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Decision

the manner and form in which it has complied with the order to cease and desist.

IN THE MATTER OF
MERCURY RECORD CORPORATION ET AL.

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

Docket 7846. Complaint, Mar. 28, 1960—Decision, June 9, 1960

Consent order requiring a Chicago manufacturer of phonograph records and its sales subsidiaries to cease paying concealed "payola" to television and radio disc jockeys as inducement to have their records broadcast frequently in order to increase sales.

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

Goldberg & Levin, of Chicago, Ill., for respondents.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on March 28, 1960, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act, by negotiating for and disbursing "payola" (money and other valuable consideration) to disk jockeys broadcasting musical programs, and causing such fact to be withheld from the public. After being served with said complaint respondents appeared by counsel and entered into an agreement, dated April 26, 1960, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by all respondents, by counsel for said respondents, and by counsel supporting the complaint, and approved by the Director and Assistant Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that 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 such agreement. It has been agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing, and that the complaint may be used in construing the terms of said order. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, and that said 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.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Respondent Mercury Record Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 35 East Wacker Drive, Chicago, Illinois.

Respondent Mercury Record Distributors Inc. of Ohio is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 1737 Chester Avenue, Cleveland, Ohio.

Respondent Mercury Record Sales Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 549 West 52nd Street, New York, New York.

Respondent Midwest Mercury Record Distributors, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 2021 South Michigan Avenue, Chicago, Illinois.

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.

ORDER

It is ordered, That respondents Mercury Record Corporation, a corporation, Mercury Record Distributors Inc. of Ohio, a corporation, Mercury Record Sales Corp., a corporation, and Midwest Mercury Record Distributors, Inc., a corporation, and their officers, 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.

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 9th day of June, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That 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

SAMUEL I. VULCAN DOING BUSINESS AS
BRANTON WATCH COMPANYORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 7617. Complaint, Oct. 19, 1959—Decision, June 11, 1960*

Order requiring a New York City importer of watch movements from Switzerland which he assembled with cases from separate sources, to cease preticketing said watches, and furnishing his customers, with false price tickets representing the retail sales price to be much more than was the fact.

Mr. Ames W. Williams supporting the complaint.

Respondent, *pro se*.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

PRELIMINARY STATEMENT

The complaint issued in these proceedings on October 19, 1959, charges the respondent, Samuel I. Vulcan, an individual, trading and doing business as the Branton Watch Company, with a violation of the Federal Trade Commission Act by preticketing watches which respondent sells in interstate commerce, so as to furnish customers the means and instrumentalities by which the purchasing public may be misled as to the regular and usual retail prices of respondent's watches. A prehearing conference was convened on December 18, 1959, in New York, New York, for the purpose of ascertaining whether the hearings in this matter might not be expedited. Thereafter, hearings were set for New York, New York, and other cities, but as a result of an agreement as to what the testimony in the other cities would be, said hearings, other than those in New York, New York, were cancelled.

The record in this case consists of 58 pages, and Commission's Exhibits 1 through 20-P were offered and received in evidence. The respondent Samuel I. Vulcan, stated to the hearing examiner that he is a licensed attorney. He represented himself. No answer was filed by the respondent.

Testimony in this proceeding was taken on January 25, 1960. At the conclusion of that hearing respondent stated, "It seems to me it would almost be pointless to put in any sort of defense. I