

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

It is ordered, That respondent herein shall, within sixty (60) days after service upon it of this order, 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.

IN THE MATTER OF

COSNAT DISTRIBUTING CORP. ET AL.

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

Docket 7703. Complaint, Dec. 22, 1959—Decision, Apr. 28, 1960

Consent order requiring several associated corporations and their common officers located variously in New York City, Cleveland, Ohio, and Detroit, Mich., engaged in distributing phonograph records for several manufacturers, to cease giving concealed "payola" to television and radio disc jockeys to induce playing their records in order to increase sales.

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

Mr. Milton Somerfield, of New York, N.Y., for respondents.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on December 22, 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 March 22, 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 terms of the 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 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 Cosnat Distributing Corp., is a corporation organized, 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 315 West 47th Street, New York, New York.

2. Respondent Cosnat Distributing Corp. of Cleveland is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 1233 West Ninth Street, Cleveland, Ohio.

3. Respondent Cosnat Distributing Detroit Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 3727 Woodward Avenue, Detroit, Michigan.

4. Respondent Jay-Gee Record Company, Inc., is a corporation organized, 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 315 West 47th Street, New York, New York.

5. Respondents Jerry Blaine and Elliott Blaine are president and executive vice president and secretary treasurer, respectively, of corporate respondents Cosnat Distributing Corp. and Cosnat Distributing Corp. of Cleveland. Said individual respondents are also president and secretary treasurer, respectively, of corporate respondents Cosnat Distributing Detroit Corp. and Jay-Gee Record Company, Inc.

6. Respondent Charles Gray is vice president of corporate respondent Cosnat Distributing Detroit Corp. and Respondent Bennett Blaine is vice president of corporate respondent Jay-Gee Record Company, Inc. All of the above-named individual respondents formulate, direct and control the acts and practices of the respective corporate respondents in which they are officers. The addresses

of the individual respondents are the same as those of their respective corporations.

7. 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 Cosnat Distributing Corp., a corporation, Cosnat Distributing Corp. of Cleveland, a corporation, Cosnat Distributing Detroit Corp., a corporation, and Jay-Gee Record Company, Inc., a corporation, and their officers, and Jerry Blaine, Elliot Blaine, Bennett Blaine, and Charles Gray, individually and as officers of said corporations, 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 in 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 did on the 28th day

ATLANTIC RECORDING CORP. ET AL.

1341

1338

Decision

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