Syllabus

The respondents' appeal is denied. The initial decision, modified as noted above, is adopted as the decision of the Commission.

FINAL ORDER

This matter having been heard by the Commission upon the appeal filed by the respondents from the initial decision of the hearing examiner; and

The Commission having denied the appeal for reasons stated in the accompanying opinion and having further determined that the order to cease and desist contained in the initial decision should be modified:

It is ordered, That the unnumbered paragraph in preamble to the three numbered paragraphs contained in said order be, and it hereby is, modified to read as follows:

"*It is ordered*, That respondent Witkower Press, Inc., a corporation, and its officers, and respondents Dan Dale Alexander and Bernard Witkower, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of a book entitled 'Arthritis and Common Sense,' or any other book or books of the same or of approximately the same content, material or methods, whether sold under the same name or any other name, in commerce, as 'commerce' is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly, that the regimen set out in said book provides:"

It is further ordered, That the initial decision, as so modified, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the 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 as modified.

IN THE MATTER OF

THE CLINTON WATCH COMPANY ET AL.

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

Docket 7434. Complaint, Mar. 11, 1959—Decision, July 19, 1960

Order requiring Chicago distributors of watches to mail order and discount houses, wholesalers and retailers for resale, to cease representing "All Movement Parts GUARANTEED FOR LIFE Never To Break" in adver-

tising their watches, when in fact the guarantee required payment of an undisclosed service charge for repairs or adjustments; and to cease preticketing their watches with exaggerated amounts and designating fictitious prices as "retail prices" in catalog inserts and other advertising, whereby retailers were enabled to mislead the public as to the usual retail prices.

Mr. William A. Somers for the Commission.
Mr. Paul G. Annes, of Chicago, Ill., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

In this proceeding respondent watch company and its officers are charged with having engaged in unfair and deceptive acts and practices and unfair methods of competition in commerce in violation of the Federal Trade Commission Act. These alleged acts and practices, in substance, are that respondents have made deceptive so-called "lifetime guarantees" of their watches and have also used fictitious pricing by setting forth exaggerated and untrue retail prices of their watches on tickets attached to their watches, and by quoting certain exaggerated and untrue retail prices in their catalogues, brochures and other advertising media relating to such watches.

In this initial decision the charges of the complaint are found to be sustained by the evidence as to all respondents named in the complaint except respondents Bernard J. Cogan and Max Magnus in their individual capacities, as to whom the complaint is dismissed for reasons hereinafter set forth; but said two respondents are included in the findings and order as officers of the respondent corporation.

This proceeding was instituted by the issuance of the complaint on March 11, 1959. Thereafter due service of process was had upon all respondents, who jointly filed their answer on April 22, 1959. At a hearing held in Chicago, Ill., on June 18, 1959, the Commission's case was presented, and on September 28, 1959, the respondents presented their evidence at a further hearing in Chicago. The parties thereafter, on November 16, 1959, filed their respective proposed findings of fact, conclusions of law and order. Those proposals which have been adopted are included in the initial decision either in substance or verbatim, and all others have been rejected.

The record is quite brief, consisting of only 73 pages of testimony, stipulations of fact, remarks of counsel and rulings of the examiner, plus 13 documentary Commission's exhibits, all being advertisements and related papers of respondent. The record was materially shortened by counsel stipulating most of the evidence, by relatively brief testimony, and by a general absence of objection to evidence.

Respondents, during the hearing, petitioned the hearing examiner to accept a consent order agreeable to both parties, but acceptance thereof was conditioned by a claim that in order to avoid serious injury to respondents' business, issuance of any decision herein should be withheld until all the Commission's pending cases against various competitor watch companies were also ready for decision. Counsel supporting the complaint opposed this petition, although quite willing to agree to a consent order not so conditioned. The examiner denied this petition (R. 6–8) and also a later motion to the same effect (R. 59–69), primarily upon the ground that he had no authority to so act, since the matter is one of administrative policy and discretion vested solely in the Commission itself, to which body such a petition should be addressed (R. 6–8, 32). That this is the law is no longer open to question. See *Moog Industries, Inc.* v. *FTC* and *FTC* v. *C. E. Niehoff Co.* (1958), 355 U.S. 411, 413–414, rehearing denied 356 U.S. 905, holding that such power is not even vested in the Courts. No statute and no rule of the Commission delegates such authority or discretion to a hearing examiner. He can only pass upon the particular adjudicative proceeding before him, and "The taking of evidence and subsequent proceedings shall proceed with all reasonable expedition" (Commission's Rules of Adjudicative Proceedings, § 3.16(d).) Also by the Commission's Rules (§ 3.25 (d)), the hearing examiner must dispose of an agreement containing a consent order within 30 days of its receipt, either by accepting it and issuing an initial decision based thereon, or by rejecting it.

Several motions to dismiss for lack of proof were made after the close of the Commission's case-in-chief. They were denied, with leave to renew the same at the close of all evidence, or in the filed proposals, which latter method respondents have followed. The said motions of respondents Cogan and Magnus, made at the time the Commission's case was rested, were denied as being procedurally premature in any event. The motions as to all respondents were denied on the basis that a *prima facie* case had been made, under the now well-established doctrine of *Vulcanized Rubber and Plastics Co.*, Docket 6222 (1955), 52 FTC 533, decision (1956) 53 FTC 920, affirmed on review in *Vulcanized Rubber and Plastics Co.* v. *FTC* (C.A. of D.C. 1958), 528 F. 2d 684, followed in the Commission's order of May 27, 1959, in *Timken Roller Bearing Co.*, Docket 6504, and its order of January 5, 1959, in *Scott Paper Co.*, Docket 6559, and in several other decisions. The motions are renewed in respondents' proposals on the basis of the insufficiency of the evidence as to each and all respondents, but, except as to respondents Cogan and Magnus solely in their individual capacities, they are denied because

the evidence fully sustains the allegations of the complaint, as hereinafter specifically found.

The two basic issues in contest herein are (1) whether the words "All Movement Parts Guaranteed For Life never to break" and similar expressions used in the advertising of respondents' watches are false, misleading and deceptive; and (2) whether the respondents have falsely represented the proper retail prices of their watches by pre-ticketing and otherwise advertising them at fictitious prices far above the actual retail prices at which such watches are sold to the public. Both of these issues are herein found to be sustained by the evidence, and such acts and practices are held to be violative of the Federal Trade Commission Act. A cease-and-desist order appropriate thereto is herewith issued.

In determining the facts in this proceeding upon the whole record as required by law, the hearing examiner has given full, careful and impartial consideration to all the evidence and to the fair and reasonable inferences arising therefrom. He has found those facts alleged in the complaint, which are admitted by the answer, to be true. Therefore, upon due consideration of the whole record, as well as from the personal observation of the conduct and demeanor of the witnesses, the hearing examiner makes the following findings of fact:

1. It is alleged in the complaint and admitted in the answer and upon the pleadings and evidence factually found that respondent, The Clinton Watch Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 111 South Wacker Drive, Chicago, Ill.; that respondents Irving L. Wein, Bernard J. Cogan and Max Magnus are officers of the corporate respondent; and that respondent Wein formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. The address of respondent's officers is the same as that of the corporation.

It is undisputed that respondent Wein is the president of the respondent corporation. He alone formulates, directs and controls the corporate policies, acts and practices (R. 39, 40–41). While it is admitted in paragraph Two of the Answer that respondent Cogan is Vice-President and respondent Magnus is Secretary of the corporate respondent, the former functioning as sales manager and the latter as bookkeeper and accountant (R. 17–18), neither Cogan nor Magnus has anything to do with the corporation's advertising and pricing practices (R. 17–18, 37–39). Neither Cogan nor Magnus hold any stock in the corporation, and neither of them is a director thereof (R. 39–40). Under these circumstances there is no personal

authority, interest or action shown on the part of either of them in the practices of respondent here under attack, to warrant an order against either in his personal capacity. See Opinion of the Commission, dated October 20, 1950, in Docket 7146, *Trans-Continental Clearing House, etc., et al.*, and authorities cited. The complaint herein should therefore be dismissed as to respondents Cogan and Magnus, each in his individual capacity, but not in his capacity as an officer of the corporate respondent.

2. The evidence also sustains the allegations of the complaint that respondents are now, and for some years last past have been, engaged in the advertising, offering for sale, sale and distribution of watches to mail order and discount houses and wholesalers, and also to retailers for resale to the public. See Record, pages 10–15, inclusive, stipulation of fact; pages 16–29 and 41–46; and also all of Commission's Exhibits 1–A through 13–D. The evidence clearly discloses a very substantial annual volume of business of about $1,500,000 (R. 46). This business is done with about 4,000 distributors, but about $100,000 of it is done mainly with about 100 retail distributors (R. 41, 45–46). These customers of respondent corporation are located throughout the United States, and the record clearly establishes that, as alleged in the complaint, respondents, in the course and conduct of their business, now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of Illinois to purchasers thereof located in various other States of the United States, and now 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. Respondents admit this in their Answer, and the stipulation of record shows numerous actual, substantial purchases from respondent of its watches by a number of specifically named jewelry merchants, both wholesalers and retailers (R. 10–15), located in various places in the States of Indiana and Wisconsin.

3. The complaint further alleges, and the evidence establishes without dispute, that respondents used such words and expressions as "All Movement Parts GUARANTEED FOR LIFE Never To Break" in the advertising of some of their watches, thereby representing that the movements of said watches are fully guaranteed by them in every respect. See Commission's Exhibits 11–A through –D. Respondents contend that after such guarantee was adopted several years ago, they have made no charge whatever for repair parts or other service charges when defective watches are returned to them for correction of such defects under their guarantee. See Exhibit 12, Service Dept. price list, effective Aug. 12, 1957, as compared to their

earlier service price list, Exhibit 6–B. They have only charged reimbursement for packing, postage, insurance, and other expenses incurred in returning repaired or replaced watches to customers. It is also true that some of their cheaper brands of watches do not carry said guarantee (R. 27). But all such statements and representations of lifetime guarantee are false, misleading, and deceptive because the guarantee furnished by respondents actually require the payment of a service charge for repairs or adjustments, which fact was not disclosed in respondents' advertisements. That this reimbursement charge was small and the actual cost to respondents slightly exceeded it are immaterial. The guarantee itself says the watch is "unconditionally guaranteed" and the guarantee is "all-inclusive." Its limitations only except certain named breakages and the like. Reference on the back of the guarantee slip (Commission's Exhibit 11–D) to a $1 handling charge for servicing the watch does not relieve it of the capacity and tendency to deceive the public. The consumer does not actually see that precise guarantee on his watch until he actually purchases it (R. 26) and may miss it altogether because of its lack of prominence along with the guarantee. Moreover, in respondents' advertising, repeated emphasis is laid on an unlimited statement, in large, colored type, "Guaranteed for Life." See Exhibits 1–A through –D, 2–A and –B, 3, pages 8–A through –D, and 13–A through –D, advertising respondents' "Clinton" and "Wolbrook" brands of watches. Such limitations thereto as appear are in very inconspicuous small type. A number of consumers were actually misled by respondents' guarantee into believing there would be no service charge (R. 15–16). Counsel supporting the complaint cites *Parker Pen Co.* v. *FTC* (C.C.A. 7, 1946), 159 F. 2d 509, as authority for a cease-and-desist order on this particular charge. It is strong authority. In that case, as here, the evidence disclosed that the small service charge for repairing the Parker Company's "Lifetime guarantee pen" was so inconspicuously printed and placed in its advertisements as to pass unnoticed by the casual or negligent reader, whom it is the Commission's function to protect. The Court held that such "guarantee" advertisements might be permitted, but only if the less noticeable limitations within the apparently absolute guarantee were placed in close conjunction with and in the same sized type as the guarantee itself. The provisions of the order issued herewith, which appropriately relate to this phase of the case however, are broader and less specific than the precise, judicially modified order in the *Parker* case. The order herein issued follows current practice in this type of litigation, and lends better to the protection of the public interest.

It is further alleged in the complaint (paragraph 6 and 7) and found from the evidence, that respondents, for the purpose of inducing the purchase of their products, have engaged in the practice of using fictitious prices in connection therewith by attaching, or causing to be attached, tickets to their said watches upon which certain amounts are printed, and have also designated certain prices as "retail prices" in catalogue inserts, brochures, circulars, and other advertising distributed to mail order and discount houses, wholesalers and retailers, thereby representing, directly and by implication, that the same amounts and prices were the usual and regular retail prices for said watches. In truth and in fact, said amounts and prices were not the usual and regular retail prices for said watches, but were fictitious and exaggerated prices. By such practices, respondents have placed and still do place in the hands of retailers means and instrumentalities by and through which they may and do mislead the public as to the usual and regular retail prices of said watches. It requires no extended argument to demonstrate that members of the public may well be deceived into believing they have made a great bargain if, for example, they can buy a $55 watch for $29, as the following evidence amply discloses.

The stipulated evidence (R. 10–16) shows that the usual and regular retail prices indicated by respondents' preticketing and catalogue prices were fictitious and greatly exaggerated. For example, watches preticketed at $55 each were sold for $29, or about such price, to the public, and watches preticketed at $24.75 and $26.50 were actually sold at $11.25 apiece. These sales, for the most part, were made by mail. This preticketing practice is the universal practice of respondents. Respondent Wein testified, in effect (R. 67–68, 70–71), that they were only suggested prices which were so set by respondents in order to meet competitive prices, and that they were usually lower than prices charged by watch industry leaders for similar products. It is vainly contended by respondents that they have not violated the Federal Trade Commission Act since, by their pricing methods, they have increased competition and lowered prices of watches to the ultimate consumer, although the corporate respondent does only $1,500,000 annual business, as against much larger competitors, some of whom do up to 20 million dollars' worth of annual business. Said respondent claims to rank only about 15th to 20th in its line of business. The evidence actually establishes the fact of substantial competition, although proof of such is unnecessary under the Wheeler-Lea Amendment of 1938 to the Federal Trade Commis-

sion Act where unfair practices in commerce have been established as here. It is therefore found that respondents are in substantial competition in commerce with corporations, firms and individuals engaged in the sale of watches, and their practices unfairly divert business from competitors, to the substantial injury thereof. Of course, the illegal pricing practices of respondents are not purged of their unfair and unlawful character by reason of competitive practices and prices so urged by respondents as a defense.

The evidence fully establishes both charges of the complaint, and the examiner finds that the use by respondents of the aforesaid false, misleading and deceptive statements, representations 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 causes them to purchase substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

CONCLUSIONS OF LAW

Out of the foregoing findings of fact, the hearing examiner draws the following conclusions of law:

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the person of each of the respondents;

2. This proceeding is to the interest of the public, and such interest is specific and substantial;

3. The acts and practices of the respondents, as hereinabove found, were and are all to the prejudice and injury of the public and of the respondents' competitors and constituted and now constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

The following order is therefore entered:

ORDER

It is ordered, That respondent The Clinton Watch Company, a corporation, and its officers; Irving L. Wein, Bernard J. Cogan and Max Magnus, as officers of said corporation; and Irving L. Wein, individually, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of watches, or any other merchandise, in commerce, as "commerce" is defined

in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, in any manner that any amount is the retail price of merchandise, when such amount is in excess of the price at which such merchandise is usually and regularly sold at retail in the trade area or areas where the representations are made;

2. Putting into operation any plan or device whereby others may misrepresent the regular and usual retail price of respondents' merchandise;

3. Representing that any merchandise offered for sale is guaranteed, unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly disclosed;

4. Representing that merchandise is guaranteed, when a service charge is imposed, unless the amount thereof is clearly disclosed.

OPINION OF THE COMMISSION

By ANDERSON, *Commissioner:*

The complaint in this matter charges respondents with misrepresenting the terms of the guarantee furnished with their watches and with using fictitious prices for the purpose of inducing the purchase of these watches, all in violation of the Federal Trade Commission Act. The hearing examiner in his initial decision held that the allegations of the complaint were sustained by the evidence and ordered respondents to cease and desist from the practices found to be unlawful. Respondents have appealed from this decision.

The record fully supports the hearing examiner's finding that the amounts set forth by respondents on tickets which they attach to their watches and which are represented as retail prices in promotional material distributed to mail order and discount houses, wholesalers and retailers, are not the usual and regular retail prices of their watches. The argument advanced by respondents that their prices are equal or lower than prices of competing sellers cannot justify the deception inherent in their price representations. That deception as to price is to the prejudice and injury of the public within the intent, scope and meaning of the Federal Trade Commission Act is well established and respondents' contention to the contrary is rejected. *Consumer Sales Corp.* v. *Federal Trade Commission*, 198 F. 2d 404 (2d Cir. 1952); *International Art Company* v.

Federal Trade Commission, 109 F. 2d 393 (7th Cir. 1940); *Harsam Distributors, Inc.* v. *Federal Trade Commission*, 263 F. 2d 396 (2d Cir. 1959).

Throughout this proceeding, respondents have requested that the Commission stay the effective date of any cease and desist order with respect to the fictitious pricing charge until Commission proceedings involving similar charges against certain of their competitors are completed. We have carefully considered the grounds set forth by respondents in support of this request, and it is our opinion that the public interest far outweighs the private considerations urged by respondents. Respondents' request is therefore denied. It is our opinion that the public interest in protecting purchasers from practices found to be unlawful by requiring immediate cessation thereof far outweighs whatever public or private interest may be present in allowing such practices to continue for any length of time for other reasons. Respondents' request is therefore denied.

The hearing examiner ruled that respondents' use of such advertising claims as "All Movement Parts GUARANTEED FOR LIFE Never To Break" was deceptive for the reason that the advertisements did not disclose the existence of a $1.00 handling charge. Respondents contend that this ruling is in error since the repairing and replacing of parts is done without charge, the $1.00 charge being made only to reimburse respondents, in part, for postage, insurance and other expenses incurred in returning the watch to the buyer. This argument is rejected on the authority of *Parker Pen Co.* v. *Federal Trade Commission*, 159 F. 2d 509 (7th Cir. 1946). In that case, the court in considering this same point with reference to the respondents' advertised "lifetime guarantee" on its pens, concluded that a guarantee *per se* negatives the idea of a further consideration on the part of a purchaser in his effort to obtain satisfactory performance from the article guaranteed.

Respondents next contend that the complaint should be dismissed as to respondents Bernard J. Cogan and Max Magnus in their official capacities, on the basis of the hearing examiner's finding that neither of these persons was individually responsible for the practices of the corporate respondent. Although this finding justifies the hearing examiner's dismissal of the complaint as to these persons in their individual capacities, it has no bearing on whether they should be held as officers. There is no dispute that Cogan and Magnus were Vice-President and Secretary, respectively, of the respondent corporation and there is no showing that they do not now occupy those positions. In their official capacities they are responsible

at least in part for the conduct of the corporate business and they act for and in behalf of the corporation. Consequently, the cease and desist order to be fully effective is properly directed against those named individuals in their official capacities. *Sebrone Co.* v. *Federal Trade Commission*, 135 F. 2d 676 (7th Cir. 1943); *Mandel Brothers, Inc.* v. *Federal Trade Commission*, 254 F. 2d 18 (7th Cir. 1958).

The appeal of respondents is denied and the initial decision will be adopted as the decision of the Commission.

FINAL ORDER

This matter having been heard by the Commission upon respondents' appeal from the hearing examiner's initial decision, and upon briefs and oral argument in support thereof and in opposition thereto; and the Commission having rendered its decision denying the appeal and adopting the initial decision:

It is ordered, That respondents, The Clinton Watch Company, a corporation, and Bernard J. Cogan and Max Magnus, as officers of said corporation, and Irving L. Wein, individually and as an officer of said corporation, 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.

IN THE MATTER OF

HERMAN WINTERS ET AL. DOING BUSINESS AS WINTERS-SCHNEIDER SALES AGENCY

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

Docket 7679. Complaint, Dec. 4, 1959—Decision, July 19, 1960

Consent order requiring three individuals in California to cease obtaining information from debtors through subterfuge, including the use of terms and forms similar to those used by the U.S. Government, and a Washington, D.C., mailing address, and representations that a sum of money was due and could be collected by persons filling in the desired information.

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 Herman Winters, Ralph Schneider and Sidney Mandy, individually and as copartners, trading and doing business as Winters-Schneider Sales Agency, 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 Herman Winters, Ralph Schneider and Sidney Mandy are individuals and copartners trading and doing business under the name of Winters-Schneider Sales Agency. Respondents' office and principal place of business is located at 1063 North Vine Street, Hollywood, Calif. They maintain an office or agent in Washington, D.C., at Room 501, 1424 K Street, NW.

PAR. 2. The respondents are now, and for more than one year last past have been, engaged in the business of selling printed mailing forms under their respective trade names. Respondents cause said printed material when sold, to be transported from their place of business in the State of California to purchasers thereof at their respective points of location in various other States of the United States. Respondents maintain, and at all times herein mentioned have maintained, a course of trade in their said products in commerce between and among the various States of the United States. Respondents' volume of trade is substantial.

The said printed material sold and transported by the respondents, as heretofore alleged, is designed and intended to be used and is used by collection agencies, merchants and others to whom it is sold for the purpose of obtaining information concerning delinquent debtors, with the aid and assistance of respondents as hereinafter set forth.

The said printed material consists of the following:

Job Locaters Forms

SA–1 IBM card shaped and punched, captioned "Semi-Annual Employment record."

SA–2 IBM card shaped and punched plus black arrow, captioned "Semi-Annual Employment Record."

E–2 IBM size and shape, captioned "Change of Employment Records, Second Notice."

DSD IBM punched, captioned "Employment Verification Request, Area-A."

VV IBM shaped and punched, captioned "Department of Vehicle Verification Records."

Skip Locaters Forms

K–1 IBM shaped and punched, captioned "Department of Claims and Settlements."

AA IBM shaped, captioned "Office of Area A."

Collection Forms

M–1 IBM shaped and punched, captioned "Bureau of Settlements and Collections, Demand for Payment of Debt."

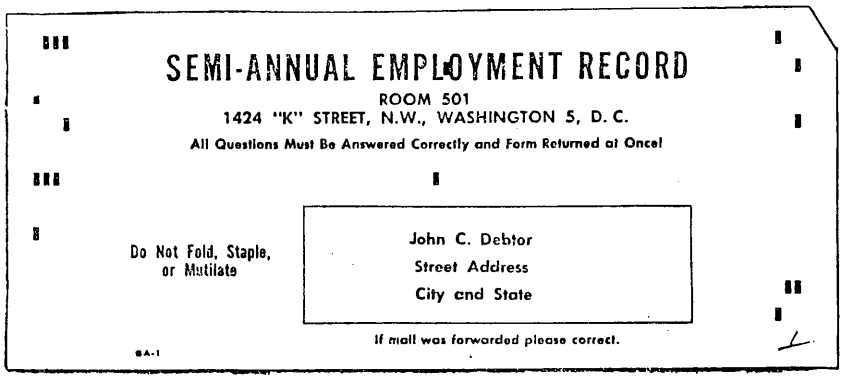
M–2 IBM shaped and punched, captioned "Bureau of Settlements and Collections, Final Demand for Payment of Debt."

Payment Voucher Form

Green paper, captioned "Payment Voucher, Division of Disbursements."

All of said forms are designed to be forwarded from Washington, D.C. to the addressees in stamped or metered envelopes provided by respondents in which are enclosed the form and a return postage paid envelope addressed to the name used such as: "Semi-Annual Employment Record," "Change of Employment Records," "Employment Verification Request, Area-A", "Department of Vehicle Verification Records," "Department of Claims and Settlements, Office of Area A," "Bureau of Settlements and Collections," and "Payment Voucher, Division of Disbursements." All are addressed to 1424 K Street, NW., Washington, D.C. Each of said forms sets out questions, which if answered will provide information which is considered to be of value in the collection of accounts owed or alleged to be owed by the addressee. The purchasers of respondents' printed material above referred to, fill in the appropriate data in the spaces provided including the name of the alleged debtor and in the case of the "Department of Claims and Settlements" form and "Bureau of Settlements and Collections" forms, the amount of the alleged indebtedness, and send the forms in bulk to respondents' agent at the aforesaid Washington, D.C. address, and respondents' agent then mails the forms from that location. If the addressee completes the form and remails it, respondents' agent forwards such form and any others in bulk to respondents at their address in Hollywood, California, where they are processed and either the completed forms themselves or the information contained thereon is forwarded to their purchasers.

PAR. 3. Typical of the printed forms sold by respondents and used in the manner aforesaid by their purchasers are the following:



SEMI-ANNUAL EMPLOYMENT RECORD

ROOM 501
1424 "K" STREET, N.W., WASHINGTON 5, D. C.

All Questions Must Be Answered Correctly and Form Returned at Once!

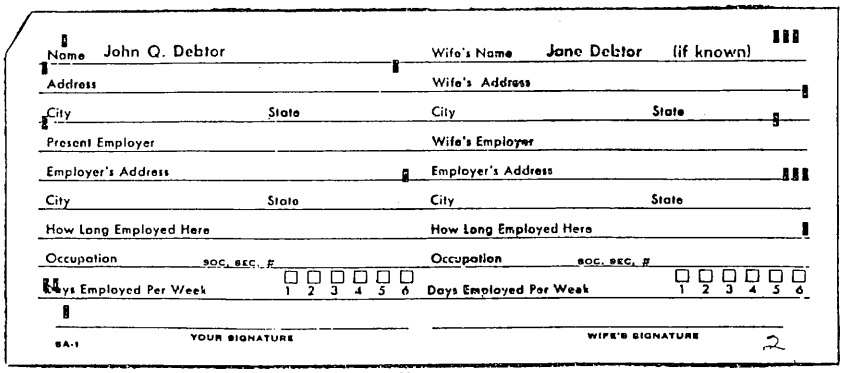
Do Not Fold, Staple, or Mutilate

John C. Debtor
Street Address
City and State

If mail was forwarded please correct.

SA-1

FRONT



Name John Q. Debtor — Wife's Name Jane Debtor (if known)

Address — Wife's Address

City — State — City — State

Present Employer — Wife's Employer

Employer's Address — Employer's Address

City — State — City — State

How Long Employed Here — How Long Employed Here

Occupation — SOC. SEC. # — Occupation — SOC. SEC. #

Days Employed Per Week ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 — Days Employed Per Week ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6

SA-1 YOUR SIGNATURE — WIFE'S SIGNATURE

BACK

SEMI-ANNUAL EMPLOYMENT RECORD

ROOM 501
1424 "K" STREET, N.W., WASHINGTON 5, D. C.

All Questions Must Be Answered Correctly and Form Returned at Once!

IMPORTANT REQUEST FOR

John C. Debtor
Street Address
City and State

Do Not Fold, Staple, or Mutilate

If mail was forwarded please correct.

6A-2

FRONT

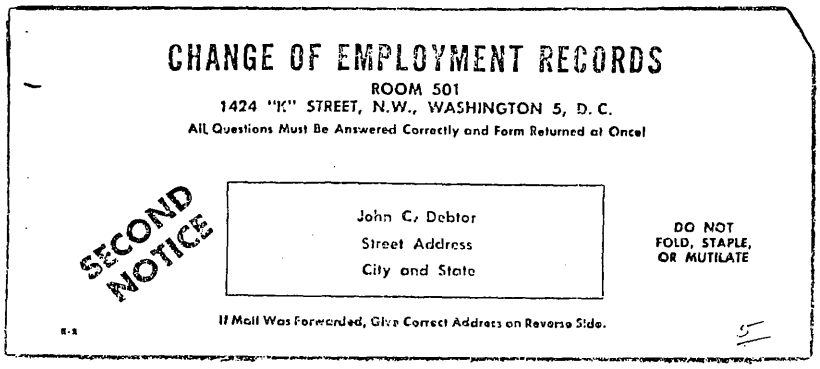
The Verification Department of the Semi-Annual Employment Records Division has been advised that you have failed to answer the original request. Records must be kept current.

— Answer All Questions Below —

GIVE REASON HERE WHY FIRST FORM WAS NOT RETURNED AS REQUESTED

Name John Q. Debtor		Wife's Name Jane Debtor	(If known)
Address		Wife's Address	
City	State	City	State
Present Employer		Wife's Employer	
Employer's Address		Employer's Address	
City	State	City	State
How Long Employed	soc. sec. #	How Long Employed	soc. sec. #

BACK



CHANGE OF EMPLOYMENT RECORDS

ROOM 501
1424 "K" STREET, N.W., WASHINGTON 5, D. C.
All Questions Must Be Answered Correctly and Form Returned at Once!

SECOND NOTICE

John C. Debtor
Street Address
City and State

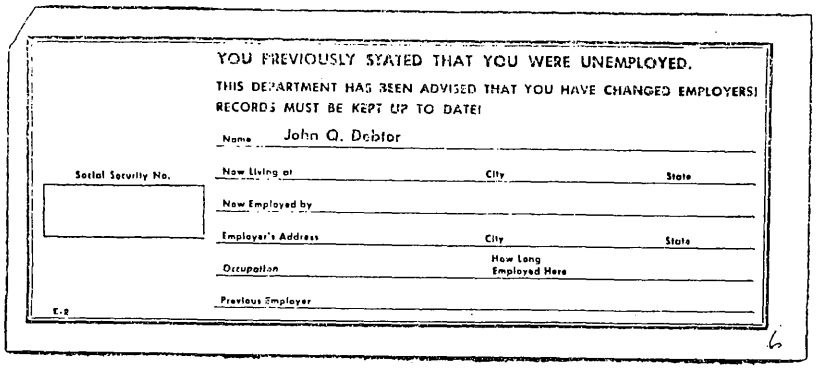
DO NOT FOLD, STAPLE, OR MUTILATE

If Mail Was Forwarded, Give Correct Address on Reverse Side.

E-2

5

FRONT



YOU PREVIOUSLY STATED THAT YOU WERE UNEMPLOYED.

THIS DEPARTMENT HAS BEEN ADVISED THAT YOU HAVE CHANGED EMPLOYERS! RECORDS MUST BE KEPT UP TO DATE!

Name John Q. Debtor

Social Security No.

Now Living at ____ City ____ State ____

Now Employed by ____

Employer's Address ____ City ____ State ____

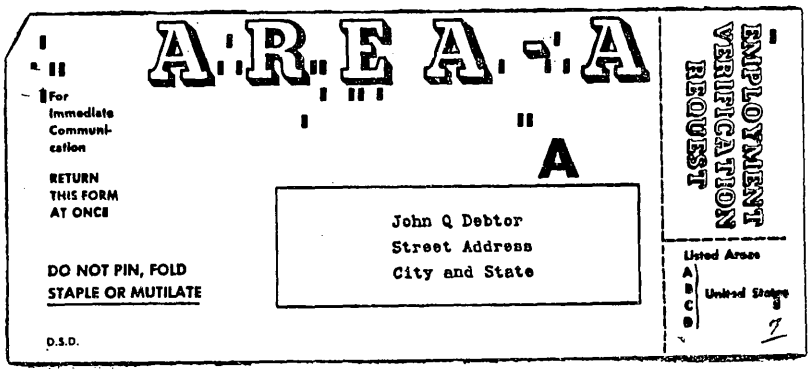
Occupation ____ How Long Employed Here ____

Previous Employer ____

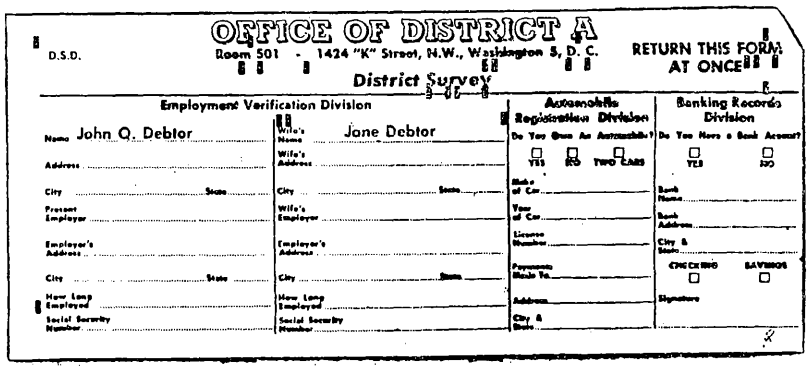
E-2

6

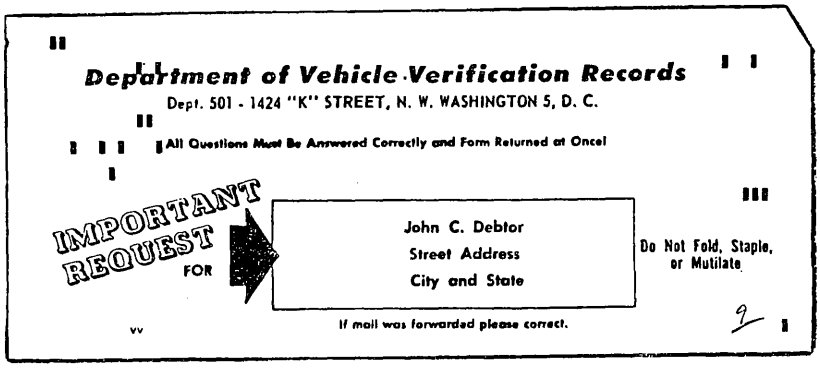
BACK


A-R-E-A-7-A
For Immediate Communication
RETURN THIS FORM AT ONCE
DO NOT PIN, FOLD STAPLE OR MUTILATE
D.S.D.
John Q Debtor
Street Address
City and State
EMPLOYMENT VERIFICATION REQUEST
Listed Areas
A B C D
United States

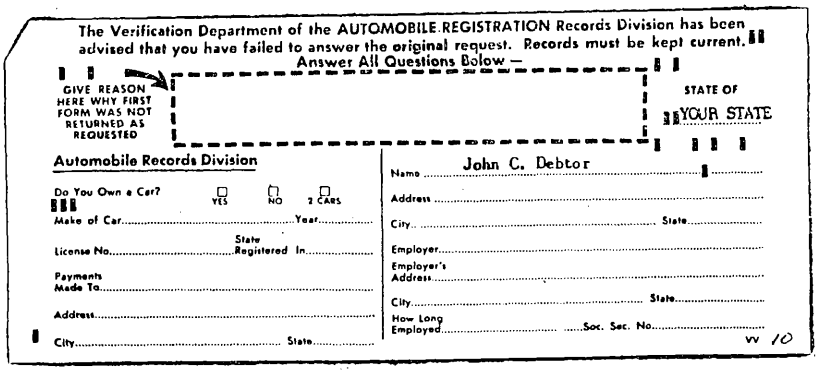
FRONT


OFFICE OF DISTRICT A
D.S.D.
Room 501 - 1424 "K" Street, N.W., Washington 5, D. C.
RETURN THIS FORM AT ONCE
District Survey
Employment Verification Division
Name John Q. Debtor
Wife's Name Jane Debtor
Address
City State
Present Employer
Employer's Address
How Long Employed
Social Security Number
Automobile Registration Division
Do You Own An Automobile?
YES NO TWO CARS
Make of Car
Year of Car
License Number
Payments Made To
Address
City & State
Banking Records Division
Do You Have a Bank Account?
YES NO
Bank Name
Bank Address
City & State
CHECKING SAVINGS
Signature

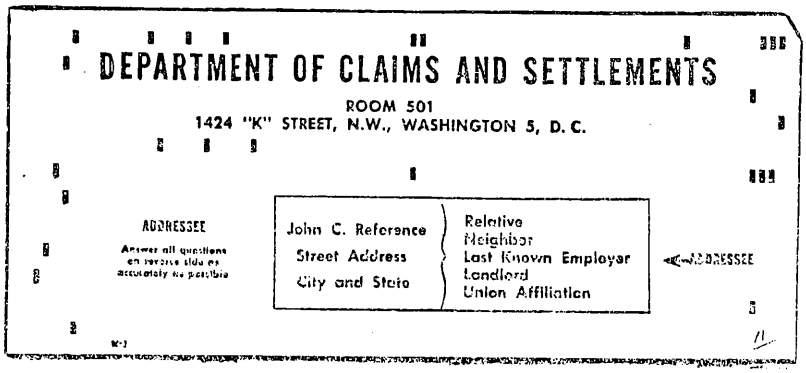
BACK


Department of Vehicle Verification Records
Dept. 501 - 1424 "K" STREET, N. W. WASHINGTON 5, D. C.
All Questions Must Be Answered Correctly and Form Returned at Once!
IMPORTANT REQUEST FOR
John C. Debtor
Street Address
City and State
Do Not Fold, Staple, or Mutilate
If mail was forwarded please correct.

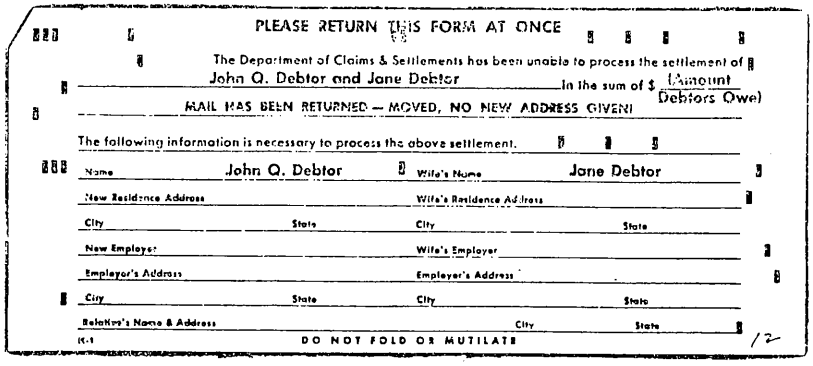
FRONT


The Verification Department of the AUTOMOBILE REGISTRATION Records Division has been advised that you have failed to answer the original request. Records must be kept current.
Answer All Questions Below —
GIVE REASON HERE WHY FIRST FORM WAS NOT RETURNED AS REQUESTED
STATE OF YOUR STATE
Automobile Records Division
Do You Own a Car? YES NO 2 CARS
Make of Car Year
License No. State Registered In
Payments Made To
Address
City State
Name John C. Debtor
Address
City State
Employer
Employer's Address
City State
How Long Employed Soc. Sec. No.

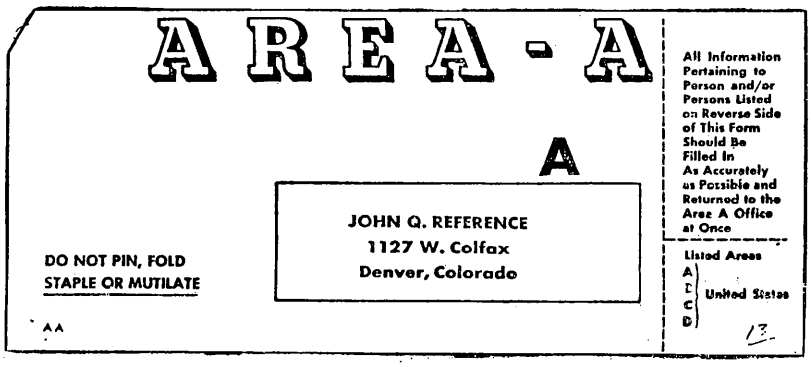
BACK


DEPARTMENT OF CLAIMS AND SETTLEMENTS
ROOM 501
1424 "K" STREET, N.W., WASHINGTON 5, D. C.
ADDRESSEE
Answer all questions on reverse side as accurately as possible
John C. Reference
Street Address
City and State
Relative
Neighbor
Last Known Employer
Landlord
Union Affiliation
ADDRESSEE

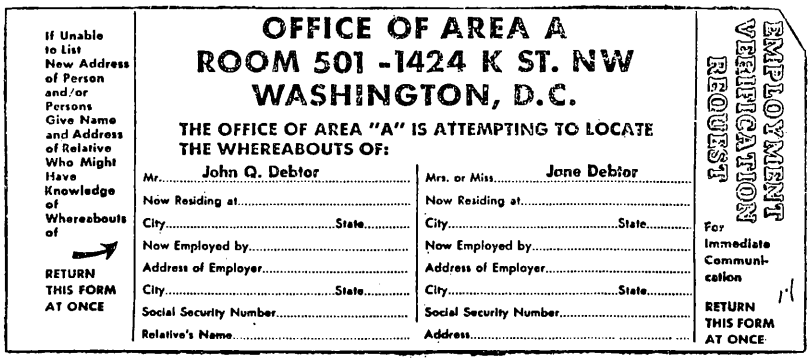
FRONT


PLEASE RETURN THIS FORM AT ONCE
The Department of Claims & Settlements has been unable to process the settlement of
John Q. Debtor and Jane Debtor
in the sum of $ (Amount Debtors Owe)
MAIL HAS BEEN RETURNED — MOVED, NO NEW ADDRESS GIVEN!
The following information is necessary to process the above settlement.
Name John Q. Debtor
Wife's Name Jane Debtor
New Residence Address
Wife's Residence Address
City State City State
New Employer
Wife's Employer
Employer's Address
Employer's Address
City State City State
Relative's Name & Address
City State
DO NOT FOLD OR MUTILATE

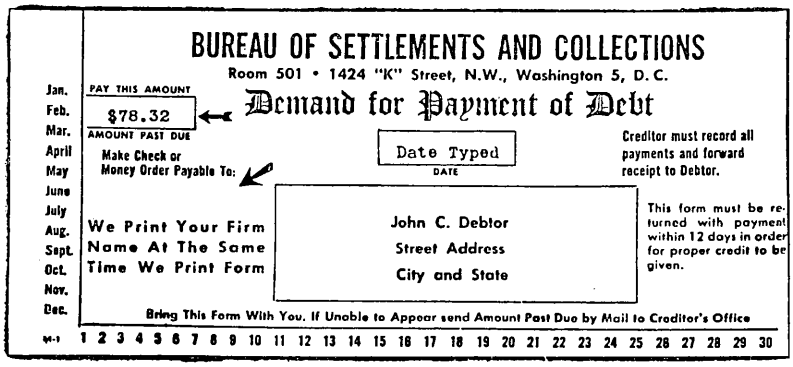
BACK


AREA - A
A
JOHN Q. REFERENCE
1127 W. Colfax
Denver, Colorado
DO NOT PIN, FOLD
STAPLE OR MUTILATE
AA
All Information Pertaining to Person and/or Persons Listed on Reverse Side of This Form Should Be Filled In As Accurately as Possible and Returned to the Area A Office at Once
Listed Areas
A
B
C
D
United States
13

FRONT


If Unable to List New Address of Person and/or Persons Give Name and Address of Relative Who Might Have Knowledge of Whereabouts of
RETURN THIS FORM AT ONCE
OFFICE OF AREA A
ROOM 501 -1424 K ST. NW
WASHINGTON, D.C.
THE OFFICE OF AREA "A" IS ATTEMPTING TO LOCATE THE WHEREABOUTS OF:
Mr. John Q. Debtor
Now Residing at
City State
Now Employed by
Address of Employer
City State
Social Security Number
Relative's Name
Mrs. or Miss Jane Debtor
Now Residing at
City State
Now Employed by
Address of Employer
City State
Social Security Number
Address
EMPLOYMENT VERIFICATION REQUEST
For Immediate Communication
RETURN THIS FORM AT ONCE

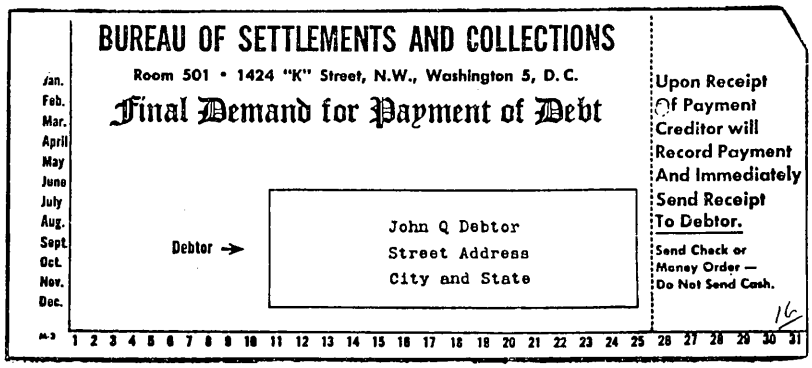
BACK



FRONT

(BLANK)

BACK



BUREAU OF SETTLEMENTS AND COLLECTIONS

Room 501 • 1424 "K" Street, N.W., Washington 5, D. C.

Final Demand for Payment of Debt

Jan. Feb. Mar. April May June July Aug. Sept. Oct. Nov. Dec.

Debtor →

John Q Debtor
Street Address
City and State

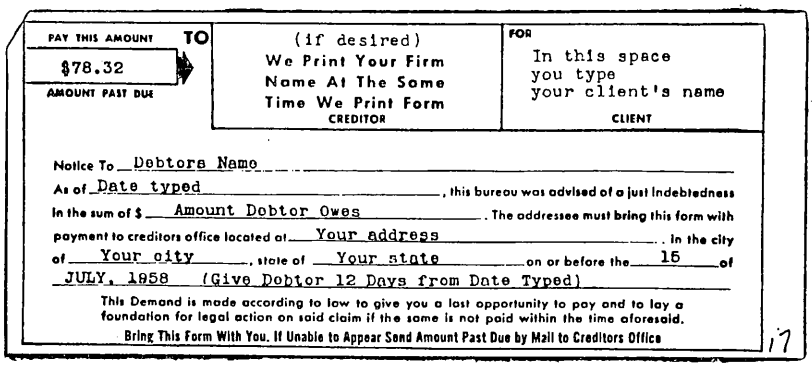
Upon Receipt Of Payment Creditor will Record Payment And Immediately Send Receipt To Debtor.

Send Check or Money Order — Do Not Send Cash.

16

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31

FRONT



PAY THIS AMOUNT $78.32 AMOUNT PAST DUE

TO (if desired) We Print Your Firm Name At The Same Time We Print Form CREDITOR

FOR In this space you type your client's name CLIENT

Notice To Debtors Name

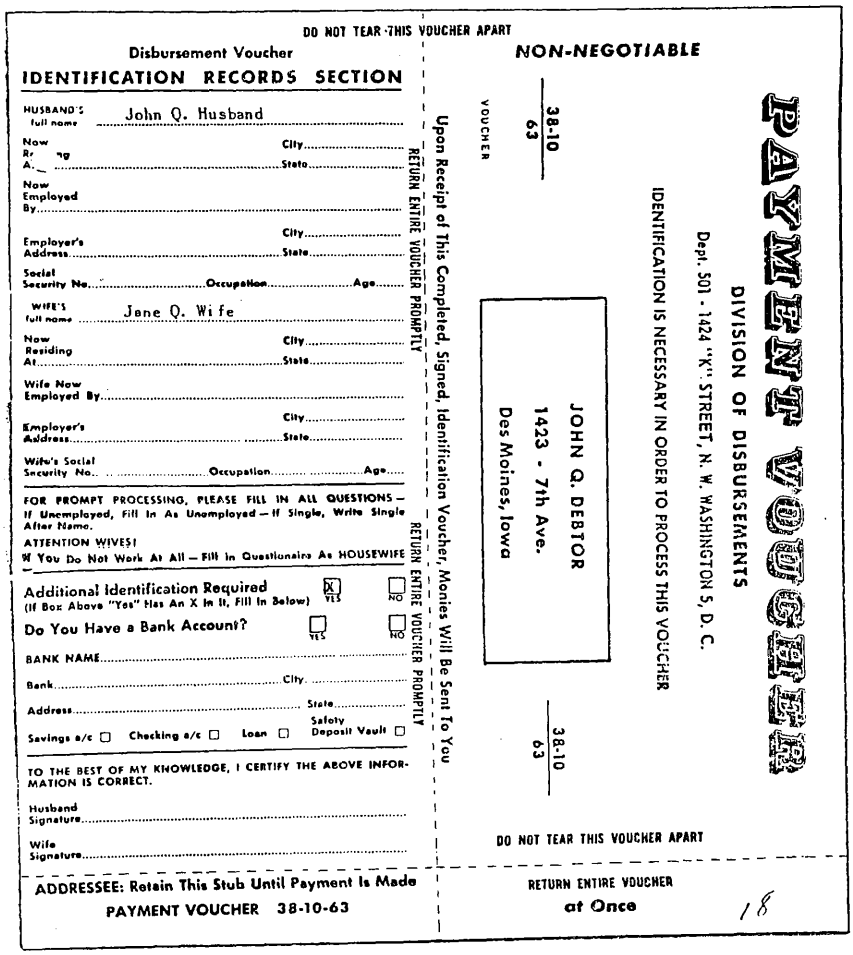
As of Date typed, this bureau was advised of a just indebtedness in the sum of $ Amount Debtor Owes. The addressee must bring this form with payment to creditors office located at Your address, in the city of Your city, state of Your state on or before the 15 of JULY, 1958 (Give Debtor 12 Days from Date Typed)

This Demand is made according to law to give you a last opportunity to pay and to lay a foundation for legal action on said claim if the same is not paid within the time aforesaid.

Bring This Form With You. If Unable to Appear Send Amount Past Due by Mail to Creditors Office

17

BACK



DO NOT TEAR THIS VOUCHER APART

Disbursement Voucher

IDENTIFICATION RECORDS SECTION

HUSBAND'S full name: John Q. Husband

Now Residing At: ..... City ..... State .....

Now Employed By: .....

Employer's Address: ..... City ..... State .....

Social Security No. ..... Occupation ..... Age .....

WIFE'S full name: Jane Q. Wife

Now Residing At: ..... City ..... State .....

Wife Now Employed By: .....

Employer's Address: ..... City ..... State .....

Wife's Social Security No. ..... Occupation ..... Age .....

FOR PROMPT PROCESSING, PLEASE FILL IN ALL QUESTIONS — If Unemployed, Fill In As Unemployed — If Single, Write Single After Name.

ATTENTION WIVES! If You Do Not Work At All — Fill In Questionaire As HOUSEWIFE

Additional Identification Required (If Box Above "Yes" Has An X In It, Fill In Below) [X] YES [ ] NO

Do You Have a Bank Account? [ ] YES [ ] NO

BANK NAME .....

Bank ..... City .....

Address ..... State .....

Savings a/c ☐ Checking a/c ☐ Loan ☐ Safety Deposit Vault ☐

TO THE BEST OF MY KNOWLEDGE, I CERTIFY THE ABOVE INFORMATION IS CORRECT.

Husband Signature .....

Wife Signature .....

ADDRESSEE: Retain This Stub Until Payment Is Made

PAYMENT VOUCHER 38-10-63

RETURN ENTIRE VOUCHER PROMPTLY

Upon Receipt of This Completed, Signed, Identification Voucher, Monies Will Be Sent To You

RETURN ENTIRE VOUCHER PROMPTLY

NON-NEGOTIABLE

38-10
63
VOUCHER

JOHN Q. DEBTOR
1423 - 7th Ave.
Des Moines, Iowa

38-10
63

PAYMENT WOULD BE MADE

DIVISION OF DISBURSEMENTS
Dept. 501 - 1424 "K" STREET, N. W. WASHINGTON 5, D. C.

IDENTIFICATION IS NECESSARY IN ORDER TO PROCESS THIS VOUCHER

DO NOT TEAR THIS VOUCHER APART

RETURN ENTIRE VOUCHER at Once

18

PAR. 4. Through the words or terms "Semi-Annual Employment Record," "Change of Employment Records," "Employment Verification Request," "Department of Vehicle Verification Records," "Department of Claims and Settlement," "Office of Area-A, "Bureau of Settlements and Collections," and "Division of Disbursements," particularly the words "Bureau," "Department," "Office," and "Division," on said forms, and also through the use of IBM cards, colored, shaped and punched in similar fashion to those used by many agencies of the United States Government or in the case of "Payment Voucher" the use of green paper similar to that used by the United States Government for checks, and through the use of symbols and numbers arranged on aforesaid forms in similar fashion to that of government forms such as "Do not fold, Staple or Mutilate" or in the case of "Payment Voucher" the numbers "$\frac{38\text{–}10}{63}$" as in checks issued by the United States Government, and in the form and phraseology of said forms, respondents represent and place in the hands of the purchasers of their said forms, the means and instrumentalities whereby they represent and imply to those to whom said forms are mailed that the request for information is made by an agency or branch of the United States Government. The fact that such forms are mailed from Washington, D.C. and if desired by the purchaser under metered postage enhances such implication. The insertion in the "Department of Claims and Settlements" form of an amount the "Department" has been unable to "process the settlement" due to lack of information serves as a representation or implication that the amount inserted therein is due and owing to persons whose names are inserted in the forms and can be collected, and that by filling in the desired information they will thereby be entitled to receive such sum.

Through the use of the words and terms "Semi-Annual Employment Record," "Change of Employment Records," "Employment Verification Request," and "Department of Vehicle Verification Records" on said forms, and the nature of inquiries set out on said forms, respondents represent and place in the hands of purchasers of the said forms, instrumentalities by and through which they represent or imply that projects are being carried on by the United States Government for the purpose of ascertaining data on employment and vehicle ownership. The fact that these forms are mailed from Washington, D.C. enhances such implication.

PAR. 5. The aforesaid representations and implications were and are false, misleading and deceptive. In truth and in fact, the so-called "Semi-Annual Employment Record," "Change of Employment Records," "Office of District A," "Employment Verification

Request," "Department of Vehicle Verification Records," "Department of Claims and Settlements," "Office of Area-A", "Bureau of Settlements and Collections," and "Division of Disbursements" are not agencies or branches of the United States Government and the request for information set out therein does not come from any agency of the United States Government. There is no amount due or collectible to those to whom the forms referred to above are sent or to any other person.

The United States Government is not and never has been engaged through "Semi-Annual Employment Record," "Change of Employment Records," "Employment Verification Request, Office of District A," and "Department of Vehicle Verification Records" in obtaining data or other information on employment or vehicle ownership.

In truth and in fact, the sole business of respondents, conducted as aforesaid, is to sell the various printed forms to others to be used by them for the purpose of obtaining information concerning debtors and, by selling and placing said forms in the hands of the purchasers, respondents thereby furnish to such purchasers means and instrumentalities by and through which they may, and often do, obtain information by subterfuge.

PAR. 6. The uses, as hereinabove set forth, of respondents' printed forms containing the false, misleading and deceptive statements, representations, depictions and implications have had, and now have, the tendency and capacity to mislead and deceive many persons to whom said printed forms were sent into the erroneous and mistaken belief that the said statements, representations, depictions and implications were and are true and induce the recipients thereof to furnish information which otherwise they would not have supplied.

PAR. 7. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. John J. McNally for the Commission.

Dryden, Harrington, Horgan & Swartz, of Los Angeles, Calif., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated December 4, 1959 the respondents are charged with violating the provisions of the Federal Trade Commission Act.

On March 21, 1960, the respondents and their attorney entered into an agreement with counsel in support of the complaint for a consent order.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

The hearing examiner finds that the content of the agreement meets all of the requirements of Section 3.25(b) of the Rules of the Commission.

The hearing examiner being of the opinion that the agreement and the proposed order provide an appropriate basis for disposition of this proceding as to all of the parties, the agreement is hereby accepted and it is ordered that the agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Respondents Herman Winters, Ralph Schneider and Sidney Mandy are individuals and were, until October 10, 1959, copartners, trading as Winters-Schneider Sales Agency with their office and principal place of business located at 1063 North Vine Street, Hollywood, Calif. The current addresses of respondents are as follows: Herman Winters, 5723 Graves Avenue, Encino, Calif.; Raph Schneider, Apartment 47, 2010 Latham Street, Mountain View, Calif.; and Sidney Mandy, 1004 South Second Street, Alhambra, Calif.

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 Herman Winters, Ralph Schneider and Sidney Mandy, as individuals, or as copartners doing business as Winters-Schneider Sales Agency, or under any other trade name or names, and respondents' representatives, agents or employees, directly, or through any corporate or other device, in connection with the business of obtaining information concerning delinquent debtors, or with the offering for sale, sale or distribution of forms, or other material, for use in obtaining information concerning delinquent debtors, or in the collection of, or in attempting to collect accounts,

in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Using, or placing in the hands of others for use, any forms, letters, questionnaires or other materials, printed or written, which do not clearly reveal that the purpose for which the information is requested is that of obtaining information concerning delinquent debtors.

(2) Representing, or placing in the hands of others any means of representing, directly or by implication, that money is being held for, or is due, persons concerning whom information is sought, or is collectible by such persons, unless money is in fact due and collectible by such persons and the amount thereof is expressly stated.

(3) Using the terms: "Semi-Annual Employment Record," "Change of Employment Records," "Employment Verification Request," "Department of Vehicle Verification Records," "Department of Claims and Settlements," "Office of Area-A," "Bureau of Settlements and Collections," or "Division of Disbursements," or other words, terms or phrases of similar import to designate, describe, or refer to respondents' business; or representing, directly or by implication in any manner that requests for information concerning delinquent debtors are from, or have any connection with the Government of the United States or any agency or branch thereof.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 19th day of July 1960, become the decision of the Commission; and, accordingly:

It is 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 the order to cease and desist.

IN THE MATTER OF

HULL RECORDS, INC., ET AL.

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

Docket 7829. Complaint, Mar. 18, 1960—Decision, July 19, 1960

Consent order requiring New York City manufacturers of phonograph records to cease giving concealed "payola"—money or other material consideration—to disc jockeys of television and radio programs or others to induce broadcasting of their records.

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 Hull Records, Inc., a corporation, and William Kaslin, and Blanche Kaslin, individually and as officers of said 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. Hull Records, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 1595 Broadway, New York, N.Y.

Respondents William Kaslin and Blanche Kaslin are respectively President and Secretary of the respondent corporation and formulate, direct and control the acts and practices of said respondent corporation, including the acts and practices herein set out. The address of the individual respondents is the same as that of said corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture, distribution and sale of phonograph records to independent distributors for resale to retail outlets and jukebox operators in various States of the United States.

In the course and conduct of their business, respondents now cause, and for some time last past have caused, the records they manufacture, sell and distribute, when sold, to be shipped from their place of business in the State of New York, 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 phonograph records in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business, at all times mentioned herein, respondents have been, and are now, in substantial competition in commerce, with corporations, firms and individuals in the manufacture, sale and distribution of phonograph records.

PAR. 4. After World War II when television and radio stations shifted from "live" to recorded performances for much of their programming, the production, distribution and sale of phonograph records emerged as an important factor in the musical industry with a sales volume of approximately $400,000,000 in 1958.

Record manufacturing companies and distributors ascertained that popular disk jockeys could by "exposure" or the playing of a record day after day, sometimes as high as six to ten times a day, substantially increase the sales of those records so "exposed". Some record manufacturers and distributors obtained and insured the "exposure" of certain records in which they were financially interested by disbursing "payola" to individuals authorized to select and "expose" records for both radio and television programs.

"Payola", among other things is the payment of money or other valuable consideration to disk jockeys of musical programs on radio and television stations to induce, stimulate or motivate the disk jockey to select, broadcast, "expose" and promote certain records in which the payer has a financial interest.

Disk jockeys in consideration of their receiving the payments heretofore described, either directly or by implication represent to their listening public that the records "exposed" on their broadcasts have been selected on their personal evaluation of each record's merits or its general popularity with the public, whereas, in truth and in fact, one of the principal reasons or motivations guaranteeing the record's "exposure" is the "payola" payoff.

PAR. 5. In the course and conduct of their business in commerce during the last several years, the respondents have engaged in unfair and deceptive acts and practices and unfair methods of competition in the following respects:

The respondents alone, or with certain unnamed record distributors, negotiated for and disbursed "payola" to disk jockeys broadcasting musical programs over radio or television stations, broadcasting across state lines.

Deception is inherent in "payola" inasmuch as it involves the payment of a consideration on the express or implied understanding that the disk jockey will conceal, withhold or camouflage such fact from the listening public.

The respondents by participating individually or in a joint effort with certain collaborating record distributors have aided and abetted the deception of the public by various disk jockeys by controlling or unduly influencing the "exposure" of records by said disk jockeys with the payment of money or other consideration to them.

Thus, "payola" is used by the respondents to mislead the public into believing that the records "exposed" were the independent and unbiased selections of the disk jockeys based either on each record's merit or public popularity. This deception of the public has the capacity and tendency to cause the public to purchase the "exposed" records which they otherwise might not have purchased and, also, to enhance the popularity of the "exposed" records in various popu-

larity polls, which in turn has the capacity and tendency to substantially increase the sales of the "exposed" records.

PAR. 6. The aforesaid acts and practices and methods have the capacity and tendency to mislead and deceive the public and to hinder, restrain and suppress competition in the manufacture, distribution and sale of phonograph records, and to divert trade unfairly to the respondents from their competitors and substantial injury has thereby been done and may continue to be done to competition in commerce.

PAR. 7. The aforesaid acts and practices of respondents, as alleged herein, were and are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

Mr. John T. Walker and *Mr. James H. Kelley* for the Commission.

Respondents, for themselves.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents, who are engaged in the manufacture, distribution and sale of phonograph records to independent distributors for resale to retail outlets and jukebox operators in various states of the United States, with violation of the Federal Trade Commission Act, in that respondents, alone or with certain unnamed record distributors, have negotiated for and disbursed "payola", i.e., the payment of money or other valuable consideration to disk jockeys of musical programs on radio and television stations, to induce, stimulate or motivate the disk jockeys to select, broadcast, "expose" and promote certain records, in which respondents are financially interested, on the express or implied understanding that the disk jockeys will conceal, withhold or camouflage the fact of such payment from the listening public.

After the issuance of the complaint, respondents and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the Director, Associate Director and Assistant Director of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement states that respondent Hull Records, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 1595 Broadway, New York,

N.Y., and that respondents William Kaslin and Blanche Kaslin are, respectively, President and Secretary of the respondent corporation and formulate, direct and control the acts and practices of said respondent corporation, their address being the same as that of said corporate respondent.

The agreement provides, among other things, that respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the complaint may be used in construing the terms of the order agreed upon, which may be altered, modified or set aside in the manner provided for other orders; that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint; and that the order set forth in the agreement and hereinafter included in this decision shall have the same force and effect as if entered after a full hearing.

Respondents waive any further procedural steps before the Hearing Examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The order agreed upon fully disposes of all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein as being in violation of the Federal Trade Commission Act. Accordingly, the Hearing Examiner finds this proceeding to be in the public interest, and accepts the agreement containing consent order to cease and desist as part of the record upon which this decision is based. Therefore,

It is ordered, That respondent Hull Records, Inc., a corporation, and its officers, and respondents William Kaslin and Blanche Kaslin, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with phonograph records which have been distributed in commerce, or which are used by radio or television stations in broadcasting programs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Syllabus

(1) Giving or offering to give, without requiring public disclosure, any sum of money or other material consideration, to any person, directly or indirectly, to induce that person to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or any of them, have a financial interest of any nature;

(2) Giving or offering to give, without requiring public disclosure, any sum of money, or other material consideration, to any person, directly or indirectly, as an inducement to influence any employee of a radio or television broadcasting station, or any other person, in any manner, to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or any of them, have a financial interest of any nature.

There shall be "public disclosure" within the meaning of this order, by any employee of a radio or television broadcasting station, or any other person, who selects or participates in the selection and broadcasting of a record when he shall disclose, or cause to have disclosed, to the listening public at the time the record is played, that his selection and broadcasting of such record are in consideration for compensation of some nature, directly or indirectly received by him or his employer.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 19th day of July 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Hull Records, Inc., a corporation, and William Kaslin and Blanche Kaslin, individually and as officers of said corporation, 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.

IN THE MATTER OF

CONTINENTAL SCHOOLS, INC., ET AL.

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

Docket 7873. Complaint, Apr. 20, 1960—Decision, July 19, 1960

Consent order requiring operators of a correspondence school in Vancouver, Wash., selling a course on jet engine mechanics, among others, to cease

using misleading claims in newspaper advertising, form letters, salesmen's statements, etc., concerning employment and earning prospects in the airplane industry, opportunities therein for students completing their course, etc.

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 Continental Schools, Inc., a corporation, and Leroy White, Ralph J. Merris and Ralph D. Lingenfelter, as individuals and as officers of said corporation, and Max Moore, an individual, 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. Continental Schools, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its offices and principal place of business located at 114 West Sixth Street in the City of Vancouver, State of Washington. Prior to January 12, 1959, or thereabouts, its corporate name was Continental Jet Training, Inc. The said change of corporate name was accomplished by amendment to the charter of Continental Jet Training, Inc., pursuant to the laws of the State of Washington.

Individual respondents Leroy White, Ralph J. Merris and Ralph D. Lingenfelter, are officers of the said corporate respondent. Their office addresses are the same as that of the corporate respondent.

Individual respondent Max Moore was President of the corporate respondent prior to the said amendment, and was for a time Secretary of the corporate respondent subsequent thereto. Individual respondent Max Moore also served for a time as Sales Manager of the corporate respondent and has a substantial interest in its ownership. His principal office and place of business is located at 1528 S.E. Holgate, Portland, Oreg.

The said individual respondents formulated and now formulate, direct, and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the business of advertising, offering for sale, selling and distributing various types of home study courses. Among said courses is a course on jet engine mechanics.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said course

of study, when sold, to be transported from their place of business located in Vancouver, Wash., to the purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said courses in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the sale of their said course on jet engine mechanics, respondents have made, published, and caused to be published, a variety of statements concerning said course in newspapers and other publications, in brochures displayed to prospective purchasers by respondents or their salesmen, and in post cards and form letters sent by means of the United States mails to prospective purchasers by the respondents.

Among and including, but not limited to, such statements are the following:

(a) Please hand this letter and the enclosed reference form to our representative when he calls, as he must return them with his report and reasons for acceptance or rejection (form letter)

I am here for one purpose only; to see if there is a student here that will qualify for our Jet Training Program. (Salesman's guide)

(b) We sincerely hope your qualifications are such that we may serve as your guide to success in this profitable, wide-open, new field. (form letter)

If you can qualify you can earn more! (brochure)

WE NEED MEN . . . who can qualify for training. (newspaper advertisement)

(c) We at the school want to help you make this change by offering you the opportunity to equip yourself with the necessary knowledge that will enable you to demand a good position and provide a secured income for you and your family. (form letter)

. . . Prepare yourself—train now. . . . (newspaper advertisement)

(d) Trained men by the thousands are needed to help keep these planes flying . . . service . . . overhaul. (form letter)

. . . train during spare time for jet aircraft mechanics, jet specialist, engine buildup, engine overhaul, inspectors, instructors, maintenance and service. (post card)

. . . Trouble shooters, maintenance, overhaul inspectors, instructors. . . . (newspaper advertisement)

(e) Look to an assured future. (brochure)

Jet (gas turbine) opens endless new positions (brochure)

Indicating The Unlimited Future of Jet Aviation. . . . Followed by a montage of newspaper articles and Help Wanted advertisements, including: Line inspectors wanted for expanding jet engine plant. We seek men with A & E experience . . . General Electric; Aircraft mechanics needed immediately. Airframe mechanics, . . . (name of prospective employer partially covered); Eastern Air to build plant in Miami to overhaul jets . . .; Continental Airlines . . . to build 2½ million dollar overhaul and maintenance base for turbine engines . . .; Journeymen. . . . (brochure)

PAR. 5. By means of the statements appearing in such advertisements, brochures, postcards and form letters, and others of the same import and meaning not set forth herein, and through the oral statements of their sales representatives, respondents represent, directly or by implication:

(a) That their sales representatives are primarily concerned with determining the qualifications of prospective purchasers of such courses.

(b) That respondents will accept as students only those who can learn the principles and practical aspects of jet engine mechanics, including the repair, maintenance and overhauling of jet engines, by means of a course of home study without personal instruction or supervision.

(c) That such course of study is so prepared and presented that the prospect who qualifies and is accepted for enrollment will be able to complete it without personal instruction or supervision.

(d) That if the prospect is accepted and completes such course with passing grades he will become a trained jet engine mechanic or technician qualified to repair, maintain and overhaul jet engines.

(e) That those completing such course with passing grades are assured employment as jet mechanics or technicians in the repair, maintenance, and overhauling of jet engines.

PAR. 6. The said statements and representations of respondents are false, misleading and deceptive. In truth and in fact:

(a) Respondents' sales representatives depend upon commissions earned from selling such course as a means of livelihood. Their sales presentation is primarily concerned with effectuating sales. They give little or no consideration to determining the qualifications of prospective purchasers of the said course.

(b) Respondents accept virtually all students who are willing to enroll and make the down payment. Respondents have accepted and enrolled a great number of purchasers who could not learn the principles and practical aspects of jet engine mechanics by means of such written home study course without personal instruction or supervision.

(c) Few, if any, of respondents' customers have continued on with the course after having received several lessons. The overwhelming majority of such customers have been unwilling or unable to complete the said course. A major portion of the income of respondents and of their sales representatives in the usual course of business is derived from payments for cancelled or uncompleted courses.

(d) Upon the completion of such course with passing grades the prospect could in no sense be considered a trained jet engine

mechanic or technician nor will he be qualified to repair, maintain, or overhaul jet engines.

(e) Few, if any, of those who enrolled for respondents' said course have completed it. Even were they to complete the said course with passing grades there is little if any prospect of their employment as jet engine mechanics or technicians by industry.

PAR. 7. In the course and conduct of their business, respondents have made further statements through newspaper advertisements, brochures, form letters, and through oral statements of the respondents or their sales representatives. Among and including, but not limited to, such statements are the following:

. . . flight line trouble shooting, engine buildup .. . instructor . . . test operations. . . . (brochure)

With its critical shortage of maintenance men, SAC is obliged to hire technical representatives from industry to help out . . . the civilians are earning up to $1,200 a month. (brochure)

If you are not making better than $125 a week [depiction of silhouette of airplane] . . . Turbojet offers ground floor opportunities for better jobs, future, more pay and security. Train now and be a top man in the multimillion dollar jet industry. (post card)

PAR. 8. By means of the statements set forth in paragraph 7 above, in conjunction with those set forth in paragraph 4 above, and through others of the same import and meaning not set forth herein including the oral statements of respondents and their sales representatives, respondents represent directly or by implication, that there is no bar or impediment which would operate to prevent those who successfully complete such course in jet engine mechanics from earning the prevalent wage scales of highly skilled mechanics or technicians on airplane engines.

PAR. 9. Ordinarily mechanical work on jet aircraft engines is performed by skilled personnel who are capable of working on all types of power plants, which includes reciprocating as well as jet engines. Much of this work, particularly above the repetitive and routine levels in the repair, overhaul and maintenance of aircraft engines, can only be performed by personnel who have been examined and certified by the Federal Aviation Agency. Examination for certification by said agency will only be given upon the successful completion of a course of study including supervised practical shop and bench work, at either a duly authorized school or under an approved apprenticeship training program, in lieu of specified practical experience requirements. Certification for airframe and power plant work is known in the trade as an "A & P Ticket" (and was formerly designated "A & E Ticket" for airframe and engine work).

PAR. 10. Respondents, their school, and their unsupervised home study course in jet engine mechanics have not been approved by the Federal Aviation Agency. Students who successfully complete such course with passing grades would not meet the prerequisites for taking an examination for certification for aircraft or power plant work on airplane engines, and as a consequence, would not earn the prevailing wages earned by skilled aircraft mechanics or technicians.

PAR. 11. The failure of respondents to affirmatively disclose to prospective purchasers of such course of home study for jet engine mechanics, in connection with statements and representations concerning employment and earning prospects in the aircraft industry, that such prospective purchasers cannot, on the strength of such study alone, qualify for such certification as is necessary for performing skilled work and for earning the prevalent wages of skilled jet engine mechanics or technicians, is false, misleading and deceptive.

PAR. 12. In the course and conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms, and individuals in the sale of correspondence courses of the same general kind and nature as those sold by respondents.

PAR. 13. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices, and their failure to affirmatively disclose the existing limitations as to the employment and earning prospects of their prospective purchasers, has had, and now has, a capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were true and complete, and into the purchase of substantial quantities of respondents' said correspondence course by reason of such erroneous and mistaken beliefs. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been and is being done to competition in commerce.

PAR. 14. 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 and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. John J. McNally for the Commission.

Respondents, for themselves.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on April 20, 1960, issued its complaint herein, charging the respondents Continental Schools, Inc., a corporation; Leroy White, Ralph J. Merris and Ralph D. Lingenfelter, as individuals and as officers of said corporation; and Max Moore, as an individual, with having violated the provisions of the Federal Trade Commission Act, and respondents were duly served with process.

On June 1, 1960, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order To Cease And Desist; which had been entered into by and between respondents and the attorney supporting the complaint, under date of May 27, 1960, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with § 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondent Continental Schools, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its offices and principal place of business located at 514 Ford Building in the City of Vancouver, State of Washington. Prior to January 12, 1959, or thereabouts, its corporate name was Continental Jet Training, Inc. The said change of corporate name was accomplished by amendment to the charter of Continental Jet Training, Inc., pursuant to the laws of the State of Washington. Individual respondents Leroy White, Ralph J. Merris and Ralph D. Lingfelter are officers of the said corporate respondent, their office addresses being the same as that of the corporate respondent. Individual respondent Max Moore was President of the corporate respondent prior to the said amendment, and was for a time Secretary of the corporate respondent subsequent thereto. He also served for a time as Sales Manager of the corporate respondent and has a substantial interest in its ownership. His principal office and place of business is located at 1528 S.E. Holgate, Portland, Oreg.

2. Respondents admit all of the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

3. This agreement disposes of all of this proceeding as to all parties.

4. Respondents waive:

(a) Any further procedural steps before the hearing examiner and the Commission;

(b) The making of findings of fact or conclusions of law; and

(c) All of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

5. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement.

6. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

7. This agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

8. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondents. When so entered it shall have the same force and effect as if entered after a full hearing. It may be altered, modified or set aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order To Cease And Desist", this agreement is hereby approved, accepted and ordered filed. The hearing examiner finds from the complaint and the aforesaid "Agreement Containing Consent Order To Cease And Desist" that the Commission has jurisdiction of the subject-matter of this proceeding and of the respondents herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act against the respondents, both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the folowing order as proposed in said agreement is appropriate for the just disposition of all of the issues in this proceeding as to all of the parties hereto; and that said order therefore should be, and hereby is, entered as follows:

It is ordered, That respondents Continental Schools, Inc., a corporation, and its officers; and Leroy White, Ralph J. Merris and Ralph D. Lingenfelter individually and as officers of said corporation; and Max Moore, individually, and respondents' representa-

tives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of courses of study or instruction, do forthwith cease and desist from:

1. Representing, directly or by implication:

(a) That their sales representatives are primarily concerned with determining the qualifications of prospective purchasers of courses when their purpose is to sell courses of instruction;

(b) That they are selective to the extent of enrolling only those who possess the aptitude for successful completion of such courses of study, or that they are selective to any other extent that is contrary to the facts;

(c) That the jet engine mechanic course is so prepared and presented that the prospect can successfully complete it without personal instruction or supervision;

(d) That a person upon completion of such jet engine mechanic course will be a trained jet mechanic or technician or will be qualified to repair, maintain or overhaul jet engines;

(e) That a person upon completion of such jet engine mechanic course will be able to get employment as a jet mechanic or technician, or in the repair, maintenance or overhaul of jet engines;

2. Making any representations concerning employment or earning prospects in the aircraft industry, without affirmatively and conspicuously disclosing:

(a) That certification by the Federal Aviation Agency is required for employment as a skilled jet mechanic or technician in the repair, maintenance or overhauling of aircraft engines;

(b) That completion of such course of study does not meet the prerequisites for certification by such agency.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 19th day of July 1960, become the decision of the Commission; and, accordingly:

It is ordered, That the above-named 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.

IN THE MATTER OF

NASHBORO RECORD COMPANY, INC., ET AL.

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

Docket 7875. Complaint, May 3, 1960—Decision, July 19, 1960

Consent order requiring manufacturers of phonograph records in Nashville, Tenn., to cease giving concealed "payola"—money or othe rmaterial consideration—to disc jockeys of television and radio programs or others to induce broadcasting of their records.

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 Nashboro Record Company, Inc., a corporation, and Ernest L. Young, individually and as an officer of said 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 Nashboro Record Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee with its principal office and place of business located at 177 Third Avenue, North, Nashville, Tenn.

Respondent Ernest L. Young is President and Treasurer of said corporate respondent and formulates, directs and controls the acts and practices of said respondent corporation, including the acts and practices herein set out. The address of the individual respondent is the same as that of said corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture, distribution and sale of phonograph records to independent distributors for resale to retail outlets and jukebox operators in various States of the United States.

In the course and conduct of their business, respondents now cause, and for some time last past have caused, the records they manufacture, sell and distribute, when sold, to be shipped from their place of business in the State of Tennessee, 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 phonograph records in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business, at all times mentioned herein, respondents have been, and are now, in substantial competition in commerce, with corporations, firms and individuals in the manufacture, sale and distribution of phonograph records.

PAR. 4. After World War II when television and radio stations shifted from "live" to recorded performances for much of their programming, the production, distribution and sale of phonograph records emerged as an important factor in the musical industry with a sales volume of approximately $400,000,000 in 1958.

Record manufacturing companies and distributors ascertained that popular disk jockeys could by "exposure" or the playing of a record day after day, sometimes as high as six to ten times a day, substantially increase the sales of those records so "exposed". Some record manufacturers and distributors obtained and insured the "exposure" of certain records in which they were financially interested by disbursing "payola" to individuals authorized to select and "expose" records for both radio and television programs.

"Payola", among other things, is the payment of money or other valuable consideration to disk jockeys of musical programs on radio and television stations to induce, stimulate or motivate the disk jockey to select, broadcast, "expose" and promote certain records in which the payer has a financial interest.

Disk jockeys in consideration of their receiving the payments heretofore described, either directly or by implication represent to their listening public that the records "exposed" on their broadcasts have been selected on their personal evaluation of each record's merits or its general popularity with the public, whereas, in truth and in fact, one of the principal reasons or motivations guaranteeing the record's "exposure" is the "payola" payoff.

PAR. 5. In the course and conduct of their business in commerce during the last several years, the respondents have engaged in unfair and deceptive acts and practices and unfair methods of competition in the following respects:

The respondents alone, or with certain unnamed record distributors, negotiated for and disbursed "payola" to disk jockeys broadcasting musical programs over radio or television stations, broadcasting across state lines.

Deception is inherent in "payola" inasmuch as it involves the payment of a consideration on the express or implied understanding that the disk jockey will conceal, withhold or camouflage such fact from the listening public.

The respondents by participating individually or in a joint effort with certain collaborating record distributors have aided and abet-

ted the deception of the public by various disk jockeys by controlling or unduly influencing the "exposure" of records by said disk jockeys with the payment of money or other consideration to them.

Thus, "payola" is used by the respondents to mislead the public into believing that the records "exposed" were the independent and unbiased selections of the disk jockeys based either on each record's merit or public popularity. This deception of the public has the capacity and tendency to cause the public to purchase the "exposed" records which they otherwise might not have purchased and, also, to enhance the popularity of the "exposed" records in various popularity polls, which in turn has the capacity and tendency to substantially increase the sales of the "exposed" records.

PAR. 6. The aforesaid acts and practices and methods have the capacity and tendency to mislead and deceive the public and to hinder, restrain and suppress competition in the manufacture, distribution and sale of phonograph records, and to divert trade unfairly to the respondents from their competitors and substantial injury has thereby been done and may continue to be done to competition in commerce.

PAR. 7. The aforesaid acts and practices of respondents, as alleged herein, were and are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

Mr. John T. Walker and *Mr. James H. Kelley* for the Commission.

Mr. Jordan Stokes, III, of Nashville, Tenn., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents, who are engaged in the manufacture, distribution and sale of phonograph records to independent distributors for resale to retail outlets and jukebox operators in various States of the United States, with violation of the Federal Trade Commission Act, in that respondents, alone or with certain unnamed record distributors, have negotiated for and disbursed "payola," i.e., the payment of money or other valuable consideration to disk jockeys of musical programs on radio and television stations, to induce, stimulate or motivate the disk jockeys to select, broadcast, "expose" and promote certain records, in which respondents are financially interested, on the express or implied understanding that

the disk jockeys will conceal, withhold or camouflage the fact of such payment from the listening public.

After the issuance of the complaint, respondents, their counsel, and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the Director, Associate Director and Assistant Director of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement states that respondent Nashboro Record Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal office and place of business located at 117 Third Avenue, North, Nashville, Tenn., and that respondent Ernest L. Young is president and treasurer of said corporate respondent and formulates, directs and controls the acts and practices of said respondent corporation, his address being the same as that of said corporate respondent.

The agreement provides, among other things, that respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the complaint may be used in construing the terms of the order agreed upon, which may be altered, modified or set aside in the manner provided for other orders; that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint; and that the order set forth in the agreement and hereinafter included in this decision shall have the same force and effect as if entered after a full hearing.

Respondents waive any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The order agreed upon fully disposes of all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein as being in violation of the Federal Trade Commission Act. Accordingly, the hearing examiner finds this proceeding to be in the public interest, and accepts the agreement containing consent

order to cease and desist as part of the record upon which this decision is based. Therefore,

It is ordered, That respondents Nashboro Record Company, Inc., a corporation, and its officers, and Ernest L. Young, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with phonograph records which have been distributed in commerce, or which are used by radio or television stations in broadcasting programs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Giving or offering to give, without requiring public disclosure, any sum of money, or other material consideration, to any person, directly or indirectly, to induce that person to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or either of them, have a financial interest of any nature;

(2) Giving or offering to give, without requiring public disclosure, any sum of money, or other material consideration, to any person, directly or indirectly, as an inducement to influence any employee of a radio or television broadcasting station, or any other person, in any manner, to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or either of them, have a financial interest of any nature.

There shall be "public disclosure" within the meaning of this order by any employee of a radio or television broadcasting station, or any other person, who selects or participates in the selection and broadcasting of a record when he shall disclose, or cause to have disclosed, to the listening public at the time the record is played, that his selection and broadcasting of such record are in consideration for compensation of some nature, directly or indirectly received by him or his employer.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner did, on the 19th day of July 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Nashboro Record Company, Inc., a corporation, and Ernest L. Young, individually and as an officer of said corporation, 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.

Findings

IN THE MATTER OF

COLUMBIA CONTAINER CORPORATION ET AL.

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

Docket 7105. Complaint, Apr. 3, 1958—Decision, July 20, 1960

Order requiring a Baltimore manufacturer to cease misrepresenting the quality of its corrugated fibreboard boxes through imprinting the certificate of the box maker—required by Rule 41, Uniform Freight Classification, established by American railroads as authorized by the Interstate Commerce Act—on boxes which did not conform to the standards set out in the rule in that the combined weight of the facings and the bursting strength of a substantial number of the boxes tested were less than the required minimum.

Before *Mr. William L. Pack*, hearing examiner.
Mr. Charles W. O'Connell for the Commission.
Shipley, Akerman & Pickett, of Washington, D.C., for respondents.

FINDINGS AS TO THE FACTS, CONCLUSIONS AND ORDER

The Federal Trade Commission issued its complaint against the above-named respondents on April 3, 1958, charging them with violation of the Federal Trade Commission Act by imprinting on the corrugated fibreboard boxes they manufacture and sell, false and misleading representations as to the bursting strength and weight of the fibreboard facings of said boxes. In response to a motion of Commission counsel, the complaint was amended by order of the hearing examiner issued June 18, 1958. In their answer, respondents denied the charges. Hearings were held before the hearing examiner and testimony and other evidence in support of and in opposition to the allegations of the complaint were received into the record. In an initial decision filed September 24, 1958, the hearing examiner found that the charges had not been sustained by the evidence and ordered that the complaint be dismissed.

Upon appeal by counsel supporting the complaint, the Commission issued its order on March 27, 1959, vacating the initial decision and remanding the case to the hearing examiner for the purpose of receiving certain additional evidence. Pursuant to such remand, the case was reopened and additional evidence, both in support of and in opposition to the complaint was received and considered and the case was argued orally before the hearing examiner. On February 24, 1960, an initial decision was filed wherein the hearing examiner again ordered dismissal of the complaint for failure of proof.

Counsel supporting the complaint filed an appeal from said initial decision and the Commission, after considering said appeal and the entire record, has determined that the appeal should be granted and that the initial decision should be vacated and set aside. The Commission further finds that the proceeding is in the public interest and now makes its findings as to the facts, conclusions drawn therefrom and order to cease and desist, which, together with the accompanying opinion, shall be in lieu of the findings, conclusion and order contained in the initial decision.

FINDINGS AS TO THE FACTS

1. Respondent, Columbia Container Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 2240 Annapolis Avenue, Baltimore, Md. Respondent, James Glose, is an individual and president-treasurer of said corporate respondent. Mr. Glose formulates, directs and controls the acts, practices and policies of the corporate respondent. Respondent, Harvey Jones, is vice president of the respondent corporation.

2. In the course and conduct of their business, respondents are now and have been engaged in the manufacture of corrugated fibreboard boxes and in the sale and distribution of said boxes in commerce, as commerce is defined in the Federal Trade Commission Act.

3. Respondents are now and at all times mentioned herein have been in substantial competition in commerce with other corporations, firms and individuals in the sale of corrugated fibreboard boxes.

4. American railroads, through their Official Classification Committee, have established a Uniform Freight Classification containing ratings, rules and regulations governing the transportation of goods. Rule 41 of said classification prescribes certain minimum standards for fibreboard boxes used in interstate shipments. Included therein are requirements as to the bursting strength of such boxes and the minimum combined weight of the paper facings used in the manufacture of those boxes. These standards do not allow for tolerances.

Rule 41 requires that boxes made to conform to the standards set forth therein must bear a certificate of the box maker giving, among other things, the bursting strength in pounds per square inch of the fibreboard in the box, and stating that the box conforms to all construction requirements of Uniform Freight Classification.

Shippers who tender articles for interstate shipment in fibreboard boxes which do not comply with the requirements of the standards

in Rule 41 are required to increase their freight payments to the railroads by 20% on less than carload shipments and 10% on carload shipments.

5. In the course of their business, respondents have imprinted the certificate required by Rule 41 on certain of their corrugated fibreboard boxes, thereby representing that the boxes bearing such certificate conform to all of the standards set out therein.

6. A number of respondents' boxes were obtained by the Commission's investigating attorney from four of respondents' customers located in the Washington, D.C., area in July, 1957. Tests were conducted on thirteen of these boxes by Container Laboratories, Inc., New York, N.Y., in December, 1957. Two of these boxes appeared to have been used by the purchasers prior to the time they were turned over to the investigating attorney. The results of the tests conducted on these two boxes are not being considered. Of the eleven unused boxes, four did not meet the bursting strength test and nine failed to meet the requirements for the combined weight of the facings. One of the two boxes which met the weight requirement for the combined facings did not pass the bursting strength test. Thus, ten of the eleven unused boxes did not conform to all of the construction requirements of Rule 41.

Duplicates of the thirteen boxes, with one exception, were obtained by the investigating attorney at the same time as the originals were obtained. Tests were conducted on these boxes by Eastern Box Co., a competitor of respondents, in August, 1957. Seven of the nine unused boxes tested by Eastern Box Co., had facings whose combined weight failed to meet the standards set up by Rule 41. The test procedure employed by Eastern Box Co. in testing respondents' boxes for the combined weight of the facings is the same as that used by Eastern in testing its own boxes and any other boxes received in its plant for testing purposes.

7. At the time of testing by Container Laboratories, Inc., nine of the eleven unused boxes were approximately six months old. One of the two other boxes was approximately nine months old, while the remaining box was about one year old. The age of the duplicate of each of these boxes when tested by Eastern Box Co. was about four months less, respectively. From the time the boxes left respondents' plant until tests were performed by each of the two testing concerns, the boxes were stored under proper conditions.

8. The age of the boxes tested did not affect their bursting strength or the combined weight of the facings of said boxes. At the time tests were performed by Container Laboratories, Inc., and Eastern Box Co., the boxes were in substantially the same condition as when they left respondents' plant.

9. Through the use of the certificate imprinted on their boxes and the statements contained therein, respondents have represented that their boxes conform to all of the construction requirements of Rule 41, Uniform Freight Classification. The evidence of record establishes that respondents' use of the certificate and the statements therein was false and misleading in that the bursting strength and the combined weight of the fibreboard facings, of a substantial number of said boxes, were less than the minimum required under said Rule 41.

10. The practice of the respondents, as hereinabove found, has had and now has the tendency and capacity to mislead and deceive purchasers of their boxes with respect to the construction of said boxes and thereby induce the purchase of substantial quantities thereof. As a result, substantial trade in commerce may be unfairly diverted to respondents from their competitors and substantial injury has been and is being done to competition in commerce.

CONCLUSIONS

The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents. The aforesaid acts and practices of respondents, as herein found, were all to the prejudice and injury of the public and of respondents' competitors and constituted unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

The evidence of record fails to establish that the respondent Harvey Jones, as an individual, formulates, directs or controls the policies, acts and practices of the corporate respondent. In light thereof and in the absence of a showing of any circumstances in the record pointing to the necessity of directing an order against this respondent individually, the complaint will be dismissed as to respondent Harvey Jones in his individual capacity.

ORDER

It is ordered, That the respondents, Columbia Container Corporation, and its officers, and James Glose, individually and as an officer of said corporation, 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 corrugated fibreboard boxes in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using on such boxes a certificate of box maker required by Rule 41, Uniform Freight Classification, when such boxes do not conform to all of the construction requirements of said Rule; or misrepresenting in any other manner the quality or weight of constituent parts, construction, bursting strength, or any other characteristics of their boxes.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to Harvey Jones in his individual capacity.

It is further ordered, That respondents, Columbia Container Corporation, a corporation, and James Glose, individually and as an officer of said corporation, 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.

OPINION OF THE COMMISSION

By TAIT, *Commissioner*:

The complaint in this matter charges respondents with misrepresenting the combined weight of the fibreboard facings and the bursting strength of their corrugated fibreboard boxes in violation of Section 5 of the Federal Trade Commission Act. The case was remanded to the hearing examiner by Commission order issued March 27, 1959, and is now before us upon appeal of counsel supporting the complaint from the hearing examiner's initial decision after remand wherein he held that the allegations are not sustained by the evidence and ordered dismissal of the complaint.

Corrugated fibreboard consists of a corrugated paper center with paper facings glued to each side. A double wall corrugated fibreboard has an additional corrugating medium and an additional facing. The combined weight of the facings of a corrugated fibreboard box relates to the ability of the box to stand end shocks and to be piled without collapsing. Bursting strength pertains to the ability of the box to hold its contents without bursting.

This case involves alleged misrepresentation with respect to respondents' conformance to the standards set forth in Rule 41, Uniform Freight Classification, established by American railroads through their Official Classification Committee. Said rule prescribes a minimum combined weight of the facings used in corrugated fibreboard boxes, in pounds per 1,000 square feet, and a minimum bursting strength of the corrugated fibreboard in such boxes in pounds per square inch, based on boxes which come within specified sizes and gross weight limits. The railroads have estab-

lished these standards to avoid damage to shipments of goods because of inadequately constructed fibreboard boxes. Section 9(a) of Rule 41 requires that each box made to conform to this rule must bear a certificate of the box maker which gives certain specifications, including bursting strength, and contain a statement that the box conforms to all construction requirements of Uniform Freight Classification.

The rule provides that when goods are tendered for shipment in boxes which do not conform to the requirements and specifications of the rule, freight charges will be increased 20% on less than carload shipments and 10% on carload shipments.

The Interstate Commerce Act authorizes the establishment of the classification of which Rule 41 is a part. The classification is filed with the Interstate Commerce Commission which decides on the reasonableness of the terms thereof. Respondents contend that since Rule 41 is a tariff, enforcement is solely within the purview of the Interstate Commerce Commission and the Federal Trade Commission is without jurisdiction in this matter. The obvious answer to this argument is that this proceeding does not involve enforcement of Rule 41. The tariff provisions are imposed on shippers who transport goods in boxes in commerce. Respondents herein are not charged with violating Rule 41 but are charged with misrepresenting that the boxes which they manufacture comply with standards which are of importance to others for tariff purposes. Respondents' contention in this respect must be rejected.

The complaint alleges that respondents imprinted the certificate of the box maker required by Rule 41 on boxes which did not conform to the standards set out in the rule. In particular, it is alleged that the combined weight of the facings and the bursting strength of a substantial number of said boxes were less than the required minimum. When this matter was previously before the hearing examiner, the results of certain tests performed on boxes obtained from respondents' customers were entered in evidence by counsel supporting the complaint. The hearing examiner, in ordering dismissal at that time, based his decision in part upon his finding that there was no evidence in the record as to the time the boxes left respondents' plant and that there was no evidence indicating that the boxes were in substantially the same condition at the time of testing as when they were purchased from respondents. Upon review, we concluded that the public interest required that the issues be disposed of on the merits. The case was remanded to the hearing examiner for the purpose of receiving the evidence which had been found to be lacking.

The boxes upon which tests were conducted were obtained in July, 1957, in the course of the investigation of this matter. Thirteen boxes were obtained from four of respondents' customers located in the Washington, D.C., area (Commission Exhibits 2–12, 14 and 15). With one exception, for each box obtained a duplicate box was also obtained from the same customer (Commission Exhibits 17–28).

The original group of thirteen boxes was tested in December, 1957, by Container Laboratories, Inc., New York City, stipulated by counsel as being a reputable and qualified testing laboratory. It appears from the evidence of record that two of these thirteen boxes had been used by the purchasers thereof prior to being obtained by the Commission's investigator. The hearing examiner was of the opinion that no used boxes should have been employed for testing purposes. Counsel supporting the complaint contends that on the basis of certain opinion testimony and the fact that in the test report (Commission Exhibit 16), no reference is made to the use of the boxes as adversely affecting the test results, the hearing examiner should have considered the results of the tests performed on the used boxes. However, viewing the entire record, we do not find it necessary to rule on this question in reaching our decision.

The report of the tests as to the unused boxes discloses that four of these eleven boxes did not meet the bursting strength test and nine failed to meet the requirements for the combined weight of the facings. One of the two boxes which was satisfactory as to the combined weight of the facings failed to pass the bursting strength test. Thus, the tests showed that ten out of eleven of the unused boxes did not meet the requirements of Rule 41 in one respect or another.

The duplicate set of boxes was tested by Eastern Box Co., Baltimore, Maryland, a competitor of respondents, in August, 1957. Of the twelve boxes tested, three showed evidence of use. Seven of the nine unused boxes had facing sheets whose combined weight failed to meet the standards set up in Rule 41. Although Eastern also conducted bursting strength tests, the results thereof were not placed in evidence. It was conceded by counsel supporting the complaint that the bursting strength tests were not conducted in the manner prescribed in Rule 41.

The hearing examiner did not consider the results of the tests conducted by respondents' competitor in making his decision. Counsel supporting the complaint contends that Eastern's test results do have probative value. The evidence with respect to the method employed by Eastern in testing respondents' boxes discloses a vari-

ance from the method employed by Container Laboratories, Inc. Samples, after a baking out period, were allowed to condition under controlled temperature and humidity for 24 hours before testing by Container Laboratories, Inc., whereas Eastern allowed only 1 hour for conditioning. However, respondents' contention that this shows bias is refuted by the testimony of the competitor's technical director that the method employed in testing respondents' boxes was the same as that employed by Eastern in testing its own boxes and any other boxes sent into its plant for that purpose. While we think that the same conclusion would be reached in this case without considering Eastern's tests, we think the hearing examiner was in error in holding that they are completely devoid of evidentiary value. The mere fact that the tests were performed by a competitor is not sufficient grounds for refusing to consider them.

Subsequent to the remand, evidence was introduced as to the age of respondents' boxes at the time they were tested and the conditions under which they were stored from the time of purchase until testing. This evidence included the testimony of the four customers of respondents from whom the boxes were obtained. All four testified as to their procedure in ordering boxes from respondents, the time period between placing orders and delivery by respondents, the length of time a supply of boxes generally lasted, and they specifically related most of the boxes to invoices which were received into the record. In addition, the respondent James Glose testified that in most cases, boxes were made up as orders were received. On the basis of this evidence, the hearing examiner found that with two exceptions, the thirteen boxes tested by Container Laboratories in December, 1957, were about six months old when tested. One of the remaining boxes was found to have been about nine months old and the other about one year old at the time of testing. Although noting an exception as to the two used boxes, the hearing examiner found that when tested in December, 1957, the thirteen boxes were in substantially the same condition as when they left respondents' plant. We agree that the evidence relied on by the hearing examiner fully supports these findings. Moreover, there is additional evidence which apparently was not considered by the hearing examiner. Two experts who have conducted numerous tests on fibreboard boxes to determine compliance with Rule 41 were called as witnesses by counsel supporting the complaint. Both testified, in substance, that age alone would not affect the weight of the facings or the bursting strength of fibreboard boxes for a period of at least three years.

In addition to the above evidence, counsel supporting the complaint introduced results of tests conducted on the same boxes by

Container Laboratories, Inc., in June, 1959. Counsel had these additional tests made for the purpose of ascertaining whether there had been any significant change in the condition of the boxes between the original test and the retest, a period of about eighteen months. If the retest showed no significant change, it would, in counsel's view, create an inference that no change occurred in the condition of the boxes in the six month period from the date the boxes left respondents' plant until they were first tested.

The hearing examiner, upon consideration of the results of the retests, found that there was no substantial change in the condition of the thirteen boxes between tests. He also found that there was no significant difference between the results of the first and second tests insofar as the weight of the facings was concerned. No comparison was made as to bursting strength as the second series of tests were incomplete in that respect due to the fact sufficient material was not available for adequate testing.

Respondents strenuously objected to the action of counsel supporting the complaint in having the exhibits retested without requesting approval by the hearing examiner or the Commission and without notice to respondents. On the basis of this action by counsel supporting the complaint, respondents moved to have these exhibits stricken from the record. This motion was denied by the hearing examiner. While we believe the better course would have been for counsel supporing the complaint to have notified respondents of his proposed action, we do not find it necessary to pass on the hearing examiner's ruling as we do not rely on the results of the retests in reaching our decision.

In ordering dismissal on the grounds of failure of proof, the hearing examiner minimized the differences between the requirements of Rule 41 for the weight of the facings and the results of the tests performed on six of respondents' boxes. The combined weight of the facings of five of those six boxes is required to be 84.0 pounds (per thousand square feet) and the sixth box is required to have combined facings weighing 126.0 pounds. On the basis of the Container Laboratories' tests conducted in December, 1957, the boxes listed by the hearing examiner fell short of the required weight by 4.5 pounds, 5.4 pounds, 4.8 pounds, 5.4 pounds, 3.3 pounds and 6.6 pounds. We agree with counsel supporting the complaint that these variances cannot be minimized. In the first place, Rule 41 sets up absolute standards and does not provide for tolerances. Purchasers of the boxes are entitled to rely on the manufacturer's certificate that these standards have been adhered to. Moreover, the significance of these amounts becomes apparent when considered in light of the evidence of record that the basic stand-

ard weights of paper facings purchased from paper mills and used in combination in manufacturing corrugated fibreboard containers are 26 pounds, 33 pounds, 38 pounds, 42 pounds, 47 pounds, 69 pounds and 90 pounds. The weight shortage in four of the five boxes required to have combined facings weighing 84 pounds is more than the difference between the use of a 38 pound facing and a 42 pound facing in combination. Of the remaining boxes not listed by the hearing examiner, two met the requirements for the weight of the facings while the other four showed shortages in amounts of 20.9 pounds, 8.5 pounds, 7.9 pounds and 9.0 pounds.

The hearing examiner found that facing paper used in the manufacture of boxes may vary in weight as much as 4 or 5 percent within a given roll, and different rolls, although marked as being of the same weight, also vary materially. There is testimony that this 4 or 5 percent variation relates to the total spread between the minimum and the maximum weight of the roll. For example, the paper in a roll marked 42 pounds, allowing a 5-percent variance (2.1 pounds), would vary in weight between 40.95 pounds and 43.05 pounds. However, respondents' production manager testified that the variance will be two pounds either way in a 42-pound roll. Giving full weight to his testimony, no box required to have facings weighing 84 pounds would have facings weighing less than 80 pounds. Seven of the eight unused boxes tested which were required to weigh 84 pounds failed to meet this 80-pound minimum, even assuming that all of them had facings with the maximum variance in weight at the lowest level. Moreover, there is testimony that some paper producers manufacture their paper overweight so as to allow for variations.

The undisputed evidence in this record discloses that ten out of eleven boxes selected at random from respondents' customers failed to meet the requirements of Rule 41 in tests performed by an independent testing laboratory stipulated by counsel as being fully qualified to perform such tests. In addition, there is evidence that seven out of nine other boxes tested by a competitor were below the standards set forth in the rule. The evidence establishes that these boxes were in substantially the same condition when tested as when they left respondents' plant with a certificate imprinted thereon which represented that they conformed to all construction requirements of Rule 41 In our view, this evidence affords a reasonable basis for a conclusion that a substantial number of boxes sold by respondents were misrepresented. In light of this evidence, certain other testimony of record with respect to respondents' manufacturing procedures and customer satisfaction, and the absence of evidence that respondents' boxes have been found to be defective in

actual use, all of which was given weight by the hearing examiner, is deemed immaterial.

We observe from our review of the record that the respondent Harvey Jones is charged in the complaint in his individual capacity as well as in his capacity as an officer of the corporation. The answer, while admitting that Jones is an officer of the corporation, denies that he has ever participated to any extent whatsoever in the formulation, direction or control of the policies, acts or practices of the corporate respondent. The president and sole stockholder of respondent corporation, James Glose, admitted in his testimony that he is individually responsible but denied that Jones has anything to do with the policies of the corporation. Jones did not testify and there is a complete absence in this record of any evidence or showing of circumstances to support a conclusion that individual liability should attach as to him. Under the circumstances, the complaint will be dismissed as to Harvey Jones in his individual capacity.

In view of the foregoing, the appeal of counsel supporting the complaint is granted. The initial decision is set aside, and we are entering our own findings as to the facts, conclusions and order to cease and desist in conformity with this opinion.

IN THE MATTER OF

NATIONAL BUSINESS ASSOCIATES, INC., ET AL.

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

Docket 7626. Complaint, Oct. 23, 1959—Decision, July 20, 1960

Consent order requiring a Chicago company to cease using deception in the sale of real estate advertising, including such claims as that it had prospective buyers interested in a particular property, that the asking price was too low and should be raised and that it would make the sale at the increased price in a short time, that it financed the purchase of the listed property, and that the listing fee would be returned if the property was not sold promptly.

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 National Business Associates, Inc., a corporation, and Lawrence J. Gordon and Judith Gordon, individually and as officers of said 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 re-

spect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent National Business Associates, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois. Its office and principal place of business is 7014 South Crandon Avenue, Chicago 49, Ill.

Respondents Lawrence J. Gordon and Judith Gordon are individuals and officers of corporate respondent National Business Associates, Inc., and formulate, direct, and control the practices of said corporate respondent. Their office and principal place of business is that of the corporate respondent, 7014 South Crandon Avenue, Chicago 49, Ill.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in the business of soliciting the listing for sale and advertising of real estate and other property. In connection with this business, respondents are and have been engaged in the operation, in commerce, of a business which offers for sale advertising in newspapers and other advertising media and other services and facilities in connection with the offering for sale, selling, buying and exchanging of business and other properties. In connection therewith, the respondents have been and now are transmitting and receiving, through the United States mail, advertising matter, pamphlets, circulars, letters, contracts, checks, money orders and other written instruments which are sent and received between respondents' place of business in the State of Illinois and persons, firms, and corporations located in various States of the United States, and thereby have engaged in extensive commercial intercourse in commerce, as "commerce" is defined in the Federal Trade Commission Act.

The volume of the aforesaid business conducted by respondents has been and is substantial.

PAR. 3. In the course and conduct of their business, respondents, through the use of newspaper advertising, post cards, circulars and other written instruments circulated in various States, and through oral statements made by their solicitors or representatives, all for the purpose of obtaining listings of property for sale and collecting substantial sums of money as fees for the listing and sale of property, have represented, directly and by implication, to persons who had property for sale: (1) that they have available prospective buyers who are interested in the purchase of their specific properties; (2) that their property would be sold within a short period of time as a result of respondents' efforts; (3) that the property is underpriced and the asking price should be raised, and that they could and would sell the property at the increased price; (4) that respondents were and are able to finance or assist in financing the purchase of

the listed properties; (5) that the listing fee is an advance on the selling commission and will be refunded to the property owner if the property is not sold within a short period of time.

PAR. 4. The aforesaid representations were and are false, misleading, and deceptive. In truth and in fact: (1) Respondents have never had prospective buyers interested in and available to purchase the specific property listed; (2) property is seldom, if ever, sold as a result of respondents' efforts; (3) the purpose of increasing the owner's asking price for the property is not that it was underpriced but, on the contrary, to increase the fee collectible in advance and to increase the property owner's interest in respondents' services; (4) Respondents do not and have not financed the purchase of listed property; (5) the listing fee is not an advance on the selling commission but is a fee charged for listing the property and in most cases is not refunded.

PAR. 5. The use by respondents of the aforesaid acts and practices, in connection with the conduct of their aforesaid business has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the public and to induce many owners of property, because of said false, deceptive, and misleading representations, to enter into contracts respecting the listing and advertising of their properties and to pay over substantial sums of money to respondents in connection therewith.

PAR. 6. The 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 the Federal Trade Commission Act.

Mr. William A. Somers for the Commission.
Respondents, *pro se.*

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated October 23, 1959, the respondents are charged with violating the provisions of the Federal Trade Commission Act.

On May 4, 1960, respondents National Business Associates, Inc., a corporation, and Lawrence J. Gordon, individually and as an officer of said corporation, entered into an agreement with counsel in support of the complaint for a consent order.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect

as if entered after a full hearing and the document includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

The hearing examiner finds that the content of the agreement meets all of the requirements of section 3.25(b) of the Rules of the Commission.

The agreement provides that the complaint insofar as concerns the individual respondent Judith Gordon should be dismissed for the reasons set forth in an affidavit attached thereto that said respondent was never active in the business of the corporate respondent and that she at no time contributed any monies, time and/or work on behalf of the business of the corporate respondent, nor did she serve for or on behalf of the business complained of in the complaint. Said Judith Gordon was only an officer in name for the corporate respondent to enable affiant to qualify under the incorporating laws of the State of Illinois.

The hearing examiner being of the opinion that the agreement and the proposed order provide an appropriate basis for disposition of this proceeding as to all of the parties, the agreement is hereby accepted and it is ordered that the agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Respondent National Business Associates, Inc., is a corporation, and respondent Lawrence J. Gordon is an individual and officer of the corporate respondent with their office and principal place of business located at 7014 South Crandon Avenue, Chicago 49, Ill.

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 National Business Associates, Inc., a corporation, and its officers, and Lawrence J. Gordon, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, or sale of advertising in any advertising media, or of other services and facilities in connection with the offering for sale, selling, buying, or exchanging of business or any kind of property, in commerce, as "commerce"

is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. Respondents have available prospective buyers who are interested in the purchase of specific property.

2. Property listed with respondents will be sold as a result of their efforts.

3. Property sought to be listed is underpriced or that the asking price should be increased, or that respondents can or will sell the property at the increased price.

4. Respondents finance or assist in financing the purchase of listed property.

5. The listing fee is an advance on the selling commission or will be refunded to the property owner.

It is further ordered, That the complaint be, and it is hereby, dismissed as to respondent Judith Gordon.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 20th day of July 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondent National Business Associates, Inc., a corporation, and Lawrence J. Gordon, individually and as an officer of said corporation, 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.

IN THE MATTER OF

QUEEN ANNE COUNTY CLAM ASSOCIATION ET AL.

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

Docket 7578. Complaint, Sept. 2, 1959—Decision, July 21, 1960

Consent order requiring two Maryland clam digger associations and their responsible officers, to cease conspiring to suppress competition in the purchase or sale of soft shell clams harvested in the Chesapeake Bay region, in pursuance of which they engaged in such illegal practices as establishing and maintaining uniform prices and terms, boycotting dealers who purchased or sought to purchase at less than their fixed prices, and using threats of reprisals, intimidation, and physical violence and other means to enforce adherence to their prices.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (38 Stat. 717; 15 U.S.C.A., Section 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 parties named in the caption hereof, and hereinafter more particularly described and designated as respondents, have violated and are violating 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. The Queen Anne County Clam Association is a corporation organized and existing under and by virtue of the laws of the State of Maryland. Said corporation's principal office and place of business is located in Grasonville, Md.

The control, direction, and management of said corporate respondent are vested in its officers and members. Said officers are elected annually to serve a term of one year. The officers of this corporate respondent include a president, a vice president, and a secretary-treasurer. During 1958 and 1959 the officers of said corporation were Charles Ford, Grasonville, Md., President; Elwood Thompson, Grasonville, Md., Vice President; and Oscar Schultz, Grasonville, Md., Secretary and Treasurer.

The aforenamed officials of the Queen Anne County Clam Association, their predecessors, and successors have directed or controlled the policies, acts, and practices of said Association, including one or more of the policies, acts, and practices which are complained against herein.

Said officials in their individual capacities as members of the Queen Anne County Clam Association, have performed, authorized, or adopted one or more of the policies, acts, and practices which are complained against herein.

PAR. 2. Respondents Hiram Ruth, William Hoxter, John Thomas, Willard Jones, Benjamin Austin, Sr., and George Darrell, all of whom reside at Grasonville, Md., are members of respondent Queen Anne County Clam Association.

The activities of these individual members and of the aforenamed officers in authorizing, performing, or adopting one or more of the policies, acts, and practices as hereinafter alleged are representative of the activities of all the members of the Queen Anne County Clam Association during 1958 and 1959.

The membership of said Queen Anne County Clam Association is composed of a number of persons and partnerships engaged in the business of harvesting and selling soft shell clams. The number of

members fluctuates but usually exceeds fifty, with the membership comprised mostly of parties harvesting and selling clams in Queen Anne County, Md. Because of the large and fluctuating membership of said Queen Anne County Clam Association, it is impracticable to specifically name each member as a party respondent herein. Furthermore, the membership of said association, as a class, is adequately represented and can be defended in this proceeding by the aforenamed members; therefore, said members are not only named individually as respondents, but also as representatives of the entire membership of respondent association as a class, so that the members not named specifically are made parties respondent as though they had been named individually herein.

PAR. 3. Respondent Anne Arundel County Clam Association is an unincorporated association with its principal office and place of business located in Shady Side, Md. Respondents Gordon Hallock, John M. Nieman, Woodrow Blythe, and Charles Cantler, all of whose addresses are Shady Side, Md., are, and have been, President, Vice President, Secretary, and Treasurer, respectively, of said Arundel County Clam Association. The aforenamed officials of respondent Anne Arundel County Clam Association, together with the members thereof, have directed or controlled the policies, acts, and practices of said association.

The aforenamed officials, in their individual capacities as members of said association, have performed, authorized or adopted one or more of the policies, acts, and practices complained against herein. In this respect, the activities of said officials in their individual capacities are representative of the activities of all the members of the Anne Arundel County Clam Association.

The membership of the Anne Arundel County Clam Association is composed of a number of persons and partnerships engaged in the business of harvesting and selling soft shell clams. The number fluctuates, but usually it exceeds twenty-five. Because of the large and fluctuating membership of said Anne Arundel County Clam Association, it is impracticable to specifically name each member as a party respondent herein. Furthermore, the membership of said Anne Arundel County Clam Association, as a class, is adequately represented and can be defended in this proceeding by the aforenamed officials of the Association. Therefore, the respondent officials of respondent Anne Arundel County Clam Association are named respondents in their respective official positions, individually, as members of the Anne Arundel County Clam Association, and also as representatives of the entire membership of respondent association, as a class, so that the members not named specifically

are parties respondent as though they had been named individually herein.

PAR. 4. Respondent Shadyside Seafood Cooperative, is an unincorporated association with its principal offices located in Shady Side, Md. Its members are engaged in the business of harvesting and selling soft shell clams. Respondent John M. Nieman, who also resides at Shady Side, Md., is president of said respondent Shadyside Seafood Cooperative, and as such, together with the members of said Cooperative, has directed or controlled the policies, acts, and practices of said cooperative and also has, expressly or impliedly, authorized, performed, or adopted, one or more of the policies, acts, or practices herein alleged to have been performed by or through said cooperative. Said policies, acts, and practices were performed by or through the medium of said respondent cooperative, or by or through respondent John M. Nieman, with the approval and on behalf of its individual members, and were intended to, and did, bind said members in the same manner and with the same effect as though they had engaged in same.

The number of members of said cooperative fluctuates, with the exact membership at any particular time not being known, so that it is impracticable to specifically name each member of said cooperative as a party respondent herein. Furthermore, the membership of said cooperative, as a class, is adequately represented and can be defended in this proceeding by the said respondent John M. Nieman, who, acting for, or in the name of, the respondent cooperative, markets and determines the prices and terms at which the respondent members of said respondent cooperative sell the clams they gather. Therefore, said respondent John M. Nieman is not only named as respondent individually, as a member and as president of said respondent cooperative, but also as representative of the entire membership of respondent cooperative, as a class, so that the members of said respondent cooperative are made parties respondent as though they had been named individually herein.

PAR. 5. All of the individual respondents named herein are engaged in, or connected with, the business of harvesting and selling soft shell clams in the Chesapeake Bay and its tributaries for resale commercially.

This business developed in the Chesapeake Bay region in 1952, coincidentally with the development of hydraulic clam dredges and the shortage of soft shell clams in New England.

The Maryland Soft Shell Clam Industry has grown from a relatively small volume business in 1952 to its present volume of $1,500,000 to $2,000,000 annually. The number of clam boats operating

in Maryland waters has increased from seven in 1952 to over a hundred in 1959.

PAR. 6. All the respondents named herein are engaged in doing business in commerce, as "commerce" is defined in the Federal Trade Commission Act, in that the individual respondents are clam diggers harvesting clams in commercially navigable waters, selling and shipping, or causing such clams to be shipped, to dealers located not only in the State of Maryland, but in other States of the United States and in the District of Columbia, and to agents of buyers of such clams located in states other than the State of Maryland. Said dealers buy and sell the clams in one continuous flow of commerce to buyers located in States of the United States other than the State of Maryland.

Respondents, Queen Anne County Clam Association, Anne Arundel County Clam Association, and Shadyside Seafood Cooperative, as well as the representative respondent officials of each, also are engaged in such commerce, in that they, on behalf of their representative respondent members, ship, or cause to be shipped, such clams to dealers or other buyers located not only in the State of Maryland, but in other States of the United States and in the District of Columbia, and in that they performed, in commerce, one or more of the acts or practices hereinafter set forth.

PAR. 7. In the course and conduct of the aforesaid business of gathering and selling soft shell clams in commerce, as hereinbefore described, the respondents, Queen Anne County Association, together with its respondent officers and members; respondent members of respondent Anne Arundel County Clam Association, together with said respondent association and its officers; and respondent members of respondent Shadyside Seafood Cooperative, together with said respondent cooperative and its president, respondent John M. Nieman, have, since approximately 1958, entered into, maintained, and effectuated an understanding, agreement, combination, and conspiracy to pursue, and they have pursued, a planned common course of action between and among two or more of them, or between one or more of them and others not named parties respondent herein, to suppress and hinder competition between and among themselves and also between themselves and such other parties in the purchase or sale in such commerce of said clams.

PAR. 8. Pursuant to, and in furtherance of, said understanding, agreement, combination, conspiracy, and planned common course of action, said respondents since 1958 have adopted, accepted, or performed, among others, the following policies and practices, and the acts committed to effectuate them:

1. Attempting to establish, fix, and maintain, and they have established, fixed and maintained, uniform and noncompetitive prices for the purchase or sale of soft shell clams harvested by members of respondents, Queen Anne County Clam Association, Anne Arundel County Clam Association, and Shadyside Seafood Cooperative;

2. Establishing, fixing, and maintaining, and they have established, fixed, and maintained, uniform and noncompetitive terms for the purchase or sale of soft shell clams harvested by said respondent members;

3. Boycotting dealers and purchasers of soft shell clams who seek, or have sought, to purchase, or have purchased, such clams at prices lower than those established, fixed, or maintained by respondents;

4. Enforcing adherence to said prices and the terms of purchase or sale by various means and methods, including threats of reprisals, intimidation, and physical violence against individual sellers or purchasers who do not comply with, or who refuse to comply with, such prices or terms.

PAR. 9. The capacity and tendency of the aforesaid understanding, agreement, combination, conspiracy, and planned common course of action, and the practices, policies, and acts done pursuant thereto, as hereinbefore set forth, have been, and are, to unlawfully restrict, restrain, hinder, and destroy competition in the harvesting, offering for sale, and marketing of soft shell clams in commerce, as "commerce" is defined in the Federal Trade Commission Act, within the intent and meaning of Section 5 of said Act.

PAR. 10. The policies, acts, and practices of the respondents, as hereinbefore set forth, are to the prejudice and injury of the public interest and constitute unfair acts and practices and unfair methods of competition within the intent and meaning of Section 5 of the Federal Trade Commission Act.

Mr. James H. Kelley supporting the complaint.

Mr. Vachel A. Downes, Jr., of Centreville, Md., *Mr. Samuel Scrivener, Jr.*, and *Mr. David S. Scrivener*, of Washington, D.C., for respondents.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on September 2, 1959 charging them with entering into and maintaining an agreement among themselves and between themselves and others to fix and maintain uniform prices, terms and conditions of sale of soft shell clams and enforcing adherence to such prices and terms of sale. It was further charged that respondents agreed to and did boycott dealers who purchased

or sought to purchase such clams at prices lower than the prices fixed by respondents.

On May 3, 1960, there was submitted to the undersigned hearing examiner two separate agreements between the above-named respondents, their counsel, and counsel supporting the complaint providing for the entry of a consent order.

Under the terms of the agreements, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the documents include a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreements further recite that they are for settlement purposes only and do not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

The hearing examiner finds that the content of the agreements meet all of the requirements of Section 3.25(b) of the Rules of the Commission.

The hearing examiner having considered the agreements and proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the agreements are hereby accepted, and it is ordered that said agreements shall not become a part of the official record unless and until they become a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Respondent Queen Anne County Clam Association is a corporation existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at Grasonville, Md.

At the time of issuance of the complaint, respondents Charles Ford, Elwood Thompson and Oscar Schulz (misspelled Schultz in the complaint) were respectively president, vice president, secretary and treasurer of the respondent Queen Anne County Clam Association with their address the same as said association's address. Charles Ford and Elwood Thompson are no longer officers of the association. Respondent Oscar Schulz is now president of the said respondent association.

2. Respondent Anne Arundel County Clam Association is an unincorporated association organized and existing as an entity under the laws of the State of Maryland governing unincorporated associations, with its principal office and place of business located at Shady Side, Md.

Respondents Gordon Hallock, John M. Nieman, Woodrow Blythe and Charles Cantler are respectively president, vice president, secretary and treasurer of the respondent Anne Arundel County Clam Association with their address the same as that of Anne Arundel County Clam Association.

By order of November 16, 1959, the complaint herein was dismissed as to respondent Benjamin Austin, Sr., for the reason that it appeared that he was inadvertently joined as a respondent in this proceeding.

3. Counsel supporting the complaint and Counsel for Seafood Co-Operative, Inc., (erroneously named in the complaint as Shadyside Seafood Cooperative) its officers, directors and members, and John M. Nieman, individually, and as president, member and representative of the entire membership of that co-operative have moved that the complaint be dismissed as to these respondents. This motion is hereby granted and the following order dismisses the complaint as to these respondents in the capacities named in the motion.

4. 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 the respondents Queen Anne County Clam Association and its officers, their respective successors and assigns, agents, representatives, employees and members, directly or through any corporate or other device, and Oscar Schulz, acting in any official capacity for said Association, and that the respondents Anne Arundel County Clam Association and its officers, their respective successors and assigns, agents, representatives, employees and members, directly or through any corporate or other device, and Gordon Hallock, John M. Nieman, Woodrow Blythe and Charles Cantler, acting in any official capacity for said association, in connection with the purchase or sale or the offering to purchase or to sell in commerce, as "commerce" is defined in the Federal Trade Commission Act, of soft shell clams or any other type or form of seafood, do forthwith cease and desist from entering into, continuing, cooperating in or carrying out any planned common course of action, understanding, agreement, combination or conspiracy between any of said respondents or between any one of said respondents and others not parties hereto, to do or perform any of the following acts or practices:

1. Establishing, fixing or maintaining, or attempting to establish, fix or maintain, prices or terms for the purchase or sale of any of said seafood products.

2. Engaging in boycotts of dealers or other purchasers in connection with the sale of any of said seafood products.

3. Enforcing adherence, by any means or methods, to prices for the purchase or sale of any such seafood products.

It is further ordered, That the complaint be dismissed as to Charles Ford, Elwood Thompson, Oscar Schulz, Hiram Ruth, William Hoxter, John Thomas, Willard Jones and George Dorrell, in their individual capacities and also as representatives of the entire membership of the Queen Anne County Clam Association, and also be dismissed as to Charles Ford and Elwood Thompson as officers of said association.

It is further ordered, That the complaint be dismissed as to Gordon Hallock, John M. Nieman, Woodrow Blythe and Charles Cantler, in their individual capacities and also as representatives of the entire membership of the Anne Arundel County Clam Association.

It is further ordered, That, upon joint motion of Counsel Supporting the Complaint and Counsel for Respondent Seafood Co-Operative, Inc., the complaint be dismissed as to Seafood Co-Operative, Inc. (erroneously named in the complaint as Shadyside Seafood Cooperative), its officers, directors and members; and as to John M. Nieman, individually and as President, member and representative of the entire membership of Seafood Co-Operative, Inc.

Provided, However, that nothing herein shall prevent any association of bona fide clam fishermen acting pursuant to and in accordance with the provisions of the Fisherman's Cooperative Marketing Act (15 USCA, Paragraphs 521–522) from performing any of the acts and practices permitted by said Act.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 21st day of July 1960, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents ordered to cease and desist in the initial decision 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 the order to cease and desist.

IN THE MATTER OF

KASTNER-SHERMAN CORP. ET AL.

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

Docket 7429. Complaint, Feb. 27, 1959—Decision, July 22, 1960

Order requiring wholesalers in Waltham, Mass., to cease representing carbon steel drills falsely as high-speed drills and misrepresenting the regular retail price of a ten-piece drill set by printing on the container "$3.95 Value".

Mr. John J. Mathias for the Commission.

Goulston & Storrs, by *Mr. Phillip J. Nexon*, of Boston, Mass., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The respondents are charged with having violated the Federal Trade Commission Act through misrepresenting the value and quality of a 10-piece set of drills which they imported and offered for sale to distributors and jobbers for ultimate resale to the public.

The essential facts, which were stipulated, and the conclusions drawn therefrom are as follows:

1. Respondent Kastner-Sherman Corp. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business located at 740 South Street in the City of Waltham, State of Massachusetts.

2. Respondents Warren F. Kastner and Jerome Sherman are officers of the corporate respondent. They formulate, direct, and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

3. Respondents are now, and for some time last past have been, engaged in the importing of carbon steel drills and other merchandise, and in the advertising, offering for sale, sale and distribution of said merchandise to distributors and jobbers, and to wholesalers and retailers for resale to the public.

4. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said product, when sold, to be shipped from their place of business in the State of Massachusetts 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

product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

5. In the course and conduct of their business prior to July 1, 1959, and for the purpose of inducing the sale of their merchandise, respondents have made certain statements with respect to the quality and value of their steel drills, in advertising material, catalogues and invoices, of which the following are typical:

RAPID WALTHAM,
RAPID SPEED WALTHAM,
HIGH SPEED WALTHAM.

Respondents further cause to be printed on the case in which their 10-piece set of drills is packed the statement "$3.95 Value" and picture said case and printing thereon in their catalogue.

6. Through the use of the aforesaid statements, respondents represented:

a. That said drills were composed of high-speed steel and were high-speed drills;

b. That the amount designated as "value" was the price at which the 10-piece set of drills referred to was usually and customarily sold at retail.

7. Said statements and representations were false, misleading and deceptive. In truth and in fact:

a. Said drills were composed of carbon steel, which is not a high-speed steel, and were not high-speed drills;

b. The amount designated as "value" was substantially in excess of the price at which the 10-piece set of drills was usually and customarily sold at retail.

8. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms, and individuals in the sale of drills of the same general kind and nature as those sold by respondents.

9. Respondents' representations as to the composition and value of the Waltham 10-piece set of drills were false, misleading and deceptive; and by making such representations, respondents placed in the hands of wholesalers, jobbers, and retailers means and instrumentalities by and through which they may mislead the public as to the quality and value of said drills.

10. The use by respondents of the aforesaid false, misleading and deceptive statements, representations 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' product by reason of said

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

11. The aforesaid acts and practices of respondents, as herein found, 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 and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act. This proceeding is in the public interest, and the Commission has jurisdiction over the acts and practices of the respondents as herein found.

12. The Waltham imported drills were manufactured and labeled to the order of respondents, who are therefore completely responsible for their quality and their labeling. Although in their memorandum of law and in oral argument respondents' counsel stated that since the violation of the Act has been called to their attention, the respondents "forthwith ceased and desisted from the practice" of labeling the merchandise in question, a cease-and-desist order seems to be appropriate. Therefore,

It is ordered, That respondents, Kastner-Sherman Corp., a corporation, and its officers, and Warren F. Kastner and Jerome Sherman, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of drills or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing in any manner, directly or by implication:

(a) That drills made of carbon steel are composed of high-speed steel or are high-speed drills;

(b) That the retail value of merchandise manufactured to their order or labelled by them is any amount which is in excess of the price at which such merchandise is usually and customarily sold at retail;

2. Placing in the hands of others a means and instrumentality by and through which they may deceive and mislead the purchasing public, in respects set out in paragraph 1 above.

OPINION OF THE COMMISSION

By KERN, *Commissioner*:

This matter is before the Commission upon appeal by counsel supporting the complaint from the hearing examiner's initial decision.

The only issue presented for our consideration is the scope of the order issued by the hearing examiner.

The complaint charges respondents with misrepresenting the quality and value of steel drill sets. The facts are not in dispute, respective counsel having entered into a stipulation in which all of the factual allegations of the complaint are admitted to be true. Respondents are wholesalers and for the purposes of this case, the merchandise which they sell may be classified into three categories: imported goods which are labeled to their order; domestic goods purchased in bulk and packaged and labeled by them; and domestic goods which are packaged and labeled by others prior to sale to the respondents. In this latter category, respondents have no control over the retail price representations which the seller places on the product or its package.

Counsel supporting the complaint and respondents both submitted proposed orders to the hearing examiner. The only difference between these orders is in the wording of the inhibition directed at prohibiting the fictitious pricing practice. The hearing examiner adopted the order proposed by respondents which requires them to cease representing:

That the retail value of merchandise manufactured to their order or labeled by them is any amount which is in excess of the price at which such merchandise is usually and customarily sold at retail.

Counsel supporting the complaint contends that the order should cover all merchandise sold by the respondents and should not be limited to merchandise "manufactured to their order or labeled by them," which phrase does not appear in the order he requested. In support of this argument, counsel supporting the complaint cites those cases which hold that a Commission order to be of value must proscribe the unfair methods and practices complained of as well as the specific acts by which they are manifested. This is a well established principle. The question is whether its proper application to the facts in this case justifies the order urged by counsel supporting the complaint.

The complaint alleges that respondents cause to be printed on the case in which their drills are packed, an amount designated as "value" which is substantially in excess of the price at which the drills are usually and customarily sold at retail and picture said case and printing thereon in their catalog. There can be no doubt that the order should be broad enough to prevent respondents from selling other goods by the same method as such drills are sold. However, an essential element of the deceptive sales method alleged in this complaint is that respondents caused the fictitious retail price to be printed on their products. This constitutes the unfair sales

method stipulated to by respondents and which may be prohibited by the Commission. In our opinion, the limited scope of the complaint and proof in this particular case will not sustain an order broader than that contained in the initial decision.

In view of the foregoing, the appeal of counsel supporting the complaint is denied and the initial decision is adopted as the decision of the Commission.

Commissioner Tait did not participate in the decision of this matter.

FINAL ORDER

This matter having been heard by the Commission upon appeal by counsel supporting the complaint from the hearing examiner's initial decision, and upon briefs and oral argument in support thereof and in opposition thereto; and the Commission having rendered its decision denying the appeal and adopting the initial decision:

It is ordered, That respondents, Kastner-Sherman Corp., a corporation, and Warren F. Kastner and Jerome Sherman, individually and as officers of said corporation, 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 contained in the aforesaid initial decision.

Commissioner Tait not participating.

IN THE MATTER OF

MARK CUMMINGS ET AL. TRADING AS MARK CHARLES STUDIOS, ETC., ET AL.

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

Docket 7741. Complaint, Jan. 12, 1960—Decision, July 22, 1960

Order requiring Massachusetts photographers selling to purchasers in their homes "certificates" bearing the statements "9.95 value only $2.98", "Natural Color Portrait", "New England's Foremost Photographers", and "Workmanship Unconditionally Guaranteed", to cease thus misrepresenting their business status, the quality and value of their photographs, and the guarantees on them, and to cease failing to deliver such photographs at all or within a reasonable period.

Mr. DeWitt T. Puckett supporting the complaint.

No appearance for respondents.

INITIAL DECISION OF JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission on January 12, 1960, issued and thereafter served its complaint in this proceeding charging the respondents hereinabove named with having engaged in unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act, by making various misrepresentations and engaging in other improper practices in connection with the sale of photographs. Although duly served with said complaint respondents failed to file answer thereto within thirty (30) days, as required by Section 3.7 of the Commission's Rules of Practice for Adjudicative Proceedings and by the Notice served with said complaint.

Thereafter, a hearing was held on March 17, 1960, in Washington, D.C., before the undersigned hearing examiner, theretofore duly designated to hear this proceeding. Upon the failure of respondents to appear and show cause at said hearing, counsel supporting the complaint moved that the case be closed for the taking of testimony in view of respondents' failure to answer and appear and that, in accordance with Section 3.7(b) of the Rules of Practice, the hearing examiner find the facts to be as alleged in the complaint. Counsel further moved that an order be entered against respondents, in the form proposed by him, a copy of which was spread upon the record at said hearing. The undersigned granted said motion to the extent that findings and conclusions would be made, based upon the allegations of the complaint, and that the proposed order would be taken into consideration in the framing of an appropriate order.

This proceeding having now come on for final consideration on the complaint and the proposed order of counsel supporting the complaint, and it appearing that the order proposed covers all of the allegations of the complaint and provides for an appropriate disposition of this proceeding, the undersigned finds that this proceeding is in the interest of the public and, in accordance with Section 3.7 of the Rules of Practice, makes the following findings as to the facts, conclusion and order:

FINDINGS OF FACT

PARAGRAPH 1. Respondents Mark Cummings, Henry Fanning and Joseph Mazzapica are individuals and copartners trading as Mark Charles Studios and as Keepsake Color of Hollywood, with their principal office and place of business located at 26 Leicester Street, Brighton, Mass. Respondent Robert P. Rolling is an employee of the other respondents. His address is 13 Arundel Avenue, Wakefield (Greenwood Post Office), Mass. Said respondent Rolling partici-

pated in and aided in carrying out the acts and practices hereinafter described.

PAR. 2. Respondents are now, and for some time last past have been, jointly engaged in offering for sale and selling photographs directly 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 said products, when sold, to be shipped from their place of business in the State of Massachusetts 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 commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their said business, and for the purpose of inducing the purchase of their photographs, respondents and their salesmen call on prospective purchasers of photographs and exhibit respondents' "certificates" which bear the statements "9.95 value only $2.98", "Natural Color Portrait", and "New England's Foremost Photographers". If the sale is made and the $2.98 collected the prospect receives one of the respondents' "certificates" entitling the purchaser to one of respondents' photographs. An appointment is then made for a photographer to call and take the picture. Subsequently proofs of the pictures are presented to the customer by a representative of respondents for selection of the picture or pictures desired and an attempt is made at that time to sell the purchaser additional pictures. Additional pictures often are contracted for and payment therefor, or a portion thereof, made at that time.

PAR. 5. By means of the statements above referred to, respondents represented:

1. That the finished photographs which would be delivered were a $9.95 value.

2. That said photographs would be in natural color.

3. That respondents are New England's foremost photographers.

PAR. 6. The aforesaid statements and representations were false, misleading and deceptive. In truth and in fact:

1. The finished photographs delivered were not a $9.95 value.

2. Many photographs delivered were not in natural color.

3. Respondents are not New England's foremost photographers.

PAR. 7. The certificates referred to in Paragraph Four bear the additional statement "Workmanship Unconditionally Guaranteed". In truth and in fact, respondents frequently did not comply with said guarantee by delivering photographs to purchasers which were satisfactory as to workmanship.

PAR. 8. Respondents, after taking orders for photographs and receiving all or a portion of the purchase price therefor, frequently do not deliver the photographs so purchased at all or not until many months have elapsed from date of such orders.

PAR. 9. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of photographs of the same general kind and nature as that sold by respondents.

PAR. 10. The use by respondents of the aforesaid false, misleading and deceptive statements, representations 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 that their products are delivered within a reasonable time. As a result of respondents' aforesaid acts and practices, substantial quantities of respondents' products have been and are now being purchased by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

CONCLUSION

The acts and practices of respondents, as hereinabove found, 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 and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents Mark Cummings, Henry Fanning and Joseph Mazzapica, individually and as copartners, trading as Mark Charles Studios, Keepsake Color of Hollywood, or under any other name, and Robert P. Rolling, an individual, 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 photographs, or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication that:

(a) Their photographs are a $9.95 value; or representing that their photographs are of any certain value, unless such is fact;

(b) Their photographs are in "Natural Color," unless such is the fact;

(c) They are New England's foremost photographers; or misrepresenting in any manner their standing or position as photographers;

2. Failing to comply with the terms of any guarantee given;

3. Failing to deliver photographs sold or, if delivery is made, failing to deliver within a reasonable time after the sale thereof.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

This matter having come on to be heard by the Commission upon its review of the hearing examiner's initial decision filed on April 14, 1960, and the Commission having determined that said initial decision is adequate and appropriate in all respects to dispose of this proceeding:

It is ordered, That the aforesaid initial decision be, and it hereby is, adopted as the decision of Commission.

It is further ordered, That the respondents, Mark Cummings, Henry Fanning, Joseph Mazzapica, and Robert P. Rolling, 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.

IN THE MATTER OF

RADIO TELEVISION TRAINING ASSOCIATION, INC., ET AL.

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

Docket 6616. Complaint, Aug. 21, 1956—Decision, July 27, 1960

Consent order requiring New York City operators of a correspondence course in the practice and theory of radio and television to cease representing falsely in advertising in newspapers, magazines, by radio, and otherwise, that students would receive, as part of their course and without extra charge, a 21" television tube and would have all expenses paid for a training period in New York City.

The charge that respondent falsely represented itself as an "Association" was disposed of in a consent order dated Nov. 24, 1959, 56 F.T.C. 587. Other allegations of the complaint were dismissed.

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 Radio Television

Training Association, Inc., a corporation, National Home Study School, a corporation, and Leonard C. Lane, Harvey C. Kaplan and Frank Brown, individually and as officers of Radio Television Training Association, Inc., and National Home Study School, 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 Radio Television Training Association, Inc., is a New Jersey corporation, with its office and principal place of business located at 52 East 19th Street, New York 3, N.Y. Respondent National Home Study School is a New York corporation with its office and principal place of business located at 52 East 19th Street, New York 3, N.Y. Respondents Leonard C. Lane and Harvey C. Kaplan are individuals and officers of the corporate respondents Radio Television Training Association, Inc., and National Home Study School, and as such officers are responsible for, and control and formulate the policies of said corporate respondents. Respondent Frank Brown is an individual and until recently was an officer of said corporate respondents. Said individual respondents as officers were responsible for and controlled and formulated the policies of said corporate respondents, including the acts and practices hereinafter described. The business address of each of the said individual respondents is the same as that shown above for the corporate respondents, except for Frank Brown, whose address is 2727 Palisades Avenue, Riverdale, N.Y.

PAR. 2. Respondents are now, and for the five years last past have been, engaged in the business of conducting a correspondence school, and in selling and distributing, in commerce, between and among the various States of the United States and in the District of Columbia, courses of instruction for home study in the practice and theory of radio and television. They have caused and are causing their courses of instruction in said subjects, when sold, to be transported from their place of business in the State of New York to the purchasers thereof at their respective addresses in other States of the United States and in the District of Columbia.

PAR. 3. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said courses of instruction in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Respondents at all times mentioned herein have been in substantial competition, in commerce, with other corporations, firms and individuals engaged in the sale of similar courses of instruction.

PAR. 5. In the course and conduct of their business, as aforesaid,

and for the purpose of enrolling prospective students and thereby promoting the sale of their said course of instruction, respondents through advertisements, inserted in newspapers and magazines having general circulation throughout the United States, and in pamphlets, leaflets, circulars, form letters, cards, printed contracts and other mediums distributed through the United States mails, and through radio broadcasts, have made and are making numerous statements and representations with respect to the advantages and benefits which the purchasers of their said course of instruction could expect to receive. Among and typical of such statements and representations are the following:

1. . . . The VA will pay for your entire training . . .

2. . . . the Government will pay for your entire course.

3. You build and keep this professional giant screen television receiver complete with big picture tube (designed and engineered to take any size up to 21" . . .)

4. Set up your own laboratory with these 15 . . . kits RTTA sends you at no extra cost (A picture of a 21" tube accompanies this statement).

5. . . . two weeks training in New York City at no extra cost.

6. Train at my expense and have a glorious vacation besides.

7. Each lesson is given prompt personal attention and accurate grading by experienced teachers who will point out weak spots and praise good work.

8. Leading manufacturers in the television and radio industry have cooperated by contributing their knowledge and years of experience in order to make this training possible.

9. Naturally as president of this Association . . . I hear about a great many developments . . . which are not made public . . .

10. . . . become a member of this association . . .

11. . . . here is a training that will enable you to command supervisory jobs such as Commercial Radio Station Operator, Ship-Operator-Officer, Broadcast Station Technician, Police Radio Expert, Aircraft Installator, Experimental Laboratory Man, Radio Store Manager . . .

12. Does $100.00 a week sound like a lot of money to you . . . countless television technicians are making even more. And the amazing RADIO TELEVISION TRAINING ASSOCIATION'S "Earn by Doing" shop method lessons enable you to qualify for this better pay and better security. You can start earning $10 to $25 extra spare-time money soon after you enroll.

13. Earn $4,000 to $8,500 yearly . . . in . . . jobs like these . . . transmitter engineer, studio engineer . . .

14. By the power vested in me as Administrator of Veteran Training with RTTA, I can reinstate you as an active Veteran Trainee, if you will but use the enclosed envelope and drop me a few lines making such a request.

15. Just as new major developments are announced they are included in the RTTA course.

16. When you finish . . . RTTA's . . . placement director . . . will recommend you for position . . . help you locate the job you want . . .

PAR. 6. Through the use of the statements and representations hereinbefore set forth, and many others of similar import and effect, respondents represented, directly and by implication, that:

1. Eligible veterans do not pay any portion of the tuition, the entire cost of which is borne by the Veterans Administration.

2. The student will receive a 21" tube free.

3. All expenses will be paid for two weeks training in New York City.

4. Well qualified teachers will review students' work.

5. Leading manufacturers in the television and radio industry have cooperated with the respondents in the preparation of their course of instruction.

6. The satisfactory completion of the course will qualify students to hold such positions as radio station operator, ship-operator officer, transmitter engineer and studio engineer.

7. Salaries in the amount of $100 a week and $4,000 to $8,500 yearly can be earned by students completing the course, and while pursuing the course they can earn substantial extra spare time money in the amounts of $10.00 to $25.00.

8. A school official has been appointed by the Veterans Administration to exercise certain powers of the Veterans Administration relative to the dispensing of VA benefits.

9. Students are taught the latest developments in radio and television.

10. Graduate students will secure positions through the aid of the school.

11. Ample training for a successful career as a technician in radio and television is assured on completion of the course.

12. The satisfactory completion of the course properly equips one with the necessary qualifications to obtain and hold high salaried positions in the radio and television industry.

PAR. 7. The aforesaid statements and representations are grossly exagerrated, false, and misleading. In truth and in fact:

1. Certain students who are eligible to receive Veterans Administration benefits are personally liable for a portion of the tuition.

2. Students do not receive a 21" tube as a part of the course.

3. All expenses are not paid for two weeks training in New York City.

4. Well qualified teachers do not review the students' work.

5. Leading manufacturers in the radio or television industry have not in any manner cooperated with the respondents in the preparation of their course of instruction.

6. The satisfactory completion of the course does not qualify students to hold jobs such as radio station operator, ship-operator officer, transmitter engineer and studio engineer.

7. Students cannot earn $100 a week or from $4,000 to $8,500 yearly upon satisfactory completion of the course or $10 to $25 extra

spare time money soon after they enroll while pursuing the course, or any similar amounts.

8. A school official has not been appointed by the Veterans Administration to exercise powers of the Veterans Administration relative to the dispensing of VA benefits.

9. Students are not taught the latest developments in radio and television.

10. Graduate students do not secure positions through the aid of the school.

11. Ample training for a successful career as a technician in radio and television is not assured upon completion of the course.

12. The satisfactory completion of the course does not properly equip one with the necessary qualifications to obtain and hold high salaried positions in the radio and television industry.

PAR. 8. In the course and conduct of said business as aforesaid, respondents have adopted and used a fictitious trade name, to wit, Globe Credit Reporting and Collection Bureau, for the purpose of collecting accounts alleged to be delinquent, thereby representing and implying that said Globe Credit Reporting and Collection Bureau is an independent and separate organization.

In truth and in fact, said fictitious collection agency is operated solely by respondents and is used by them to contact purchasers of said course of instruction, as well as persons who have cancelled enrollments to such course and compel them to pay for said course, though purchased as a result of the erroneous and mistaken belief engendered by respondents' deceptive practices as herein alleged.

PAR. 9. Through the use of the word "Association" as a part of the name of corporate respondent Radio Television Training Association and through the use of such statements as "become a member of this association" and "Naturally as president of this Association . . . I hear about a great many developments . . . which are not made public", and other statements of similar import, respondents represented that said corporate respondent is an organization composed of persons primarily interested in its activities from an educational standpoint and that said corporate respondent had the endorsement of or some connection with the radio and television industries.

PAR. 10. In truth and in fact, said corporate respondent is not an organization composed of persons primarily, or in any manner, interested in its activities from an educational standpoint, but is a corporation engaged in a commercial business for profit. Said corporate respondent has not been and is not now connected in any manner with the radio or television industries.

PAR. 11. The statements and representations made by respondents and the acts and practices engaged in by respondents, as aforesaid,

have had and now have the tendency and capacity to mislead and deceive members of the purchasing public into the erroneous belief that said statements and representations were and are true and to induce the purchase of respondents' said course of instruction on account thereof. As a result, substantial trade in commerce has been and is being unfairly diverted to respondents from their competitors and substantial injury has been and is being done to competition in commerce.

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 and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Berryman Davis for the Commission.
Mr. I. H. Wachtel, of Washington, D.C., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents, who are engaged in the business of conducting a correspondence school, and in selling and distributing in commerce, between and among the various States of the United States and in the District of Columbia, courses of instruction for home study in the practice and theory of radio and television, with violation of the Federal Trade Commission Act, by the use of grossly exaggerated, false and misleading statements and representations in connection with said courses of instruction, the use of a fictitious trade name for the purpose of collecting accounts alleged to be delinquent, and the use of the word "Association" as a part of the name of corporate respondent Radio Television Training Association.

After the issuance of the complaint, respondents, their counsel, and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the Director, Associate Director and Assistant Director of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement states that:

Respondent Radio Television Training of America, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 52 East 19th Street in the city of New York, State of New York. At the time the complaint herein issued, this corporate respondent was known as Radio Television Training Asso-

ciation, Inc. On or about September 1, 1959, this respondent changed its name to Radio Television Training of America, Inc. Respondents Leonard C. Lane and Harvey C. Kaplan are individuals and officers of the said corporate respondent. Their address is the same as that of the said corporate respondent.

Respondent National Home Study School is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business also located at 52 East 19th Street in the city of New York, State of New York. Respondents Leonard C. Lane and Harvey C. Kaplan are also officers of this said corporate respondent, and their address is the same as that of the corporate respondent.

Respondent Frank Brown is an individual and until sometime in January, 1956, was an officer of both the aforenamed corporate respondents.

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 21, 1956, issued its complaint in this proceeding against respondents, and true copies thereafter were duly served on respondents.

It is agreed that the complaint may be dismissed as to respondent Frank Brown for the reason that he is not now and has not been since January, 1956, associated or connected with the other respondents in any way, and his whereabouts are unknown.

It is further agreed that the complaint may be dismissed as to respondents National Home Study School and Leonard C. Lane and Harvey C. Kaplan, individually and as officers of that corporate respondent, for the reason that the evidence in the light of subsequent developments is such as to indicate affirmatively that these said respondents were not parties to or participants in the acts and practices charged against the other respondents.

It is further agreed that subparagraphs 1, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of paragraphs 6 and 7, and paragraph 8 of the complaint herein may be dismissed on the grounds that the evidence in the light of subsequent developments is insufficient to substantiate the allegations set out therein.

Paragraph 9 of the complaint, as amended, is not covered by this agreement inasmuch as the allegation therein was disposed of by prior agreement between respondents Radio Television Training Association, Inc., Leonard C. Lane and Harvey C. Kaplan, individually and as officers of that corporate respondent, and counsel, resulting in a separate decision herein, which became the decision of the Commission on November 24, 1959.

The agreement provides, among other things, that respondents admit all the jurisdictional facts alleged in the complaint, and agree

that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the complaint may be used in construing the terms of the order agreed upon, which may be altered, modified or set aside in the manner provided for other orders; that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint; and that the order set forth in the agreement and hereinafter included in this decision shall have the same force and effect as if entered after a full hearing.

Respondents waive any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted. Accordingly,

It is ordered, That respondents Radio Television Training of America, Inc., a corporation, and its officers, and Leonard C. Lane and Harvey C. Kaplan, individually and as officers of Radio Television Training of America, Inc., and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of a course of instruction for home study in the theory and practice of television and radio, do forthwith cease and desist from representing, directly or by implication:

1. That students will receive, as part of their course of instruction, without extra charge or cost, a 21" TV tube, or any other size tube, unless such tube is actually furnished without extra charge or cost.

2. That all expenses of students for a training period in New York City, or any other place, or any other expenses, will be paid by respondents, unless such is the fact.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to respondents National Home Study School, Leonard C. Lane and Harvey C. Kaplan, as officers of National Home

Study School, and Frank Brown, individually and as an officer of the corporate respondents.

It is further ordered, That subparagraphs 1, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of paragraphs 6 and 7, and paragraph 8, of the complaint be, and the same hereby are, dismissed.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 27th day of July 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Radio Television Training of America, Inc., a corporation, and its officers, and Leonard C. Lane and Harvey C. Kaplan, individually and as officers of Radio Television Training of America, Inc., 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.

IN THE MATTER OF

ARTHUR MURRAY, INC., ET AL.

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

Docket 7845. Complaint, Mar. 25, 1960—Decision, July 27, 1960

Consent order requiring the operator of dance studios in New York City and Miami—licensor also of some 450 other to use his name in conducting dancing schools throughout the United States and the world—

To cease representing falsely by television, radio, newspaper, and other advertising in connection with "bait" or "decoy" promotional schemes used to obtain names of prospects for dance instruction, that winners of gift certificates in telephone quizzes, simple cross-word, dizzy dance, and zodiac puzzles and "Lucky Buck" contests, would receive, either without charge or at a reduced price, a course of dance instruction or a specified number of Arthur Murray dancing lessons; facts being that a substantial part of the purported instruction time was used to sell additional lessons and, in some instances, part of the instruction was furnished only on the previously undisclosed condition that additional lessons must be purchased;

To cease using a variety of coercive practices, as in the order below indicated, to induce the prospect's purchase of dancing instruction and the pupil's purchase of additional lessons; and

To cease requesting the signing of uncompleted contracts, refusing to answer inquiries concerning amounts due on agreements, and misrepresenting such amounts.

Before *Mr. Loren H. Laughlin*, hearing examiner.

Mr. Harold A. Kennedy for the Commission.

Cahill, Gordon, Reindel & Ohl, of New York City, for respondents.

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 Arthur Murray, Inc., a corporation, and Arthur Murray, Kathryn Murray and David A. Teichman, individually and as officers of said 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 Arthur Murray, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 11 East Forty-third Street, in the City of New York, State of New York.

Respondents Arthur Murray, Kathryn Murray and David A. Teichman are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. The corporate respondent now, and for more than one year last past, owns and operates dance studios or schools in New York, N.Y., and Miami Beach, Fla., and licenses certain individuals, firms and corporations to use the "Arthur Murray Method" of dancing instruction and the name "Arthur Murray" in connection with the operation of approximately 450 dancing schools or studios in cities located throughout the United States and the world. As hereinafter used, "Arthur Murray Studios" refers to schools or studios licensed by the corporate respondent as well as those owned and operated by it.

The licensed dancing studios conduct their respective businesses under the supervision of and with the assistance and advice of respondents and pay the corporate respondent approximately ten percent (10%) of the gross receipts received from the operation of said dancing studios. Each licensee also pays an additional amount, usually five percent (5%) of its gross receipts, to the corporate respondent to be held in escrow to protect and indemnify the corporate respondent from claims arising out of the operation of said licensee's studio.

PAR. 3. In the course and conduct of the aforesaid business, advertising matter, contracts, letters, checks and other written instruments and communications are and have been sent and received between respondents at their place of business in the State of New York and Arthur Murray studios located in various States of the United States. In addition thereto, respondents are and have been engaged in the advertising and promotion of the aforesaid business by national network television broadcasts and by other means. As a result of said national promotion and the transmission and the receipt of said written instruments and communications, respondents are and have been engaged in extensive commercial intercourse in commerce, as "commerce" is defined in the Federal Trade Commission Act.

The volume of the aforesaid business conducted by respondents has been, and is, substantial.

PAR. 4. In the course and conduct of the aforesaid business, respondents establish and promulgate minimum "tuition" rates to be charged for dance instruction at the various Arthur Murray studios. Such rates are computed and set forth on rate sheets showing the amounts to be charged pupils or prospective pupils for dancing instruction, ranging from one hour of instruction, priced at approximately $20, to 1,200 hours priced at approximately $12,000. Courses of instruction are usually sold in multiples or series of hours, the particular course being purchased by a given pupil depending on the ability of the dance instructor or other Arthur Murray representatives to sell and the willingness of the pupil or prospective pupil to pay therefor. In order to facilitate the sale of dancing instruction, various incentives have been devised. Such incentives include the bronze medal, the silver medal and the gold medal, each of which, while purporting to be awards for achievement of varying standards of skill in dancing, usually or often correspond to a given number of hours of Arthur Murray method of dance instruction purchased. Also, respondents have devised so-called "Lifetime Membership" courses which are priced at approximately $12,000 and call for 1,200 hours of dancing instruction during the first ten years of membership and two hours of instruction per month thereafter for life, along with certain ancillary benefits, including the attendance at specific Arthur Murray parties, admission to the ballroom during off-hours for practice, membership in the "Lifetime Membership Club" and free admission to certain parties when sponsored by the member. Multiple lifetime memberships, calling for additional hours of dancing instruction and other benefits similar to those previously described, are also available and have been frequently sold to individuals already holding a lifetime membership.

"Junior Lifetime Memberships", priced at approximately $7,500 each and calling for similar but proportionally less benefits, are available and have been sold to numerous purchasers.

PAR. 5. In the course and conduct of their aforesaid business, respondents, directly or through their licensees, have made certain representations on radio and television broadcasts, in newspaper advertisements, and by other means, including those in connection with the use of various promotional schemes, all of which have been made for the purpose of attracting prospective purchasers of dance instruction. Such promotional schemes have included telephone quizzes, cross-word, dizzy dance, and zodiac puzzles, and "Lucky Buck" contests in which the winner is purportedly awarded a gift certificate entitling him or her to a given number of Arthur Murray lessons usually at $35 or $25. The representations made in radio and television broadcasts and newspaper advertisements have included those which relate to special or introductory offers purporting to furnish the first lesson of a course of dance instruction or a short course in dancing either at a reduced price or free of charge.

Among and typical, but not all inclusive, of offers made by respondents and their licensees are the following:

* * *

LEARN THE SECRET OF
BEING A POPULAR
DANCE PARTNER * * *
A $1.00 TRIAL LESSON WILL PROVE
YOU CAN LEARN TO DANCE IN
3 HOURS THE ARTHUR MURRAY WAY * * *
Free
WHY we offer your
first lesson *and a party* FREE
at ARTHUR MURRAY Studios * * *

* * *

ARTHUR MURRAY
CROSSWORD PUZZLE
It's fun! Fill in the spaces and win an
ARTHUR MURRAY $35 DANCE COURSE * * *
WERE *YOU* BORN
UNDER A LUCKY STAR?

* * *

If you are lucky, you win a
$35.00 Arthur Murray Dance Course * * *
DIZZY DANCE CONTEST
WIN A $25.00 DANCE COURSE
JUST UNSCRAMBLE
THE DIZZY DANCE PUZZLES * * *
GOT A LUCKY BUCK?

* * *

If any of the serial numbers of your dollar bills contain a "5" and "0" then you've got a "Lucky Buck." And here's what you'll receive for it! A certificate for a $25.00 Arthur Murray Dance Course at the studio nearest you * * *

PAR. 6. Through the use of the aforesaid statements and representations, respondents, directly or through their licensees, have represented that the winner of said certificates and those to whom said special offers have been directed will receive, either without charge or at a reduced price, whichever the case may be, a course of dance instruction or a specified number of dancing lessons, said lessons or course of dancing instruction to consist of a period or periods of time devoted to *bona fide* dancing instruction.

PAR. 7. Said statements and representations are and have been false, misleading and deceptive. In truth and in fact, recipients of said certificates and persons responding to said special offers have not in many instances, been furnished a course of *bona fide* dance instruction or the specified number of dancing lessons called for in the certificates or in the special offer. In said instances, part, and frequently a substantial part, of the purported periods of instruction time furnished said recipients and said persons as specified in paragraph 6 have been used to sell additional lessons or courses of dance instruction. Furthermore, in some instances, part of the dancing instruction called for in said certificates or special offers is and has been furnished only upon the previously undisclosed condition that additional lessons must be purchased.

PAR. 8. Said promotional schemes and advertising therefor referred to in Paragraph 5 hereof are false, misleading and deceptive for the further reason that the purported quizzes, puzzles and contests are not *bona fide* quizzes, puzzles, or contests. They are, instead, a deceptive form of "bait" or "decoy", attractive to the innocent, unwary and unsuspecting members of the purchasing public, and have been and are used as the initial step in a system of effecting sales of dancing instruction. The purported quizzes, puzzles and contests are and have been so simple of solution, or the winning thereof so easy, as to remove them from the categories of competition, skill or special selection, and are such that substantially everyone, if not all, may qualify and win. Thus, these promotional schemes are not *bona fide* but are used to obtain the names of persons who may later be encouraged to purchase dancing instruction.

PAR. 9. In the course and conduct of the aforesaid business, courses or series of lessons in dancing instruction are and have been sold calling for the furnishing of a specified number of dancing lessons, said dancing lessons to consist of specified period or periods of time to be devoted to *bona fide* dancing instruction. In many instances, purchasers of said courses or lessons are not furnished

with the specified time of *bona fide* instruction called for because the actual instruction in such instances, and particularly toward the end of a course or series of dance instruction, is lost by reason of the persistent campaign of sales effort to re-enroll said purchasers in further courses of dance instruction. In such circumstances said purchasers receive less than the amount of *bona fide* dance instruction to which they are entitled.

PAR. 10. In the course and conduct of their aforesaid business, respondents, directly or through their licensees, have employed various techniques or practices as a part of a scheme to sell initial or supplemental courses of dance instruction. Such techniques or practices have in some instances been utilized to mislead, coerce, or otherwise induce by unfair or deceptive means the purchase of such initial or supplemental courses of dancing instruction. Among and typical, but not all inclusive, of such techniques or practices are the following:

1. The use of "relay salesmanship", involving successive efforts of a number of different Arthur Murray representatives who, by force of numbers and unrelenting sales talks, and aided by hidden listening devices monitoring conversation with the prospect or pupil, attempt to persuade and do persuade a lone prospect or pupil to sign a contract for dancing instruction.

2. The use of so-called "analyses", "tests", "studio competitions", "dance derbies", and similar artifices purportedly designed to evaluate dancing ability, progress or proficiency by an objective and impartial means, whereas in fact the purpose of such artifices is to lead the "winner" or "successful candidate" to believe that he should purchase future dancing instruction.

3. The use of blank or partially filled out contract forms and by refusing to answer or by evading questions concerning the amount due or payable whereby the pupil or prospective pupil is led to believe his financial obligation is substantially less than what respondents or their representatives consider due and payable.

4. By falsely assuring pupils or prospective pupils that a given course of dancing instruction will enable him or her to achieve a given "standard" of dancing proficiency whereas, in fact, it is anticipated and planned that such prospects or pupils will be, and are in fact, subjected to further coercive sales efforts toward the purchase of additional dancing instruction before the given course of dancing instruction is completed and before the "standard" has been achieved.

PAR. 11. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition in com-

merce with other corporations, firms and individuals likewise engaged in the sale of dancing instruction.

PAR. 12. The use by respondents of the unfair and deceptive acts and practices as aforesaid in connection with the conduct of their business, has had and now has the capacity and tendency to mislead, deceive, coerce or otherwise induce by unfair or deceptive means a substantial portion of the purchasing public into the purchase of substantial number of hours of dancing instruction. As a result thereof, trade has been unfairly diverted to respondents from their competitors and substantial injury has thereby been done to competition in commerce.

PAR. 13. 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 and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

On March 25, 1960, the Federal Trade Commission issued and subsequently served its complaint in this proceeding, charging that the named corporate and individual respondents were engaged in unfair and deceptive acts and practices and unfair methods of competition in commerce within the meaning of the Federal Trade Commission Act. Thereafter, an agreement containing a consent order to cease and desist was entered into between counsel supporting the complaint and respondents and submitted in disposition of all the issues presented in this proceeding. Under procedures provided in § 3.25(e) of the Commission's Rules of Practice, the agreement is now before the Commission for its consideration.

Pursuant to the agreement, respondents have admitted all the jurisdictional allegations of the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations. The agreement further provides that respondents waive all further procedural steps before the hearing examiner and the Commission, including the making of findings as to the facts or conclusions of law and the right to challenge or to contest the validity of the order to cease and desist entered in accordance with that agreement. The agreement further asserts that it is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint. Respondents addition-

ally have agreed, among other things, that the order to cease and desist contained in the agreement may be entered in this proceeding by the Commission without further notice to the respondents and that when so entered it shall have the same force and effect as if entered after a full hearing and that it may be altered, modified or set aside in the manner provided for other orders.

For the reasons cited in its accompanying opinion, the Commission has determined that the aforesaid agreement containing the consent order to cease and desist provides for an appropriate disposition of this proceeding in the public interest and such agreement is hereby accepted and ordered filed; and

Having determined that this proceeding is in the public interest, the Commission hereby makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. Respondent Arthur Murray, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 11 East Forty-Third Street, in the City of New York, State of New York.

Respondents, Arthur Murray, Kathryn Murray, and David A. Teichman, are officers of the corporate respondent and maintain their offices at the same address as that of the corporate respondent.

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 respondent Arthur Murray, Inc., a corporation, and its officers, and respondents Arthur Murray, Kathryn Murray and David A. Teichman, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, or through any licensee, in connection with the solicitation, advertising or sale of dancing instruction in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, by means of radio or television broadcasts, newspaper advertisements, contracts, telephone quizzes, crossword, dizzy dance or zodiac puzzles, "Lucky Buck" contests, or any certificates relating thereto, or any other means,

that a course of dancing instruction or a specified number of dancing lessons, or any other service or thing of value, will be furnished free of charge, at a reduced price, or for any price, unless the period or periods of bona fide dancing instruction or other service or thing of value is in fact furnished as represented.

2. Refusing to honor the terms and provisions of any certificate, award or offer.

3. Using (a) by telephone any quiz, puzzle, contest or other device which purports to involve, or is represented as involving, skill, competition or special selection; (b) by other means any promotion which purports to be a *bona fide* quiz, puzzle, contest or other device involving skill, competition or special selection when skill, competition or special selection is not involved; or (c) any *bona fide* quiz, puzzle, contest or similar device when a purpose of such promotion is to obtain leads to prospective customers and such purpose is not fully and conspicuously disclosed in the announcement or description of such promotion.

4. Using in any single day "relay salesmanship", that is consecutive sales talks or efforts of more than one representative, with or without the employment of hidden listening devices, to induce the purchase of dancing instruction.

5. Using "analyses", "tests", "studio competitions", "dance derbies", or any other artifices purportedly designed to evaluate dancing ability, progress or proficiency when said artifices are not so designed or so used but are in fact to induce the purchase of dancing instruction.

6. Requesting pupils or prospective pupils to sign uncompleted contracts or agreements; evading or refusing to answer inquiries concerning amounts due or payable on proposed or completed contracts or agreements; or misrepresenting to pupils or prospective pupils what is or will be due or payable.

7. Falsely representing to or assuring pupils or prospective pupils that a given course of dancing instruction will enable him or her to achieve a given standard of dancing proficiency.

8. Contracting with a pupil or prospective pupil for a specific course of dancing instruction and thereafter, prior to the completion of the given course, subjecting such pupil or prospective pupil to sales effort toward the purchase of additional lessons, unless (a) any contract for additional lessons is subject to cancellation by such pupil or prospective pupil, with or without cause, at any time up to and including one week after the completion of the units of dancing instruction previously contracted for, without cost or obligation,

except that a charge may be made for not in excess of two additional lessons furnished during such week and (b) all of such units previously contracted for shall be used or completed prior to the commencement of the additional lessons.

9. Using any technique or practice similar to those set out in paragraphs 4 through 8 hereof to mislead, coerce, or induce by other unfair or deceptive means the purchase of dancing instruction.

It is further ordered, That respondent Arthur Murray, Inc., and respondents Arthur Murray, Kathryn Murray, and David A. Teichman, individually and as officers of said corporation, 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.

OPINION OF THE COMMISSION

By KERN, *Commissioner:*

On July 5, 1960, the hearing examiner filed an order and notice rejecting an "Agreement Containing Consent Order To Cease And Desist" entered into between counsel supporting the complaint and all respondents. This matter comes on for hearing on the joint appeal of counsel supporting the complaint and counsel for all respondents from that ruling as permitted under § 3.25(e) of the Commission's Rules of Practice.

In his notice of rejection, the hearing examiner stated that the charges against respondents are serious in character and indicate a planned course of fraudulent acts and practices; and he in effect expressed the view that the Commission's policy does not contemplate that the procedures provided in § 3.25 of the Rules be used to dispose of matters in which the challenged practices appear thus contrary to the public interest. Under the agreement, everything is accomplished that would be achieved by entry of a cease and desist order after trial and the expeditious disposition of this proceeding duly authorized by such agreement will serve the public interest. Furthermore, the procedure provided under § 3.25 is available in all types of cases at any stage of a proceeding subsequent to issuance of a complaint. *Rit-Zie Novelty Company, Inc., et al.*, Docket No. 6354, *Victor B. Handal & Bro., Inc., et al.*, Docket No. 6375, and *Reliance Intercontinental Corporation, et al.*, Docket No. 6520 (decided October 7, 1957). Having determined that the agreement constitutes an appropriate disposition of the issues presented by the complaint, we are accepting the agreement and entering appropriate decision.

IN THE MATTER OF

AM-PAR RECORD CORP. ET AL.

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

Docket 7778. Complaint, Feb. 5, 1960—Decision, July 28, 1960

Consent order requiring New York City manufacturers of phonograph records to cease giving concealed "payola"—money or other material consideration —to disc jockeys of television and radio programs or others to induce broadcasting of their records.

Mr. John T. Walker and *Mr. James H. Kelley* supporting the complaint.

Mr. Thomas Kiernan, *White and Case*, of New York, N.Y., for respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

The complaint in this proceeding was issued by the Federal Trade Commission on February 5, 1960, charging the respondents with engaging in unfair and deceptive acts and practices and unfair methods of competition by negotiating for and disbursing "payola" to disk jockeys broadcasting musical programs over radio or television stations broadcasting across state lines and, in collaboration with certain record manufacturers and/or distributors, aiding and abetting the deception of the public by various disk jockeys, by controlling or unduly influencing the "exposure" of records by disk jockeys with payment of money or other consideration to them, or to other personnel who select or participate in the selection of the records used on such broadcasts. A true and correct copy of the original complaint was duly served upon the respondents and each and all of them, as required by law. Thereafter, respondents appeared by counsel and agreed to dispose of this proceeding without a formal hearing pursuant to the provisions of an agreement dated June 7, 1960, containing consent order to cease and desist. The agreement is accompanied by (1) a waiver in and by which respondents agree that the Federal Trade Commission may act immediately upon the initial decision without waiting thirty days as contemplated by Rules 3.21 and 3.25 and (2) an affidavit signed and sworn to on March 29, 1960, by Samuel H. Clark to support the order, hereinafter entered dismissing this proceeding against Harry Levine, Edith Schaffer and Simon B. Siegel, individually. The agreement of June 7, 1960, provides that certain allegations of the original complaint should be stricken, and amendments substituted for such stricken allegations.

An order has been entered on June 16, 1960, amending the complaint as provided in the aforesaid agreement. The hearing examiner hereby finds that such amendments do not affect the gravamen of the original complaint.

The aforementioned agreement containing consent order to cease and desist, affidavit of Samuel H. Clark, and waiver were received by the hearing examiner on June 13, 1960. The agreement of June 7, 1960, has been signed by the respondents, by counsel supporting the complaint, and by counsel for the respondents. It has been approved by the Director, the Associate Director, and the Assistant Director of the Bureau of Litigation of the Federal Trade Commission. The agreement contains the form of a consent cease and desist order which the parties have agreed is dispositive of the issues involved in this proceeding. The agreement has been submitted to the hearing examiner in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondents pursuant to the aforesaid agreement have admitted all the jurisdictional facts alleged in the amended complaint and have agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. The agreement provides that it disposes of all of this proceeding as to all parties. In the agreement respondents waive: (a) any further procedural steps before the hearing examiner and the Commission; (b) the making of findings of fact or conclusions of law; and (c) all of the rights that they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement. When entered such order would have the same force and effect as if entered after a full hearing. The agreement provides that such order may be altered, modified, or set aside in the manner provided for other orders; that the amended complaint may be used in construing the terms of the order; that the agreement shall not become part of the official record unless and until it becomes part of the decision of the Commission; that the record on which the Initial Decision and the decision of the Commission shall be based shall consist solely of the amended complaint and the agreement; and that the agreement is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the amended complaint.

This proceeding having now come on for final consideration on the amended complaint and the aforesaid agreement of June 7, 1960, containing consent order, and it appearing that the order provided for in said agreement covers all of the allegations of the amended complaint, and provides for an appropriate disposition of this pro-

ceeding as to all parties, the agreement of June 7, 1960, is hereby accepted and ordered filed at the same time this decision becomes the decision of the Federal Trade Commission pursuant to Section 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings. The undersigned hearing examiner having considered the agreement and proposed order and being of the opinion that the acceptance thereof will be in the public interest makes the following findings and issues the following order:

FINDINGS

1. The Federal Trade Commission has jurisdiction over the parties and the subject matter of this proceeding;

2. Respondents Am-Par Record Corp. and Pamco Music, Inc. are corporations organized, existing, and doing business under and by virtue of the laws of the State of New York with their office and principal place of business located at 1501 Broadway (erroneously designated in the complaint as 77 West 66th Street) New York, N.Y.

3. Respondent Samuel H. Clark is president of the corporate respondents and formulates, directs, and controls the acts and practices of said corporate respondents. Respondents Harry Levine, Edith Schaffer, and Simon B. Siegel are vice president, secretary, and treasurer, respectively, of the corporate respondents. The complaint erroneously designated the addresses of the individual respondents, whose correct addresses are as follows: The address of respondent Simon B. Siegel is 7 West 66th Street, New York, N.Y. The address of the other individual respondents is the same as that of the corporate respondents as designated herein.

4. The affidavit of Samuel H. Clark which is being filed simultaneously with the agreement of June 7, 1960, states that the respondents Simon B. Siegel, and Edith Schaffer do not have any familiarity with or knowledge of the practices which have been followed by Am-Par Record Corp., in the promotion and sale of its records or of the practices which have been followed by Pamco Music Co., Inc. in connection with the promotion of its properties. The affidavit further states that neither Harry Levine nor Edith Schaffer nor Simon B. Siegel have had any participation or part in making any decision on behalf of the corporate respondents to pay out money to individuals authorized to select and expose records for radio or television programs, nor have they had anything to do with negotiating for or distributing any monies to disk jockeys broadcasting musical programs on radio or television stations, or to any other personnel who influence the selection of the records exposed by the disk jockeys on such programs;

5. Respondents are engaged in commerce as "commerce" is defined in the Federal Trade Commission Act;

6. The amended complaint herein states a cause of action against the respondents under the Federal Trade Commission Act, and this proceeding is in the public interest. Now, therefore,

It is ordered, That respondents Am-Par Record Corp., a corporation, and its officers, Pamco Music, Inc., a corporation, and its officers, Samuel H. Clark, individually, and as an officer of said corporations, and Harry Levine, Edith Schaffer, and Simon B. Siegel, as officers of said corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with phonograph records which have been distributed in commerce, or which are used by radio or television stations in broadcasting programs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Giving or offering to give, without requiring public disclosure, any sum of money, or other material consideration, to any person, directly or indirectly, to induce that person to select, or participate in the selection of, and broadcasting of, any such records in which respondents, or any of them, have a financial interest of any nature.

2. Giving or offering to give, without requiring public disclosure, any sum of money, or other material consideration, to any person, directly or indirectly, as an inducement to influence any employee of a radio or television broadcasting station, or any other person, in any manner, to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or any of them, have a financial interest of any nature.

There shall be "public disclosure" within the meaning of this order by any employee of a radio or television broadcasting station, or any other person, who selects or participates in the selection and broadcasting of a record, when he shall disclose, or cause to have disclosed, to the listening public at the time the record is played, that his selection and broadcasting of such record are in consideration for compensation of some nature, directly or indirectly, received by him or his employer.

It is further ordered, That the complaint be, and hereby is, dismissed as to Harry Levine, Edith Schaffer, and Simon B. Siegel individually, but not as officers of the said corporate respondents.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 28th day

of July 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Am-Par Record Corp., a corporation, Pamco Music, Inc., a corporation, and Samuel H. Clark, individually, and as an officer of said corporations, and Harry Levine, Edith Schaffer, and Simon B. Siegel, as officers of said corporations, 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.

IN THE MATTER OF

LEONARD SGRO DOING BUSINESS AS UNITED PRODUCTS COMPANY, AND JOSEPH STEIN

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

Docket 7816. Complaint, Mar. 10, 1960—Decisions, July 28, 1960, and Aug. 4, 1960

Orders, identical in content—one based on a consent settlement agreed to by a sales agent and the other issued in default against his employer—requiring two individuals in Cleveland, Ohio, to cease making—in advertisements in newspapers and by statements of salesmen—false offers of employment, exaggerated earnings claims, and other misrepresentations to sell their vending machines and supplies therefor, as in the order below indicated.

Before: *Mr. John Lewis*, hearing examiner.
Mr. *William A. Somers* supporting the complaint.
Respondent, *pro se*.

INITIAL DECISION AS TO RESPONDENT JOSEPH STEIN

The Federal Trade Commission issued its complaint against the above-named respondents on March 10, 1960, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act, by making various false and misleading statements in connection with the sale and distribution of vending machines by them. After being served with said complaint, respondent Joseph Stein appeared and entered into an agreement, dated May 20, 1960, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to said respondent. Said agreement which has been signed by Joseph Stein, by counsel supporting the complaint, and approved by the Director, Associate Director and

Assistant Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

The signatory respondent, pursuant to the aforesaid agreement, has admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that such respondent waives any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law and all of the rights he may have to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has been agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing and that the complaint may be used in construing the terms of said order. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, and that said agreement is for settlement purposes only and does not constitute an admission by the signatory respondent that he has violated the law as alleged in the complaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all of the allegations of the complaint and provides for an appropriate disposition of this proceeding as to respondent Joseph Stein, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Respondent Joseph Stein is an individual with his address at 2060 Goodnor Road, Cleveland Heights 18, Ohio.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent hereinabove named. The complaint states a cause of action against said respondent under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That respondent Joseph Stein, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale

or distribution of vending machines, vending machine supplies or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. The offer made in respondent's advertisements is that of a nationally known candy manufacturer, or is that of any one other than the person or persons who are actually making the offer.

2. The respondent represents a nationally known candy manufacturer or any person, persons, firm or corporation other than themselves.

3. Employment is offered by respondent when in fact, the real purpose of the offer is to obtain purchasers of respondent's products.

4. The respondent's offer is made to selected persons or that such persons must furnish references or own a car.

5. Respondent has established routes of his vending machines at the time the offer of sale is made; or has established routes of his vending machines at any time, unless such is the fact.

6. Respondent, his agents or employees will obtain satisfactory or profitable locations for the machines purchased from him.

7. The agreements permitting the placement of vending machines are duly signed by the person or persons owning or controlling the premises on which the machines may be located, when in fact said agreements are not so signed.

8. The respondent or his agents will return to assist and advise a purchaser of vending machines in their operation.

9. The amount invested in respondent's products is for working inventory; or is for any purpose other than the purchase of said products.

10. Respondent allots exclusive territory in which the machines purchased from him may be located and operated.

11. Respondent, or his representatives, repurchases, or will obtain a purchaser for, the machines sold by him in the event the purchaser is dissatisfied.

12. The earnings or profits derived from the operation of respondent's machines are any amount in excess of those which have been, in fact, customarily earned by operators of his machines under like circumstances.

13. A vending machine of respondent's will empty every two weeks or produces $7.00 to $15.00 each time it empties; or will empty in any specified time or produce any specified return, that is not in accordance with the fact.

14. That the investment in respondent's machines is secure or cannot be lost.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 28th day of July 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Joseph Stein shall within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist.

Before: *Mr. John Lewis*, hearing examiner.

Mr. William A. Somers and *Mr. Berryman Davis*, supporting the complaint.

No appearance for respondent.

INITIAL DECISION AS TO RESPONDENT LEONARD SGRO

The Federal Trade Commission on March 10, 1960, issued and thereafter served its complaint in this proceeding charging the respondents hereinabove named with having engaged in unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act, by making various misrepresentations in connection with the sale and distribution of vending machines by them. Although duly served with said complaint respondents failed to file answer thereto within thirty (30) days, as required by Section 3.7 of the Commission's Rules of Practice for Adjudicative Proceedings and by the Notice served with said complaint.

Thereafter, a hearing was held on May 17, 1960, in Washington, D.C., before the undersigned hearing examiner, theretofore duly designated to hear this proceeding. No appearance was made at said hearing by either of the respondents. However, counsel supporting the complaint advised the undersigned that arrangements had been made with respondent Joseph Stein for an appropriate disposition of the proceeding as to said respondent. Counsel supporting the complaint thereupon moved that, in view of the failure of the other respondent, Leonard Sgro, to appear and show cause, the case be closed for the taking of testimony as to said respondent and that, in accordance with Section 3.7(b) of the Rules of Practice, the hearing examiner find the facts to be as alleged in the complaint. Counsel submitted a form of proposed order and moved that said order be entered against respondent Leonard Sgro. The undersigned granted said motion to the extent that findings and conclusions would be made, based upon the allegations of the complaint, and

that the proposed order would be taken into consideration in the framing of an appropriate order.

This proceeding having now come on for final consideration as to respondent Leonard Sgro on the complaint and the proposed order of counsel supporting the complaint, and it appearing that the order proposed covers all of the allegations of the complaint and provides for an appropriate disposition of this proceeding as to said respondent, and the undersigned having been advised that the proceeding will be otherwise appropriately disposed of as to the remaining respondent, the undersigned finds that this proceeding is in the interest of the public and, in accordance with Section 3.7 of the Rules of Practice, makes the following findings as to the facts, conclusion and order:

FINDINGS OF FACT

PARAGRAPH 1. Respondent, Leonard Sgro, is an individual doing business as United Products Company. All references made to the respondent herein are to said individual. Said respondent's place of business is located at 6116 Lorain Avenue, Cleveland, Ohio.

PAR. 2. Respondent has been engaged in the promotion, sale and distribution of vending machines and vending machine supplies. In the course and conduct of his business, respondent caused said products, when sold, to be transported from the state in which they were manufactured, to purchasers thereof located in various other states of the United States. Respondent maintained a substantial course of trade in said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. Respondent, in the course and conduct of his business, as aforesaid, at all times mentioned herein has been, in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of similar products.

PAR. 4. Respondent Leonard Sgro employed sales representatives or agents in selling said products. Respondent placed advertisements concerning said products in various newspapers, typical examples of which are as follows:

START SPARE TIME
SERVICING
HERSHEY CANDY ROUTE

Responsible man or woman will be selected to service NEW HERSHEY CANDY DISPENSERS in this area. No selling or experience necessary. Opportunity of earnings $3000 a year, devoting spare time to start. Requires about 10 hours a week to service and collect. Applicant must drive car and be able to make small investment of $595.00 cash for inventory. For interview, write including phone and reference. District Manager, P.O. Box 1951, Cleveland 6, Ohio.

MAN OR WOMAN
HIGH INCOME
OPPORTUNITY

Responsible party able to make $900 cash inventory investment, will be appointed to supply accounts we establish with (Hershey, M & M and other candy products). Revolutionary development in billion dollar candy dispensing industry creates opportunity where high profit earnings are realized from the start. Income can exceed $5,000 the first year. Requires only part time till fully developed. Write fully including phone for interview. Manager, P.O. Box 1951, Cleveland 6, Ohio.

Persons responding to said advertisement were called upon by respondent or other agents of said respondent, and the purchase of said products was solicited. In case a sale was made a contract was entered into, the purchase price collected and a purchase order was sent to the manufacturer and supplier of the products and shipment was made direct to the purchaser at his place of residence.

PAR. 5. Respondent Leonard Sgro used and furnished to his sales representatives or agents certain sales material, which was used by the respondent and said sales representatives or agents in their effort to sell respondent's products to prospective purchasers. Through the use of the statements appearing in the advertisements hereinbefore set out, and others similar thereto, but not specifically set out herein, of statements in the sales material and purchase contracts, and by oral statements made by the respondent and said sales representatives or agents, respondent has represented directly or by implication, that:

1. The offer made in the advertisements is that of a nationally known candy manufacturer.

2. The respondent represents a nationally known candy manufacturer.

3. The offer made in respondent's advertisements is one of employment.

4. Such offer is made to selected persons only and that such persons must furnish references and have a car.

5. Routes of respondent's vending machines have been established at the time the offer is made.

6. Respondent or his sales representatives or agents, will secure satisfactory and profitable locations for all vending machines purchased.

7. The agreements permitting the placement of vending machines purchased, have been duly and properly signed by the person owning or operating the premises.

8. The respondent or his agents will return from time to time to assist and advise the purchaser in the operation of his vending machines.

9. The investment required of the purchasers is for working inventory.

10. Purchasers of vending machines will be given exclusive territory within which their machines may be placed.

11. Respondent or his representatives will repurchase, or find a new purchaser for, the vending machines purchased, in the event the purchaser becomes dissatisfied.

12. A person can reasonably expect to earn $3,000.00 to $5,000.00 net profit a year by investing $595.00 to $900.00 in respondent's products for part time work in servicing said machines.

13. The machines purchased will empty every two weeks and produce $7.00 to $15.00 each time they empty.

14. That the investment in respondent's machines is secure and cannot be lost.

PAR. 6. The aforesaid representations were and are false, misleading and deceptive. In truth and in fact:

1. The offer made in respondent's advertisements was not made by a nationally known candy manufacturer but were advertisements of the respondent who sought persons to purchase his products.

2. The respondent did not represent anyone other than himself.

3. The offer made in respondent's advertisements was not one of employment but was made for the purpose of obtaining purchasers of his products.

4. The offer was not made to selected persons only or to those who could furnish references or own a car, but was open to anyone who had the money to purchase respondent's products.

5. Routes of respondent's vending machines had not been established at the time the offer of sale was made.

6. Respondent, or his sales representatives or agents, seldom, if ever, obtained or assisted in obtaining satisfactory or profitable locations for the machines purchased from them.

7. In many instances the purported agreements permitting the placement of vending machines had not been signed by the persons owning or operating the premises.

8. Neither respondent nor his agents assisted or advised the purchasers in the operation of their machines after their purchase.

9. The investment required was for the purchase of respondent's products, not for a working inventory.

10. Purchasers of respondent's products were not given exclusive territory in which they might locate their machines, but, on the contrary, respondent sold his machines to anyone willing and able to purchase, for placement wherever the purchaser might desire.

11. Neither respondent, nor his sales representatives or agents, purchased or found a purchaser for the vending machines of dissatisfied purchasers.

12. A net profit of $3000.00 to $5000.00 a year upon an investment of $595.00 or $900.00 for respondent's products was greatly in excess of the profit that would accrue in a great majority of the cases, no matter how much time the purchaser devoted to servicing the machines.

13. Seldom, if ever, would the machines offered for sale by respondent be emptied every two weeks or produce $7.00 to $15.00 each time they empty.

14. The investment made in respondent's machines was frequently lost in whole or substantial part.

PAR. 7. The use by respondent of the foregoing false, deceptive and misleading statements, representations and practices, had the tendency and capacity to mislead a substantial portion of the public into the erroneous and mistaken belief that such statements and representations were true, and into the purchase of substantial quantities of respondent's products by reason of such erroneous and mistaken belief. As a consequence thereof, trade in commerce has been unfairly diverted to respondent from his competitors and injury has thereby been done to competition in commerce.

CONCLUSION

The acts and practices of respondent, as hereinabove found, were all to the prejudice and injury of the public and of respondent's competitors and constituted unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondent Leonard Sgro, doing business as United Products Company, or under any other name, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of vending machines, vending machine supplies or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. The offer made in respondent's advertisements is that of a nationally known candy manufacturer, or is that of any one other than the person or persons who are actually making the offer.

2. The respondent represents a nationally known candy manufacturer or any person, persons, firm or corporation other than themselves.

3. Employment is offered by respondent when, in fact, the real purpose of the offer is to obtain purchasers of respondent's products.

4. The respondent's offer is made to selected persons or that such persons must furnish references or own a car.

5. Respondent has established routes of his vending machines at the time the offer of sale is made; or has established routes of his vending machines at any time, unless such is the fact.

6. Respondent, his agents or employees will obtain satisfactory or profitable locations for the machines purchased from him.

7. The agreements permitting the placement of vending machines are duly signed by the person or persons owning or controlling the premises on which the machines may be located, when in fact said agreements are not so signed.

8. The respondent or his agents will return to assist and advise a purchaser of vending machines in their operation.

9. The amount invested in respondent's products is for working inventory; or is for any purpose other than the purchase of said products.

10. Respondent allots exclusive territory in which the machines purchased from him may be located and operated.

11. Respondent, or his representatives, repurchases, or will obtain a purchaser for, the machines sold by him in the event the purchaser is dissatisfied.

12. The earnings or profits derived from the operation of respondent's machines are any amount in excess of those which have been, in fact, customarily earned by operators of his machines under like circumstances.

13. A vending machine of respondent's will empty every two weeks or produce $7.00 to $15.00 each time it empties; or will empty in any specified time or produce any specified return, that is not in accordance with the fact.

14. That the investment in respondent's machines is secure or cannot be lost.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

This matter having come on to be heard by the Commission upon its review of the initial decision as to respondent Leonard Sgro which was filed by the hearing examiner on May 31, 1960, and the Commission having determined that said initial decision is adequate and appropriate in all respects to dispose of this proceeding:

It is ordered, That the aforesaid initial decision be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondent Leonard Sgro, an individual doing business as United Products Company, shall, within sixty (60) days after service upon him of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist.

IN THE MATTER OF

PORTEM DISTRIBUTING, INC., ET AL.

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

Docket 7877. Complaint, May 3, 1960—Decision, July 28, 1960

Consent order requiring New York City distributors of phonograph records to cease giving concealed "payola"—money or other material consideration—to disc jockeys of television and radio programs or others to induce broadcasting of their records.

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 Portem Distributing, Inc., a corporation, and Gladys R. Pare, individually, and as an officer of said 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. Portem Distributing, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 601 West 50th Street, City of New York, State of New York.

Respondent Gladys R. Pare is the secretary of said corporate respondent and formulates, directs and controls the acts and practices of said corporate respondent, including the acts and practices set forth herein. The address of this individual respondent is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale and distribution of phonograph records as an independent distributor for several rec-

ord manufacturers to retail outlets and jukebox operators in various States of the United States.

In the course and conduct of their business, respondents now cause, and for some time last past have caused the records they distribute, when sold, to be shipped from their place of business in the State of New York 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 phonograph records in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business, at all times mentioned herein, respondents have been, and are now, in substantial competition, in commerce, with corporations, firms and individuals in the sale and distribution of phonograph records.

PAR. 4. After World War II when television and radio stations shifted from "live" to recorded performances for much of their programming, the production, distribution and sale of phonograph records emerged as an important factor in the musical industry with a sales volume of approximately $400,000,000 in 1958.

Record manufacturing companies and distributors ascertained that popular disk jockeys could, by "exposure" or the playing of a record day after day, sometimes as high as six to ten times a day, substantially increase the sales of those records so "exposed". Some record manufacturers and distributors obtained and insured the "exposure" of certain records in which they were financially interested by disbursing "payola" to individuals authorized to select and "expose" records for both radio and television programs.

"Payola", among other things, is the payment of money or other valuable consideration to disk jockeys of musical programs on radio and television stations to induce, stimulate or motivate the disk jockeys to select, broadcast, "expose" and promote certain records in which the payer has a financial interest.

Disk jockeys, in consideration of their receiving the payments heretofore described, either directly or by implication represent to their listening public that the records "exposed" on their broadcasts have been selected on their personal evaluation of each record's merits or its general popularity with the public, whereas, in truth and in fact, one of the principal reasons or motivations guaranteeing the record's "exposure" is the "payola" payoff.

PAR. 5. In the course and conduct of their business in commerce during the last several years, the respondents have engaged in unfair and deceptive acts and practices and unfair methods of competition in the following respects:

The respondents alone, or with certain unnamed record manufacturers, negotiated for and disbursed "payola" to disk jockeys broadcasting musical programs over radio or television stations broadcasting across state lines, or to other personnel who influenced the selection of the records "exposed" by the disk jockeys on such programs.

Deception is inherent in "payola" inasmuch as it involves the payment of a consideration on the express or implied understanding that the disk jockey will conceal, withhold or camouflage such fact from the listening public.

The respondents, by participating individually or in a joint effort with certain collaborating record manufacturers, have aided and abetted the deception of the public by various disk jockeys by controlling or unduly influencing the "exposure" of records by disk jockeys with the payment of money or other consideration to them, or to other personnel which select or participate in the selection of the records used on such broadcasts.

Thus, "payola" is used by the respondents to mislead the public into believing that the records "exposed" were the independent and unbiased selections of the disk jockeys based either on each record's merit or public popularity. This deception of the public has the capacity and tendency to cause the public to purchase the "exposed" records which they otherwise might not have purchased and, also, to enhance the popularity of the "exposed" records in various popularity polls, which in turn has the capacity and tendency to substantially increase the sales of the "exposed" records.

PAR. 6. The aforesaid acts, practices and methods have the capacity and tendency to mislead and deceive the public, and to hinder, restrain and suppress competition in the offering for sale, sale and distribution of phonograph records, and to divert trade unfairly to the respondents from their competitors, and substantial injury has thereby been done and may continue to be done to competition in commerce.

PAR. 7. The aforesaid acts and practices of respondents, as alleged herein, were and are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

Mr. John T. Walker and *Mr. James H. Kelley* for the Commission.

Mr. Morris B. Raucher, of New York, N.Y., for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with violation of the Federal Trade Commission Act in the sale and distribution of phonograph records by negotiating for and disbursing "payola" (money and other valuable consideration) to disk jockeys broadcasting musical programs, and causing such fact to be withheld from the public. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent Portem Distributing, Inc., is a New York corporation with its principal office and place of business located at 601 West 50th Street, New York, N.Y. Individual respondent Gladys R. Pare is the secretary of said corporate respondent and formulates, directs and controls the acts and practices of said corporate respondent. The address of the individual respondent is the same as that of the corporate respondent.

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 Portem Distributing, Inc., a corporation, and its officers, and Gladys R. Pare, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with phonograph records which have been distributed in commerce, or which are used by radio or television stations in broadcasting programs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Giving or offering to give, without requiring public disclosure, any sum of money, or other material consideration, to any person, directly or indirectly, to induce that person to select, or participate in the selection of, and broadcasting of, any such records in which respondents, or either of them, have a financial interest of any nature.

2. Giving or offering to give, without requiring public disclosure, any sum of money, or other material consideration, to any person, directly or indirectly, as an inducement to influence any employee of a radio or television broadcasting station, or any other person, in any manner, to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or either of them, have a financial interest of any nature.

There shall be "public disclosure" within the meaning of this order by any employee of a radio or television broadcasting station, or any other person, who selects or participates in the selection and broadcasting of a record, when he shall disclose, or cause to have disclosed, to the listening public at the time the record is played, that his selection and broadcasting of such record are in consideration for compensation of some nature, directly or indirectly, received by him or his employer.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 28th day of July 1960, become the decision of the Commission; and, accordingly:

It is 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 the order to cease and desist.