

ration, and Warren F. Rastner and Jerome Sherman, individually and as officers 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 contained in the aforesaid initial decision.

Commissioner Tait not participating.

IN THE MATTER OF
MARK CUMMINGS ET AL. TRADING AS MARK CHARLES
STUDIOS, ETC., ET AL.

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

Docket 7741. Complaint, Jan. 12, 1960—Decision, July 22, 1960

Order requiring Massachusetts photographers selling to purchasers in their homes "certificates" bearing the statements "9.95 value only \$2.98", "Natural Color Portrait", "New England's Foremost Photographers", and "Workmanship Unconditionally Guaranteed", to cease thus misrepresenting their business status, the quality and value of their photographs, and the guarantees on them, and to cease failing to deliver such photographs at all or within a reasonable period.

Mr. DeWitt T. Puckett supporting the complaint.

No appearance for respondents.

INITIAL DECISION OF JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission on January 12, 1960, issued and thereafter served its complaint in this proceeding charging the respondents hereinabove named with having engaged in unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act, by making various misrepresentations and engaging in other improper practices in connection with the sale of photographs. Although duly served with said complaint respondents failed to file answer thereto within thirty (30) days, as required by Section 3.7 of the Commission's Rules of Practice for Adjudicative Proceedings and by the Notice served with said complaint.

Thereafter, a hearing was held on March 17, 1960, in Washington, D.C., before the undersigned hearing examiner, theretofore duly designated to hear this proceeding. Upon the failure of respondents to appear and show cause at said hearing, counsel supporting the complaint moved that the case be closed for the taking of testimony in view of respondents' failure to answer and appear and that, in accordance with Section 3.7(b) of the Rules of Practice, the hearing examiner find the facts to be as alleged in the complaint. Counsel further moved that an order be entered against respondents, in the form proposed by him, a copy of which was spread upon the record at said hearing. The undersigned granted said motion to the extent that findings and conclusions would be made, based upon the allegations of the complaint, and that the proposed order would be taken into consideration in the framing of an appropriate order.

This proceeding having now come on for final consideration on the complaint and the proposed order of counsel supporting the complaint, and it appearing that the order proposed covers all of the allegations of the complaint and provides for an appropriate disposition of this proceeding, the undersigned finds that this proceeding is in the interest of the public and, in accordance with Section 3.7 of the Rules of Practice, makes the following findings as to the facts, conclusion and order:

FINDINGS OF FACT

PARAGRAPH 1. Respondents Mark Cummings, Henry Fanning and Joseph Mazzapica are individuals and copartners trading as Mark Charles Studios and as Keepsake Color of Hollywood, with their principal office and place of business located at 26 Leicester Street, Brighton, Mass. Respondent Robert P. Rolling is an employee of the other respondents. His address is 13 Arundel Avenue, Wakefield (Greenwood Post Office), Mass. Said respondent Rolling partici-

pated in and aided in carrying out the acts and practices hereinafter described.

PAR. 2. Respondents are now, and for some time last past have been, jointly engaged in offering for sale and selling photographs directly to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of Massachusetts to purchasers thereof located in various other States of the United States, 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. 4. In the course and conduct of their said business, and for the purpose of inducing the purchase of their photographs, respondents and their salesmen call on prospective purchasers of photographs and exhibit respondents' "certificates" which bear the statements "9.95 value only \$2.98", "Natural Color Portrait", and "New England's Foremost Photographers". If the sale is made and the \$2.98 collected the prospect receives one of the respondents' "certificates" entitling the purchaser to one of respondents' photographs. An appointment is then made for a photographer to call and take the picture. Subsequently proofs of the pictures are presented to the customer by a representative of respondents for selection of the picture or pictures desired and an attempt is made at that time to sell the purchaser additional pictures. Additional pictures often are contracted for and payment therefor, or a portion thereof, made at that time.

PAR. 5. By means of the statements above referred to, respondents represented:

1. That the finished photographs which would be delivered were a \$9.95 value.

2. That said photographs would be in natural color.

3. That respondents are New England's foremost photographers.

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

1. The finished photographs delivered were not a \$9.95 value.

2. Many photographs delivered were not in natural color.

3. Respondents are not New England's foremost photographers.

PAR. 7. The certificates referred to in Paragraph Four bear the additional statement "Workmanship Unconditionally Guaranteed". In truth and in fact, respondents frequently did not comply with said guarantee by delivering photographs to purchasers which were satisfactory as to workmanship.

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PAR. 8. Respondents, after taking orders for photographs and receiving all or a portion of the purchase price therefor, frequently do not deliver the photographs so purchased at all or not until many months have elapsed from date of such orders.

PAR. 9. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of photographs of the same general kind and nature as that sold by respondents.

PAR. 10. 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 that their products are delivered within a reasonable time. As a result of respondents' aforesaid acts and practices, substantial quantities of respondents' products have been and are now being purchased by reason of said erroneous and mistaken belief. 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.

CONCLUSION

The acts and practices of respondents, as hereinabove found, 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.

ORDER

It is ordered, That respondents Mark Cummings, Henry Fanning and Joseph Mazzapica, individually and as copartners, trading as Mark Charles Studios, Keepsake Color of Hollywood, or under any other name, and Robert P. Rolling, an individual, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of photographs, or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication that:

(a) Their photographs are a \$9.95 value; or representing that their photographs are of any certain value, unless such is fact;

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(b) Their photographs are in "Natural Color," unless such is the fact;

(c) They are New England's foremost photographers; or misrepresenting in any manner their standing or position as photographers;

2. Failing to comply with the terms of any guarantee given;

3. Failing to deliver photographs sold or, if delivery is made, failing to deliver within a reasonable time after the sale thereof.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

This matter having come on to be heard by the Commission upon its review of the hearing examiner's initial decision filed on April 14, 1960, and the Commission having determined that said initial decision is adequate and appropriate in all respects to dispose of this proceeding:

It is ordered, That the aforesaid initial decision be, and it hereby is, adopted as the decision of Commission.

It is further ordered, That the respondents, Mark Cummings, Henry Fanning, Joseph Mazzapica, and Robert P. Rolling, 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

RADIO TELEVISION TRAINING ASSOCIATION, INC.,
ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 6616. Complaint, Aug. 21, 1956—Decision, July 27, 1960

Consent order requiring New York City operators of a correspondence course in the practice and theory of radio and television to cease representing falsely in advertising in newspapers, magazines, by radio, and otherwise, that students would receive, as part of their course and without extra charge, a 21" television tube and would have all expenses paid for a training period in New York City.

The charge that respondent falsely represented itself as an "Association" was disposed of in a consent order dated Nov. 24, 1959, 56 F.T.C. 587. Other allegations of the complaint were dismissed.

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 Radio Television

Training Association, Inc., a corporation, National Home Study School, a corporation, and Leonard C. Lane, Harvey C. Kaplan and Frank Brown, individually and as officers of Radio Television Training Association, Inc., and National Home Study School, hereinafter referred to as respondents, have violated the provisions 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 Radio Television Training Association, Inc., is a New Jersey corporation, with its office and principal place of business located at 52 East 19th Street, New York 3, N.Y. Respondent National Home Study School is a New York corporation with its office and principal place of business located at 52 East 19th Street, New York 3, N.Y. Respondents Leonard C. Lane and Harvey C. Kaplan are individuals and officers of the corporate respondents Radio Television Training Association, Inc., and National Home Study School, and as such officers are responsible for, and control and formulate the policies of said corporate respondents. Respondent Frank Brown is an individual and until recently was an officer of said corporate respondents. Said individual respondents as officers were responsible for and controlled and formulated the policies of said corporate respondents, including the acts and practices hereinafter described. The business address of each of the said individual respondents is the same as that shown above for the corporate respondents, except for Frank Brown, whose address is 2727 Palisades Avenue, Riverdale, N.Y.

PAR. 2. Respondents are now, and for the five years last past have been, engaged in the business of conducting a correspondence school, and in selling and distributing, in commerce, between and among the various States of the United States and in the District of Columbia, courses of instruction for home study in the practice and theory of radio and television. They have caused and are causing their courses of instruction in said subjects, when sold, to be transported from their place of business in the State of New York to the purchasers thereof at their respective addresses in other States of the United States and in the District of Columbia.

PAR. 3. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said courses of instruction in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Respondents at all times mentioned herein have been in substantial competition, in commerce, with other corporations, firms and individuals engaged in the sale of similar courses of instruction.

PAR. 5. In the course and conduct of their business, as aforesaid,

and for the purpose of enrolling prospective students and thereby promoting the sale of their said course of instruction, respondents through advertisements, inserted in newspapers and magazines having general circulation throughout the United States, and in pamphlets, leaflets, circulars, form letters, cards, printed contracts and other mediums distributed through the United States mails, and through radio broadcasts, have made and are making numerous statements and representations with respect to the advantages and benefits which the purchasers of their said course of instruction could expect to receive. Among and typical of such statements and representations are the following:

1. . . . The VA will pay for your entire training . . .
2. . . . the Government will pay for your entire course.
3. You build and keep this professional giant screen television receiver complete with big picture tube (designed and engineered to take any size up to 21" . . .)
4. Set up your own laboratory with these 15 . . . kits RTTA sends you at no extra cost (A picture of a 21" tube accompanies this statement).
5. . . . two weeks training in New York City at no extra cost.
6. Train at my expense and have a glorious vacation besides.
7. Each lesson is given prompt personal attention and accurate grading by experienced teachers who will point out weak spots and praise good work.
8. Leading manufacturers in the television and radio industry have cooperated by contributing their knowledge and years of experience in order to make this training possible.
9. Naturally as president of this Association . . . I hear about a great many developments . . . which are not made public . . .
10. . . . become a member of this association . . .
11. . . . here is a training that will enable you to command supervisory jobs such as Commercial Radio Station Operator, Ship-Operator-Officer, Broadcast Station Technician, Police Radio Expert, Aircraft Installator, Experimental Laboratory Man, Radio Store Manager . . .
12. Does \$100.00 a week sound like a lot of money to you . . . countless television technicians are making even more. And the amazing RADIO TELEVISION TRAINING ASSOCIATION'S "Earn by Doing" shop method lessons enable you to qualify for this better pay and better security. You can start earning \$10 to \$25 extra spare-time money soon after you enroll.
13. Earn \$4,000 to \$8,500 yearly . . . in . . . jobs like these . . . transmitter engineer, studio engineer . . .
14. By the power vested in me as Administrator of Veteran Training with RTTA, I can reinstate you as an active Veteran Trainee, if you will but use the enclosed envelope and drop me a few lines making such a request.
15. Just as new major developments are announced they are included in the RTTA course.
16. When you finish . . . RTTA's . . . placement director . . . will recommend you for position . . . help you locate the job you want . . .

PAR. 6. Through the use of the statements and representations hereinbefore set forth, and many others of similar import and effect, respondents represented, directly and by implication, that:

1. Eligible veterans do not pay any portion of the tuition, the entire cost of which is borne by the Veterans Administration.

2. The student will receive a 21" tube free.

3. All expenses will be paid for two weeks training in New York City.

4. Well qualified teachers will review students' work.

5. Leading manufacturers in the television and radio industry have cooperated with the respondents in the preparation of their course of instruction.

6. The satisfactory completion of the course will qualify students to hold such positions as radio station operator, ship-operator officer, transmitter engineer and studio engineer.

7. Salaries in the amount of \$100 a week and \$4,000 to \$8,500 yearly can be earned by students completing the course, and while pursuing the course they can earn substantial extra spare time money in the amounts of \$10.00 to \$25.00.

8. A school official has been appointed by the Veterans Administration to exercise certain powers of the Veterans Administration relative to the dispensing of VA benefits.

9. Students are taught the latest developments in radio and television.

10. Graduate students will secure positions through the aid of the school.

11. Ample training for a successful career as a technician in radio and television is assured on completion of the course.

12. The satisfactory completion of the course properly equips one with the necessary qualifications to obtain and hold high salaried positions in the radio and television industry.

PAR. 7. The aforesaid statements and representations are grossly exaggerated, false, and misleading. In truth and in fact:

1. Certain students who are eligible to receive Veterans Administration benefits are personally liable for a portion of the tuition.

2. Students do not receive a 21" tube as a part of the course.

3. All expenses are not paid for two weeks training in New York City.

4. Well qualified teachers do not review the students' work.

5. Leading manufacturers in the radio or television industry have not in any manner cooperated with the respondents in the preparation of their course of instruction.

6. The satisfactory completion of the course does not qualify students to hold jobs such as radio station operator, ship-operator officer, transmitter engineer and studio engineer.

7. Students cannot earn \$100 a week or from \$4,000 to \$8,500 yearly upon satisfactory completion of the course or \$10 to \$25 extra

spare time money soon after they enroll while pursuing the course, or any similar amounts.

8. A school official has not been appointed by the Veterans Administration to exercise powers of the Veterans Administration relative to the dispensing of VA benefits.

9. Students are not taught the latest developments in radio and television.

10. Graduate students do not secure positions through the aid of the school.

11. Ample training for a successful career as a technician in radio and television is not assured upon completion of the course.

12. The satisfactory completion of the course does not properly equip one with the necessary qualifications to obtain and hold high salaried positions in the radio and television industry.

PAR. 8. In the course and conduct of said business as aforesaid, respondents have adopted and used a fictitious trade name, to wit, Globe Credit Reporting and Collection Bureau, for the purpose of collecting accounts alleged to be delinquent, thereby representing and implying that said Globe Credit Reporting and Collection Bureau is an independent and separate organization.

In truth and in fact, said fictitious collection agency is operated solely by respondents and is used by them to contact purchasers of said course of instruction, as well as persons who have cancelled enrollments to such course and compel them to pay for said course, though purchased as a result of the erroneous and mistaken belief engendered by respondents' deceptive practices as herein alleged.

PAR. 9. Through the use of the word "Association" as a part of the name of corporate respondent Radio Television Training Association and through the use of such statements as "become a member of this association" and "Naturally as president of this Association . . . I hear about a great many developments . . . which are not made public", and other statements of similar import, respondents represented that said corporate respondent is an organization composed of persons primarily interested in its activities from an educational standpoint and that said corporate respondent had the endorsement of or some connection with the radio and television industries.

PAR. 10. In truth and in fact, said corporate respondent is not an organization composed of persons primarily, or in any manner, interested in its activities from an educational standpoint, but is a corporation engaged in a commercial business for profit. Said corporate respondent has not been and is not now connected in any manner with the radio or television industries.

PAR. 11. The statements and representations made by respondents and the acts and practices engaged in by respondents, as aforesaid,

have had and now have the tendency and capacity to mislead and deceive members of the purchasing public into the erroneous belief that said statements and representations were and are true and to induce the purchase of respondents' said course of instruction on account thereof. As a result, substantial trade in commerce has been and is being unfairly diverted to respondents from their competitors and substantial injury has been and is being done to competition in commerce.

PAR. 12. 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.

Mr. I. H. Wachtel, of Washington, D.C., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents, who are engaged in the business of conducting a correspondence school, and in selling and distributing in commerce, between and among the various States of the United States and in the District of Columbia, courses of instruction for home study in the practice and theory of radio and television, with violation of the Federal Trade Commission Act, by the use of grossly exaggerated, false and misleading statements and representations in connection with said courses of instruction, the use of a fictitious trade name for the purpose of collecting accounts alleged to be delinquent, and the use of the word "Association" as a part of the name of corporate respondent Radio Television Training Association.

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

The agreement states that:

Respondent Radio Television Training of America, 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 52 East 19th Street in the city of New York, State of New York. At the time the complaint herein issued, this corporate respondent was known as Radio Television Training Asso-

ciation, Inc. On or about September 1, 1959, this respondent changed its name to Radio Television Training of America, Inc. Respondents Leonard C. Lane and Harvey C. Kaplan are individuals and officers of the said corporate respondent. Their address is the same as that of the said corporate respondent.

Respondent National Home Study School 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 also located at 52 East 19th Street in the city of New York, State of New York. Respondents Leonard C. Lane and Harvey C. Kaplan are also officers of this said corporate respondent, and their address is the same as that of the corporate respondent.

Respondent Frank Brown is an individual and until sometime in January, 1956, was an officer of both the aforementioned corporate respondents.

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 21, 1956, issued its complaint in this proceeding against respondents, and true copies thereafter were duly served on respondents.

It is agreed that the complaint may be dismissed as to respondent Frank Brown for the reason that he is not now and has not been since January, 1956, associated or connected with the other respondents in any way, and his whereabouts are unknown.

It is further agreed that the complaint may be dismissed as to respondents National Home Study School and Leonard C. Lane and Harvey C. Kaplan, individually and as officers of that corporate respondent, for the reason that the evidence in the light of subsequent developments is such as to indicate affirmatively that these said respondents were not parties to or participants in the acts and practices charged against the other respondents.

It is further agreed that subparagraphs 1, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of paragraphs 6 and 7, and paragraph 8 of the complaint herein may be dismissed on the grounds that the evidence in the light of subsequent developments is insufficient to substantiate the allegations set out therein.

Paragraph 9 of the complaint, as amended, is not covered by this agreement inasmuch as the allegation therein was disposed of by prior agreement between respondents Radio Television Training Association, Inc., Leonard C. Lane and Harvey C. Kaplan, individually and as officers of that corporate respondent, and counsel, resulting in a separate decision herein, which became the decision of the Commission on November 24, 1959.

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 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. Accordingly,

It is ordered, That respondents Radio Television Training of America, Inc., a corporation, and its officers, and Leonard C. Lane and Harvey C. Kaplan, individually and as officers of Radio Television Training of America, Inc., and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of a course of instruction for home study in the theory and practice of television and radio, do forthwith cease and desist from representing, directly or by implication:

1. That students will receive, as part of their course of instruction, without extra charge or cost, a 21" TV tube, or any other size tube, unless such tube is actually furnished without extra charge or cost.

2. That all expenses of students for a training period in New York City, or any other place, or any other expenses, will be paid by respondents, unless such is the fact.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to respondents National Home Study School, Leonard C. Lane and Harvey C. Kaplan, as officers of National Home

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Study School, and Frank Brown, individually and as an officer of the corporate respondents.

It is further ordered, That subparagraphs 1, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of paragraphs 6 and 7, and paragraph 8, of the complaint be, and the same hereby are, dismissed.

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 27th day of July 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Radio Television Training of America, Inc., a corporation, and its officers, and Leonard C. Lane and Harvey C. Kaplan, individually and as officers of Radio Television Training of America, Inc., 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

ARTHUR MURRAY, INC., ET AL.

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

Docket 7845. Complaint, Mar. 25, 1960—Decision, July 27, 1960

Consent order requiring the operator of dance studios in New York City and Miami—licensor also of some 450 other to use his name in conducting dancing schools throughout the United States and the world—

- To cease representing falsely by television, radio, newspaper, and other advertising in connection with "bait" or "decoy" promotional schemes used to obtain names of prospects for dance instruction, that winners of gift certificates in telephone quizzes, simple cross-word, dizzy dance, and zodiac puzzles and "Lucky Buck" contests, would receive, either without charge or at a reduced price, a course of dance instruction or a specified number of Arthur Murray dancing lessons; facts being that a substantial part of the purported instruction time was used to sell additional lessons and, in some instances, part of the instruction was furnished only on the previously undisclosed condition that additional lessons must be purchased;
- To cease using a variety of coercive practices, as in the order below indicated, to induce the prospect's purchase of dancing instruction and the pupil's purchase of additional lessons; and
- To cease requesting the signing of uncompleted contracts, refusing to answer inquiries concerning amounts due on agreements, and misrepresenting such amounts.

Before *Mr. Loren H. Laughlin*, hearing examiner.

Mr. Harold A. Kennedy for the Commission.

Cahill, Gordon, Reindel & Ohl, of New York City, for respondents.

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 Arthur Murray, Inc., a corporation, and Arthur Murray, Kathryn Murray and David A. Teichman, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions 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 Arthur Murray, Inc., 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 11 East Forty-third Street, in the City of New York, State of New York.

Respondents Arthur Murray, Kathryn Murray and David A. Teichman are officers of the corporate respondent. 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. The corporate respondent now, and for more than one year last past, owns and operates dance studios or schools in New York, N.Y., and Miami Beach, Fla., and licenses certain individuals, firms and corporations to use the "Arthur Murray Method" of dancing instruction and the name "Arthur Murray" in connection with the operation of approximately 450 dancing schools or studios in cities located throughout the United States and the world. As hereinafter used, "Arthur Murray Studios" refers to schools or studios licensed by the corporate respondent as well as those owned and operated by it.

The licensed dancing studios conduct their respective businesses under the supervision of and with the assistance and advice of respondents and pay the corporate respondent approximately ten percent (10%) of the gross receipts received from the operation of said dancing studios. Each licensee also pays an additional amount, usually five percent (5%) of its gross receipts, to the corporate respondent to be held in escrow to protect and indemnify the corporate respondent from claims arising out of the operation of said licensee's studio.

PAR. 3. In the course and conduct of the aforesaid business, advertising matter, contracts, letters, checks and other written instruments and communications are and have been sent and received between respondents at their place of business in the State of New York and Arthur Murray studios located in various States of the United States. In addition thereto, respondents are and have been engaged in the advertising and promotion of the aforesaid business by national network television broadcasts and by other means. As a result of said national promotion and the transmission and the receipt of said written instruments and communications, respondents are and have been engaged in extensive commercial intercourse in commerce, as "commerce" is defined in the Federal Trade Commission Act.

The volume of the aforesaid business conducted by respondents has been, and is, substantial.

PAR. 4. In the course and conduct of the aforesaid business, respondents establish and promulgate minimum "tuition" rates to be charged for dance instruction at the various Arthur Murray studios. Such rates are computed and set forth on rate sheets showing the amounts to be charged pupils or prospective pupils for dancing instruction, ranging from one hour of instruction, priced at approximately \$20, to 1,200 hours priced at approximately \$12,000. Courses of instruction are usually sold in multiples or series of hours, the particular course being purchased by a given pupil depending on the ability of the dance instructor or other Arthur Murray representatives to sell and the willingness of the pupil or prospective pupil to pay therefor. In order to facilitate the sale of dancing instruction, various incentives have been devised. Such incentives include the bronze medal, the silver medal and the gold medal, each of which, while purporting to be awards for achievement of varying standards of skill in dancing, usually or often correspond to a given number of hours of Arthur Murray method of dance instruction purchased. Also, respondents have devised so-called "Lifetime Membership" courses which are priced at approximately \$12,000 and call for 1,200 hours of dancing instruction during the first ten years of membership and two hours of instruction per month thereafter for life, along with certain ancillary benefits, including the attendance at specific Arthur Murray parties, admission to the ballroom during off-hours for practice, membership in the "Lifetime Membership Club" and free admission to certain parties when sponsored by the member. Multiple lifetime memberships, calling for additional hours of dancing instruction and other benefits similar to those previously described, are also available and have been frequently sold to individuals already holding a lifetime membership.

"Junior Lifetime Memberships", priced at approximately \$7,500 each and calling for similar but proportionally less benefits, are available and have been sold to numerous purchasers.

PAR. 5. In the course and conduct of their aforesaid business, respondents, directly or through their licensees, have made certain representations on radio and television broadcasts, in newspaper advertisements, and by other means, including those in connection with the use of various promotional schemes, all of which have been made for the purpose of attracting prospective purchasers of dance instruction. Such promotional schemes have included telephone quizzes, cross-word, dizzy dance, and zodiac puzzles, and "Lucky Buck" contests in which the winner is purportedly awarded a gift certificate entitling him or her to a given number of Arthur Murray lessons usually at \$35 or \$25. The representations made in radio and television broadcasts and newspaper advertisements have included those which relate to special or introductory offers purporting to furnish the first lesson of a course of dance instruction or a short course in dancing either at a reduced price or free of charge.

Among and typical, but not all inclusive, of offers made by respondents and their licensees are the following:

* * *

LEARN THE SECRET OF
BEING A POPULAR
DANCE PARTNER * * *
A \$1.00 TRIAL LESSON WILL PROVE
YOU CAN LEARN TO DANCE IN
3 HOURS THE ARTHUR MURRAY WAY * * *
Free
WHY we offer your
first lesson *and a party* FREE
at ARTHUR MURRAY Studios * * *

* * *

ARTHUR MURRAY
CROSSWORD PUZZLE
It's fun! Fill in the spaces and win an
ARTHUR MURRAY \$35 DANCE COURSE * * *
WERE YOU BORN
UNDER A LUCKY STAR?

* * *

If you are lucky, you win a
\$35.00 Arthur Murray Dance Course * * *
DIZZY DANCE CONTEST
WIN A \$25.00 DANCE COURSE
JUST UNSCRAMBLE
THE DIZZY DANCE PUZZLES * * *
GOT A LUCKY BUCK?

* * *

Complaint

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If any of the serial numbers of your dollar bills contain a "5" and "0" then you've got a "Lucky Buck." And here's what you'll receive for it! A certificate for a \$25.00 Arthur Murray Dance Course at the studio nearest you * * *

PAR. 6. Through the use of the aforesaid statements and representations, respondents, directly or through their licensees, have represented that the winner of said certificates and those to whom said special offers have been directed will receive, either without charge or at a reduced price, whichever the case may be, a course of dance instruction or a specified number of dancing lessons, said lessons or course of dancing instruction to consist of a period or periods of time devoted to *bona fide* dancing instruction.

PAR. 7. Said statements and representations are and have been false, misleading and deceptive. In truth and in fact, recipients of said certificates and persons responding to said special offers have not in many instances, been furnished a course of *bona fide* dance instruction or the specified number of dancing lessons called for in the certificates or in the special offer. In said instances, part, and frequently a substantial part, of the purported periods of instruction time furnished said recipients and said persons as specified in paragraph 6 have been used to sell additional lessons or courses of dance instruction. Furthermore, in some instances, part of the dancing instruction called for in said certificates or special offers is and has been furnished only upon the previously undisclosed condition that additional lessons must be purchased.

PAR. 8. Said promotional schemes and advertising therefor referred to in Paragraph 5 hereof are false, misleading and deceptive for the further reason that the purported quizzes, puzzles and contests are not *bona fide* quizzes, puzzles, or contests. They are, instead, a deceptive form of "bait" or "decoy", attractive to the innocent, unwary and unsuspecting members of the purchasing public, and have been and are used as the initial step in a system of effecting sales of dancing instruction. The purported quizzes, puzzles and contests are and have been so simple of solution, or the winning thereof so easy, as to remove them from the categories of competition, skill or special selection, and are such that substantially everyone, if not all, may qualify and win. Thus, these promotional schemes are not *bona fide* but are used to obtain the names of persons who may later be encouraged to purchase dancing instruction.

PAR. 9. In the course and conduct of the aforesaid business, courses or series of lessons in dancing instruction are and have been sold calling for the furnishing of a specified number of dancing lessons, said dancing lessons to consist of specified period or periods of time to be devoted to *bona fide* dancing instruction. In many instances, purchasers of said courses or lessons are not furnished

with the specified time of *bona fide* instruction called for because the actual instruction in such instances, and particularly toward the end of a course or series of dance instruction, is lost by reason of the persistent campaign of sales effort to re-enroll said purchasers in further courses of dance instruction. In such circumstances said purchasers receive less than the amount of *bona fide* dance instruction to which they are entitled.

PAR. 10. In the course and conduct of their aforesaid business, respondents, directly or through their licensees, have employed various techniques or practices as a part of a scheme to sell initial or supplemental courses of dance instruction. Such techniques or practices have in some instances been utilized to mislead, coerce, or otherwise induce by unfair or deceptive means the purchase of such initial or supplemental courses of dancing instruction. Among and typical, but not all inclusive, of such techniques or practices are the following:

1. The use of "relay salesmanship", involving successive efforts of a number of different Arthur Murray representatives who, by force of numbers and unrelenting sales talks, and aided by hidden listening devices monitoring conversation with the prospect or pupil, attempt to persuade and do persuade a lone prospect or pupil to sign a contract for dancing instruction.

2. The use of so-called "analyses", "tests", "studio competitions", "dance derbies", and similar artifices purportedly designed to evaluate dancing ability, progress or proficiency by an objective and impartial means, whereas in fact the purpose of such artifices is to lead the "winner" or "successful candidate" to believe that he should purchase future dancing instruction.

3. The use of blank or partially filled out contract forms and by refusing to answer or by evading questions concerning the amount due or payable whereby the pupil or prospective pupil is led to believe his financial obligation is substantially less than what respondents or their representatives consider due and payable.

4. By falsely assuring pupils or prospective pupils that a given course of dancing instruction will enable him or her to achieve a given "standard" of dancing proficiency whereas, in fact, it is anticipated and planned that such prospects or pupils will be, and are in fact, subjected to further coercive sales efforts toward the purchase of additional dancing instruction before the given course of dancing instruction is completed and before the "standard" has been achieved.

PAR. 11. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition in com-

merce with other corporations, firms and individuals likewise engaged in the sale of dancing instruction.

PAR. 12. The use by respondents of the unfair and deceptive acts and practices as aforesaid in connection with the conduct of their business, has had and now has the capacity and tendency to mislead, deceive, coerce or otherwise induce by unfair or deceptive means a substantial portion of the purchasing public into the purchase of substantial number of hours of dancing instruction. As a result thereof, trade has been unfairly diverted to respondents from their competitors and substantial injury has thereby been done to competition in commerce.

PAR. 13. 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.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

On March 25, 1960, the Federal Trade Commission issued and subsequently served its complaint in this proceeding, charging that the named corporate and individual respondents were engaged in unfair and deceptive acts and practices and unfair methods of competition in commerce within the meaning of the Federal Trade Commission Act. Thereafter, an agreement containing a consent order to cease and desist was entered into between counsel supporting the complaint and respondents and submitted in disposition of all the issues presented in this proceeding. Under procedures provided in § 3.25(e) of the Commission's Rules of Practice, the agreement is now before the Commission for its consideration.

Pursuant to the agreement, respondents have admitted all the jurisdictional allegations of the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations. The agreement further provides that respondents waive all further procedural steps before the hearing examiner and the Commission, including the making of findings as to the facts or conclusions of law and the right to challenge or to contest the validity of the order to cease and desist entered in accordance with that agreement. The agreement further asserts that it is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint. Respondents addition-

ally have agreed, among other things, that the order to cease and desist contained in the agreement may be entered in this proceeding by the Commission without further notice to the respondents and that when so entered it shall have the same force and effect as if entered after a full hearing and that it may be altered, modified or set aside in the manner provided for other orders.

For the reasons cited in its accompanying opinion, the Commission has determined that the aforesaid agreement containing the consent order to cease and desist provides for an appropriate disposition of this proceeding in the public interest and such agreement is hereby accepted and ordered filed; and

Having determined that this proceeding is in the public interest, the Commission hereby makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. Respondent Arthur Murray, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 11 East Forty-Third Street, in the City of New York, State of New York.

Respondents, Arthur Murray, Kathryn Murray, and David A. Teichman, are officers of the corporate respondent and maintain their offices at the same address 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 respondent Arthur Murray, Inc., a corporation, and its officers, and respondents Arthur Murray, Kathryn Murray and David A. Teichman, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, or through any licensee, in connection with the solicitation, advertising or sale of dancing instruction in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, by means of radio or television broadcasts, newspaper advertisements, contracts, telephone quizzes, crossword, dizzy dance or zodiac puzzles, "Lucky Buck" contests, or any certificates relating thereto, or any other means,

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that a course of dancing instruction or a specified number of dancing lessons, or any other service or thing of value, will be furnished free of charge, at a reduced price, or for any price, unless the period or periods of bona fide dancing instruction or other service or thing of value is in fact furnished as represented.

2. Refusing to honor the terms and provisions of any certificate, award or offer.

3. Using (a) by telephone any quiz, puzzle, contest or other device which purports to involve, or is represented as involving, skill, competition or special selection; (b) by other means any promotion which purports to be a *bona fide* quiz, puzzle, contest or other device involving skill, competition or special selection when skill, competition or special selection is not involved; or (c) any *bona fide* quiz, puzzle, contest or similar device when a purpose of such promotion is to obtain leads to prospective customers and such purpose is not fully and conspicuously disclosed in the announcement or description of such promotion.

4. Using in any single day "relay salesmanship", that is consecutive sales talks or efforts of more than one representative, with or without the employment of hidden listening devices, to induce the purchase of dancing instruction.

5. Using "analyses", "tests", "studio competitions", "dance derbies", or any other artifices purportedly designed to evaluate dancing ability, progress or proficiency when said artifices are not so designed or so used but are in fact to induce the purchase of dancing instruction.

6. Requesting pupils or prospective pupils to sign uncompleted contracts or agreements; evading or refusing to answer inquiries concerning amounts due or payable on proposed or completed contracts or agreements; or misrepresenting to pupils or prospective pupils what is or will be due or payable.

7. Falsely representing to or assuring pupils or prospective pupils that a given course of dancing instruction will enable him or her to achieve a given standard of dancing proficiency.

8. Contracting with a pupil or prospective pupil for a specific course of dancing instruction and thereafter, prior to the completion of the given course, subjecting such pupil or prospective pupil to sales effort toward the purchase of additional lessons, unless (a) any contract for additional lessons is subject to cancellation by such pupil or prospective pupil, with or without cause, at any time up to and including one week after the completion of the units of dancing instruction previously contracted for, without cost or obligation,

except that a charge may be made for not in excess of two additional lessons furnished during such week and (b) all of such units previously contracted for shall be used or completed prior to the commencement of the additional lessons.

9. Using any technique or practice similar to those set out in paragraphs 4 through 8 hereof to mislead, coerce, or induce by other unfair or deceptive means the purchase of dancing instruction.

It is further ordered, That respondent Arthur Murray, Inc., and respondents Arthur Murray, Kathryn Murray, and David A. Teichman, individually and as officers 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.

OPINION OF THE COMMISSION

By KERN, *Commissioner*:

On July 5, 1960, the hearing examiner filed an order and notice rejecting an "Agreement Containing Consent Order To Cease And Desist" entered into between counsel supporting the complaint and all respondents. This matter comes on for hearing on the joint appeal of counsel supporting the complaint and counsel for all respondents from that ruling as permitted under § 3.25(e) of the Commission's Rules of Practice.

In his notice of rejection, the hearing examiner stated that the charges against respondents are serious in character and indicate a planned course of fraudulent acts and practices; and he in effect expressed the view that the Commission's policy does not contemplate that the procedures provided in § 3.25 of the Rules be used to dispose of matters in which the challenged practices appear thus contrary to the public interest. Under the agreement, everything is accomplished that would be achieved by entry of a cease and desist order after trial and the expeditious disposition of this proceeding duly authorized by such agreement will serve the public interest. Furthermore, the procedure provided under § 3.25 is available in all types of cases at any stage of a proceeding subsequent to issuance of a complaint. *Rit-Zie Novelty Company, Inc., et al.*, Docket No. 6354, *Victor B. Handal & Bro., Inc., et al.*, Docket No. 6375, and *Reliance Intercontinental Corporation, et al.*, Docket No. 6520 (decided October 7, 1957). Having determined that the agreement constitutes an appropriate disposition of the issues presented by the complaint, we are accepting the agreement and entering appropriate decision.

Decision

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IN THE MATTER OF
AM-PAR RECORD CORP. ET AL.

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

Docket 7778. Complaint, Feb. 5, 1960—Decision, July 28, 1960

Consent order requiring New York City manufacturers of phonograph records to cease giving concealed "payola"—money or other material consideration—to disc jockeys of television and radio programs or others to induce broadcasting of their records.

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

Mr. Thomas Kiernan, White and Case, of New York, N.Y., for respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

The complaint in this proceeding was issued by the Federal Trade Commission on February 5, 1960, charging the respondents with engaging in unfair and deceptive acts and practices and unfair methods of competition by negotiating for and disbursing "payola" to disk jockeys broadcasting musical programs over radio or television stations broadcasting across state lines and, in collaboration with certain record manufacturers and/or distributors, aiding and abetting the deception of the public by various disk jockeys, by controlling or unduly influencing the "exposure" of records by disk jockeys with payment of money or other consideration to them, or to other personnel who select or participate in the selection of the records used on such broadcasts. A true and correct copy of the original complaint was duly served upon the respondents and each and all of them, as required by law. Thereafter, respondents appeared by counsel and agreed to dispose of this proceeding without a formal hearing pursuant to the provisions of an agreement dated June 7, 1960, containing consent order to cease and desist. The agreement is accompanied by (1) a waiver in and by which respondents agree that the Federal Trade Commission may act immediately upon the initial decision without waiting thirty days as contemplated by Rules 3.21 and 3.25 and (2) an affidavit signed and sworn to on March 29, 1960, by Samuel H. Clark to support the order, hereinafter entered dismissing this proceeding against Harry Levine, Edith Schaffer and Simon B. Siegel, individually. The agreement of June 7, 1960, provides that certain allegations of the original complaint should be stricken, and amendments substituted for such stricken allegations.