

VOLKWEIN BROTHERS, INC., ET AL.

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

Docket 7793. Complaint, Feb. 25, 1960—Decision, Apr. 26, 1960

Consent order requiring a Pittsburgh, Pa., manufacturer of phonograph records for distribution to retail outlets and jukebox operators, to cease giving concealed "payola" to television and radio disc jockeys inducement to play certain records in order to increase sales.

1300

Decision

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

Mr. Homer T. Newlon, Jr., of *Bearer, Masick and Newlon*, of Pittsburgh, Pa., for respondents.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

The complaint in this matter charges the respondents with violations of the provisions of the Federal Trade Commission Act by the payment of money or other valuable consideration to induce the playing of certain phonograph records over radio and television stations in order to enhance the popularity of such records.

On March 23, 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 all the jurisdictional facts alleged in the complaint. The agreement provides that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion 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 disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, the respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement 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 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 Volkwein Brothers, Inc. is a corporation 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 632 Liberty Avenue, in the City of Pittsburgh, State of Pennsylvania.

Respondents Carl R. Volkwein and Walter E. Volkwein are president, and vice-president and treasurer, respectively, of the corporate respondent, and formulate, direct and control the acts and practices of said corporate respondent. The address of the individual respondents is the same as that of said corporate respondent.

2. 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 Volkwein Brothers, Inc., a corporation, and its officers, and Carl R. Volkwein and Walter E. Volkwein, 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 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 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 did, on the 26th day of

LASKY ENTERPRISES, INC., ET AL.

1303

1300

Decision

April, 1960, become the decision of the Commission; and, accord-