

# The National Association of Broadcasters

NATIONAL PRESS BUILDING \* \* \* \* \* WASHINGTON, D. C.  
JAMES W. BALDWIN, Managing Director

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### HEALTH-O-QUALITY PRODUCTS CO.

On receipt of inquiry from member stations, it has been learned that the Federal Trade Commission late in 1934 entered into a stipulation with the Health-O-Quality Products Co., Cincinnati, Ohio. The stipulation, No. 0770, is entitled "Stipulation of Facts with Vendor-Advertiser and Agreement to Cease and Desist—False and Misleading Advertising, Toilet Preparations." Copies may be obtained from the Federal Trade Commission or through NAB headquarters.

### FEDERAL TRADE COMMISSION ACTIVITIES

#### Complaints

The Federal Trade Commission has alleged unfair competition in complaints issued against the following companies. In each case, the respondent will be given an opportunity to appear at a hearing to show cause why a cease and desist order should not be issued.

**No. 2551. Chicago Silk Co., Chicago, Ill.** The complaint alleges that the company distributes through the mails certain literature, instructions and sales outfits, including paper punch cards and the premiums to be awarded by lot of chance, constituting unfair competition through the use of a lottery. Hearing October 18.

**No. 2552. Vernon White & Co., Thayer Sales Corp., Federal Pure Food Co., and T. E. Hanshaw, all of Chicago, Ill.** The complaint alleges misrepresentations in the sale of a food product in the promotion of the sale of their product "Yum-Yum." Hearing October 18.

**No. 2254. J. C. Hickson & Co., Miami, Florida.** The complaint alleges unfair competition in advertising its citrus fruits as "Indian River" fruit, when in fact it was not grown in the Indian River region in Florida. Hearing October 25.

**No. 2256. Peters Serum Co., Kansas City, Mo.** The complaint alleges improper use of the word "Manufacturer" in its advertising literature. Although the Peters Company manufactures serums and bacterins for inoculation of livestock and poultry against disease, the complaint points out that it also deals in a line of veterinary remedies and preparations purchased from other dealers. Hearing October 25.

**No. 2257. Thayer Pharmaceutical Company and Thayer Sales Corporation, 2944 W. Lake Street, Chicago.** The complaint alleges unfair representations in the sale of cosmetics, in that the respondent is alleged to have advertised a massage cream as "Turtle Oil Cream," when in fact turtle oil or oil derived from turtles does not constitute the whole or even a substantial part of the oil content of this cream. Hearing November 1.

#### Dismissal

**No. 2253. G. A. Goebel Company, Inc., Chicago, Ill.** The complaint charging unfair representations in the sale of military uniforms and insignia, was dismissed on consideration of the record.

#### Stipulations

**No. 1455. Leading Drug Corporation, of New York City,** agrees to cease using advertisements having a tendency to deceive

buyers into the belief that the company manufactures or compounds all of the products it sells, or any except those it does actually manufacture or compound.

**No. 1456. Sinclair G. Stanley, of Chicago, trading as Z. G. Herbs Company** and engaged in preparing a product compounded from herbs and designated "Z. G. Herbs Tea No. 17" or "Z. G. Herbs Tea No. 17, Extra Strong," will abandon the use of advertising matter which tends to deceive purchasers into believing that his product is a remedy or cure or possesses such therapeutic properties or value as to be properly represented or referred to as a competent and adequate treatment for stomach troubles, nervousness, gallstones, or other ailments, when this is not true. The Commission, on August 10, 1935, announced the closing of a formal case against the respondent concerning charges covering the same allegations included in the stipulation because of the fact that Stanley had entered into a stipulation to cease and desist from the practices alleged.

**No. 0900. Louis Ball and Mark Burke, of Wilkes-Barre, Pa., trading as Dr. Webber Co.,** and selling a treatment for obesity, agree to stop representing that the preparation is either safe or absolutely harmless, that it contains no harmful ingredients, and that it is a tonic or produces wonderful or marked tonic effects. This preparation was advertised as having been "tried and tested on both sides of the sea."

**No. 0901. The Certified Crystals Sales Co., of Charleston, W. Va.,** in its stipulation, admits making various representations and asserts that it has definitely discontinued advertising and selling its commodity, but that should it at any time resume such advertising it will follow the rules of the Federal Trade Commission. Particularly, it will not advertise that "Certified Crystals" are a competent or effective treatment for a substantial number of ailments, including rheumatism, neuritis and lumbago.

**No. 1457. Herman L. Gold, trading as Kantrun Manufacturing Company, Chicago, Ill.,** agrees to cease representing in advertisements that the use of his chemical compound for treating silk, chiffon and rayon hosiery, and lingerie, makes possible the prevention of runs, snags and breaks.

**No. 1458. Pamies & Sons, Inc., St. Augustine, Fla.,** according to its stipulation, maintained a cigar factory at Tampa, Fla., prior to 1932, then moved to St. Augustine where it continued to manufacture cigars. The firm, Ricardo & Co., Inc., of St. Augustine, is owned by Pamies & Sons, Inc., and the officers and directors of the two corporations are the same. In their stipulation these respondents agree to cease and desist from using the word "Tampa" on brands or labels affixed to their products or the containers of the products, or in any way that tends to deceive buyers into believing that their cigars are made in Tampa, Fla., or in the territory immediately surrounding known as the "Tampa District," when this is not a fact.

**No. 1459. Hibriten Furniture Co., Lenoir, N. C.,** agrees to stop using the word "walnut," either independently or in connection with other words, in its advertising matter so as to imply that the products so described are derived from the trees of the walnut family, when this is not true.

**No. 1460. A. W. Faber, Inc., Newark, N. J.,** agrees to stop advertising to the effect that it manufactures a certain type of pencil which it sells, when this is not true.

**No. 1462. E. J. Pritchett, Dallas, Texas, an individual trading as Diamond Specialty Company,** engaged in the printing business, including the sale and distribution of calling cards, agrees to cease and desist from using in his advertising matter the word "engraved," either alone or in connection with the word "process," in a manner tending to deceive buyers into the belief that the product he sells is engraved or embossed or is the result of impressions made from inked engraved plates, when this is not true. Pritchett, according to the stipulation, did not use the process known as "engraving" or "embossing."



**No. 1463. Michael J. Friedman, Chicago, an individual trading as Crown Spirits Company,** and engaged in the bottling, blending and rectifying of wines, liquors and cordials, agrees to stop using the word "manufacturers" on letterheads, invoices and in advertising, or in any way which may deceive buyers into believing that he owns, controls and operates a factory wherein the products he sells are manufactured, when this is not true.

**No. 1464. Harry G. Kuehle, Minneapolis, an individual trading as Double-Wear Shoe Company,** agrees to abandon the use in his catalogues, order blanks or other literature, of the phrase "From factory to wearer," or any similar phrase which may have a tendency to confuse or deceive purchasers into the belief that Kuehle manufactures the products he sells or owns and operates the factory in which they are made. Kuehle also stipulates that he will stop employing in his advertising a picture of a factory or buildings implying that the products sold by him are made in such factory or buildings, or that they are owned and operated by him. He will cease representations to the effect that his selling method eliminates jobbers' and wholesalers' profits, when this is not true.

**No. 1465. S. & M. Cut Rate Stores, Inc., Washington, D. C.,** will discontinue the listing of its corporate and trade name in the Washington telephone directory under the classified heading of "Army and Navy Goods Business" and from employing the phrase "Army and Navy Goods" in its advertising or in any way which may have a tendency to deceive buyers into the belief that the products which it sells consist in substantial part of Army and Navy surplus products, when this is not true.

**No. 1461. Henry R. Simmons and Rutledge Simmons, Jr., New York City, tr/as Henry Ginnel & Co.** The respondents agree to stop selling or placing in the hands of others for sale products to which are affixed tags bearing what purport to be retail selling prices but which are exaggerated and fictitious.

**No. 1499. Oklahoma Publishing Co., Oklahoma City,** has entered into a stipulation with the Federal Trade Commission to cease and desist from entering into special contracts for sale of its advertising space and from giving discounts or rebates to advertisers as a reward for their refusal to buy advertising space from competitors.

#### Cease and Desist Order

**No. 2492. White Cross Laboratories, Inc., Chicago, Ill.** According to the consent cease and desist order entered into with the Federal Trade Commission, the respondent agrees to discontinue alleged misrepresentation in the sale of "Turtle Oil" cream.

#### BROADCASTING PHONOGRAPH RECORDS

An interesting and important decision on the subject of copyright and of broadcasting of sound records was received this week from the Department of State. It is a decision of the Royal Hungarian Supreme Court in the case of Hungarian Radio Company versus Gramophone Company, Limited, of London.

The decision is especially interesting at this time because of the suit recently brought by Fred Waring against Radio Station WDAS, Philadelphia (See NAB REPORTS, Sept. 26, 1935, p. 968).

The decision in full text follows:

#### Translation

A final decision in a law suit was given on January 30, 1935, under No. 9.P.41702/934/1, before the Budapest Royal Court, which suit was instituted by the Magyar Telefonhíradó és Rádió R. T., plaintiff, represented by Dr. Louis Ludinsky, a Budapest attorney, against the Budapest Representative of the Gramophone Co. Ltd., defendant, represented by Dr. Herbert Trebits, a Budapest attorney, concerning the non-existence of author's right. An appeal was filed on March 4, 1935, against the judgment of the Budapest Royal Court on the basis of article 18, Law VIII of 1925, under P.I. 41702/1934/10. A hearing of the case having taken place on May 24, 1935, the Royal Hungarian Supreme Court rendered the following judgment:

The Royal Hungarian Supreme Court dismissed the appeal of the defendant with costs (250 gold pengő).

The reasons are the following:

I. The fact that the plaintiff in a letter dated August 8, 1934, noted from a letter of defendant dated August 2, 1934, that the defendant forbids the use of the records of its factory for radio broadcasting can only be understood to mean that the plaintiff acknowledged the fact that the defendant forbade the use of the

records, but it cannot be inferred that the plaintiff acknowledged the protest as justified and binding.

There is therefore no basis for the defendant's claim, submitted also in his appeal, that the plaintiff through an agreement to this effect, obliged himself to acknowledge the protest as justified and binding.

Consequently in the law suit filed on the basis of article 130 of the Code of Civil Procedure the question had to be examined, whether, in consideration of the protection granted to performing artists under the copyright law, the broadcasting of an artist's performance through gramophone records is subject to the permission of the gramophone factory, owing to a transfer of rights of the performing artist.

Therefore, the Court had to ascertain what constitutes the legal status of the performing artist in the use and utilization of his artistic performance.

The performing artist does not create, but only brings before the public an already existing work of art in an artistic performance. The performing artist is therefore not entitled to copyright protection, although an adequate protection of the performance of an artist who shows individual conception and style must undoubtedly be provided.

At a conference held at Rome for the revision of the Bern convention the hope was expressed that the various governments should consider the possibility of establishing rules for the protection of the rights of performing artists, because at this conference the proposition that the copyright of the performing artists be assured, was not adopted, since a majority opposed it on the basis that the performing artist is not considered the author of a "composition."

The defendant is basing his claim, that the performance of an artist recorded for mechanical performance comes also under the provisions established for works (compositions) entitled to copyright, on article 8 of the Copyright Law.

This provision of the Law, however, can not be interpreted as meaning what the defendant claims.

According to article 8 of the Copyright Law, "Translations, adaptations, including adaptation of the performance of an artist for mechanical production (article 6, par. 9.), also re-arrangements (revisions), etc., enjoy the same right as the original works (compositions) without infringement of the rights of the original author."

According to the official explanation of the law by the Cabinet Minister who introduced the bill in Parliament, the artistic adaptation of a composition reflects the adapted work through the personal artistic performance of the artist, by way of gramophones or similar instruments.

The above mentioned article 8 protecting adaptations, revisions, etc., actually refers to the adaptations, revisions, etc., mentioned in article 6, par. 10, and consequently it protects the adapter, revisor, etc., who adds his own creating work to the original by which certain changes are effected in it, whereas, on the other hand, an artistic "adaptation" by somebody who merely performs, reflects the original work in an unchanged form in his performance and hence in no sense does he create a new work, however artistic or individual his performance may be.

Although the ministerial interpretations regarding article 8 acknowledges the performing artist as the author of the artistic adaptation, it is plain that in the sense of the Copyright Law, he can not be considered as the author of the composition.

Though it is true that the provision of article 8 of the Hungarian Copyright Law regarding the performing artist might have been drafted under the influence of the respective provisions of the German and Austrian copyright laws, which consider the activity of the performing artist as completing the performed work, and the artist himself as author of the completion, this fact can not be taken into consideration when interpreting the respective provisions of the Hungarian Copyright Law for the reason that the fiction which considers the result of the performing artist's activity as a work in itself, is steadily losing ground as appears from the draft of the German Copyright Law issued in 1932.

And though the convention of Bern, and subsequently the convention of Rome in article 2, paragraph 2, gives the same right to adaptations as to original compositions, it obviously did not mean the activity of the performing artist also, as otherwise there would not have been submitted to the Rome conference, which led to the conclusion of the convention, a special motion to provide a certain copyright protection for performing artists, and when this motion was overruled, the conference would not have merely expressed the wish that the various governments consider



the possibility of making rules by which performing artists may assert their claims.

Therefore the defendant's standpoint, that the Rome convention in paragraph 2 of article 2 also assured to the performing artist the protection extended to the author in article 11/a according to which the author has the exclusive right to permit the performance of his compositions for the general public through the radio, is erroneous. There is a sharp difference between adaptation—i. e., the activity of an author (composer) who creates a work (composition)—mentioned under article 8 of the copyright law and procedure contained in article 6, paragraph 10, on the one hand and the mention in article 8 of "adaptation connected with artistic activity" to which article 8 of the Hungarian Copyright Law also endeavored to assure a certain protection not closely defined. Such protection was permissible within article 8 to adaptations mentioned in article 6, paragraph 10.

Since the extent of this protection can not be ascertained from the Law itself, it is the task of the Court to draw the limits of this protection by interpreting the Law in accordance with present day ideas.

Article 8 protects an artistic performance intended for mechanical representation and refers in this connection to paragraph 9 of article 6 which makes the author's consent a condition of the transmission of his work to instruments of mechanical representation and their stationary or exchangeable parts (records, cylinders, films, etc.).

Such instruments of mechanical representation are the gramophone, the film, but also the radio.

The Royal Supreme Court does not share in this respect the view of the Royal Court of Justice, according to which broadcasting of the work can not be considered a transmission to a mechanical instrument in the sense of paragraph 9 of article 6, since recording of a work by a mechanical instrument is understood by the term "transmission."

The law does not specify that the transmission must be effected through an instrument which records it; such a constriction of the law would not be justified in view of the necessity of the protection of radio broadcasting.

According to the correct interpretation of the provision of the law in question, transmission of the work to any instrument which reproduces it through mechanical means is understood.

The sound waves of speech, song and music before the microphone cause corresponding changes of electrical current in the microphone; these changes, taken up and strengthened by the sender, are broadcast as radio waves into the space by the antenna and, in the receiver, through its own antenna, these electrical waves cause changes of current which bring about adequate sound waves in the ear-apparatus or loudspeaker. The ear apparatus or loudspeaker, therefore, transmit the speech, song or music through a mechanical process, consequently broadcasting of such performance is nothing but transmission in the sense of paragraph 9 of article 6 to an apparatus capable of mechanical reproduction, i. e., performance. Radio broadcasting is therefore not only a transmission but also a reproduction through mechanical means of the sound.

When the Copyright Law was enacted, the legislator drafting article 6, paragraph 9, had in mind the gramophone records and mechanical apparatus then existing (mentioned in article 13, paragraph one, point 1 of the Bern agreement), and he could not have thought of the radio, the importance of which was not known at that time. There is, however, no reason why article 6, paragraph 9, of the Copyright Law should not now be applied also to the radio, since by giving such an interpretation to the above-quoted paragraph the Hungarian authors also enjoy the right of broadcasting their works through the radio to which the authors of foreign works are entitled in our country under articles 4 and 6 of the Rome convention.

This interpretation of article 6, paragraph 9, therefore on the one hand includes the protection granted to the author by article 13, paragraph 1, point 1 of the Rome convention (in which the convention mentions only the gramophone and apparatuses which record the work), and on the other hand also includes the protection which article 11/a of the Rome convention deemed necessary to mention specially. In applying the provisions of the convention within the competence of article 6, paragraph 9, of the Copyright Law, the cases mentioned in article 13, paragraph 1, point 1, must therefore be separated from those mentioned in article 11/a.

With regard to the above, and according to a correct interpretation of the provision of article 8 which considers the performing artist's work for mechanical production entitled to the same

protection as the original work, the performing artist has the exclusive right to permit that the reproduction of his artistic performance by gramophone, film or similar apparatus, be duplicated and be brought into circulation, and that it be *directly* transmitted to the public—for instance from a concert hall, where the artist is performing in person—through the radio or the telephone news service. The permission to transmit the performance of an artist by gramophone records (films) is considered to include the permission of multiplication, publication and circulation of the transmission, unless the contrary follow from the particular circumstances of the case.

II. A further question is whether gramophone records made with the permission of the performing artist may be used for public performance or for radio broadcasting without his permission.

Articles 49-55 of the Hungarian Copyright Law grant exclusive author's right of the public performance of their work only to the authors of plays, musical plays, and musical compositions, and article 74 to the authors of motion picture plays.

Though article 51 of the Copyright Law refers to article 8, the protection of the public performance of plays, musical plays, and musical compositions revised, adapted, translated according to article 6, paragraph 10, and article 7 was evidently intended, and not the protection of the performance of an artist reproduced by gramophone record or other similar apparatus, which, according to the above, can not be considered as coming under the same category as a "work" (musical composition, etc.).

For the same reason no protection of the performing artist against public performance can be inferred from the provisions contained in articles 54 and 74 of the Copyright Law which stipulates that the provisions of article 8 are to be correspondingly applied also to the public performance of plays, musical plays, and musical compositions, as well as of motion picture productions.

Considering further that according to article 53 of the Copyright Law the author of the text of a musical composition has no right to object to the public performance of a record made with his permission, it is obvious that the Law did not intend to make the use of the records for public performance dependent on a permission of the performing artist whose part is generally less important than that of the author of the text.

The Court of Justice was correct in stating that article 52 of the Copyright Law was intended to provide protection only to the authors of plays, musical plays and musical compositions regarding the public performance through a mechanical apparatus, but not to the performing artists.

Hence, according to our Copyright Law, gramophone records or films rightfully made of the performance of an artist may be used for public performance without his permission.

If the performing artist has no exclusive right of public performance of his work recorded by gramophone or film, it may be justly inferred that the right of broadcasting his performance through the radio can not depend on his permission either.

III. The view as taken by the Supreme Court that the permission of the performing artist is not required for the broadcasting of gramophone records through the radio is based further on the following considerations:

The permission of the composer of a musical composition is certainly required for the public performance or broadcasting over the radio of a gramophone record made of his copyrighted work.

If, besides the permission of the composer the permission of the performing artist would be also required, composers would be unfairly hampered in selling and disposing of their compositions, because while it is usually not difficult to obtain the permission of composers through their various organizations established for this purpose, the difficulties to obtain the permission of the performing artist would, for various reasons, be almost insuperable.

It is also to be considered that the performing artists receive a proper fee for their performances when these are recorded, and there are no reasons deserving consideration why they should be reserved a participation in the utilization—which also includes public performance and broadcasting over the radio—of the records made with their permission. The fee paid to the artist for recording may also be considered a fee for the use of the record for public performance and radio broadcasting.

The draft of the German Copyright Law published in 1932 desires to limit, explicitly referring to foreign legislative acts, the protection granted to the performing artist in a way that his exclusive rights do not extend to the use of mechanical instruments, gramophone records, films, made and put into circulation with his permission for public performance or radio broadcasting.

IV. Therefore, when article 8 of our Law provides that the performance of a performing artist enjoy the same protection as



original compositions, it does not thereby indicate that the protection granted to the performing artist is identical with that enjoyed by the author in every respect and in its full extent; it merely indicates that he too is entitled to protection greater than that afforded by ordinary Civil Law; hence he may demand the application of legal procedure defined in article 18 of the Copyright Law, to anybody who violates his rights.

Notwithstanding that the production of a performing artist cannot be termed a composition of original work and notwithstanding that the performing artist cannot be considered as an author in the sense of the Copyright Law, article 8 of the latter assures to the production of the performing artist a protection not clearly defined but nevertheless equal to that assured to original compositions; hence the performing artists being thus specially favored, the practice of the Court cannot extend the limits of the protection granted to the performing artist beyond justified limits.

Accordingly, article 8 of the Copyright Law shall be correctly interpreted, upon comparison with other provisions of the Law, to the effect that the performing artist has the exclusive right to permit that his artistic performance recorded by gramophone, film or other similar apparatuses be duplicated, published and put into circulation and at the same time he has the exclusive right to permit the broadcasting of his artistic performance directly through the radio, but his permission is not required in order that records or films which have been lawfully made of his artistic performance and put into circulation, may be used for public performance or broadcasting through the radio. It is further self-evident that, in the case of a personal public performance of a performing artist, his permission is required for a *direct* radio broadcasting of his performance; no such permission is needed, however, for the public performance or radio broadcasting of artistic performances rightfully recorded for gramophones (in films) and put into circulation. There is no need to discuss here the cases in which the consent of the performing artist to a transmission of his performance over the radio may be taken for granted, owing to circumstances and common sense.

V. As according to the above the Rome convention does not deal with the right of the performing artist, and does not consider the performing artist as composer (author), article 4 of the convention can therefore not be applied to the performance of the artist. Foreign artists, therefore, cannot refer to article 4 of the convention.

The Hungarian Copyright Law—according to its correct interpretation—does therefore not require the permission of the performing artist for the public performance and radio broadcasting of gramophone records lawfully made and put into circulation and accordingly—lacking an international agreement to the contrary—it is of no consequence whether the performing artist is a Hungarian or foreign subject or whether the records were made in Hungary or in other countries. Accordingly, gramophone records made of the performance of foreign artists may be performed publicly in Hungary or broadcast over the radio without their consent.

In view of the principles outlined above, the defendant cannot rightfully protest, on the grounds that the performing artists assigned to him their rights in regard to their artistic performance, against the broadcasting in Hungary, without his consent, of gramophone records of artistic performances. Consequently, an inscription affixed on records by the defendant to the effect that broadcasting of the record without his permission is prohibited, puts the plaintiff under no legal obligation since there was no contract between plaintiff and defendant. Nobody can acquire extra-contractual rights against third persons by one-sided declarations if there are no rules granting him such right.

VI. As regards the defense of the defendant based upon unfair competition, the view of the Royal Court is correct that, although the plaintiff collects a fee from his subscribers, he does not compete with the defendant, in the latter's capacity of producer and distributor of the records, by the broadcasting of gramophone records through the radio. Since, according to the above, the plaintiff has the right to broadcast through the radio the sound records put into circulation by the defendant, without the permission of the latter, there can be no question of any unfair competition on the part of the plaintiff by such broadcasting.

VII. Taking all this into consideration the Royal Court correctly decreed that the defendant has no right to forbid the broadcasting through the Hungarian Radio of sound records put into circulation by him and to make their broadcasting dependent on his permission; further, that the inscription on the sound records forbidding their broadcasting through the radio has no legal effect against the plaintiff and the latter is not obliged to comply with the restrictive order. As the appeal of defendant was unsuccessful,

therefore, the Royal Supreme Court orders the payment of the expenses incurred by the appeal according to Civil Law Procedure Articles 508 and 543.

Budapest, May 24, 1935.

(Signed) Dr. Stephen Osvald, Chief Judge of the Royal Hungarian Supreme Court, Dr. Desider Alföldy, Master in Chancery, Edward Ulrich, Dr. Ralph Ludwig, Dr. Joseph Brandt.

## SECURITIES ACT REGISTRATIONS

The following companies have filed registration statements with the Securities & Exchange Commission under the Securities Act:

- General Mines Corporation, Spokane, Wash. (2-1654, Form A-1)
- Foresight Foundation, Inc., Philadelphia, Pa. (2-1655, Form C-1)
- R. W. Smith, Inc., Wilmington, Del. (2-1657, Form A-1)
- Penryn Gold Mines Company, Spokane, Wash. (2-1659, Form A-1)
- Arkansas Southern Oil Company, Inc., El Dorado, Ark. (2-1660, Form A-1)
- National Rubber Machinery Co., Akron, Ohio. (2-1661, Form A-2)
- Gold & Silver Circle Mines, Inc., Midas, Nev. (2-1662, Form A-1)
- The Baltimore Dairy Company, Baltimore, Md. (2-1663, Form A-1)
- Committee for Holders of Corpus Christi Co., Corpus Christi, Tex. (2-1665, Form D-1)
- Signode Steel Strapping Company, Chicago, Ill. (2-1666, Form A-2)
- The Brush-Moore Newspapers, Inc., Canton, Ohio. (2-1667, Form A-2)
- Committee for Quincy Station P. O. Bldg., Corporation, St. Louis, Mo. (2-1668, Form D-1)

## RECOMMENDS CHANGE FOR WILL

Broadcasting Station WILL, Urbana, Ill., applied to the Federal Communications Commission for change of frequency, power and hours. The station operates on 890 kilocycles, 250 watts and 1,000 watt LS, sharing time with KUSD and KFNF. The station asked for 580 kilocycles, 1,000 watts LS and daytime hours. This was granted by the Commission but subsequently Station WIBW filed a protest and hearing was called before an Examiner.

Examiner P. W. Seward in Report I-111 recommends that the original grant of the Commission be affirmed. The Examiner found that granting the application of WILL would not curtail the advertising of WIBW as claimed by that station. He states that granting of the application would be in the public interest and so recommends.

## DENIAL RECOMMENDED OF WSYR-WSYU APPLICATION

Station WSYR-WSYU, Syracuse, N. Y., applied to the Federal Communications Commission for authorization to move the transmitter locally, to install new equipment and to increase its operating power from 250 to 1,000 watts.

Examiner Ralph L. Walker in Report I-112 recommends that the application be denied. He found that the granting of the application "would result in further increasing the over quota condition of a state now having more than its equitable share of nighttime broadcast facilities."

## FOOD AND DRUGS ADMINISTRATION DENOUNCES DINITROPHENOL

The following release has been issued by the Department of Agriculture concerning dinitrophenol:

Blindness from the use of dinitrophenol for reducing weight has not stopped the use of the drug in spite of repeated warning, says W. G. Campbell, Chief of the Federal Food and Drug Administration.

The eye cataracts observed in dinitrophenol poisoning develop with a rapidity and malignancy hitherto unknown, and result in total blindness within a comparatively short time. This drug may produce acute poisoning, the symptoms of which are nausea, stomach and intestinal distress, sweating, flushed skin, high fever, rapid breathing, and muscular rigor followed by death. The drug also damages the liver, kidneys, heart and sensory nerves. It produces



agranulocytosis, a blood disorder also noted in cases of poisoning with amidopyrine, a common ingredient of medicines for the relief of pain.

The Food and Drugs Act, according to Mr. Campbell, is practically inoperative against this public health hazard. He says, "The only application of the law to these products is through some misstatement of fact or some false and fraudulent curative claim in the labeling. In any event, the law can be invoked only when the product has been transported across a state line."

"There is little doubt," continues Mr. Campbell, "that the cases of progressive blindness recently reported in California are the result of medication with dinitrophenol. It is to be regretted that the present Federal law is silent with respect to the control of dangerous drugs."

Of all the products containing dinitrophenol now on the market, only one has been confiscated under the Food and Drugs Act, the Administration reports. That was "Slim," against which legal action was brought because of a label claim that it was "safe to use," whereas medical opinion is unanimous to the contrary. This proceeding was approved by Mr. Campbell, who states that in the absence of affirmative control over dangerous drugs, and to achieve one of the essential objects of the Food and Drugs Act—the protection of the public health—it is the purpose of the Administration to take advantage of any available legal technicality in proceeding against all products containing dinitrophenol. This, he points out, is contrary to the usual practice of the Administration in enforcing the Food and Drugs Act.

Dinitrophenol is sold under many fanciful names sometimes accompanied by a statement of the presence of the drug itself. Some of the names under which it has been or is now being sold are reported by the Food and Drug Administration as follows: Nitromet, Dinitrolac, Nitro-Phen, Dinitriso, Formula 281, Dinitrose, Nox-Ben-Ol, Re-Du, Aldinol, Dinitrenal, Prescription No. 17, Slim, Dinitrole, Tabolin and Redusols.

"It is interesting to note," said Mr. Campbell, "that all the so-called reducing preparations on the market fall into three categories: first, laxatives that deny the body the benefit of its food intake, as the salts, crystals and herb teas; second, obvious frauds that depend for effect upon the stringent diets prescribed as part of the 'treatment,' as 'Syl-Vette' and 'Stardom's Hollywood Diet'; and third, the unquestionably effective but dangerous articles containing thyroid or dinitrophenol, both of which act by speeding up the utilization of food. All of them are unwarranted impositions upon the public, which cannot evaluate claims made for the preparations, and cannot readily appreciate the harm that may result from careless use of the products."

## FEDERAL COMMUNICATIONS COMMISSION ACTION

### HEARING CALENDAR

Monday, October 7, 1935

- NEW—Joplin Broadcasting Co., Pittsburg, Kans.—C. P., 1200 kc., 100 watts, daytime.
- NEW—Pittsburgh Publishing Co., Pittsburg, Kans.—C. P., 1500 kc., 100 watts, unlimited time.
- NEW—William S. Thellman, New Castle, Pa.—C. P., 1420 kc., 100 watts, daytime.
- NEW—Chanute Broadcasting Co., R. B. Smith, R. E. Highley, C. M. Brobst, Partners, Chanute, Kans.—C. P., 1500 kc., 100 watts, daytime.
- NEW—Harold F. Foraker and Ray D. Luzadder, d/b as The Wichita Broadcasting Co., Wichita, Kans.—C. P., 1500 kc., 100 watts, unlimited.

Tuesday, October 8, 1935

- NEW—Luther E. Gibson, d/b as Times-Herald Publishing Co., Vallejo, Calif.—C. P., 850 kc., 250 watts, daytime.

Wednesday, October 9, 1935

- NEW—Dudley J. Connolly, Elliott Knight, Roy W. Knight, and Fred Sullivan, d/b as Dudley J. Connolly & Co., Chattanooga, Tenn.—C. P., 1200 kc., 100 watts, daytime.
- WBHS—Virgil V. Evans, Huntsville, Ala.—C. P., 1200 kc., 100 watts, unlimited time. Present assignment: 1200 kc., 100 watts, 6/7 time; requests authority to move to Chattanooga, Tenn.

WBHS—Virgil V. Evans, Huntsville, Ala.—Renewal of license, 1200 kc., 100 watts, shares with WFBC-WBHS 6/7 time.

Thursday, October 10, 1935

### ORAL ARGUMENT BEFORE THE BROADCAST DIVISION

#### Examiner's Report No. I-78:

NEW—2826—B4-P-329—Head of the Lakes Broadcasting Co., Virginia, Minn.—C. P., 1370 kc., 100 watts, unlimited time.

#### Examiner's Report No. I-46:

NEW—2766—B4-P-273—The Journal Company (The Milwaukee Journal), Milwaukee, Wis.—C. P., 1010 kc., 1 KW, unlimited time.

### FURTHER HEARING BEFORE AN EXAMINER

NEW—KWIL Broadcasting Co., Williston, N. Dak.—C. P., 1500 kc., 100 watts, specified hours.

Friday, October 11, 1935

NEW—Springfield Newspapers, Inc., Springfield, Mo.—C. P., 710 kc., 1 KW, daytime.

NEW—Ralph Perez Perry, Santurce, Puerto Rico.—C. P., 1340 kc., 250 watts, unlimited time.

### APPLICATIONS GRANTED

KMLB—Liner's Broadcasting Station, Inc., Monroe, La.—Granted C. P. to make changes in equipment and change method of modulation from low to high.

WOOD—Kunsky-Trendle Broadcasting Corp., Grand Rapids, Mich.—Granted authority to install automatic frequency control.

WXYZ—Kunsky-Trendle Broadcasting Corp., Detroit, Mich.—Granted authority to install automatic frequency control.

WFBC—Greenville News-Piedmont Co., Greenville, S. C.—Granted modification of C. P. approving transmitter site at Piedmont Highway, U. S. 29, Greenville, S. C., extend commencement date to 30 days after grant and completion date to 180 days thereafter.

WJAS—Pittsburgh Radio Supply House, Pittsburgh, Pa.—Granted modification of C. P. to extend completion date to January 17, 1936.

WHN—Marcus Loew Booking Agency, New York City.—Granted renewal of license for the regular period; 1010 kc., 1 KW, unlimited.

WROL—Stuart Broadcasting Corp., Knoxville, Tenn.—Granted license to cover C. P. authorizing changes in equipment and increase in day power to 250 watts.

WJAY—The Cleveland Radio Broadcasting Corp., Cleveland, Ohio.—Granted C. P. to install new equipment, move studio location to 1311 Terminal Tower, Cleveland, and transmitter locally to site to be determined with Commission's approval.

KINY—Edwin A. Kraft, d/b as Northwest Radio Advertising Co., Juneau, Alaska.—Granted modification of license to change name from Edwin A. Kraft, d/b as Northwest Radio Advertising Co. to Edwin A. Kraft.

KSO—Cedar Rapids Broadcast Co., Des Moines, Iowa.—Granted C. P. approving transmitter site to north of Des Moines, Iowa; extend commencement date to 60 days after grant and completion date to 180 days thereafter.

KQV—KQV Broadcasting Co., Pittsburgh, Pa.—Granted modification of C. P. to extend completion date to January 19, 1936.

WTAQ—Gillette Rubber Co., Green Bay, Wis.—Granted consent to voluntary assignment of C. P. to WHBY, Inc.

WNYC—City of New York, Dept. of Plant and Structures, New York City.—Granted C. P. to move transmitter site locally foot of Greenpoint Ave. and East River, Brooklyn, and make changes in antenna.

NEW—Brown Radio Service & Lab. (Gordon P. Brown, Owner), Rochester, N. Y.—C. P. amended, removed from hearing docket and granted, for new station to operate on 1210 kc., 100 watts, daytime.

NEW—Don Lee Broadcasting System, Portable-Mobile (Los Angeles).—Granted C. P. (temporary broadcast pickup); frequencies 1645, 2090, 2190, 2830 kc., 100 watts.



KNEF—Radio Service Corp. of Utah, Portable-Mobile (Salt Lake City, Utah).—Granted license to cover C. P. (temporary broadcast pickup); frequencies 1646, 2090, 2830 kc., 200 watts.

WOEG—General Electric Co., Portable-Mobile (Schenectady, N. Y.).—Granted license to cover C. P. for temporary broadcast pickup service; frequencies 1606, 2020, 2102 and 2760 kc., 50 watts.

### SET FOR HEARING

NEW—Eagle Rock Broadcasting Co. (Charles A. Butler, E. Kaufman), Eagle Rock, Calif.—C. P., already in hearing docket, amended to read: 600 kc., 250 watts, daytime.

NEW—James R. Doss, Jr., Tuscaloosa, Ala.—C. P., already in hearing docket, amended to read: 1200 kc., 100 watts, daytime.

KLO—Interstate Broadcasting Corp., Ogden, Utah.—C. P., already in hearing docket, amended to read: Move transmitter to site to be determined by the Commission, make changes in equipment, increase power from 500 watts to 1 KW, and make changes in antenna.

WBAA—Purdue University, W. Lafayette, Ind.—Modification of license already in hearing docket amended to read: change specified hours of operation to daily except Sunday: 10 a. m. to 2 p. m.; Saturday, 2 to 5 p. m., except November and December: 2 to 4:30 p. m.; January: 2 to 4:45 p. m.

WBHS—Virgil V. Evans, Huntsville, Ala.—C. P. already in hearing docket, amended to read: change hours of operation from 6/7 time to daytime only; transmitter site to be determined subject to Commission's approval.

WBEN—WBEN, Inc., Buffalo, N. Y.—Application for C. P. to make changes in equipment and increase operating power from 1 to 5 KW night and day. To be heard by Division en banc.

### MISCELLANEOUS

WCOP—Joseph M. Kirby, Boston, Mass.—Denied request for special temporary authority to operate from local sunset to 7 p. m., EST, for period beginning September 29, and ending in no event later than October 28, pending action on formal application to change frequency and increase hours of operation from daytime and from LS to 8 p. m., EST.

KOOS—H. H. Hanseth, Inc., Marshfield, Ore.—Denied request for special temporary authority to operate from local sunset to 8 p. m., PST, for period beginning October 9, ending not later than November 7, in order to broadcast community and civic programs.

NEW—W. A. Patterson, Chattanooga, Tenn.—Granted authority to take depositions in re application for new station to operate on 1420 kc., 100 watts.

WJAR—The Outlet Co., Providence, R. I.—Denied petition to reconsider action in designating application for hearing, to increase its power to 1 KW, employing directional antenna.

KFSG—Echo Park Evangelistic Assn., Los Angeles, Cal.—Application for renewal of license heretofore designated for hearing, was reconsidered and granted, since applicant for facilities of this station withdrew his petition.

### ACTION ON EXAMINER'S REPORTS

KPJM—Ex. Rep. No. 1-70: Scott & Sturm, Prescott, Ariz.—Denied as in cases of default, application for renewal of license to operate on 1500 kc., 100 watts, unlimited time, sustaining Examiner P. W. Seward. Order effective November 26, 1935.

KTFI—Ex. Rep. No. 1-75: Radio Broadcasting Corp., Twin Falls, Idaho.—Remanded to docket for further hearing.

NEW—Ex. Rep. No. 1-89: Hauser Radio Co., Ventura, Calif.—Dismissed with prejudice, application for C. P. to operate on 1310 kc., 100 watts, unlimited time, sustaining Examiner P. W. Seward.

WGES—Ex. Rep. No. 1-98: Oak Leaves Broadcasting Station, Inc., Chicago, Ill.—Granted application for renewal of license to operate on 1360 kc., 500 watts night, 1 KW LS Sundays, 3/7 time, sustaining Examiner R. H. Hyde. Order effective November 12, 1935.

WSBC—Ex. Rep. No. 1-99: WSBC, Inc., Chicago, Ill.—Granted renewal of license to operate on 1210 kc., 100 watts, S.H., sustaining Examiner R. H. Hyde. Order effective November 12, 1935.

NEW—Ex. Rep. No. 1-100: Oklahoma Press Pub. Co., Muskogee, Okla.—Granted oral argument to be held December 4, 1935. Also granted request for oral argument to the Pittsburgh Publishing Co., which was permitted to appear at hearing and cross examine in re interference in this case.

### ACTION IN SO-CALLED BROOKLYN CASE AND OTHER INVOLVED APPLICATIONS

Upon consideration of the applications, the record in this case, Examiner's Reports Nos. 539 and 1-40, the exceptions filed thereto, and the oral argument had, the Broadcast Division this day found that public interest, convenience and necessity would be served by granting the following applications in the manner indicated:

WBBC—Ex. Rep. Nos. 1-40 and 539: Brooklyn Broadcasting Corp., Brooklyn, N. Y.—Modification of license requesting facilities of stations WARD and WVFW (formerly WFOX). Application granted in part, so as to authorize operation of station WBBC on the 1400 kc. frequency, sharing time equally with Brooklyn Daily Eagle Broadcasting Co., Inc.

WBBC—Brooklyn Broadcasting Corp., Brooklyn, N. Y.—Renewal of license. Application granted.

WBBC—Brooklyn Broadcasting Corp., Brooklyn, N. Y.—Renewal of auxiliary transmitter license. Application granted.

NEW—Brooklyn Daily Eagle Broadcasting Co., Inc., Brooklyn, N. Y.—C. P. for new station to operate on 1400 kc. with 500 watts, unlimited time, requesting facilities of stations WARD, WBBC, WVFW and WLTH. Application granted in part, so as to authorize operation of a new station on 1400 kc., with power of 500 watts, sharing equally with WBBC.

WHAZ—Rensselaer Polytechnic Inst., Troy, N. Y.—Renewal of license. Application granted.

WFAB—Fifth Ave. Broadcasting Corp., New York City—Renewal of license. Application granted.

WBBR—Peoples Pulpit Assn., Brooklyn, N. Y.—Renewal of license. Application granted.

Upon consideration of the applications, the record in this case, Examiner's Reports Nos. 539 and 1-40, the exceptions filed thereto, and the oral argument had, the Broadcast Division this day found that public interest, convenience and necessity would not be served by granting the applications in the following cases:

WARD—Ex. Rep. No. 1-40, 539: United States Broadcasting Corp., Brooklyn, N. Y.—C. P. to make changes in equipment; 1400 kc., 500 watts, dividing time with WFOX, WLTH and WBBC. Application denied.

WARD—United States Broadcasting Corp., Brooklyn, N. Y.—Modification of license to change hours to unlimited time, requesting facilities of WFOX, WLTH and WBBC. Application denied.

WARD—United States Broadcasting Corp., Brooklyn, N. Y.—Renewal of license, 1400 kc., 500 watts, sharing time with WFOX, WLTH and WBBC. Application denied.

WARD—United States Broadcasting Corp., Brooklyn, N. Y.—Voluntary assignment of license from U. S. Broadcasting Corp. to Broadcasters of Brooklyn, Inc. Application denied.

WLTH—Voice of Brooklyn, Inc., Brooklyn, N. Y.—Renewal of license, 1400 kc., 500 watts, sharing time with WARD, WFOX and WBBC. Application denied.

WLTH—Voice of Brooklyn, Inc., Brooklyn, N. Y.—Voluntary assignment of license from Voice of Brooklyn, Inc., to Broadcasters of Brooklyn, Inc. Application denied.

WVFW—Paramount Broadcasting Corp., Brooklyn, N. Y.—Modification of license to change hours of operation to unlimited time, requesting facilities of WARD, WLTH and WBBC. Application denied.

WVFW—Paramount Broadcasting Corp., Brooklyn, N. Y.—Renewal of license. Application denied.

WVFW—Paramount Broadcasting Corp., Brooklyn, N. Y.—Voluntary assignment of license from Paramount Broadcasting Corp. to Broadcasters of Brooklyn, Inc. Application denied.

NEW—Ex. Rep. No. 1-40: Arde Bulova and Norman K. Winston, Brooklyn, N. Y.—C. P. for new station to operate on 1400 kc., 500 watts, unlimited time, requesting facilities of WARD, WBBC, WLTH and WVFW. Application denied.

WEVD—Debs Memorial Radio Fund, Inc., New York City.—Modification of license to change hours of operation from sharing with WBBR, WFAB and WHAZ to unlimited time, 1300 kc., 1 KW power. Application denied.

The order as entered herein shall be effective at 3 A. M., Eastern Standard Time, November 15, 1935.



The Commission will issue and publish at a subsequent date an opinion setting forth a statement of facts appearing of record and the grounds for the decision herein reached.

## ACTION ON ADDITIONAL EXAMINERS' REPORTS

- WMBC—Ex. Rep. No. 1-92: Michigan Broadcasting Co., Detroit, Mich.—Granted oral argument for November 1, 1935, on application for C. P. to change frequency from **1420 kc.** to **1300 kc.**, power from 100 watts, 250 watts LS, to 500 watts.
- WHBL—Press Publishing Co., Sheboygan, Wis.—Application for modification of license to change frequency from **1410 kc.**, to **1300 kc.**, power from 500 watts to 250 watts, and time from sharing with WROK to unlimited.
- NEW—Ex. Rep. No. 1-93: Brackett, Breed & Laport, d/b as Conn. Valley Broadcasting Co., Springfield, Mass.—Granted oral argument for November 21, 1935, on application for C. P. to operate on **1140 kc.**, 500 watts, limited time.
- NEW—Ex. Rep. No. 1-96: Charles C. Theis, Wichita, Kans.—Granted oral argument, date to be determined, on application for C. P. for new station to operate on **1210 kc.**, 100 watts, unlimited time.
- NEW—Ex. Rep. No. 1-97: Hartford Broadcasting Co., Inc., Hartford, Conn.; and NEW—Worcester Broadcasting Co., Inc., Worcester, Mass.; and NEW—Hartford Times, Inc., Hartford, Conn.—Granted oral argument to be held on December 4, 1935, application for new station, frequency **1200 kc.**, 100 watts, unlimited.

## APPLICATIONS RECEIVED

### First Zone

- WPRO—Cherry & Webb Broadcasting Company, Providence, 630 R. I.—Construction permit to install new equipment and increase power from 250 watts to 500 watts, 1 KW local sunset.
- WHDL—Olean Broadcasting Co., Inc., Olean, N. Y.—Construction permit to install new equipment, change frequency from **1420 kc.** to **1260 kc.**, power from 100 watts to 250 watts, and move transmitter from Exchange National Bank Bldg., corner Union and Laurens Sts., Olean, New York, to town of Allegany, New York.
- WHDL—Olean Broadcasting Co., Inc., Olean, N. Y.—Authority to 1420 transfer control of corporation from Olean Broadcasting Co., Inc., to the Olean Times-Herald Corp., 123 shares of common stock.

### Second Zone

- NEW—The Times Dispatch Publishing Co., Inc., Richmond, Va.—1500 Construction permit for a new broadcast station to be operated on **1500 kc.**, 100 watts, unlimited time. Amended: Antenna to be determined.

### Third Zone

- WMAZ—Southeastern Broadcasting Co., Inc., Macon, Ga.—Construction permit to make equipment changes.
- WMFO—James R. Doss, Jr., Decatur, Ala.—Modification of license 1370 to change hours of operation from daytime to unlimited time, using 100 watts power.
- KCRC—Enid Radiophone Company, Enid, Okla.—License to cover 1370 construction permit (B3-P-379) for equipment changes.
- KALB—Alexandria Broadcasting Co., Inc., Alexandria, La.—1420 License to cover construction permit (B3-P-179) for new station on **1420 kc.**, 100 watts, daytime.

- KNET—Palestine Broadcasting Association, Bonner Frizzell, John 1420 C. Welch, Wm. M. Keller, Palestine, Tex.—Modification of construction permit (B3-P-216) for approval of antenna, move studio from 315 W. Spring St. to O'Neill Hotel, Palestine, Tex., and transmitter from one mile east of city limits to O'Neill Hotel, Palestine, Tex.
- NEW—C. W. Snider, Wichita Falls, Tex.—Construction permit for 1500 a new broadcast station to operate on **1500 kc.**, 100 watts, unlimited time. Amended to change hours of operation from unlimited to daytime only.
- WKY—WKY Radiophone Company, Oklahoma City, Okla.—Construction permit for a new general experimental station to operate on **31600, 35600, 38600, 41000 kc.**, 100 watts.
- KILU—Arkansas Radio and Equipment Company, Little Rock, Ark.—Renewal of license for broadcast pickup station.

### Fourth Zone

- NEW—Bismarck Tribune Company, Bismarck, N. Dak.—Construction permit for a new broadcast station to operate on 550 **550 kc.**, power 1 KW, 5 KW local sunset, unlimited time, requesting all facilities of station KFYZ, with studio to be located at Bismarck, N. Dak., and transmitter, to be determined, at Apple Creek Township, North Dakota.
- NEW—A. Stanart Graham, E. V. Baxter, Norman Baxter, d/b as 790 Pittsburg Broadcasting Co., Pittsburg, Kans.—Construction permit for a new broadcast station to be operated on **1500 kc.**, 100 watts, unlimited time. Amended to change frequency from **1500 kc.** to **790 kc.**, power from 100 watts to 1 KW, hours of operation from unlimited to daytime; also make changes in equipment.
- NEW—Mason City Globe Gazette Co., Mason City, Iowa.—Construction permit for a new broadcast station to be operated on **1210 kc.**, power 100 watts, unlimited time.
- WTMV—Mississippi Valley Broadcasting Co., Inc., East St. Louis, 1500 Ill.—Construction permit to install new equipment and increase power from 100 watts to 100 watts, 250 watts local sunset.
- WNEI—Indianapolis Power and Light Company (Portable).—Modification of license to change frequencies to **1646, 2190, 2830, 2090 kc.**, of broadcast pickup station.

### Fifth Zone

- KPOF—Pillar of Fire (a corp.), Denver, Colo.—License to cover 880 construction permit (B5-P-554) to build a new transmitter and make equipment changes.
- NEW—Christina M. Jacobson, d/b as The Valley Electric Co., San 1090 Luis Obispo, Calif.—Construction permit for a new station to operate on **1090 kc.**, 250 watts, daytime. Amended as to antenna.
- NEW—John A. Stump, Fairbanks, Alaska.—Construction permit 1210 for new station to operate on **1210 kc.**, 50 watts, specified hours. Amended to change power from 50 watts to 100 watts, 250 watts local sunset, unlimited time; make antenna and equipment changes; transmitter site to be determined, Fairbanks, Alaska, and studio to be located at First and Clay Sts., Fairbanks, Alaska.
- NEW—F. W. Atkinson, Watsonville, Calif.—Construction permit 1310 for a new station to operate on **1310 kc.**, 250 watts, daytime.
- NEW—Fresno Broadcasting Co., Fresno, Calif.—Construction permit 1410 for a new broadcast station to be operated on **1410 kc.**, power 500 watts, 1 KW local sunset, unlimited time.

## CORRECTION

NAB REPORTS for September 19, 1935, listed W6XAR erroneously as owned by Westinghouse whereas the license has been issued to Julius Brunton & Sons Company, San Francisco.