

complied with the order to cease and desist.

IN THE MATTER OF
LOUIS J. BEDELL ET AL. DOING BUSINESS AS
ERA RECORDS

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

Docket 8191. Complaint, Nov. 28, 1960—Decision, Apr. 6, 1961

Consent order requiring Hollywood manufacturers of phonograph records to cease giving concealed payola to disc jockeys and other personnel of radio and television stations to induce frequent playing of their records in order to increase sales.

Complaint

58 F.T.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in by by said Act, the Federal Trade Commission, having reason to believe that Louis J. Bedell, Max Newman and Herbert Newman, individually, and formerly operating as copartners, trading and doing business as Era Records, 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. Individual respondents Louis J. Bedell, Max Newman and Herbert Newman were copartners, trading and doing business as Era Records. Louis J. Bedell's and Max Newman's present office and principal place of business is located at 1481 North Vine Street, in the City of Hollywood, State of California. Herbert Newman's office is located at 6425 Hollywood Boulevard, in the City of Hollywood, State of California.

PAR. 2. Respondents, prior to May 1959, were engaged in the manufacture and distribution, offering for sale and sale of phonograph records to distributors and various retail outlets when trading and doing business as Era Records. Respondents are now, and for some time last past have been, engaged in the manufacture and distribution, offering for sale and sale of phonograph records to distributors and various retail outlets, under separate corporate entities.

PAR. 3. In the course and conduct of their business, respondents, as copartners, for some time last past have caused their said records, when sold, to be shipped from one State of the United States to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a course of trade in said phonograph records in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their said business, and at all times mentioned herein, respondents have been in competition, in commerce, with corporations, firms and individuals in the sale of phonograph records.

PAR. 5. After World War II when TV and radio stations shifted from "live" to recorded performances for much of their programming, the production, distribution and sale of phonograph records emerged as an important factor in the musical industry, with a sales volume of approximately \$400,000,000 in 1958.

Record manufacturing companies and distributors ascertained that popular disc jockeys could, by "exposure" or the playing of a record day after day, sometimes as high as 6 to 10 times a day,

substantially increase the sales of those records so "exposed." Some record manufacturers and distributors obtained and insured the "exposure" of certain records in which they were financially interested by disbursing "payola" to individuals authorized to select and "expose" records for both radio and TV programs.

"Payola," among other things, is the payment of money or other valuable consideration to disc jockeys of musical programs on radio and TV stations to induce, stimulate or motivate the disc jockey to select, broadcast, "expose" and promote certain records in which the payer has a financial interest.

Disc jockeys, in consideration of their receiving the payments heretofore described, either directly or by implication, represent to their listening public that the records "exposed" on their broadcasts have been selected on their personal evaluation of each record's merits or its general popularity with the public, whereas, in truth and in fact, one of the principal reasons or motivations guaranteeing the record's "exposure" is the "payola" payoff.

PAR. 6. In the course and conduct of their business, in commerce, during the period indicated herein, respondents as copartners have engaged in unfair and deceptive acts and practices and unfair methods of competition in the following respects:

The respondents alone or with certain unnamed record distributors negotiated for and disbursed "payola" to disc jockeys broadcasting musical programs over radio or television stations broadcasting across state lines, or to other personnel who influence the selection of the records "exposed" by the disc jockeys on such programs.

Deception is inherent in "payola" inasmuch as it involves the payment of a consideration on the express or implied understanding that the disc jockey will conceal, withhold or camouflage such fact from the listening public.

The respondents by participating individually or in a joint effort with certain collaborating record distributors have aided and abetted the deception of the public by various disc jockeys by controlling or unduly influencing the "exposure" of records by disc jockeys with the payment of money or other consideration to them, or to other personnel which select or participate in the selection of the records used on such broadcasts.

Thus, "payola" has been used by respondents to mislead the public into believing that the records "exposed" were the independent and unbiased selection of the disc jockeys based either on each record's merit or public popularity. This deception of the public has the capacity and tendency to cause the public to purchase the "exposed" records which they might otherwise not have purchased and also to

enhance the popularity of the "exposed" records in various popularity polls, which in turn has the capacity and tendency to substantially increase the sales of the "exposed" records.

PAR. 7. The aforesaid acts, practices and methods have the capacity and tendency to mislead and deceive the public and to hinder, restrain and suppress competition in the manufacture, sale or distribution of phonograph records, and to divert trade unfairly to the respondents from their competitors, and injury has thereby been done and may continue to be done to competition in commerce.

PAR. 8. The aforesaid acts and practices of respondents, as alleged herein, were and are all to the prejudice and injury of the public and of respondents' competitors and 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. Arthur Wolter, Jr., for the Commission.

Lesser & Graff, by *Mr. Irving Graff*, of Beverly Hills, Calif., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on November 28, 1960, issued its complaint herein, charging the individual respondents Louis J. Bedell, Max Newman and Herbert Newman, who are now engaged in the manufacture, distribution, offering for sale and sale of phonograph records to distributors and various retail outlets (and were so engaged prior to May, 1959, when trading and doing business as Era Records), with violation of the Federal Trade Commission Act, in that respondents, alone or with certain unnamed record distributors, have negotiated for and disbursed "payola", i.e., the payment of money or other valuable consideration to disc jockeys of musical programs on radio and television stations, to induce, stimulate or motivate the disc jockeys to select, broadcast, "expose" and promote certain records, in which respondents are financially interested, on the express or implied understanding that the disc jockeys will conceal, withhold or camouflage the fact of such payment from the listening public. Respondents were duly served with process.

On January 27, 1961, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order To Cease And Desist", which had been entered into by respondents, their counsel, and counsel supporting the complaint on January 17, 1961, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

After due consideration, the hearing examiner finds that said agreement, both in form and in content, is in accord with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Individual respondents Louis J. Bedell, Max Newman and Herbert Newman were copartners, trading and doing business as Era Records. Louis J. Bedell's and Max Newman's present office and principal place of business is located at 1481 North Vine Street, Hollywood, California. Herbert Newman's office is located at 6425 Hollywood Boulevard, Hollywood, California.

2. 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.

3. This agreement disposes of all of this proceeding as to all parties.

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 they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

5. 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.

6. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

7. This 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.

8. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondents. When so entered it shall have the same force and effect as if entered after a full hearing. It may be altered, modified or set aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

Upon due consideration of said complaint and agreement, the hearing examiner approves and accepts the said "Agreement Containing Consent Order To Cease And Desist"; finds that the Commission has jurisdiction of the subject matter of this proceeding and of the respondents herein; that the complaint states a legal cause

for complaint under the Federal Trade Commission Act against the respondents, both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; and that the following order, as proposed in said agreement, is appropriate for the just disposition of all of the issues in this proceeding as to all of the parties hereto. The hearing examiner therefore issues the said order, as follows:

It is ordered, That respondents Louis J. Bedell, Max Newman and Herbert Newman, individually and formerly operating as copartners trading and doing business as Era Records, or under any other name, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with phonograph records which have been distributed in commerce, or which are used by radio or television stations in broadcasting programs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Giving, or offering to give, without requiring public disclosure, any sum of money or other material consideration, to any person, directly or indirectly, to induce that person to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or any of them, have a financial interest of any nature;

(2) Giving, or offering to give, without requiring public disclosure, any sum of money, or other material consideration, to any person, directly or indirectly, as an inducement to influence any employee of a radio or television broadcasting station, or any other person, in any manner, to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or any of them, have a financial interest of any nature.

There shall be "public disclosure" within the meaning of this order, by any employee of a radio or television broadcasting station, or any other person, who selects or participates in the selection and broadcasting of a record when he shall disclose, or cause to have disclosed, to the listening public at the time the record is played, that his selection and broadcasting of such record are in consideration for compensation of some nature, directly or indirectly received by him or his employer.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 6th day of April 1961, become the decision of the Commission; and, accordingly:

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Complaint

It is ordered, That the above-named respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.
