

Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
GULF UNION CORPORATION, ET AL.

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

Docket C-1853. Complaint, Jan. 25, 1971—Decision, Jan. 25, 1971

Consent order requiring a Baton Rouge, Louisiana, radio broadcasting company and its subsidiary to cease engaging in "hyponing" during a period when its broadcast audience is being measured, that is, using unusual promotional practices designed to temporarily increase the size of a broadcast audience during rating periods.

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 Gulf Union Corporation, and Sound Dimensions, Inc., a corporation, 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. Respondent Gulf Union Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana, with its principal place of business located in the city of Baton Rouge, State of Louisiana.

Respondent Sound Dimensions, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana, with its principal place of business located in the city of Baton Rouge, State of Louisiana. Respondent Sound Dimensions, Inc., is the licensee of Radio Station WQXY-FM.

Sound Dimensions, Inc., is a wholly owned subsidiary of Gulf Union Corporation which owns the entire capital stock of Sound Di-

mensions, Inc. Gulf Union Corporation directs and controls the acts and practices of Sound Dimensions, Inc.

PAR. 2. Respondents are now, and for some time last past have been engaged in radio broadcasting and in the offering for sale and sale of radio broadcast time to advertisers and advertising agencies.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now sell and offer for sale, and for some time last past have sold and offered for sale, broadcast time for advertising purposes to advertisers and advertising agencies located both in the State of Louisiana and in various other States of the United States, and respondents now cause, and for some time last past have caused, the broadcasting of radio signals, including, among other things, the aforementioned advertising, from their transmitter and place of business in the State of Louisiana into various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in the sale of broadcast time and in broadcasting in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents and other radio broadcasters purchase audience measurement reports as compiled and sold by market research companies for use in the sale of broadcast time to advertisers and advertising agencies. These reports are compiled from audience surveys as conducted in each particular market, and purport to contain statistical estimates of the ratings, audience size and audience composition of each radio station attaining certain minimal audience levels in the measured market.

Such reports are used by the respondents and other radio broadcasters to demonstrate to the purchasers of advertising time, the size and composition of the audience that is tuned to their station at any particular time of the day, and how the size and composition of their station's audience compares with that of competing radio broadcasters in the same market.

Advertisers and advertising agencies purchase the same reports for use in determining from which radio broadcaster in a particular market they will purchase broadcast time for advertising purposes.

PAR. 5. In the further course and conduct of their aforesaid business respondents engaged in certain unusual promotional practices during a rating period, to wit:

1. Respondents conducted and broadcast a contest, designated as "WQXY-FM \$30,000 Cash Sweepstakes," over their radio station beginning on April 11, 1970, and ending on May 10, 1970. Members of the public were sent a card with a "lucky number" printed on its

face. The contest was tied directly to, and required the listening to respondents' broadcasts. To participate one had to be listening to respondents' broadcast at 7 a.m., 10 a.m., 2 p.m., 5 p.m., for it was at these times that the winning number was announced. Nowhere else could the winning number be obtained.

2. During the period beginning April 16, 1970, and ending May 13, 1970, respondents' market was being surveyed and measured by the American Research Bureau (ARB). The ARB survey was subscribed to by respondents.

3. The value of the prizes offered daily during this contest was one thousand dollars (\$1,000).

4. In the support of this contest, respondents placed 100 television spots in a four week period coinciding with the contest. In addition, respondents promoted their contest with a thirty (30) day showing of billboards in six locations and with three newspaper ads.

5. During respondents' tenure of its license, they have conducted no other contests.

PAR. 6. The employment of short term and unusual promotional practices by a broadcaster has the tendency and capacity to effect a temporary increase in the size of that broadcaster's audience. Such a temporary increase in the size of a broadcaster's audience occurring during a period when that broadcaster's market is being measured or surveyed would cause the survey or rating company to measure an audience for such broadcaster that would be larger than would have been measured but for such short term and unusual promotional practices, thereby causing the rating or survey company to publish in its report, ratings and other data that would appear to be estimates of such a broadcaster's customary and usual audience.

As set forth in Paragraph Four hereof, audience survey reports are extensively used by broadcasters and purchasers of broadcast time as a tool for establishing the cost of broadcast time and for evaluating broadcast audiences. It is therefore an unfair act or practice for a broadcaster to employ any short term and unusual promotional practice which has the tendency or capacity to temporarily distort or inflate viewing levels in a broadcast market during a period when that market is being measured or surveyed. Engaging in such a practice is known as "hyponing."

Therefore, the unusual promotional practices of the respondents, as set forth in Paragraph Five hereof, constitute unfair acts or practices.

PAR. 7. The acts and practices of respondents as set forth in Paragraph Five hereof were calculated or designed to cause the Ameri-

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can Research Bureau to publish in its April-May 1970 report for the Baton Rouge market, ratings and other audience data that would appear to be estimates of respondents' customary and usual audience but which would in fact be estimates based upon the measurement of an audience larger than respondents customarily or usually have, and to cause ARB to place in the hands of purchasers of such reports, audience ratings and other data which would have the tendency and capacity to mislead and deceive such purchasers as to the size and composition of respondents' customary and usual audience.

Therefore the aforesaid unusual promotional practices of respondents constitute deceptive acts or practices.

PAR. 8. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition in commerce with corporations, firms and individuals in the sale of broadcast time of the same general nature as that sold by respondents.

PAR. 9. The use by respondents of the aforesaid unfair or deceptive acts and practices has had, and now has, the capacity and tendency to mislead the purchasers of broadcast time into the erroneous and mistaken belief that the ratings and other audience data contained in the aforementioned April-May 1970 report are estimates of the usual audience of the radio stations reported therein and into the purchase of substantial quantities of respondents' broadcast time by reason of said erroneous and mistaken belief.

As a consequence thereof substantial trade in commerce has been and is being unfairly diverted to the respondents from their competitors, and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 10. 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 and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereon, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its Rules, the Commission thereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Gulf Union Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana with its principal office and place of business located at 1364 Nicholson Drive, Baton Rouge, Louisiana.

Sound Dimensions, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana with its principal office and place of business located at 1737 Wooddale Boulevard, Baton Rouge, Louisiana.

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

ORDER

It is ordered, That respondents, Gulf Union Corporation, a corporation, and Sound Dimensions, Inc., a corporation, their officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the broadcasting, and the advertising, offering for sale or sale of broadcast time in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Conducting or participating in any unusual contest or giveaway or promotional practice which is calculated or designed to temporarily increase the size of their broadcast audience only during a rating or survey period or which is calculated or designed to cause any rating or survey company to publish and place in the hands of purchasers thereof, audience rating or

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other data which may mislead or deceive such purchasers as to the size or composition of respondents' audience.

It is further ordered, That the respondent corporations shall forthwith distribute a copy of this order to each of their operating divisions.

It is further ordered, That respondent Sound Dimensions, Inc., notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale, resulting in the emergence of a successor corporation, corporation which may affect compliance obligations arising out of the creation or dissolution of subsidiaries or any other change in the the order.

It is further ordered, That the respondents herein 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 this order.

IN THE MATTER OF
MAREMONT CORPORATION