

CHARLES A. ROBERTS DOING BUSINESS AS
GAIN PUBLISHING CO., ETC.

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

Docket 7603. Complaint, Oct. 1, 1959—Decision, Mar. 8, 1960

Consent order requiring an individual in New York City to cease representing falsely in advertising that persons using his slogans, answers, titles, and other written material in competitive contests could win homes, cars, substantial sums of money, or other awards; that he employed a staff of

writers, reporters, and advertising experts, and was approved by sponsors and judges of competitive contests; that he limited sales to a small number of selected persons; and that he had been a contest judge and sponsor and was thus an expert in preparing winning answers.

Mr. Frederick McManus for the Commission.

Mr. Jacob Friedman, of New York, N.Y., for respondent.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

The complaint in this matter charges the respondent 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 respondent and counsel supporting the complaint which provides, among other things, that respondent admits 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 respondent and when entered shall have the same force and effect as if entered after a full hearing, respondent specifically waiving all the rights he 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 respondent that he has 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 Charles A. Roberts is an individual doing business as Gain Publishing Company and Win Publishing Company with his office and place of business located at 141 West 17th Street in the City of New York, New York.

ORDER

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.

It is ordered, That respondent, Charles A. Roberts, doing business under the names Gain Publishing Company and Win Publishing Company, or any other name or names, and respondent's 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, paid up insurance policies, or substantial sums of money, or any other award 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. Respondent employs a staff of writers, reporters and advertising experts.

3. Respondent is approved by judges in and sponsors of competitive contests.

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

5. Respondent has experience as a judge in and as a sponsor of competitive contests, or is an expert in preparing winning entries in competitive contests.

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 8th day of March, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That the respondent herein 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.

IN THE MATTER OF

DUKE RECORDS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 7690. Complaint, Dec. 17, 1959—Decision, Mar. 8, 1960*

Consent order requiring Houston, Tex., distributors of phonograph records to independent distributors for resale to retail outlets and jukebox operators to cease giving concealed "payola" to disc jockeys of television and radio programs to induce them to broadcast the seller's records in order to increase sales.

Mr. John T. Walker and Mr. James H. Kelley for the Commission.
Mr. William H. Scott, Jr., Houston 2, Texas, for the 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 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 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 Duke Records, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 2809 Erastus Street, Houston 26, Texas, and that individual respondent Don D. Robey is the president of the corporate respondent, his address being the same as that of said corporate respondent.