

IN THE MATTER OF
EDWARD S. BARSKY, INC., ET AL.

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

Docket 7668. Complaint, Dec. 2, 1959—Decision, Apr. 1, 1960

Consent order requiring independent distributors of phonograph records for several manufacturers to retail outlets and jukebox operators in the area of eastern Pennsylvania, southern New Jersey, and Delaware, to cease giving concealed "payola" to disc jockeys of radio and television programs to induce them to "expose," or play frequently, certain of their records to increase sales thereof.

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

Polisher, Steinberg, Yohlin & Polisher of Philadelphia, Pa., for respondents.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on December 2, 1959, charging them 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 February 2, 1960 there was submitted to the undersigned hearing examiner an agreement between the above-named respondents, their counsel, and counsel supporting the complaint providing for the entry of a consent order.

Under the foregoing agreement, the respondents admit 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 respondents 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 respondents that they have violated the law as alleged in the complaint. The agreement also recommends that the complaint be dismissed as to Delaine Ginchoff, individually, but not as an officer of the corporate respondent.

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 Edward S. Barsky, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 2522 North Broad Street, Philadelphia, Pennsylvania.

Order

56 F.T.C.

2. Respondents Edward S. Barsky, Manuel Barsky and Delaine Ginchoff are president, vice-president and secretary, respectively, of the respondent corporation. The address of the individual respondents is the same as that of said corporate respondent.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Edward S. Barsky, Inc., a corporation, and its officers, and Edward S. Barsky and Manuel Barsky, individually and as officers of said corporation, and Delaine Ginchoff, as an officer 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 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.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to respondent Delaine Ginchoff as an individual.

1178

Decision

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

It is ordered, That respondents Edward S. Barsky, Inc., a corporation, and Edward S. Barsky and Manuel Barsky, individually and as officers of said corporation, and Delaine Ginchoff, as an officer 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 com-