

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS, OPINIONS, AND ORDERS, JULY 1, 1965, TO DECEMBER 31, 1965

IN THE MATTER OF WESTERN RADIO CORPORATION ET AL.

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

Docket 7468. Complaint, April 2, 1959—Decision, July 7, 1965

Order modifying cease and desist order of Sept. 25, 1963, 63 F.T.C. 882, requiring manufacturers of portable radio transmitters in Kearney, Nebr., to cease falsely advertising the operational range of their products; the conditions of licensing and the terms of guarantee remain unchanged, in accordance with an opinion of the Court of Appeals, Seventh Circuit, of Nov. 23, 1964, 339 F. 2d 937, *cert. denied*, 381 U.S. 938 (1965), 7 S.&D. 1030.

MODIFIED ORDER TO CEASE AND DESIST

Respondents having filed in the United States Court of Appeals for the Seventh Circuit a petition to review and set aside the order to cease and desist issued herein on September 25, 1963 [63 F.T.C. 882]; and the court on November 23, 1964 [339 F. 2d 937], having filed its decision, and on January 27, 1965, having entered its final decree modifying and as modified, affirming and enforcing said order to cease and desist; and the United States Supreme Court on June 1, 1965 [381 U.S. 938], having denied a petition for certiorari filed by respondents;

Now, therefore, it is hereby ordered, That the aforesaid order to cease and desist be, and it hereby is, modified in accordance with the said final decree of the Court of Appeals, as follows:

It is ordered, That respondents Western Radio Corporation, a corporation, and its officers, and Paul S. Beshore and W. P. Beshore, 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 offering for sale,

sale and distribution of their products, including radio transmitters, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication:

(a) That their transmitters with or without the use of additional equipment have a satisfactory operational range of any specified distance unless respondents are able to establish that their devices in fact have the operational ranges specified.

(b) That no license or permit is required for any operational use of their radio transmitters unless the specific conditions under which such license or permit would be required are conspicuously set forth in conjunction therewith.

(c) That any product is guaranteed unless the terms and conditions of such guarantee are clearly and conspicuously set forth, including the amount of any service or other charge which is imposed.

It is further ordered, That 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 set forth herein.

IN THE MATTER OF
PAILLARD, INCORPORATED

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

Docket C-914. Complaint, July 7, 1965—Decision, July 7, 1965

Consent order requiring a Linden, N. J., corporation—a subsidiary of Paillard, S.A. of Yverdon, Switzerland—engaged in selling and distributing cameras, photographic equipment and supplies through franchised dealers, to cease entering into and carrying out any planned common course of action through its franchised retail dealers to fix and maintain retail prices of its "Bolex" and "Hasselblad" cameras, photograph equipment, and supplies.

COMPLAINT

The Federal Trade Commission, having reason to believe that Paillard, Incorporated, a corporation, hereinafter referred to as respondent, has violated and is now violating the provisions of

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Section 5 of the Federal Trade Commission Act (15 U.S.C. Sec. 45), 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 with respect thereof as follows:

PARAGRAPH 1. Respondent, Paillard, Incorporated, 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 1900 Lower Road, Linden, New Jersey. Respondent is now and for several years last past, has been, among other things, engaged in the offering for sale, sale and distribution of cameras, photographic equipment and supplies in the various states of the United States. Respondent is a subsidiary of Paillard, S.A. of Yverdon, Switzerland. Said cameras are extensively advertised and sold under the brand names of "Bolex" and "Hasselblad." Respondent sells lenses and accessories for these cameras that are sold under various brand names. The dollar volume of sales of cameras, photographic equipment and supplies by respondent per year exceeds \$7,000,000. The respondent sells its products to dealers throughout the United States and as of June 30, 1960, it had 1,494 franchised Bolex dealers, and 591 franchised Hasselblad dealers.

PAR. 2. In the course and conduct of its business, respondent is now and has been at all times referred to herein engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act, in that it ships its cameras, photographic equipment, and supplies, or causes such products to be shipped, from states wherein it does business to purchasers located in other states, and there is and has been at all times mentioned herein a continuous and substantial current of trade in commerce in such products between and among the various states of the United States and the District of Columbia.

PAR. 3. Except to the extent that competition has been hindered, frustrated, lessened and eliminated as set forth in this complaint, respondent has been and is now in substantial competition with other corporations, individuals and partnerships engaged in the sale and distribution of cameras, photographic equipment and supplies in commerce as that term is defined in the Federal Trade Commission Act.

PAR. 4. It is now, and has been for some time past, the practice and policy of Paillard, Incorporated, to enter into certain agreements, understandings, and arrangements with various of its retail dealers located in areas within which it does business, including the various States of the United States and the District of Columbia

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whereby respondent forces and requires, or attempts to force and require its retail dealers to agree to maintain resale consumer prices fixed and promulgated by Paillard, Incorporated, for its products which are distributed, offered for sale, and sold through said retail dealers.

By various means and methods, respondent has entered into and effectuated the aforesaid practice and policy by which it can and does control, establish, manipulate, fix, and maintain the resale prices at which its products are sold by its dealers.

For example, in the selection and appointment of its retail dealers, respondent utilizes and consummates contracts designated and known as Franchise and Retail Fair Trade Agreements with its retail dealers, under the terms of which retail dealers agree, among other things, not to, directly or indirectly, display, advertise, offer to sell or sell the products purchased from respondent at prices less than the minimum retail or consumer selling prices set forth in a schedule established and provided by respondent. Although said franchise agreements contain a disclaimer as to the applicability of the resale price provisions in states where such agreements are not lawful by statute, law or public policy, respondent nevertheless has been and is now enforcing or attempting to enforce adherence to its schedule of prices uniformly in all states. In addition, respondent regularly publishes and distributes from time to time, to its franchised retail dealers price lists or catalog sheets which contain the retail or consumer prices to be observed by said dealers. Also, respondent publishes or causes to be published advertisements, such as those utilized in its cooperative advertising program, promoting and offering its products for sale by its franchised dealers to consumers at prices, which are determined and established by respondent, and to be observed by said dealers.

Through its officials and representatives respondent maintains and exerts pressure upon its retail dealers to insure that they do not depart from or sell below the minimum resale prices fixed by said respondent. Retail dealers who advertise or sell at prices below the agreed minimum prices are contacted by a representative of respondent, who secures, or attempts to secure, the retail dealers' adherence to the minimum prices fixed by respondent through persuasion, or informs and threatens the retail dealers that respondent will discontinue doing business with said dealers.

As a result of the aforesaid practice and policy, and various means and methods including, among others those described herein,

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respondent has caused and is causing its franchised retail dealers to enter into or acquiesce in a course of dealing, combination, conspiracy, agreement, understanding, or planned common course of action with respondent whereby the retail or consumer price at which cameras, photographic equipment, and supplies were and are sold or offered for sale to the purchasing public by said retail dealers, was and is fixed and maintained.

Pursuant to and in furtherance of the aforesaid combination, planned common course of action, understanding and agreement, respondent, acting together in combination as aforesaid with such dealers, agreed to fix and maintain, and did fix and maintain, the retail price at which cameras, photographic equipment and supplies, purchased by the dealers from respondent, were to be sold or were sold at retail by the dealers to the purchasing public in the various States of the United States and the District of Columbia; and policed the retail prices at which respondent's products were sold; and prevented retail dealers from selling or shipping respondent's products to other retail dealers for resale; and withdrew the franchise from dealers who cut prices and who shipped or sold respondent's products to other retail dealers for resale.

PAR. 5. The agreements, understandings, conspiracy, combination, planned common course of action or course of dealings, together with the acts, practices, methods, and policies, as hereinabove alleged, are unlawful and against public policy because of their tendency to unduly restrain, hinder, suppress and eliminate competition and to restrain and monopolize trade and commerce and thereby constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute

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an admission by respondent that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Paillard, Incorporated, is a corporation organized, 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 1900 Lower Road, Linden, New Jersey. Respondent is a subsidiary of Paillard, S.A. of Yverdon, Switzerland.

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

ORDER

It is ordered, That the respondent, Paillard, Incorporated, a corporation, its officers, directors, agents, representatives or employees, successors or assigns, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of its cameras, photographic equipment and supplies in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, arrangement, agreement, contract or conspiracy with any person or persons not parties hereto to establish, fix, adopt, maintain, adhere to, or stabilize by any means or method, prices, terms or conditions of sale at which its cameras, photographic equipment and supplies are to be resold or otherwise distributed.

2. Establishing, maintaining, continuing, cooperating in, or carrying out, or attempting so to do, any plan, policy or program in combination with any other person or persons not parties hereto, for the purpose or with the effect of enabling respondent to establish or fix the prices, terms or conditions of sale at which its cameras, photographic equipment and supplies are to be resold or otherwise distributed.

3. Refusing to enter into or canceling any contract with a dealer, or distributor, for the distribution of respondent's products because of the dealer's or distributor's refusal to agree or adhere to any contract, agreement or understanding to

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establish or fix the prices, terms or conditions of sale at which respondent's products are to be resold or otherwise distributed.

4. Putting into effect, maintaining, or enforcing any merchandising or distribution plan or policy under which contracts, agreements, or understandings are entered into with dealers in or distributors of respondent's products which have the purpose or effect of:

(a) Fixing, establishing, or maintaining the prices at which such products may be resold or distributed by dealers or distributors; or

(b) Requiring or inducing any dealer or distributor to refrain from reselling such products to any specified persons or classes of persons.

5. Directly or indirectly establishing, maintaining, continuing, or effectuating any of the acts or practices prohibited by paragraphs 1 through 4 above, by any one or more of the following:

(a) Compiling, circulating, publishing or causing to be published lists of dealers or distributors who have had their franchises or licenses revoked.

(b) Utilizing the services of salesmen or any other persons for the purpose of shopping, investigating, or exercising any other methods of surveillance over the business operations of dealers or distributors to determine the prices at which such products are resold by the dealers or distributors.

(c) Refusing to continue to sell to dealers or distributors for the reason that such dealers or distributors are known to be, or are suspected of being, dealers or distributors who resell such products for less than recommended or prevailing resale prices.

(d) Preventing in any manner dealers or distributors from reselling, lending, exchanging or giving such products to other dealers or distributors for the reason that such dealers or distributors are known to be, or are suspected of being, dealers or distributors who resell such products or any other products for less than recommended or prevailing resale prices; or for the reason that such dealers or distributors are known to have, or are suspected of having, resold, loaned, exchanged, or given such products to other dealers or distributors known to have, or suspected of having, resold such products, or any other

products, for less than recommended or prevailing resale prices.

(e) Disseminating to its dealers or distributors any lists of prices at which its products may be resold by said dealers or distributors.

It is further ordered, That respondent shall within sixty days following the effective date of this Order:

1. Terminate and cancel each existing contract, agreement or understanding which prescribes or maintains, or purports to prescribe or maintain, the price at which any person shall resell any camera, photographic equipment or supplies obtained directly or indirectly from respondent by purchase or otherwise;

2. Serve by mail a copy of this Order on all dealers or distributors of its products except for those dealers or distributors with whom respondent herein has resale price agreements excepted from the provisions of the Federal Trade Commission Act by virtue of the McGuire Act amendments to said Act.

Provided, however, That nothing contained in this Order shall be interpreted as prohibiting respondent herein from establishing, continuing in effect, maintaining, or enforcing in any lawful manner any price agreement excepted from the provisions of the Federal Trade Commission Act by virtue of the McGuire Act amendments to said Act or any other applicable statute, whether now in effect or hereafter enacted, or from complying with the requirements of any law or ordinances.

It is further ordered, That nothing contained in this Order shall be construed as prohibiting the establishment or maintenance of any lawful bona fide agreement, discussions, or other action solely between respondent and its parent.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

AMERICAN BAKERIES COMPANY

ORDER OF DISMISSAL, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SECS. 2(a), (d), AND (e) OF THE CLAYTON ACT

Docket 8120. Complaint, Sept. 23, 1960—Decision, July 8, 1965

Order dismissing a complaint against a Chicago, Ill., distributor of bread and

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other bakery products, which charged the firm with discriminating among its customers in prices, advertising allowances and services or facilities—five years having lapsed since issuance of complaint in this matter without proceeding to trial, the Commission concluded that public interest does not warrant further proceedings on the complaint.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described has violated and is now violating the provisions of subsections (a), (d), and (e), of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936, (U.S.C., Title 15, Section 13), hereby issues its complaint, stating its charges with respect thereto as follows:

COUNT I

PARAGRAPH 1. Respondent American Bakeries Company 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 919 North Michigan Avenue, Chicago 11, Illinois.

PAR. 2. Respondent is now, and for many years last past has been, engaged in the production, sale and distribution of bread and other bakery products for use, consumption or resale within the United States. Its total net sales for the year 1959 were approximately \$160 million.

PAR. 3. Respondent markets its products under widely advertised brands, including Taystee, Merita and Grennan. Respondent sells its products to thousands of retailer customers and to many restaurants, lunch counters and other servers of food located generally throughout the eastern half of the United States. These customers are regular accounts with whom respondent has entered into contracts or arrangements to supply them with their requirements of the bakery products produced by it. Respondent operates approximately 49 bakeries and many more sales depots or loading stations located in 19 states. For the purpose of supplying said customers and of making deliveries pursuant to such contracts or arrangements, respondent ships its products both from its bakeries directly to its customers, some of which are located in States other than that from which such shipments originate, and from said bakeries to said sales depots or loading stations and to other bakeries, some of which depots and other bakeries are located in States other than that from which such shipments originate, for regular reshipment

to its customers, some of which are located in States other than that from which such reshipments are made. Respondent carries on negotiations across State lines with some of its customers for the sale of its products, and adjustments of accounts between respondent and some of its customers take place across such lines. Advertising, both national and local, is prepared and placed in media by respondent's headquarters or divisional offices.

Respondent, from its headquarters, centrally purchases raw materials for the manufacture of its products, as well as supplies, equipment, and other needs, and ships or causes to be shipped such items from various points to its bakeries located in States other than those from which such shipments originate. Respondent at all times maintains control, directly from its headquarters or through various divisional and regional offices, over the activities of its bakeries, such control being exercised over, among other matters, the area in which and the price at which each bakery is permitted to sell, standards of production to be maintained by said bakeries, all but minor repairs to plants and equipment, personnel policies, and funds collected and disbursed by said bakeries. In the exercise of such controls, respondent's headquarters, divisional and regional offices and its bakeries and sales depots carry on a steady flow of correspondence and other contacts with one another across state lines.

Thus there is and has been at all times herein mentioned a continuous current of trade and commerce, as "commerce" is defined in the Clayton Act, in said products between respondent and its customers.

PAR. 4. In the course and conduct of its business, respondent is now and during the times mentioned herein has been in substantial competition with other corporations, partnerships, individuals, and firms engaged in the production, sale and distribution of bakery products. Respondent's customers are competitively engaged with each other within the various trading areas in which they are engaged in business.

PAR. 5. Respondent, in the course and conduct of its business, as above described, has been for several years last past, and is now, discriminating in price, directly or indirectly, between different purchasers of bakery products, who are in competition with each other, by selling said products of like grade and quality to some of such purchasers at substantially higher prices than to other of such purchasers.

PAR. 6. Among the methods by which respondent discriminates between said purchasers is the granting of discounts (a) ranging

up to 7% off its list or regular price on all purchases of said products by certain of its restaurant, lunch-counter, or other food-serving customers, including large interstate chains operating lunch counters, and (b) ranging up to 5% off its list or regular prices on all purchases of said products by certain food-retailer customers, including large interstate food-retailer chains, and denying such discounts, or granting lesser discounts, to other customers who compete with said favored customers.

For example, during 1959, on purchases approximately \$70,000 for the lunch counters of certain units of the F. W. Woolworth variety-store chain, respondent granted a discount of approximately \$3,500. Further as an example, during 1959 on purchases of approximately \$360,000 for certain units of The Kroger Company, a concern operating a large interstate chain of retail food stores, respondent began granting a discount, and at the end of that year was paying it at the annual rate of approximately \$18,000. At the same time, respondent granted no discount, or a lesser rate of discount, to customers purchasing said products of like grade and quality and who competed with said two favored customers.

Since September 23, 1960, the date of the Complaint in this matter, respondent has granted discounts of 5% and in excess thereof to the following Atlanta, Georgia purchasers, American Service Co. (trading as Green Circle Stores and Handy Pantry Stores); Atlantic Ice Company (trading as E-Z Curb Stores and E-Z Food Stores); The Kroger Company; Colonial Stores, Inc.; Alterman Foods, Inc. (trading as Big Apple Stores); Winn Dixie Stores, Inc.; Echols Ma-Jik Markets, Inc.; F. W. Woolworth Co.; Lane-Liggett Drug Co.; Waffle House Restaurants; and to the following Tampa, Florida purchasers, Tampa Wholesale Grocery Co. (trading as Kash and Karry Wholesale Supermarkets) and the Southland Corp. (trading as 7-Eleven Stores). The practices engaged in by respondent since September 23, 1960 were similar to those engaged in prior to September 23, 1960, were and are now similar.*

PAR. 7. The effect of such discriminations in price as alleged herein may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and its customers are respectively engaged; or to injure, destroy or prevent competition with respondent or with purchasers therefrom who receive the benefit of such discriminations.

*This paragraph was added by Hearing Examiner's Order of Nov. 18, 1964.

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PAR. 8. The aforesaid acts and practices of respondent constitute violations of the provisions of subsection (a) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

COUNT II

PAR. 9. The allegations of Paragraphs One through Four, inclusive, of Count One of this complaint are hereby adopted and are incorporated herein by reference and made a part of this Count Two as if they were repeated herein verbatim.

PAR. 10. In the course and conduct of its business in commerce, as alleged, respondent has paid, or contracted for the payment of, something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by respondent, and such payments were not made available on proportionally equal terms to all other customers competing in the distribution of respondent's products.

For example, during 1959, and during other years, respondent paid money in substantial sums to Food Fair Stores, Inc., a large interstate retail food chain, and to other large customers, as compensation or as an allowance for advertising or other service or facility furnished by or through such customers in connection with their offering for sale or sale of products sold to them by respondent. Such compensation or allowance was not offered or otherwise made available by respondent on proportionally equal terms to all other customers competing with said customers in the sale and distribution of respondent's products.

PAR. 11. The aforesaid acts and practices of respondent constitute violations of the provisions of subsection (d) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

COUNT III

PAR. 12. The allegations of Paragraph One through Four, inclusive, of Count One of this complaint are hereby adopted and are incorporated herein by reference and made a part of this Count Three as if they were repeated herein verbatim.

PAR. 13. In the course and conduct of its business, as alleged, respondent has discriminated in favor of some of the purchasers of its products bought for resale against other of such purchasers by contracting to furnish or furnishing, or by contributing to the furnishing of, services or facilities connected with the handling,

sale, or offering for sale of such products so purchased upon terms not accorded to all purchasers on proportionally equal terms.

For example, during 1959, and for sometime prior thereto, respondent regularly followed the practice of furnishing Milgram Food Stores, Inc., a food retailer operating a chain of approximately 22 units in the Kansas City, Missouri, metropolitan area, personnel, products and equipment for the purpose of demonstrating its products in the stores of said concern, which services or facilities were furnished upon terms not accorded to all purchasers on proportionally equal terms.

PAR. 14. The aforesaid acts and practices of respondent constitute violations of the provisions of subsection (e) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

ORDER DISMISSING COMPLAINT

This matter having come before the Commission upon respondent's motion, filed March 9, 1965, requesting that the complaint herein be dismissed; and

The Commission having considered said motion and having noted that the complaint in this matter originally issued about five years ago and has not yet proceeded to trial; and

The Commission being of the opinion that under the particular circumstances of this case, the public interest does not warrant further proceedings on the complaint herein:

It is ordered, That the complaint be, and it hereby is, dismissed.

IN THE MATTER OF

AMERICAN MUSIC GUILD, INC., ET AL.

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

Docket 8550. Complaint, Jan. 2, 1963—Decision, July 8, 1965

Order requiring two defunct Washington, D.C., retailers of stereophonic records and record players through a "package deal," to cease making false savings, pricing, value, and free claims, and misrepresenting the manner in which the records could be selected and would be delivered, and that offers were for a limited time and available only to specially selected persons.

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 American Music Guild, Inc., a corporation, Space-Tone Electronics Corp., a corporation, and Philip R. Connor, Jr., individually and as an officer of both said corporations and Neil J. Cantor and Ernest R. Brewington, individually and as officers of American Music Guild, Inc., 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 American Music Guild, Inc., and Space-Tone Electronics Corp., are corporations organized, existing and doing business under and by virtue of the laws of the State of Maryland with their office and principal place of business located at 1145 - 19th Street, N.W., Washington, D.C.

Respondent Philip R. Connor, Jr., is an officer of both said corporate respondents and participates in formulating, directing and controlling the acts and practices of both said corporate respondents, including the acts and practices hereinafter set forth. Respondents Neil J. Cantor and Ernest R. Brewington are officers of the corporate respondent, American Music Guild, Inc., and, individually and jointly, and in conjunction with respondent Philip R. Connor, Jr. participate in formulating, directing and controlling the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. The business address of the individual respondents is the same as that of the corporate respondents.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the assembling, advertising, offering for sale and sale of phonographs, phonograph records and record cabinets 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 products, when sold, to be shipped and transported from their place of business in the District of Columbia to purchasers thereof located in various other States of the United States, as well as in the District of Columbia 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. Respondents, in the course and conduct of their business, and for the purpose of inducing the sale of their products, are engaged in a selling plan involving various combination offers for

one price, which offers included a console phonograph, a certain number of records to be delivered periodically, as specified, and a record cabinet, and, at the present time, includes a console phonograph and a certain number of records to be delivered as specified in the contract. These combination offers were, and are, generally the same, although varying in details of operation.

PAR. 5. In connection with said combination offers, respondents, in their advertising, which includes radio commercials, and through their sales representatives and employees, have made, and make, certain statements and representations, directly or by implication, to obtain purchasers for respondents' products.

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

1. That respondents are working with, are affiliated with, or are sponsored by RCA Victor, CBS Electronics, Columbia Records or Columbia Broadcasting System.

2. That respondents' combination offers, and the respondents themselves, have been approved by the Federal Trade Commission and the Better Business Bureau.

3. That the finance charge in the conditional sales contract is one per cent per month on the unpaid balance of the contract.

4. That the then current offer will be open for a limited time only and will be made to a limited number of persons who have been specially selected.

5. That by becoming a member of the American Music Guild, a substantial discount will be afforded to the customer from the regular retail price of said combination offer.

PAR. 6. In truth and in fact:

1. Respondents are not now, and never have been, working with, affiliated with, or sponsored by RCA Victor, CBS Electronics, Columbia Records or Columbia Broadcasting System or any other company.

2. Neither the combination offers of the respondents, nor the respondents themselves, are, or ever have been, approved by the Federal Trade Commission or the Better Business Bureau.

3. The finance charge in the conditional sales contract is greatly in excess of one percent a month on the unpaid balance.

4. The then current offer is not open for a limited time, is not made to a limited number of persons and the persons contacted as prospective customers have not been specially selected for that purpose. On the contrary, the offer is open for an indefinite period of time and the combination offer is made to the public in general

and can be purchased by anyone able to pay the purchase price in cash or who has a sufficiently good credit rating to warrant the extension of credit.

5. By becoming a member of the American Music Guild, the purchaser obtains no discount on the purchase price of said combination offer but, on the contrary, the net price after deduction of the said alleged discount is the price at which said combination offer is usually and customarily sold by the respondents at retail in the recent regular course of business in the trade area or areas where the representations are made.

Therefore, the statements and representations set forth in Paragraph Five hereof are false, misleading and deceptive.

PAR. 7. In the course and conduct of their business as aforesaid, and for the purpose of inducing the public to purchase their products, respondents, by means of newspaper advertisements, radio commercials and direct mail advertising, make certain other statements and representations concerning their products.

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

1. Free 120 12" (record) albums.

And the most exciting feature is that you'll then receive absolutely free a magnificent Columbia Stereophonic Console Record Player*** plus a handsome record cabinet***.

As a new subscriber to the American Music Guild you immediately receive without extra cost a brand new magnificent General Electric Stereo Console.

In addition you also receive at no cost a \$40 matching record cabinet to store your albums.

Remember this valuable General Electric Stereophonic Console is yours at absolutely no additional cost.

No added cost for the GE Stereo Console.

Remember, a Columbia Stereophonic player free when you buy one stereo record a month.

Everything is yours free, the stereo console and matching cabinet when you buy one stereo LP a month from the American Music Guild.

As a new member-subscriber to the American Music Guild, you immediately receive without extra cost, the "Senator" (console).

Do you know that you can own a General Electric Hi-Fidelity Stereo Console worth over \$300 as a dividend for subscribing to just two stereo albums a month at the American Music Guild?

Please accept this beautiful \$695.00 stereo console at no extra cost by subscribing for only 2 stereo albums a month.

Please remember, you are obligated to accept only two stereo albums a month, priced at \$4.98 each.

Your complete record collection will provide for you 140 stereo albums, that alone at the minimum nationally advertised price of \$4.98 each is worth \$695.

2. There are no hidden charges, no gimmicks.

All you buy is one LP a month at \$4.98-\$5.98.

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The price you pay for each album is only \$4.98.

Transportation and postage are prepaid.

3. Folks, just a minute. I have been handed a very important announcement from the American Music Guild, a division of Space-Tone Electronics. The membership committee has informed me there are more openings in the American Music Guild.

By becoming a member of American Music Guild * * *.

If you meet the qualifications you can join the American Music Guild.

The American Music Guild has asked for new memberships.

Membership in the American Music Guild now makes it possible * * *.

As a new member-subscriber to the American Music Guild * * *.

Designating the purchase contract as "Membership application."

4. All of the famous label American Music Guild stereo albums are nationally advertised at \$4.98 or more.

The American Music Guild price for each album is only \$4.98 payable in advance. Many of the famous American Music Guild albums you select could be priced much higher.

The price you pay for each album is only \$4.98, payable in advance. Many of the famous label American Music Guild albums you select are priced much higher.

All nationally advertised at \$4.98 or more.

5. Manufactured to sell for \$695.

Please accept this beautiful \$695 stereo console at no extra cost.

You will receive at no extra cost the "Senator" competitively priced at \$695.

6. You select from albums like these. You have a wide variety of Stereo albums from which to choose * * * classical * * * semi-classical * * * popular * * * folk music * * * jazz * * * show tunes * * * whatever your particular taste in listening is * * * you assemble exactly what you wish * * * The selection is yours.

PAR. 8. By means of said statements and representations, and others of similar import not specifically set forth herein, respondents represented, and now represent, directly or by implication:

1. That one or more of the items constituting the particular combination offer then being sold are free or without additional cost or charge to the purchaser.

2. That the only cost of the combination offer was, and now is, the cost of one or two records purchased each month for a specified period of time, under the terms of the particular contract.

3. That the respondent, American Music Guild, Inc., is a non-profit association of persons, called members, with kindred pursuits or common interest or aims for mutual aid and protection.

4. That the records to be delivered as part of the combination offer are all famous label records, selling at or of a value of \$4.98 or more each and that said records will be delivered each month.

5. That the "Senator" console is priced at, or is of a value of, \$695.

6. That the purchaser will be privileged to choose the class or

kind of records he or she may desire and that only records of that class or kind will be delivered.

PAR. 9. In truth and in fact:

1. Nothing is given free or without additional cost or charge, but on the contrary, the price of each item constituting the particular combination offer is included in the total purchase price of such combination offer.

2. To the total purchase price of the combination offer there is added a 29¢ mailing and handling charge for each record, whether delivered one at a time or more than one at a time. In addition thereto, unless the purchaser pays the total amount of the purchase price for the entire combination offer in full within ninety days of the signing of the contract, the purchaser is required to sign a conditional sales contract which includes not only interest on the amount owed, but a substantial finance charge. The monthly payments on such conditional sales contract greatly exceed the cost of two records a month and the total amount is required to be paid in a much shorter time than it would be if the only payment was for two records a month.

3. The American Music Guild, Inc. is not a non-profit association of persons called members, with kindred pursuits or common interests or aims for mutual aid and protection but, on the contrary, it is a business corporation organized for the sole purpose of selling respondents' products to the general public for profit.

4. The records delivered as part of the combination offer are not all famous label records selling at, or of a value of, \$4.98, they are not delivered monthly and the records delivered are not all of the class or kind chosen by the customer, but, on the contrary, many of the records are other than famous label records, and the records delivered are valued at, and selling at, substantially less than \$4.98 in the trade area where the combination offer is presented, and at the time it is presented, and said records are delivered at intervals of six months or more.

5. The "Senator" console which is part of the combination offer is not manufactured to sell at \$695, is of a value less than \$695 and has never been sold separately at that, or any other, price.

6. No matter what class or kind of records are chosen by the customer, the records delivered as part of the combination offer are not all of that class or kind.

Therefore, the statements and representations set forth in Paragraph Seven hereof are false, misleading and deceptive.

PAR. 10. In the conduct of their business, and at all times men-

tioned herein, respondents have been in substantial competition, in commerce, with other corporations, firms and individuals in the sale of products of the same general kind and nature as those sold by respondents.

PAR. 11. The use by respondents of the foregoing false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that such statements and representations were, and are, true and into the purchase of substantial quantities of respondents' products by reason of such erroneous and mistaken belief.

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 methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

*Mr. Roy B. Pope, Mr. J. Leon Williams supporting the complaint.
Mr. Philip R. Connor pro se.*

INITIAL DECISION BY RAYMOND J. LYNCH, HEARING EXAMINER

OCTOBER 5, 1964

The complaint in this proceeding alleges that the respondents engaged in a promotional program advertising for sale, and selling, a "package program" consisting of a series of records and a record player, and during the course of said advertising engaged in false, deceptive, and misleading representations in violation of Section 5 of the Federal Trade Commission Act.

Copies of the complaint were served upon all of the respondents. Answers were filed by all respondents, both admitting and denying certain of the allegations of the complaint. However, after several pretrial conferences, counsel representing the individual respondents as well as the corporate respondents withdrew from the proceeding. The answers were not withdrawn. However, respondents Neil J. Cantor and Ernest R. Brewington subsequently withdrew their original answers and filed admission answers. Respondent Philip R. Connor requested that a hearing be held.

Hearings were held in Washington, D.C., July 6 through 10, 1964, inclusive. Respondent Connor appeared in his own behalf,

cross-examined witnesses, and gave testimony. No one appeared in behalf of the corporate respondents. At the conclusion of the hearings, respondent Connor and counsel supporting the complaint filed suggested findings of fact, conclusions of law and replies thereto.

This proceeding is now before the hearing examiner for final consideration based upon the complaint, answers thereto, testimony and documentary evidence, and proposed findings of fact and conclusions filed by respondent Connor and counsel supporting the complaint.

The hearing examiner has given consideration to the proposed findings of fact and conclusions, and all findings of fact and conclusions not herewith found or concluded are herewith rejected. Having considered the entire record, the hearing examiner makes the following findings of fact, conclusions drawn therefrom, and Order.

FINDINGS OF FACT

1. Respondents American Music Guild, Inc., and Space-Tone Electronics Corp., are corporations organized and doing business under and by virtue of the laws of the State of Maryland and, until June 25, 1963, each of said corporate respondents maintained its office and principal place of business in the same suite of rooms located at 1145 19th Street, N.W., Washington, D.C.

2. On June 25, 1963, each of the corporate respondents filed voluntary petitions in bankruptcy in the United States District Court for the District of Columbia. Each was duly adjudged bankrupt, and the proceedings are still pending (CXs 1 and 2).

3. Respondent Space-Tone Electronics Corp., at the time of the filing of the complaint, was the owner of 100 per cent of the stock of respondent American Music Guild, Inc., and controlled the acts and practices of American Music Guild, Inc., completely (CXs 3 and 4; testimony of Raymond T. Hunt, Tr. 130).

4. Respondent Philip R. Connor, Jr., is and was the president of both said corporate respondents and participated directly in controlling the acts and practices of both corporate respondents (CX 3).

5. Respondents Neil J. Cantor and Ernest R. Brewington were executive vice president and vice president, respectively, of respondent corporation American Music Guild, Inc., and acted individually and in conjunction with its President, Philip R. Connor, Jr. (admitted by answer, CX, p. 29).

6. In the course and conduct of their business respondents caused their products to be shipped and transported from their

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place of business in the District of Columbia to purchasers thereof located in various other States of the United States, as well as in the District of Columbia, and at all times mentioned herein maintained a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

7. Respondents in the course and conduct of their business, and for the purpose of inducing the sale of their products, were engaged in a selling plan or program involving the offering for sale and the sale of a combination package deal that included a console phonograph, a certain number of records, and a record cabinet to be delivered to the purchaser, as specified in the contract of sale (admitted in answer).

8. Respondents, in connection with their said combination offer, used salesmen making personal contact with selected customers and radio advertisements making certain statements and representations, directly or by implication, to obtain purchasers for respondents' products. Typical, but not all inclusive, of such statements and representations are the following:¹

- a. Free 120 12" (record) albums.
- b. And the most exciting feature is that you'll then receive absolutely free a magnificent Columbia Stereophonic Console Record Player * * * plus a handsome record cabinet * * *.
- c. As a new subscriber to the American Music Guild you immediately receive without extra cost a brand new magnificent General Electric Stereo Console.
- d. In addition you also receive at no cost a \$40 matching record cabinet to store your albums.
- e. Remember, a Columbia Stereophonic player free when you buy one stereo record a month.
- f. Everything is yours free, the stereo console and matching cabinet when you buy one stereo LP a month from the American Music Guild.
- g. As a new member-subscriber to the American Music Guild, you immediately receive without extra cost, the "Senator" [console].
- h. Please accept this beautiful \$695.00 stereo console at no extra cost by subscribing for only 2 stereo albums a month.
- i. Please remember, you are obligated to accept only two stereo albums a month, priced at \$4.98 each.
- j. Your complete record collection will provide for you 140 stereo albums, that alone at the minimum advertised price of \$4.98 each is worth \$695.
- k. Transportation and postage are prepaid.
- l. Folks, just a minute. I have been handed a very important announcement from the American Music Guild, a division of Space-Tone Electronics. The membership committee has informed me there are more openings in the American Music Guild.

¹ CXs 36-40, 43, 46-47, 50, 64, 72, 75, 78, 105, 108, 117.

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m. All of the famous label American Music Guild Stereo albums are nationally advertised at \$4.98 or more.

n. The American Music Guild price for each album is only \$4.98 payable in advance. Many of the famous American Music Guild albums you select could be priced much higher.

o. The price you pay for each album is only \$4.98 payable in advance. Many of the famous label American Music Guild albums you select are priced much higher.

p. All nationally advertised at \$4.98 or more.

q. Manufactured to sell for \$695.

r. Please accept this beautiful \$695 stereo console at no extra cost.

s. You will receive at no extra cost the "Senator" competitively priced at \$695.

t. You select from albums like these. You have a wide variety of Stereo albums from which to choose * * * classical * * * semi-classical * * * popular * * * folk music * * * jazz * * * show tunes * * * whatever your particular taste in listening is * * * you assemble exactly what you wish * * *. The selection is yours.

u. Representations were also made that the finance charge in the conditional sales contract would be one per cent per month on the unpaid balance of the contract.

9. The record discloses and the examiner finds that the finance charge in the conditional sales contract was considerably in excess of the one per cent per month on the unpaid balance. The interest charge varied from $\frac{3}{4}$ of one per cent to one per cent of the balance due after the down payment had been deducted, multiplied by the number of months the contract specified. As an example, CX 103 discloses that:

Selling Price	\$695.00
Other charges	16.90
Total	<u>711.90</u>
Down Payment (Cash)	31.90
Unpaid balance	<u>680.00</u>
Principal balance	680.00
Time differential	244.84
Total time balance	<u>\$924.84</u>

The purchaser agrees to repay the Total Time Balance hereunder in 36 monthly payments at \$25.69 (CXs 102, 103, 105, 108, 109; Tr. 156, 244).

10. Representations made by respondents that the current offer of the "package deal" would only be open for a limited time and made to a limited number of persons specifically selected is completely false. The fact of the matter is, and the record discloses, that respondents offered to and did sell to any one willing to purchase. It is clear that the offer was not made to a limited number

of persons or to a select list. Commission Exhibit 7, a letter used for advertising purposes, was mailed to 10,000 persons whose names were obtained from the telephone book (Tr. 54).

Furthermore, the representation that by becoming a member of the American Music Guild, a discount would be offered from the regular retail price of said combination offer was not true (Tr. 254, 302, 353). Respondent Connor contends that discounts were actually offered to members of the American Music Guild as set forth on the back of CX 5. However, the discount referred to on this exhibit refers to additional purchases that may be made later and has nothing to do with the pricing or selling of the actual package deal sold by the respondents. The best example of the discount deal is CX 118. In this contract, the price of the phonograph was listed at \$695 plus the cost of the records, \$797, making a total purchase price of \$1492. Respondents then granted what the contract calls "Credit to American Music Guild members \$695.00." This left a balance due of \$797, the price of the records purchased. A delivery charge and clearing fee of \$13 was added, making the "Cash delivered price \$810.00." The purchaser paid \$50 cash and on the balance of \$760 a "Finance charge" of \$273.56 was added, making the "Time balance \$1033.56" payable in 36 monthly installments of \$28.71. This is but one example of respondents' "Hi Fi," "High Finance" deals (Tr. 484-87).

11. In the course and conduct of their business, the respondents, for the purpose of inducing the public to purchase their products, made other representations by means of newspaper advertisements, radio commercials, and direct mail advertising that were misleading, false and deceptive. Typical, but not all inclusive of such statements and representations, are those set forth in Finding No. 8.

Contrary to the above statements, the testimony of the witnesses and the documentary evidence present in this record discloses that respondents gave nothing away free or at no cost to the customers. The respondents were in business to make a profit which is perfectly legitimate, but the methods that were used are proscribed by the Federal Trade Commission Act. No matter how you analyze their program, whether it be on the sale of records and a phonograph free or at no cost, or whether you consider the deal as the sale of a phonograph and the records free or at no cost, respondents are in violation of the Act. The respondent Connor as early as 1960 stated that he was selling a combination package or program (Tr. 50, 483). In the first place, the records offered in CX 30 were not what respondents represented them to be. An expert in the

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methods of competition in commerce, in violation of Section 5 of the Federal Trade Commission Act.

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

ORDER

It is ordered, That respondents American Music Guild, Inc., a corporation, and Space-Tone Electronics Corp., a corporation, and their officers, and respondent Philip R. Connor, Jr., individually and as an officer of both of said corporations, and respondents Neil J. Cantor and Ernest R. Brewington, individually and as officers of American Music Guild, Inc., 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 phonographs, phonograph records, record cabinets, or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication:

a. That all phonograph records to be included in any combination offer or otherwise, will be famous label records.

b. That the price or value of any records included in any combination offer, or otherwise, is more than the price at which such records are being sold or offered for sale in the usual and regular course of business in the trade area in which the combination offer is made.

c. That the "Senator" console phonograph is manufactured to sell at, or is of a value of, any amount which is in excess of the price at which it has been sold to the public separate and apart from any combination offer, or is in excess of the price at which comparable phonographs are being offered for sale in the trade area in which the combination offer is being made.

d. That the customer may select the records or type of records to be delivered as part of the combination offer or that a specified number of records will be delivered each month, if in fact such selections are made by respondents or deliveries are made on other than a monthly basis; or otherwise misrepresenting the manner of selection or of delivery of such records.

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e. That the rate of interest specified in their conditional sales contract is the total finance charge, or misrepresenting in any manner the rate of interest or amount of their finance charge.

f. That any offer to purchase is open for a limited time only, or is being offered to a limited number of people, or that those to whom the offer is made have been specially selected.

g. That any of respondents' products included in the combination offer are free or without additional cost or charge; that the only charge will be the monthly cost of record or records, or otherwise misrepresenting that the offer is other than a combination offer to sell all of the items included in the offer, or misrepresenting the period within which payment is to be made for said combination offer.

h. That by reason of membership in the American Music Guild, or for any other reason, savings or a discount are afforded a purchaser of respondents' merchandise or combination offer from the usual and customary retail price, unless the price at which said merchandise or combination offer is offered constitutes a reduction from the price at which said merchandise or combination offer is usually and customarily sold at retail in the recent regular course of business in the trade area where the representation is made.

2. Misrepresenting the value of any item or items of any combination offer or any of respondents' products.

3. Using the word "Guild" in or as part of their trade or corporate name or otherwise representing that their business is anything other than a commercial enterprise operated for profit.

OPINION OF THE COMMISSION

JULY 8, 1965

By REILLY, *Commissioner*:

This matter is before the Commission on respondent Connor's appeal in his individual capacity from the examiner's initial decision. The other two individual respondents have filed admission answers, and no appeal has been taken, by the corporate respondents or by

respondent Connor as an officer of the corporations, from the initial decision of the hearing examiner.

The complaint herein issued January 2, 1963, and alleged violation of the Federal Trade Commission Act through misrepresentation in the advertising and sale of stereophonic records and record players.

Respondents, prior to the corporate respondents being adjudged bankrupt, were engaged in the sale of stereophonic records and record players through a package deal which in broad outline consisted of the purchase of records at full price and the inclusion of a record player "at no extra cost." As the plan was originally conceived, the cost to respondents of supplying customers with the record players would be defrayed from the substantial savings realized in the bulk purchase of records at extremely low prices and the resale of the records at the highest prevailing price. The plan went awry when the respondents began to broadly suggest, and explicitly state on occasion, that the records or the record player were free upon the purchase of the other or that the customer was getting the one at current market value with the other included when in fact, as will appear below, the records were "cut-outs," "budget lines," "discontinued or slow-moving items" worth far less than the value represented. Thus, instead of purchasing currently popular records at the prevailing market price and receiving a stereophonic record player "at no extra cost" the purchaser was paying a high, nationally advertised, price for records worth a fraction of that value, the substantial markup thereby defraying the cost of the record player.

The hearing examiner's findings and order concern themselves with this central representation and six others incident thereto.

In brief summary, the hearing examiner found that respondents:

Had misrepresented that records received by or available to members of American Music Guild are all *famous label* records,

Had misrepresented that the *finance charge* in their conditional sales contract would be one percent per month on the unpaid balance (that is, the declining outstanding balance) of the contract when in fact the monthly charge was assessed against the total balance due after the down payment had been applied,

Had "the intention * * * to create the impression that the American Music Guild was something other than a profit-making organization,"

Had, on some occasions, represented that the records were *free* with the purchase of a stereo record player and, on others, that the stereo was free with the purchase of the records,

Had misrepresented the *value* of the records and/or stereo in the combination deal,

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Had misrepresented that the customer could select the class of records he desired and that the transportation and postage would be prepaid,

Had misrepresented that the package deal would only be open for a limited time and was available only to a limited number of persons specifically selected.

The hearing examiner's findings and order are generally correct only as to the last four above. The findings and conclusions as to the first three are based on a misapprehension as to the facts or a misinterpretation of the applicable law or both.

Famous Label

Respondents made an explicit representation that all of the records available for selection were "famous label records."¹ The hearing examiner in his proposed order prohibited any representation that all phonograph records included in the offer would be famous label records. However, nowhere in the initial decision did the examiner make a finding that the representation was false. In fact he made no explicit finding that the representation had in fact been made. The failure to make a finding that the representation had been made is of little consequence since the record contains ample evidence in that regard. The failure of the examiner to find that the representation was false is possibly explained by the fact that there is nothing in the record to support such a finding.

The only evidence in the record bearing upon the question of the truth or falsity of the representation is the testimony of five witnesses to the effect that some of the records bore labels they had never heard of.² In no case does the record show that the "unknown" labels fell within the type or classification of music the witness was familiar with. In no instance was it established on the record why lack of familiarity on the part of the witnesses should be taken as an indication of the "fame" of the records. Nowhere in the record is there any attempt to establish what constitutes a famous label.

The inclusion in the order of a proscription against representation that records are famous label records was error.

Interest Rate

The complaint alleged misrepresentation by respondents "that the finance charge in the conditional sales contract is one percent per month on the unpaid balance of the contract." The examiner

¹ CX 37, 85, 61.

² Tr. 206, 263, 305, 347, 377.

found that the finance charge in the conditional sales contract was "considerably in excess of one percent per month on the unpaid balance."

The allegation in the complaint is ambiguous but the examiner is wrong in any event. The ambiguity arises out of the meaning of "unpaid balance." If it means the amount due and owing after down payment has been deducted, it would appear there is no misrepresentation since the amount due each month is a stated percentage of that figure. If, on the other hand, "unpaid balance" means the constantly diminishing balance due each successive month by virtue of the outstanding balance having been reduced by the preceding monthly payment, there would be a misrepresentation if the expression had been used.

In point of fact, the expression used by respondents was "one percent per month on the balance" and there has been no showing that it is generally understood that that phrase means on the declining balance after application of payments. Indeed, there is no showing in the record that the witnesses so understood it.

The contracts used by respondents and the testimony of witnesses are clear that the interest was described as a given percentage usually one percent or three-quarters of one percent per month applied to the balance due after the application of the down payment. The nearest the record comes to supporting the allegation was in the following colloquy between complaint counsel and a customer witness:

Q. With regards to the interest on the unpaid balance, Mrs. Terrell, was it explained to you what that rate of interest would be?

A. It was supposed to be very little, if nothing, he said. It was to be very little. It seems, after we paid the down payment, it was a pretty good amount. We got the book on it. It seems like it was a pretty good amount of interest.

Q. Did you check your contract which indicates that it was three-quarters of one percent per month?

A. Yes. But the way he sounded that night, we thought he meant it was that for the time while we were getting it. It wasn't going to be like that.

Q. On the unpaid balance, was that your understanding?

A. Yes. That is what we thought that night.

Q. Later, did there come a time when you ascertained it was three-quarters of one percent on the entire balance per month?

A. Yes.³

³ Tr. 258, 259.

