

Complaint

116 F.T.C.

IN THE MATTER OF

CENTER FOR IMPROVED COMMUNICATIONS, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3433. Complaint, June 15, 1993--Decision, June 15, 1993*

This consent order requires, among other things, the New York corporation and its officer to correct false and deceptive claims in Yellow Pages advertisements, prominently post corrected information about Medicare coverage in their offices or provide it to consumers prior to purchase, and prohibits them from misrepresenting the coverage provided by any medical insurance for any hearing-related device or service they offer in the future.

*Appearances*For the Commission: *Collet Guerard* and *Eileen Harrington*.For the respondents: *Pro se*.

## COMPLAINT

The Federal Trade Commission, having reason to believe that Center for Improved Communications, a corporation, and Jack Brown, individually and as an officer of Center for Improved Communications, ("respondents"), have violated certain provisions of the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Center for Improved Communications is a New York corporation with its main office and principal place of business located at 9720 Flatlands Avenue, Brooklyn, New York. Another office is located at 1301 57th Street, Brooklyn, New York.

PAR. 2. Respondent Jack Brown is an audiologist who is an officer of Center for Improved Communications. He formulates,

directs and controls the policies, acts and practices of Center for Improved Communications, and his address is the same as said corporation.

PAR. 3. Respondents are, and have been, selling hearing aids and offering hearing tests to the public. Hearing aids are a "device" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act, 15 U.S.C. 52 and 55.

PAR. 4. The acts and practices of respondents alleged in this complaint are, and have been, in or affecting commerce, as commerce is defined in the Federal Trade Commission Act.

PAR. 5. Respondents have placed, or caused to be placed, advertising for hearing aids in various Yellow Pages directories distributed to the general public, as a means of inducing the public to buy their products and services.

PAR. 6. Respondents' advertising includes, but is not necessarily limited to, the attached Exhibit A. This advertising contains the following statement:

"Hearing Aids ... Complete Audiological Evaluations ... Medicare ... Accepted."

PAR. 7. Through the use of the statement contained in the advertisement referred to in paragraph six, including but not necessarily limited to the advertisement attached as Exhibit A, respondents have represented, directly or by implication, that Medicare will pay for the costs of hearing aids purchased from respondents.

PAR. 8. In truth and fact, Medicare will not pay for the costs of hearing aids purchased from respondents. Therefore, the representation made in paragraph seven was, and is, false and misleading.

PAR. 9. Through the use of the statement contained in the advertisement referred to in paragraph six, including but not necessarily limited to the advertisement attached as Exhibit A, respondents have represented, directly or by implication, that Medicare will pay for the costs of hearing tests provided by respondents.

PAR. 10. In the advertising described in paragraph six, respondents have failed to disclose that Medicare does not pay for the costs of the hearing tests provided by respondents unless they are performed by order of a physician for the purpose of obtaining additional information necessary for the physician's evaluation of the need for or the appropriate type of medical or surgical treatment for a hearing deficit or related medical problem. In light of the representation made in paragraph nine these facts would be material to consumers in deciding whether to seek respondents' services and the failure to disclose these facts was, and is, deceptive.

PAR. 11. The dissemination by respondents of the aforesaid false and misleading representations as alleged in this complaint constituted, and now constitutes, an unfair or deceptive act or practice and the making of false advertisements in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act, 15 U.S.C. 45(a) and 52.

EXHIBIT A

NYC Brooklyn 7/90 3143375

**BROOKLYN AUDIOLOGY ASSOCIATES P.C.**  
**COMPLETE HEARING SERVICES BY PROFESSIONAL AUDIOLOGISTS**  
 BROOKLYN'S ONLY AUTHORIZED CENTERS OF Miracle-Ear HEARING INSTRUMENTS

- SPECIALISTS IN THE FITTING OF DIGITAL HEARING AIDS
- STATE OF THE ART EQUIPPED OFFICES INCLUDING COMPUTERIZED HEARING AID ANALYZER, AND REAL EAR MEASUREMENT.
- ALL PROFESSIONAL SERVICES PERFORMED EXCLUSIVELY BY N.Y. STATE LIC. AUDIOLOGISTS
- SALES, SERVICE ON ALL MAKES & MODELS

INSURANCE ASSIGNMENT ACCEPTED FOR: MEDICARE • OH • MEDICAD • EMPLOYE PLAN • HEALTHWAYS • HEALTH CARE • TRAVELERS • TOTAL HEALTH • HMO ACCEPTED

**RICHARD KANER, M.A., C.C.C. - DIRECTOR**

Serving Brooklyn For Over 10 Yrs

**3 CONVENIENT LOCATIONS**

BAY RIDGE      BROOKLYN HTS.      BRONX BEACH  
 8502 47th AVE.      142 JONAH BENET ST (RM 88)      3003 OCEAN BLVD

**745-6363    855-4330    449-9800**

**NY State Licensed Audiologists ASHA Certified**  
**NY State Licensed Speech Pathologist ASHA Certified**

**HEARING AIDS**  
 COMPLETE AUDIOLOGICAL EVALUATIONS  
 SCIENTIFIC FITTING  
 LATEST STATE OF THE ART INSTRUMENTS

- BUY • RENT • REPAIR
- LOANERS AT NO CHARGE • PARTS • BATTERIES • CORDS
- Medicaid, Medicare & Most Insurance Plans Accepted
- Special Attention To Senior Citizens
- Home Visits Arranged By Appointment
- Authorized Specialist For Most Major Manufacturers

**Center for Improved Communications**

Jack Brown, Director  
 CANARSE • FLATBUSH      BORO PARK • BAY RIDGE  
**257-9092      438-4062**

**Hearing Aids**

**AMERICAN HEARING CENTER**

AUDIOLOGISTS SPECIALIZING IN THE ANALYSIS, DIAGNOSIS & CARE OF THE HEARING IMPAIRED OF ALL AGES

- CLOSED CAPTIONING EQUIPMENT
- ALARM CLOCKS
- TELEPHONE TV AMPLIFIERS
- DOCTOR'S HOSPITAL RECOMMENDED
- MILICA ACCREDITED
- PASSPORTS FILLED FOR ALL BRANCHES

ASK ABOUT OUR GUARANTEED SATISFACTION FOR PRECISION TESTING FITTING AND REPAIRS

**CALL FOR FREE BROCHURE**


**BROOKLYN    QUEENS**  
 482 86TH ST.    116-18 QUEENS BLVD  
**745-5169    FOREST HILLS**  
**748-2630    261-6800**

Doctors, dentists, merchants... all kinds of products and services... are listed in the NYEX Yellow Pages. Keep them handy - they save you time and effort.

Simply your buying—know where to buy it. The dealers in many national & specialized markets are listed in the NYEX Yellow Pages. Make it a habit to "Look inside the NYEX Yellow Pages" before buying.

EXHIBIT A

**DINING OUT?**



Call the restaurant for a reservation, and ask for your favorite table.

## DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of respondents named in the caption hereof, and respondents having been furnished thereafter with a copy of a draft complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

Respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that respondents have violated the said Act, and that the complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Center for Improved Communications is a New York Corporation, with its office and principal place of business located at 9720 Flatlands Avenue, Brooklyn, New York. Another office is located at 1301 57th Street, Brooklyn, New York.

Respondent Jack Brown is an audiologist who is an officer of Center for Improved Communications. He formulates, directs and controls the policies, acts and practices of Center for Improved Communications, and his address is 1301 57th Street, Brooklyn, New York.

Respondents are, and have been, selling hearing aids and offering hearing tests to the public.

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

## ORDER

### I.

*It is ordered*, That respondents Center for Improved Communications, a New York corporation, its successors and assigns, and its officers, and Jack Brown, individually and as an officer of said corporation; and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, affiliate, partnership, sole proprietorship, or other device, in connection with the advertising, promotion, sale, distribution or offering for sale of any hearing-related device or service in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting, directly or by implication, in any manner that Medicare will pay for the costs of such device or service.

B. Misrepresenting, directly or by implication, in any manner that other types of medical insurance, whether federal, state, or private, will cover the costs of such device or service.

### II.

*It is further ordered*, That respondents Center for Improved Communications, a corporation, its successors and assigns, and its officers, and Jack Brown, individually and as an officer of said corporation, within fifteen (15) days after this order becomes final, send a certified letter to the publishers of all Yellow Pages directories that contain the representations in paragraphs seven and nine of the complaint. The letter shall state that any statements

representing, directly or by implication, that Medicare will pay for the costs of hearing aids are to be eliminated from the next appearing edition in which it is possible to make changes, and in all subsequent editions. The letter shall also state that any statements representing, directly or by implication, that Medicare will pay for the costs of hearing tests are to be eliminated from the next appearing edition in which it is possible to make changes, and in all subsequent editions, unless the representation is qualified by a statement that the hearing tests must be ordered in advance by a physician for medical diagnostic purposes. Respondents shall include a copy of this order with the letter.

### III.

*It is further ordered,* That respondents Center for Improved Communications, a corporation, its successors and assigns, and its officers, and Jack Brown, individually and as an officer of said corporation, within fifteen (15) days after this order becomes final, either:

A. Post in each of the locations in which respondents do business, a prominent notice that is at least 12" by 15" in size that states clearly and conspicuously the following:

MEDICARE DOES NOT COVER THE COSTS OF HEARING AIDS.  
MEDICARE ALSO DOES NOT COVER THE COSTS OF HEARING  
TESTS CONDUCTED IN THIS OFFICE UNLESS THE TESTS ARE FIRST  
ORDERED BY A PHYSICIAN FOR MEDICAL DIAGNOSTIC PUR-  
POSES.

This notice shall be clearly and conspicuously posted in the reception area so that it is visible to consumers as they enter the business location, and in each of the rooms where the hearing tests are conducted; or

B. Provide each consumer prior to any discussion about the consumer's hearing problem a notice that is at least 8 1/2" by 11" in size that states clearly and conspicuously the following:

MEDICARE DOES NOT COVER THE COSTS OF HEARING AIDS. MEDICARE ALSO DOES NOT COVER THE COSTS OF HEARING TESTS CONDUCTED IN THIS OFFICE UNLESS THE TESTS ARE FIRST ORDERED BY A PHYSICIAN FOR MEDICAL DIAGNOSTIC PURPOSES.

Respondents shall obtain the consumer's signature on the notice. The signed notices shall be available to representatives of the Federal Trade Commission for inspection for a period of three (3) years from the date of service of this order.

C. The requirements described in (A) and (B) of this paragraph shall be followed for no less than two (2) years after the last date of distribution by the publisher to the general public of the Yellow Pages directories containing the representations in paragraphs seven and nine of the complaint.

#### IV.

*It is further ordered,* That respondents Center for Improved Communications, a corporation, its successors and assigns, and its officers, and Jack Brown, individually and as an officer of said corporation, shall, for three (3) years after the date of this order, maintain and upon request make available to representatives of the Federal Trade Commission for inspection and copying all records demonstrating compliance with this order including but not necessarily limited to:

- (1) Communications with publishers of the Yellow Page directories regarding the representations in paragraphs seven and nine of the complaint, and
- (2) The notices required by paragraph III(A) and (B) above.



## V.

*It is further ordered,* That respondents shall, within thirty (30) days after service upon them of this order, distribute a copy of the order to each of their operating divisions, subsidiaries, and related offices, to each of their managerial employees, to each of their employees responsible for advertising, and to each of their officers, agents, representatives or employees selling hearing aids and/or offering hearing tests.

## VI.

*It is further ordered,* That the corporate respondent shall notify the Commission at least thirty (30) days prior to any proposed change in respondent such as dissolution, assignment, purchase, or sale resulting in a change of ownership or business structure, or any other change in respondent that may affect compliance obligations arising out of this order.

## VII.

*It is further ordered,* That the individual respondent shall hereafter promptly notify the Commission in the event of the discontinuance of his present business or employment and, for a period of five (5) years from the date of service of this order, shall promptly notify the Commission of each affiliation with a new business or a new employment whose activities would or might include the sale of hearing aids, and/or the offering of hearing tests, each such notice to include the respondent's new business address and a statement of the nature of such business or employment and a description of the respondent's expected duties and responsibilities.

## VIII.

*It is further ordered,* That respondents shall, within sixty (60) days after service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with all requirements of this order.

## IN THE MATTER OF

## SHERWIN BASIL

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

*Docket C-3434. Complaint, June 15, 1993--Decision, June 15, 1993*

This consent order requires, among other things, the California hearing aid seller to correct false and deceptive claims in Yellow Pages advertisements, prominently post corrected information about Medicare coverage in his offices or provide it to consumers prior to purchase, and prohibits him from misrepresenting the coverage provided by any medical insurance for any hearing-related device or service he offers in the future.

*Appearances*

For the Commission: *Collot Guerard* and *Eileen Harrington*.

For the respondent: *Pro se*.

## COMPLAINT

The Federal Trade Commission, having reason to believe that Sherwin Basil, individually and d/b/a Audio Logics, ("respondent"), has violated certain provisions of the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Sherwin Basil, individually and d/b/a Audio Logics, is a resident of California. Respondent's main office and principal place of business is located at 1165 E. San Antonio, Long Beach, California. Another office is located at 1919 North Fairview Avenue, Suite 204, Santa Ana, California.

PAR. 2. Respondent is an audiologist who is, and has been, selling hearing aids and offering hearing tests to the public.

Hearings aids are a "device" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act, 15 U.S.C. 52 and 55.

PAR. 3. Respondent is the owner of Audio-Logics and he formulates, directs and controls the policies, acts and practices of Audio-Logics.

PAR. 4. The acts and practices of respondent alleged in this complaint are, and have been, in or affecting commerce, as commerce is defined in the Federal Trade Commission Act.

PAR. 5. Respondent has placed, or caused to be placed, advertising for hearing aids in various Yellow Pages directories distributed to the general public, as a means of inducing the public to buy respondent's products and services.

PAR. 6. Respondent's advertising includes, but is not necessarily limited to, the attached Exhibit A. This advertising contains the following statement:

"Hearing Tests ... Hearing Aids ... MEDICARE"

PAR. 7. Through the use of the statement contained in the advertisement referred to in paragraph six, including but not limited to the advertisement attached as Exhibit A, respondent has represented, directly or by implication, that Medicare will pay for the costs of hearing aids purchased from respondent.

PAR. 8. In truth and fact, Medicare will not pay for the costs of hearing aids purchased from respondent. Therefore, the representation made in paragraph seven was, and is, false and misleading.

PAR. 9. Through the use of the statement contained in the advertisement referred to in paragraph six, including but not limited to the advertisement attached as Exhibit A, respondent has represented, directly or by implication, that Medicare will pay for the costs of hearing tests provided by respondent.

PAR. 10. In the advertising described in paragraph six, respondent has failed to disclose that Medicare does not pay for the costs of the hearing tests provided by respondent unless they are performed by order of a physician for the purpose of obtaining additional information necessary for the physicians evaluation of the

need for, or the appropriate type of, medical or surgical treatment for a hearing deficit or related medical problem. In light of the representation made in paragraph nine, these facts would be material to consumers in deciding whether to seek respondent's services, and the failure to disclose these facts was, and is, deceptive.

PAR. 11. The dissemination by respondent of the aforesaid false and misleading representations as alleged in this complaint constituted, and now constitutes, an unfair or deceptive act or practice and the making of false advertisements in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act, 15 U.S.C. 45(a) and 52.

EXHIBIT A

729 Hearing L.A.S Long Beach 9/90 YELLOW PAGES "Tells Where To Buy It"

### CONES LONG BEACH HEARING AIDS SPECIALISTS

**DR. KENNETH G. SMITH**  
LICENSED AUDIOLOGIST & HEARING AID SPECIALIST ON STAFF

*All Major Brands of Hearing Aids*  
**SALES & SERVICE**

30 DAY TRIAL  
MONEY BACK IF NOT SATISFIED  
BATTERIES ACCESSORIES  
MEDICAL PRIVATE INSURANCE  
PH.P. KAISER SCAN  
ACCEPTED AT ALL TIMES  
PAYMENTS TO SUIT MOST FINANCIAL CONDITIONS  
OPEN MONDAY THROUGH FRIDAY 9:00 TO 5:00  
SATURDAY 9:00 TO 12:00

**432-8961**

427 ATLANTIC AVE. - LONG BEACH

EXCELLENCE IN SERVICE FOR OVER 35 YEARS

#### Hearing Aids

A PROFESSIONAL GROUP DONALD M. BROWN D.O.S.

**EMERGENCY DENTIST**  
TDD 924-1072  
7 DAYS A WEEK

1115 E. Ocean St. Long Beach, CA 90802  
432-4688  
1120 E. Ocean St. Long Beach, CA 90802  
432-2272

See Hearing Aid Specialists  
432-7888  
See Advertisements On This Page

**AFFILIATED ASSOCIATES HEARING**  
BALANCE & EYE SERVICES

EAR DISEASES VERTIGO  
OTOLOGY & NEURO-OTOLOGY  
AUDIOLOGIC & VESTIBULAR LAB  
HEARING TUNNINGS  
FACIAL PARALYSIS - PAIN  
MICROSURGICAL LASER SURGERY  
EVALUATION & TREATMENT  
HEARING AIDS - COMPLETED EVAL  
Suite 106  
Surrey Plaza at Sherman Center  
1242 Sherman St.  
Long Beach, CA 90801  
432-8738

Professional Hearing Services  
2215 South St. Long Beach, CA 90801  
432-9110

Has SOMETHING SPECIAL  
happened to you? Tell them  
yourself, by Long Distance.

#### ARTESIA CERRITOS HEARING AID CENTER

11416 Artesia Blvd. Artesia, CA 90201 402-5771  
11416 Artesia Blvd. Long Beach, CA 90801 432-3388  
11416 Artesia Blvd. Long Beach, CA 90801 432-3388

**422-3388**

11416 Artesia Blvd. Long Beach, CA 90801 432-3388  
11416 Artesia Blvd. Long Beach, CA 90801 432-3388

Advocate Here-It Pays

### Miracle-Ear

Miracle-Ear is available only at Miracle-Ear Centers. Accept NO substitutes.

Ask about our **2 Year Hearing Protection Plan**

Batteries & Accessories  
All Makes  
Service/Repair - All Makes  
Major Credit Cards  
Free Hearing Tests

Featuring quality canal, contour and behind-the-ear instruments.

40 YEARS EXPERIENCE CALL NOW FOR AN APPOINTMENT

LONG BEACH 432-0459 LAKWOOD 830-3410 TORRANCE 214-2288

### BROWN-POTTER HEARING AID CENTER

• ADJUST • PROTECT • CLEAN • TUNE  
• ACCURATE • MAKE • CUSTOM • ONE-TO-ONE  
• REPAIR • IN LAB • HIGH • PRECISION  
• REPAIR • REPAIR • SERVICE • REPAIR  
• SERVICE • QUALITY • TIMELY • TURN-TO-TO-TO

**SERVICE \* INTEGRITY \* COMPASSION**  
Welfare, Union & U.S. Government Plans Accepted

WPC HOURS: 10 to 5 P.M. Sat. 10 to 1:30 P.M.  
VOICE OR TDD

Call **433-6701**

MALLYE B. CARPENTIER  
CERTIFIED HEARING INSTRUMENT SPECIALIST

12001 S. Normandie  
Under the level of the hearing aid  
12001 S. Normandie  
12001 S. Normandie

### The Center For Better Hearing Inc.

**HEARING AIDS**

- STARKEY, SIEMENS AND MOST MAJOR BRANDS
- REASONABLE PRICES
- FREE HEARING TESTS
- INDUSTRIAL CUSTOM EAR PLUGS & CUSTOM SWIM PLUGS
- 30 DAY MONEY BACK GUARANTEE
- BATTERIES & ACCESSORIES

**495-7829**  
1-800-369-7401

107 E. 8th L.B.

### A.C.E. Hearing Aid Specialists

Most Advanced Hearing Aids Available

- AUTOMATICALLY ELIMINATES BACKGROUND NOISE
- FREE HEARING TEST
- FREE ANALYSIS OF ANY HEARING AID
- BATTERIES - REPAIRS - ACCESSORIES

M. JOE HUGHES **987-0884**

4115 E. 7TH ST. SUITE B LONG BEACH

**IF YOU FEEL FORTUNATE YOUR CHILD JUST SMOKES MARIJUANA, THEN YOU SHOULD KNOW MORE ABOUT MARIJUANA.**

Call 1-800-667-HELP  
NATIONAL INSTITUTE ON Drug Abuse TRIP LINE  
PARTNERSHIP FOR A DRUG-FREE AMERICA

## DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of respondent named in the caption hereof, and respondent having been furnished thereafter with a copy of a draft complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

Respondent, his attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that the complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Sherwin Basil is a California resident doing business as Audio Logics, a sole proprietorship. Respondent's main office and principal place of business is located at 1165 E. San Antonio Long Beach, California. Another office is located at 1919 North Fairview Avenue, Suite 204, Santa Ana, California.

Respondent Sherwin Basil is an audiologist who is, and has been, selling hearing aids and offering hearing tests to the public. He owns Audio-Logics and he formulates, directs and controls the policies, acts and practices of Audio-Logics.

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

### ORDER

#### I.

*It is ordered*, That respondent Sherwin Basil, individually and d/b/a Audio Logics, respondent's successors and assigns, and respondent's agents, representatives, and employees, directly or through any corporation, subsidiary, division, affiliate, partnership, sole proprietorship, or other device, in connection with the advertising, promotion, sale, distribution or offering for sale of any hearing-related device or service, in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting, directly or by implication, in any manner that Medicare will pay for the costs of such device or service.

B. Misrepresenting, directly or by implication, in any manner that other types of medical insurance, whether federal, state, or private, will cover the costs of such device or service.

#### II.

*It is further ordered*, That respondent Sherwin Basil, individually and d/b/a Audio-Logics, and respondent's successors and assigns, within fifteen (15) days after this order becomes final, send a certified letter to the publishers of all Yellow Pages directories that contain the representations in paragraphs seven and nine of the complaint. The letter shall state that any statements representing, directly or by implication, that Medicare will pay for the costs of hearing aids are to be eliminated from the next appearing edition in which it is possible to make changes, and in all subsequent editions. The letter shall also state that any statements representing, directly

or by implication, that Medicare will pay for the costs of hearing tests are to be eliminated from the next appearing edition in which it is possible to make changes, and in all subsequent editions, unless the representation is qualified by a statement that the hearing tests must be ordered in advance by a physician for medical diagnostic purposes. Respondent shall include a copy of this order with the letter.

### III.

*It is further ordered,* That respondent Sherwin Basil, individually and d/b/a Audio Logics, and respondent's successors and assigns, within fifteen (15) days after this order becomes final, either:

A. Post in each of the locations in which respondent does business, a prominent notice that is at least 12" by 15" in size that states clearly and conspicuously the following:

MEDICARE DOES NOT COVER THE COSTS OF HEARING AIDS.  
MEDICARE ALSO DOES NOT COVER THE COSTS OF HEARING TESTS CONDUCTED IN THIS OFFICE UNLESS THE TESTS ARE FIRST ORDERED BY A PHYSICIAN FOR MEDICAL DIAGNOSTIC PURPOSES.

This notice shall be clearly and conspicuously posted in the reception area so that it is visible to consumers as they enter the business location, and in each of the rooms where the hearing tests are conducted; or

B. Provide each consumer prior to any discussion about the consumer's hearing problem a notice that is at least 8½" by 11" in size that states clearly and conspicuously the following:

MEDICARE DOES NOT COVER THE COSTS OF HEARING AIDS.  
MEDICARE ALSO DOES NOT COVER THE COSTS OF HEARING TESTS CONDUCTED IN HIS OFFICE UNLESS THE TESTS ARE FIRST ORDERED BY A PHYSICIAN FOR MEDICAL DIAGNOSTIC PURPOSES.



Respondent shall obtain the consumer's signature on the notice. The signed notices shall be available to representatives of the Federal Trade Commission for inspection for a period of three (3) years from the date of service of this order.

C. The requirements described in (A) and (B) of this paragraph shall be followed for no less than two (2) years after the last date of distribution by the publisher to the general public of the Yellow Pages directories containing the representations in paragraphs seven and nine of the complaint.

#### IV.

*It is further ordered,* That respondent Sherwin Basil, individually and d/b/a Audio Logics, and respondent's successors and assigns, shall, for three (3) years after the date of this order, maintain and upon request make available to representatives of the Federal Trade Commission for inspection and copying all records demonstrating compliance with this order including but not necessarily limited to:

(1) Communications with publishers of the Yellow Page directories regarding the representations in paragraphs seven and nine of the complaint, and

(2) The notices required by paragraph III(A) and (B) above.

#### V.

*It is further ordered,* That respondent shall, within thirty (30) days after service upon respondent of this order, distribute a copy of the order to each of respondent's operating divisions subsidiaries, and related offices, to each of respondent's managerial employees, to each of respondent's employees responsible for advertising, and to each of respondent's officers, agents, representatives or employees selling hearing aids and/or offering hearing tests.

## VI.

*It is further ordered,* That respondent shall hereafter promptly notify the Commission in the event of the discontinuance of respondent's present business or employment and, for a period of five (5) years from the date of service of this order, shall promptly notify the Commission of each affiliation with a new business or a new employment whose activities would or might include the sale of hearing aids, and/or the offering of hearing tests, each such notice to include the respondent's new business address and a statement of the nature of such business or employment and a description of the respondent's expected duties and responsibilities.

## VII.

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

Complaint

116 F.T.C.

IN THE MATTER OF

SUSAN FRUGONE, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3435. Complaint, June 15, 1993--Decision, June 15, 1993*

This consent order requires, among other things, the California hearing aid sellers to correct false and deceptive claims in Yellow Pages advertisements, prominently post corrected information about Medicare coverage in their offices or provide it to consumers prior to purchase, and prohibits them from misrepresenting the coverage provided by any medical insurance for any hearing-related device or service they offer in the future.

*Appearances*For the Commission: *Collot Guerard* and *Eileen Harrington*.For the respondents: *Rick P. Lantz*, Los Angeles, CA.

## COMPLAINT

The Federal Trade Commission, having reason to believe that Susan Frugone and Patricia Keane, individually and as partners d/b/a Audio Rx Hearing Aids, ("respondents"), have violated certain provisions of the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondents Susan Frugone and Patricia Keane, individually and as partners d/b/a Audio Rx Hearing Aids, a partnership, ("respondents"), are residents of California. Respondents' main office and principal place of business is located at 6333 Wilshire Blvd., Suite 307, Los Angeles, California. Another office is located at 4161 Redondo Beach Blvd., Suite 201, Lawndale, California.

PAR. 2. Respondents are audiologists who are, and have been, selling hearing aids and offering hearing tests to the public. Hearing aids are a "device" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act, 15 U.S.C. 52 and 55.

PAR. 3. Respondents are the owners of, and partners in, Audio Rx Hearing Aids, and they formulate, direct and control the policies, acts and practices of Audio Rx Hearing Aids.

PAR. 4. The acts and practices of respondents alleged in this complaint are, and have been, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Respondents have placed, or caused to be placed, advertising for hearing aids in various Yellow Pages directories distributed to the general public, as a means of inducing the public to buy their products and services.

PAR. 6. Respondents' advertising includes, but is not necessarily limited to, the attached Exhibit A. This advertising contains the following statement:

"Audio Rx Hearing Aids ... Sales and Service ... All Major Brands ... Medicare ... welcome."

PAR. 7. Through the use of the statement contained in the advertisement referred to in paragraph six, including but not necessarily limited to the advertisement attached as Exhibit A, respondents have represented, directly or by implication, that Medicare will pay for the costs of hearing aids purchased from respondents.

PAR. 8. In truth and fact, Medicare will not pay for the costs of hearing aids purchased from respondents. Therefore, the representation made in paragraph seven was, and is, false and misleading.

PAR. 9. The dissemination by respondents of the aforesaid false and misleading representation as alleged in this complaint constituted, and now constitutes, an unfair or deceptive act or practice and the making of false advertisements in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act, 15 U.S.C. 45(a) and 52.

EXHIBIT A

Greater Los Angeles CR Rm 659-754 Kaha 9/13 B1405

## 696 Health-Hearing

<p><b>Health Maintenance Organizations (Cont'd)</b></p> <p><b>SECURE HORIZONS MEDICARE</b>      Health Plan      Executive      For Plans      With Medicare      700 INFORMATION CALL      SECURE HORIZONS MEDICARE      Health Plan      FEDERAL      MAINTENANCE ORGANIZATION      FOR INFORMATION CALL      MEMBERSHIP SERVICES      HEALTH PLAN OF AMERICA      KLEMAN &amp; ASSOCIATES      NEWMARKET DENTAL PLAN      OHS INC AND DENTAL PLAN      PACIFICARE      PARTNERS HEALTH PLAN      PARTNERS Health Plan      PARTNERS HEALTH PLAN      PARTNERS NATIONAL HEALTH PLAN      CENTURY CLUB      THE ONLY HEALTH SERVICE THAT IS A QUALITY LIFE IN COST BY CITY FINES OPEN ENROLL</p>	<p><b>Health Services (Cont'd)</b></p> <p><b>SECURE HORIZONS MEDICARE</b>      Health Service      2000 Avenue of the Stars      627-0281      633-9556      630-7111      293-7422      487-8667      643-1062      304-3049      383-1300      368-1262      780-8626      851-5536      467-9757      704-5165      638-8294      466-5572      366-2673      749-8274      601-7428      633-1960      433-1130      642-1838      636-9057      646-7328      366-1637      387-1557      642-6447      567-1196      638-7205      338-4272      484-8706      461-1961      647-8436      633-2091      333-6675      828-0231      466-6557      783-3813      487-7423      483-3413      327-8188      838-8294      553-8976</p>	<p><b>Hearing Aids (Cont'd)</b></p> <p><b>VOODOO HEARING AIDS</b>      Audio RE Hearing Aids      PATRICIA HEARD - SOUTH PACIFIC      STATE LICENSED AUDIOLOGIST      30 DAY TRIAL      (EMERGENCY - 24 HOURS)      - ALL MAJOR BRANDS      - HEARD'S SERVICE      - 15 Year Experience      LA South Bay      651-5107 371-0024      453-3127      843-3127      818-848-5535      843-2228      843-1143      464-6473      437-1518      276-8585      818-842-4067      449-1446      728-3181      853-1479      333-8130      712-2477      483-0988      443-2104      472-2477      481-1291      274-2148      477-1518      631-2130      275-9530      483-7109      87-1188      563-6438      340-8742</p>
---	---	---

Exhibit A

## DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of respondents named in the caption hereof, and respondents having been furnished thereafter with a copy of a draft complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

Respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that respondents have violated the said Act, and that the complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondents Susan Frugone and Patricia Keane are residents of California and partners in Audio Rx Hearing Aids. Respondents' main office and principal place of business is located at 6333 Wilshire Blvd., Suite 307, Los Angeles, California. Another office is located at 4161 Redondo Beach Blvd., Suite 201, Lawndale, California.

Respondents Susan Frugone and Patricia Keane are audiologists who are, and have been, selling hearing aids and offering hearing tests to the public. As partners in Audio Rx Hearing Aids, they

formulate, direct and control the policies, acts and practices of Audio Rx Hearing Aids.

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

## ORDER

### I.

*It is ordered,* That respondents Susan Frugone and Patricia Keane, individually and as partners d/b/a Audio Rx Hearing Aids, a partnership, respondents' successors and assigns, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, affiliate, partnership, sole proprietorship, or other device, in connection with the advertising, promotion, sale, distribution or offering for sale of any hearing-related device or service, in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting, directly or by implication, in any manner that Medicare will pay for the costs of such device or service.

B. Misrepresenting, directly or by implication, in any manner that other types of medical insurance, whether federal, state, or private, will cover the costs of such device or service.

### II.

*It is further ordered,* That respondents Susan Frugone and Patricia Keane, individually and as partners d/b/a Audio Rx Hearing Aids, a partnership, and respondents' successors and assigns, within fifteen (15) days after this order become final, send a certified letter to the publishers of all Yellow Pages directories that contain the representation in paragraph seven of the complaint. The letter shall state that any statements representing, directly or by implication,

that Medicare will pay for the costs of hearing aids are to be eliminated from the next appearing edition in which it is possible to make changes, and in all subsequent editions. Respondents shall include a copy of the order with the letter.

### III.

*It is further ordered,* That respondents Susan Frugone and Patricia Keane, individually and as partners d/b/a Audio Rx Hearing Aids, a partnership, and their successors and assigns, within fifteen (15) days after this order becomes final, either:

A. Post in each of the locations in which respondents do business, a prominent notice that is at least 12" by 15" in size that states clearly and conspicuously the following:

MEDICARE DOES NOT COVER THE COSTS OF HEARING AIDS.  
MEDICARE ALSO DOES NOT COVER THE COSTS OF HEARING  
TESTS CONDUCTED IN THIS OFFICE UNLESS THE TESTS ARE FIRST  
ORDERED BY A PHYSICIAN FOR MEDICAL DIAGNOSTIC PUR-  
POSES.

This notice shall be clearly and conspicuously posted in the reception area so that it is visible to consumers as they enter the business location, and in each of the rooms where the hearing tests are conducted; or

B. Provide each consumer prior to any discussion about the consumer's hearing problem a notice that is at least 8 1/2" by 11" in size that states clearly and conspicuously the following:

MEDICARE DOES NOT COVER THE COSTS OF HEARING AIDS.  
MEDICARE ALSO DOES NOT COVER THE COSTS OF HEARING  
TESTS CONDUCTED IN THIS OFFICE UNLESS THE TESTS ARE FIRST  
ORDERED BY A PHYSICIAN FOR MEDICAL DIAGNOSTIC PUR-  
POSES.



Respondents shall obtain the consumer's signature on the notice. The signed notices shall be available to representatives of the Federal Trade Commission for inspection for a period of three (3) years from the date of service of this order.

C. The requirements described in (A) and (B) of this paragraph shall be followed for no less than two (2) years after the last date of distribution by the publisher to the general public of the Yellow Pages directories containing the representation in paragraph seven of the complaint.

#### IV.

*It is further ordered,* That respondents Susan Frugone and Patricia Keane, individually and as partners d/b/a Audio Rx Hearing Aids, a partnership, and respondents' successors and assigns, shall, for three (3) years after the date of this order maintain and upon request make available to representatives of the Federal Trade Commission for inspection and copying all records demonstrating compliance with this order, including but not necessarily limited to:

(1) Communications with publishers of the Yellow Page directories regarding the representation in paragraph seven of the complaint, and

(2) The notices required by paragraph III(A) and (B) above.

#### V.

*It is further ordered,* That respondents shall, within thirty (30) days after service upon respondents of this order, distribute a copy of the order to each of respondents' operating-divisions, subsidiaries, and related offices, to each of respondents' managerial employees, to each of respondents' employees responsible for advertising, and to each of respondents' officers, agents, representatives or employees selling hearing aids and/or offering hearing tests.

## VI.

*It is further ordered,* That each individual respondent shall hereafter promptly notify the Commission in the event of the discontinuance of her present business or employment and, for a period of five (5) years from the date of service of this order, shall promptly notify the Commission of each affiliation with a new business or a new employment whose activities would or might include the sale of hearing aids, and/or the offering of hearing tests, each such notice to include the respondent's new business address and a statement of the nature of such business or employment and a description of the respondent's expected duties and responsibilities.

## VII.

*It is further ordered,* That respondents shall, within sixty (60) days after service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with all requirements of this order.

## IN THE MATTER OF

## BAY COLONY AUDIOLOGY CENTER, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

*Docket C-3436. Complaint, June 15, 1993--Decision, June 15, 1993*

This consent order requires, among other things, the Massachusetts corporation and its officer to correct false and deceptive claims in Yellow Pages advertisements, prominently post corrected information about Medicare coverage in their offices or provide it to consumers prior to purchase, and prohibits them from misrepresenting the coverage provided by any medical insurance for any hearing-related device or service they offer in the future.

*Appearances*

For the Commission: *Collot Guerard* and *Eileen Harrington*.

For the respondents: *Robert Weinstein, Burn & Levinson*,  
Boston, MA.

## COMPLAINT

The Federal Trade Commission, having reason to believe that Bay Colony Audiology Center, a corporation, and David Citron, III, individually and as an officer of Bay Colony Audiology Center, ("respondents") have violated certain provisions of the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Bay Colony Audiology Center is a Massachusetts corporation with its offices and principal place of business located at 825 Main Street, South Weymouth, Massachusetts.

PAR. 2. Respondent David Citron, III, is an audiologist who is an officer of Bay Colony Audiology Center. He formulates, directs

and controls the policies, acts and practices of Bay Colony Audiology Center, and his address is the same as said corporation.

PAR. 3. Respondents are, and have been, selling hearing aids and offering hearing tests to the public. Hearing aids are a "device" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act, 15 U.S.C 52 and 55.

PAR. 4. The acts and practices of respondents alleged in this complaint are, and have been, in or affecting commerce, as commerce is defined in the Federal Trade Commission Act.

PAR. 5. Respondents have placed, or caused to be placed, advertising for hearing aids in various Yellow Pages directories distributed to the general public, as a means of inducing the public to buy their products and services.

PAR. 6. Respondents' advertising includes, but is not necessarily limited to, the attached Exhibit A. This advertising contains the following statement:

"Hearing Aid Evaluations and Sales ... Medicare Assignment Accepted"

PAR. 7. Through the use of the statement contained in the advertisement referred to in paragraph six, including but not necessarily limited to the advertisement attached as Exhibit A, respondents have represented, directly or by implication, that Medicare will pay for the costs of hearing aids purchased from respondents.

PAR. 8. In truth and fact, Medicare will not pay for the costs of hearing aids purchased from respondents. Therefore, the representation made in paragraph seven was, and is, false and misleading.

PAR. 9. Through the use of the statement contained in the advertisement referred to in paragraph six, including but not necessarily limited to the advertisement attached as Exhibit A, respondents have represented, directly or by implication, that Medicare will pay for the costs of hearing tests provided by respondents.

PAR. 10. In the advertising described in paragraph six, respondents have failed to disclose that Medicare does not pay for

the costs of the hearing tests provided by respondents unless they are performed by order of a physician for the purpose of obtaining additional information necessary for the physician's evaluation of the need for, or the appropriate type of, medical or surgical treatment for a hearing deficit or related medical problem. In light of the representation made in paragraph nine, these facts would be material to consumers in deciding whether to seek respondents' services and the failure to disclose these facts was, and is, deceptive.

PAR. 11. The dissemination by respondents of the aforesaid false and misleading representations as alleged in this complaint constituted, and now constitutes, an unfair or deceptive act or practice and the making of false advertisements in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act, 15 U.S.C. 45(a) and 52.



## DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of respondents named in the caption hereof, and respondents having been furnished thereafter with a copy of a draft complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

Respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that respondents have violated the said Act, and that the complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Bay Colony Audiology Center is a Massachusetts corporation with its office and principal place of business located at 825 Main Street, South Weymouth, Massachusetts.

Respondent David Citron, III, is an audiologist who is an officer of Bay Colony Audiology Center. He formulates, directs and controls the policies, acts and practices of Bay Colony Audiology Center, and his office and principal place of business is located at the above stated address.

Respondents are, and have been, selling hearing aids and offering hearing tests to the public.

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

## ORDER

### I.

*It is ordered,* That respondents Bay Colony Audiology Center, a Massachusetts corporation, its successors and assigns, and its officers, and David Citron, III, individually and as an officer of said corporation; and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, affiliate, partnership, sole proprietorship, or other device, in connection with the advertising, promotion, sale, distribution or offering for sale of any hearing-related device or service in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting, directly or by implication, in any manner that Medicare will pay for the costs of such device or service.

B. Misrepresenting, directly or by implication, in any manner that other types of medical insurance, whether federal, state, or private, will cover the costs of such device or service.

### II.

*It is further ordered,* That respondents Bay Colony Audiology Center, a corporation, its successors and assigns, and its officers, and David Citron, III, individually and as an officer of said corporation, within fifteen (15) days after this order becomes final, send a certified letter to the publishers of all Yellow Pages directories that contain the representations in paragraphs seven and nine of the complaint. The letter shall state that any statements representing,



directly or by implication, that Medicare will pay for the costs of hearing aids are to be eliminated from the next appearing edition in which it is possible to make changes, and in all subsequent editions. The letter shall also state that any statements representing, directly or by implication, that Medicare will pay for the costs of hearing tests are to be eliminated from the next appearing edition in which it is possible to make changes, and in all subsequent editions, unless the representation is qualified by a statement that the hearing tests must be ordered in advance by a physician for medical diagnostic purposes. Respondents shall include a copy of this order with the letter.

### III.

*It is further ordered,* That respondents Bay Colony Audiology Center, a corporation, its successors and assigns, and its officers, and David Citron, III, individually and as an officer of said corporation, within fifteen (15) days after this order becomes final, either:

A. Post in each of the locations in which respondents do business, a prominent notice that is at least 12" by 15" in size that states clearly and conspicuously the following:

MEDICARE DOES NOT COVER THE COSTS OF HEARING AIDS.  
MEDICARE ALSO DOES NOT COVER THE COSTS OF HEARING TESTS CONDUCTED IN THIS OFFICE UNLESS THE TESTS ARE FIRST ORDERED BY A PHYSICIAN FOR MEDICAL DIAGNOSTIC PURPOSES.

This notice shall be clearly and conspicuously posted in the reception area so that it is visible to consumers as they enter the business location, and in each of the rooms where the hearing tests are conducted; or

B. Provide each consumer prior to any discussion about the consumer's hearing problem a notice that is at least 8 ½" by 11" in size that states clearly and conspicuously the following:

MEDICARE DOES NOT COVER THE COSTS OF HEARING AIDS. MEDICARE ALSO DOES NOT COVER THE COSTS OF HEARING TESTS CONDUCTED IN THIS OFFICE UNLESS THE TESTS ARE FIRST ORDERED BY A PHYSICIAN FOR MEDICAL DIAGNOSTIC PURPOSES.

Respondents shall obtain the consumer's signature on the notice. The signed notices shall be available to representatives of the Federal Trade Commission for inspection for a period of three (3) years from the date of service of this order.

C. The requirements described in (A) and (B) of this paragraph shall be followed for no less than two (2) years after the last date of distribution by the publisher to the general public of the Yellow Pages directories containing the representations in paragraphs seven and nine of the complaint.

#### IV.

*It is further ordered,* That respondents Bay Colony Audiology Center, a corporation, its successors and assigns, and its officers, and David Citron, III, individually and as an officer of said corporation, shall, for three (3) years after the date of this order, maintain and upon request make available to representatives of the Federal Trade Commission for inspection and copying all records demonstrating compliance with this order, including but not necessarily limited to:

- (1) Communications with publishers of the Yellow Page directories regarding the representations in paragraphs seven and nine of the complaint, and
- (2) The notices required by paragraph III(A) and (B) above.

#### V.

*It is further ordered,* That respondents shall, within thirty (30) days after service upon them of this order, distribute a copy of the order to each of their operating divisions, subsidiaries, and related

offices, to each of their managerial employees, to each of their employees responsible for advertising, and to each of their officers, agents, representatives or employees selling hearing aids and/or offering hearing tests.

#### VI.

*It is further ordered,* That the corporate respondent shall notify the Commission at least thirty (30) days prior to any proposed change in respondent such as dissolution, assignment, purchase, or sale resulting in a change of ownership or business structure, or any other change in respondent that may affect compliance obligations arising out of this order.

#### VII.

*It is further ordered,* That the individual respondent shall hereafter promptly notify the Commission in the event of the discontinuance of his present business or employment and, for a period of five (5) years from the date of service of this order, shall promptly notify the Commission of each affiliation with a new business or a new employment whose activities would or might include the sale of hearing aids, and/or the offering of hearing tests, each such notice to include the respondent's new business address and a statement of the nature of such business or employment and a description of the respondent's expected duties and responsibilities.

#### VIII.

*It is further ordered,* That respondents shall, within sixty (60) days after service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with all requirements of this order.

## IN THE MATTER OF

## BROOKLYN AUDIOLOGY ASSOCS., P.C., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

*Docket C-3437. Complaint, June 15, 1993 -- Decision, June 15, 1993*

This consent order requires, among other things, the New York corporation and its officer to correct false and deceptive claims in Yellow Pages advertisements, prominently post corrected information about Medicare coverage in their offices or provide it to consumers prior to purchase, and prohibits them from misrepresenting the coverage provided by any medical insurance for any hearing-related device or service they offer in the future.

*Appearances*

For the commission: *Collet Guerard and Eileen Harrington.*

For the respondents: *Pro se.*

## COMPLAINT

The Federal Trade Commission, having reason to believe that Brooklyn Audiology Assocs., P.C., a corporation, and Richard Kaner, individually and as an officer of Brooklyn Audiology Assocs., P.C., ("respondents"), have violated certain provisions of the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Brooklyn Audiology Assocs., P.C., is a New York corporation with its main office and principal place of business located at 8502 4th Ave., Bay Ridge, Brooklyn, New York. Other offices are located at 3003 Ocean Parkway, Brooklyn, New York, and at 142 Joralemon Street, Brooklyn, New York.

PAR. 2. Respondent Richard Kaner is an audiologist who is an officer of Brooklyn Audiology Assocs., P.C. He formulates, directs and controls the policies, acts and practices of Brooklyn Audiology Assocs., P.C., and his address is the same as that of said corporation.

PAR. 3. Respondents are, and have been, selling hearing aids and offering hearing tests to the public. Hearing aids are a "device" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act, 15 U.S.C. 52 and 55.

PAR. 4. The acts and practice of respondents alleged in this complaint are, and have been, in or affecting commerce, as commerce is defined in the Federal Trade Commission Act.

PAR. 5. Respondents have placed, or caused to be placed, advertising for hearing aids in various Yellow Pages directories distributed to the general public, as a means of inducing the public to buy their products and services.

PAR. 6. Respondents' advertising includes, but is not necessarily limited to, the attached Exhibit A. This advertising contains the following statement:

"Complete Hearing Services by Professional Audiologists ... Specialists in the fitting of digital hearing aids ... Computerized hearing aid analyzer, and real ear measurement ... Insurance Assignment Accepted for: Medicare."

PAR. 7. Through the use of the statement contained in the advertisement referred to in paragraph six, including but not necessarily limited to the advertisement attached as Exhibit A., respondents have represented, directly or by implication, that Medicare will pay for the costs of hearing aids purchased from respondents.

PAR. 8. In truth and fact, Medicare will not pay for the costs of hearing aids purchased from respondents. Therefore, the representation made in paragraph seven was, and is, false and misleading.

PAR. 9. Through the use of the statement contained in the advertisement referred to in paragraph six, including but not necessarily limited to the advertisement attached as Exhibit A, respondents have represented, directly or by implication, that

Medicare will pay for the costs of hearing tests provided by respondents.

PAR. 10. In the advertising described in paragraph six, respondents have failed to disclose that Medicare does not pay for the costs of the hearing tests provided by respondents unless they are performed by order of a physician for the purpose of obtaining additional information necessary for the physician's evaluation of the need for or the appropriate type of medical or surgical treatment for a hearing deficit or related medical problem. In light of the representation made in paragraph nine, these facts would be material to consumers in deciding whether to seek respondents' services and the failure to disclose these facts was, and is, deceptive.

PAR. 11. The dissemination by respondents of the aforesaid false and misleading representations as alleged in this complaint constituted, and now constitutes, an unfair or deceptive act of practice and the making of false advertisements in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act, 15 U.S.C. 45(1) and 52.

EXHIBIT A

NYC Brooklyn 7/90

**BROOKLYN AUDIOLOGY ASSOCS, P.C.**  
AUDIOLOGY AND HEARING AID DISPENSING

**COMPLETE HEARING SERVICES BY PROFESSIONAL AUDIOLOGISTS**

BROOKLYN'S ONLY AUTHORIZED CENTERS OF *Miracle-Ear* HEARING INSTRUMENTS

- SPECIALISTS IN THE FITTING OF DIGITAL HEARING AIDS
- STATE OF THE ART EQUIPPED OFFICES INCLUDING COMPUTERIZED HEARING AID ANALYZER, AND REAL EAR MEASUREMENT.
- ALL PROFESSIONAL SERVICES PERFORMED EXCLUSIVELY BY N.Y. STATE LIC. AUDIOLOGISTS
- SALES, SERVICE ON ALL MAKES & MODELS

Insurance Adornment Accepted For: MEDICARE • CH • MEDICAID • EMPIRE PLAN • HEALTHWAYS • HEALTH CARE • TRAVELERS • TOTAL HEALTH • HMO ACCEPTED

RICHARD KANER, M.A., C.C.C. - DIRECTOR

Serving Brooklyn For Over 10 Yrs

**3 CONVENIENT LOCATIONS**

BAY RIDGE      BKLYN HTS.      BRIGHTON  
8502 4TH AVE.    142 JORALEMON ST (RM 88)    3003 OCEAN PKWY

**745-6363    855-4330    449-9800**

---

**NY State Licensed Audiologists ASHA Certified**  
**NY State Licensed Speech Pathologist ASHA Certified**

**HEARING AIDS**  
COMPLETE AUDIOLOGICAL EVALUATIONS  
SCIENTIFIC FITTING  
LATEST STATE OF THE ART INSTRUMENTS

BUY • RENT • REPAIR  
• LOANERS AT NO CHARGE •  
PARTS • BATTERIES • CORDS

- Medicaid, Medicare & Most Insurance Plans Accepted
- Special Attention To Senior Citizens
- Home Visits Arranged By Appointment
- Authorized Specialist For Most Major Manufacturers

**CENTER FOR IMPROVED COMMUNICATIONS**

CANARISE • FLATEUSH      Jack Brown, Director  
BORO PARK • BAY RIDGE  
**257-9092      438-4062**

---

**Hearing Aids**

**ALL HEARING AID CENTERS**

Dr. Donald E. Klein, Ph.D., & Jay Press, M.B.

- Hearing Aid Salesmen, Fitting & Repairs
- Earplugs / Earbuds / Earphones / Accessories
- Complete Hearing Tests By Audiologists
- Medicaid / Most Insurance Plans Accepted

OPEN 8 DAYS MON-SAT

142 Joralemon St (Rm 88) | 875-3131

**ASSOCIATED RIDGEWOOD HEARING AID CENTER INC.**  
See Our Display Ad Page 487  
42 151st Ave. #2, Forest Hills, N.Y. 11375  
Audiological Diagnostic PC  
See Our Display Ad Page 487  
4777 31st Ave. #2, Forest Hills, N.Y. 11375  
8191 66th St., Forest Hills, N.Y. 11375  
3041 Ocean Ave., Forest Hills, N.Y. 11375  
173 Ramson, Forest Hills, N.Y. 11375  
855-1004

**BELTONE HEARING AIDS**

Free Electronic Hearing Tests For the Purpose of Selecting and Fitting Hearing Aids. Services Ad. Made In-Home Service. Batteries. Exclusive Service Plan.

**"FOR INFORMATION CALL"**  
BELTONE HEARING AID SVCE OF BROOKLYN  
P.O. Box 800, Bklyn, N.Y. 11211  
1-800-521-2252  
Brooklyn Audiology Assoc. 142 Joralemon St. - 855-4330  
Brooklyn Audiology Assoc. 142 Joralemon St. - 855-4330  
See Our Display Ad This Page  
300 Ocean Ave. - 855-1004  
BROOKLYN HEARING HEALTH ASSOCIATES

**Sheepshead Bay**  
Hearing Aids & Evaluations  
N.Y.S. Lic. Audiologist  
Most Insurance Accepted • Competitive Rates  
Ask About Our Free Consultation

1331 Ave 2 | 743-8223

Center For Hearing Tests  
Director Robert E. Susan, Registration  
Medical, Hearing Aids & Repair  
Services In Home Service Available  
275 Bay Ave. - 734-3010  
275 Bay Ave. - 734-3010

**CENTER FOR IMPROVED COMMUNICATIONS**  
See Our Display Ad This Page  
8700 Flatbush Ave. - 257-8082  
Christine Hearing Aid Ctr. - 748-1516  
38th Street - 748-1516  
DIAMENBERG WILLIAM  
Free Consultation  
2501 86th St. - 445-3333  
Dependable Hearing Aid Svce - 551-6101  
Hartford Hearing Center  
1400 Sheepshead Bay Rd. - 332-9837  
Hear The Best - 332-9837  
Hearing Aid Specialists Co. 142 Joralemon - 855-4330  
Messone Patrick M. 1 Ramson Av. - 855-1004

**AMERICAN HEARING CENTER**

AUDIOLOGISTS SPECIALIZING IN THE ANALYSIS, DIAGNOSIS & CARE OF THE HEARING IMPAIRED OF ALL AGES

- CLOSED CAPTIONED EQUIPMENT
- ALPAM CLOCKS
- TELEPHONE & TV AMPLIFIERS
- DOCTOR & HOSPITAL RECOMMENDED
- MED. AID ACCEPTED
- PRESCRIPTIONS FILLED FOR ALL BRANDS

ASK ABOUT OUR GUARANTEED SATISFACTION FOR PRECISION TESTING, FITTING AND REPAIRS

**CALL FOR FREE BROCHURE**


**BROOKLYN      QUEENS**  
442 86TH ST.      116-18 QUEENS BLVD  
**745-5169      261-6800**  
748-2630      FOREST HILLS

Doctors, dentists, merchants... all kinds of products and services... are listed in the NYNEX Yellow Pages. KEEP them handy - they save you time and effort.

Simply your buying-know where to buy it. The dealers in many nationally advertised articles are listed in the NYNEX Yellow Pages. Make it a habit to "Look inside the NYNEX Yellow Pages" before buying.

**DINING OUT?**

Call the restaurant for a reservation, and ask for your favorite table.



## DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of respondents named in the caption hereof, and respondents having been furnished thereafter with a copy of a draft complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

Respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that respondents have violated the said Act, and that the complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Brooklyn Audiology Assocs., P.C. is a New York corporation with its main office and principal place of business located at 8502 4th Ave., Bay Ridge, Brooklyn, New York. Other offices are located at 3003 Ocean Parkway, Brooklyn, New York, and at 142 Joralemon Street, Brooklyn, New York.

Respondent Richard Kaner is an audiologist who is an officer of Brooklyn Audiology Assocs., P.C. He formulates, directs and controls the policies, acts and practices of said corporation, and his



principal office and place of business is located at 8502 4th Ave., Bay Ridge, Brooklyn, New York.

Respondents are, and have been, selling hearing aids and offering hearing tests to the public.

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

### ORDER

#### I.

*It is ordered*, That respondents Brooklyn Audiology Assocs., P.C., a New York corporation, its successors and assigns, and its officers, and Richard Kaner, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, affiliate, partnership, sole proprietorship, or other device, in connection with the advertising, promotion, sale, distribution or offering for sale of any hearing-related device or service in or affecting commerce, as commerce is defined in Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting, directly or by implication, in any manner that Medicare will pay for the costs of such device or service.

B. Misrepresenting, directly or by implication, in any manner that other types of medical insurance, whether federal, state, or private, will cover the costs of such device or service.

#### II.

*It is further ordered*, That respondents Brooklyn Audiology Assocs., P.C., a corporation, its successors and assigns, and its officers, and Richard Kaner, individually and as an officer of said corporation, within fifteen (15) days after this order becomes final, send a certified letter to the publishers of all Yellow Pages directories that contain the representations in paragraphs seven and nine of the complaint. The letter shall state that any statements

representing, directly or by implication, that Medicare will pay for the costs of hearing aids are to be eliminated from the next appearing edition in which it is possible to make changes, and in all subsequent editions. The letter shall also state that any statements representing, directly or by implication, that Medicare will pay for the costs of hearing tests are to be eliminated from the next appearing edition in which it is possible to make changes, and in all subsequent editions, unless the representation is qualified by a statement that the hearing tests must be ordered in advance by a physician for medical diagnostic purposes. Respondents shall include a copy of this order with the letter.

### III.

*It is further ordered,* That respondents Brooklyn Audiology Assocs., P.C., a corporation, its successors and assigns, and its officers, and Richard Kaner, individually and as an officer of said corporation, within fifteen (15) days after this order becomes final, either:

A. Post in each of the locations in which respondents do business, a prominent notice that is at least 12" by 15" in size that states clearly and conspicuously the following:

MEDICARE DOES NOT COVER THE COSTS OF HEARING AIDS.  
MEDICARE ALSO DOES NOT COVER THE COSTS OF HEARING  
TESTS CONDUCTED IN THIS OFFICE UNLESS THE TESTS ARE FIRST  
ORDERED BY A PHYSICIAN FOR MEDICAL DIAGNOSTIC PUR-  
POSES.

This notice shall be clearly and conspicuously posted in the reception area so that it is visible to consumers as they enter the business location, and in each of the rooms where the hearing tests are conducted; or

B. Provide each consumer prior to any discussion about the consumer's hearing problem a notice that is at least 8 1/2" by 11" in size that states clearly and conspicuously the following:

MEDICARE DOES NOT COVER THE COSTS OF HEARING AIDS. MEDICARE ALSO DOES NOT COVER THE COSTS OF HEARING TESTS CONDUCTED IN THIS OFFICE UNLESS THE TESTS ARE FIRST ORDERED BY A PHYSICIAN FOR MEDICAL DIAGNOSTIC PURPOSES.

Respondents shall obtain the consumer's signature on the notice. The signed notices shall be available to representatives of the Federal Trade Commission for inspection for a period of three (3) years from the date of service of this order.

C. The requirements described in (A) and (B) of this paragraph shall be followed for no less than two (2) years after the last date of distribution by the publisher to the general public of the Yellow Pages directories containing the representations in paragraphs seven and nine of the complaint.

#### IV.

*It is further ordered,* That respondents Brooklyn Audiology Assocs., P.C., a corporation, its successors and assigns, and its officers, and Richard Kaner, individually and as an officer of said corporation, shall, for three (3) years after the date of this order, maintain and upon request make available to representatives of the Federal Trade Commission for inspection and copying all records demonstrating compliance with this order, including but not necessarily limited to:

- (1) Communications with publishers of the Yellow Page directories regarding the representations in paragraphs seven and nine of the complaint, and
- (2) The notices required by paragraphs III (A) and (B) above.

#### V.

*It is further ordered,* That respondents shall, within thirty (30) days after service upon them of this order, distribute a copy of the order to each of their operating divisions subsidiaries, and related offices, to each of their managerial employees, to each of their employees responsible for advertising, and to each of their officers,

agents, representatives or employees selling hearing aids and/or offering hearing tests.

#### VI.

*It is further ordered,* That the corporate respondent shall notify the Commission at least thirty (30) days prior to any proposed change in respondent such as dissolution, assignment, purchase, or sale resulting in a change of ownership or business structure, or any other change in respondent that may affect compliance obligations arising out of this order.

#### VII.

*It is further ordered,* That the individual respondent shall hereafter promptly notify the Commission in the event of the discontinuance of his present business or employment and, for a period of five (5) years from the date of service of this order, shall promptly notify the Commission of each affiliation with a new business or a new employment whose activities would or might include the sale of hearing aids, and/or the offering of hearing tests, each such notice to include the respondent's new business address and a statement of the nature of such business or employment and a description of the respondent's expected duties and responsibilities.

#### VIII.

*It is further ordered,* That respondents shall, within sixty (60) days after service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with all requirements of this order.

Complaint

116 F.T.C.

IN THE MATTER OF

SALLYE B. CARPENTIER

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3438. Complaint, June 15, 1993--Decision, June 15, 1993*

This consent order requires, among other things, the California hearing aid seller to correct false and deceptive claims in Yellow Pages advertisements, prominently post corrected information about Medicare coverage in her office or provide it to consumers prior to purchase, and prohibits her from misrepresenting the coverage provided by any medical insurance for any hearing-related device or service she offers in the future.

*Appearances*

For the Commission: *Collot Guerard* and *Eileen Harrington*.  
For the respondent: *Stuart Wallach*, Orange, CA.

## COMPLAINT

The Federal Trade Commission, having reason to believe that Sallye B. Carpentier, individually and d/b/a Brown-Potter Hearing Aid Center, ("respondent"), has violated certain provisions of the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Sallye B. Carpentier, individually and d/b/a Brown-Potter Hearing Aid Center, is a resident of California. Respondent's office and principal place of business is located at 3740 E. 7th Street, Long Beach, California.

PAR. 2. Respondent is a hearing aid dealer who is, and has been, selling hearing aids and offering hearing tests to the public. Hearing aids are a "device" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act, 15 U.S.C. 52 and 55.

PAR. 3. Respondent is the owner of Brown-Potter Hearing Aid Center and she formulates, directs and controls the policies, acts and practices of Brown-Potter Hearing Aid Center.

PAR. 4. The acts and practices of respondent alleged in this complaint are, and have been, in or affecting commerce, as commerce is defined by the Federal Trade Commission Act.

PAR. 5. Respondent has placed, or caused to be placed, advertising for hearing aids in various Yellow Pages directories distributed to the general public, as a means of inducing the public to buy respondent's products and services.

PAR. 6. Respondent's advertising includes, but is not necessarily limited to, the attached Exhibit A. This advertising contains the following statement:

"Hearing Aid Center ... U.S. Government Plans Accepted"

PAR. 7. Through the use of the statement contained in the advertisement referred to at paragraph six, including but not necessarily limited to the advertisement attached as Exhibit A, respondent has represented, directly or by implication, that U.S. Government Plans, including Medicare, will pay for the costs of hearing aids purchased from respondent.

PAR. 8. In truth and fact, Medicare will not pay for the costs of hearing aids purchased from respondent. Therefore, the representation made in paragraph seven was, and is, false and misleading.

PAR. 9. The dissemination by respondent of the aforesaid false and misleading representation as alleged in this complaint constituted, and now constitutes, an unfair or deceptive act or practice and the making of false advertisements in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act, 15 U.S.C. 45(a) and 52.



## DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of respondent named in the caption hereof, and respondent having been furnished thereafter with a copy of a draft complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

Respondent, her attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that the complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Sallye B. Carpentier is a resident of California doing business as Brown-Potter Hearing Aid Center, a sole proprietorship. Respondent's office and principal place of business is located at 3740 E. 7th Street, Long Beach, California.

Respondent Sallye B. Carpentier is a hearing aid dealer who is, and has been, selling hearing aids and offering hearing tests to the public. Respondent is the owner of Brown-Potter Hearing Aid Center and she formulates, directs and controls the policies, acts, and practices of said Brown-Potter Hearing Aid Center.



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

## ORDER

### I.

*It is ordered,* That respondent Sallye B. Carpentier, individually and d/b/a Brown-Potter Hearing Aid Center, respondent's successors and assigns, and respondent's agents, representatives, and employees, directly or through any corporation, subsidiary, division, affiliate, partnership, sole proprietorship, or other device, in connection with the advertising, promotion, sale, distribution or offering for sale of any hearing-related device or service, in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting, directly or by implication, in any manner that Medicare will pay for the costs of such device or service.

B. Misrepresenting, directly or by implication, in any manner that other types of medical insurance, whether federal, state, or private, will cover the costs of such device or service.

### II.

*It is further ordered,* That respondent Sallye B. Carpenter, individually and d/b/a Brown-Potter Hearing Aid Center, and respondent's successors and assigns, within fifteen (15) days after this order becomes final, send a certified letter to the publishers of all Yellow Pages directories that contain the representation in paragraph seven of the complaint. The letter shall state that any statements representing, directly or by implication, that U.S. Government Plans will pay for the costs of hearing aids are to be eliminated from the next appearing edition in which it is possible to

make changes, and in all subsequent editions. Respondent shall include a copy of this order with the letter.

### III.

*It is further ordered,* That respondent Sallye B. Carpentier, individually and d/b/a Brown-Potter Hearing Aid Center, and respondent's successors and assigns, within fifteen (15) days after this order becomes final, either:

A. Post in each of the locations in which respondent does business, a prominent notice that is at least 12" by 15" in size that states clearly and conspicuously the following:

MEDICARE DOES NOT COVER THE COSTS OF HEARING AIDS.  
MEDICARE ALSO DOES NOT COVER THE COSTS OF HEARING  
TESTS CONDUCTED IN THIS OFFICE.

This notice shall be clearly and conspicuously posted in the reception area so that it is visible to consumers as they enter the business location, and in each of the rooms where the hearing tests are conducted; or

B. Provide each consumer prior to any discussion about the consumer's hearing problem a notice that is at least 8 ½" by 11" in size that states clearly and conspicuously the following:

MEDICARE DOES NOT COVER THE COSTS OF HEARING AIDS.  
MEDICARE ALSO DOES NOT COVER THE COSTS OF HEARING  
TESTS CONDUCTED IN THIS OFFICE.

Respondent shall obtain the consumer's signature on the notice. The signed notices shall be available to representatives of the Federal Trade Commission for inspection for a period of three (3) years from the date of service of this order.

C. The requirements described in (A) and (B) of this paragraph shall be followed for no less than two (2) years after the last date of distribution by the publisher to the general public of the Yellow Pages directories containing the representation in paragraph seven of the complaint.

#### IV.

*It is further ordered,* That respondent, Sallye B. Carpentier, individually and d/b/a Brown-Potter Hearing Aid Center, and respondent's successors and assigns, shall, for three (3) years after the date of this order, maintain and upon request make available to representatives of the Federal Trade Commission for inspection and copying all records demonstrating compliance with this order, including but not necessarily limited to:

- (1) Communications with publishers of the Yellow Page directories regarding the representation in paragraph seven of the complaint, and
- (2) The notices required by paragraph III(A) and (B) above.

#### V.

*It is further ordered,* That respondent shall, within thirty (30) days after service upon respondent of this order, distribute a copy of the order to each of respondent's operating divisions subsidiaries, and related offices, to each of respondent's managerial employees, to each of respondent's employees responsible for advertising, and to each of respondent's officers, agents, representatives or employees selling hearing aids and/or offering hearing tests.

## VI.

*It is further ordered,* That respondent shall hereafter promptly notify the Commission in the event of the discontinuance of respondent's present business or employment and, for a period of five (5) years from the date of service of this order, shall promptly notify the Commission of each affiliation with a new business or a new employment whose activities would or might include the sale of hearing aids, and/or the offering of hearing tests, each such notice to include respondent's new business address and a statement of the nature of such business or employment and a description of respondent's expected duties and responsibilities.

## VII.

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

Complaint

116 F.T.C.

IN THE MATTER OF

## HEARING CARE ASSOCIATES-ARCADIA, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3439. Complaint, June 15, 1993--Decision, June 15, 1993*

This consent order requires, among other things, the California firms and their officer to correct false and deceptive claims in Yellow Pages advertisements, and to prominently post corrected information about Medicare coverage in their offices or provide it to consumers prior to purchase, and prohibits them from misrepresenting the coverage provided by any medical insurance for any hearing-related device or service they offer in the future.

*Appearances*For the Commission: *Collet Guerard* and *Eileen Harrington*.For the respondents: *Pro se*.

## COMPLAINT

The Federal Trade Commission, having reason to believe that Hearing Care Associates-Arcadia, Hearing Care Associates-Glendora, Hearing Care Associates-Los Angeles, Hearing Care Associates-Panorama City, corporations, and Hearing Care Associates-Alhambra, a partnership, and Gregory Frazer, individually and as an officer in said corporations and a partner in said partnership, ("respondents"), have violated certain provisions of the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Hearing Care Associates-Arcadia is a California corporation with its offices and principal place of business located at 612 West Duarte Road, Arcadia, California.

Respondent Hearing Care Associates-Glendora is a California corporation with its offices and principal place of business located at 210 South Grand Avenue, Glendora, California.

Respondent Hearing Care Associates-Los Angeles is a California corporation with its offices and principal place of business located at 1127 Wilshire Blvd., Los Angeles, California.

Respondent Hearing Care Associates-Panorama City is a California corporation with its offices and principal place of business located at 14425 Chase Street, Panorama City, California.

Respondent Hearing Care Associates-Alhambra is a partnership with its offices and principal place of business located at 7 West Main, Alhambra, California.

PAR. 2. Respondent Gregory Frazer is an audiologist who is an officer of said corporations, and a partner in said partnership. He formulates, directs and controls the policies, acts and practices of these corporations and the partnership. His principal place of business is located at 14425 Chase Street Panorama City, California.

PAR. 3. Respondents are, and have been, selling hearing aids and offering hearing tests to the public. Hearing aids are a "device" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act, 15 U.S.C. 52 and 55.

PAR. 4. The acts and practices of respondent alleged in this complaint are, and have been, in or affecting commerce, as commerce is defined in the Federal Trade Commission Act.

PAR. 5. Respondents have placed, or caused to be placed, advertising for hearing aids in various Yellow Pages directories distributed to the general public, as a means of inducing the public to buy their products and services.

PAR. 6. Respondents' advertising includes, but is not necessarily limited to, the attached Exhibits A - D. This advertising contains the following statements:

1. "Audiological Testing for Medicare" (Exhibit A)
2. "Hearing Aids and Listening Devices ... Complete Diagnostic Evaluations ... Medicare Welcomes" (Exhibit B)
3. "Hearing Aids and Listening Devices ... Medicare Welcome" (Exhibit C)

4. "All Types of Hearing Aids ... Medicare Welcome" (Exhibit D)

PAR. 7. Through the use of the statements contained in the advertisements referred to in paragraph six, including but not limited to the advertisements attached as Exhibits A-D, respondents have represented, directly or by implication, that Medicare will pay for the costs of hearing aids purchased from respondents.

PAR. 8. In truth and fact, Medicare will not pay for the costs of hearing aids purchased from respondents. Therefore, the representation made in paragraph seven was, and is, false and misleading.

PAR. 9. Through the use of the statements contained in the advertisements referred to in paragraph six, including but not limited to the advertisements attached as Exhibits A-D, respondents have represented, directly or by implication, that Medicare will pay for the costs of hearing tests provided by respondents.

PAR. 10. In the advertising described in paragraph six, respondents have failed to disclose that Medicare does not pay for the costs of the hearing tests provided by respondents unless they are performed by order of a physician for the purpose of obtaining additional information necessary for the physician's evaluation of the need for or the appropriate type of medical or surgical treatment for a hearing deficit or related medical problem. In light of the representation made in paragraph nine, these facts would be material to consumers in deciding whether to seek respondents' services, and the failure to disclose these facts was, and is, deceptive.

PAR. 11. The dissemination by respondents of the aforesaid false and misleading representations as alleged in this complaint constituted, and now constitutes, an unfair or deceptive act or practice and the making of false advertisements in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act, 15 U.S.C. 45(a) and 52.

EXHIBIT A

See Local Calling Area As Shown In The White Information Pages

HEAR-ING - 554

**Hearing Aids**  
— (Cont'd) —

**W. J. HEARING AID CENTER**  
1111 W. Colton Ave. Arcadia, CA 91709  
Tel: 915-776-6111

**EMERY HEARING AID CENTER**  
1111 W. Colton Ave. Arcadia, CA 91709  
Tel: 915-776-6111

**W. J. HEARING AID CENTER**  
1111 W. Colton Ave. Arcadia, CA 91709  
Tel: 915-776-6111

**W. J. HEARING AID CENTER**  
1111 W. Colton Ave. Arcadia, CA 91709  
Tel: 915-776-6111

**W. J. HEARING AID CENTER**  
1111 W. Colton Ave. Arcadia, CA 91709  
Tel: 915-776-6111

**SEARS**

1111 W. Colton Ave. Arcadia, CA 91709  
Tel: 915-776-6111

**FOR INFORMATION CALL:**

1111 W. Colton Ave. Arcadia, CA 91709  
Tel: 915-776-6111

**Hearing Analysis**  
See Audiologist

**Hearing Therapy**  
See Audiologist

**Heal Exchange**

**Equipment**

**Heal Pumps**

**NATIONAL HEARING AID SERVICE**  
SINCE 1969

**"OUR SERVICE SAYS WE CARE"**

Specializing in:

- STARKEY
- THE AWARD
- QUADITONE
- FIDELITY • ELECTONE
- SIEMENS
- MAICO • TELEX • WIDEX
- AUDIOVOX • OTICON

**"A HEARING AID SO TINY IT FITS TOTALLY WITHIN THE EAR"**  
— CALL FOR A DEMONSTRATION —

MON-FRI. 9:00-5:00  
EVENINGS BY APPOINTMENT

FREE HEARING TEST  
IN OUR OFFICE OR YOUR HOME

**915-7766**

104 W. COLTON (CORNER L. COLTON & COLTON)  
DOWNTOWN ARCADIA

MEMBER OF NATIONAL HEARING AID SOCIETY

**NEIGHBORHOOD HEARING AID CENTERS INC**

1111 W. Colton Ave. Arcadia, CA 91709  
Tel: 915-776-6111

**HURDLE HEARING INSTRUMENT CENTER**

A HEARING CARE ASSOCIATES

DISPENSING • RENTAL SERVICE • SUPPLIES • ALL TYPES OF HEARING AIDS

GLENDORA

FOOTHILL MEDICAL ARTS  
210 S. Grand Ave.  
335-7102  
963-7418

ARCADIA

612 MEDICAL CENTER  
612 W. Duane Road  
445-2844  
445-1169

WE DO FITTING AND TESTING FOR BLUE CROSS & BLUE SHIELD - CALIFORNIA WORKERS COMP - RETAIL CLERKS - TEAMSTERS - MET LIFE AND MOST PAID HEALTH PLANS & INSURANCE PLANS - AUDIOLOGICAL TESTING FOR MEDICARE - MEDICAL

**ADVERTISE**

All Your Products  
And Services In The  
YELLOW PAGES.

Get More New Customers  
Fast At All Low Cost.

**FOR INFORMATION CALL:**

1111 W. Colton Ave. Arcadia, CA 91709  
Tel: 915-776-6111

**KEEP IN TOUCH** with friends  
around and who talk at home  
by telephone when you're away.

**Hearing Aid Center**

LOCATED BY CALIFORNIA ROADS BY MEDICAL CENTER CENTER

Personalized Hearing Test  
In the comfort of our office  
Same Service and Results  
At All Hours in the Evening

Call for a Hearing Aid Consultation and Accessories

DISCOUNTS TO ALL SENIOR CITIZENS

818 337-1225 • 818 338-0395



EXHIBIT B

**HEARING AIDS**  
SERVING LA FOR OVER 40 YEARS  
**HEARING AID SERVICES OF HOLLYWOOD**  
COMPLETELY EQUIPPED TECHNICAL FACILITIES FOR...  
• HEARING EVALUATION  
• HEARING AID EVALUATION  
• HEARING AID ANALYSIS  
• SERVICE & REPAIR  
30 DAY TRIAL

WE SPECIALIZE IN DIFFICULT HEARING PROBLEMS

SC HABLA ESPAÑOL  
**463-0988**  
**JEFFREY GRAMA**  
M.A.  
CERTIFIED STATE LICENSED AUDIOLOGIST

**CUSTOM CANAL AID**

1710 NORTH WILCOX - LOS ANGELES  
16 BLOCK NORTH OF HOLLYWOOD BLVD

---

**AMERICAN HEARING AID CENTER**  
MOST Makes of Hearing Aids For Males & Females  
REPAIRS • SALES • SERVICE  
COMPLETE HEARING EVALUATION - NO CHARGE  
Medi-Cal Welcome  
MON-FRI: 9AM - 5PM  
SAT-SUN: 9AM - NOON  
30-DAY TRIAL PERIOD  
**383-1696**  
2875 WILSHIRE BLVD (CROSS WILSHIRE)

---

**SEARS**  
HEARING AID SERVICES  
FREE HEARING TEST

---

**STEDAY HEARING AID CO.**  
FREE HEARING TEST  
PLEASE CALL FOR APPOINTMENT  
MEDICAL WELCOME  
**880-6600**

---

**FAIRFAX HEARING AID CENTER**  
MOST MAJOR BRANDS  
SALES, REPAIRING SERVICE - BATTERIES  
FREE HEARING TEST  
OPEN MON-FRI 9:30-5:00  
**213 653-1479**  
527 N. FAIRFAX AVE.

---

**A&B**  
SINCE 1937  
NEED HELP FAST  
• HEATING  
• DRAIN CLEANING  
• PLUMBING  
• ELECTRICAL  
24 HOUR EMERGENCY SERVICE  
FREE ESTIMATE  
FREE SERVICE CALL  
• 24 HOUR PLUMBING HEATING & ELECTRICAL

---

**A PAYNE FAMILY SERVICES COMPANY**  
A-WEST APPLIANCE REPAIR

Exhibit B

EXHIBIT C

"See Local Calling Area As Shown In The White Information Pages" Hearing-Hearing 581

**Hearing Aids**  
—(Cont'd)—

**PROFESSIONAL HEARING AID CENTER**  
1745 W. 17TH AVE. SUITE 101  
TOLSON, CALIF. 92580  
547-1134

**PARSONS HEARING & SPEECH CENTER**  
SPECIALIZING IN SMALL CANAL HEARING AIDS & HARD TO FIT HEARING LOSSES

4331 TOWN & TOWNERS ..... 544-4372  
4341 TOWN & TOWNERS ..... 544-4372

**QUALITY HEARING AID CENTER**  
1745 W. 17TH AVE. SUITE 101  
TOLSON, CALIF. 92580  
547-1134

**HEARING CARE ASSOCIATES**  
1745 W. 17TH AVE. SUITE 101  
TOLSON, CALIF. 92580  
547-1134

**SOUTH BAY HEARING AID CENTER**  
1745 W. 17TH AVE. SUITE 101  
TOLSON, CALIF. 92580  
547-1134

**SPEECH AND HEARING SERVICES**

**HEARING EVALUATION HEARING AIDS**

MOST BRANDS & TYPES  
COMPETITIVE PRICES  
LIC. & CERTIFIED AUDIOLOGIST  
& HEARING AID DISPENSER

**544-1702**

4331 TOWN & TOWNERS ..... 544-4372  
4341 TOWN & TOWNERS ..... 544-4372

**STABLE CUSTOM HEARING AID CENTER**  
1745 W. 17TH AVE. SUITE 101  
TOLSON, CALIF. 92580  
547-1134

**AMERICAN HEARING AID CENTER**

OF THE SOUTH BAY  
OVER 20 YEARS EXPERIENCE  
SALES • SERVICE • REPAIRS • ALL MAKES  
WIDE VARIETY OF INSTRUMENTS FOR EVERY CORRECTABLE HEARING LOSS

JOHN DEL SORDANO "SE HABLA ESPAÑOL"  
ROBERT BOCK  
LIC. HEARING AID DISPENSERS

**373-8753**

3435 LOMITA BLVD. SUITE 111 TORRANCE  
LIFE MEDICAL CENTER  
FURNACE & DUCT CLEANING

**Heat Treating/Metal**

ACCURATE STEEL TREATING

1745 W. 17TH AVE. SUITE 101  
TOLSON, CALIF. 92580  
547-1134

4331 TOWN & TOWNERS ..... 544-4372  
4341 TOWN & TOWNERS ..... 544-4372

**HEATING CONTRACTORS**

FURNACE & AIR DUCT CLEANING  
RESIDENTIAL / COMMERCIAL

**533-8666**

**AARIN'S BREATHE EASY FURNACE & DUCT CLEANING**

1745 W. 17TH AVE. SUITE 101  
TOLSON, CALIF. 92580  
547-1134

4331 TOWN & TOWNERS ..... 544-4372  
4341 TOWN & TOWNERS ..... 544-4372

**HEARING AID CENTER INC.**

STARTED BY LICENSED & CERTIFIED DISPENSING AUDIOLOGISTS

CARRY ALL MAJOR BRANDS OF HEARING AIDS INCLUDING CANAL AIDS

COMPLETE FOLLOW-UP SERVICES BY APPOINTMENT ONLY

TORRANCE MEDICAL BUILDING

**534-5949**

3442 W. LOMITA BL.  
TORRANCE, CALIF. 90503

**HEARING CARE ASSOCIATES**

572-5812

307 N. LINDENWOOD BL., UNIT 202  
BOSTON, CALIF. 92521  
THE HEARING CENTER OF BOSTON

**STUDIO DISCOUNTS**

"SHOW THE STAMP WHEN YOU USE THE GIE YELLOW PAGES"

**SAMPLES OF ADVERTISING**

LOOK IN THE BACK OF THE GIE EVERYTHING PAGES FOR AD IDEAS

**UNFORTUNATE! SIGNS OF DRUG USE AREN'T THIS OBVIOUS.**

CALL 1-800-368-5627  
NATIONAL INSTITUTE OF DRUG ABUSE  
PARTNERSHIP IN DRUG-FREE AMERICA

Exhibit C

EXHIBIT D

LA VE - Alhambra 1100

Hearing Hearing

**ALHAMBRA HEARING AIDS & AUDIOLOGY**

CHARLES HILL, H.A.D.  
GREGORY FRAZER, Ph.D.  
JAMI TANIHANA, M.A.  
BI-HWA TSENG, M.A.

State Board Licensed Audiologists  
State Board Licensed Hearing Aid Dispensers

精進國、粵、越語

精進國、粵、越語

HEARING CARE ASSOCIATES  
HILL'S HEARING AID SERVICE

English & Spanish (818) 281-6689  
(818) 289-0518

7 WEST MAIN • ALHAMBRA  
ENTRANCE & FREE PARKING IN THE REAR

**ALHAMBRA HEARING AID CENTER**

818-284-4162

45 St. Charles Ave. Alhambra, CA 91801

**ALL BRANDS • ALL STYLES**

INCLUDING:

ASSISTIVE • BTE • COMBIS • COCHLEAR • DIRECT • RIC • RIC  
DICK • FIDELITY • GUNDEL • JENCO • JENSEN • JET • JET  
REPAIRS ON ALL MAKES  
LOANERS • RENTALS • BATTERIES

**HURDLE HEARING INSTRUMENT CENTER**

DISPENSING • RENTALS SERVICE • SUPPLIES • ALL TYPES OF HEARING AIDS  
STAFF: GREGORY FRAZER Ph.D. LAUREN VAN DUINEN D.D. M.A.  
ROBERT L. HURD Ph.D. HURDLE H.A.D.

<p><b>GLENORA</b></p> <p>FOOTHILL MEDICAL BLDG 210 S. Grand Ave 818-335-7102 818-963-7418</p>		<p><b>ARCADIA</b></p> <p>611 MEDICAL CENTER 612 W. Duarte Road 818 445-2844 818 445-1165</p>
---	--	--

WE DISPENSING AND TESTING FOR ALL BRANDS & ALL TYPES OF  
CALIFORNIA WEARERS COMP. METAL CRYSTAL TRANSISTERS  
WET. LIFE AND WOODS PATENT HEALTH PLANS INSURANCE PLAN  
LABORATORY TESTING FOR HURDLE MEDICAL

Containing lists are physicians and dentists who specialize in diagnosis and treatment of ear disease and hearing loss. They also test ears to detect defects and prescribe corrective hearing.

Many of the advertisers listed in the Smart Yellow Pages must be licensed or registered by the State Department of Consumer Affairs. Ask to see a license or proof of registration when purchasing professional services.

Exhibit D

## DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of respondents named in the caption hereof, and respondents having been furnished thereafter with a copy of a draft complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

Respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that the complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Hearing Care Associates-Arcadia is a California corporation with its offices and principal place of business at 612 Duarte Road, Arcadia, California.

Respondent Hearing Care Associates-Glendora is a California corporation with its offices and principal place of business at 210 South Grand Avenue, Glendora, California.

Respondent Hearing Care Associates-Los Angeles is a California corporation with its offices and principal place of business at 1127 Wilshire Blvd., Los Angeles, California.

Respondent Hearing Care Associates-Panorama City is a California corporation with its offices and principal place of business at 14425 Chase Street, Panorama City, California.

Respondent Hearing Care Associates-Alhambra is a partnership with its offices and principal place of business located at 7 West Main Alhambra, California.

Respondent Gregory Frazer is an audiologist who is an officer of said corporations, and a partner in said partnership. He formulates, directs and controls the policies, acts and practices of these corporations and the partnership. His principal place of business is located at 14425 Chase Street, Panorama City, California.

Respondents are, and have been, selling hearing aids and offering hearing tests to the public.

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

#### ORDER

##### I.

*It is ordered,* That respondents Hearing Care Associates-Arcadia, Hearing Care Associates-Glendora, Hearing Care Associates-Los Angeles, Hearing Care Associates-Panorama City, California corporations, and Hearing Care Associates-Alhambra, a partnership, their successors and assigns, and their officers and Gregory Frazer, individually and as an officer of said corporations and partner in said partnership; and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, affiliate, partnership, sole proprietorship, or other device, in connection with the advertising, promotion, sale, distribution or offering for sale of any hearing-related device or service in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting, directly or by implication, in any manner that Medicare will pay for the costs of such device or service.

B. Misrepresenting, directly or by implication, in any manner that other types of medical insurance, whether federal, state, or private, will cover the costs of such device or service.

## II.

*It is further ordered,* That respondents Hearing Care Associates-Arcadia, Hearing Care Associates-Glendora, Hearing Care Associates-Los Angeles, Hearing Care Associates-Panorama City, corporations, and Hearing Care Associates-Alhambra, a partnership, their successor's and assigns, and their officers, and Gregory Frazer, individually and as an officer of said corporations and partner in said partnership, within fifteen (15) days after this order becomes final, send a certified letter to the publishers of all Yellow Pages directories that contain the representations in paragraphs seven and nine of the complaint. The letter shall state that any statements representing, directly or by implication, that Medicare will pay for the costs of hearing aids are to be eliminated from the next appearing edition in which it is possible to make changes, and in all subsequent editions. The letter shall also state that any statements representing, directly or by implication, that Medicare will pay for the costs of hearing tests are to be eliminated from the next appearing edition in which it is possible to make changes, and in all subsequent editions, unless the representation is qualified by a statement that the hearing tests must be ordered in advance by a physician for medical diagnostic purposes. Respondents shall include a copy of this order with the letter.

## III.

*It is further ordered,* That respondents Hearing Care Associates-Arcadia, Hearing Care Associates-Glendora, Hearing Care Associates-Los Angeles, Hearing Care Associates-Panorama City, corporations, and Hearing Care Associates-Alhambra, a partnership,

their successors and assigns, and their officers, and Gregory Frazer, individually and as an officer of said corporations and partner in said partnership, within fifteen (15) days after this order becomes final, either:

A. Post in each of the locations in which respondents do business, a prominent notice that is at least 12" by 15" in size that states clearly and conspicuously the following:

MEDICARE DOES NOT COVER THE COSTS OF HEARING AIDS. MEDICARE ALSO DOES NOT COVER THE COSTS OF HEARING TESTS CONDUCTED IN THIS OFFICE UNLESS THE TESTS ARE FIRST ORDERED BY A PHYSICIAN FOR MEDICAL DIAGNOSTIC PURPOSES.

This notice shall be clearly and conspicuously posted in the reception area so that it is visible to consumers as they enter the business location, and in each of the rooms where the hearing tests are conducted; or

B. Provide each consumer prior to any discussion about the consumer's hearing problem a notice that is at least 8 ½" by 11" in size that states clearly and conspicuously the following:

MEDICARE DOES NOT COVER THE COSTS OF HEARING AIDS. MEDICARE ALSO DOES NOT COVER THE COSTS OF HEARING TESTS CONDUCTED IN THIS OFFICE UNLESS THE TESTS ARE FIRST ORDERED BY A PHYSICIAN FOR MEDICAL DIAGNOSTIC PURPOSES.

Respondents shall obtain the consumer's signature on the notice. The signed notices shall be available to representatives of the Federal Trade Commission for inspection for a period of three (3) years from the date of service of this order.

C. The requirements described in (A) and (B) of this paragraph shall be followed for no less than two (2) years after the last date of distribution by the publisher to the general public of the Yellow

Pages directories containing the representations in paragraphs seven and nine of the complaint.

#### IV.

*It is further ordered,* That respondents Hearing Care Associates-Arcadia, Hearing Care Associates-Glendora, Hearing Care Associates-Los Angeles, Hearing Care Associates-Panorama City, corporations, and Hearing Care Associates-Alhambra, a partnership, their successors and assigns, and their officers, and Gregory Frazer, individually and as an officer of said corporations and partner in said partnership, shall, for three (3) years after the date of this order, maintain and upon request make available to representatives of the Federal Trade Commission for inspection and copying all records demonstrating compliance with this order, including but not necessarily limited to:

- (1) Communications with publishers of the Yellow Pages directories regarding the representations in paragraphs seven and nine of the complaint, and
- (2) The notices required by paragraph III(A) and (B) above.

#### V.

*It is further ordered,* That respondents shall, within thirty (30) days after service upon them of this order, distribute a copy of the order to each of their operating division, subsidiaries, and related offices, to each of their managerial employees, to each of their employees responsible for advertising, and to each of their officers, agents, representatives or employees selling hearing aids and/or offering hearing tests.

#### VI.

*It is further ordered,* That the corporate and partnership respondents shall notify the Commission at least thirty (30) days



prior to any proposed change in respondents such as dissolution, assignment, purchase, or sale resulting in a change of ownership or business structure, or any other change in respondents that may affect compliance obligations arising out of this order.

#### VII.

*It is further ordered,* That the individual respondent shall hereafter promptly notify the Commission in the event of the discontinuance of his present business or employment and, for a period of five (5) years from the date of service of this order, shall promptly notify the Commission of each affiliation with a new business or a new employment whose activities would or might include the sale of hearing aids, and/or the offering of hearing tests, each such notice to include the respondent's new business address and a statement of the nature of such business or employment and a description of the respondent's expected duties and responsibilities.

#### VIII.

*It is further ordered,* That respondents shall, within sixty (60) days after service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with all requirements of this order.

## IN THE MATTER OF

## SERVICE CORPORATION INTERNATIONAL

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE  
FEDERAL TRADE COMMISSION ACT

*Docket C-3440. Complaint, June 15, 1993--Decision, June 15, 1993*

This consent order requires, among other things, the Texas corporation to divest, to a Commission-approved acquirer, five funeral homes, and to obtain prior Commission approval, for a period of ten years, before acquiring any additional funeral homes in certain Georgia and Tennessee areas.

*Appearances*

For the Commission: *Daniel P. Ducore and Katharine B. Alphin.*

For the respondent: *Michael Byowitz, Wachtell, Lipton, Rosen & Katz, New York, N.Y.*

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Service Corporation International ("SCI"), a corporation subject to the jurisdiction of the Commission, proposes to acquire substantially all of the common stock of Sentinel Group, Inc. (Sentinel), in violation of the provisions of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

## I. DEFINITIONS

1. For the purposes of this complaint, the following definitions shall apply:

a. “*SCI*” means the respondent Service Corporation International, its parents, subsidiaries, divisions, groups controlled by SCI, successors and assigns, and their respective directors, officers, employees, agents, and representatives.

b. “*Sentinel*” means Sentinel Group, Inc., its parents, subsidiaries, divisions, groups controlled by Sentinel, successors and assigns, and their respective directors, officers, employees, agents, and representatives.

c. “*Funeral services*” means a group of services that may include, but not be limited to: the removal of the body from the place of death; its embalming or other preparation; making available a place for visitation and viewing, for the conduct of a funeral service, and for the display of caskets and outside cases; and arrangement for and conveyance of the body to a cemetery or crematory for final disposition.

d. “*Funeral establishment*” means the Assets and Businesses of a facility that is devoted to the care or preparation for burial or transportation of deceased human bodies and in which funeral services may be conducted.

## II. THE RESPONDENT

2. Respondent SCI is a corporation organized, existing and doing business under the laws of the State of Texas, with its office and principal place of business located at 1929 Allen Parkway, Houston, Texas.

3. Sentinel is a corporation organized, existing and doing business under the laws of the State of Delaware, with its office and principal place of business located at 1177 Summer Street, Stamford, Connecticut.

4. SCI and Sentinel are, and at all times relevant herein have been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and are corporations whose businesses are in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

### III. THE ACQUISITION

5. On or about April 5, 1991, SCI entered into an Agreement and Plan of Merger with Sentinel, in which SG Acquisition Corp., a wholly-owned subsidiary of SCI, would be merged into Sentinel. Sentinel would survive as a legal entity, however, Sentinel shareholders would receive SCI common stock, and SCI would become the sole shareholder of Sentinel.

### IV. THE RELEVANT MARKET

6. For purposes of this complaint, the relevant line of commerce in which to analyze the proposed acquisition of Sentinel is the provision of funeral services.

7. For purposes of this complaint, the relevant geographic markets are:

- a. Savannah, Georgia, and its immediate environs.
- b. LaFayette, Georgia, and its immediate environs.
- c. Hamilton County, Tennessee, and Rossville and Fort Oglethorpe, Georgia.

8. In the three relevant geographic markets described in paragraph seven, the funeral service industry is concentrated whether measured by the Herfindahl-Hirschmann Index or by two-firm or four-firm concentration ratios.

9. Entry into the relevant geographic markets is difficult.

10. In each of the relevant geographic markets, both SCI and Sentinel own funeral establishments and are actual competitors in

the provision of funeral services. In the Savannah, Georgia area, Sentinel is the largest firm and SCI one of the leading firms in the provision of funeral services. In the Hamilton County, Tennessee and Rossville and Fort Oglethorpe, Georgia area, Sentinel and SCI are the two largest firms in the provision of funeral services. In the LaFayette, Georgia area, Sentinel and SCI are the only two providers of funeral services.

#### V. EFFECT OF THE ACQUISITION

11. The effects of the acquisition may be to substantially lessen competition in each of the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways, among others:

- a. By eliminating actual competition between SCI and Sentinel in the relevant markets; and
- b. By significantly enhancing the possibility of collusion or interdependent coordination among the remaining firms in the relevant markets or by tending to create a dominant firm in the relevant markets.

#### VI. VIOLATION CHARGED

12. The acquisition described above violates Section 7 of the Clayton Act, as amended, 15 U.S.C. 18 and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain funeral home acquisitions of Service Corporation International ("SCI"), a corporation, and SCI, having been furnished with a copy of a draft of complaint that the Atlanta Regional Office proposed to present to the Commission for its consideration, and

that, if issued by the Commission, would charge Service Corporation International with violations of the Clayton Act and Federal Trade Commission Act; and

Respondent SCI, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission, having thereafter considered the matter and having determined that it had reason to believe that the respondent had violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having accepted modifications to such agreement and placed the draft order containing the modifications on the public record for thirty (30) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent SCI is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas with its office and principal place of business located at 1929 Allen Parkway in the City of Houston, State of Texas.

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

## ORDER

## I.

As used in this order, the following definitions shall apply:

A. “*SCI*” or “*respondent*” means Service Corporation International, its parents, subsidiaries, divisions, groups controlled by SCI, successors and assigns, and their respective directors, officers, employees, agents and representatives.

B. “*Sentinel*” means Sentinel Group, Inc., its parents, subsidiaries, divisions, groups controlled by Sentinel, successors and assigns, and their respective directors, officers, employees, agents and representatives.

C. “*Funeral establishment*” means the Assets and Businesses of a facility that is devoted to care or preparation for burial or transportation to a cemetery or crematory of deceased human bodies and in which funeral services may be conducted.

D. “*Assets and Businesses*” include assets, properties, business and goodwill, tangible and intangible, utilized by a funeral establishment, including the following:

1. All right, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits;
2. All machinery, fixtures, equipment, furniture, tools and other tangible personal property;
3. All right, title and interest in the trade name of each funeral establishment;
4. All right, title and interest in the legal name “Lane Funeral-Homes, Inc.” within Hamilton County, Tennessee, and a portion of Dade, Walker and Catoosa Counties, Georgia, being more particularly described as follows: Beginning at the northwest corner of Dade County, Georgia, turning thence southerly along the western line of Dade County, Georgia, to its intersection with the westerly extension of the northerly line of the Chickamauga & Chattanooga National Military Park (“Park”), thence easterly along the extension

of the northerly line of the Park and the northerly line of the Park to the intersection of the northeastern corner of the Park and the city limits of Ft. Oglethorpe, thence turning northeasterly through the intersection of the centerline of Ross Hollow Road and Doug Road to the north line of Catoosa County, Georgia, hence westerly along the north line of Catoosa, Walker and Dade Counties to the northwest corner of Dade County, Georgia and the point of beginning;

5. All right, title and interest in the legal name, "Wallis & Son Funeral Home" and the trade name "Wallis" in that portion of Walker County, Georgia, being more particularly described as follows: All of Walker County, Georgia lying south of the north line of the Chickamauga & Chattanooga National Military Park and its westward extension; and

6. All books, records and files pertinent to any of the Properties to be Divested:

E. "*Properties to be Divested*" means the Assets and Businesses of the following funeral establishments:

1. Lane Funeral Homes, Inc., South Crest Chapel, Rossville, Georgia.
2. Lane Funeral Homes, Inc., R. J. Coulter Chapel, Chattanooga, Tennessee.
3. Lane Funeral Homes, Inc., Williamson & Sons Funeral Home, Soddy Daisy, Tennessee.
4. Wallis & Son Funeral Home, LaFayette, Georgia.
5. Sipple's Mortuary, Savannah, Georgia.

## II.

*It is ordered*, That, within twelve (12) months after the date this order becomes final, respondent shall divest, absolutely and in good faith, the Properties to be Divested. The Properties to be Divested are to be divested only to an acquirer or acquirers, and only in such manner, that receives the prior approval of the Commission. The



purpose of the divestitures required by this order is to ensure the continuation of the funeral establishments as ongoing viable enterprises and to remedy the lessening of competition alleged in the Commission's complaint.

### III.

*It is further ordered,* That, pending divestiture, respondent shall maintain the viability and marketability of the Properties to be Divested and shall not cause or permit the destruction, removal, or impairment of any assets or businesses of the Properties to be Divested, except in the ordinary course of business and except for ordinary wear and tear.

### IV.

*It is further ordered,* That:

A. If respondent has not divested the Properties to be Divested as required by Section II within twelve (12) months after the date this order becomes final, respondent shall consent to the appointment of a trustee by the Commission to divest the remaining Properties to be Divested. In the event the Commission or the Attorney General brings an action pursuant to Section 5(1) of the Federal Trade Commission Act, 15 U.S.C. 45(1), or any other statute enforced by the Commission, respondent shall similarly consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Section shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(1) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by SCI to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to Section IV.A. of this order, respondent shall consent to

the following terms and conditions regarding the trustee's powers, authorities, duties and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall have the exclusive power and authority, subject to the prior approval of the Commission, to divest the remaining Properties to be Divested.

3. The trustee shall have eighteen (18) months from the date of appointment to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the eighteen-month period the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission, or by the Court for a court-appointed trustee; *provided, however*, that the Commission or court may only extend the divestiture period two (2) times.

4. The trustee shall have full and complete access to the personnel, books, records and facilities relating to the remaining Properties to be Divested, or any other relevant information, as the trustee may reasonably request. Respondent shall develop such financial or other information as such trustee may reasonably request and shall cooperate with any reasonable request of the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by respondent shall extend the time for divestiture under this Section in an amount equal to the delay, as determined by the Commission or the court for a court-appointed trustee.

5. Subject to respondent's absolute and unconditional obligation to divest at no minimum price and the purpose of the divestiture as stated in Section II of this order; the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each acquiring entity for the divestiture of the remaining Properties to be Divested. The divestiture shall be made in the manner set out

in Section II; *provided, however*, that if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by respondent from among those approved by the Commission.

6. The trustee shall serve, without bond or other security, at the cost and expense of respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, or other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of respondent and the trustee's power shall be terminated. The trustee's compensation shall be based at least in a significant part on a commission arrangement contingent on the trustee's divesting the remaining Properties to be Divested.

7. Except in cases of misfeasance, negligence, willful or wanton acts, or bad faith by the trustee, the trustee shall not be liable to respondent for any action taken or not taken in performance of the trusteeship. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this order, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for or defense of any claim whether or not resulting-in any liability, except to the extent such liabilities, claims, or expenses result from misfeasance, negligence, willful or wanton acts, or bad faith of the trustee.

8. Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of

a court-appointed trustee, of the court, respondent shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Section IV.A. of this order.

10. The Commission or, in the case of a court-appointed trustee, the court may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the remaining Properties to be Divested.

12. The trustee shall report in writing to respondent and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

#### V.

*It is further ordered,* That respondent shall be bound by the terms and obligations of the Agreement Containing Consent Order between staff of the Commission and Sentinel, dated April 11, 1991, and any order issued by the Commission in Sentinel Group, Inc., File No. 891 0086, pursuant thereto, and shall execute the provisions thereof.

#### VI.

*It is further ordered,* That respondent shall comply with the Agreement to Hold Separate, attached hereto and made a part hereof as Appendix I. Said agreement shall continue in effect until respondent has divested the Properties to be Divested or until such other time as the Agreement to Hold Separate provides.

## VII.

*It is further ordered,* That, within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until respondent has fully complied with Section II of this order, respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying or has complied with that provision. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of all contacts or negotiations with prospective acquirers for the divestitures required by this order, including the identity of all parties contacted. Respondent also shall include in its compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports, and recommendations concerning the required divestitures.

## VIII.

*It is further ordered,* That, for a period of ten (10) years after the date this order became final, respondent shall cease and desist from acquiring, through subsidiaries or otherwise, without the prior approval of the Commission, any interest in a funeral establishment located within the city limits of, or the area extending fifteen (15) miles outward in any direction from the city limits of: (a) Chattanooga, Tennessee; (b) Soddy Daisy, Tennessee; (c) LaFayette, Georgia; and (d) Savannah, Georgia; *provided, however,* that this prohibition shall not apply to the construction of new facilities by respondent.

## IX.

*It is further ordered,* That, for a period of ten (10) years after the date this order becomes final, notwithstanding the requirements of Section VIII hereof and of Section VII of the Decision and Order referred to in Section V hereof, respondent may acquire through

default or foreclosure proceedings any interest in a funeral establishment located within the city limits of, or the area extending fifteen (15) miles outward in any direction from the city limits of: (a) Chattanooga, Tennessee; (b) Soddy Daisy, Tennessee; (c) LaFayette, Georgia; (d) Savannah, Georgia; (e) Gainesville, Georgia; (f) Rome, Georgia; (g) Summerville, Georgia; (h) Waycross, Georgia; or (i) Ft. Smith, Arkansas; *provided, however*, that respondent must give the Commission notice of such acquisition within ten (10) days of the acquisition. Within thirty (30) days of such acquisition respondent must apply for Commission approval of the acquisition. If the Commission does not approve the acquisition, respondent shall divest such interest in accordance with the terms of Sections II., III., and IV. of this order. From the date of the acquisition until such time as the Commission approves the acquisition or, if the acquisition is not approved, until the acquisition is divested, respondent shall hold separate, as required by the modified Hold Separate Agreement attached hereto, any funeral establishment in which such an interest is acquired.

#### X.

*It is further ordered*, That, one year after the date this order becomes final and annually thereafter for nine (9) years, respondent shall file with the Commission a verified written report of its compliance with Sections VIII. and IX. of this order. Such reports shall include, but not be limited to, a listing of all acquisitions and the acquired locations' addresses including but not limited to acquisitions due to default, foreclosure proceedings or purchases in foreclosure, made by respondent during the 12 months preceding the date of the report.

#### XI.

*It is further ordered*, That, for the purpose of determining or securing compliance with this order, subject to any legally recognized privilege, and upon written request with reasonable

notice to respondent made to their principal offices, respondent shall permit any duly authorized representative or representatives of the Commission:

A. Access, during the office hours of respondent and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order;

B. Upon five (5) days' notice to respondent and without restraint or interference therefrom, to interview officers or employees of respondent, who may have counsel present, regarding such matters.

## XII.

*It is further ordered,* That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in its organization, such as dissolution, assignment or sale resulting in the emergence of a successor, the creation or dissolution of subsidiaries, or any other change, that may affect compliance obligations arising out of this order.

### AGREEMENT TO HOLD SEPARATE

This Agreement to Hold Separate (the "Agreement") is by and between Service Corporation International ("SCI"), a corporation organized and existing under the laws of the State of Texas, with its principal executive offices located at 1929 Allen Parkway, Houston, Texas, and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively the "Parties").

## Premises

*Whereas*, on or about April 5, 1991, SCI entered into an agreement and Plan of Merger with Sentinel Group, Inc. (“Sentinel,” in which (1) SG Acquisition Corp., a wholly-owned subsidiary of SCI, would be merged into Sentinel; (2) Sentinel shareholders would receive SCI common stock; and (3) SCI would become the sole shareholder of Sentinel (hereinafter the “Acquisition”)); and

*Whereas*, both Sentinel and SCI own funeral establishments that provide funeral services to consumers; and

*Whereas*, the Commission is now investigating the Acquisition to determine if the Acquisition would violate any of the statutes enforced by the Commission; and

*Whereas*, if the Commission accepts the Agreement Containing Consent Order (the “SCI Consent Agreement”), attached hereto as Exhibit A, the Commission must place the order on the public record for public comment for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission’s Rules; and

*Whereas*, if the Commission accepts the Agreement Containing Consent Order dated April 11, 1991 between Sentinel and Commission staff (“Sentinel Consent Agreement”), attached hereto as Exhibit B, the Commission must place the Sentinel order on the public record for public comment for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission’s Rules; and

*Whereas*, the Commission is concerned that if an understanding is not reached preserving the status quo ante and holding separate the assets and businesses of certain Sentinel funeral establishments listed in Exhibit C attached hereto and made a part hereof (hereinafter “Hold Separate Assets”) until the divestitures contemplated by the SCI Consent Agreement and the Sentinel Consent Agreement have been made, divestitures resulting from any proceeding challenging the legality of the Acquisition might not be possible or might be less than an effective remedy; and



*Whereas*, if the Commission finally accepts the order contained in the SCI Consent Agreement, SCI agrees, for a period of 10 years after the date the order becomes final, to notify the Commission of the acquisition, by default or foreclosure proceedings, of any interest in a funeral establishment in nine specified geographic areas and to hold such funeral establishment separate until such time as the Commission approves the acquisition or the interest is divested; and

*Whereas*, the purposes of this Agreement are to: (1) preserve the Hold Separate Assets as viable independent businesses pending the divestitures described in the SCI Consent Agreement and the Sentinel Consent Agreement; (2) preserve the Commission's ability to require the divestitures of the funeral establishments required by the SCI Consent Agreement and the Sentinel Consent Agreement; and (3) remedy any anticompetitive aspects of the Acquisition; and

*Whereas*, SCI's entering into this Agreement shall in no way be construed as an admission by SCI that the Acquisition is illegal; and

*Whereas*, SCI understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

*Now, therefore*, the Parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the SCI Consent Agreement, it will not seek further relief from SCI with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement, the SCI Consent Agreement to which it is annexed and made a part thereof and any order issued against SCI or Sentinel, as follows:

1. SCI agrees to execute and be bound by the attached SCI Consent Agreement.
2. SCI agrees that, from the date this Agreement is accepted until the first to occur of (i) ten business days after the Commission withdraws its acceptance of the SCI Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's Rules; or (ii)

until the date the divestitures required by the SCI order and the Sentinel order are accomplished, SCI shall hold the Hold Separate Assets separate and apart on the following terms and conditions and for the periods set forth in Exhibit C:

- a. SCI shall hold separate and apart the Hold Separate Assets.
- b. Except as provided herein and as is necessary to assure compliance with this Agreement and the Consent Order, SCI shall not exercise direction or control over, or influence directly or indirectly, the Hold Separate Assets or any of their operations or businesses.
- c. SCI shall cause the Hold Separate Assets to continue using their present names and trade names, and shall maintain and preserve the viability and marketability of each of the Hold Separate Assets and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair their marketability or viability.
- d. SCI shall refrain from taking any actions that may cause any material adverse change in the business or financial conditions of the Hold Separate Assets.
- e. SCI shall not change the composition of the management of the Hold Separate Assets, except that SCI may fill vacancies and remove management for cause.
- f. SCI shall maintain separate financial and operating records and shall prepare separate financial statements for the Hold Separate Assets and shall provide the Commission with quarterly and annual financial statements for each funeral establishment within ten days of their availability.
- g. All earnings and profits of the Hold Separate Assets shall be held separate. If necessary, SCI shall provide any or all of the Hold Separate Assets with sufficient working capital to operate at their current levels.
- h. SCI shall refrain from, directly or indirectly, encumbering, selling, disposing of, or causing to be transferred any assets, property, or business of the Hold Separate Assets, except that the Hold Separate Assets may advertise, purchase merchandise and sell

or otherwise dispose of merchandise in the ordinary course of business, and SCI may sell or otherwise dispose of assets, property or business to accomplish the divestitures required by any order issued against SCI or Sentinel.

3. The parties agree that if the Commission finally approves and issues the order in the SCI Consent Agreement, this Agreement shall remain in effect until ten (10) years after the date said order becomes final.

4. Should the Federal Trade Commission seek in any proceeding to compel SCI to divest itself of the shares of Sentinel stock that SCI may acquire, or to compel SCI to divest any assets or businesses of Sentinel that it may hold, or to seek any other injunctive or equitable relief, SCI shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. SCI also waives all rights to contest the validity of this Agreement.

5. In the event the Commission has not finally approved and issued the SCI order within one hundred-twenty (120) days of its publication in the Federal Register, SCI may, at its option, terminate this Agreement to Hold Separate by delivering written notice of termination to the Commission, which termination shall be effective ten (10) days after the Commission's receipt of such notice, and this Agreement shall thereafter be of no further force and effect. If this Agreement is so terminated, the Commission may take such action as it deems appropriate, including but not limited to an action pursuant to Section 13(b) of the Federal Trade Commission Act, 15 U.S.C, 53(b). Termination of this Agreement to Hold Separate shall in no way operate to terminate the Agreement Containing Consent Order that SCI has entered into in this matter.

6. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to SCI made to its principal office, SCI shall make available to any duly authorized representative or representatives of the Commission:

a. All books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of SCI relating to any matters contained in this Agreement, for inspection and copying during office hours and in the presence of counsel; and

b. Upon five (5) days notice to SCI, and without restraint or interference from SCI, officers or employees of SCI, who may have counsel present, for interviews regarding any such matters.

7. This agreement shall not be binding until approved by the Commission.

#### AGREEMENT CONTAINING CONSENT ORDER

The Federal Trade Commission having initiated an investigation of the proposed acquisition of the voting securities of Sentinel Group, Inc., (“Sentinel”) by Service Corporation International, a corporation hereinafter sometimes referred to as “proposed respondent” or “SCI,” and it now appearing that the proposed respondent is willing to enter into an agreement containing an order to divest certain assets and cease and desist from certain acts.

It is hereby agreed by and between proposed respondent, its duly authorized officer and attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent SCI is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1929 Allen Parkway, Houston, Texas.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission’s decision contain a statement of findings of fact and conclusions of law;

- c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and
- d. Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the

order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that, once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

8. Counsel for the Federal Trade Commission agree that the Agreement Containing Consent Order in Sentinel Group, Inc., File No. 891 0086, shall be submitted to the Commission for its consideration prior to or contemporaneously with this agreement.

## ORDER

### I.

As used in this order, the following definitions shall apply:

A. “*SCF*” or “*respondent*” means Service Corporation International, its parents, subsidiaries, divisions, groups controlled by SCI, successors and assigns, and their respective directors, officers, employees, agents and representatives.

B. “*Sentinel*” means Sentinel Group, Inc., its parents, subsidiaries, divisions, groups controlled by Sentinel, successors and assigns, and their respective directors, officers, employees, agents and representatives.

C. “*Funeral establishment*” means the Assets and Businesses of a facility that is devoted to the care or preparation for burial or transportation to a cemetery or crematory of deceased human bodies and in which funeral services may be conducted.

D. “*Assets and Businesses*” include assets, properties, business and goodwill, tangible and intangible, utilized by a funeral establishment, including the following:

1. All right, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits;
2. All machinery, fixtures, equipment, furniture, tools and other tangible personal property;
3. All right, title and interest in the trade name of each funeral establishment with the exception that the trade name "Chattanooga Funeral Home" need not be included;
4. All right, title and interest in the legal name "Lane Funeral Homes, Inc." within Hamilton County, Tennessee, and a portion of Dade, Walker and Catoosa Counties, Georgia, being more particularly described as follows: Beginning at the northwest corner of Dade County, Georgia, turning thence southerly along the western line of Dade County, Georgia, to its intersection with the westerly extension of the northerly line of the Chickamauga & Chattanooga National Military Park ("Park"), thence easterly along the extension of the northerly line of the Park and the northerly line of the Park to the intersection of the northeastern corner of the Park and the city limits of Ft. Oglethorpe, thence turn northeasterly through the intersection of the centerline of Ross Hollow Road and Doug Road to the north line of Catoosa County, Georgia, thence westerly along the north line of Catoosa, Walker and Dade Counties to the northwest corner of Dade County, Georgia and the point of beginning;
5. All right, title and interest in the legal name, "Wallis & Son Funeral Home" and the trade name "Wallis" in that portion of Walker County, Georgia, being more particularly described as follows: All of Walker County, Georgia lying south of the north line of the Chickamauga & Chattanooga National Military Park and its westward extension; and
6. All books, records and files pertinent to any of the Properties to be Divested.

E. "*Properties to be Divested*" means the Assets and Businesses of the following funeral establishments:

1. Chattanooga Funeral Home, West Chapel, Chattanooga, Tennessee.
2. Lane Funeral Homes, Inc., R. J. Coulter Chapel, Chattanooga, Tennessee.
3. Lane Funeral Homes, Inc., Valley View Chapel, Chattanooga, Tennessee.
4. Lane Funeral Home, Inc., Williamson & Sons Funeral Home, Soddy Daisy, Tennessee.
5. Wallis & Son Funeral Home, LaFayette, Georgia.
6. Sipple's Mortuary, Savannah, Georgia.

## II.

*It is ordered,* That, within twelve (12) months after the date this order becomes final, respondent shall divest, absolutely and in good faith, the Properties to be Divested. The Properties to be Divested are to be divested only to an acquirer or acquirers, and only in such manner, that receives the prior approval of the Commission. The purpose of the divestitures required by this order is to ensure the continuation of the funeral establishments as ongoing viable enterprises and to remedy the lessening of competition alleged in the Commission's complaint.

## III.

*It is further ordered,* That, pending divestiture, respondent shall maintain the viability and marketability of the Properties to be Divested and shall not cause or permit the destruction, removal, or impairment of any assets or businesses of the Properties to be Divested, except in the ordinary course of business and except for ordinary wear and tear.



## IV.

*It is further ordered, That:*

A. If respondent has not divested the Properties to be Divested as required by Section II within twelve (12) months after the date this order becomes final, respondent shall consent to the appointment of a trustee by the Commission to divest the remaining Properties to be Divested. In the event the Commission or the Attorney General brings an action pursuant to Section 5(1) of the Federal Trade Commission Act, 15 U.S.C. 45(1), or any other statute enforced by the Commission, respondent shall similarly consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Section shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(1) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by SCI to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to Section IV.A. of this order, respondent shall consent to the following terms and conditions regarding the trustee's powers, authorities, duties and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall have the exclusive power and authority, subject to the prior approval of the Commission, to divest the remaining Properties to be Divested.

3. The trustee shall have eighteen (18) months from the date of appointment to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the eighteen-month period the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission, or

by the Court for a court-appointed trustee; *provided, however*, that the Commission or court may only extend the divestiture period two (2) times.

4. The trustee shall have full and complete access to the personnel, books, records and facilities relating to the remaining Properties to be Divested, or any other relevant information, as the trustee may reasonably request. Respondent shall develop such financial or other information as such trustee may reasonably request and shall cooperate with any reasonable request of the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by respondent shall extend the time for divestiture under this Section in an amount equal to the delay, as determined by the Commission or the court for a court-appointed trustee.

5. Subject to respondent's absolute and unconditional obligation to divest at no minimum price and the purpose of the divestiture as stated in Section II of this order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each acquiring entity for the divestiture of the remaining Properties to be Divested. The divestiture shall be made in the manner set out in Section II; *provided, however*, that if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by respondent from among those approved by the Commission.

6. The trustee shall serve, without bond or other security, at the cost and expense of respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, or other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the

court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of respondent and the trustee's power shall be terminated. The trustee's compensation shall be based at least in a significant part on a commission arrangement contingent on the trustee's divesting the remaining Properties to be Divested.

7. Except in cases of misfeasance, negligence, willful or wanton acts, or bad faith by the trustee, the trustee shall not be liable to respondent for any action taken or not taken in performance of the trusteeship. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this order, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for or defense of any claim whether or not resulting in any liability, except to the extent such liabilities, claims, or expenses result from misfeasance, negligence, willful or wanton acts, or bad faith of the trustee.

8. Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, respondent shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Section IV.A. of this order.

10. The Commission or, in the case of a court-appointed trustee, the court may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the remaining Properties to be Divested.

12. The trustee shall report in writing to respondent and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

## V.

*It is further ordered,* That respondent shall be bound by the terms and obligations of the Agreement Containing Consent Order between staff of the Commission and Sentinel, dated April 11, 1991, and any order issued by the Commission in Sentinel Group, Inc., File No. 891 0086, pursuant thereto, and shall execute the provisions thereof.

## VI.

*It is further ordered,* That respondent shall comply with the Agreement to Hold Separate, attached hereto and made a part hereof as Appendix I. Said agreement shall continue in effect until respondent has divested the Properties to be Divested or until such other time as the Agreement to Hold Separate provides.

## VII.

*It is further ordered,* That within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until respondent has fully complied with Section II of this order, respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying or has complied with that provision. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of all contacts or negotiations with prospective acquirers for the divestitures required by this order, including the identity of all parties contacted. Respondent also shall include in its compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports, and recommendations concerning the required divestitures.

## VIII.

*It is further ordered,* That, for a period of ten (10) years after the date this order becomes final, respondent shall cease and desist from acquiring, through subsidiaries or otherwise, without the prior approval of the Commission, any interest in a funeral establishment located within the city limits of, or the area extending fifteen (15) miles outward in any direction from the city limits of: (a) Chattanooga, Tennessee; (b) Soddy Daisy, Tennessee; (c) La Fayette, Georgia; and (d) Savannah, Georgia; *provided, however,* that this prohibition shall not apply to the construction of new facilities by respondent.

## IX.

*It is further ordered,* That, for a period of ten (10) years after the date this order becomes final, notwithstanding the requirements of Section VIII. hereof and of paragraph VII. of the "Agreement Containing Consent Order" that is referred to in Section V. hereof, respondent may acquire through default or foreclosure proceedings any interest in a funeral establishment located within the city limits of, or the area extending fifteen (15) miles outward in any direction from the city limits of: (a) Chattanooga, Tennessee; (b) Soddy Daisy, Tennessee; (c) LaFayette, Georgia; (d) Savannah, Georgia; (e) Gainesville, Georgia; (f) Rome, Georgia; (g) Summerville, Georgia; (h) Waycross, Georgia; or (i) Ft. Smith, Arkansas; *provided, however,* that respondent must give the Commission notice of such acquisition within ten (10) days of the acquisition. Within thirty (30) days of such acquisition respondent must apply for Commission approval of the acquisition. If the Commission does not approve the acquisition, respondent shall divest such interest in accordance with the terms of Sections II., III., and IV. of this order. From the date of the acquisition until such time as the Commission approves the acquisition or, if the acquisition is not approved, until the interest is divested, respondent shall hold separate, as required by the Hold Separate Agreement attached

hereto, any funeral establishment in which such an interest is acquired.

X.

*It is further ordered,* That, one year after the date this order becomes final and annually thereafter for nine (9) years, respondent shall file with the Commission a verified written report of its compliance with Sections VIII. and IX. of this order. Such reports shall include, but not be limited to, a listing of all acquisitions and the acquired locations' addresses, including but not limited to acquisitions due to default, foreclosure proceedings or purchases in foreclosure, made by respondent during the 12 months preceding the date of the report.

XI.

*It is further ordered,* That, for the purpose of determining or securing compliance with this order, subject to any legally recognized privilege, and upon written request with reasonable notice to respondent made to their principal offices, respondent shall permit any duly authorized representative or representatives of the Commission:

A. Access, during the office hours of respondent and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order;

B. Upon five (5) days' notice to respondent and without restraint or interference therefrom, to interview officers or employees of respondent, who may have counsel present, regarding such matters.

## XII.

*It is further ordered,* That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in its organization, such as dissolution, assignment or sale resulting in the emergence of a successor, the creation or dissolution of subsidiaries, or any other change, that may affect compliance obligations arising out of this order

## AGREEMENT CONTAINING CONSENT ORDER

The Federal Trade Commission having initiated an investigation of certain funeral home acquisitions of Sentinel Group, Inc., a corporation, and it now appearing that Sentinel Group, Inc., hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing a Consent Order.

It is hereby agreed by and between Sentinel Group, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Sentinel Group, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1177 Summer Street, in the City of Stamford, State of Connecticut.
2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.
3. Proposed respondent waives:
  - (a) Any further procedural steps;
  - (b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;
  - (c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and
  - (d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that, once the order has



been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

## ORDER

### I.

As used in this order, the following definitions shall apply:

(a) “*Sentinel*” means Sentinel Group, Inc., its parents, subsidiaries, divisions, groups controlled by Sentinel, successors and assigns and their respective directors, officers, employees, agents and representatives.

(b) “*Funeral home*” means a facility devoted to the care or preparation for burial or transportation of deceased human bodies, and a facility in which funeral services may be conducted.

(c) “*Properties to be Divested*” means the funeral home properties described in paragraph II.

(d) “*Commission*” means the Federal Trade Commission.

### II.

*It is ordered*, That, within twelve (12) months after the date this order becomes final, Sentinel shall divest, absolutely and in good faith, the following funeral homes: Mincy-Fulford Funeral Home in Waycross, Georgia; Little-Davenport Funeral Home in Gainesville, Georgia; and Erwin-Pettit Funeral Home in Summerville, Georgia. These funeral homes are hereinafter referred to as the “Properties to be Divested.” The Properties to be Divested are to be divested only to an acquirer or acquirers, and only in such manner, that receive the prior approval of the Commission. The purpose of the divestiture required by this order is to insure the continuation of the funeral

homes as ongoing viable enterprises and to remedy the lessening of competition alleged in the Commission's complaint.

### III.

*It is further ordered,* That, pending divestiture, Sentinel shall maintain the viability and marketability of the Properties to be Divested and shall not cause or permit the destruction, removal or impairment of any assets or business of the Properties to be Divested, except in the ordinary course of business and except for ordinary wear and tear.

### IV.

*It is further ordered,* That the Properties to be Divested shall not be divested, directly or indirectly, to anyone who is at the time of the divestiture an officer, director, employee or agent of, or under the control, direction or influence of Sentinel.

### V.

*It is further ordered,* That:

(A) If Sentinel has not divested the Properties to be Divested as required by paragraph II within twelve (12) months after the date this order becomes final, Sentinel shall consent to the appointment of a trustee by the Commission to divest the remaining Properties to be Divested. In the event the Commission or the Attorney General brings an action pursuant to Section 5(1) of the Federal Trade Commission Act, 15 U.S.C. 45(1), or any other statute enforced by the Commission, Sentinel shall similarly consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(1) of the Federal

Trade Commission Act, or any other statute enforced by the Commission, for any failure by Sentinel to comply with this order.

(B) If a trustee is appointed by the Commission or a court pursuant to paragraph V.(A) of this order, Sentinel shall consent to the following terms and conditions regarding the trustee's powers, authorities, duties and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Sentinel, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall have the exclusive power and authority, subject to the prior approval of the Commission, to divest the remaining Properties to be Divested.

3. The trustee shall have eighteen (18) months from the date of appointment to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the eighteen-month period the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission, or by the Court for a court-appointed trustee; *provided, however*, that the Commission or court may only extend the divestiture period two (2) times.

4. The trustee shall have full and complete access to the personnel, books, records and facilities relating to the remaining Properties to be Divested, or any other relevant information, as the trustee may reasonably request. Sentinel shall develop such financial or other information as such trustee may reasonably request and shall cooperate with any reasonable request of the trustee. Sentinel shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by Sentinel shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or the court for a court-appointed trustee.

5. Subject to Sentinel's absolute and unconditional obligation to divest at no minimum price and the purpose of the divestiture as

stated in paragraph II of the order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each acquiring entity for the divestiture of the remaining Properties to be Divested. The divestiture shall be made in the manner set out in paragraph II; *provided, however*, that if the trustee receives *bona fide* offers from more than one acquiring entity or entities, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by Sentinel from among those approved by the Commission.

6. The trustee shall serve, without bond or other security, at the cost and expense of Sentinel, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of Sentinel, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, or other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Sentinel and the trustee's power shall be terminated. The trustee's compensation shall be based at least in a significant part on a commission arrangement contingent on the trustee's divesting the remaining Properties to be Divested.

7. Except in cases of misfeasance, negligence, willful or wanton acts, or bad faith by the trustee, the trustee shall not be liable to respondent for any action taken or not taken in performance of the trusteeship. Sentinel shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this order including all reasonable fees of counsel and other expenses incurred in connection with the preparation for or defense of any claim whether or not resulting in any liability, except to the

extent such liabilities, claims, or expenses result from misfeasance, negligence, willful or wanton acts, or bad faith of the trustee.

8. Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, Sentinel shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph V.(A) of this order.

10. The Commission and, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the remaining Properties to be Divested.

12. The trustee shall report in writing to Sentinel and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

## VI.

*It is further ordered,* That, within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until Sentinel has fully complied with paragraph II of this order, Sentinel shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying or has complied with that provision. Sentinel shall include in its compliance reports, among other things that are required from time to time, a full description of all contacts or negotiations with prospective acquirers for the divestiture required by this order, including the identity of all parties contacted. Sentinel also shall include in its compliance reports copies of all written communications to and from such parties, and all internal memo-

randa, reports, and recommendations concerning the required divestiture.

## VII.

*It is further ordered,* That, for a period of ten (10) years after the date this order becomes final, Sentinel shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, without the prior approval of the Commission, any funeral home located within the area extending fifteen (15) miles outward in any direction from the city limits of: (a) Waycross, Georgia; (b) Summerville, Georgia; (c) Gainesville, Georgia; (d) Rome, Georgia; (e) Savannah, Georgia; and (f) Ft. Smith, Arkansas; *provided, however,* that this prohibition shall not apply to the construction of new facilities by Sentinel.

## VIII.

*It is further ordered,* That, one year after the date this order becomes final and annually thereafter for nine (9) years, Sentinel shall file with the Commission a verified written report of its compliance with paragraph VII of this order. Such reports shall include a listing of all acquisitions made by Sentinel during the 12 months preceding the date of the report.

## IX.

*It is further ordered,* That for the purpose of determining or securing compliance with this order, subject to any legally recognized privilege, and upon written request with reasonable notice to Sentinel made to its principal office, Sentinel shall permit any duly authorized representative or representatives of the Commission:

(A) Access during the office hours of Sentinel, in the presence of counsel, to inspect and copy all books, ledgers, accounts,

correspondence, memoranda and other records and documents in the possession or under the control of Sentinel relating to compliance with this order;

(B) Upon five (5) days' notice to Sentinel and without restraint or interference from them, to interview officers or employees of Sentinel, who may have counsel present, regarding any such matters.

X.

*It is further ordered*, That Sentinel shall notify the Commission at least thirty (30) days prior to any proposed change in its organization such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change that may affect compliance obligations arising out of this order.

EXHIBIT C

HOLD SEPARATE ASSETS AND TIME PERIOD OF HOLD  
SEPARATE OBLIGATIONS

1. The following three funeral establishments shall be held separate until the divestiture of Sipple's Mortuary pursuant to the order as is set forth in the SCI Consent Agreement:

FOX & WEEKS FUNERAL DIRECTORS, INC.

d/b/a Fox & Weeks - Hodgson Chapel  
7200 Hodgson Memorial Drive  
Savannah, Georgia

d/b/a Fox & Weeks - Drayton Street Chapel  
700 Drayton Street  
Savannah, Georgia

d/b/a Massey Funeral Home  
d/b/a Terry C. Massey Funeral Home  
Highway 80 West  
P.O. Box 7198  
Garden City, Georgia

2. The following four funeral establishments shall be held separate until the divestitures of Valley View Chapel, R. J. Coulter Chapel, Williamson & Sons Funeral Home and Chattanooga Funeral Home West Chapel, pursuant to the order as is set forth in the SCI Consent Agreement:

LANE FUNERAL HOME, INC.

d/b/a South Crest Chapel  
833 Chickamauga Avenue  
Rossville, Georgia

d/b/a Valley View Chapel  
7914 Old Lee Highway  
Chattanooga, Tennessee

d/b/a R. J. Coulter Chapel  
601 Ashland Terrace  
Chattanooga, Tennessee

d/b/a Williamson & Sons Funeral Home  
8852 Dayton Place  
Soddy Daisy, Tennessee

3. The following funeral establishment shall be held separate until the divestiture of Wallis & Son Funeral Home pursuant to the order as is set forth in the SCI Consent Agreement:

LANE FUNERAL HOME, INC.

d/b/a Lafayette Chapel  
Highway 27 North  
Lafayette, Georgia

4. The following funeral establishment shall be held separate until its divestiture pursuant to the order as is set forth in the Sentinel Consent Agreement:

LANE FUNERAL HOME, INC.

d/b/a Erwin-Petitt Funeral Home  
Route 22, Box 76A  
Summerville, Georgia



5. The following two funeral establishments shall be held separate until the divestiture of Mincy-Fulford Funeral Home pursuant to the order as is set forth in the Sentinel Consent Agreement:

MILES-ODUM FUNERAL HOME, INC.

d/b/a Miles-Odum Funeral Home  
130 Scriven Avenue  
Waycross, Georgia

d/b/a Mincy-Fulford Funeral Home  
1503 Tebeau Street  
Waycross, Georgia

6. The following funeral establishment shall be held separate until its divestiture pursuant to the order as is set forth in the Sentinel Consent Agreement:

WARDS FUNERAL HOME, INC.

d/b/a Wards Funeral Home  
758 Main Street  
Gainesville, Georgia

MODIFICATION OF AGREEMENT TO HOLD SEPARATE

This Modification of Agreement to Hold Separate (“Modification”) is by and between Service Corporation International (“SCI”), a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal executive offices located at 1929 Allen Parkway, Houston, Texas, and the Federal Trade Commission, an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively the “Parties”).

Premises

*Whereas*, the Parties entered into an Agreement to Hold Separate (“Hold Separate”), attached hereto and by reference made in part hereof, and an Agreement Containing Consent Order (“Consent Agreement”) relating to SCI’s acquisition of the Sentinel Group,

Inc. ("Sentinel"), which were accepted by the Commission on or about July 25, 1991; and

*Whereas*, SCI's acquisition of Sentinel was consummated on August 30, 1991, and pursuant to the terms of the Hold Separate, SCI has been holding separate the Hold Separate Assets; and

*Whereas*, the proposed order in the Consent Agreement required that SCI divest among others the Chattanooga Funeral Home, West Chapel ("Chattanooga-West") and the Lane Funeral Homes, Inc., Valley View Chapel ("Valley View") in Chattanooga, Tennessee; and

*Whereas*, prior to the Commission's issuance of its decision and order in disposition of this proceeding, but following the expiration of the public comment period on the proposed order, SCI notified the Commission by letter dated October 10, 1991, that it desired that the order be changed to require the divestiture of the Lane Funeral Homes, Inc., Southcrest Funeral Home ("Southcrest") in lieu of the divestitures of Chattanooga-West and Valley View; and

*Whereas*, paragraph five of the Hold Separate provides, among other things, that "in the event that the Commission has not finally approved and issued the SCI order within one hundred twenty (120) days of its publication in the Federal Register, SCI may, at its option terminate this Agreement to Hold Separate" upon certain conditions; and

*Whereas*, the Parties now desire to amend and modify the Hold Separate to allow the Commission ample opportunity to consider SCI's proposed change in the divestiture requirements of the proposed order.

*Now, therefore*, the Parties agree that paragraph five of the Hold Separate shall be and hereby is amended and modified to state as follows:

5. In the event that the Commission has not finally approved and issued the SCI order in this matter either:

a. Within one hundred twenty (120) days of the date of this Modification, or

b. If the Commission, determines that any change it may decide to make in the proposed order necessitates a new public comment period, then within sixty (60) days of the expiration of any public comment period following publication in the Federal Register of a revised order in this matter,

SCI, may at its option, terminate this Agreement to Hold Separate by delivering written notice of termination to the Commission, which termination shall be effective ten (10) days after the Commission's receipt of such notice, and this Agreement shall thereafter be of no further force and effect. If this Agreement is so terminated, the Commission may take such action as it deems appropriate, including but not limited to an action pursuant to Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b). Termination of this Agreement to Hold Separate shall in no way operate to terminate the Agreement Containing Consent Order that SCI has entered into this matter.