COLUMBIA BROADCASTING SYSTEM, INC., ET AL.

Docket 8512. Order, Feb. 26, 1963

Order granting respondent permission to inspect certain special reports to Commission.

ORDER FOR EXAMINATION OF DOCUMENTS

Complaint counsel has requested permission to disclose to respondents' counsel the special reports filed by ABC-Paramount Records, Inc., and Decca Records, Inc., in response to a Commission order issued under Section 6(b) of the Federal Trade Commission Act. Complaint counsel intends to introduce these reports or information taken therefrom into evidence and disclosure to opposing counsel in advance of hearings would appear to be appropriate unless some overriding consideration making disclosure inimical to the public interest intervenes.

These special reports are part of a group of 56 received from phonograph record manufacturers. Complaint counsel previously requested and received permission to disclose the contents of the 54 reports then in his possession and is now requesting permission to accord similar treatment to these two belatedly filed reports.

Inasmuch as there appears no reason why the two reports here involved should be withheld and thus treated differently than the 54 others of which they are a part, the Commission has determined that they should be disclosed to respondents' counsel. However, the Commission has recently formulated and promulgated a procedure for such disclosures which is designed to preserve the secrecy of such reports to as great an extent as possible. This procedure is described and was utilized in our interlocutory Order For Examination Of Documents, issued February 11, 1963, *The Grand Union Company*, Docket No. 8458. It is the Commission's view that the disclosure of these special reports should be made pursuant to this new procedure.

From the date of service of this order, all of the 56 special reports and the information obtained therefrom shall be dealt with in strict accordance with the terms of this order.

Accordingly, it is ordered, That counsel for respondents be, and hereby are, granted permission to examine the special reports filed by ABC-Paramount Records, Inc., and Decca Records, Inc., upon the following conditions:

1. Counsel for respondents who have filed an appearance and are actually engaged in the defense of this proceeding may examine the aforesaid documents on the Commission's premises, and may have made at their own expense and may remove from the Commission's premises one photocopy of each such document, or may make and

remove summaries of the information contained in these documents, provided copies thereof are furnished to complaint counsel.

2. Except as expressly permitted by the hearing examiner, no additional copies may be made of the photocopies or summaries which are removed from the Commission's premises.

3. Except as provided in paragraph 4, the copies or summaries removed from the Commission's premises may be examined only by counsel for respondents who have filed an appearance and are actually engaged in the defense of this proceeding, and only for the purpose of preparing such defense; and no information contained in such copies or summaries shall be disclosed to any other person, including any officer or employee of respondents.

4. Counsel for respondents may make application to the hearing examiner for permission to disclose the copies or summaries removed from the Commission's premises, or any information contained therein, to other specified persons for use in the defense of this proceeding. Application for such permission shall identify the names and positions of the persons to whom the copies, summaries or information would be disclosed and the purposes for which they would be examined or used by those persons. Permission may be granted by the hearing examiner upon a showing that such disclosure is necessary for the respondents' defense in this proceeding.

5. All copies or summaries removed from the Commission's premises, together with all notes, memoranda or other papers containing information obtained from such copies or summaries, must be returned to the Commission upon the termination of this proceeding.

It is further ordered, That insofar as it is possible the 54 special reports previously ordered revealed to respondents' counsel be afforded treatment in accordance with the above set out provisions of this order.

Commissioners Anderson and MacIntyre dissented for the reason that it would be manifestly unfair to subject the materials furnished by the various people not parties to this action to examination by their competitor, Columbia Broadcasting System, Inc. Commissioner MacIntyre did not concur in the action of the Commission in making available to Columbia Broadcasting System, Inc., the other 54 reports of its competitors.

THE DAYTON RUBBER COMPANY

Docket 7604. Order and Opinion, Feb. 28, 1963

Interlocutory order denying—no sufficient showing having been made as to the relevancy or materiality of the documents concerned—application for release of confidential information, improperly presented as an application