

Complaint

IN THE MATTER OF
NORTH AMERICAN FOREIGN TRADING CORPORATION
ET AL.

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

Docket 7872. Complaint, Apr. 19, 1960—Decision, Sept. 21, 1960

Consent order requiring New York City distributors to cease selling watch bands imported from Japan, Hong Kong, and West Germany without adequate disclosure of their foreign origin—the alleged unfair practices consisting of packaging the bands between two pieces of cardboard with a clear cellophane window, which made it impossible to see the stamping of the foreign country on the inside of a link without opening and damaging the package.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that North American Foreign Trading Corporation, a corporation, and Morris Lowinger, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent North American Foreign Trading Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 220 5th Avenue, in the city of New York, State of New York.

Respondent Morris Lowinger is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now and for some time last past have been engaged in the offering for sale, sale and distribution of watch bands to distributors and jobbers.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia, and

maintain and at all times mentioned herein have maintained a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents' watch bands are imported from Japan, Hong Kong and West Germany. Some of said bands are sold in bulk. The country of origin is stamped on a link on the inside of the band. In the case of some bands, this stamping is so small and indistinct that it does not constitute adequate notice to the public as to the country of origin. After receipt by respondents of said imported bands, some are packaged between two pieces of card board, the bands being exposed through a window covered by clear cellophane. A number of the individual cards are mounted on counter display cards.

The manner in which the bands are packaged makes it impossible for a prospective purchaser to see the stamping on the inside of the band except by opening and damaging the package. The country of origin of the bands is not shown on the individual cards or on the counter display cards.

PAR. 5. In the absence of an adequate disclosure that a product, including watch bands, is of foreign origin, the public understands and believes that it is of domestic origin and there are among the members of the purchasing public a substantial number who have a preference for domestic products over products of foreign origin, including watch bands originating in Hong Kong, Japan and West Germany. Many domestic watch bands sell for higher prices than imported bands, including those imported from Hong Kong, Japan and West Germany and members of the purchasing public are willing to pay these higher prices for domestic bands.

PAR. 6. In the conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of watch bands of the same general kind and nature as that sold by respondents.

PAR. 7. The failure of respondents to adequately disclose the foreign origin of their watch bands has the tendency and capacity to lead the purchasing public into the erroneous and mistaken belief that such bands are of domestic origin and into the purchase of substantial quantities of said products by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been and is being unfairly diverted to respondents from their competitors and substantial injury has thereby been and is being done to competition in commerce.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public

and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

Mr. Harry E. Middleton, Jr., supporting the complaint.

Guggenheimer & Untermyer, and *Mr. George Herbert Goodrich* of New York, N. Y., for respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

The complaint issued in this proceeding on April 19, 1960, against the above-named respondents charges them with violating the Federal Trade Commission Act by failing to disclose adequately the foreign origins of merchandise, particularly watch bands, imported from Hong Kong, Japan and West Germany, and sold by respondents in interstate commerce in the United States. A true copy of said complaint was served upon respondents as required by law. After being served with said complaint, respondents appeared by counsel and entered into an agreement dated July 15, 1960, which purports to dispose of all of this proceeding as to all parties without the necessity of conducting a hearing. The agreement has been signed by all of the respondents, their counsel, and by counsel supporting the complaint; and has been approved by the Director, Associate Director and the Assistant Director of the Commission's Bureau of Litigation. Said 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. On July 25, 1960, the said agreement was 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 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 North American Foreign Trading Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 220 5th Avenue, in the city of New York, State of New York.

2. Respondent Maurice Lowinger, erroneously named Morris Lowinger in the complaint, is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent. His address is the same as that of the corporate respondent.

3. 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 North American Foreign Trading Corporation, a corporation, and its officers, and Maurice Lowinger, 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 the offering for sale, sale or distribution of imported watch bands, or any other imported product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Offering for sale, or selling, any such product, unless the country of origin is clearly disclosed thereon, or in immediate connection therewith, and, if the product is packaged, such disclosure is clearly shown on the package.

637

Complaint

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 21st day of September 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
KOBACKER STORES, INC.

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

Docket 7893. Complaint, May 16, 1960—Decision, Sept. 21, 1960

Consent order requiring a furrier in Toledo, Ohio, to cease violating the Fur Products Labeling Act by failing to set forth the terms "Persian Lamb" and "Dyed Mouton processed Lamb" where required; by failing in advertising to disclose the names of animals producing certain furs or the country of origin of imported furs, to reveal when fur products contained artificially colored or cheap or waste fur, and by naming animals other than the producers of certain furs; and by failing in other respects to comply with labeling, invoicing, and advertising requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Kobacker Stores, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Kobacker Stores, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio with its office and principal place of business located at 408 Summit Street, Toledo, Ohio.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondent through its Division known as Tiedtke's has been and is now engaged in the introduction into commerce and in the sale, advertising, and offering for sale, in commerce, and in the transportation and distribution, in commerce, of fur products; and has sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 4. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

(b) The term "Persian Lamb" was not set forth in the manner required, where an election was made to use that term instead of Lamb in violation of Rule 8 of said Rules and Regulations.

(c) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was mingled with nonrequired information, in violation of Rule 29(a) of said Rules and Regulations.

(d) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not completely set out on one side of labels, in violation of Rule 29(a) of said Rules and Regulations.

(e) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in handwriting on labels, in violation of Rule 29(b) of said Rules and Regulations.

(f) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth in the required sequence, in violation of Rule 30 of said Rules and Regulations.

(g) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth separately on labels with respect to each section of fur products composed of two or more sections containing different animal furs, in violation of Rule 36 of said Rules and Regulations.

(h) Required item numbers were not set forth on labels, in violation of Rule 40 of said Rules and Regulations.

PAR. 5. Certain of said fur products were falsely and deceptively invoiced by respondent 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 promulgated thereunder.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

(b) The term "Dyed Mouton processed Lamb" was not set forth in the manner required where an election was made to use that term instead of Lamb in violation of Rule 9 of said Rules and Regulations.

PAR. 7. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that respondent caused the dissemination in commerce, as "commerce" is defined in said Act, of certain newspaper advertisements, concerning said products, which were not in accordance with the provisions of Section 5(a) of the said Act and the Rules and Regulations promulgated thereunder; and which advertisements were intended to aid, promote and assist, directly or indirectly in the sale and offering for sale of said fur products.

PAR. 8. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondent which appeared in issues of the Toledo Blade, a newspaper published in the city of Toledo, State of Ohio, and having wide circulation in said State and various other States in the United States.

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

(a) Failed to disclose the name or names of the animal or animals that produced the fur contained in the fur product as set forth in

the Fur Products Name Guide, in violation of Section 5(a)(1) of the Fur Products Labeling Act.

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

(c) Failed to disclose that fur products were composed in whole or in substantial part of paws, tails, bellies or waste fur, when such was the fact, in violation of Section 5(a)(4) of the Fur Products Labeling Act.

(d) Contained the name or names of an animal or animals other than those producing the fur contained in the fur product, in violation of Section 5(a)(5) or the Fur Products Labeling Act.

(e) Failed to disclose the name of the country of origin of the imported furs contained in the fur products in violation of Section 5(a)(6) of the Fur Products Labeling Act.

(f) Failed to set forth the term "Persian Lamb" where an election is made to use that term instead of Lamb in violation of Rule 8 of said Rules and Regulations.

(g) Failed to set forth the term "Dyed Mouton Processed Lamb" where an election is made to use that term instead of Lamb in violation of Rule 9 of said Rules and Regulations.

(h) Contained information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder which was not set forth in type of equal size and conspicuousness and in close proximity with each other, in violation of Rule 38(a) of said Rules and Regulations.

PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

Mr. Charles W. O'Connell supporting the complaint.

Marshall, Melhorn, Bloch & Belt by *Mr. Edward F. Weber*, of Toledo, Ohio, for respondent.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding alleges that Kobacker Stores, Inc., a corporation, hereinafter referred to as respondent, misbranded, falsely and deceptively invoiced and advertised fur products in violation of the Federal Trade Commission Act and the Fur Products Labeling Act and the rules and regulations promulgated under the last named act.

After issuance and service of the complaint, the above-named respondent, its attorney, and counsel supporting the complaint entered into an agreement for a consent order. The agreement has been approved by the Director, Associate Director and Assistant Director of the Bureau of Litigation. The agreement disposes of the matters complained about.

The pertinent provisions of said agreement are as follows: Respondent admits 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; respondent waives the requirement that the decision must contain a statement of findings of fact and conclusions of law; respondent waives 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; respondent waives 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 respondent that it has 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 Kobacker Stores, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio with its office and principal place of business located at 408 Summit Street, Toledo, Ohio.

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

ORDER

It is ordered, That respondent Kobacker Stores, 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 introduction into commerce or the sale, advertising, offering for sale, transportation or distribution, in commerce, of fur products; or in connection with the sale, advertising, offering for

Order

57 F.T.C.

sale, transportation, or distribution of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

1. Failing to affix labels to fur products showing:

(a) In words and figures plainly legible all of the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

(b) The item number or mark assigned to a fur product.

2. Setting forth on labels affixed to fur products information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder:

(a) In abbreviated form;

(b) Mingled with non-required information;

(c) In handwriting.

3. Failing to set forth the term "Persian Lamb" in the manner required where an election is made to use that term instead of lamb.

4. Failing to set forth all the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder on one side of the label.

5. Failing to set forth the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in the required sequence.

6. Failing to set forth separately on labels affixed to fur products composed of two or more sections containing different animal furs the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder with respect to the fur comprising each section.

B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish to purchasers of fur products an invoice showing all 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 invoices the information required to be disclosed by Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form.

3. Failing to set forth the term "Dyed Mouton Processed Lamb" in the manner required where an election is made to use that term instead of lamb.

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

1. Fails to disclose:
 - (a) The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed under the Rules and Regulations.
 - (b) That the fur product contains or is composed of bleached, dyed or otherwise artificially colored fur when such is the fact.
 - (c) That the fur product is composed in whole or in substantial part of paws, tails, bellies or waste fur when such is the fact.
 - (d) The name of the country of origin of any imported furs contained in a fur product.
2. Sets forth the name or names of any animal or animals other than the name or names specified in Section 5(a)(1) of the Fur Products Labeling Act.
3. Fails to set forth the term "Persian Lamb" in the manner required where an election is made to use that term instead of lamb.
4. Fails to set forth the term "Dyed Mouton Processed Lamb" where an election is made to use that term instead of Lamb.
5. Fails to set forth the information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in type of equal size and conspicuousness and in close proximity with each other.

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

It is ordered That respondent Kobacker Stores, 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
RANK RECORDS OF AMERICA, INC.

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

Docket 7898. Complaint, May 20, 1960—Decision, Sept. 21, 1960

Consent order requiring a distributor of phonograph records in New York City to cease giving concealed payola to disc jockeys or other personnel of radio or television programs to induce playing of their records in order to increase sales.

Complaint

57 F.T.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Rank Records of America, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Rank Records of America, Inc. 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 24 West 57th Street, in the City of New York, State of New York.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the offering for sale, sale and distribution, of phonograph records to independent distributors and others throughout the United States.

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

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

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

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

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

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

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

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

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

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

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

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

bution of phonograph records, and to divert trade unfairly to the respondent from its competitors and substantial injury has thereby been done and may continue to be done to competition in commerce.

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

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

Mr. Paul G. Marshall, of New York, N.Y., for respondent.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondent 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 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 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:

647

Decision

1. Respondent Rank Records of America, Inc., is a Delaware corporation with its office and principal place of business located at 24 West 57th Street, New York, N.Y.

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

ORDER

It is ordered, That respondent Rank Records of America, 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 21st day of September 1960, become the decision of the Commission; and, accordingly:

It is ordered, That 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.

