

in which they have complied with the order to cease and desist.

IN THE MATTER OF
ALL SOUTH DISTRIBUTING CORPORATION ET AL.

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

Docket 7760. Complaint, Jan. 27, 1960—Decision, Apr. 28, 1960

Consent order requiring New Orleans distributors of phonograph records to
cease giving concealed "payola" to television and radio disc jockeys to in-
duce playing their records in order to increase sales.

Mr. John T. Walker and Mr. James H. Kelley for the Commission.
Mr. Herman J. Agregard, of New Orleans, La., for respondents.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On January 27, 1960, the Federal Trade Commission issued its
complaint against the above-named respondents charging them with
violating the provisions of the Federal Trade Commission Act in
connection with the offering for sale, sale and distribution of phono-
graph records as an independent distributor for several record manu-
facturers to retail outlets and jukebox operators in various states of
the United States.

On February 29, 1960, the respondents and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist in accordance with section 3.25(a) of the Rules of Practice and Procedure of the Commission.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint and agree, among other things, that the cease and desist order there set forth may be entered without further notice and shall have the same force and effect as if entered after a full hearing. The agreement includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith; and recites that the said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, and 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 said agreement meets all the requirements of section 3.25 (b) of the Rules of Practice.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent order, and it appearing that said agreement provides for an appropriate disposition of this proceeding, the aforesaid agreement is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with section 3.21 of the Rules of Practice; and in consonance with the terms of said agreement, the hearing examiner makes the following jurisdictional findings and order:

1. Respondent All South Distributing Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana, with its principal office and place of business located at 630 Baronne Street, City of New Orleans, State of Louisiana.

Respondents Henry J. Hildebrand, Jr., Evelyn K. Hildebrand, and Henry J. Hildebrand, Sr., are president, vice president, and secretary 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 hereinabove named. The complaint states a cause of action against said respondents under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

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Decision

ORDER

It is ordered, That respondent All South Distributing Corporation, a corporation, and its officers, and respondents Henry J. Hildebrand, Jr., Evelyn K. Hildebrand, and Henry J. Hildebrand, Sr., 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 did, on the 28th day of April, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents herein 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

SUPERIOR RECORD SALES CO., INC., ET AL.

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

Docket 7761. Complaint, Jan. 27, 1960—Decision, Apr. 28, 1960

Consent order requiring New York City distributors of phonograph records 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* for the Commission.

Mr. Joseph Klotz, of New York, N.Y., for 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 the New York-New Jersey-Connecticut area, with violation of the Federal Trade Commission Act, 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 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 Assistant Director of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement states that the respondent Superior Record Sales Co., Inc., is a corporation 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 656 Tenth Avenue, New York, New York, and that individual respondent Sam Weiss is president of the corporate respondent, his address being the same as that of said corporate respondent.

The agreement provides, among other things, that respondents ad-