

of March, 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

RAYMOND ROSEN & CO., INC., ET AL.

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

Docket 7762. Complaint, Jan. 27, 1960—Decision, Mar. 1, 1960

Consent order requiring Philadelphia distributors of phonograph records to cease disbursing concealed "payola"—payment of money or other valuable consideration—to disc jockeys of radio and television programs to induce "exposure"—playing of a record day after day and several times daily—and promotion of records in which they had a financial interest.

Mr. John T. Walker and Mr. James H. Kelley for the Commission.
Schnader, Harrison, Segal & Lewis, by *Mr. Edward W. Mullinix*,
of Philadelphia, Pa., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents with violation of the Federal Trade Commission Act in connection with the offering for sale, sale and distribution of phonograph records in various states of the United States, 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 considerations to disk jockeys of musical programs on radio and television stations to induce, stimulate or motivate the disk jockey to select, broadcast, "expose" and promote certain records in which respondents have a financial interest, on the express or implied understanding that the disk jockey 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 and an Assistant Director of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement states that respondent Raymond Rosen & Co., Inc. is a corporation 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 Parkside Avenue at 51st Street, Philadelphia, Pennsylvania, and that individual respondents Thomas F. Joyce, Joseph B. Elliott, Jack S. Rosen, Edward H. Rosen and George M. Minter are president, executive vice president, vice president, secretary and treasurer, respectively, of the corporate respondent, and formulate, direct and control the acts and practices of said corporate respondent, their 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; 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; 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 Raymond Rosen & Co., Inc., a corporation, and its officers, and Thomas F. Joyce, Joseph B. Elliott, Jack S. Rosen, Edward H. Rosen, and George M. Minter, 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 1st day of March, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Raymond Rosen & Co., Inc., a corporation, and Thomas F. Joyce, Joseph B. Elliott, Jack S. Rosen, Edward H. Rosen and George M. Minter, 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

A. PLACK CARR DOING BUSINESS AS
MICRO-LUBE SALESCONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 7581. Complaint, Sept. 8, 1959—Decision, Mar. 2, 1960*

Consent order requiring a Dallas, Tex., distributor of an oil and gas additive designated "Micro-Lube," to cease advertising falsely that the United States Air Force officially approved of, endorsed, and recommended the product.

Mr. Thomas F. Howder supporting the complaint.

Mr. Frank C. Erwin, Jr. of Austin, Tex., for respondent.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On September 8, 1959 the Federal Trade Commission, pursuant to the provisions of the Federal Trade Commission Act, issued its complaint against A. Plack Carr, an individual doing business as Micro-Lube Sales (hereinafter referred to as respondent) charging said respondent with violating the Federal Trade Commission Act by making false, deceptive and misleading statements in selling, offering for sale and distributing an oil and gas additive under the brand name of "Micro-Lube," by giving or attempting to give the impression that the United States Air Force and/or other agencies or branches of the United States Government officially approve, endorse or recommend such products. A true and correct copy of said complaint was served upon respondent as required by law. After being served with the complaint, respondent appeared by counsel and entered into an agreement dated December 7, 1959, 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 the respondent, his counsel, and by counsel supporting the complaint; and has been approved by the Director and the Assistant Director of the Bureau of Litigation of this Commission. 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 December 16, 1959 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.

Respondent, pursuant to the aforesaid agreement, has 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