

IN THE MATTER OF

POLYGRAM RECORDS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION AND SEC. 7 OF THE CLAYTON ACTS*Docket 9174. Complaint,* March 19, 1984—Decision, Sept. 8, 1986*

This consent order requires, among other things, a New York City record company to obtain prior FTC approval before acquiring any interest in major record companies and to notify the FTC about distribution agreements planned with those companies.

Appearances

For the Commission: *Robert W. Doyle, Jr. and Richard Malatt.*

For the respondents: *James E. Akers, Sullivan & Cromwell, New York City.*

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents, Chappell & Co. Inc., formerly an affiliated company under common ownership now merged with PolyGram Records, Inc., and PolyGram Records, Inc., with violation of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

Respondent, PolyGram Records, Inc., its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent 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The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter 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

* Complaint previously published at 108 F.T.C. 105

further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent, PolyGram Records, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with offices and principal places of business located in the City of New York, State of New York. Respondent Chappell & Co. Inc. was merged with PolyGram Records, Inc. in January of 1984.

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

ORDER

Definitions

Warner, as used herein, means Warner Communications Inc., Warner Bros. Records, Inc., as well as their officers, directors, employees, agents, their parents, divisions, subsidiaries, successors, assigns, and the officers, directors, employees, or agents of their parents, divisions, subsidiaries, successors and assigns.

PolyGram, as used herein, means Chappell & Co., Inc., PolyGram Records, Inc., as well as their officers, directors, employees, agents, their parents, divisions, subsidiaries, successors, assigns and the officers, directors, employees or agents of their parents, divisions, subsidiaries, successors and assigns.

Major record company, as used herein, means the following record companies that are vertically integrated into the creation and national distribution of prerecorded music: Warner, PolyGram, CBS Inc., and RCA Corporation.

Distribution Agreement, as used herein, means a contractual arrangement whereby one major record company undertakes to distribute nationally prerecorded music for another major record company, as defined herein, to prerecorded music retailers, one-stops, rack jobbers or other subdistributors for resale.

Prerecorded music means recorded audio-only performances sold in the form of records (singles, LPs and compact discs) and tapes (cassettes, 8-track cartridges and reel-to-reel tapes).

Effective date, as used herein, means the date on which the agreement containing consent order between respondent and counsel for the Commission was executed.

I.

It is ordered, That PolyGram terminate immediately all agreements that provide for or contemplate the merger of, or a joint venture between, its prerecorded music operations and those of Warner in the United States, including but not limited to the Letter of Intent dated July 26, 1983, and Agreement of Merger and Plan of Reorganization dated December 29, 1983; and return or destroy all documents, if any, regarding confidential information provided to PolyGram by Warner in connection with merger or joint venture negotiations or agreements.

II.

It is further ordered, That for a period of five (5) years from the effective date hereof, PolyGram cease and desist from acquiring, directly or indirectly, without the prior approval of the Federal Trade Commission, any interest in, or any stock, share capital or assets of the United States operations of any other major record company.

III.

It is further ordered, That for a period of five (5) years from the effective date hereof, PolyGram shall not, without providing written advance notification to the Federal Trade Commission, enter into a United States distribution agreement with any other major record company, as defined herein. Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended (hereinafter referred to as "the Notification"). PolyGram shall provide the Notification to the Federal Trade Commission at least fifteen (15) days prior to entering into the distribution agreement (hereinafter referred to as the "first waiting period"). At the time of the filing of the Notification, PolyGram shall provide to the Commission supplemental information, either in PolyGram's possession or reasonably available to PolyGram. Such supplemental information shall include a copy of the proposed agreement; the names of the principal representatives of PolyGram and the principal representatives of the firm whose records are to be distributed (or that intends to distribute PolyGram's records) who negotiated the proposed distribution agreement; any management or strategic plans discussing the proposed distribution agreement; and documents discussing market shares and competitive conditions in the prerecorded music industry. If within the first waiting period of fifteen (15) days, the Federal Trade Commis-

sion makes a written request for additional information, PolyGram shall comply with said request within an additional period of fifteen (15) days or sooner. PolyGram shall not enter into the proposed distribution agreement for fifteen (15) days after the submission of the additional information.

IV.

It is further ordered, To the extent that it will affect PolyGram's compliance obligations arising out of this order, PolyGram shall notify the Commission at least thirty (30) days prior to any proposed corporate change such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or any other changes in the record operations of the corporation.

V.

It is further ordered, That PolyGram shall, within sixty (60) days after service upon it of this order, and annually thereafter for five years, file with the Commission a written report setting forth in detail the manner and form in which it has complied with this order.

Chairman Oliver and Commissioner Strenio did not participate.

IN THE MATTER OF

THE NORTH CAROLINA ORTHOPAEDIC ASSOCIATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-3200. Complaint, Sept. 19, 1986—Decision, Sept. 19, 1986.

This consent order, among other things, prohibits The North Carolina Orthopaedic Assoc. from placing unreasonable restrictions against podiatrists seeking access to hospital facilities or surgical privileges and inducing hospitals or medical staffs to deny such privileges to qualified podiatrists.

Appearances

For the Commission: *Douglas B. Brown and Charles Peterson.*

For the respondent: *George L. Little, Jr. and F. Joseph Treacy, Petree, Stockton, Robinson, Vaughn, Glaze & Maready, Winston-Salem, N.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the North Carolina Orthopaedic Association, a non-profit corporation, hereinafter sometimes 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 as follows:

PARAGRAPH 1. Respondent, the North Carolina Orthopaedic Association, is a non-profit corporation organized, existing and doing business under and by virtue of the laws of the State of North Carolina.

PAR. 2. Respondent is a professional association organized in substantial part to represent the interests of orthopedic surgeons who practice in North Carolina and the profession of orthopedics in North Carolina. Respondent has approximately 225 members. Many of respondent's activities are of a scientific and educational nature. A significant portion of respondent's activities furthers its members' pecuniary interests. By virtue of its purposes and activities, respondent is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.