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Decision

The Commission now having concluded that said initial decision dismissing the complaint without prejudice constitutes an appropriate and adequate disposition of this proceeding:

It is ordered, That the initial decision of the hearing examiner filed April 28, 1961, be, and it hereby is, adopted as the decision of the Commission.

IN THE MATTER OF

CAPITOL RECORDS DISTRIBUTING CORPORATION

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

Docket 8029. Complaint, June 30, 1960—Order, June 1, 1961

Order dismissing without prejudice—the public interest considered to be fully protected by recent amendment to the Communications Act of 1934—complaint charging illegal payment of “payola” to radio and television disc jockeys.

Mr. Harold A. Kennedy and *Mr. Arthur Wolter, Jr.* for the Commission.

Hogan & Hartson, by *Mr. Joseph J. Smith, Jr.* and *Mr. E. Barrett Prettyman, Jr.*, of Washington, D.C., for respondent.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

On June 30, 1960, the Commission issued its complaint herein, charging the Respondent, which is engaged in the distribution, offering for sale, and sale of phonograph records to various retail outlets and distributors, with violation of the Federal Trade Commission Act, in that Respondent, alone or with certain unnamed record distributors, has negotiated for and disbursed “payola”, which consists of the payment of money or other valuable consideration to disc jockeys of musical programs on radio and TV stations, to induce the disc jockeys to select, broadcast, “expose” and promote certain records, in which the Respondent is financially interested, on the express or implied understanding that the disc jockeys will conceal the fact of such payment from the listening public.

On March 27, 1961, prior to the offering of any evidence herein, counsel supporting the complaint submitted a motion requesting that the complaint be dismissed without prejudice. In support of their request counsel supporting the complaint state that the Communi-

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cations Act of 1934 has been amended in several particulars, and that, as a result of those amendments, they consider "the continued prosecution of this matter an unnecessary expenditure of time, effort and funds in determining the legality of the alleged practice, since the protection of the public interest is now fully assured by specific statute". Counsel for the Respondent offers no objection to the granting of this motion.

After considering the motion to dismiss, the law and amendments referred to therein, and the Respondent's reply thereto, the Hearing Examiner accepts the reasons offered in support of the motion, and concurs in the opinion of counsel supporting the complaint that the dismissal without prejudice of the complaint herein will be in the public interest. Therefore,

It is ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice to the right of the Commission to initiate further proceedings against the Respondent, should future events so warrant.

FINAL ORDER

By its order of May 9, 1961, the Commission extended until further order the date on which the initial decision of the hearing examiner herein would become the decision of the Commission; and

The Commission now having concluded that said initial decision dismissing the complaint without prejudice constitutes an appropriate and adequate disposition of this proceeding:

It is ordered, That the initial decision of the hearing examiner filed April 5, 1961, be, and it hereby is, adopted as the decision of the Commission.
