
IN THE MATTER OF
AMERICAN MUSIC GUILD, INC., ET AL.

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

Docket 8550. Complaint, Jan. 2, 1963—Decision, July 8, 1965

Order requiring two defunct Washington, D.C., retailers of stereophonic records and record players through a "package deal," to cease making false savings, pricing, value, and free claims, and misrepresenting the manner in which the records could be selected and would be delivered, and that offers were for a limited time and available only to specially selected persons.

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

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Trade Commission, having reason to believe that American Music Guild, Inc., a corporation, Space-Tone Electronics Corp., a corporation, and Philip R. Connor, Jr., individually and as an officer of both said corporations and Neil J. Cantor and Ernest R. Brewington, individually and as officers of American Music Guild, Inc., 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. Respondents American Music Guild, Inc., and Space-Tone Electronics Corp., are corporations organized, existing and doing business under and by virtue of the laws of the State of Maryland with their office and principal place of business located at 1145 - 19th Street, N.W., Washington, D.C.

Respondent Philip R. Connor, Jr., is an officer of both said corporate respondents and participates in formulating, directing and controlling the acts and practices of both said corporate respondents, including the acts and practices hereinafter set forth. Respondents Neil J. Cantor and Ernest R. Brewington are officers of the corporate respondent, American Music Guild, Inc., and, individually and jointly, and in conjunction with respondent Philip R. Connor, Jr. participate in formulating, directing and controlling the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. The business address of the individual respondents is the same as that of the corporate respondents.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the assembling, advertising, offering for sale and sale of phonographs, phonograph records and record cabinets to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused their products, when sold, to be shipped and transported from their place of business in the District of Columbia to purchasers thereof located in various other States of the United States, as well as in the District of Columbia and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents, in the course and conduct of their business, and for the purpose of inducing the sale of their products, are engaged in a selling plan involving various combination offers for

one price, which offers included a console phonograph, a certain number of records to be delivered periodically, as specified, and a record cabinet, and, at the present time, includes a console phonograph and a certain number of records to be delivered as specified in the contract. These combination offers were, and are, generally the same, although varying in details of operation.

PAR. 5. In connection with said combination offers, respondents, in their advertising, which includes radio commercials, and through their sales representatives and employees, have made, and make, certain statements and representations, directly or by implication, to obtain purchasers for respondents' products.

Typical, but not all inclusive of such statements and representations, are the following:

1. That respondents are working with, are affiliated with, or are sponsored by RCA Victor, CBS Electronics, Columbia Records or Columbia Broadcasting System.

2. That respondents' combination offers, and the respondents themselves, have been approved by the Federal Trade Commission and the Better Business Bureau.

3. That the finance charge in the conditional sales contract is one per cent per month on the unpaid balance of the contract.

4. That the then current offer will be open for a limited time only and will be made to a limited number of persons who have been specially selected.

5. That by becoming a member of the American Music Guild, a substantial discount will be afforded to the customer from the regular retail price of said combination offer.

PAR. 6. In truth and in fact:

1. Respondents are not now, and never have been, working with, affiliated with, or sponsored by RCA Victor, CBS Electronics, Columbia Records or Columbia Broadcasting System or any other company.

2. Neither the combination offers of the respondents, nor the respondents themselves, are, or ever have been, approved by the Federal Trade Commission or the Better Business Bureau.

3. The finance charge in the conditional sales contract is greatly in excess of one percent a month on the unpaid balance.

4. The then current offer is not open for a limited time, is not made to a limited number of persons and the persons contacted as prospective customers have not been specially selected for that purpose. On the contrary, the offer is open for an indefinite period of time and the combination offer is made to the public in general

and can be purchased by anyone able to pay the purchase price in cash or who has a sufficiently good credit rating to warrant the extension of credit.

5. By becoming a member of the American Music Guild, the purchaser obtains no discount on the purchase price of said combination offer but, on the contrary, the net price after deduction of the said alleged discount is the price at which said combination offer is usually and customarily sold by the respondents at retail in the recent regular course of business in the trade area or areas where the representations are made.

Therefore, the statements and representations set forth in Paragraph Five hereof are false, misleading and deceptive.

PAR. 7. In the course and conduct of their business as aforesaid, and for the purpose of inducing the public to purchase their products, respondents, by means of newspaper advertisements, radio commercials and direct mail advertising, make certain other statements and representations concerning their products.

Typical, but not all inclusive, of such statements and representations are the following:

1. Free 120 12" (record) albums.

And the most exciting feature is that you'll then receive absolutely free a magnificent Columbia Stereophonic Console Record Player*** plus a handsome record cabinet***.

As a new subscriber to the American Music Guild you immediately receive without extra cost a brand new magnificent General Electric Stereo Console.

In addition you also receive at no cost a \$40 matching record cabinet to store your albums.

Remember this valuable General Electric Stereophonic Console is yours at absolutely no additional cost.

No added cost for the GE Stereo Console.

Remember, a Columbia Stereophonic player free when you buy one stereo record a month.

Everything is yours free, the stereo console and matching cabinet when you buy one stereo LP a month from the American Music Guild.

As a new member-subscriber to the American Music Guild, you immediately receive without extra cost, the "Senator" (console).

Do you know that you can own a General Electric Hi-Fidelity Stereo Console worth over \$300 as a dividend for subscribing to just two stereo albums a month at the American Music Guild?

Please accept this beautiful \$695.00 stereo console at no extra cost by subscribing for only 2 stereo albums a month.

Please remember, you are obligated to accept only two stereo albums a month, priced at \$4.98 each.

Your complete record collection will provide for you 140 stereo albums, that alone at the minimum nationally advertised price of \$4.98 each is worth \$695.

2. There are no hidden charges, no gimmicks.

All you buy is one LP a month at \$4.98-\$5.98.

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The price you pay for each album is only \$4.98.

Transportation and postage are prepaid.

3. Folks, just a minute. I have been handed a very important announcement from the American Music Guild, a division of Space-Tone Electronics. The membership committee has informed me there are more openings in the American Music Guild.

By becoming a member of American Music Guild * * *.

If you meet the qualifications you can join the American Music Guild.

The American Music Guild has asked for new memberships.

Membership in the American Music Guild now makes it possible * * *.

As a new member-subscriber to the American Music Guild * * *.

Designating the purchase contract as "Membership application."

4. All of the famous label American Music Guild stereo albums are nationally advertised at \$4.98 or more.

The American Music Guild price for each album is only \$4.98 payable in advance. Many of the famous American Music Guild albums you select could be priced much higher.

The price you pay for each album is only \$4.98, payable in advance. Many of the famous label American Music Guild albums you select are priced much higher.

All nationally advertised at \$4.98 or more.

5. Manufactured to sell for \$695.

Please accept this beautiful \$695 stereo console at no extra cost.

You will receive at no extra cost the "Senator" competitively priced at \$695.

6. You select from albums like these. You have a wide variety of Stereo albums from which to choose * * * classical * * * semi-classical * * * popular * * * folk music * * * jazz * * * show tunes * * * whatever your particular taste in listening is * * * you assemble exactly what you wish * * * The selection is yours.

PAR. 8. By means of said statements and representations, and others of similar import not specifically set forth herein, respondents represented, and now represent, directly or by implication:

1. That one or more of the items constituting the particular combination offer then being sold are free or without additional cost or charge to the purchaser.

2. That the only cost of the combination offer was, and now is, the cost of one or two records purchased each month for a specified period of time, under the terms of the particular contract.

3. That the respondent, American Music Guild, Inc., is a non-profit association of persons, called members, with kindred pursuits or common interest or aims for mutual aid and protection.

4. That the records to be delivered as part of the combination offer are all famous label records, selling at or of a value of \$4.98 or more each and that said records will be delivered each month.

5. That the "Senator" console is priced at, or is of a value of, \$695.

6. That the purchaser will be privileged to choose the class or

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kind of records he or she may desire and that only records of that class or kind will be delivered.

PAR. 9. In truth and in fact:

1. Nothing is given free or without additional cost or charge, but on the contrary, the price of each item constituting the particular combination offer is included in the total purchase price of such combination offer.

2. To the total purchase price of the combination offer there is added a 29¢ mailing and handling charge for each record, whether delivered one at a time or more than one at a time. In addition thereto, unless the purchaser pays the total amount of the purchase price for the entire combination offer in full within ninety days of the signing of the contract, the purchaser is required to sign a conditional sales contract which includes not only interest on the amount owed, but a substantial finance charge. The monthly payments on such conditional sales contract greatly exceed the cost of two records a month and the total amount is required to be paid in a much shorter time than it would be if the only payment was for two records a month.

3. The American Music Guild, Inc. is not a non-profit association of persons called members, with kindred pursuits or common interests or aims for mutual aid and protection but, on the contrary, it is a business corporation organized for the sole purpose of selling respondents' products to the general public for profit.

4. The records delivered as part of the combination offer are not all famous label records selling at, or of a value of, \$4.98, they are not delivered monthly and the records delivered are not all of the class or kind chosen by the customer, but, on the contrary, many of the records are other than famous label records, and the records delivered are valued at, and selling at, substantially less than \$4.98 in the trade area where the combination offer is presented, and at the time it is presented, and said records are delivered at intervals of six months or more.

5. The "Senator" console which is part of the combination offer is not manufactured to sell at \$695, is of a value less than \$695 and has never been sold separately at that, or any other, price.

6. No matter what class or kind of records are chosen by the customer, the records delivered as part of the combination offer are not all of that class or kind.

Therefore, the statements and representations set forth in Paragraph Seven hereof are false, misleading and deceptive.

PAR. 10. In the conduct of their business, and at all times men-

tioned herein, respondents have been in substantial competition, in commerce, with other corporations, firms and individuals in the sale of products of the same general kind and nature as those sold by respondents.

PAR. 11. The use by respondents of the foregoing false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that such statements and representations were, and are, true and into the purchase of substantial quantities of respondents' products by reason of such erroneous and mistaken belief.

PAR. 12. The aforesaid acts and practices of respondents as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

*Mr. Roy B. Pope, Mr. J. Leon Williams supporting the complaint.
Mr. Philip R. Connor pro se.*

INITIAL DECISION BY RAYMOND J. LYNCH, HEARING EXAMINER

OCTOBER 5, 1964

The complaint in this proceeding alleges that the respondents engaged in a promotional program advertising for sale, and selling, a "package program" consisting of a series of records and a record player, and during the course of said advertising engaged in false, deceptive, and misleading representations in violation of Section 5 of the Federal Trade Commission Act.

Copies of the complaint were served upon all of the respondents. Answers were filed by all respondents, both admitting and denying certain of the allegations of the complaint. However, after several pretrial conferences, counsel representing the individual respondents as well as the corporate respondents withdrew from the proceeding. The answers were not withdrawn. However, respondents Neil J. Cantor and Ernest R. Brewington subsequently withdrew their original answers and filed admission answers. Respondent Philip R. Connor requested that a hearing be held.

Hearings were held in Washington, D.C., July 6 through 10, 1964, inclusive. Respondent Connor appeared in his own behalf,

cross-examined witnesses, and gave testimony. No one appeared in behalf of the corporate respondents. At the conclusion of the hearings, respondent Connor and counsel supporting the complaint filed suggested findings of fact, conclusions of law and replies thereto.

This proceeding is now before the hearing examiner for final consideration based upon the complaint, answers thereto, testimony and documentary evidence, and proposed findings of fact and conclusions filed by respondent Connor and counsel supporting the complaint.

The hearing examiner has given consideration to the proposed findings of fact and conclusions, and all findings of fact and conclusions not herewith found or concluded are herewith rejected. Having considered the entire record, the hearing examiner makes the following findings of fact, conclusions drawn therefrom, and Order.

FINDINGS OF FACT

1. Respondents American Music Guild, Inc., and Space-Tone Electronics Corp., are corporations organized and doing business under and by virtue of the laws of the State of Maryland and, until June 25, 1963, each of said corporate respondents maintained its office and principal place of business in the same suite of rooms located at 1145 19th Street, N.W., Washington, D.C.

2. On June 25, 1963, each of the corporate respondents filed voluntary petitions in bankruptcy in the United States District Court for the District of Columbia. Each was duly adjudged bankrupt, and the proceedings are still pending (CXs 1 and 2).

3. Respondent Space-Tone Electronics Corp., at the time of the filing of the complaint, was the owner of 100 per cent of the stock of respondent American Music Guild, Inc., and controlled the acts and practices of American Music Guild, Inc., completely (CXs 3 and 4; testimony of Raymond T. Hunt, Tr. 130).

4. Respondent Philip R. Connor, Jr., is and was the president of both said corporate respondents and participated directly in controlling the acts and practices of both corporate respondents (CX 3).

5. Respondents Neil J. Cantor and Ernest R. Brewington were executive vice president and vice president, respectively, of respondent corporation American Music Guild, Inc., and acted individually and in conjunction with its President, Philip R. Connor, Jr. (admitted by answer, CX, p. 29).

6. In the course and conduct of their business respondents caused their products to be shipped and transported from their

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place of business in the District of Columbia to purchasers thereof located in various other States of the United States, as well as in the District of Columbia, and at all times mentioned herein maintained a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

7. Respondents in the course and conduct of their business, and for the purpose of inducing the sale of their products, were engaged in a selling plan or program involving the offering for sale and the sale of a combination package deal that included a console phonograph, a certain number of records, and a record cabinet to be delivered to the purchaser, as specified in the contract of sale (admitted in answer).

8. Respondents, in connection with their said combination offer, used salesmen making personal contact with selected customers and radio advertisements making certain statements and representations, directly or by implication, to obtain purchasers for respondents' products. Typical, but not all inclusive, of such statements and representations are the following:¹

- a. Free 120 12" (record) albums.
- b. And the most exciting feature is that you'll then receive absolutely free a magnificent Columbia Stereophonic Console Record Player * * * plus a handsome record cabinet * * *.
- c. As a new subscriber to the American Music Guild you immediately receive without extra cost a brand new magnificent General Electric Stereo Console.
- d. In addition you also receive at no cost a \$40 matching record cabinet to store your albums.
- e. Remember, a Columbia Stereophonic player free when you buy one stereo record a month.
- f. Everything is yours free, the stereo console and matching cabinet when you buy one stereo LP a month from the American Music Guild.
- g. As a new member-subscriber to the American Music Guild, you immediately receive without extra cost, the "Senator" [console].
- h. Please accept this beautiful \$695.00 stereo console at no extra cost by subscribing for only 2 stereo albums a month.
- i. Please remember, you are obligated to accept only two stereo albums a month, priced at \$4.98 each.
- j. Your complete record collection will provide for you 140 stereo albums, that alone at the minimum advertised price of \$4.98 each is worth \$695.
- k. Transportation and postage are prepaid.
- l. Folks, just a minute. I have been handed a very important announcement from the American Music Guild, a division of Space-Tone Electronics. The membership committee has informed me there are more openings in the American Music Guild.

¹ CXs 36-40, 43, 46-47, 50, 64, 72, 75, 78, 105, 108, 117.

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m. All of the famous label American Music Guild Stereo albums are nationally advertised at \$4.98 or more.

n. The American Music Guild price for each album is only \$4.98 payable in advance. Many of the famous American Music Guild albums you select could be priced much higher.

o. The price you pay for each album is only \$4.98 payable in advance. Many of the famous label American Music Guild albums you select are priced much higher.

p. All nationally advertised at \$4.98 or more.

q. Manufactured to sell for \$695.

r. Please accept this beautiful \$695 stereo console at no extra cost.

s. You will receive at no extra cost the "Senator" competitively priced at \$695.

t. You select from albums like these. You have a wide variety of Stereo albums from which to choose * * * classical * * * semi-classical * * * popular * * * folk music * * * jazz * * * show tunes * * * whatever your particular taste in listening is * * * you assemble exactly what you wish * * *. The selection is yours.

u. Representations were also made that the finance charge in the conditional sales contract would be one per cent per month on the unpaid balance of the contract.

9. The record discloses and the examiner finds that the finance charge in the conditional sales contract was considerably in excess of the one per cent per month on the unpaid balance. The interest charge varied from $\frac{3}{4}$ of one per cent to one per cent of the balance due after the down payment had been deducted, multiplied by the number of months the contract specified. As an example, CX 103 discloses that:

Selling Price	\$695.00
Other charges	16.90
Total	711.90
Down Payment (Cash)	31.90
Unpaid balance	680.00
Principal balance	680.00
Time differential	244.84
Total time balance	\$924.84

The purchaser agrees to repay the Total Time Balance hereunder in 36 monthly payments at \$25.69 (CXs 102, 103, 105, 108, 109; Tr. 156, 244).

10. Representations made by respondents that the current offer of the "package deal" would only be open for a limited time and made to a limited number of persons specifically selected is completely false. The fact of the matter is, and the record discloses, that respondents offered to and did sell to any one willing to purchase. It is clear that the offer was not made to a limited number

of persons or to a select list. Commission Exhibit 7, a letter used for advertising purposes, was mailed to 10,000 persons whose names were obtained from the telephone book (Tr. 54).

Furthermore, the representation that by becoming a member of the American Music Guild, a discount would be offered from the regular retail price of said combination offer was not true (Tr. 254, 302, 353). Respondent Connor contends that discounts were actually offered to members of the American Music Guild as set forth on the back of CX 5. However, the discount referred to on this exhibit refers to additional purchases that may be made later and has nothing to do with the pricing or selling of the actual package deal sold by the respondents. The best example of the discount deal is CX 118. In this contract, the price of the phonograph was listed at \$695 plus the cost of the records, \$797, making a total purchase price of \$1492. Respondents then granted what the contract calls "Credit to American Music Guild members \$695.00." This left a balance due of \$797, the price of the records purchased. A delivery charge and clearing fee of \$13 was added, making the "Cash delivered price \$810.00." The purchaser paid \$50 cash and on the balance of \$760 a "Finance charge" of \$273.56 was added, making the "Time balance \$1033.56" payable in 36 monthly installments of \$28.71. This is but one example of respondents' "Hi Fi," "High Finance" deals (Tr. 484-87).

11. In the course and conduct of their business, the respondents, for the purpose of inducing the public to purchase their products, made other representations by means of newspaper advertisements, radio commercials, and direct mail advertising that were misleading, false and deceptive. Typical, but not all inclusive of such statements and representations, are those set forth in Finding No. 8.

Contrary to the above statements, the testimony of the witnesses and the documentary evidence present in this record discloses that respondents gave nothing away free or at no cost to the customers. The respondents were in business to make a profit which is perfectly legitimate, but the methods that were used are proscribed by the Federal Trade Commission Act. No matter how you analyze their program, whether it be on the sale of records and a phonograph free or at no cost, or whether you consider the deal as the sale of a phonograph and the records free or at no cost, respondents are in violation of the Act. The respondent Connor as early as 1960 stated that he was selling a combination package or program (Tr. 50, 483). In the first place, the records offered in CX 30 were not what respondents represented them to be. An expert in the

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methods of competition in commerce, in violation of Section 5 of the Federal Trade Commission Act.

The Federal Trade Commission has jurisdiction of and over respondents and the subject matter of this proceeding; and this proceeding is in the public interest.

ORDER

It is ordered, That respondents American Music Guild, Inc., a corporation, and Space-Tone Electronics Corp., a corporation, and their officers, and respondent Philip R. Connor, Jr., individually and as an officer of both of said corporations, and respondents Neil J. Cantor and Ernest R. Brewington, individually and as officers of American Music Guild, Inc., and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of phonographs, phonograph records, record cabinets, or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication:

a. That all phonograph records to be included in any combination offer or otherwise, will be famous label records.

b. That the price or value of any records included in any combination offer, or otherwise, is more than the price at which such records are being sold or offered for sale in the usual and regular course of business in the trade area in which the combination offer is made.

c. That the "Senator" console phonograph is manufactured to sell at, or is of a value of, any amount which is in excess of the price at which it has been sold to the public separate and apart from any combination offer, or is in excess of the price at which comparable phonographs are being offered for sale in the trade area in which the combination offer is being made.

d. That the customer may select the records or type of records to be delivered as part of the combination offer or that a specified number of records will be delivered each month, if in fact such selections are made by respondents or deliveries are made on other than a monthly basis; or otherwise misrepresenting the manner of selection or of delivery of such records.

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e. That the rate of interest specified in their conditional sales contract is the total finance charge, or misrepresenting in any manner the rate of interest or amount of their finance charge.

f. That any offer to purchase is open for a limited time only, or is being offered to a limited number of people, or that those to whom the offer is made have been specially selected.

g. That any of respondents' products included in the combination offer are free or without additional cost or charge; that the only charge will be the monthly cost of record or records, or otherwise misrepresenting that the offer is other than a combination offer to sell all of the items included in the offer, or misrepresenting the period within which payment is to be made for said combination offer.

h. That by reason of membership in the American Music Guild, or for any other reason, savings or a discount are afforded a purchaser of respondents' merchandise or combination offer from the usual and customary retail price, unless the price at which said merchandise or combination offer is offered constitutes a reduction from the price at which said merchandise or combination offer is usually and customarily sold at retail in the recent regular course of business in the trade area where the representation is made.

2. Misrepresenting the value of any item or items of any combination offer or any of respondents' products.

3. Using the word "Guild" in or as part of their trade or corporate name or otherwise representing that their business is anything other than a commercial enterprise operated for profit.

OPINION OF THE COMMISSION

JULY 8, 1965

By REILLY, *Commissioner*:

This matter is before the Commission on respondent Connor's appeal in his individual capacity from the examiner's initial decision. The other two individual respondents have filed admission answers, and no appeal has been taken, by the corporate respondents or by

respondent Connor as an officer of the corporations, from the initial decision of the hearing examiner.

The complaint herein issued January 2, 1963, and alleged violation of the Federal Trade Commission Act through misrepresentation in the advertising and sale of stereophonic records and record players.

Respondents, prior to the corporate respondents being adjudged bankrupt, were engaged in the sale of stereophonic records and record players through a package deal which in broad outline consisted of the purchase of records at full price and the inclusion of a record player "at no extra cost." As the plan was originally conceived, the cost to respondents of supplying customers with the record players would be defrayed from the substantial savings realized in the bulk purchase of records at extremely low prices and the resale of the records at the highest prevailing price. The plan went awry when the respondents began to broadly suggest, and explicitly state on occasion, that the records or the record player were free upon the purchase of the other or that the customer was getting the one at current market value with the other included when in fact, as will appear below, the records were "cut-outs," "budget lines," "discontinued or slow-moving items" worth far less than the value represented. Thus, instead of purchasing currently popular records at the prevailing market price and receiving a stereophonic record player "at no extra cost" the purchaser was paying a high, nationally advertised, price for records worth a fraction of that value, the substantial markup thereby defraying the cost of the record player.

The hearing examiner's findings and order concern themselves with this central representation and six others incident thereto.

In brief summary, the hearing examiner found that respondents:

Had misrepresented that records received by or available to members of American Music Guild are all *famous label* records,

Had misrepresented that the *finance charge* in their conditional sales contract would be one percent per month on the unpaid balance (that is, the declining outstanding balance) of the contract when in fact the monthly charge was assessed against the total balance due after the down payment had been applied,

Had "the intention * * * to create the impression that the American Music Guild was something other than a profit-making organization,"

Had, on some occasions, represented that the records were *free* with the purchase of a stereo record player and, on others, that the stereo was free with the purchase of the records,

Had misrepresented the *value* of the records and/or stereo in the combination deal,

Had misrepresented that the customer could select the class of records he desired and that the transportation and postage would be prepaid,

Had misrepresented that the package deal would only be open for a limited time and was available only to a limited number of persons specifically selected.

The hearing examiner's findings and order are generally correct only as to the last four above. The findings and conclusions as to the first three are based on a misapprehension as to the facts or a misinterpretation of the applicable law or both.

Famous Label

Respondents made an explicit representation that all of the records available for selection were "famous label records."¹ The hearing examiner in his proposed order prohibited any representation that all phonograph records included in the offer would be famous label records. However, nowhere in the initial decision did the examiner make a finding that the representation was false. In fact he made no explicit finding that the representation had in fact been made. The failure to make a finding that the representation had been made is of little consequence since the record contains ample evidence in that regard. The failure of the examiner to find that the representation was false is possibly explained by the fact that there is nothing in the record to support such a finding.

The only evidence in the record bearing upon the question of the truth or falsity of the representation is the testimony of five witnesses to the effect that some of the records bore labels they had never heard of.² In no case does the record show that the "unknown" labels fell within the type or classification of music the witness was familiar with. In no instance was it established on the record why lack of familiarity on the part of the witnesses should be taken as an indication of the "fame" of the records. Nowhere in the record is there any attempt to establish what constitutes a famous label.

The inclusion in the order of a proscription against representation that records are famous label records was error.

Interest Rate

The complaint alleged misrepresentation by respondents "that the finance charge in the conditional sales contract is one percent per month on the unpaid balance of the contract." The examiner

¹ CX 37, 85, 61.

² Tr. 206, 263, 305, 347, 377.

found that the finance charge in the conditional sales contract was "considerably in excess of one percent per month on the unpaid balance."

The allegation in the complaint is ambiguous but the examiner is wrong in any event. The ambiguity arises out of the meaning of "unpaid balance." If it means the amount due and owing after down payment has been deducted, it would appear there is no misrepresentation since the amount due each month is a stated percentage of that figure. If, on the other hand, "unpaid balance" means the constantly diminishing balance due each successive month by virtue of the outstanding balance having been reduced by the preceding monthly payment, there would be a misrepresentation if the expression had been used.

In point of fact, the expression used by respondents was "one percent per month on the balance" and there has been no showing that it is generally understood that that phrase means on the declining balance after application of payments. Indeed, there is no showing in the record that the witnesses so understood it.

The contracts used by respondents and the testimony of witnesses are clear that the interest was described as a given percentage usually one percent or three-quarters of one percent per month applied to the balance due after the application of the down payment. The nearest the record comes to supporting the allegation was in the following colloquy between complaint counsel and a customer witness:

Q. With regards to the interest on the unpaid balance, Mrs. Terrell, was it explained to you what that rate of interest would be?

A. It was supposed to be very little, if nothing, he said. It was to be very little. It seems, after we paid the down payment, it was a pretty good amount. We got the book on it. It seems like it was a pretty good amount of interest.

Q. Did you check your contract which indicates that it was three-quarters of one percent per month?

A. Yes. But the way he sounded that night, we thought he meant it was that for the time while we were getting it. It wasn't going to be like that.

Q. On the unpaid balance, was that your understanding?

A. Yes. That is what we thought that night.

Q. Later, did there come a time when you ascertained it was three-quarters of one percent on the entire balance per month?

A. Yes.³

³ Tr. 258, 259.

This witness was one of several examined by complaint counsel and the testimony cited is the only testimony in point. Considering the way this witness was led, and the failure to pin her "misapprehension" on anything respondents had said, and in view of the clear provisions of the contract which her husband signed,⁴ there is simply not enough here either to cure the ambiguity or support the allegation.

The examiner's finding and his inclusion in the proposed order of a proscription against misrepresenting the rate of interest were error.

Guild

The complaint alleged that reference to membership and the use of the word "Guild" by respondents constituted a misrepresentation "that respondent American Music Guild, Inc., is a non-profit association of persons called members with kindred pursuits or common interests or aims for mutual aid and protection."

The examiner found that "... it was the intention of the respondents ... to create the impression that American Music Guild was something other than a profit-making organization."

The bankruptcy of American Music Guild, Inc., might suggest that it was indeed something other than a profit-making organization. In any event, considering the name as a whole and the circumstances in which it was used, we have no basis for finding that "Guild" had the capacity or tendency to deceive consumers.

Complaint counsel cites definitions of the word "guild" in *Webster's Third New International Dictionary* and *Black's Law Dictionary*, 4th Edition, and asserts that under those definitions American Music Guild is not entitled to use the word. Neither of the definitions cited says anything about "guild" being equivalent to "non-profit."

In their brief, complaint counsel rely on *Goodman v. F.T.C.*, 244 F.2d 584 (CA-9, 1957) for the proposition that use of the word Guild is misleading as suggesting something other than an organization for profit. *Goodman v. F.T.C.* is readily distinguishable from the present case. There the organization was engaged in selling instruction in reweaving and it represented itself to be the "Weavers Guild of America." The court upheld the Commission's power to prohibit the use of the word Guild in that context since the word connoted a voluntary association of persons to promote common interests and was likely to mislead consumers into believing that

⁴ CX 108.

the respondent was other than a firm engaged in business. The "Guild" in *Goodman* purported to instruct those interested in re-weaving, and as such the parallel to a guild as defined in *Webster* and *Black* is obvious. Here reference to membership in a guild carries no greater overtones of a non-profit association than does membership in book clubs or, indeed, record clubs imply that the proprietors of the enterprise are not devoted to making money.

"Free"

At one point respondents represented that the records were free with the purchase of a stereo console.⁵ At another it was represented that the stereo was free with the purchase of records.⁶ Respondent Connor admitted on the record that the whole merchandising plan of American Music Guild was to *sell* stereo *and* records as a package and that the "free" representation was false since neither records nor stereo were intended to be given away free.⁷

Value of Records and Stereo

Respondents' sales and advertising program included explicit representations as to the value of its records and stereo.⁸

⁵ CX 108, 123.

⁶ CX 117.

⁷ Tr. 482-484.

⁸ "You can now own one of the finest stereo consoles, manufactured to sell for \$695, at no extra cost when you become a member of American Music Guild by subscribing for two stereo albums a month." CX 36.

"To own the 'Senator' [stereophonic console] you have only to become a member-subscriber to the American Music Guild and agree to accept each month 2 stereo albums priced at \$4.98 each." CX 37.

"By becoming a member of American Music Guild and agreeing to subscribe to just *two* Stereo L.P. Albums a month, valued at \$4.98 and \$5.98 each, you immediately become eligible, and at no extra cost, to receive a magnificent General Electric Stereophonic Console Hi-Fi Set * * *." CX 70.

"Please accept this beautiful \$695.00 stereo console at no extra cost by subscribing for only 2 stereo albums a month." CX 38.

"Build your record collection and own one of the finest stereophonic consoles available at no extra cost. * * * Your complete record collection will provide for you 140 stereo albums that alone, at the minimum nationally advertised price of \$4.98 each is worth \$695.00." CX 50.

"Your complete record collection will provide for you 150 stereo albums, that alone at the minimum nationally advertised price of \$4.98 each is worth \$747.00." CX 47.

"Your complete record collection will provide for you 160 stereo albums, that alone at the minimum nationally advertised price of \$4.98 each is worth \$797.00." CX 49.

"You can select from your favorite record labels * * * all worth \$4.98 each." CX 85.

"The price you pay for each album is only \$4.98. Many of the famous label American Music Guild albums you select are priced much higher." CX 61.

"The Senator [stereophonic console] * * * made to sell for \$695." CX 52.

"You will receive at no extra cost the 'Senator' competitively priced at \$695 when you become a member-subscriber." CX 50.

Through these and similar statements respondents represented that by paying a price representing the value or prevailing price for the records the buyer would receive without extra cost the stereo valued at the amount stated. In practice, respondents purported to deduct the price of the stereo from the total cost of the records as set forth in the conditional sales contract as a "discount" available by virtue of membership in American Music Guild.⁹

It goes without saying that respondents would be hard put to operate profitably if they were supplying records at competitive prices representing a normal retail markup and in addition supplying a stereo of substantial value without extra charge.

The truth of the matter is that the represented values of both the records and the stereo were substantially inflated. The record shows that, far from being worth \$4.98 to \$5.98 each, the records which respondents made available were, according to expert testimony, labels of firms no longer in the record business or records no longer listed in catalogs because they don't sell, which could be purchased from the manufacturer from 75¢ to a dollar apiece, whereas records usually retailing for \$4.98 are purchased at a cost of \$3.09.¹⁰

The stereo which was represented to be made to sell for \$695 and competitively priced at \$695 was worth, according to expert testimony, \$300 to \$350 at retail.¹¹

In the face of this expert testimony respondents introduced no countervailing evidence that \$695 or any figure approximating it is the usual and customary retail price at which his or comparable phonographs were being offered in his trade area.

Customer Selection of Records

Respondents represented that the purchaser or member may exercise unrestricted selection of the albums he prefers. The advertising includes such statements as "Select the type music you prefer," "The selection is yours," "You can select from your favorite labels."¹²

The testimony of the customer witnesses clearly shows the respondents consistently pre-selected some records without reference to the known desires of the customers; that the customers could not select their favorite labels because the American Music Guild catalog from which they made their selection bore "American

⁹ CX 118, 121.

¹⁰ Tr. 225-230.

¹¹ Tr. 428, 429.

¹² CX 36, 49, 54, 61, 85.

Music Guild" designations without cross reference to commercial labels; that customers not only did not receive their first or second choice but at times received substantial numbers of records they did not want. One witness had expressed a preference to American Music Guild for classical and semi-classical records, nevertheless, out of 12 records received, only 3 fell within this category.¹³ Moreover, in repeated instances customers did not receive the records in the amounts and within the periods specified.¹⁴

In regard to the alleged misrepresentation by respondents that there would be no extra charges when in fact there was a charge for mailing and handling, we find the record insufficient to support this allegation.

Selected Membership

Oral representations made by respondents' salesmen as well as representations made in advertising were to the effect that membership in American Music Guild was open only to a select few; that the person or neighborhood was selected especially for the "benefits" of membership; that the persons contacted were the lucky few and that a select list was the basis for approaching prospective members.¹⁵

In point of fact respondents' offer was available to all comers, and respondents were engaged through their printed advertising in making a general offer of their products. This point is not seriously contested by respondents.

There is one other matter deserving of consideration relating to certain rulings of the examiner which respondent Connor on appeal claims were prejudicial:

The testimony of the expert appearing in support of the complaint that respondents' records were "low cost," "cut-outs," "budget lines," etc., was based upon his examination of catalog descriptions of the records, the wholesale prices of the records and upon his conviction that the firms supplying respondents with the records are customarily engaged in the sale of low cost, budget lines, etc., records.

Respondent Connor attempted to counter this last basis by showing on cross examination and in his own direct testimony that certain New York department stores in fact purchased from the suppliers in question. The examiner prevented his eliciting

¹³ Tr. 316, 325, 326, 346, 376, 377, 384, 385, 391.

¹⁴ Tr. 260, 264, 310, 316.

¹⁵ CX 7, 78; Tr. 170, 254, 302, 353, 355.

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Final Order

this testimony on cross examination on the ground that it was beyond the scope of the direct examination. The examiner further prevented respondent Connor's direct testimony on the ground that the dealings between the suppliers and New York department stores were hearsay.

We think the examiner was in error on his cross examination ruling, and on his direct testimony ruling we think the testimony should have been admitted whether or not it was hearsay. However, in neither event was respondent prejudiced. The most persuasive basis for the expert's testimony was his reliance on the descriptions of the records themselves and upon the wholesale price, and neither of these bases was effectively countered by respondent Connor.

An appropriate order will issue.

FINDINGS OF FACT, CONCLUSIONS, FINAL ORDER

FINDINGS OF FACT

The Commission adopts the findings of fact contained at pages 20 to 25 of the hearing examiner's initial decision as its own findings of fact except that finding No. 2, page 20, should be changed so that the second sentence should read "Each was duly adjudged bankrupt and the proceedings were still pending as of the date the record in this matter was closed"; the second sentence of finding No. 8, page 21, and all subparagraphs are specifically rejected. Findings 9, 11 and 12 are rejected. The Commission's other findings of fact are set forth in the accompanying opinion.

CONCLUSIONS

The acts and practices of respondents herein found were and are to the prejudice and injury of the public and of respondents' competitors and constituted and now constitute unfair methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act.

The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of the respondents. This proceeding is in the public interest.

FINAL ORDER

It is ordered, That respondents American Music Guild, Inc., a corporation, and Space-Tone Electronics Corp., a corporation, and their officers, and respondent Philip R. Connor, Jr., individually and as an officer of both of said corporations, and respondents Neil J. Cantor and Ernest R. Brewington, individually and as

officers of American Music Guild, Inc., and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of phonographs, phonograph records, or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication:

a. That any of respondents' products are free or without additional cost or charge; or otherwise misrepresenting that the offer is other than a combination offer to sell all of the items included in the offer.

b. That records, offered by respondents, are nationally advertised at a price higher than respondents' offering price, or are comparable in value to records currently selling or offered at a nationally advertised price.

c. That the "Senator" console phonograph or any other phonograph offered by respondents is manufactured to sell at, or is of a value of, any amount which is in excess of the price at which it or phonographs of comparable quality and components are being sold or offered for sale in the usual and regular course of business in the trade area in which respondents' offer is made.

d. That the customer may select the records to be delivered as part of a combination offer or that a specified number of records will be delivered within a specified period if in fact selection of the records is in any way made by respondents or if in practice the number of records delivered or the period within which delivery is to be made do not conform to prior representation.

e. That any offer to purchase is open for a limited time only, or is being offered to a limited number of people, or that those to whom the offer is made have been specially selected.

f. That by reason of membership in the American Music Guild, or for any other reason, savings or a discount are afforded a purchaser of respondents' merchandise off the usual and customary retail price, unless the price at which said merchandise is offered constitutes a reduction from the price at which substantial sales of said merchandise have been made at retail in the recent regular course of business in the trade area where the representation is made.

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2. Misrepresenting the value of any item or items of any combination offer or of any of respondents' products.

It is further ordered, That 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.
