

IN THE MATTER OF

GONE RECORDING CORP. ET AL.

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

Docket 7766. Complaint, Jan. 27, 1960—Decision, June 1, 1960

Consent order requiring New York City manufacturers and 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. M. Warren Troob, of New York, N.Y., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The respondents are, individually and/or jointly, engaged in the manufacture, distribution and sale of phonograph records to independent distributors for resale, and in the offering for sale, sale and distribution of phonograph records as an independent distributor for several record manufacturers, to retail outlets and jukebox operators in various states of the United States. They are charged with violation of the Federal Trade Commission Act, in that, alone or in collaboration with certain record manufacturers or distributors, they have aided and abetted the deception of the public by various disk jockeys by controlling or unduly influencing their "exposure" of records by the use of "payola," i.e., the payment of money or other consideration to such disk jockeys, or to other personnel participating in the selection of the records used on such broadcasts. It is alleged that "payola" is thus used by respondents to mislead the public into believing that the records "exposed" were the independent and unbiased selections of the disk jockeys based either on each record's merit or public popularity. This deception has the capacity and tendency to enhance the popularity of the "exposed" records and to substantially increase their sales.

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, the Associate Director, and the Assistant Director of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement states that respondents Gone Recording Corp. and End Music, Inc. are corporations organized, existing and doing business under and by virtue of the laws of the State of New York,

with their office and principal place of business located at 1650 Broadway, New York, New York; individual respondent George Goldner is president of both corporate respondents and is a co-partner in the general partnership trading as Co-Op Distributing Company; individual respondent Jack Waxman is vice-president of corporate respondent Gone Recording Corp., and is a co-partner in the general partnership trading as Co-Op Distributing Company; individual respondent Jerome G. Roth is a co-partner in said general partnership; and the address of all of the above-named individual respondents is the same as that of the corporate respondents.

The agreement provides, among other things, that respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the complaint may be used in construing the terms of the order agreed upon, which may be altered, modified or set aside in the manner provided for other orders; that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint; and that the order set forth in the agreement and hereinafter included in this decision shall have the same force and effect as if entered after a full hearing.

Respondents waive any further procedural steps before the Hearing Examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The order agreed upon fully disposes of all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein as being in violation of the Federal Trade Commission Act. Accordingly, the hearing examiner finds this proceeding to be in the public interest, and accepts the agreement containing consent order to cease and desist as part of the record upon which this decision is based. Therefore,

It is ordered, That respondents Gone Recording Corp., a corporation, and End Music, Inc., a corporation, and their officers, and George Goldner and Jack Waxman, individually, and as officers of said corporations, and as co-partners, trading as Co-Op Distributing Company, or by any other name, and Jerome G. Roth, individually,

and as co-partner, trading as Co-Op Distributing Company, or by any other name, 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

The Commission having considered the hearing examiner's initial decision, filed April 7, 1960, accepting an agreement containing a consent order theretofore executed by the respondents and counsel in support of the complaint; and

It appearing that the initial decision contains certain statements which are not based upon the aforesaid agreement and is, to that extent, at variance with such agreement; and

The Commission being of the opinion that this departure from the agreement of the parties should be corrected:

It is ordered, That the initial decision be, and it hereby is, amended by substituting for the first paragraph thereof the following:

The Federal Trade Commission issued its complaint against re-

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spondents on January 27, 1960, 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.

It is further ordered, That the initial decision, as so amended, shall, on the 1st day of June, 1960, become the decision of the Commission.

It is further ordered, That the respondents 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 contained in the aforesaid initial decision, as amended.