

# RECORD MERCHANDISERS, INC., ET AL.

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

*Docket 7791. Complaint, Feb. 25, 1960—Decision, May 10, 1960*

Consent order requiring St. Louis record distributors to cease paying concealed  
“payola” to disc jockeys of radio and television programs as inducement to  
have their records broadcast frequently in order to increase sales.

*Mr. John T. Walker* and *Mr. James H. Kelley* for the Commission.  
*Mr. Ben G. Landau*, of St. Louis, Mo., for respondents.

## INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

The complaint in this matter charges the respondents with violation 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 April 1, 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 it is recommended that the complaint be dismissed insofar as it relates to Ben G. Landau as an individual but not as an officer of the corporate respondent. An affidavit attached to the agreement recites that Mr. Landau, an attorney, performs only legal services for the corporate respondent, having nothing to do with the promotion or sale of records or with company policy. The agreement recites that there is no available evidence contrary to said affidavit. Under the circumstances there is no basis for the attachment of individual liability.

Under the foregoing agreement the respondents admit all the jurisdictional allegations in the complaint. The agreement also 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 the 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 and does not constitute an admission by 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 an appropriate disposition of the proceeding as to all of the parties, the agreement is hereby accepted, the following jurisdictional findings made and the following order issued:

1. Respondent Record Merchandisers, Inc. is a corporation organized, existing and doing business under and by virtue of the laws

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of the State of Missouri, with its principal office and place of business located at 1933 Washington Avenue, in the City of St. Louis, State of Missouri.

Respondents Charles D. Gorman, Alfred L. Chotin, and Ben G. Landau are president, vice president and treasurer, and secretary, respectively, of the corporate respondent, and have the same address 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 the respondents, Record Merchandisers, Inc., a corporation, and its officers, and Charles D. Gorman and Alfred L. Chotin, individually, and as officers of said corporation, and Ben G. Landau, 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.

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*It is further ordered,* That the complaint be, and hereby is, dismissed as to Ben G. Landau individually, but not as an officer of said corporate respondent.

## 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 10th day of May, 1960, become the decision of the Commission; and, accordingly:

*It is ordered,* That respondent Record Merchandisers, Inc., a corporation and Charles D. Gorman and Alfred L. Chotin, individually, and as officers of said corporation, and Ben G. Landau, 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 complied with the order to cease and desist.

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