

Decision

57 F.T.C.

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.

An order has been entered on June 16, 1960, amending the complaint as provided in the aforesaid agreement. The hearing examiner hereby finds that such amendments do not affect the gravamen of the original complaint.

The aforementioned agreement containing consent order to cease and desist, affidavit of Samuel H. Clark, and waiver were received by the hearing examiner on June 13, 1960. The agreement of June 7, 1960, has been signed by the respondents, by counsel supporting the complaint, and by counsel for the respondents. It has been approved by the Director, the Associate Director, and the Assistant Director of the Bureau of Litigation of the Federal Trade Commission. The agreement contains the form of a consent cease and desist order which the parties have agreed is dispositive of the issues involved in this proceeding. The agreement has been submitted to the hearing examiner 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 amended complaint and have agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. The agreement provides that it disposes of all of this proceeding as to all parties. In the agreement respondents waive: (a) any further procedural steps before the hearing examiner and the Commission; (b) the making of findings of fact or conclusions of law; and (c) all of the rights that they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement. When entered such order would have the same force and effect as if entered after a full hearing. The agreement provides that such order may be altered, modified, or set aside in the manner provided for other orders; that the amended complaint may be used in construing the terms of the order; that the agreement shall not become part of the official record unless and until it becomes part of the decision of the Commission; that the record on which the Initial Decision and the decision of the Commission shall be based shall consist solely of the amended complaint and the agreement; and that the agreement is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the amended complaint.

This proceeding having now come on for final consideration on the amended complaint and the aforesaid agreement of June 7, 1960, containing consent order, and it appearing that the order provided for in said agreement covers all of the allegations of the amended complaint, and provides for an appropriate disposition of this pro-

Findings

57 F.T.C.

ceeding as to all parties, the agreement of June 7, 1960, is hereby accepted and ordered filed at the same time this decision becomes the decision of the Federal Trade Commission pursuant to Section 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings. The undersigned hearing examiner having considered the agreement and proposed order and being of the opinion that the acceptance thereof will be in the public interest makes the following findings and issues the following order:

FINDINGS

1. The Federal Trade Commission has jurisdiction over the parties and the subject matter of this proceeding;

2. Respondents Am-Par Record Corp. and Pamco 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 1501 Broadway (erroneously designated in the complaint as 77 West 66th Street) New York, N.Y.

3. Respondent Samuel H. Clark is president of the corporate respondents and formulates, directs, and controls the acts and practices of said corporate respondents. Respondents Harry Levine, Edith Schaffer, and Simon B. Siegel are vice president, secretary, and treasurer, respectively, of the corporate respondents. The complaint erroneously designated the addresses of the individual respondents, whose correct addresses are as follows: The address of respondent Simon B. Siegel is 7 West 66th Street, New York, N.Y. The address of the other individual respondents is the same as that of the corporate respondents as designated herein.

4. The affidavit of Samuel H. Clark which is being filed simultaneously with the agreement of June 7, 1960, states that the respondents Simon B. Siegel, and Edith Schaffer do not have any familiarity with or knowledge of the practices which have been followed by Am-Par Record Corp., in the promotion and sale of its records or of the practices which have been followed by Pamco Music Co., Inc. in connection with the promotion of its properties. The affidavit further states that neither Harry Levine nor Edith Schaffer nor Simon B. Siegel have had any participation or part in making any decision on behalf of the corporate respondents to pay out money to individuals authorized to select and expose records for radio or television programs, nor have they had anything to do with negotiating for or distributing any monies to disk jockeys broadcasting musical programs on radio or television stations, or to any other personnel who influence the selection of the records exposed by the disk jockeys on such programs;

5. Respondents are engaged in commerce as "commerce" is defined in the Federal Trade Commission Act;

6. The amended complaint herein states a cause of action against the respondents under the Federal Trade Commission Act, and this proceeding is in the public interest. Now, therefore,

It is ordered, That respondents Am-Par Record Corp., a corporation, and its officers, Pamco Music, Inc., a corporation, and its officers, Samuel H. Clark, individually, and as an officer of said corporations, and Harry Levine, Edith Schaffer, and Simon B. Siegel, as officers of said corporations, 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.

It is further ordered, That the complaint be, and hereby is, dismissed as to Harry Levine, Edith Schaffer, and Simon B. Siegel individually, but not as officers of the said corporate respondents.

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 28th day

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

It is ordered, That respondents Am-Par Record Corp., a corporation, Pamco Music, Inc., a corporation, and Samuel H. Clark, individually, and as an officer of said corporations, and Harry Levine, Edith Schaffer, and Simon B. Siegel, as officers of said corporations, shall, within sixty (60) days after service upon them of this order