IN THE MATTER OF

STEPHEN F. SINGER TRADING AS STAR-CREST RECORDING COMPANY

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

Docket 8170. Complaint, Nov. 14, 1960—Decision, June 30, 1961

Consent order requiring an individual in Los Angeles, Calif., engaged in soliciting contracts and fees for recording songs for writers and in the sale of records containing the songs, to cease using false royalty claims and other deception to obtain fees from song writers, in advertisements in magazines and newspapers, form letters, and otherwise, as in the order below specified.

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 Stephen F. Singer, individually and trading as Star-Crest Recording Company, 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 Stephen F. Singer is an individual trading and doing business as Star-Crest Recording Company, with his office and principal place of business located at 1350 North Highland Avenue, Hollywood, California.

PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the solicitation of contracts and fees for the recording of songs for writers and prospective writers and in the sale and distribution of records containing, among other things, the songs of writers contracting with him. Said solicitations are made through advertisements placed in magazines, periodicals and newspapers, and through form letters and other written solicitations circulated to song writers and prospective song writers located in the various States of the United States and in the District of Columbia.

Respondent forwards contracts from his said place of business in the State of California, through the United State mail and otherwise, to song writers and prospective song writers located in the various States of the United States, other than the State of California, and in the District of Columbia. Said contracts when signed

or executed by the song writers are forwarded from their respective locations, through the United States mail and otherwise, to respondent at his said place of business in the State of California.

Respondent causes his said records when made to be shipped from his said place of business in the State of California to customers located in various States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said records in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Respondent's volume of business in the negotiation of contracts for the recording, sale and distribution of records for said song writers and prospective song writers is, and has been, substantial.

PAR. 3. Respondent is now, and at all times mentioned herein has been, in substantial competition, in commerce, with corporations, firms and individuals engaged in the contracting for recording of songs for song writers and prospective song writers and in the sale and distribution of records.

PAR. 4. In the course and conduct of his business as aforesaid, and for the purpose of soliciting contracts for the recording of songs of song writers and prospective song writers and for the purpose of receiving money from song writers in connection with said contracts, respondent has made many statements and representations, directly or indirectly, of which the following are typical but not all inclusive:

SONGS—POEMS
We need New Ideas
FOR RECORDING
Your Songs or Poems may
EARN MONEY FOR YOU
Songs recorded—Royalties Paid
FREE EXAMINATION
Mail to: STAR-CREST RECORDING CO.
Dept. C–8, 1350 N. Highland, Hollywood, Calif.

Our primary interest is in selling albums and earning money for our writers and ourselves.

Writer agrees to pay for the test recording session at a special 50% scale rate of $96.20.

We have with us some of the most talented and respected singing stars in Hollywood.

Our "Music of America" series will contain well-known singing hits. Successful numbers that have already sold millions of copies and are being bought and played every day.

Publishers and record companies have found that a small group of professional writers cannot supply all of the music that the public demands.

Star-Crest has the facilities available to manufacture and ship these albums in tremendous quantities if sales warrant.

We do not charge a writer for accepting his song or including it in one of our albums, we pay all expenses of recording and album manufacturing.

PAR. 5. By means of the above representations and statements, disseminated as aforesaid, respondent represents, and has represented, directly or by implication, that:

1. Song writers who contract with him for the recording of their songs will earn substantial amounts of money.

2. Payments in the form of royalties will be made to song writers whose songs are accepted.

3. His primary interest in making recordings is in selling the albums.

4. There is a regular scale of charges for test recording and $96.20 is one-half of this charge.

5. He employs, for the purpose of recording the accepted songs, some of the most outstanding singing stars in Hollywood.

6. His Music of America Series, in which the songs will be recorded, will contain current song hits.

7. There is great public demand for music beyond that which can be supplied by a small group of professional writers.

8. Star-Crest has the manufacturing facilities for the production of albums in very large quantities.

9. Respondent makes no charge for including a song writer's song in an album.

PAR. 6. The aforesaid statements and representations were, and are, false, misleading and deceptive. In truth and in fact:

1. Song writers who contract with respondent for the recording of their songs and pay a fee therefor do not earn any substantial amount of money.

2. Respondent does not pay royalty to the song writers whose songs are accepted. Respondent's plan is one in which the song writers subsidize the production of the records containing their songs by paying for the entire cost of the records plus a profit to respondent. Respondent agrees to pay the song writers, whose songs are used, a certain amount for each record sold but the sales of the records are so limited that the song writers are never able to recover their investments.

3. Respondent's primary interest is not in the sale of albums but is in obtaining contracts and the payments under the contracts.

4. There is no regular scale of charges for test recording, as recording companies make no such charge. Consequently, $96.20 is not one-half or any other percentage of such charge.

5. The talent employed by respondent for recording the accepted songs does not include outstanding or well-known Hollywood singing stars.

6. Respondent's Music of America Series albums do not contain current successful song hits.

7. There is no shortage of songs which cannot be supplied by the professional song writers.

8. Star-Crest has no manufacturing facilities for the production of albums but, on the contrary, all of the albums sold by respondent are produced by others on contract.

9. Before accepting and including a song writer's song in respondent's album, a charge of $96.20 is made for a test recording.

PAR. 7. Respondent, for the purpose of procuring the signing of contracts, as hereinabove referred to, also has sent telegrams to song writers, who have submitted songs to him, as follows:

Song approved for test recording session. Rogers scheduled on vocal. I am attending to production details. Letter and contract in mail.

Respondent thereby represents that the well-known recording star Jimmy Rogers will sing the song writer's songs, whereas, in truth and in fact, after the contract is signed and the fee paid by the song writer, the test recording will not be made by Jimmy Rogers but by Tony Rogers, who is not as well known as a recording artist.

PAR. 8. The use by respondent of the foregoing false, misleading and deceptive statements and representations has had, and now has, the tendency and capacity to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that such statements are true, and to enter into contracts for respondent's services because of such erroneous and mistaken belief. As a result thereof, substantial trade in commerce has been, and is now being, unfairly diverted to respondent from his competitors, and substantial injury has been, and is now being, done to competition in commerce.

PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondent's 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. John W. Brookfield, Jr., for the Commission.

Bryant, Campbell, McCormick & Danielson, by *Mr. Walter M. Campbell*, of Los Angeles, Calif., for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on November 14, 1960, issued its complaint herein, charging the above-named respondent with having violated the provisions of the Federal Trade Commission Act in certain particulars, and respondent was duly served with process.

On April 17, 1961, 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 and between respondent and counsel for both parties, under date of April 14, 1961, 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 Stephen F. Singer is an individual trading and doing business as Star-Crest Recording Company, with his office and principal place of business located at 1350 North Highland Avenue, Los Angeles, California.

2. 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.

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

4. Respondent waives:

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

It is ordered, That respondent Stephen F. Singer, an individual trading as Star-Crest Recording Company, 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 the solicitation of contracts or fees for the recording of songs for writers or prospective writers, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. Song writers who contract with respondent will receive substantial sums of money;

2. Any payment received by song writers who contract with respondent, arising out of the sale of records, is a "royalty," unless and until the amount paid to respondent has been fully repaid;

3. Respondent's primary interest in the recording of song writers' songs is in the sale of records of said songs;

4. There is a regular scale of charges for test recording or that the charge of $96.20, or any other amount charged by respondent, is any percent of such a charge;

5. The songs for which respondent contracts will be recorded on an album with current song hits, unless current song hits are actually recorded therein;

6. The songs for which respondent contracts will be sung by outstanding Hollywood stars;

7. The demand for songs is greater than can be supplied by the professional song writers;

8. Respondent owns facilities for the manufacture of albums;

9. Respondent does not make a charge for including a song writer's song in an album.

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 30th day of June, 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Stephen F. Singer, individually and trading as Star-Crest Recording Company, 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.

INTERLOCUTORY ORDERS, ETC.

TRACTOR TRAINING SERVICE ET AL.

Docket 5943. Order, Jan. 19, 1961

Order denying, for lack of material changes of fact or law, petition for modification of desist order of Mar. 3, 1954, 50 F.T.C. 762.

Respondents, Tractor Training Service, Inc., an Illinois corporation, and Tractor Training Service, an Oregon corporation, by petition filed on November 21, 1960, having requested the Commission to modify the order to cease and desist heretofore entered in disposition of this proceeding, by deleting paragraph 5 thereof, which paragraph prohibits the respondents, in connection with the sale in commerce of their course of study and instruction in diesel training and training in heavy equipment, from representing that the individuals to whom such course is sold are selected on any basis other than their ability to make the required down payment; and

It appearing that the ground for the request is that the respondents have developed and now utilize a standard procedure for the selection of prospective purchasers of their course, which is in addition to and ahead of the requirement that the individuals be able to pay for such course; and

It further appearing, however, that the standards and procedures described in the respondents' petition and in their reply to the answer filed by counsel in support of the order are not materially different from the standards and procedures described in a similar petition requesting the same relief which the same respondents filed on March 14, 1957, and which the Commission, for the reasons set forth in its opinion rendered on May 10, 1957, denied by order entered on the same date (53 Federal Trade Commission Decisions 1292); and

The Commission having considered the matter anew and having concluded that the current petition, like the previous petition, and for the same reasons, fails to establish a reasonable probability that material changes have occurred in conditions of fact or of law since the order to cease and desist was entered or to demonstate a probability that the public interest requires the modification requested:

It is ordered, That said petition be, and it hereby is, denied.

GOJER, INC.

Docket 7851. Order, Jan. 19, 1961

Order denying motion to reopen price discrimination proceeding in which consent order to cease and desist was entered Dec. 1, 1960 (57 F.T.C. 1228), possible trade practice rules imposing no legal injunction and no facts being presented to indicate need for industry-wide conference.

The respondent, by motion filed January 6, 1961, having requested the Commission to reopen this proceeding and, in effect, hold in abeyance the order to cease and desist contained in the hearing examiner's initial decision adopted by the Commission on December 1, 1960, it being the respondent's contention that such action would be justified because (1) the respondent wishes to file an application for a trade practice conference for its industry which it hopes will contribute to a better understanding on the part of the industry members of what constitutes fair trade practices, and (2) the respondent was the first company in its industry to be formally charged with a violation of the Clayton Act, as amended, and a stay of the order would obviate a disadvantage which the respondent allegedly will suffer if prohibited from engaging in practices open to its competitors; and

The Commission having considered the petition and having concluded that the showing made fails to demonstrate that granting the relief requested would be in the public interest for the reasons (1) that trade practice rules, even if ultimately approved for the respondent's industry, and even if they should cover the practices prohibited by the order to cease and desist, would be in the nature of advisory opinions for the guidance of businessmen acting on a voluntary basis and would not impose upon the industry members, including the respondent, any legal injunction to refrain from the activities to which they would relate, and (2) that the respondent has presented no facts from which the Commission might conclude that the respondent's competitors actually engage in the practices prohibited to the respondent or, if so, whether such practices may or should be dealt with through the medium of a voluntary and industry-wide conference or in separate adjudicative proceedings, and has provided the Commission with no basis for appraising the adverse effect on competition which might result from postponing the order prohibiting the respondent from continuing pricing practices long recognized as inimical to competition; and

The Commission being unaware of any other facts or circumstances which might justify a stay of the order to cease and desist:

It is ordered, That the respondent's motion be, and it hereby is, denied.

AMERICAN METAL PRODUCTS COMPANY ET AL.

Docket 7365. Order and Opinion, Jan. 23, 1961

Interlocutory order remanding case to hearing examiner for modification and to provide for simultaneous filing by both parties of proposed findings instead of successive filing.

OPINION OF THE COMMISSION

By the COMMISSION:

In his order of November 15, 1960, closing this proceeding for the reception of evidence, the hearing examiner fixed February 3, 1961, as the date for filing of proposed findings and conclusions by counsel supporting the complaint, and designated March 6, 1961, for filing of such proposals by the respondents. The order additionally granted counsel supporting the complaint leave to file reply to respondents' suggested findings within a time to be subsequently designated. Counsel supporting the complaint seasonably filed interlocutory appeal and contends that the order's provision for successive instead of simultaneous filings of those proposals is inequitable and constitutes an improper departure from established procedure in Commission cases. Since the question thus raised involves an interpretation of a rule of practice having general applicability to all of the Commission's adjudicative proceedings, the Commission feels that an expression of its views on this subject will be of material assistance to both counsel and hearing examiners in future proceedings and, consequently, the appeal is being treated as one to be entertained and decided.

Section 3.19 of the Commission's Rules accords parties the right to file proposed findings and conclusions at the close of the reception of evidence or "within a reasonable time thereafter" as fixed by the hearing examiner. Counsel supporting the complaint does not contend, however, that the time allotted for preparation of the suggested findings which are to be initially filed by him is insufficient, and disposition of the appeal accordingly does not turn on this aspect of the time disparities. Furthermore, although the periods of time accorded under the hearing examiner's ruling exceed those usually granted in Commission proceedings, the appeal's exceptions relate only to the successive filing provision. Thus, no question of whether the order serves to delay the proceeding unduly is presented to us, nor is it being decided.

The above-mentioned rule does not expressly prescribe that the time fixed by hearing examiners provide for simultaneous filing of proposed findings; and a rigid requirement in that respect would foreclose hearing examiners from meeting the exigencies of unusual

situations warranting another course. It is, however, equitable and proper that parties be afforded equal time, running concurrently, for the submission of their suggested findings. This has been the customary practice in Commission proceedings, and as we have previously held in a prior interpretation* of that rule, such course should be departed from only in unusual circumstances. The order appealed from here, however, contains no showing of special circumstances or exigencies impelling a departure from the customary practice and other facets of the case clearly suggest their absence.

The rule as above interpreted is conducive to informed and expeditious decision of cases on their merits. In the Commission's view, simultaneous submissions of proposed findings better engender full discussion of all alternative factual and legal theories available, including arguments in favor of those proposed for adoption and against those anticipated to be advanced by the adversary, and, when thus prepared, proposed findings constitute informative briefs on the evidence. Successive submissions in Commission proceedings, however, envision narrowing of the issues to those advocated by the respective parties, with respondents' counter findings and staff counsel's rebuttal submissions serving primarily as memoranda of points and authorities in support of their exceptions to their opponents' contentions. Hence, simultaneous filing of suggested findings encourages more comprehensive coverage of the facts. Furthermore, such filing practice obviously is attended by less likelihood of delaying proceedings unduly.

In view of the foregoing, the Commission is of the opinion that the hearing examiner erred in failing to accord the parties equal time, running concurrently, for preparation and submission of their proposed findings and conclusions. The appeal is granted and the case is being remanded for further proceedings in regular course, including appropriate modification of the order of November 15, 1960.

Chairman Kintner dissented to the decision herein.

ORDER REMANDING CASE

This matter having come on to be heard upon the interlocutory appeal filed by counsel supporting the complaint from the hearing examiner's order of November 15, 1960, and upon the respondents' answers in opposition to such appeal; and the Commission, for reasons stated in the accompanying opinion, having granted the appeal:

It is ordered, That this proceeding be, and it hereby is, remanded to the hearing examiner for appropriate modification of said order.

Chairman Kintner dissenting.

* *Luria Brothers & Company, Inc.*, Docket 6156 (Decision on interlocutory appeal, July 30, 1958).

SCOTT PAPER COMPANY

Docket 6559. Order, Feb. 21, 1961

Order, with memorandum, denying motion requesting 60-day stay and reconsideration of divestiture order of Dec. 16, 1960, 57 F.T.C. 1415.

The respondent, on January 16, 1961, filed a motion requesting that the order contained in the Commission's decision entered December 16, 1960, be stayed for sixty days; that the respondent be orally heard on the motion; and that the order be reconsidered by the Commission. In support of the motion, respondent contends, among other things, that the requirement in the order for divestiture is unnecessarily harsh; that respondent has had no opportunity to present its views as to the provisions of the order; and that the order is unenforceable because of lack of specificity.

When rendering its decision in this proceeding, the Commission determined that divestiture of the assets of the named corporations acquired and thereafter held by the respondent in violation of Section 7 of the Clayton Act, as amended, was the appropriate remedy for correcting those violations. In directing such divestiture, the order also prescribes guideposts for its conduct in good faith, including restoration of the acquired properties as competitive entities in substantially the same operating form and of substantially equivalent productive capacity as existed at or about the time of acquisition; and the order additionally directs the respondent to submit within sixty days a plan for compliance with the order, with time for compliance to be fixed thereafter. The challenged order accordingly contemplates full opportunity for the respondent to submit in writing its recommendations and suggestions relating to the order's requirements for good faith divestiture of the acquired assets, with opportunity for counsel supporting the complaint to respond in writing. Furthermore, it is implicit in the Commission's prior action that an additional order specifying the manner of divestiture within the purview of Section 11 of the aforesaid Act, as well as the time within which it must be accomplished, will follow.

ORDER

It is ordered, That the respondent's motion be, and it hereby is, denied.

It is further ordered, However, that the time within which the respondent may submit its plan for compliance with the order for divestiture be, and it hereby is, extended to include thirty (30) days from the service upon the respondent of this order.

Commissioner Mills not participating.

MOORE BUSINESS FORMS, INC.

Docket 7086. Order, Mar. 1, 1961

Interlocutory order reversing hearing examiner's rulings which quashed specifications regarding respondent's sales from subpoena duces tecum in price discrimination case.

Counsel supporting the complaint having filed an appeal from the hearing examiner's rulings of November 15, 1960, whereby he granted the respondent's motion to quash specifications 2, 3, 4, 6, 7, 8 and 9 of the subpoena duces tecum which issued on October 11, 1960, and limited specifications 1, 5 and 10 in certain respects; and

It appearing that the information excluded from the specifications' requirements under such rulings includes, among other things, data relating to annual and monthly net sales of respondent's business forms products for certain years, classified by customers, sales divisions and products, together with information respecting total sales by the respondent at prices below its list prices; and

It appearing that such excluded information pertains, among other things, to the conduct and scope of the respondent's business and its capacity to compete, and thus is relevant to the issues raised by the complaint in this proceeding which charges discriminations in price resulting or likely to result in injury to competition in the line of commerce in which the respondent is engaged; and

The Commission having determined that counsel supporting the complaint are entitled to production of all of the information specified in the subpoena duces tecum and that the appeal should be granted:

It is ordered, That the rulings of the hearing examiner which quashed or limited the specifications of said subpoena be, and they hereby are, reversed.

UARCO, INC.

Docket 7087. Order, Mar. 1, 1961

Interlocutory order reversing hearing examiner's exclusion of exhibits including tabulations of respondent's sales, and denying appeal from rejection of other documents in price discrimination case.

Counsel supporting the complaint having filed an interlocutory appeal from certain rulings by the hearing examiner which counsel contend erroneously rejected three series of documentary exhibits offered in evidence; and

It appearing that one series of the documents include tabulations by the respondent of its net sales for certain years classified by customers and by types of forms and data as to sales by it at prices

below list prices and that counsel supporting the complaint contend that those documents show, among other things, increasing annual sales, together with disproportionately increased sales by the respondent at prices below its list prices and enhanced ability to compete; and

The hearing examiner having stated that such information will be of no assistance in resolving whether competitive injury has or likely may result from any price discriminations proved and having ruled that such documents would not be received unless like sales data for some of the respondent's competitors are also to be offered; and

It appearing to the Commission that in situations involving alleged discriminations in price and alleged primary line injury the scope of the seller's marketing activities and his sales and financial progress or decline necessarily are relevant factors in the over-all competitive situation and are relevant and material to determinations here of past or probable future competitive effects; and

The Commission having therefore determined that the rulings excluding the first series of documents, namely, Commission Exhibits for Identification 397 through 403(b), should be reversed as contravening §3.14(b) of the Commission's Rules of Practice which prescribes that relevant, material and reliable evidence shall be received in its adjudicative proceedings; and

It further appearing as to a second series of documents containing statements of the respondent's earnings for certain years that the hearing examiner deferred final rulings, and the Commission, though regarding its above ruling as also controlling to the admissibility of this series of documents, having determined that this aspect of the appeal should be denied as premature; and

The hearing examiner having rejected the third series of documents as too remote for the reason that the industry sales data therein relate primarily to sales of machines or office equipment other than the business forms products relevant here, and there being no showing in the appeal that the hearing examiner's analysis is erroneous; and

Counsel supporting the complaint having further contended that the hearing examiner erroneously ruled that certain exhibits which were received in evidence constituted a complete response to specification 10 of the subpoena duces tecum which issued in this proceeding, but it appearing that the specific rulings cited by counsel do not relate to the question of whether the subpoena has been complied with; and

The Commission having further determined that the memoranda filed in support of and in opposition to the appeal suffice for in-