

Complaint

87 F.T.C.

IN THE MATTER OF

SOUND ALIKE MUSIC CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2817. Complaint, May 10, 1976—Decision, May 10, 1976*

Consent order requiring a Los Angeles, Calif., seller and distributor of tape products, among other things to cease using, in connection with their tape products, deceptive and misleading advertisements, labels, packages and promotional materials which misrepresent performers as original artists. The order further requires respondents to disclose in advertising and on packaging either the name of the actual recording artist or that their tape products are not original artist recordings, and to furnish, for a seven-year period, copies of the order to all retailers and distributors who purchase respondents' products.

*Appearances*For the Commission: *Robert H. Wyman.*For the respondents: *Eugene J. Weiss*, Beverly Hills, Calif.

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 Sound Alike Music Corporation, a corporation, and Richard Taxe, individually and as an officer of said corporation, hereinafter sometimes 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. For the purposes of this proceeding, the following definitions shall apply:

Original Artist: The original artist is the person who originally recorded and made popular the song(s) or album in question, or with whom the public generally identifies the song(s) in question.

Sound Alike Recording: A sound alike recording is a recording of a hit song(s) or a hit album recorded by one other than the original artist and performed in the style and manner of the original artist.

Compilation of Hits: A compilation of hits is a tape product featuring a variety of songs originally recorded and made popular by various artists.

Tape Products: Tape products include tape cartridges or tape

cassettes; or, insofar as Sound Alike Music Corporation produces or distributes them, phonograph records.

PAR. 2. Respondent Sound Alike Music Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 6330 Arizona Circle, Los Angeles, California.

Respondent Richard Taxe is an individual and an officer of the corporate respondent. He formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 3. Respondents are now, and for some time last past have been engaged in the manufacture and distribution of various tape products, including compilations of hits and sound alike recordings.

PAR. 4. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their products when sold to be shipped from their place of business located in the State of California to purchasers thereof located in various other States of the United States, and maintain and at all times mentioned herein have maintained, a substantial course of trade in said products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 5. In the course and conduct of their business, and for the purpose of inducing the purchase of their sound alike tape products, respondents have caused, and are now causing:

(A) Certain labels to be used on the aforesaid tape products employing the name of the original artist.

Typical of these labels, but not all inclusive thereof, are the following:

A Tribute to RAY PRICE

* * * * *

A Salute to CHICAGO

* * * * *

The Best of TOM JONES

* * * * *

CARPENTERS

* * * * *

(B) Certain labels to be used on the aforesaid tape products bearing the likeness of the original artist, or depicting drawings similar to those appearing on the album cover of the original recording.

(C) Certain labels to be used on the aforesaid tape products, which state that the album contains a compilation of hit songs.

Typical of these labels, but not all inclusive thereof, are the following:

A Tribute to the Early BEATLES VOL. I

* * * * *

Tribute to the Best of THE DECADE OF THE '40s

VOL. I

* * * * *

(D) Certain statements and representations to appear in promotional literature and advertisements with respect to the nature of the aforesaid tape products.

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

* * * top hit songs made famous by artists like these (alongside illustrations of well-known recording performers)

PAR. 6. By and through the use of the aforesaid labels, catalogues, advertisements, and other promotional materials, and statements and representations of similar import and meaning, respondents have represented, and are now representing, directly or by implication, that the aforesaid tape products feature the original artists.

PAR. 7. In truth and in fact, the aforesaid tape products are not original artist recordings.

PAR. 8. By the aforesaid practices, respondents have placed, and are now placing, in the hands of distributors and retailers the means and instrumentalities by and through which the respondents may mislead and deceive the public in the manner and as to the matters herein alleged.

PAR. 9. The use by respondents of the aforesaid false, misleading, and deceptive statements, representations, acts, and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true, and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

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

constituted, and now constitute, unfair and deceptive acts and practices in commerce within the intent and meaning 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 hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Los Angeles Regional Office 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 having thereafter executed an agreement containing a consent order, an admission 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 sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Sound Alike Music Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 6330 Arizona Circle, Los Angeles, California.

Respondent Richard Taxe is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his principal office and place of business is located at the above stated address.

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 Sound Alike Music Corporation, a corporation, its successors and assigns, and its officers, and Richard Taxe, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device in connection with the sale of tape products recorded by a person or persons other than the original artist(s), in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using any label, package, catalogue, or any form of advertising, promotional material or point of sale material which:

- (a) Contains any likeness of an original artist(s);
- (b) Contains any illustration similar to that on the album cover or tape label used in any recording by the original artist(s);
- (c) Implies, in any manner, that the tape product has been recorded by an original artist(s).

2. Offering for sale, selling, or distributing any tape product recorded by one other than the original artist(s), unless the tape product's package or label contains either the name(s) of the actual artist(s) or a clear and conspicuous disclosure which reads:

"THIS IS NOT AN ORIGINAL ARTIST RECORDING."

(a) If the legend "THIS IS NOT AN ORIGINAL ARTIST RECORDING" is employed, that legend shall appear on the front and spine of the tape product's label in capital letters and in boldface type set in type of at least the following sizes:

Front of the package — 12-point type

Spine of the package — 8-point type.

(b) If the name(s) of the actual artist(s) is(are) used in conjunction with the name(s) of the original artist(s), the name(s) of the actual artist(s) shall appear in capital letters and in boldface type on the same surface of the tape product as the name(s) of the original artist(s) appear(s). The name(s) of the actual artist(s) shall be printed in type which is at least the same size as the type size employed for the name(s) of the original artist(s).

(c) If the name(s) of the actual artist(s) is(are) not used in conjunction with the name(s) of the original artist(s), the disclosure shall comply with the requirements of Paragraph 2(a).

(d) The disclosure employed shall be a separate element, set in contrasting type on a solid-color background and shall not include any

part of any picture, design, illustration or other text, *provided* that if the name(s) of the original artist(s) is(are) used, the name of the actual artist(s) may be placed directly under or adjacent to the name(s) of the original artist(s).

3. Offering for sale, selling, or distributing any sound alike tape product, the title of which does not either name the actual artist or clearly disclose that the tape product is a sound alike recording, by incorporating the words, "Sounds like" or "Sound alike," or words of similar import and meaning.

4. Advertising any tape product not recorded by the original artist(s), unless respondents, in all advertisements of such tape products, either disclose clearly and conspicuously the name(s) of the actual artist(s) for each such recording, or make one clear and conspicuous disclosure which reads:

"THIS IS NOT AN ORIGINAL ARTIST RECORDING."

For the purposes of this section of the order, the term "advertisement" shall mean all advertising in newspapers, magazines, catalogues and other printed materials; and advertisements appearing on television and radio.

(a) If the name of each actual artist is not clearly and conspicuously disclosed, respondents shall set forth the disclosure, "THIS IS NOT AN ORIGINAL ARTIST RECORDING," in all printed advertisements, in capital letters and in boldface type, set in type of at least the following sizes:

Advertisements of a trim size larger than 144 square inches 24-point type

Advertisements of a trim size larger than 65 square inches but not larger than 143 square inches 14-point type

Advertisements of a trim size larger than 36 square inches but not larger than 64 square inches 12-point type

Advertisements of a trim size not larger than 35 square inches ... 10-point type

The disclosure shall comply with the requirements of Paragraph 2(d) of this order.

(b) In all radio and television advertisements, the disclosure shall at least be made orally. There must be no less than one half-second pause both before and after the disclosure.

It is further ordered, That respondents may continue to distribute tape products presently in inventory with labels and packaging not bearing the disclosures required by this order, *provided* that respondents shall affix to each and every tape product a label which contains a clear and conspicuous disclosure which reads, "NOT AN ORIGINAL ARTIST RECORDING."

(a) The disclosure shall be in boldface capital letters, set in at least 14-point type;

(b) The disclosure shall be set in black type on a bright-red background;

(c) The disclosure shall appear as a separate element, and shall not include any part of any picture, design, illustration, or other text.

It is further ordered, That respondents shall, for a period of seven years, deliver a copy of this order to all retailers or distributors known to respondents who purchase respondents' tape products from respondents.

It is further ordered, That a copy of this order be delivered to all present and future personnel of respondents engaged in the design and creation of any packaging or labels for respondents' tape products, and that respondents shall secure from each such person a signed statement acknowledging receipt of said order.

It is further ordered, That respondents 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, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That 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
SOUNDTRACK CHEVELL INDUSTRIES, INC., ET AL.

Docket 8998. Order, May 11, 1976

Denial of motions to dismiss the complaint as to Lonnie Temple and Gene Temple.

Appearances

For the Commission: *Richard H. Gateley* and *John J. Hemrick*.

For the respondents: *Thompson, Knight, Simmons & Bullion*, Dallas, Tex. for Soundtrack Chevell Industries, Inc., William F. Temple and Helen Temple.

ORDER DENYING MOTIONS TO DISMISS THE COMPLAINT AS TO
LONNIE TEMPLE AND GENE TEMPLE

By order of March 16, 1976, the Commission withdrew this matter from adjudication for settlement purposes as to respondents Soundtrack Chevell Industries, Inc., William F. Temple, and Helen Temple, and directed that complaint counsel file a response to the motions of respondents Lonnie Temple and Gene Temple asking that the complaint be dismissed as to them.

Respondents Lonnie Temple and Gene Temple contend, in letters they have transmitted, that the complaint should be dismissed as to them because they did not exercise control over the corporate respondent's policies, and are not personally responsible for the acts and practices alleged in the complaint. Complaint counsel respond that movants' contention runs counter to the allegations of the complaint that they, in conjunction with other respondents, formulated the policies and directed and controlled the acts and practices of the corporate respondent, raising factual issues which should most appropriately be resolved in the pending administrative hearing.

In an order of April 22, 1975, the Commission denied the motions of Lonnie Temple and certain other respondents to dismiss the complaint as to them. Lonnie Temple's motion, like the ones now before the Commission, asserted that he was not responsible for the acts and practices alleged in the complaint. The Commission stated that nothing raised in the motions before it had altered the Commission's original reason to believe a proceeding as to those respondents would be in the public interest.

Respondent Lonnie Temple has made no further showing, nor has respondent Gene Temple made any showing, sufficient to dismiss the complaint as to them. Their bare allegations, without more, that they did not exercise control over the corporate respondent's policies and are