

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
RADIO CORPORATION OF AMERICA

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

Docket 7676. Complaint, Dec. 3, 1959—Decision, Dec. 15, 1959

Consent order requiring one of the nation's major record manufacturers to cease giving concealed "payola"—sums of money or other valuable consideration—to television and radio disc jockeys or anyone else to induce them to play its recordings.

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

Cahill, Gordon, Reindel and Ohl by *Mr. Jerrold G. Van Cise* of New York, N.Y., for respondent.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against respondent Radio Corporation of America, a corporation, on December 3, 1959 charging it 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.

On December 14, 1959 there was submitted to the undersigned hearing examiner an agreement between the above-named respondent, its counsel, and counsel supporting the complaint providing for the entry of a consent order.

Under the foregoing agreement, the respondent admits the jurisdictional facts alleged in the complaint. 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 respondent of all rights to challenge or 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 respondent that it has 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 hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the agreement is hereby accepted, and it is ordered that said agreement shall not become a part of the official record 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 Radio Corporation of America 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 30 Rockefeller Plaza 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 respondent, and the proceeding is in the public interest.

ORDER

It is ordered. That respondent Radio Corporation of America, 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 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

The Commission having considered the hearing examiner's initial decision herein, filed December 14, 1959, accepting an agreement containing a consent order theretofore executed by the respondent and counsel in support of the complaint; and

It appearing that through inadvertence the word "the" erroneously appears in the fifth line of the paragraph numbered (1) of the order contained in the initial decision; 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 of the hearing examiner be, and it hereby is, modified, by striking from the fifth line of paragraph (1) of the order contained in said initial decision the word "the" as it appears immediately preceding the word "broadcasting."

It is further ordered, That the initial decision, as so modified, shall, on the 15th day of December, 1959, become the decision of the Commission.

It is further ordered, That the respondent, Radio Corporation of America, shall, within sixty (60) days after service upon it of this decision, 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 contained in the aforesaid initial decision, as modified.

Decision

IN THE MATTER OF

PHILIP REIFFE ET AL. TRADING AS
MAIL ORDER MART, ETC.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 6605. Complaint, July 31, 1956—Decision, Dec. 16, 1959*

Order dismissing complaint charging Brooklyn, N.Y., mail order distributors of women's and children's apparel with selling used and secondhand dresses as new, and shipping to customers soiled and unwearable merchandise, in wrong sizes, and fewer than the number ordered for the same price or a greater price. After issuance of the complaint, respondents were indicted for criminally fraudulent practices similar to those alleged in the complaint, pleaded guilty, and were awaiting sentence.

Mr. Michael J. Vitale for the Commission.

Walter L. and Robert M. Post, of New York, N.Y., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint in this proceeding, charging respondents with violating §5 of the Federal Trade Commission Act in connection with their business of selling and distributing women's and children's apparel by mail order, was issued July 30, 1956.

By motion, counsel supporting the complaint now asks that said complaint be dismissed, stating that since the issuance of the complaint the individual respondents, who were doing business as Mail Order Mart, The Bargain Mart and Reiffe Bros., were indicted under Title 18, §1341 U.S.C., for criminally fraudulent practices similar to those alleged in the complaint. Thereafter they pleaded guilty to ten counts of the indictment, and are to be sentenced on November 12, 1959.

Under these circumstances counsel supporting the complaint states that he believes the continuation of the Federal Trade Commission proceeding is not necessary, and that the public interest would best be served by dismissing this complaint. With that conclusion there can be no disagreement, and the motion of counsel supporting the complaint will be granted. Therefore,

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

DECISION OF THE COMMISSION

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 December, 1959, become the decision of the Commission.