
IN THE MATTER OF
DECCA DISTRIBUTING CORPORATION

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

Docket 7880. Complaint, Mar. 18, 1960—Decision, Aug. 2, 1961

Order—following enactment of specific statutes which afford adequate protection to the public against the challenged practices—dismissing complaint charging New York City distributors of phonograph records with giving illegal “payola” to radio and television disc jockeys.

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 Decca Distributing Corporation, a corporation, hereinafter referred to as respondent, has 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. Decca Distributing Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its headquarters located at 445 Park Avenue, New York, New York.

PAR. 2. Respondent is a wholly owned subsidiary of Decca Records, Inc. The respondent is now, and for some time last past has been, engaged in the offering for sale, sale and distribution of phonograph records and other products manufactured by its parent corporation, Decca Records, Inc. and by other subsidiaries of Decca Records, Inc. including Coral Records, Inc. and Brunswick Radio Corporation. Respondent sells and distributes said phonograph records and other products through some five divisions and thirty-one branch offices located throughout the United States, to retail outlets and jukebox operators in various States of the United States.

In the course and conduct of its business, respondent now causes, and for some time last past has caused, the records its distributes to be shipped from one of its division headquarters or branch offices to purchasers thereof located in various other states of the United States, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in phonograph records in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of its business, at all times mentioned herein, respondent has been, and is now, in substantial competition, in commerce, with corporations, firms and individuals in the sale and distribution of phonograph records.

PAR. 4. After World War II, when television 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 disk jockeys could, by "exposure" or the playing of a record day after day, sometimes as high as six to ten 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 television programs.

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

Disk 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. 5. In the course and conduct of its business in commerce during the last several years, the respondent has engaged in unfair and deceptive acts and practices and unfair methods of competition in the following respects:

The respondent has negotiated for and disbursed "payola" to disk 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 disk 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 disk jockey will conceal, withhold or camouflage such fact from the listening public.

The respondent has aided and abetted the deception of the public by various disk jockeys by controlling or unduly influencing the "exposure" of records by disk 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" is used by the respondent to mislead the public into believing that the records "exposed" were the independent and unbiased selections of the disk 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 otherwise might 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. 6. 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 offering for sale, sale and distribution of phonograph records, and to divert trade unfairly to

the respondent from its competitors and substantial injury has thereby been done and may continue to be done to competition in commerce.

PAR. 7. The aforesaid acts and practices of respondent, as alleged herein, were and are all to the prejudice and injury of the public and of respondent's 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., and *Mr. John T. Walker* for the Commission.

Mr. Robert J. Feldman, New York, N.Y., for the respondent.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

On March 18, 1960, the Commission issued its complaint herein, charging the Respondent, which is a wholly-owned subsidiary of Decca Records, Inc., and is engaged in the offering for sale, sale and distribution of phonograph records and other products manufactured by its parent corporation and by other subsidiaries thereof, with violation of the Federal Trade Commission Act, in that Respondent has negotiated for and disbursed "payola", which consists of the payment of money or other valuable consideration to disk jockeys of musical programs on radio and TV stations, to induce the disk jockeys to select, broadcast, "expose" and promote certain records, in which the Respondent is financially interested, on the express or implied understanding that the disk jockeys will conceal the fact of such payment from the listening public.

On June 5, 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 his request counsel supporting the complaint states that the Communications Act of 1934 has been amended in several particulars, and that, as a result of those amendments, he considers "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 herein, and the oral reply thereto of counsel for the Respondent, the Hearing Examiner accepts the reasons offered in support of the motion, and concurs in the opinion of counsel supporting

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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.