

# HEINL RADIO BUSINESS LETTER

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No. 697

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February 13, 1934.

## FIRM OF AMOS 'N' ANDY WINS PATENT APPEAL

Amos 'n' Andy, whose burlesques of legal difficulties are nationally famous, have been victorious in their effort to prevent a manufacturer from using what they have successfully contended is their firm name, "Amos 'n' Andy". The United States Court of Customs and Patents Appeals has affirmed the decision of the Commissioner of Patents denying Feldman & Sons the right to register the trade-mark "Amos 'n' Andy" for work shirts, which mark had been used on such merchandise for the past four years.

The appelland contended that the real name of the firm was Correll and Gosden and that "Amos 'n' Andy" were simply the characters they portrayed.

Judge Oscar E. Bland set forth in his affirmative opinion that Correll and Gosden for several years had been associated as partners in the broadcasting of "Amos 'n' Andy" episodes and had made phonograph records "which records bear the firm name of 'Amos 'n' Andy'"; that in 1928 they adopted "Amos 'n' Andy" as the name of their partnership. Judge Bland stated further "that their partnership agreement was an oral one and each partner contributed one-half of the funds required for the expense of carrying on the business; that they had first conducted their business from their residence in a hotel in Chicago; that in February, 1929, they had cards and stationery printed showing their firm name, Amos and Andy; that in September, 1929, they established offices in the Palmolive Building in Chicago, and purchased the necessary furniture and equipment, had their firm name, Amos and Andy, lettered on the door, and since that time have conducted their partnership business from that place under that name; that under said partnership agreement they had shared equally the profits which resulted from the business; that during the conduct of said business they had received a great amount of correspondence in the name of Amos and Andy and had answered the same under that name; that their personal representative, Alexander S. Robb, handled their bookings and appearances in theatres, and in so doing used the name Amos and Andy, as the firm name.

"Various exhibits, showing the use of the said firm name on cards, stationery, door lettering, talking machine records and advertisements, were submitted with the notice of opposition. Said stipulated facts show ownership in opposers of design patent granted to Louis Marx for a design patent on a toy named 'Amos 'n' Andy Fresh Air Taxicab.'

"It is appellant's first contention that his mark "Amos 'n' Andy" is printed in a distinctive manner and is therefore not barred from registration by the provisions of the disputed section.

He argues that by reason of the elision, 'n', between the words 'Amos' and 'Andy', which is a substitution for the word 'and', it presents a different appearance and sound from the term 'Amos and Andy', and is to be regarded as printing the term in a distinctive manner within the meaning of the statute.

"It is further contended by appellant that 'Amos 'n' Andy' or 'Amos and Andy' is not the name of a firm within the meaning of the act, and that all of appellees' exhibits and statements show that 'Amos and Andy' or 'Amos 'n' Andy' are not the names of a firm, but constitute merely an advertisement of dramatic performances, and that the design patent in evidence shows conclusively that the term 'Amos 'n' Andy' is not used as the name of a firm, but that it there, as elsewhere, assumes the nature of a trademark. It is pointed out, however, that the term is not a trademark term for the purposes of this case, since it is conceded that the opposers have never used the term in connection with the sale of merchandise."

Appellant then proceeds to discuss the fact that the business in which the term "Amos and Andy" has been used is not the same or a similar business as that in which appellant is engaged, and that the articles in connection with which the term is used are not of the same description.

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#### JAMES BARRETT HEADS RADIO-PRESS BUREAU

James W. Barrett, former city editor of the New York World and of the New York American, has been appointed editorial head of the central news bureau which will select the press association news to be given to radio broadcasters for two five-minute daily broadcasts as stipulated in the agreement between publishers and broadcasters announced last week.

The cooperative plan between the press and radio becomes effective March 1, and preliminary work on the organization of the bureau is going forward.

The committee organizing the bureau consists of Mr. Friendly, Chairman; Hugh Baillie, United Press; Lloyd Stratton, Associated Press; Joseph V. Connolly, International News Service; Frank B. Mason, National Broadcasting Co., and Paul White, Columbia Broadcasting System.

Station WOR, Newark, N. J., announced that as an independent broadcaster it would adhere to the new rules.

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## GREATLY CHANGED LABOR PROVISIONS IN MANUFACTURERS' CODE

Virtually a new, or substitute, code for the Electrical and Radio Manufacturing Industry, under which radio manufacturers operate, was submitted to the NRA at Washington.

Many witnesses, voicing strong attack upon and defense of the proposed code revisions were heard at a session last week by Deputy Administrator H. O. King of the NRA, attended by a number of radio industry representatives. The hearings were adjourned subject to indefinite future call. Two or probably more months may elapse before the new code, with many probable future revisions, is finally approved by the NRA and President Roosevelt. In the meantime, the existing code will continue.

The new amendments, submitted to NRA by the Board of Governors of the National Electrical Manufacturers' Association but without previous submission to or consideration of the electrical or other industries, propose a national uniform minimum wage of 40¢ per hour for males and 32½¢ per hour for females (with a Southern differential), and would eliminate the July 15, 1929, sub-minimum rate of 32¢ in the present code. In North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi and Louisiana, the newly proposed rates are 32¢ per hour for males and 27¢ for females.

A 36-hour week is provided in the new code amendments but not until the metal working and capital goods industries effect a similar maximum week for similar employees. Until the metal working and capital goods codes become uniform a 40-hour week would prevail under the proposed code.

On overtime of employees, the amendments propose a 48-hour week limited to twelve weeks annually until the metal working and capital goods codes are uniform, and a 44-hour week for any 12 weeks annually thereafter, plus a controverted provision for special overtime arrangements in supplemental codes. The present unlimited "seasonal peak" overtime clause, of the existing code, would be abolished.

The "Open price" plan of publishing prices and discounts has an amendment proposed to establish resale price maintenance by contracts with jobbers and dealers, but this and, in fact, the entire "open price" plan is under sharp attack in Washington and is expected to be materially revised if not entirely eliminated.

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## DIVISIONAL CODE RADIO WHOLESALING TRADE HEARING

Notice was given through the office of Divisional Administrator A. D. Whiteside that a public hearing will be held Saturday, February 24, in Room 2062 of the Department of Commerce Building in Washington, on divisional code for the radio branch of the wholesaling trade.

The code will establish fair practice rules and provide separate administration for the radio division subject to the labor provisions of the master code for the Wholesaling or Distributing Trade.

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## EUROPE'S WAVE SHUFFLE IS NIGHTMARE

Europe has had a grand reshuffle of wave-lengths, and slightly bewildered listeners are wondering why. Thirty-five countries took part in a conference at Lucerne. A new plan to clean up the ether was prepared, to which twenty-seven countries agreed and eight did not. Of these eight, Holland, Sweden, Finland, Lithuania, Luxemburg, and Poland quarreled with the long-wave allocations. In spite of this, the International Broadcasting Union, which has its headquarters in Brussels, determined to put the plan into operation in the fond hope that the malcontents would come into line at the last moment.

"January 15 was the first night for Europe's rearranged orchestra of 230 stations", the New York Times reports. "Brussels lifted its baton and began to conduct. The result was a maddening medley of shrieks and whistles beside which Stravinsky's 'Fire Bird' is sweet music. In the long-wave band some stations changed and some did not. Eiffel Tower (Paris), which should have closed down altogether, just kept on talking, violently hetrodyning Daventry (England). Huizen (Holland) ignored the new plan and stuck to its old wave length; so did Warsaw. Radio Paris adopted a new wave but not that prescribed by the plan. Minsk, Russia, also obligingly provided a background for England's big station at Daventry.

"Brussels changed its role from conductor to tariff cop. Frantic orders were issued. Daventry hastily adopted another wave, but unfortunately one closer to Eiffel Tower. Meanwhile, Luxemburg, which had been banished to the medium waves, ran up the black flag in flat defiance and, seizing the long wave of 1,304 meters, began bawling away with the full force of its 200 kilowatts.

"In the medium wave-band things were better but there was plenty of confusion.

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## STEPPING - BUT HOW?

Someone recently called the liquor warning as a "step in the right direction."

"What direction?" an official of the Commission, who was not in sympathy with the "warning" inquired. He said the Commission's statement was "absolutely obscure and meaningless", and that in issuing it the Commission "walked down both sides of the street."

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## DAYS OF RADIO COMMISSION SEEN TO BE NUMBERED

It seems as if they are getting ready to put the skids under the Federal Radio Commission. President Roosevelt has approved the idea of a simple bill creating a Communications Commission. If Congress is of the same opinion, the new radio regulatory body, absorbing the present Radio Commission, will be created this session. It is believed the writing of the new bill may be completed in two weeks, if not sooner, at which time it will be submitted to President Roosevelt for his approval.

Senator Dill said that the bill would contain no controversial features. In that case time would be saved as then it probably would not be necessary to hold hearings. If, however, there are controversial features such as the appeal section sponsored by Senator Dill in the omnibus radio bill which was passed by the House and Senate in the last Congress but not signed by President Hoover, the industry will call for a hearing.

"We'll see the bill before we start any shooting", said a broadcaster. "If it is simply a matter of patching together the Radio Act and those portions of the Interstate Commerce Act relating to Communications, O.K., but if portions of Dill's old bill come walking in or they try to stick in anything objectionable, you will hear from us."

Asked if he thought the rate fixing power carried over from the Interstate Commerce Act will affect broadcasting as well as communications, the above informant replied, "I think that will come later."

The new bill will have "very limited powers", according to Senator Dill but will conduct a careful survey into many situations and develop its jurisdiction later. One of the big questions to face it will be the unification of the telephone, telegraph, cable and radio communication services.

One report has it that the new Communications Commission will be composed of seven members, a Chairman and two Commissioners each representing the following groups - broadcasting, telephone and telegraph (wire and wireless), and cables.

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## CODE COMMITTEE TO ATTEND PRESIDENT'S CONFERENCE

A meeting of the Broadcasting Code Authority has been called for Saturday, March 3, preliminary to the members attending the conference of Code Authorities and Trade Associations called by President Roosevelt in Washington, Monday, March 5. The conference will consider primarily a 10 percent reduction of industries' working hours and a possible increase in wages.

The report concerning the shorter-hour proposal, if correct, would mean a reduction for a large part of American industries from an average of forty to an average of thirty-six hours. Most of the codes provide for the average forty-hour week. It would also mean an increase of 10 per cent in the hourly pay, so that the cost of the shorter work-week would not be borne by the employees.

There are industries, however, that have hours longer than the generally prevailing forty. In these the 10 per cent proposal still would be urged. For instance, if an industry is allowed to work employees forty-eight hours, it would be asked to reduce this work-week by 10 per cent. Thus, it was said, industry would further spread employment and maintain purchasing power.

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#### SHEPARD HEADS GROUP BROADCASTERS

John Shepard, III, of Boston, has been elected head of Group Broadcasters, Inc., a group of stations banded together for the purpose of selling time.

The Executive Committee is composed of Alfred A. Cormier, General Manager, WOR, Newark; Harry Howlett, WHK, Cleveland; I. R. Lounsberry, Vice-President, WGR and WKBW, Buffalo; Arthur B. Church, Vice-President, KMBC, Kansas City, and T. P. Convey, President, KWK, St. Louis.

Though 22 stations have already allied themselves with Group Broadcasters, the stock ownership and operating control of the organization remains permanently in the hands of the 10 charger outlets. All stations outside of this 10 will take the designation of associated members. Under the Group Broadcasters' plan of selling an advertiser must contract for a minimum of 10 stations out of the group to be eligible for the group rate.

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#### HEARING FOR APPLICANTS IN NEW WAVE BAND

A hearing date of April 4th has been set by the Federal Radio Commission for those applying for the newly opened wave band. They are: John V. L. Hogan, Long Island City, N.Y. (experimental broadcast) 1550 kc., 1 KW, unlimited time; to be heard by the Commission; L. M. Kenneth, Indianapolis, Ind., same as above except 1530 kc., American-Republican, Inc., Waterbury, Conn., same as for L. M. Kenneth; and Fred W. Christian, Jr., and Raleigh W. Whiston, d/b as Christian & Whiston, Norco, Cal., same as above except 1570 kc.

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: BUSINESS LETTER NOTES :  
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NBC gross time sales for January, 1934, amounted to \$2,373,923, a plus of \$504,038 over January, 1933. This is a 27% increase, marking a big acceleration of the upward curve in NBC business, according to a statement from that company, which adds:

"Furthermore, says NBC, January, 1934, is about \$50,000 better than December, 1933, which is the biggest December-January rise since 1929.

"NBC (with 87 of the 190 major network stations under its banner) secured 63% of all network revenue for the month."

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The condition of Thomas P. Littlepage, well known radio counsel, who is confined to the Emergency Hospital in Washington, is reported as improved.

Mr. Littlepage was taken to the hospital over a week ago suffering from pneumonia. He had just recovered from a broken arm sustained in a fall on the ice early this year. It is expected he will be released from the hospital next week.

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The government of Spain henceforth will prohibit all political speeches by radio, Diego Martinez-Barrios, Minister of the Interior, according to the Associated Press. "In the event that citizens want this political information", he added, "they must attend the speeches or buy newspapers."

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The NBC has just released a folder announcing the fact that seven of its network stations have been granted power increases within the past several months as follows:

WBZ (Boston) to 50,000 watts; WHAM (Rochester) to 50,000 watts; KVOO (Tulsa) to 25,000 watts; WFI and WLIT (Philadelphia) to 1,000 watts; WSAI (Cincinnati), to 1,000 watts; WTAG (Worcester) 500 watts.

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## HEARINGS ON BORDER BROADCASTERS' BILL THURSDAY

Hearings on the amendment to the Radio Act which would prevent studios to be located in this country with a station in a foreign country and broadcasting back into the United States will be held at the Capitol, Thursday morning, February 15. The first hearing will be at 10 o'clock with Representative Bland, of Virginia, and the House Merchant Marine and Radio Committee. The second hearing will be held at 10:30 o'clock by Senator Dill, of Washington, Chairman of the Senate Interstate Commerce Committee.

It will be the first hearing the House Committee has had on radio since the new crowd has been in the saddle and it is just possible they may have a few questions to ask about radio generally. Henry A. Bellows, Chairman of the Legislative Committee will represent the National Association of Broadcasters at both hearings.

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## COLUMBIA REPORTED CONSIDERING PUBLIC STOCK ISSUE

Columbia's stockholders, who at present comprise William S. Paley, Sam Paley, Herman Paley, L. D. Levy, Leon Levy and Lehman Bros., bankers, meet today (Tuesday) to put their stamp of approval on a stock issue for public consumption, "Variety" reports. "Move, which has been under consideration for several months, will entail the pooling of 25% of each one's CBS holdings. Shares represented by this pool after the network's capitalization has been boosted will be the stock released to outside investors.

"CBS Board of Directors has recommended that the old stock setup be revised, which would increase the present allotment of 75,000 shares of Class A stock to 375,000 shares, and the 75,000 shares of Class B stock to 375,000 shares.

"On the 150,000 shares of the original issue there is no par value. It is proposed to give both the Class A and Class B stocks of the converted 750,000 unit a par value of \$5. Of the original capitalization only 63,250 each of the Class A and Class B have been issued.

"The Public was informed of CBS's proposed recapitalization last week when the brokerage house of Wertheim & Co. advertised the availability of the stock, when and if issued. Balance sheet supplied to inquirers by this firm gave the CBS assets as of Dec. 1, 1932, as totaling \$2,462,134, and liabilities \$829,607. Columbia, said the statement, earned in 1932 a surplus of \$3,676,535 and paid \$4 a share. Surplus earnings for 1931 were \$2,502,459. There were no figures for 1933 in the Wertheim balance sheet.

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"Wertheim statement was prefaced with the notation that the firm was not making an offering, but merely creating a market for the CBS stock when and if issued. Statement also related that the stockholders' meeting today (Tuesday) will amend Columbia certificate of incorporation by increasing the present capitalization of \$2,025,000 to an authorized capitalization of \$3,750,000, of which stock aggregating \$3,162,500 in value will be issued, with this increase in capital to be effected by a transfer from the surplus.

Under this move the present stock will be convertible into five shares of the new."

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ADVERTISING  
\$1,000,000 BEER/ASSOCIATION PROPOSED

The brewing industry should expend at least \$1,000,000 a year on collective advertising to advance beer sales to the peak attained during the pre-prohibition era, according to C. D. Williams, of New York, Secretary of the United States Brewers' Association.

Attending the 58th annual convention of the organization at Atlantic City, Mr. Williams advocated the establishment of an Advisory Research Commission to formulate a comprehensive advertising program for the industry. The Association hopes to be ready to submit details to the members at the Fall meeting, probably in New York next October, he said.

He stated that the set-up would probably include newspapers, magazines, billboards and radio.

The \$1,000,000 suggested for group advertising is but a small sum to handle the tremendous job of bringing beer back to its place in the sun, Mr. Williams declared. The brewers themselves are exceeding that sum in pushing their own output.

Dr. Paul T. Cherington, of New York, consultant on distribution problems said that estimated figures for beer advertising done by individual brewers during the nine months ending with December were as follows:

Newspapers, \$3,876,000; Billboards, \$2,250,000; Magazines, \$677,800; Radio - Network - \$348,000; Radio - Spot, \$200,000; Total - \$7,351,800.

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## MACKAY RADIO ENLARGES SCOPE

The extension of the present Mackay radio system into the short-wave communication field in foreign as well as in domestic point-to-point traffic in opposition to existing companies now operating, was confirmed this week by A. Y. Tuel, Vice-President in Charge of Radio Research in the Mackay Radio and Telegraph Co., according to A. G. West, in the Editor & Publisher.

"Hitherto the Radio Corporation of America has been exclusive in this field, but since the policy of the United States Government has always encouraged competition in telegraph and cable operation with a view to improved service and lowered costs, the present plans of the Mackay system are merely in line with the best American practice", Mr. West continues.

"Sixteen new channels ranging from 4,000 KC to 16,000 KC have been requested from the Federal Radio Commission at Washington, in addition to a number of other frequencies now pending or already obtained on the short wave band by the Mackay interests. This situation, it is said, should have the almost immediate effect of creating a decrease in former rates in the near future to such cities as Shanghai, Tokio, Buenos Aires, Madrid, as has already been announced with the new circuits recently installed to Chicago, New Orleans, Seattle, Portland, Ore., San Francisco and Los Angeles.

"Construction permits have already been granted to two new stations for Atlanta and Kansas City, according to Mr. Tuel, on the domestic hook-up. These key cities, as well as the ones already mentioned above, are centers for important air transport operations, and will no doubt have interesting possibilities when air message traffic comes into its own."

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## DECISIONS OF THE FEDERAL RADIO COMMISSION

WCNW, Arthur Faske, Brooklyn, N. Y., modification of C.P. authorizing approval of transmitter site in Brooklyn, completion of construction by May 1, 1934; WHDF, The Upper Michigan Broadcasting Co., Calumet, Mich., modification of license to change specified hours of operation; WSAZ, WSAZ, Inc., Huntington, W. Va., modification of license to increase power from 500 watts to 1 KW; WHBU, Anderson Broadcasting Corp., Anderson, Ind., C.P. to rebuild station destroyed by fire, install new equipment and move transmitter and studio within building, 1210 kc., 100 watts, unlimited; WKBV, d/b as Knox Battery & Electric Co., Richmond, Ind., special temporary authority to operate from 8:30 to 10 A.M. and from 1 to 6 P.M. CST March 2 and 3; and from 1 to 6 P.M. CST on March 10; KVOA, Arizona Broadcasting Co., Inc., Tucson, Arizona, special temporary authority to operate from 3 to 6 P.M. MST, Feb. 17 and 18; KFJB, Marshall Electric Co., Inc., Marshalltown, Ia., special temporary authority to operate from 9 P.M. to 12 Midnight CST, Feb. 17.

Also, City of Chicago, Ill., Dept. of Police, C.P. (Gen. Exp.) frequencies 30100, 33100, 37100, 40100 kc., 15 watts; Ralph E. Carroll, Gainesville, Fla., C.P. (Gen. Exp.) frequencies 30100, 33100, 37100, 40100, 86000-400000 kc., 50 watts; City of Los Angeles, Cal., Dept. of Police, Mobile, C.P. (Gen. Exp.) 30100, 33100, 37100, 40100 kc., 5 watts; Same - Portable; Same, except 50 watts; Stromberg-Carlson Tel. Mfg. Co., Rochester, N. Y., C.P. (Gen. Exp.), frequencies 30100, 37100, 40100 kc., 100 watts; Same - Mobile; City of Berkeley, Cal., Dept., of Police, Portable and Mobile, 6 new C.P.s (Gen. Exp.), frequencies 30100, 33100, 37100, 40100 kc., 25 watts; Peoria Police Dept., Portable & Mobile: #9XBB W9XBC W9XBD W9XBE W9 XBF W9WBG W9WBI W9XBH W9XBJ W9XBK, licenses (gen. exp.) 30100, 33100, 37100, 40100, 86000-400000, 401000 kc. and above, 4.5 watts; W3XS, Commissioners of Lower Merion Township, Ardmore, Pa., license (Gen. Exp.) 30100, 33100, 37100 kc., 15 watts;

Also, W6XB, Earl A. Nielsen, Portable & Mobile, license (gen. exp.) frequencies 3110, 34600, 37600, 40600 kc., 3 watts, for period ending June 1, 1934; W9XBA, Peoria Police Dept., Peoria, Ill., license (Gen. Exp.), frequencies 30100, 33100, 37100, 40100, 86000-400000 kc. and above, 100 watts, for period ending June 1, 1934; Transpacific Communication Co., Ltd., Dixon, Cal., KWU KWO KKY KWX KWV, modification of license to add special authority to communicate with ships in the Pacific area at times when the apparatus and/or frequency is not required to provide pt. to pt. service.

#### Action On Examiner's Report

Leo J. Omelian, Erie, Pa., C.P. granted for new station to operate on 1420 kc., 100 watts, unlimited time, sustaining Examiner Geo. H. Hill (Commissioners Hanley and Lafount dissented).

#### Miscellaneous

WHAD, Marquette University, Milwaukee, Wis., reconsidered and set for hearing, application for consent to voluntary assignment of station license to WHAD, Inc., because of protest of Station WISN.

#### Ratifications

Action taken Feb. 9th: City and County of San Francisco Dept. of Electricity, San Francisco, C.P. granted, frequencies 30100, 33100, 37100, 40100 kc., 15 watts; Same - Portable & Mobile, granted 2 C.P.s same as above, except 2 watts, and Portable & Mobile.

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