

AMERICAN INTERNATIONAL INDUSTRIES, INC., ET AL.

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

Docket 7849. Complaint, Mar. 29, 1960—Decision, July 15, 1960

Consent order requiring a Philadelphia distributor of phonograph records and record vending racks to cease using deceptive employment offers, exaggerated earnings claims, and other misrepresentations in advertising in news-

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papers and in letters and other matter mailed to prospective purchasers, as in the order below set forth, to induce purchase of its merchandise.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that American International Industries, Inc., a corporation, and Joseph Alper and N. Francis Alper, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provision of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent American International Industries, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 507-12 Lewis Tower Building in the City of Philadelphia, State of Pennsylvania.

Respondents Joseph Alper and N. Francis Alper are officers of said respondent corporation. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of phonograph records and record vending racks. In the course and conduct of their business as aforesaid, respondents now cause and have caused said records and racks, when sold, to be shipped from their place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintain and at all times mentioned herein have maintained a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business as aforesaid, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of phonograph records and vending racks of the same general kind and nature as those sold by respondents.

PAR. 4. In the course and conduct of their business as aforesaid, and for the purpose of inducing the sale of their phonograph records and vending racks, respondents have made various statements and

representations concerning their said products and methods of conducting their said business. Such statements and representations are made, and have been made, by means of advertisements published in The Wall Street Journal, Cleveland Plain Dealer, Richmond (Va.) News Leader and other newspapers circulated in areas where respondents do business, and by means of letters, brochures and other promotional and advertising literature mailed and circulated throughout the country to prospective purchasers.

Among and typical, and illustrative, but not all inclusive, of the statements and representations made, circulated and disseminated as aforesaid are the following:

1. (By newspaper advertisements)

DISTRIBUTOR
MALE OR FEMALE
FULL OR PART TIME

Earn extra money in your own business. No experience or personal selling necessary. Requires only few hours a week spare time to service BEST BRAND RECORD DISPLAYS, located by us in food markets, drug stores, etc. Cheap record racks are rapidly being replaced by SENSATIONAL BEST BRAND SELF-SERVICE RECORD DISPLAYS. Store makes money, so do you. Excellent profit . . . but this is NOT A GET RICH QUICK SCHEME, as we are a highly respected record company rated in Dun & Bradstreet. Must have car and minimum of \$975 for record inventory, displays, store accounts, and advertising material. Write for local appointment, include phone number.

BEST RECORDS DIV.
American International
Industries, Inc.
Lewis Tower Bldg.
Phila. 2, Pa.

2. (By letter)

. . . this is an ideal opportunity for you to own . . . a full time, high profit, volume business . . .
. . . Best Brand Record Displays, located by us in high traffic retail stores . . .
. . . keep your racks filled with fast moving record selections.

3. (By promotional brochure)

HERE'S THAT ONCE-IN-A-LIFETIME OPPORTUNITY For Unlimited Success On A Limited Budget.

* * *

Make more money in less time than you thought possible.

* * *

YOU CAN SERVICE 5 RACKS IN ONLY 5 to 6 HOURS A WEEK And Pocket Tremendous Profits.

5 to 6 hours a week servicing your locations can bring you clear profit you never dreamed of making in so little time with so little effort. * * * It won't take long to learn this money-making business and once you do—the sky's the limit.

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POPULAR, UP-TO-DATE RECORDS SOLD AT YOUR LOCATIONS * * *
 Customers will quickly discover that the newest hits from stage, screen and
 Tin Pan Alley . . . are always available at *your* Best racks.

* * *

. . . Best can bring these superb recordings to music lovers everywhere at prices
 far below those being charged for records of comparative value.

* * *

If you cannot service "Fast-turnover" "High-profit" locations—DO NOT
 APPLY.

* * *

Q. HOW DO I KNOW THAT YOUR COMPANY IS RELIABLE?

A. We are listed by Dun & Bradstreet . . .

* * *

. . . we give the public a truly fine \$3.98 Hi-Fi value for the really sensible
 price of \$1.98

In response to inquiries induced by such advertisements, letters
 and literature, respondents or their employees, agents or representa-
 tives call upon members of the public initiating such inquiries, and
 then make oral representations repetitive or elaborative of and in
 addition to those contained in the aforementioned printed materials.

PAR. 5. Through the use of the aforesaid statements and repre-
 sentations set out and referred to in paragraph 4, above, respondents
 have represented and do now represent, directly or by implication,
 to the purchasing public, that:

1. Respondents' newspaper advertisements constituted offers of
 employment.

2. A highly profitable business could be obtained for an invest-
 ment of \$975.00.

3. All money invested by a purchaser of records and racks from
 respondents was secured by the stock he purchased, full refund of
 which money would be made by respondents on return of such stock
 to them.

4. Weekly net profits of \$50.00, \$100.00 and more would accrue to
 said purchaser on an investment of \$975.00, beginning with his place-
 ment of racks filled with records on the premises of stores located
 by respondents.

5. Respondents had negotiated contracts with The Great Atlantic
 & Pacific Tea Company, The Kroger Company, Safeway Stores,
 Inc., Sears, Roebuck & Company, Peoples Drug Stores, Inc., and
 other large and reputable food, drug and general merchandise com-
 panies and stores, by which it was agreed that respondents' distrib-
 utor in a given area would install vending racks with phonograph
 records in such companies' "high-traffic" retail stores located in that
 area.

6. In return for the payment of \$975.00 to respondents for records
 and racks the purchaser thereof would be the sole distributor of

records sold by respondents, in a given city or other defined geographical area.

7. A purchaser's opportunity for expansion, with concomitant earnings of incredible amount, was limited only by the industry of the purchaser and the size of the trading area wherein he would be the distributor.

8. A portion of all records sold by respondents to a purchaser in consideration of \$975.00 contained the newest "hit" tunes currently being sold throughout the nation; and on receipt of subsequent orders from the purchaser for the purpose of replenishing stocks, the respondents would have available current "hit" records as of that time.

9. The records sold by respondents had a retail value of \$3.98 or more each.

10. Respondents' integrity was avouched by the fact that they were listed in *Dun & Bradstreet Reference Book*.

PAR. 6. The aforesaid statements and representations were and are false, misleading and deceptive. In truth and in fact:

1. Respondents did not and do not offer employment to or employ persons answering their advertisements. The purpose of said advertising at all times has been and is to obtain leads to persons of established finances in order that a concentrated effort might be made, through personal solicitation, to induce them to enter into contracts for the purchase of phonograph records and vending racks.

2. Seldom, if ever, has an investment of \$975.00 in respondents' phonograph records, vending racks and plan of merchandising resulted in the establishment of a highly profitable business.

3. Money invested in phonograph records and vending racks was not and is not secured by stocks. The maximum amount returnable to an investor who wishes to terminate his contract with respondents and return all stock thereto is limited by contract to \$560 for each unit investment of \$975.00.

4. Seldom, if ever, have net profits of \$50.00 or more weekly been realized by purchasers, from respondents, of phonograph records and vending racks costing \$975.00. Net profits at certain rates cannot be expected by the purchaser from the beginning of operations or at any other time.

5. Respondents did not and do not have contracts with The Great Atlantic & Pacific Tea Company, The Kroger Company, Safeway Stores, Inc., Sears, Roebuck & Company, Peoples Drug Stores, Inc. or other large food, drug or general merchandise companies or stores whereby agreements had been reached which would permit purchasers of respondents' products to place vending racks and phonograph

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records on store premises. Invariably, store locations were not determined until after contracts for the sale of records and racks by respondents had been negotiated between them and purchasers, and then purchasers learned that locations were available only in independently-owned restaurants, drug stores and variety stores not having the high traffic and sales potentials promised by respondents.

6. Respondents breached promises made to purchasers of their phonograph records and vending racks to preserve sales territories for the sole and exclusive distributorship of purchasers.

7. Seldom, if ever, has the purchaser of respondents' phonograph records and vending racks costing \$975.00 found that his return therefrom warranted any effort to expand his operations.

8. Few, if any, records available from respondents at the time of the initial sale thereof to purchasers, or later, contained what the consuming public considered to be the newest or current "hit" tunes.

9. Most, if not all, of the records sold by respondents could be obtained by the consuming public for \$1.98 or less from retailers selling records in competition with respondents' customers in the same trading areas where said customers attempted to establish themselves in business.

10. The corporate respondent's listing in *Dun & Bradstreet Reference Book* signified nothing more than that it had a certain credit rating and a certain estimated financial worth.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' phonograph records and vending racks by reason of said erroneous and mistaken beliefs. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Berryman Davis for the Commission.

Ochman and Greenberg, of Philadelphia, by *Mr. Stanley M. Greenberg*, for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with violation of the Federal Trade Commission Act through the making of certain misrepresentations in connection with the sale of phonograph records and vending racks. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision is 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, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, 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 only 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 appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent American International Industries, Inc., is a corporation organized, existing and doing business under the laws of the State of Pennsylvania, with its principal office and place of business located at 507-12 Lewis Tower Building, Philadelphia. The individual respondents, Joseph Alper and N. Francis Alper are officers of said corporate respondent, and formulate, direct and control the acts and practices of the corporate respondent. Their address is the same as that of the 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 respondents American International Industries, Inc., a corporation, and its officers, and Joseph Alper and N. Francis

Alper, individually and as officers of said corporation, and each of them, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of devices which vend merchandise or which are accessory to the vending of merchandise, or of the merchandise to be vended, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly, that:

1. Employment is offered by respondents or any of them, or by any other person, firm or corporation.

2. A highly profitable business can be obtained by purchasing or dealing in such devices or merchandise.

3. The investment required to purchase such devices or merchandise is secured or will be refunded if the purchaser requests full refund.

4. Profits in any amount can be realized in excess of the average profits realized by all of their customers contemporaneously engaged in the operation of similar devices situated in similar locations and engaged in selling the same kind of merchandise.

5. Respondents, or any of them, have contracts, understandings or agreements with any persons, firms or corporations whereby it is understood or agreed that such persons, firms, or corporations will permit purchasers of such devices or merchandise to install or place the same for sale on their premises.

6. Customers will be granted exclusive sales territories or be the sole distributors of such devices or merchandise in given areas.

7. Opportunity exists for growth in the sale of such merchandise purchased from respondents or any of them.

8(a). Any phonograph records sold by respondents or any of them are new tunes or current hit tunes.

(b) Respondents, or any of them, will make available to customers phonograph records not yet manufactured, as and when such records appear on the market and become popular with consumers in the trade areas where said customers do business.

9. The retail value of any merchandise is in excess of the price at which such merchandise is usually and customarily sold in the trade area or areas in which the representation is made.

10. The integrity of respondents, or any of them, is avouched by Dun & Bradstreet.

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 15th day of July 1960, become the decision of the Commission; and, accordingly:

