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COPYRIGHT SUBCOMMITTEE APPOINTED

Representative Sirovich, chairman of the House Committee on Patents on Wednesday announced the following subcommittee to consider copyright legislation: Representative Lanham of Texas, chairman; Deen, of Georgia; O'Malley, of Wisconsin; Kramer, of California; Daly, of Pennsylvania; Barry, of New York; Perkins, of New Jersey; McLeod, of Michigan; Hartley, of New Jersey; and Risk, of Rhode Island. Mr. Lanham called a meeting of the subcommittee to be held on Thursday.

SECURITIES ACT REGISTRATIONS

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

- McGraw-Hill Publishing Company, New York City. (2-2077, Form A-2)
- Alabama-California Gold Mines Co., Tacoma, Wash. (2-2078, Form A-1)
- Potrero Sugar Company, New York City. (2-2081, Form A-1)
- Ashland Home Telephone Co., Ashland, Ky. (2-2082, Form A-1)
- Cascade Mining Corporation, Ypsilanti, Mich. (2-2085, Form A-1)
- Coastal Minerals Development, Inc., New Orleans, La. (2-2086, Form A-1)
- Skookum Gold Mines, Ltd., Toronto, Canada. (2-2087, Form A-1)
- General Equities, Inc., Minneapolis, Minn. (2-2088, Form A-1)
- Insurance Investors Company, Seattle, Wash. (2-2089, Form A-1)
- Bankers Incomes Shares, Ltd., St. Johns, Newfoundland. (2-2090, Form A-1)
- General Illinois Light Company, Peoria, Ill. (2-2093, Form A-2)
- W. Wallace Alexander, Inc., Philadelphia, Pa. (2-2095, Form A-1)

PRALL ADDRESSES WOMEN'S RADIO COMMITTEE

Anning S. Prall, chairman of the Federal Communications Commission, on Wednesday addressed the Women's National Radio Committee at the Astor Hotel, New York City, in connection with the presentation of awards. Mr. Prall said:

"It is a privilege and a pleasure I assure you to compliment the Women's National Radio Committee for its devotion to a cause in which both the listening public and the broadcasting industry are vitally concerned.

"It is quite unnecessary to add that in its determination to improve the standards of radio programs the Women's Committee will always have the unqualified support of the Federal Communications Commission, of which I have the honor of serving as its Chairman.

"I had intended to devote full fifteen minutes this afternoon to the subject of the Freedom of Speech because frankness compels the admission that the political and economic crisis which has become world-wide in its effects has seriously undermined confidence in some of our cherished beliefs. I cannot do so because my time has been cut from fifteen minutes to eight. However, the objective of the Women's Committee and our Commission with respect to clearing the air of undesirable programs is closely related and the question

of free speech is so involved by legal restrictions that the elimination of obnoxious programs may depend entirely on the voluntary cooperation of the broadcasters. The Fourteenth Amendment to the Constitution guarantees the freedom of speech and the provisions of the Communications Act regarding censorship are very clear and definite. What is the justification for the feeling of political insecurity that fills the hearts of men? Who could have predicted that in the decades following a war intended to make the world safe for democracy the specter of dictatorships would become a reality? Who could have foretold that instead of the democratic form of government finding wider acceptance among the peoples of Europe we would see Lenin installed in Moscow, Hitler in Berlin, and Mussolini in Rome? Have the nations for all time rejected the ideal of democracy and with it all, the absolute repudiation of free speech? Apparently the peoples of other lands are willing to sacrifice much for economic and political security. For the moment at least fundamental liberties have been foresworn in an attempt to concentrate power in one or a few rather than in the many in order to insure the equivalent values of what our forefathers called 'life, liberty and the pursuit of happiness.' Freedom of speech, the laissez-faire policy in business and social life, the right of assembly, liberty of the press and radio, have been willingly sacrificed under the present European dictatorships.

"Fortunately, the English-speaking peoples, particularly in England and the United States, despite the perils of war and the economic disaster that followed, have not been willing to sacrifice such fundamental liberties, the attainment of which required centuries of effort and sacrifice.

"The battle for a free press and free speech was not won in a day or even in a century. The Supreme Court of the United States in the decision involving the 'Louisiana Newspaper Tax' case pointed out that it was a 'tax on knowledge' and a substitute for the older forms of direct censorship. It was a device in the form of a tax to limit the circulation of information to which the public is entitled.

"Can the lesser degree of freedom attach to the most recent medium of communication—the radio—an instrumentality as potent, or more so, for good or evil as the printing press itself?

"In the twinkling of an eye, this marvelous invention carries news items as well as recreational features, such as the drama and music, to remote areas of our land not served by the daily press, and its programs are heard by millions who have neither the desire, the time nor the facilities to read the daily paper.

"A message of plans proposed or work done spoken at the fire-side of the White House is heard at millions of hearthstones throughout the land. Issues of all kinds relating to the functions of government, such as the Constitution, finance, tariff, neutrality and various types of relief are presented to our countrymen by speakers of every type of status, race, political and religious belief in messages ranging from passionate praise to withering censure.

"It is inconceivable that, as in the dictator-ridden countries of Europe, or even in England where the radio is under state control, there could be imposed by the Communications Commission regulations that would mean a denial of the same degree of free speech over the radio as is enjoyed by the press of our country.

"But while that liberty should be granted and maintained, a degree of reasonable restriction should be preserved, namely, the protection of the government and its processes, including judicial action from violent disruption, and unlawfully created disrespect; the protection of individuals in good name and business reputation; and the protection of the morals of the public and of its right not to be defrauded or deceived.

"One might discuss at some length certain questions of discretion and propriety over and beyond the legal ones already implied. When this marvelous mechanism is used in violation of good taste as involved in either what is broadcast or the method employed, the problem becomes not one of further legal restriction but the de-

velopment of intelligence and taste both in the sponsors of a given program and the listening audience to which the appeal is made. It is a truism that you can legislate neither morals nor esthetic appreciation.

"In the conduct of the press and the radio our fundamental obligation is to respect freedom of speech. The search for truth shall keep us free.

"The freedom of the press within the legal limitations to which I have referred, which conditions bespeak the wisdom of experience, is a precious inheritance. That freedom must be extended to the radio. To the defense of that freedom of the press and the radio, we pledge as did our forefathers, our lives and our sacred honor."

FEDERAL TRADE COMMISSION ACTION

Complaints

The Federal Trade Commission has alleged unfair competition in complaints issued against the following firms. The respondents will be given an opportunity for hearing to show cause why cease and desist orders should not be issued against them.

No. 2763. Kroekel-Oetinger, Inc., Philadelphia candy manufacturer, has been charged with unfair competition in selling to the trade candy so packed and assembled as to involve lottery when distributed to the consumer.

A candy assortment sold by this manufacturer to wholesalers, jobbers and retailers is said to have been made up of candies of uniform size together with certain larger pieces to be given as prizes to certain purchasers of the uniform sizes.

The complaint alleges that sale of candy to the purchasing public in this manner is a practice deemed contrary to public policy by the common law and criminal statutes. Specifically, violation of Section 5 of the Federal Trade Commission Act is charged.

No. 2765. Charging unfair competition and restraint of trade in the jobbing of automobile parts and accessories, a complaint has been issued against the **Motor and Equipment Wholesale Association**, with headquarters in **Chicago**, whose membership is said to represent a substantial volume of this class of jobbing business in the United States, occupying a dominant position in the parts and accessories trade.

Those named as respondents include the association, its officers and directors; the Automotive Trades Association of Greater Kansas City, Mo., a member; Mississippi Valley Automotive Jobbers Association (Iowa); Southwestern Automotive Wholesalers Association, Southwestern Jobbers Association, and 42 member companies in various cities.

The complaint charges the respondents with entering into agreements, combinations and conspiracies among themselves for elimination of price competition among jobbers, preventing the creation of new competition, and controlling parts and accessories prices. This program, according to the complaint, was accomplished through agreement and concerted action in (1) use of uniform and substantially identical resale prices fixed by manufacturers; (2) threats of boycott and actual boycott against manufacturers not complying with the program; (3) monopoly in the distribution of replacement parts, accessories and shop equipment through "legitimate jobbers"; (4) strict enforcement of rules for jobbers recognized as "legitimate"; and (5) establishment of "jobbing points," "ethical merchandising," or "clean merchandising" policies for promotion of the respondents' program, and holding local and regional group meetings at national shows and elsewhere, of which only meager and incomplete records have been kept so as to avoid providing evidence of agreements and to minimize detection.

No. 2766. Allegedly representing himself as a chemist in order to promote the sale of formulas and specifications for the manufacture of a wide variety of products, L. W. Gibson, 4700 North Racine Ave., Chicago, is named respondent in a complaint charging unfair methods of competition.

Gibson sells formulas for cosmetics, tooth paste, hair tonics, polishing compounds, soap, food products, adhesives, rat exterminators and other commodities, and, the complaint alleges, certain assertions he makes in advertisements, catalogues and other printed matter regarding his business are in violation of Section 5 of the Federal Trade Commission Act.

Among the respondent's alleged misrepresentations are assertions that he was educated in the science of chemistry, has had long experience in the commercial application of such science, and has spent large sums of money and devoted years to perfecting prac-

tical working formulas and processes for the manufacture of various products. The complaint also charges the respondent represents that in his establishment are laboratories equipped with modern apparatus, and that associated with him are graduates of leading American colleges whom he employs because of their sound knowledge of chemistry, their experience in the formation of money-making formulas, their success as manufacturers, and their ability to teach other manufacturers every phase of profitable production.

No. 2768. False representations in the sale of men's clothing are alleged in a complaint against **Jonas Schainuek & Son, Inc.**, with headquarters at 757 Broadway, **New York City**, from where it operates a chain of retail stores in **New York**, **Washington, D. C.**, and **Pittston**, **Wilkes-Barre**, **Scranton**, **Allentown**, **Harrisburg**, and **Hazleton**, **Pennsylvania**, and in other cities.

The complaint charges that the respondent company makes assertions in radio broadcasts that its "Factory-to-You Policy Saves You Money," and that labels attached to garments sold by the respondent bear such statements as "Maker to Wearer."

According to the complaint, the respondent company does not own or operate a factory where its products are manufactured, and the representations that it does tend to cause purchasers of such products to believe they obtain closer prices and superior quality in dealing direct with a manufacturer rather than with a retailer or middleman.

In newspapers, over radio and in other ways, the respondent corporation is said to advertise that it sells "Two Garments for One Low Price," when, according to the complaint, it does not sell two suits, two overcoats, or one suit and one overcoat for the price of one garment, nor does the purchaser save the cost of an additional garment through the medium of the respondent's sales plan, but pays the usual and ordinary retail price of two garments, or approximately so.

The respondent's practices, the complaint avers, violate Section 5 of the Federal Trade Commission Act, and not only deceive purchasers but tend to divert trade to the respondent from competitors who do not misrepresent their products.

No. 2769. Combination and conspiracy to suppress competition and create a monopoly in the ladies' garment and dress goods trade in the United States is alleged in a complaint issued against five associations whose membership represents a large portion of the national volume of business in these commodities. The complaint charges violation of the Federal Trade Commission Act.

Principal respondents named are the **Fashion Originators Guild of America, Inc.**, with headquarters at 512 7th Ave., **New York City**; **Michigan Avenue Guild of Chicago**; **Minneapolis Fashion Guild**; **Ladies' Ready-to-Wear Guild of Baltimore**; **National Federation of Textiles, Inc.**, 10 East 40th St., **New York City**; and the respective officers, directors and members of each organization.

Included as respondents are members of the three main divisions of the Fashion Originators Guild of America, Inc., namely the ladies' garment manufacturers, the textile merchants, and the affiliated members, which group consists of certain retail dealers in ladies' garments and accessories in various cities.

Principal charges of the complaint have to do with alleged efforts of the Fashion Originators Guild of America, Inc. (F. O. G. A.), and its associated respondents, to maintain its style protective program. According to the complaint, the Guild was organized ostensibly to establish fair trade practices among its members, and to promote a program to protect originators of fashions and styles against copying and piracy. This program is said to extend to textile merchants, retail dealers and non-member garment manufacturers who cooperate in the style protective program.

No. 2770. Disparagement of competitors' products on the part of the Coolerator Company, Duluth, Minn., is alleged as an unfair method of competition in a complaint issued against that company.

The respondent company, a distributor of non-mechanical refrigerators using natural or artificial ice, is alleged to have made representations having a tendency to deceive buyers into the false belief that electric refrigerators are undesirable, ineffective and harmful.

According to the complaint, the respondent distributed a booklet called "Why Ice Is Best for Refrigeration," in which it was suggested that various gases used in electric refrigerators escape from the coils, permeate the food chamber and have a deleterious effect on foods; that foods kept in electric refrigerators dehydrate to such an extent that the nutritive properties are impaired, and other similar assertions.

Stipulations

The Commission has issued the following cease and desist orders and stipulations:

No. 1642. Barnum Laboratories, Inc., 2616 Independence Ave., Kansas City, Mo., engaged in the compounding and selling of cosmetics and toilet preparations, under the trade name of Barnum's Special Formula Laboratory, Inc., agrees to cease representing in advertising that its products are made by or under the personal supervision of Dr. Barnum, or that he renders any service to customers, when such is not the fact; that its products are a food for and penetrate the skin, possessing properties that will prevent or cure wrinkles and double chins, or that any of such products promote the growth of eyebrows and eyelashes. The respondent company also stipulates it will not use such expressions as "Only U. S. Government Standard Products Used," or any similar expression tending to mislead purchasers into the belief that, because the ingredients of which such products are made may conform to the requirements of the United States Pharmacopœia, these products are made under the supervision of the United States Government or have its endorsement.

No. 1643. Leon Seelig, 3225 Harrison St., Kansas City, Mo., trading as **Peck Products**, and engaged in the mail order business of selling a certain preparation commonly known as an emmenagogue, agrees to discontinue representing in advertising matter that such product is safe or harmless for self-administration.

No. 1645. James Lees & Sons Co., Bridgeport, Pa., agrees that in the sale of its yarns and threads it will discontinue use of the word "Rayona," or any other similar word, as a trade name for its products, or in any other way which may cause purchasers to believe that the respondent's products are made from that material known to the trade and public as rayon, when such as not the fact.

No. 1647. George A. White, 645 Merion Ave., Penfield, Pa., trading as the Church Mart, will cease representing in advertising matter, or in any other way, that his preparation, "Check-It," will prevent runs, breaks or snags in silk, chiffon or rayon hosiery, dresses and lingerie, or that use of such product makes fabrics treated with it proof against all spot-producing materials, or makes all colors fast.

No. 1651. Walter L. Gerke, 107 Pike St., Seattle, Wash., trading as **Gerke Mineral Co.**, signed a stipulation to cease and desist from circulating, in connection with the sale of his mineral water product, advertisements consisting of alleged letters from users of such product, which letters contain representations that the writers thereof have been healed or cured of any serious or chronic ailment through the use of the respondent's mineral water, and from circulating advertising matter containing representations which claim for the mineral water medicinal properties or therapeutic values greater than those it actually possesses.

No. 1653. Chicago Mail Order Co., 511 South Paulina St., Chicago, dealing in rubber toilet products, will discontinue use of the words "Spiral Spray" in advertising matter to designate syringes of a type other than those commonly understood to be a "spiral spray" syringe, and will cease using such words in any way which may tend to deceive purchasers as to the type of the products so advertised.

No. 2368. Victor Soap Co., Concord and Scoville Avenues, Dayton, Ohio, trading as **Royal Soap Co.**, and as **Heick Soap Co.**, has been ordered to discontinue unfair methods of competition, including the misrepresentation of the incomes salesmen may earn in selling the respondent's products.

Specifically, the respondent is prohibited from representing that it guarantees the financial success of its agents, that Victor agents are "cleaning up" in opening soap shops, or that they are easily earning incomes in excess of the average income made by the average agent employed by the respondent.

No. 2738. Atlas China Co., Inc., 710 Wythe Ave., Brooklyn, N. Y., has been ordered to cease and desist branding chinaware products as "Limoges," or representing as Limoges certain porcelain or chinaware products which have not originated or been made in Limoges, France.

Findings are that for 150 years a vitreous, translucent and glazed ware has been made in Limoges, France, and has acquired a favorable reputation in Europe and America as a porcelain or china of superior quality, utility and beauty. The respondent's representations are held to have a tendency to deceive buyers into believing that its products were made in Limoges.

The order also directs the respondent to stop branding its articles with the words "French Decoration," or in any way representing

them as being decorated with French designs peculiar to France or to French artistry, when this is not the fact.

FEDERAL COMMUNICATIONS COMMISSION ACTION

There was no meeting of the Broadcast Division of the Commission early this week. The meeting was deferred because its members were attending hearings in connection with the Commission's telephone investigation. The meeting will be held later this week.

HEARING CALENDAR

Monday, April 27

HEARING BEFORE AN EXAMINER

(Broadcast)

WALR—WALR Broadcasting Corp., Zanesville, Ohio.—C. P. to move to Toledo, Ohio; 1210 kc., 100 watts, unlimited time.
NEW—Community Broadcasting Co., Toledo, Ohio.—C. P., 1200 kc., 100 watts, daytime.

Tuesday, April 28

HEARING BEFORE AN EXAMINER

(Broadcast)

KMMJ—The M. M. Johnson Co., Clay Center, Nebr.—C. P., 740 kc., 2½ KW (daytime), limited time.

Wednesday, April 29

HEARING BEFORE AN EXAMINER

(Broadcast)

KUMA—Albert H Schermann, Yuma, Ariz.—Renewal of license, 1420 kc., 100 watts, specified hours.
NEW—Continental Radio Co., Columbus, Ohio.—C. P., 1310 kc., 100 watts, unlimited time.

Thursday, April 30

HEARING BEFORE AN EXAMINER

(Broadcast)

NEW—The Steffen Ice & Ice Cream Co., Wichita, Kans.—C. P., 1210 kc., 100 watts, unlimited time.

ORAL ARGUMENT BEFORE THE BROADCAST DIVISION

Examiner's Report No. I-187:

WCAO—The Monumental Radio Co., Baltimore, Md.—Modification of license, 600 kc., 1 KW, unlimited time. Present assignment: 600 kc., 500 watts, 1 KW LS, unlimited time.

WICC—Southern Connecticut Broadcasting Corp., Bridgeport, Conn.—Modification of license, 600 kc., 1 KW, specified hours. Present assignment: 600 kc., 500 watts, specified hours.

WIP—Pennsylvania Broadcasting Co., Philadelphia, Pa.—Modification of license, 610 kc., 1 KW, unlimited time. Present assignment: 610 kc., 500 watts, unlimited time.

Examiner's Report No. I-189:

NEW—Golden Empire Broadcasting Co., Sacramento, Calif.—C. P., 1310 kc., 100 watts, unlimited time.

NEW—Royal Miller, Sacramento, Calif.—C. P., 1210 kc., 100 watts, daytime.

Examiner's Report No. I-164:

(Oral argument on petition for rehearing and reconsideration)
KGCX—E. E. Krebsbach, Wolf Point, Mont.—C. P., 1450 kc., 1 KW, unlimited time. Present assignment: 1310 kc., 100 watts, 250 watts LS, specified hours.

APPLICATIONS RECEIVED

First Zone

WMAS—WMAS, Inc., Springfield, Mass.—Construction permit to 560 make changes in equipment; change frequency from 1420 kc. to 560 kc.; increase power from 100 watts, 250 watts day, to

1 KW; move transmitter from 70 Chestnut St., Springfield, Mass., to Agawam, Mass., and studio from 70 Chestnut St., Springfield, Mass., to Hotel Stonehaven, Springfield, Mass.; and install directional antenna.

WJZ—National Broadcasting Co., Inc., New York, N. Y.—Construction permit to install new equipment, increase power from 50 KW to 500 KW, and move transmitter from No. 1 River Rd., Bound Brook, N. J., to site to be determined.

NEW—Twin City Broadcasting Co., Inc., Lewiston, Maine.—Construction permit for a new station to be operated on 1210 kc., 100 watts, unlimited time. Amended: Transmitter site and antenna to be determined.

WNBC—Wm. J. Sanders, New Britain, Conn.—Voluntary assignment of license from Wm. J. Sanders to State Broadcasting Corp.

NEW—Auburn Publishing Co., Auburn, N. Y.—Construction permit for a new station to be operated on 1420 kc., 100 watts, unlimited time. Amended giving transmitter site as York Street, Auburn, N. Y.

WMBQ—Metropolitan Broadcasting Corp., Brooklyn, N. Y.—Construction permit to install new equipment. Amended to move studio and transmitter from 95 Leonard Street, Brooklyn, N. Y., to 217 Havermeyer Street, Brooklyn, N. Y., and make changes in antenna.

Second Zone

WWJ—The Evening News Assn., Detroit, Mich.—Authority to determine operating power by direct measurement of antenna.
WWJ—Evening News Assn., Detroit, Mich.—License to cover construction permit (B2-P-297) as modified for move of transmitter, new equipment, and increase in power.

WCMI—The Ashland Broadcasting Co., Ashland, Ky.—Construction permit to make changes in equipment and increase power from 100 watts to 100 watts, 250 watts day.

NEW—Owensboro Broadcasting Co., Owensboro, Ky.—Construction permit for a new station to be operated on 1500 kc., 100 watts, unlimited time. Amended to give studio site as 102 E. 3rd Street, Messenger & Inquirer Bldg., Owensboro, Ky.

NEW—WJR, The Goodwill Station, Portable-Mobile.—Construction permit for a new general experimental station to be operated on 31100, 34600, 37600, 40600, 86000-400000 kc., 40 watts.

W8XEO—Harold F. Gross, M. Bliss Keeler, L. A. Versluis, d/b as Capitol City Broadcasting Co., Portable-Mobile.—License to cover construction permit for a new general experimental station to be operated on 31100, 34600, 37600, 40600 kc., 15 watts.

W3XER—Philco Radio & Television Corp., Philadelphia, Pa.—License to cover construction permit for a new special experimental station to be operated on 42000-56000, 60000-86000 kc., 250 watts.

Third Zone

WPTF—WPTF Radio Co., Raleigh, N. C.—Authority to determine operating power by direct measurement of antenna (1-KW auxiliary equipment).

NEW—State Capitol Broadcasting Assn. (R. B. Anderson, Pres.), 1120 Austin, Tex.—Construction permit for a new station to be operated on 1120 kc., 500 watts, 1 KW day, specified hours (all hours not used by WTAU), using directional antenna. Amended to make changes in directional antenna.

NEW—O. Lee Stone, Florence, S. C.—Construction permit for a 1200 new station to be operated on 1200 kc., 100 watts, daytime.
KFPW—Southwestern Hotel Co., Fort Smith, Ark.—Construction permit to make changes in equipment.

KTAT—KTAT Broadcast Co., Inc., Fort Worth, Tex.—Voluntary assignment of license from KTAT Broadcast Co., Inc., to Raymond E. Buck.

WRR—City of Dallas Texas, Dallas, Tex.—Modification of construction permit (B3-P-889) for new equipment and move of transmitter, requesting further changes in equipment.

WDOD—WDOD Broadcasting Corp., Chattanooga, Tenn.—Modification of license to increase power from 1 KW, 5 KW day, to 5 KW day and night.

KPDN—Pampa Daily News, Inc., Pampa, Tex.—License to cover 1310 construction permit (B3-P-382) as modified for a new station.

WGPC—Americus Broadcast Co., Albany, Ga.—Construction permit to install new equipment; move transmitter from 107 N. Jackson Street, Albany, Ga., to corner Pine and Jackson Sts., Albany, Ga., and studio from 107 N. Jackson Street, Albany, Ga., to 127½ N. Jackson Street, Albany, Ga.

W4XBZ—Radio Station WSOC, Inc., Portable.—License to cover construction permit for a new general experimental station to be operated on 31100, 34600, 37600, 40600 kc., 7 watts.

KNED—Carter Publications, Inc., Portable-Mobile.—License to cover construction permit for a new broadcast pickup station to be operated on 1606, 2020, 2102, 2760 kc., 50 watts.

NEW—Memphis Commercial Appeal, Inc., Portable-Mobile.—Construction permit for a new broadcast pickup station to be operated on 1606, 2020, 2102, 2760 kc., 35 watts.

Fourth Zone

KFRU—KFRU, Inc., Columbia, Mo.—Construction permit to 630 change hours of operation from share WGBF night, simultaneous daytime WGBF, to unlimited time, using directional antenna night, and to move transmitter from 1200 Broadway, Columbia, Mo., to 4 miles from center of city, Columbia, Mo.

WGBF—Evansville on the Air, Inc., Evansville, Ind.—Construction 630 permit to change hours of operation from share WOS, KFRU night, simultaneous day, to unlimited time, using directional antenna.

NEW—KFLW Broadcasting Co., Myron J. Bennett, President, 1200 Mandan, N. Dak.—Construction permit for a new station to be operated on 1200 kc., 100 watts, unlimited time. Requests facilities of KGC.

NEW—C. E. Wilkinson Broadcasting Co., Inc., Mason City, Iowa. 1210 —Construction permit for a new station to be operated on 1370 kc., 100 watts, unlimited time. Amended to change name from Charles E. Wilkinson to C. E. Wilkinson Broadcasting Co., Inc., and change frequency from 1370 kc. to 1210 kc.

NEW—KMOK Broadcasting Co., Myron J. Bennett, Pres., Valley 1310 City, N. Dak.—Construction permit for a new station to be operated on 1310 kc., 100 watts, unlimited time.

WOC—Tri-City Broadcasting Co., Davenport, Iowa.—Authority to 1370 install automatic frequency control.

WRJN—Racine Broadcasting Corp., Racine, Wis.—Modification of 1370 construction permit (B4-P-370) for equipment changes and move of transmitter, requesting further changes in equipment and extension of commencement and completion dates.

NEW—Creston News Advertiser Broadcasting Co., Creston, Iowa. 1500 Construction permit for a new station to be operated on 1500 kc., 100 watts, unlimited time. Amended to change name from W. E. Day to Creston News Advertiser Broadcasting Co.

WKBB—Sanders Brothers Radio Station, East Dubuque, Ill.—1500 Construction permit to install a new transmitter.

NEW—Central States Broadcasting Co., Portable.—Construction permit for a new broadcast pickup station to be operated on 1606, 2020, 2102, 2760 kc., 30 watts.

Fifth Zone

NEW—The Hebrew Evangelization Society, Inc., Los Angeles, Calif. 570 —Construction permit for a new station to be operated on 570 kc., 1 KW, unlimited time.

NEW—Thomas M. Hammond, d/b as Ventura Broadcasting Co., 1210 Ventura, Calif.—Construction permit for a new station to be operated on 1210 kc., 100 watts, daytime.

KVOA—Arizona Broadcasting Co., Inc., Tucson, Ariz.—Construction permit to make changes in equipment.

NEW—Mile High Radio Corp., Denver, Colo.—Construction permit 1420 for a new station to be operated on 1420 kc., 100 watts, unlimited time.

W6XKG—Ben S. McGlashan, Los Angeles, Calif.—Construction permit for increase in power of general experimental station from 100 watts to 1000 watts.

KABB—Don Lee Broadcasting System, Portable-Mobile, San Francisco, Calif.—License to cover construction permit for a new broadcast pickup station to be operated on 1646, 2090, 2190, 2830 kc., 100 watts.

**KGIR FILES ANSWER IN COPYRIGHT
INFRINGEMENT SUIT**

UNITED STATES DISTRICT COURT

DISTRICT OF MONTANA

REMICK MUSIC CORPORATION, Complainant

—against—

K. G. I. R., Inc., Defendant

The defendant, answering the bill of complaint herein:

(1) Denies each and every allegation contained in Paragraphs I, X, XII, XIII, XIV, XV and XVI.

(2) Denies that it has any knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraphs II, IIa, IV, VI, VII, VIII, VIIIa, IX, and XI, and therefore denies the same.

(3) Upon information and belief, defendant admits that Stanley Murphy, also known as S. Murphy, and Percy Wenrich, also known as P. Wenrich, prior to the 5th day of November, 1909, wrote and composed the words and music of a musical composition, entitled, "Put On Your Old Grey Bonnet," but defendant is without knowledge as to any of the other allegations contained in paragraph V.

FURTHER ANSWERING AND AS A FIRST AFFIRMATIVE DEFENSE, DEFENDANT SAYS:

I. Upon information and belief, that on or about the 13th day of February 1914, there was organized under the laws of the State of New York, for the term of ninety-nine years, an unincorporated voluntary association of seven or more persons, composed of composers, authors and publishers of musical works known and designated as the American Society of Composers, Authors and Publishers (hereinafter, for brevity, referred to as "ASCAP"), for the purpose of granting licenses to users of musical works, in public entertainment, to give public performances for profit of the works in the repertory of said "ASCAP" (hereinafter referred to as the small performing rights), and to collect from such users royalties for the right to give such public performances, and to allow and distribute among the members of ASCAP the revenue so collected from such users, and that ASCAP, was, is, and at all times has been, duly empowered by all of its members in its and their behalf to license the small rights of all musical compositions at any time written, composed, published or copyrighted by members of ASCAP.

II. Upon information and belief, that the complainant, or its predecessors in interest, were at all times from on or about the 6th day of March, 1914, to at least the 31st day of December, 1935, duly elected members of said ASCAP, and that the complainant has been such member of ASCAP since the year of 1914, and that the complainant, and its predecessors, agreed duly to perform and abide by the articles of association and all by-laws, rules, regulations and resolutions of ASCAP, and of its Board of Directors, which might be in force at the time of their applications to membership, or might thereafter from time to time be adopted. That Percy Wenrich, also known as P. Wenrich, and Stanley Murphy, also known as S. Murphy, the composers and authors of the music and words of the composition "Put On Your Old Grey Bonnet," and the said Percy Wenrich, also known as P. Wenrich, and Stanley Murphy, also known as S. Murphy, are at the present time, at this date, and were at all times hereinbefore mentioned, duly elected members of ASCAP, and that the estate and heirs of Stanley Murphy, as well as Stanley Murphy in his lifetime, and the said Percy Wenrich, agreed in writing to duly perform and abide by the articles of association and all of the by-laws, rules, regulations and resolutions of ASCAP, and of its Board of Directors, which might be in force at the time of its application to membership, or might thereafter from time to time be adopted.

III. Upon information and belief, that under the articles of association of ASCAP, and by virtue of the aforesaid membership agreements of the complainant and of Percy Wenrich and Stanley Murphy in ASCAP, the exclusive right to grant licenses to others in respect of the small rights of "Put On Your Old Grey Bonnet," together with the entire copyright, were vested in ASCAP, in that the by-laws of said association provided, among other things, that each member, including the complainant herein, should execute to ASCAP documents and agreements constituting exclusive assignments to said ASCAP of all the copyrighted music owned by said members, or that which they should thereafter acquire dur-

ing their membership; that each of the aforesaid parties, complainant, Stanley Murphy and Percy Wenrich, executed certain documents in writing to ASCAP, particularly providing:

- A. An Assignment to the Society of the entire and exclusive right of public performance of all copyrighted compositions owned or controlled by such members.
- B. That each member shall thereafter assign from time to time such entire and exclusive right to all the copyrighted compositions or original compositions which he may in the future compose or the rights to which he may in the future acquire.
- C. That he shall not grant any individual licenses and that he will join with the Society in all suits for infringements of the exclusive right of public performance granted to the Society.
- D. Assigns to the Society the exclusive right to fix or determine the terms or conditions of any license or licenses covering any of the compositions assigned to the Society.

That the aforesaid documents and assignments have never been revoked or reassigned from said ASCAP and the title to said copyrighted musical composition "Put On Your Old Grey Bonnet" is no longer vested in complainant or its assigns, but on the contrary, both grand and small rights are now vested in ASCAP and its assignees and successors, if any, as herein set forth.

IV. Upon information and belief, that ASCAP, since 1914, has licensed users of musical compositions in respect of the small rights of musical works written and composed by its writer and composer members, and published by its publisher members, including since the date of its composition, "Put On Your Old Grey Bonnet," written and composed by the aforementioned Wenrich and Murphy, and published by the Complainant; that for such small rights, ASCAP has collected, under license agreements, from time to time made with users of the aforesaid musical compositions, royalties which it has supposedly divided among its members in the ratio of one-half thereof to the writer and composer members, and one-half thereof to the publisher members; that under such license agreements, the users of musical compositions have been licensed in respect of the small rights of each and every musical composition which has either been written and composed by a writer and composer member of ASCAP, of which has been published by a publisher member of ASCAP, and all such works are referred to hereinafter as being within the repertory of ASCAP, or its successors and assigns.

V. Upon information and belief, that in the year 1921, the conditions then prevailing in said ASCAP were such that it was deemed for the advancement and protection and mutual interest of the members thereof, and to their benefit, that each member should execute an assignment as set forth in paragraph 6 herein, of the rights in his works then existing or which might thereafter be written, composed or acquired by such member, that thereafter, complainant and said Wenrich and Murphy agreed between and with each other and with ASCAP (of which they were members), each in consideration of the agreement made by the other, that the small and entire rights of all the musical works then published by complainant and written or composed by said Wenrich and Murphy, or which thereafter, and for a period of five years, should be written, composed, or acquired by them, or any of them, should be deemed to be and was vested in ASCAP, and that said Wenrich and Murphy and the complainant should be and were thereafter deemed by reason of their membership in ASCAP and the agreements as aforesaid, to be owners in common of the small and entire rights of all musical works theretofore or thereafter composed by said Wenrich and Murphy and published by complainant; that this complainant permitted, approved and ratified the election to membership in ASCAP of the said Wenrich and Murphy and their right to participate to the extent of one-half of the revenue derived from the licensing of the small and entire rights of such musical compositions; and in all manners and respects, the complainant recognized the ownership in common of said Wenrich and Murphy in and to a one-half undivided interest in the small and entire rights of such musical compositions including "Put On Your Old Grey Bonnet."

VI. On information and belief, this complainant permitted ASCAP to represent and hold out that the said Wenrich and Murphy were owners in common with the complainant of the small and entire rights of the musical compositions written and composed by the said composers, including "Put On Your Old Grey Bonnet," and this complainant permitted the said ASCAP, during said period, to represent that it had the right to make licenses for the small and entire rights of such musical compositions, including "Put On Your Old Grey Bonnet," and said

ASCAP, in reliance upon the permission, acquiescence and ratification of this complainant, did enter into various agreements with users of music for the purpose of granting them license for the small rights of the works in the repertory of ASCAP, including the composition, "Put On Your Old Grey Bonnet," and including license agreements for broadcasting over and by means of radio broadcasting station KGIR, as hereinafter set forth.

VII. That ASCAP, under various agreements made and renewed from time to time, and now in force with defendant, and in full force and effect prior to January 11th, 1936, licensed the use of the small rights of and in the works in its repertory by broadcasting from, over and by means of the facilities of radio broadcasting station KGIR, and the National Broadcasting Company, of which defendant is an affiliated station, and that such license included the right to broadcast each such work, in its repertory, including the composition "Put On Your Old Grey Bonnet," for which license substantial royalties have been paid to ASCAP. That there is now outstanding and in force a valid license agreement, under which the small rights of the works in ASCAP's repertory, including the composition "Put On Your Old Grey Bonnet" may be put to commercial use for broadcasting purposes by radio broadcasting station KGIR, and that such license and right existed on the 11th day of January, 1936.

VIII. That the execution of the aforesaid license agreements and the making of the payments required thereunder was all done in good faith and in full reliance upon the representations made by ASCAP and this complainant and in reliance upon the acts and conduct of this complainant in having acquiesced in, ratified and approved of, at all the times hereinabove mentioned, the ownership by ASCAP of such rights derived from the author and composer members of said ASCAP in the manner aforementioned, upon information and belief that at all the times hereinbefore mentioned, and up to the 5th day of December, 1935, this complainant had representation upon the board of directors of said ASCAP, and this complainant was cognizant of the representations made by ASCAP to all users of music, respecting the ownership of the small and entire rights in complainant and the respective authors and composers of the compositions published by the complainant, and this complainant with full knowledge of such representations, and in furtherance of the same, and for the purpose of causing broadcasters to enter into license agreements in reliance upon such representations, aided, assisted and collaborated in the execution of license agreements, from time to time, between the said ASCAP and broadcasters, including the agreements hereinbefore set forth, and ratified the same and accepted benefits thereunder; and by reason of the premises, complainant is now estopped from asserting that any performance by this defendant, publicly, for profit of the composition, "Put On Your Old Grey Bonnet," was without a license from this complainant, and complainant's claim in such respect is made in bad faith and bad conscience and is inequitable.

IX. Upon information and belief, that when said Murphy and Wenrich became members of ASCAP, they were given standing and classification in ASCAP by reason of their creation and composition of a number of musical compositions; that complainant, at said time, had knowledge of the said applications made by the said Murphy and Wenrich and acquiesced therein, and in all manner consented and agreed that ASCAP should then acquire, exclusively, the small and entire rights in and to the said compositions, including "Put On Your Old Grey Bonnet."

X. Upon information and belief, that thereafter, said Wenrich and Murphy executed various agreements with the said ASCAP, under which they assigned and continued to assign to ASCAP, the small and entire rights in the compositions written by them, including the composition "Put On Your Old Grey Bonnet," that the said Wenrich and Murphy executed such contracts with ASCAP in the year of 1931, and re-executed such contracts at the end of the year of 1935, for a term of five years from January 1, 1936; that in and by the aforesaid contracts, the said Murphy and Wenrich vested exclusively and irrevocably in said ASCAP the small and entire rights in all musical works theretofore written and composed by them, including the composition "Put On Your Old Grey Bonnet," and the sole and exclusive rights to license for public performance for profit such compositions, including "Put On Your Old Grey Bonnet," presently vested in, and on and many years prior to the first day of January, 1936, vested in said ASCAP.

XI. Upon information and belief, that for many years, said Murphy and Wenrich have participated in the royalties derived by the said ASCAP from licenses to publicly perform for profit and compositions written and composed by them, including the composi-

tion, "Put On Your Old Grey Bonnet," with the knowledge, consent, approval and ratification of complainant.

XII. Upon information and belief, that in and about the year 1929, Warner Brothers Pictures, Inc., then and still engaged in the business of producing and distributing motion pictures, through the medium of a corporation known as the Music Publishers Holding Corporation, purchased the controlling interest in the issued and outstanding capital stock of the complainant and a number of other music publishers, members of ASCAP; which the complainant, as well as the other music publishers, members of ASCAP, which have been owned and controlled by Warner Brothers Pictures, Inc., and the Music Publishers Holding Corporation, as aforesaid, since the year 1929, have since said time, been represented on the board of directors of ASCAP and have had full knowledge of and acquiesced in and ratified each and every contract made between ASCAP and said complainant, Murphy and Wenrich as referred to in paragraph 6 herein, as well as other contracts made between ASCAP and users of musical works, including all of the contracts licensing the performance of such works, by, over, and by means of the facilities of broadcasting station KGIR; and the license now in force and effect, under which such rights to exercise, use and enjoy the small rights in and to the works in the repertory of ASCAP for broadcasting purpose by KGIR was made with knowledge, acquiescence, and consent, agreement, ratification and approval of this complainant and the other music publishers, members of ASCAP owned and controlled by Warner Brothers Pictures, Inc., and the Music Publishers Holding Corporation.

FURTHER ANSWERING AND AS A SECOND AFFIRMATIVE DEFENSE, DEFENDANT SAYS:

I. That defendant KGIR is affiliated with the National Broadcasting Company as an outlet station, although defendant is independently owned and operated; that the business and practice of radio is such that by reason of defendant's affiliation with a national network, the defendant must receive programs from said networks, and the defendant has no choice in the selection of the musical compositions carried by the said National Broadcasting Company for rendition or performance; that the performance of a musical score by the National Broadcasting Company is the same identical performance as given by defendant; that while a rendition might originate in Chicago in a studio, the performance in Butte, Montana, is the same identical performance as that given in Chicago, with the same performers rendering the same composition; that the performance complained of, if it occurred, originated in Chicago and a single performance was then given in Chicago and carried by wire to Butte, Montana, and rendered simultaneously with that same performance in Chicago; that on information and belief, the National Broadcasting Company was licensed by complainant and its agents for a valuable consideration for a term of five years beginning on June 5th, 1935, and ending during the year 1940, by which license complainant gave the National Broadcasting Company the right to use commercially the works and compositions in its musical repertory, including the musical composition "Put On Your Old Grey Bonnet," that said license is now in effect, is in full force and operation and was subsisting on January 11th, 1936; that it is inequitable and unjust that the complainant be permitted to restrict the use of or to secure a second payment from defendant for the use of said composition "Put On Your Old Grey Bonnet" when the performance complained of originated, if performed at all, in Chicago, Illinois, and the right to use and the right to perform said composition had been paid for by said license agreement existing between the National Broadcasting Company and complainant; that defendant received said performance from the National Broadcasting Company and that such performance was a single performance and the complainant having been paid for the use of said composition in Chicago is estopped from restricting the same "use" of said composition, merely because the same performance was carried over defendant's facilities to a larger audience; that the same performer who rendered the performance in Chicago under a license to use the same from complainant, rendered only one single performance for profit in both Chicago and Butte, Montana; that the use of such music on said performance having been paid for, the complainant and its agents are estopped from restricting, collecting or receiving payment twice for the same use of said composition.

FURTHER ANSWERING, AND AS A THIRD AFFIRMATIVE DEFENSE, DEFENDANT SAYS:

I. That the title to said musical composition "Put On Your Old Grey Bonnet" is no longer in complainant, and the complainant is no longer the owner or proprietor thereof, by reason of exclusive

and irrevocable assignments made by complainant to ASCAP; that the title of the said musical composition "Put On Your Old Grey Bonnet" has been further clouded by the appointment of a receiver for ASCAP in the State of Washington, whose title to said composition relates back to the 24th day of June, 1935, when said complainant was a duly elected and participating member of said ASCAP; that the State of Washington in its sovereign capacity proceeded by injunction proceedings against said ASCAP and all of its members in an action in personam in said state in the Superior Court of the State of Washington for Thurston County, for the purpose of enforcing its criminal laws against price fixing, extortion, conspiracy, and monopoly; that personal service was obtained upon said ASCAP and its members pursuant to the laws of Washington, and that under the Code Civil Procedure No. 1919 of the laws of New York, under which said ASCAP and its members including the complainant were organized, such action brought the entire membership of ASCAP before the Superior Court of the State of Washington for Thurston County, of said state, including this complainant; that the Superior Court, as aforesaid, in construing the contracts and assignments between complainant and ASCAP, and the contracts and assignments between complainant and ASCAP, and the contracts and membership agreements between complainant and ASCAP, and the contracts and membership agreements in said Society entered its written judgment to the effect that each member, including the complainant, the said Percy Wenrich and Stanley Murphy, upon being admitted to membership in said ASCAP, were obliged to and did execute identical contracts to said ASCAP and that these contracts constituted exclusive and irrevocable assignments to said ASCAP of all of the copyrighted music owned by said members, or that which they should thereafter acquire during their membership; that the said judgment in said cause, entitled State of Washington vs. ASCAP, et al., and each and every member thereof, in Cause No. 16114, Superior Court of the State of Washington for Thurston County, recited that under the law and by virtue of these irrevocable assignments to ASCAP the said title to the copyrights of the members of the said ASCAP, including the composition "Put On Your Old Grey Bonnet," was vested in the Society, and that the receiver, Tracy Griffin, who was thereafter appointed by operation of law, came into legal possession and proprietorship of said copyrighted musical compositions, including "Put On Your Old Grey Bonnet"; that this judgment was entered on the 7th day of August, 1935, and a receiver for ASCAP and the joint property of its members including complainant was appointed on the 13th day of August, 1935, that no appeal was ever taken from this judgment of a Court of Competent Jurisdiction, and the receiver, as aforesaid, has assumed legal control and the proprietorship of all the joint property, the copyrights, the performing rights, and the tangible and intangible property of ASCAP and its members, including the title to the musical composition "Put On Your Old Grey Bonnet," that the terms of said judgment vesting the title to the musical composition "Put On Your Old Grey Bonnet," as well as to the other works of complainant and said ASCAP into the receiver, Tracy Griffin, will appear more fully and at large in the copy thereof, which will be produced as may be required; that the title to said copyrighted musical composition "Put On Your Old Grey Bonnet" is manifestly clouded and there is not sufficient title, proprietorship, or ownership in the complainant to justify the intervention of this court, sitting as a court of equity, nor is there sufficient grounds for this court to construe a right which does not arise under the copyright laws of the United States of America or any act of Congress in relation thereto.

FURTHER ANSWERING, AND AS A *FOURTH* AFFIRMATIVE DEFENSE, DEFENDANT SAYS:

I. That the said complainant, being a member of said ASCAP on the 24th day of June, 1935, was convicted in the State of

Washington, in said cause as alleged hereinbefore, of extortion, conspiracy, and price fixing, and said judgment has never been appealed nor rescinded, and the property including this composition is vested in the receiver as aforesaid, and by reason of the matters and things therein set forth, complainant is guilty of breaching the equitable maxim relating to "Unclean Hands," that a copy of said judgment will be made available at the trial hereof, and the decision of the United States District Court for the Western District of Washington, Southern Division, upholding the right of the State of Washington to maintain the action as aforesaid on a removal action is reported in 13 Federal Supplement 141.

FURTHER ANSWERING AND AS A *FIFTH* AFFIRMATIVE DEFENSE, DEFENDANT SAYS:

I. That the matter in controversy herein does not arise under and by virtue of the Copyright law of the United States; that this controversy hinges on contracts, assignments, and license agreements between the various parties as hereinbefore enumerated, and the construction of such agreements does not involve any law of the United States; that the controversy does not involve the validity of said copyrighted composition "Put On Your Old Grey Bonnet," the validity thereof and the fact that it was copyrighted being admitted; that this controversy involves a question of title and rights under contracts, assignments, and subsisting license agreements, between complainant ASCAP, Tracy Griffin as receiver for ASCAP, Stanley Murphy and Percy Wenrich, and the alleged claim for infringement set forth in the bill of complaint herein is merely incidental to such controversy; that this suit for infringement cannot lie in a Federal Court until the matter of complainant's title to "Put On Your Old Grey Bonnet" has been determined in the proper form, or until rescission has been sought in the Superior Court of the State of Washington for Thurston County of that order, proceedings, and judgment entered by said Court of Competent Jurisdiction, whereby title of said composition was vested in Tracy Griffin, as receiver for ASCAP, which judgment remains unappealed from; that the complainant is estopped from asserting its title in and to said composition, as the judgment of said Court filed in the United States Copyright Office, became the law of the case, and the matter of title to this composition is now res adjudicata; that defendant had permission of both said ASCAP and the Receiver, Tracy Griffin, to commercially perform said composition, and subsisting licenses issued by the said complainant and its agents ASCAP, and the Receiver, Tracy Griffin, to defendant and National Broadcasting Company to publicly perform said composition were issued with the knowledge, consent and acquiescence in both law and fact, of said complainant.

II. That by reason of the premises, this Court is without jurisdiction of the subject-matter of this suit and of the parties herein.

WHEREFORE, defendant demands judgment, dismissing the bill of complaint herein, besides the costs and disbursements of this action and reasonable counsel fees and for such other and further relief as to the Court may seem just and equitable.

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