

(g) That the use of respondents' devices will aid blood circulation or strengthen the muscles;

(h) That respondents' devices will retain or hold all ruptures or hernias, or control ruptures 100%;

(i) That respondents' devices are guaranteed, unless the nature and extent of the guarantee and the manner of performance thereunder are clearly and conspicuously disclosed in connection with the representation of the guarantee;

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said devices, which advertisement contains any of the representations prohibited in Paragraph 1 hereof.

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 14th day of April, 1960, become the decision of the Commission; and, accordingly:

*It is ordered*, That respondents Fred B. Miller and Robert H. Miller, individuals and partners, trading as Miller Laboratories and as Fred B. Miller, 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.

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IN THE MATTER OF

RECORDS, INC., ET AL.

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

*Docket 7774. Complaint, Feb. 5, 1960—Decision, April 14, 1960*

Consent order requiring Boston, Mass., distributors of phonograph records for several manufacturers to retail outlets and jukebox operators, to cease giving concealed "payola" to television and radio disc jockeys as inducement to play their records in order to increase sales.

*Mr. John T. Walker* and *Mr. James H. Kelley* for the Commission.  
*Mr. Morris Kirsner*, of Boston, Mass., for respondents.

## INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents, who are engaged in the offering for sale, sale and distribution of phonograph records as an independent distributor for several record manufacturers 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 manufacturers, 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 and an Assistant Director of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement states that respondent Records, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at 790 Commonwealth Avenue, Boston, Massachusetts, and that respondent Cecil Steen is president and treasurer of the corporate respondent, 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 Records, Inc., a corporation, and its officers, and Cecil Steen, 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.

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## 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 14th day of April, 1960, become the decision of the Commission; and, accordingly:

*It is ordered*, That respondents Records, Inc., a corporation, and Cecil Steen, 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

## ALLIED MERCHANDISING, INC., ET AL.

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

*Docket 7399. Complaint, Feb. 6, 1959—Decision, Apr. 18, 1960*

Order requiring cigarette vending machine distributors in University City, Mo., to cease making in advertising deceptive employment offers, exaggerated earnings claims, false assurances of assistance, and other misleading representations.

*Mr. Brockman Horne* for the Commission.

*Mr. Morris A. Shenker*, of St. Louis, Mo., for Allied Merchandising, Inc., Peter A. Krane, and William Dardick.

*Mr. James J. Rankin*, of St. Louis, Mo., for Vern F. Hawkins.

## INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint issued by the Commission on February 6, 1959, respondents are charged with the use of unfair and deceptive acts and practices and unfair methods of competition in commerce in violation of the provisions of the Federal Trade Commission Act, in connection with the sale of and distribution of vending machines, including cigarette vending machines. In due time, after answer, six days of hearings were held at St. Louis, Missouri, Wichita, Kansas, Denver, Colorado, Dallas, Texas, and Houston, Texas. At the hearing held in the last mentioned city on June 30, 1959, counsel supporting the complaint closed his case. On September 10, 1959, the respondents electing not to offer any evidence, an order was entered closing the record for the reception of evidence and further

directing that the parties may file proposed findings up to and including October 30, 1959. Proposed findings were submitted in support of the complaint but not on behalf of the respondents. The proposed findings are sustained by the evidence and are approved.

Respondent Allied Merchandising, Inc., is a corporation organized and existing under the laws of the State of Missouri, with its principal office and place of business at 7307 Olive Street Road, University City, Missouri. Respondent Peter A. Krane's address is the same as that of the corporate respondent. Respondent William Dardick's address is c/o Bernard J. Mellman, Esq., 408 Olive Street, St. Louis, Missouri. Respondent Vern F. Hawkins' address is c/o James J. Rankin, Esq., 706 Chestnut Street, St. Louis, Missouri. From September 26, 1957 to July 24, 1958, Krane was president, Dardick was vice president and Hawkins was secretary-treasurer of said corporation. During said period the three were the sole stockholders and directors of the corporation and, as such, formulated, directed and controlled the policies, acts and practices of said corporation. On July 24, 1958, Dardick and Hawkins resigned as officers and directors and sold their stock to Krane, and from that date to the present Krane has been the sole stockholder of said corporation and controlled its policies and acts. Each of the individual respondents has been active in making the representations and sales as alleged in the complaint.

Respondents Allied Merchandising, Inc. and Peter A. Krane are now, and for sometime last past have been, engaged in the business of selling and distributing machines used for the purpose of selling merchandise, including cigarette vending machines. Respondents William Dardick and Vern F. Hawkins were likewise engaged during the period that they served as officers and directors of said corporations.

Respondents have done business on a nation-wide scale and have caused their vending machines, when sold, to be shipped from the states of Iowa and Missouri to purchasers residing in other states of the United States and have maintained a course of trade in their vending machines in commerce, as "commerce" is defined in the Federal Trade Commission Act.

In the course and conduct of their business as aforesaid, the respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of vending machines.

The respondents' first step in a program of fraud and deceit is the placing of advertisements in newspapers published in the various

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states of the United States which supplies them with leads to prospective purchasers of their machines.

Typical of said advertisements is one which appeared under the classified column "Business Opportunities" in the Wichita Eagle, a newspaper published in Wichita, Kansas:

WANTED  
MALE OR FEMALE  
FULL OR PART TIME

To service route of cigarette machines. No selling or soliciting. Route established for operator.

Must have:

1. Automobile
2. References
3. \$995 to \$1995 cash available for inventory

Write briefly about yourself and include phone number for personal interview. Eagle Box 528-B.

Under the classification of "Male-Female Help Wanted" the following appeared in "The Wyoming Eagle" of Cheyenne, Wyoming:

RELIABLE MAN OR WOMAN  
FULL OR PART TIME  
TO SERVICE ROUTE  
of  
CIGARETTE MACHINES  
NO SELLING OR SOLICITING  
ROUTE ESTABLISHED  
FOR OPERATOR  
INCOME STARTS  
IMMEDIATELY  
\$995 TO \$1,995 CASH  
REQUIRED

Please don't waste our time unless you have the necessary capital and are sincerely interested in expanding—we finance expansion—if fully qualified and able to take over at once write briefly about yourself and include phone number for personal interview.

The ads give the impression that an offer of employment is being made for persons to service an established route and the only investment required is that needed to purchase an inventory.

Persons answering the advertisements receive from the corporate respondent a form letter of acknowledgment signed by "Charles Davis" which reads in part: "Due to the tremendous response to this advertisement, it will be about a week or ten days before our Regional Director will call on you." "Charles Davis" is a fictitious name used by respondents in such letters and in future dealing

with their clientele through correspondence and telephone calls. Several days after mailing the letter of acknowledgment, a representative of respondents' calls upon a prospect. The testimony of all of the fifteen purchaser witnesses which appeared before the hearing examiner reveals that the same pattern of deception was employed in making the sales. With one exception all the sales, about which the purchaser witnesses testified, were made by either Krane, Hawkins or Dardick, the individual respondents.

The representative displays to the prospect a number of credentials, at times including air-travel, diner's and gasoline credit cards, some sort of Dun & Bradstreet card, and cards indicating membership in a Better Business Bureau and in the National Association of Manufacturers. The prospect is given the impression that he is dealing with an honorable business man who is worthy of the confidence and respect of his fellow man. The prospect is maneuvered to the dining room or other large table on which photographs of, and literature about the machines is spread. He learns that respondents' offer is not one of employment to service an established vending machine route and that an investment other than for inventory is required. Respondent representative writes on a piece of paper a column of figures purporting to give the costs which will be incurred and the profits which will be realized by the prospect upon the purchase of machines. The figures do not take into account the gas and upkeep of automobiles used to service the machines, machine repair, license fees and loss and damage caused by burglaries.

The prospects are told the profits on ten machines costing approximately \$2,000 will net from \$90 to \$100 per week; the figures are based on each machine selling fourteen cartons of cigarettes a week; not more than six hours per week of purchaser's time will be required to service such machines; respondents have made a survey, or will make a survey before machines are installed, of the surrounding area to determine profitable locations and they have trained men who went around and secured locations; that by the time purchasers' machines arrived locations would be picked out which would produce the promised profits and respondents' men would install the machines in such locations; respondents' representative would return after a period of time, usually ninety days, to check and determine whether or not purchasers' machines were producing the promised profits, and if a location proves unprofitable respondents will relocate machines; should the purchasers later become dissatisfied respondents will, upon request, resell them to others and they will get the full purchase price back; Allied requires a

