. Kelley* for the Commission.

*Mr. Robert Mass*, of St. Louis, Mo., for respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued February 25, 1960, charges the respondents Midwest Distributing Company, a Missouri corporation, with its principal office and place of business located at 2642 Olive Street, St. Louis, Missouri; and Paul Levy, individually, and as an officer of said corporation, located at the same address as the corporate respondent, with violation of the provisions of the Federal Trade Commission Act in the sale and distribution of phonograph records by negotiating for and disbursing "payola" (money and other valuable consideration) to disk jockeys broadcasting musical programs, and causing such fact to be withheld from the public.

After the issuance of the complaint, respondents entered into an agreement containing consent order to cease and desist with counsel in support of the complaint, disposing of all the issues as to all parties in this proceeding.

It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the respondents admitted all the jurisdictional facts alleged in the complaint and agreed that the

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## Order

record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with the allegations.

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

Respondents further agreed that the order to cease and desist, issued in accordance with said agreement, shall have the same force and effect as if made after a full hearing.

It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order issued pursuant to said agreement; and that said order may be altered, modified or set aside in the manner prescribed by the statute for orders of the Commission.

The hearing examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provides for an appropriate disposition of this proceeding, the same is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, and, in consonance with the terms of said agreement, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein, that this proceeding is in the interest of the public, and issues the following order:

## ORDER

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

(1) Giving or offering to give, without requiring public disclosure, any sum of money or other material consideration, to any person, directly or indirectly, to induce that person to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or either of them, have a financial interest of any nature.

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

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner did, on the 14th day of June, 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.

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IN THE MATTER OF

ACE RECORD COMPANY, INC., ET AL.

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

*Docket 7808. Complaint, Mar. 7, 1960—Decision, June 14, 1960*

Consent order requiring Jackson, Miss., manufacturers of phonograph records to cease paying concealed "payola" to television and radio disc jockeys as inducement to have their records broadcast frequently in order to increase sales.

*Mr. John T. Walker* and *Mr. James H. Kelley* for the Commission.

Respondents, for themselves.

## INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents, who are engaged in the manufacture, distribution and sale, and/or the offering for sale, sale and distribution of phonograph records in various states of the United States, with violation of the Federal Trade Commission Act, in that respondents, alone or with certain unnamed record manufacturers and/or 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 respondents Ace Record Company, Inc., and Record Sales, Inc. are corporations organized, existing and doing business under and by virtue of the laws of the State of Mississippi, with their office and principal place of business located in the Millsaps Building, Jackson, Mississippi; that respondent John V. Imbraglio is president of both corporate respondents, and Joseph Caronna is treasurer of corporate respondent Record Sales, Inc.; that said individual respondents formulate, direct and control the acts and practices of the corporate respondents of which they are officers; that the address of individual respondent John V. Imbraglio is Millsaps Building, Jackson, Mississippi; and that the address of individual respondent Joseph Caronna is 640 Baronne Street, New Orleans, Louisiana.

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

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

*It is ordered*, That respondents Ace Record Company, Inc., a corporation, and Record Sales, Inc., a corporation, and their officers, and respondents John V. Imbraglio, individually and as an officer of said corporations, and Joseph Caronna, individually, and as an officer of Record Sales, Inc., 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.

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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 did, on the 14th day of June, 1960, become the decision of the Commission; and, accordingly:

*It is ordered*, That the above-named 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.

## IN THE MATTER OF

## ALLSTATE RECORD DISTRIBUTING CO. ET AL.

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

*Docket 7763. Complaint, Jan. 27, 1960—Decision, June 16, 1960*

Consent order requiring a Chicago distributor of phonograph records to cease paying concealed "payola" to television and radio disc jockeys as inducement to have its records broadcast frequently in order to increase sales.

*Mr. John T. Walker and Mr. J. H. Kelley* for the Commission.  
*Moses and Theodore J. Levitan*, of Chicago, Ill., for respondents.

## INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On January 27, 1960, the Federal Trade Commission issued its complaint against the above-named respondents charging them with violating the provisions of the Federal Trade Commission Act in connection with the offering for sale, sale and distribution of phonograph records as independent distributors for several record manufacturers to retail outlets and jukebox operators in various states of the United States.

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On March 31, 1960, the respondents and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist in accordance with section 3.25(a) of the Rules of Practice and Procedure of the Commission.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint and agree among other things, that the cease and desist order there set forth may be entered without further notice and shall have the same force and effect as if entered after a full hearing. The agreement includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith; and recites that the said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, and that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint. The hearing examiner finds that the content of the said agreement meets all the requirements of section 3.25(b) of the Rules of Practice.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent order, and it appearing that said agreement provides for an appropriate disposition of this proceeding, the aforesaid agreement is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with section 3.21 of the Rules of Practice; and in consonance with the terms of said agreement, the hearing examiner makes the following jurisdictional findings and order:

1. Respondent Allstate Record Distributing Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 1450 South Michigan Avenue, Chicago, Illinois, said corporate respondent being also known as All State Record Distributing Company.

Respondents Paul J. Glass and Peggy M. Glass are president and treasurer, and vice president and secretary, respectively, of the corporate respondent, and formulate, direct and control the acts and practices of said corporate respondent. The address of the individual respondents is the same as that of said corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

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## ORDER

*It is ordered*, That respondents Allstate Record Distributing Co., a corporation, and its officers, and Paul J. Glass and Peggy M. Glass, 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 did, on the 16th day of June, 1960, become the decision of the Commission; and, accordingly:

*It is ordered*, That the 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

## BACHMANN BROS., INC., ET AL.

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

*Docket 7789. Complaint, Feb. 24, 1960—Decision, June 16, 1960*

Consent order requiring Philadelphia distributors to cease representing falsely that imported products were made in the United States through such practices as printing "Manufactured by Bachmann Bros., Inc., \* \* \*" on display cards attached to their Japanese-made "Champion" sunglasses, and through failing to mark cases enclosing the sunglasses with the country of origin.

*Mr. Frederick McManus*, supporting the complaint.

*Mr. Charles A. Wolfe*, of *Montgomery, McCracken, Walker & Rhoads*, of Philadelphia, Pa., for respondents.

## INITIAL DECISION OF LEON R. GROSS, HEARING EXAMINER

The complaint in this proceeding, filed and issued on February 24, 1960, alleges that respondents violated the Federal Trade Commission Act by marketing certain products in interstate commerce, including sunglasses, without properly labelling said products to show their country of origin. Specifically, the complaint charges respondents with selling in interstate "commerce," as that term is defined in the Federal Trade Commission Act, sunglasses which are made in Japan, but are so labelled as to give the deceptive impression that said sunglasses are manufactured by respondents in the United States of America. A true copy of said complaint was served upon respondents as required by law. Thereafter respondents appeared by counsel and entered into an agreement dated April 11, 1960, which purports to dispose of all of this controversy as to all respondents, without the necessity of a formal hearing. Said agreement has been executed by or on behalf of all of the respondents, respondents' counsel, and counsel supporting the complaint. The agreement has been approved by the Director, Associate Director, and Assistant Director of the Bureau of Litigation of the Federal Trade Commission. The agreement contains the form of a consent cease and desist order which the parties have represented is dispositive of the issues involved in this controversy. On April 19, 1960, the agreement was submitted to the undersigned hearing examiner for his consideration in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

In and by the agreement respondents admit all the jurisdictional facts alleged in the complaint, and further agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. In the agreement respondents waive: (a) Any further procedural steps before the hearing examiner and the Federal Trade Commission; (b) the making of findings of fact or conclusions of law; and (c) all the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

In the agreement of April 11, 1960, the parties agree: That the record on which the initial decision shall be based shall consist solely of the complaint and the agreement; that the agreement shall not become part of the official record unless and until it becomes a part of the decision of the Commission; that the order to cease and desist entered pursuant to said agreement shall have the same force and effect as if entered after a full hearing; that said order may be altered, modified or set aside in the manner provided for other orders; and that the complaint filed herein may be used in construing the terms of such order to cease and desist. 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.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all of the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed at the time that this decision becomes the decision of the Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

The hearing examiner accordingly, makes the following jurisdictional findings and enters the following cease and desist order:

#### JURISDICTIONAL FINDINGS

1. Respondent Bachmann Bros., Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 1400-38 East Erie Avenue, Philadelphia, Pennsylvania.

Respondents J. Chester Crowther, Walter F. Newby, Albert H. Redles, and Bayard H. Crowther are officers of the corporate re-

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spondent. They formulate, direct and control the acts and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and over the respondents hereinabove named.

3. The complaint filed herein states a good cause of action against the respondents under the Federal Trade Commission Act, and this proceeding is in the public interest.

4. Respondents are engaged in commerce as "commerce" is defined in the Federal Trade Commission Act.

## ORDER

*It is ordered*, That the respondents Bachmann Bros. Inc., a corporation, and its officers, and J. Chester Crowther, Walter F. Newby, Albert H. Redles and Bayard H. Crowther, individually and as officers of said corporation, and respondents' officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of sunglasses or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that a product manufactured in a foreign country is manufactured in the United States.

2. Representing, directly or by implication, that respondents, or any of them, manufacture a product, when it is manufactured by others.

3. Offering for sale or selling any product which is in whole or substantial part of foreign origin, without clearly and conspicuously disclosing on such product, and if such product is enclosed in a package or container, on the package or container, or if displayed on cards, upon such cards, in a manner that it will not be hidden or readily obliterated, the country of origin thereof.

## 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 16th day of June, 1960, become the decision of the Commission; and, accordingly:

*It is ordered*, That the 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.

Decision

IN THE MATTER OF  
ROBERTS RECORD DISTRIBUTING COMPANY, INC.,  
ET AL.

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

*Docket 7800. Complaint, Mar. 2, 1960—Decision, June 16, 1960*

Consent order requiring a St. Louis, Mo., distributor of phonograph records to cease paying concealed "payola" to television and radio disc jockeys as inducement to have its records broadcast frequently in order to increase sales.

*Mr. John T. Walker and Mr. James H. Kelley for the Commission. Rassieur, Long & Yawitz, by Mr. Milton Yawitz, of St. Louis, Mo., for respondents.*

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on March 2, 1960, issued its complaint herein, charging the above-named respondents, who are engaged in the offering for sale, sale and distribution of phonograph records as an independent distributor for several record manufacturers to retail outlets and jukebox operators in various states of the United States, with violation of the Federal Trade Commission Act, in that respondents, alone or with certain unnamed record manufacturers, have negotiated for and disbursed "payola," i.e., the payment of money or other valuable consideration to disk jockeys of musical programs on radio and television stations, to induce, stimulate or motivate the disk jockeys to select, broadcast, "expose" and promote certain records, in which respondents are financially interested, on the express or implied understanding that the disk jockeys will conceal, withhold or camouflage the fact of such payment from the listening public. Respondents were duly served with process.

On May 9, 1960, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order To Cease And Desist," which had been entered into by respondents, their counsel and counsel supporting the complaint, under date of May 2, 1960, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with §3.25 of the Commission's Rules of Practice for Adjudicative

Proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondent Roberts Record Distributing Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 1906 Washington Avenue, in the City of St. Louis, State of Missouri. Respondents Robert L. Hausfater and Sam Rosenblatt are president and vice-president, respectively, of the corporate respondent, and formulate, direct and control the acts and practices of said corporate respondent. The address of the individual respondents is the same as that of said corporate respondent.

2. 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.

3. This agreement disposes of all of this proceeding as to all parties.

4. Respondents waive:

(a) Any further procedural steps before the hearing examiner and the Commission;

(b) The making of findings of fact or conclusions of law; and

(c) All of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

5. 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.

6. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

7. This 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.

8. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondents. When so entered it shall have the same force and effect as if entered after a full hearing. It may be altered, modified or set aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order To Cease And Desist," the latter is hereby approved, accepted and ordered filed. The hearing examiner finds from the complaint and the said "Agreement Containing Consent Order To Cease And Desist" that the Commission

has jurisdiction of the subject-matter of this proceeding and of the respondents herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act against the respondents, both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the just disposition of all of the issues in this proceeding as to all of the parties hereto; and that said order therefore should be, and hereby is, entered as follows:

*It is ordered.* That respondents Roberts Record Distributing Company, Inc., a corporation, and its officers, and Robert L. Hausfater and Sam Rosenblatt, 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 did, on the 16th day

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

*It is ordered*, That the above-named 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.

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IN THE MATTER OF

HERBERT LEIVENT ET AL. TRADING AS  
STUYVESANT SPORTSWEAR CO.

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

*Docket 7608. Complaint, Oct. 13, 1959—Decision, June 21, 1960*

Consent order requiring Brooklyn, N.Y., manufacturers to cease violating the Wool Products Labeling Act by such practices as labeling girls' coats falsely as "ALL WOOL," and by failing to set forth separately on labels, etc., the fiber content of interlinings.

*Mr. Charles Donelan* for the Commission.

*Mr. Benedict Ginsberg*, of New York, N.Y., for respondents.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On October 13, 1959 the Federal Trade Commission issued its complaint against the above-named respondents charging them with violating the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act and the Rules and Regulations promulgated under said Wool Products Labeling Act in connection with the manufacturing for introduction into commerce, introducing into commerce, selling, transporting, distributing, delivering for shipment, and offering for sale of wool products. On December 14, 1959, the respondents and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist in accordance with section 3.25(a) of the Rules of Practice and Procedure of the Commission.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint and agree, among other things, that the cease and desist order there set forth may be entered without further notice and shall have the same force and effect as if entered after a full hearing. The agreement includes a waiver by the respondents of all rights to challenge or contest

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the validity of the order issuing in accordance therewith; and recites that the said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, and that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint. The hearing examiner finds that the content of the said agreement meets all the requirements of section 3.25(b) of the Rules of Practice.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent order, and it appearing that said agreement provides for an appropriate disposition of this proceeding, the aforesaid agreement is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with section 3.21 of the Rules of Practice; and in consonance with the terms of said agreement, the hearing examiner makes the following jurisdictional findings and order:

1. Respondents, Herbert Leivent and Abraham Leivent are individuals and co-partners trading as Stuyvesant Sportswear Co., with offices and principal place of business located at 525 Franklin Avenue, Brooklyn, New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

## ORDER

*It is ordered,* That respondents, Herbert Leivent and Abraham Leivent, individually and as co-partners trading as Stuyvesant Sportswear Co., or under any other name, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of girls' coats or other wool products, as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding their products by:

1. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as to character or amount of the constituent fibers included therein.

2. Failing to securely affix or place on each such product a stamp,

tag, label or other means of identification showing in a clear and conspicuous manner:

(a) The percentage of the total fiber weight of such wool products, exclusive of ornamentation not exceeding five percentum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is five percentum or more, and (5) the aggregate of all other fibers:

(b) The maximum percentage of the total weight of such wool products of any non-fibrous loading, filling, or adulterating matter.

3. Failing to separately set forth on the required stamp, tag, label or other mark of identification the character and amount of constituent fibers contained in the interlinings of the said wool products in violation of Rule 24 of the aforesaid Rules and Regulations.

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 21st day of June, 1960, become the decision of the Commission; and, accordingly:

*It is ordered*, That the respondents herein shall, with 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.

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IN THE MATTER OF

LOU FARGO TRADING AS FARGO RECORDS

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

*Docket 7784. Complaint, Feb. 24, 1960—Decision, June 22, 1960*

Consent order requiring New York City manufacturers of phonograph records, to cease paying concealed "payola" to television and radio disc jockeys to have their records broadcast day after day in order to increase sales.

*Mr. John T. Walker and Mr. James H. Kelley* for the Commission.  
*Mr. Manfred Ohrenstein*, of New York, N.Y., for respondent.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondent, who is engaged in the manufacture, distribution and sale of phonograph records to independent

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distributors for resale to retail outlets and jukebox operators in various states of the United States, with violation of the Federal Trade Commission Act, in that respondent, alone or with certain unnamed record manufacturers, has 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 respondent is 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 issuance of the complaint, respondent, his 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 Lou Fargo is an individual trading as Fargo Records, with office and principal place of business located at 50 West 57th Street, New York, New York.

The agreement provides, among other things, that 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; 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 the agreement is for settlement purposes only and does not construing the terms of the order agreed upon, which may be altered, modified or set aside in the manner provided for other orders; that decision of the Commission; that the complaint may be used in constitute an admission by respondent that he has 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.

Respondent waives 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 he may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The order agreed upon fully disposes of all the issues raised in the complaint, and adequately prohibits the acts and practices

charged therein as being in violation of the Federal Trade Commission Act. Accordingly, the hearing examiner finds this proceeding to be in the public interest, and accepts the agreement containing consent order to cease and desist as part of the record upon which this decision is based. Therefore,

*It is ordered*, That respondent Lou Fargo, an individual, trading as Fargo Records, or under any other name or names, and respondent's 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 respondent has 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 respondent has 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 did, on the 22nd day of June, 1960, become the decision of the Commission; and, accordingly:

*It is ordered*, That respondent Lou Fargo, an individual, trading as Fargo Records, 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.

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IN THE MATTER OF  
KING RECORDS, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION ACT

*Docket 7792. Complaint, Feb. 25, 1960—Decision, June 22, 1960*

Consent order requiring Cincinnati, Ohio, manufacturers of phonograph records to cease paying concealed "payola" to television and radio disc jockeys to have their records broadcast day after day in order to increase sales.

*Mr. John T. Walker and Mr. James H. Kelley for the Commission.  
Mr. Jack Pearl of New York, N.Y., for respondents.*

## INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

The complaint in this matter charges the respondents with violations of the provisions of the Federal Trade Commission Act by the payment of money or other valuable consideration to induce the playing of certain phonograph records over radio and television stations in order to enhance the popularity of such records.

On June 1, 1960 there was submitted to the undersigned hearing examiner an agreement between the above-named respondents, their counsel and counsel supporting the complaint providing for the entry of a consent order.

Under the foregoing agreement, the respondents admit all the jurisdictional facts alleged in the complaint. The agreement provides that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion 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 disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, the respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

The hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an ade-

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quate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent King Records, Inc. 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 1540 Brewster Avenue, in the City of Cincinnati, State of Ohio.

Respondent Sydney Nathan (erroneously designated in the complaint as Sidney Nathan) is president and treasurer of the corporate respondent, and respondent John S. Kelley, Jr. is vice president and secretary of the corporate respondent. Said individual respondents formulate, direct and control the acts and practices of the corporate respondent. The address of the individual respondents is the same as that of said 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.

## ORDER

*It is ordered*, That respondents, King Records, Inc., a corporation, and its officers, and Sydney Nathan (erroneously designated in the complaint as Sidney Nathan), and John S. Kelley, Jr., 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 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.

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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 did, on the 22nd day of June, 1960, become the decision of the Commission; and, accordingly:

*It is ordered*, That respondents King Records, Inc., a corporation, and Sydney Nathan (erroneously designated in the complaint as Sidney Nathan) and John S. Kelley, Jr., 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

HAROLD BLUMBERG ET AL. TRADING AS  
PRINCESS ROYAL KNITTING MILLS

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

*Docket 7814. Complaint, Mar. 10, 1960—Decision, June 22, 1960*

Consent order requiring hosiery manufacturers in Reading, Pa., to cease pre-ticketing their products with tags bearing fictitiously high prices, represented thereby as the usual retail prices.

*Mr. DeWitt T. Puckett* for the Commission.

*Yaffe and Blumberg*, of Reading, Pa., by *Mr. Harold Blumberg*, for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with violation of the Federal Trade Commission Act through the use of fictitious prices in connection with hosiery sold by them. An agree-

ment has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations 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 agreement; that the inclusion 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 disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and 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.

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. Respondents Harold Blumberg, Trustee of the Estate of A. Blumberg, David Blumberg, Evelyn Blumberg and Murray Lappen are individuals and co-partners trading as Princess Royal Knitting Mills, with their principal office and place of business located at 512 North 12th Street, Reading, Pennsylvania.

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, Harold Blumberg, as Trustee of the Estate of A. Blumberg, David Blumberg, Evelyn Blumberg and Murray Lappen, individually and as co-partners, trading as Princess Royal Knitting Mills, or under any other name or names, and their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of hosiery or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing by preticketing, or in any other manner, that

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a certain amount is the customary or usual retail price of merchandise when said amount is in excess of the price at which said merchandise is customarily and usually sold at retail in the trade area or areas where the representation is made.

2. Furnishing any means or instrumentality to others by and through which they may mislead the public as to the customary or usual retail price of respondents' merchandise.

## 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 22nd day of June, 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.

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 IN THE MATTER OF

## SOUTHERN RECORD DISTRIBUTORS, INC., ET AL.

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

*Docket 7828. Complaint, Mar. 18, 1960—Decision, June 22, 1960*

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

*Mr. John T. Walker and Mr. James H. Kelley* for the Commission.  
*Mr. Jordan Stokes III*, of Nashville, Tenn., for respondents.

## INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents, who are engaged in the offering for sale, sale and distribution of phonograph records as an independent distributor for several record manufacturers to retail outlets and jukebox operators in various states of the United States, with violation of the Federal Trade Commission Act, in that respondents, alone or with certain unnamed record manufacturers, have negotiated for and disbursed "payola," i.e., the payment of money or other valuable consideration to disk jockeys of musical

programs on radio and television stations, to induce, stimulate or motivate the disk jockeys to select, broadcast, "expose" and promote certain records, in which respondents are financially interested, on the express or implied understanding that the disk jockeys will conceal, withhold or camouflage the fact of such payment from the listening public.

After the issuance of the complaint, respondents, their counsel, and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the Director, 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 Southern Record Distributors, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal office and place of business located at 147 Lafayette Street, P.O. Box 368, Nashville, Tennessee, and that individual respondent John Richbourg, who signed the agreement as John D. Richbourg, is President of said corporate respondent and formulates, directs and controls the acts and practices of said 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 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 order agreed upon fully disposes of all the issues raised in

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

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

(1) Giving or offering to give, without requiring public disclosure, any sum of money or other material consideration, to any person, directly or indirectly, to induce that person to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or either of them, have a financial interest of any nature;

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

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

## DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner did, on the 22nd day of June, 1960, become the decision of the Commission; and, accordingly:

*It is ordered,* That respondents Southern Record Distributors, Inc., a corporation, and John D. Richbourg, named in the complaint as John Richbourg, individually, and as an officer of such 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.

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IN THE MATTER OF

IDEAL RECORD PRODUCTS, INC., ET AL.

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

*Docket 7768. Complaint, Jan. 27, 1960—Decision, June 23, 1960*

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

*Mr. John T. Walker and Mr. James H. Kelley for the Commission. Newman, Hauser & Teitler, by Mr. Samuel L. Teitler, of New York, N.Y., for respondents.*

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

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

After the issuance of the complaint, respondents, their counsel, and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved

by the Director, 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 Ideal Record Products, 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 549 West 52nd Street, New York, New York; that respondent Ideal Record Products of New Jersey, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 357 Lyons Avenue, Newark, New Jersey; and that individual respondents Alfred Levine and Samuel Keenholtz are, respectively, president and treasurer, and vice president and secretary of each of the corporate respondents, and formulate, direct and control the acts and practices of said corporate respondents, the address of the individual respondents being 549 West 52nd Street, New York, New York.

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 order agreed upon fully disposes of all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein as being in violation of the Federal Trade Commission Act. Accordingly, the hearing examiner finds this proceed-

ing to be in the public interest, and accepts the agreement containing consent order to cease and desist as part of the record upon which this decision is based. Therefore,

*It is ordered*, That respondents Ideal Record Products, Inc., a corporation, and Ideal Record Products of New Jersey, Inc., a corporation, and their officers, and respondents Alfred Levine and Samuel Keenholtz, individually and as officers of said corporations, 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 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 did, on the 23rd day of June, 1960, become the decision of the Commission; and, accordingly:

*It is ordered*, That the above-named 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

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and form in which they have complied with the order to cease and desist.

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IN THE MATTER OF  
W.S.F., INC., ET AL.

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

*Docket 7827. Complaint, Mar. 17, 1960—Decision, June 23, 1960*

Consent order requiring New York City manufacturers of phonograph records to cease paying concealed "payola" to television and radio disc jockeys to have their records broadcast day after day in order to increase sales.

*Mr. John T. Walker* and *Mr. James H. Kelley* for the Commission.  
Respondents, for themselves.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents, who are 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, 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 W.S.F., 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 1674 Broadway, New York, New York; that individual respondents Jack Waltzer and Monte Freed are, respectively, president and vice president-treasurer of the corporate

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

*It is ordered*, That respondent W.S.F., Inc., a corporation, and its officers, and respondents Jack Waltzer and Monte Freed, 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

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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 did, on the 23rd day of June, 1960, become the decision of the Commission; and, accordingly:

*It is ordered*, That Respondents W.S.F., Inc., a corporation, and Jack Waltzer and Monte Freed, 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

## LIFE INSURANCE COMPANY OF AMERICA ET AL.

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

*Docket 6247. Complaint, Oct. 14, 1954—Order, June 24, 1960*

Order dismissing—following dissolution of respondent and reinsurance of its business by a company respondent in another case pending before the Commission—complaint charging a Wilmington, Del., life insurance com-

pany with misrepresenting the benefits of its accident and health insurance policies.

*Before Mr. Loren H. Laughlin*, hearing examiner.

*Mr. J. W. Brookfield, Jr.* for the Commission.

*Layne & Ephraim*, of Washington, D.C., for respondents.

#### ORDER DISMISSING COMPLAINT

This matter having come before the Commission upon appeal by respondents from the hearing examiner's initial decision and upon motion filed by respondents' counsel for discontinuance of the proceeding by reason of the dissolution of respondent corporation and answer thereto wherein counsel supporting the complaint does not oppose said motion; and

It appearing from the certified copy of the certificate of dissolution submitted with, and as a part of, the motion that respondent Life Insurance Corporation of America was dissolved by action of the Secretary of State, State of Delaware, taken on December 17, 1959; and

It further appearing from the motion that the business of respondent corporation was reinsured by Guarantee Reserve Life Insurance Company of Hammond, Indiana, on September 16, 1959, said company being respondent in Docket No. 6243 now pending before the Commission; and

The Commission having duly considered the motion of respondents' counsel, answer thereto, and the record herein, and being of the opinion that the motion should be granted:

*It is ordered*, That the complaint herein be, and it hereby is, dismissed.

Commissioners Kern and Tait not participating.

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#### IN THE MATTER OF

#### ARNOLD CONSTABLE CORPORATION

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

*Docket 7106. Complaint, Apr. 3, 1958—Decision, June 24, 1960*

Order requiring a New York City department store to cease violating the Fur Products Labeling Act by failing to set forth on invoices the country of origin of imported furs and failing in other respects to comply with invoicing provisions.

Charges of misbranding and false advertising were dismissed.

Before *Mr. Robert L. Piper*, hearing examiner.

*Mr. Charles W. O'Connell* and *Mr. Henry D. Stringer* for the Commission.

*Schreiber, Klein & Opton*, of New York City, for respondent.

#### FINDINGS AS TO THE FACTS, CONCLUSIONS AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, the Federal Trade Commission on April 3, 1958, issued and subsequently served upon the respondent, Arnold Constable Corporation, a corporation, its complaint, charging said respondent with misbranding and the false and deceptive invoicing and advertising of fur products in commerce in violation of the aforementioned Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act.

On October 16, 1958, the charges contained in paragraphs 7, 8, and 9 of the complaint as to false and deceptive advertising were dismissed by order of the Commission. Thereafter, at the conclusion of the case-in-chief, the hearing examiner granted respondent's motion to dismiss paragraphs 3 and 4 of the complaint dealing with misbranding. The Commission, on interlocutory appeal, vacated the examiner's order and remanded the matter for the taking of additional evidence on respondent's method of operation. Further hearings were held and on June 3, 1959, the hearing examiner filed an initial decision holding that the charges as to misbranding and false invoicing were sustained. Respondent was thereby ordered to cease and desist the practices found to be unlawful.

The Commission having considered the respondent's appeal from the aforementioned initial decision of the hearing examiner and the entire record in this proceeding and having rendered its decision granting the appeal and vacating and setting aside the initial decision, now makes this its findings as to the facts, conclusions drawn therefrom, and order, the same to be in lieu of those contained in said initial decision.

#### FINDINGS AS TO THE FACTS

1. Respondent, Arnold Constable Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business at Fifth Avenue and 40th Street, New York, New York. It does business under the name of Arnold Constable.

2. The respondent, since August 9, 1952, the effective date of the Fur Products Labeling Act, has engaged in the introduction into

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commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products, and has sold, advertised, offered for sale, transported, and distributed 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 products" are defined in the Fur Products Labeling Act.

3. Certain of the aforementioned fur products were falsely and deceptively invoiced in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations thereunder. The record establishes that there has been a failure to set forth on invoices the country of origin of imported furs and that required information has been abbreviated in violation of Rule 4. Examples of such invoicing defects are as follows:

(a) Commission Exhibit 68, demonstrating the failure to disclose the Canadian origin of the fur as shown by a supplier document, identified as Commission Exhibit 133 and testimony on the subject.

(b) Commission Exhibits 64 and 65, demonstrating the failure to disclose the origin of the furs as South West Africa as shown by the supplier documents, identified as Commission Exhibits 128 and 129, respectively.

(c) Commission Exhibits 62, 63, 66, 67 and 68, variously demonstrate abbreviations of required information in violation of Rule 4 in the use of "nat" for natural, "S W Africa" for South West Africa and "Can" for Canada.

4. In reference to the fur products found to be falsely and deceptively invoiced in violation of Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations thereunder, the record discloses evidence such as copies of manufacturers' documents showing that fur from which the garments therein mentioned were made originated in countries outside of the United States, namely, Canada and South West Africa; respondent's sales tickets or invoices showing that the garments described thereon were shipped or sent to persons located outside of the State of New York; and testimony that the term "Nat Can Wild Mink Coat" on a manufacturer's invoice indicates that the fur in the garment so described is Canadian fur.

5. There is no reliable, probative evidence to support the charge in the complaint of misbranding in violation of Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations thereunder.

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## Opinion

## CONCLUSIONS

The aforesaid acts and practices of the respondent relating to false and deceptive invoicing have been in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and, as specified under the provisions of the aforementioned Act, constitute unfair and deceptive acts and practices in commerce within the meaning of the Federal Trade Commission Act.

## ORDER

*It is ordered*, That Arnold Constable Corporation, a corporation, doing business as Arnold Constable, or trading under any other name or names, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale, transportation or distribution in commerce, of any fur product, or in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product which has been made in whole or in part of fur which has been shipped or received in commerce, as "commerce," "fur," and "fur products" are defined in the Fur Products Labeling Act, do forthwith cease and desist from falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices to purchases of fur products showing all of the information required to be disclosed by each of the subsections of Section 5(b) (1) of the Fur Products Labeling Act.
2. Setting forth on the invoices required information in abbreviated form.

*It is further ordered*, That the respondent 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 not participating.

## OPINION OF THE COMMISSION

By ANDERSON, *Commissioner*:

The respondent, Arnold Constable Corporation, was charged by the complaint with misbranding and with false and deceptive invoicing and advertising of fur products in violation of the Fur Products Labeling Act and the Rules and Regulations thereunder and the Federal Trade Commission Act. The charges as to false

and deceptive advertising were dismissed October 16, 1958, by order of the Commission.

The hearing examiner filed his initial decision on June 3, 1959, holding that the charges as to misbranding and false invoicing were sustained and ordering respondent to cease and desist the practices found to be unlawful. Respondent has appealed from this initial decision so far as it relates to misbranding practices asserting as grounds that there is no proof of the offering for sale by the respondent of a misbranded garment; that respondent had relied in good faith on continuing guaranties filed by its suppliers; that there is no competent and reliable evidence as to the text of the challenged labels; and that the examiner had improperly permitted an alleged relitigation of the issues.

#### The Issue as to Continuing Guaranties

The hearing examiner, relying in part on our disposition of a similar issue in *The Fair*, Docket No. 6822 (March 4, 1959), denied respondent's defense that the labels alleged to be defective were furnished by its suppliers who had filed continuing guaranties as provided in Section 10(a) of the Fur Products Labeling Act.<sup>1</sup> In *The Fair*, *supra*, we held that under Rule 34(a) of the Fur Rules and Regulations, the respondent therein was legally obligated to examine the suppliers' labels on fur products which it purchased, advertised and sold and to correct any erroneous labels.<sup>2</sup> We ruled that the defects in the labels clearly could have been discovered with the use of ordinary diligence and that the respondent therein obviously should have been aware of them. We rejected the contention that it had relied "in good faith" on the suppliers' guaranties.

The Court of Appeals for the Seventh Circuit in *The Fair v. Federal Trade Commission*, 272 F. 2d 609 (1959), overruled the Commission on this point, holding that Rule 34(a) merely permits

<sup>1</sup> Section 10(a) reads as follows:

"No person shall be guilty under section 3 if he establishes a guaranty received in good faith signed by and containing the name and address of the person residing in the United States by whom the fur product or fur guaranteed was manufactured or from whom it was received, that said fur product is not misbranded or that said fur product or fur is not falsely advertised or invoiced under the provisions of this Act. Such guaranty shall be either (1) a separate guaranty specifically designating the fur product or fur guaranteed, in which case it may be on the invoice or other paper relating to such fur product or fur; or (2) a continuing guaranty filed with the Commission applicable to any fur product or fur handled by a guarantor, in such form as the Commission by rules and regulations may prescribe."

<sup>2</sup> Rule 34(a) reads:

"If a person subject to Section 3 of the Act with respect to a fur product finds or has reasonable cause to believe the label affixed thereto is incorrect or does not contain all the information required by the Act and the Rules and Regulations, he shall correct such label or replace same with a substitute containing the required information."

the retailer to correct errors and does not impose the obligation to examine for and to correct errors under the burden of forfeiture of its rights under Section 10(a) for failure to discover all which may exist.

The hearing examiner, in considering respondent's contentions under Section 10(a) during the hearings, made it clear that he would take official notice of continuing guaranties filed with the Commission by respondent's suppliers, providing they were in existence. While he made no such ruling, he did refer in his initial decision to a concession by counsel in support of the complaint that most of respondent's suppliers had filed continuing guaranties in conformity with Section 10, although two had not done so. Counsel in support of the complaint, in his answering brief, asserts that the record shows that respondent offered misbranded fur products for sale in two instances where no guaranty at all had been established. These were identified as fur garments from Lou Linder (Commission Exhibit 72) and M. Gelto and Sons (Commission Exhibit 97). There is a fair inference from all the circumstances that continuing guaranties existed in the period involved in all except the two above-mentioned instances. Respondent, however, must do more than to merely establish the existence of such guaranties. It must also show that they were received in good faith.

In this proceeding, there is evidence that respondent sought to deal only with suppliers who would file a guaranty in accordance with the provisions of Section 10(a). Respondent has also shown that it had assurances from its various suppliers that they had filed continuing guaranties with the Federal Trade Commission. In the circumstances, we are satisfied that respondent has established as to all except two defective labels that guaranties were received in good faith in conformity with Section 10(a) of the Fur Act.

#### The Question of Commerce

The two alleged misbranding violations which cannot be disposed of on the basis of continuing guaranties involve, as indicated above, Commission Exhibits 72 and 97. Also, in these instances, there is no showing that separate guaranties were received from the suppliers. Nevertheless, the charge of misbranding has not been sustained. As to the fur products involved, there is no evidence, nor did the hearing examiner find, that such were introduced, or manufactured for introduction, into commerce, or sold, advertised or offered for sale in commerce or transported or distributed in commerce. Furthermore, there is no evidence or finding that the misbranding involved the manufacture for sale, sale, advertising, offer-

ing for sale, transportation or distribution of a fur product which was made in whole or in part of fur which had been shipped and received in commerce. Accordingly, the allegations as to misbranding in the two instances mentioned above must likewise be dismissed. It is not enough that respondent in its answer admitted the general allegations as to commerce contained in Paragraph Two of the complaint. This alone will not justify findings that the particular acts of alleged misbranding were a part of such commerce.

#### Charges as to False Invoicing

Respondent has not appealed from the holding in the initial decision regarding the false and deceptive invoicing charge. We observe, however, that there is no finding in the initial decision that the particular instances of alleged false invoicing involve commerce as defined in the Fur Act, although the record discloses that this is so. There is evidence of the sale and distribution of falsely invoiced fur products in commerce. For instance, several exhibits indicate out-of-state sales transactions in which the fur products were sent to customers located in New Jersey. There is also evidence that some of the falsely invoiced fur products were made from fur which had been shipped and received in commerce, such as testimony and suppliers' invoices showing the foreign origin of the furs from which certain of the fur products were made. The initial decision will be modified accordingly.

Our disposition of the part of the case as to misbranding, from which the appeal was taken, renders it unnecessary to consider the other arguments of the respondent.

Respondent's appeal is granted, and it is ordered that the charges as to misbranding be dismissed. The initial decision is vacated and set aside, and our findings, conclusions and order to cease and desist are issuing in lieu thereof.

Commissioner Tait did not participate in the decision of this matter.

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#### IN THE MATTER OF

#### INTERNATIONAL PARTS CORPORATION ET AL.

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

*Docket 7772. Complaint, Feb. 4, 1960—Decision, June 25, 1960*

Consent order requiring a Chicago distributor to cease representing falsely by radio and television, magazine and other advertising script furnished its

retail dealers, that their automobile mufflers were unconditionally guaranteed for the life of the automobiles on which they were installed.

*Mr. William A. Somers* supporting the complaint.

*Mr. David Silbert*, of Chicago, Ill., for respondents.

INITIAL DECISION OF JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on February 4, 1960, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act, by misrepresenting the nature and extent of the guarantee given on the automobile mufflers sold by them. After being served with said complaint, respondents appeared by counsel and entered into an agreement, dated April 5, 1960, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by all respondents, by counsel for said respondents, and by counsel supporting the complaint, and approved by the Director and Assistant Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondent's pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint, and have agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that 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 said agreement. It has been agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing, and that the complaint may be used in construing the terms of said order. It has also been agreed that the aforesaid 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.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all of the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, said

agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Respondent International Parts Corporation, is a corporation existing and doing business under and by virtue of the laws of the State of Illinois. Respondents Nate H. Sherman, Beatrice G. Sherman, Gordon Sherman and Robert Schroeder are individuals and officers of said corporate respondent. Said corporate and individual respondents have their office and principal place of business located at 4101 West 42nd Place, Chicago, Illinois.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

#### ORDER

*It is ordered,* That respondent International Parts Corporation, a corporation, and its officers, and Nate H. Sherman, Beatrice G. Sherman, Gordon Sherman and Robert Schroeder, 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 offering for sale, sale or distribution of automobile mufflers, or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting, in any manner, the nature or extent of the guarantee of a product.

2. Representing that a product is guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform are clearly disclosed.

3. Placing any means or instrumentality in the hands of others by and through which the public may be misled as to the guarantee of a product.

#### 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 25th day of June, 1960, become the decision of the Commission; and, accordingly:

*It is ordered,* That the 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.

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

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

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

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

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

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

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

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

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