

IN THE MATTER OF
DAHLBERG ELECTRONICS, INC.

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

Docket 9013. Complaint, Jan. 29, 1975 — Decision, Sept. 8, 1976

Consent order requiring a Minneapolis, Minn., manufacturer of hearing aids and hearing aid products among other things to cease misrepresenting the beneficial results of using its merchandise; misrepresenting the performance characteristics, efficacy and uniqueness of its products; furnishing means and/or instrumentalities of misrepresentation or deception; and failing to maintain records which are both accurate and adequate. Further, should a final trade regulation rule regarding hearing aids be promulgated, such rule shall supersede this order to the extent that any requirement or prohibition herein is omitted by the rule or differs from the corresponding portion of the rule.

Appearances

For the Commission: *Wallace S. Snyder.*

For the respondent: *Reinhold F. Hollender*, Minneapolis, Minn., and *Jack L. Lahr* and *John C. Fillippini, Arent, Fox, Kintner, Plotkin & Kahn*, Washington, D.C.

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 Dahlberg Electronics, Inc. hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Dahlberg Electronics, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota with its principal place of business located at Golden Valley, Minnesota.

PAR. 2. Respondent is now, and for some time last past has been engaged in the advertising, offering for sale, sale and distribution of hearing aids which come within the classification of device as the term "device" is defined in the Federal Trade Commission Act, to dealers, distributors, licensees, retailers, salespersons, representatives or agents thereof, for resale to the public.

PAR. 3. In the course and conduct of its business as aforesaid, respondent causes, and for some time last past has caused, its devices

when sold to be shipped from its place of business in the State of Minnesota to purchasers thereof located in various other States of the United States, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said devices in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business and at all times mentioned herein, respondent has been, and is now, in substantial competition in commerce with corporations, firms and individuals likewise engaged in the sale of hearing aids of the same general kind and nature as the devices sold by respondent.

PAR. 5. Respondent in the course and conduct of its business and for the purpose of inducing the purchase of said devices has furnished and supplied to dealers, distributors, licensees, retailers, salespersons, representatives or agents thereof, who sell said devices to the public, various types of advertising materials, including, but not limited to advertisements, sales manuals, brochures, advertising mailers, ad mats and other sales aid materials.

Respondent has assisted, aided, provided payments to and otherwise cooperated with its dealers, distributors, licensees, retailers, salespersons, representatives, or agents thereof, in the advertising of said devices.

PAR. 6. In the course and conduct of its business respondent has disseminated, and does now disseminate, certain advertisements by use of the United States mail and by various means in commerce as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements inserted in periodicals of general circulation, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said devices, and has disseminated, and caused the dissemination of, advertisements concerning said devices by various means, including those aforesaid, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said devices in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. Typical and illustrative of the advertisements referred to in Paragraphs Five and Six, but not all-inclusive thereof, are the advertisements attached hereto.

PAR. 8. Through the attached advertisements and similar advertisements not expressly set out herein, and otherwise, respondent has represented directly or by implication that:

1. Respondent merchandises a hearing aid which is a new invention or involves new model features or a new mechanical, engineering or scientific concept or principle in hearing aid capability.

2. Respondent's hearing aids will be beneficial to persons with a hearing loss regardless of the type or extent of loss.

3. Respondent's hearing aids will enable persons with a hearing loss to distinguish and understand speech sounds in group or noisy situations.

4. Respondent's hearing aids will help those persons who hear but do not understand.

5. Respondent's hearing aid glasses designed for bone conduction will be beneficial to persons with hearing loss regardless of the type or extent of loss.

6. Respondent's hearing aids will restore natural hearing to wearers and will enable wearers of such devices to hear sounds naturally.

7. Use of respondent's hearing aids can reverse, halt or retard the progression of a hearing loss.

PAR. 9. In truth and in fact:

1. The hearing aids referred to in the advertisements cited in Paragraph Seven and in other advertisements are not new inventions nor do they involve model features or mechanical, engineering or scientific concepts or principles in hearing aid capability that are new.

2. Many persons with a hearing loss will not receive any significant benefit from any hearing aid.

3. Many persons with a hearing loss will not be able to consistently distinguish and understand speech sounds in group and noisy situations by using any hearing aid.

4. In many instances, persons who hear but do not understand have a discrimination problem that cannot be helped by respondent's hearing aids.

5. Many persons with a hearing loss will not benefit from the use of a bone conduction hearing aid.

6. No hearing aid will restore natural hearing to the wearers thereof nor will it enable such persons to hear sounds naturally.

7. No hearing aid will reverse, halt or retard the progression of hearing loss.

Therefore, the advertisements referred to in Paragraphs Five through Eight were, and are, misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act and the aforesaid statements and representations referred to in Paragraphs Five through Eight were and are false, misleading and deceptive.

PAR. 10. Through the use of the aforesaid advertisements, respondent has represented, directly or by implication, that at the time that respondent made the claims set forth in Paragraph Eight, respondent had a reasonable basis for such claims.

PAR. 11. In truth and in fact, at the time that respondent made the claims set forth in Paragraph Eight, respondent had no reasonable basis from which to conclude that such claims were true.

Therefore, the statements and representations set forth in Paragraph Eight were, and are, deceptive or unfair acts or practices.

PAR. 12. At the time that respondent made the claims set forth in Paragraph Eight, respondent had no reasonable basis to support such claims.

Therefore, the making of the claims set forth in Paragraph Eight was, and is, a deceptive or unfair act or practice.

PAR. 13. The following statement constitutes a material fact with respect to the making of any claim regarding the hearing capability or hearing quality of any hearing aid:

Many persons with a hearing loss will not receive any significant benefit from any hearing aid.

PAR. 14. The advertisements referred to in Paragraphs Five through Eight contain claims regarding the hearing capability or the hearing quality of respondent's hearing aids and fail to disclose the material fact set forth in Paragraph Thirteen. Therefore, those advertisements were and are "false advertisements" as that term is defined in the Federal Trade Commission Act, and respondent's failure to disclose said material fact in connection with each such claim for its hearing aids was, and is, an unfair or deceptive act or practice.

PAR. 15. The dissemination by respondent of the aforesaid false advertisements and the use of the aforesaid unfair or deceptive acts or practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said advertisements and representations were, and are, true and into the purchase of substantial quantities of respondent's devices by reason of said erroneous belief.

PAR. 16. The aforesaid acts and practices of respondent, as herein alleged, including the dissemination of false advertisements, and the making of representations without a reasonable basis as aforesaid, were, and are, all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act.

Complaint



NEWSPAPER ADVERTISING BASIC ADS

ATTACHMENT A

FOR MILD NERVE DEAFNESS

NEW!
Miracle Ear

OUR RECOMMENDATION for those who hear sounds but don't always understand words!

Just slip it in your ear! When you need HEARING LIFT!

PROVEN IN USE

- ★ Remarkable new design—smaller than ever before!
- ★ Natural colored, contoured to blend with the shape of your ear!
- ★ Proven in Use! Happily worn by thousands!
- ★ NO CORDS, NO TUBES, Nothing in your clothes or in your hair!

NO CORDS • NO TUBES • NO WIRES

Miracle Ear

EXCLUSIVELY FROM
DAHLBERG ELECTRONICS, INC.

© 1972—
Dahlberg Electronics, Inc.
U.S. PATS.: 3,197,576;
3,197,577; D200,858

If you can hear sounds but can't always understand words...
SEND THIS COUPON NOW!
NO OBLIGATION

DEALER'S FIRM NAME
ADDRESS AND PHONE

Tell me how to hear again in both ears without using hearing aids that have cords or tubes.

Name _____
Address _____
City _____ State _____ Zip _____

Ad No. MA 11
3 x 5 1/8 in. (100 lines)

The elements in this mail may be used in local editions of this advertisement provided the identity thereof as compared to Dahlberg advertisement elements as set forth in the Co-op Advertising Manual.

DAHLBERG ELECTRONICS INC. • GOLDEN VALLEY, MINNEAPOLIS, MINNESOTA 55427

PAGE 1

Complaint

88 F.T.C.



NEWSPAPER ADVERTISING BASIC ADS

ATTACHMENT B

I'M NOT DEAF!

Under normal conditions, I hear well enough. But sometimes my ultraminature Dahlberg Miracle-Ear hearing aid is a blessing. I just put it in my ear and I hear more clearly. It is so natural sounding—nothing above my ear, or below my ear. Nothing behind my ear or in front of my ear. No tubes, no wires, no scratchy sounds. It is especially designed for those who hear but do not always understand—a classic symptom of nerve impairment. If diagnosis shows you have this type of loss, this modern hearing aid may give you the extra "life" you need to live a full and active life!



Rush this coupon. You'll receive a descriptive pamphlet promptly.

*ASK YOUR DOCTOR ABOUT
DAHLBERG HEARING AIDS.



Dealer's Individual Name
Dealer Firm Name, Address
Please rush full information
on the Miracle-Ear.
Name _____
Address _____
City _____
State _____ Zip _____

MA 24

2 COL. X 45 lines (90h.)

The elements in this ad may be used in local adaptations of this advertisement provided the locally devised ad conforms to Dahlberg advertising standards as set forth in the Co-op Advertising Manual.

DAHLBERG ELECTRONICS INC. GOLDEN VALLEY, MINNEAPOLIS, MINNESOTA 55427

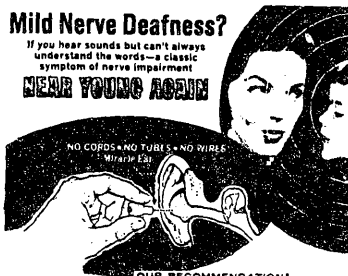
PAGE 12

Complaint



**NEWSPAPER ADVERTISING
BASIC ADS**

ATTACHMENT C



OUR RECOMMENDATION*

Miracle-Ear®

DEVELOPED AND PATENTED BY DAHLBERG ELECTRONICS, INC.

Proven in use! MIRACLE-EAR HAS HELPED COUNTLESS who could never hear clearly—they heard sounds, but words were jumbled. If diagnosis* shows you have this type of mild loss, Miracle-Ear may enable you to hear more clearly AND BETTER UNDERSTAND what people say, even in groups, church or meetings. Join the multitudes who now HEAR AGAIN MORE CLEARLY with Miracle-Ear.

***ASK YOUR DOCTOR ABOUT DAHLBERG HEARING AIDS**

U. S. PAT. 2,187,871; 2,187,872; 2,187,873; 2,187,874

Dealer's Firm Name _____

Address _____

Name _____

Address _____

City _____ State _____ Zip _____

SEND NOW

MA 27
2 COL. X 85 lines (170 li.)

The elements in this mat may be used in local editions of this advertisement provided the dealer agrees as conforms to Dahlberg advertising standards as set forth in the Copy Advertising Manual.

Complaint

88 F.T.C.



NEWSPAPER ADVERTISING BASIC ADS

ATTACHMENT D



You're not deaf . . . you hear, but it is often difficult for you to understand the world. MIRACLE-EAR® was made for you. Dahlberg was the first manufacturer to design, engineer and patent a self-contained, all-in-the-ear instrument specifically to help such mild hearing impairment.

MIRACLE-EAR® may be exactly what you need to keep your hearing sharp BEFORE more serious correction is required. No one can duplicate the years of advanced experience Dahlberg has put into this modern, space-age solution to the correction of hearing, the Miracle-Ear®.

ACT NOW! SEE HOW MIRACLE-EAR® CAN HELP YOU!

MIRACLE-EAR® Dept. 0000, P. O. Box 549
Minneapolis, Minn. 55440
Please tell me how I may understand words more clearly with Miracle-Ear®.

Name _____
Address _____
City _____ State _____ Zip _____

Mail for
FREE
information!

MA 32
2 COL. X 70 lines (140 li.)

The elements in this mail may be used in local replications of this advertisement provided the locally created ad conforms to Dahlberg advertising standards as set forth in the Copy Advertising Manual.

DAHLBERG ELECTRONICS INC. • GOLDEN VALLEY, MINNEAPOLIS, MINNESOTA 55427

PAGE 20

Complaint



**NEWSPAPER ADVERTISING
BASIC ADS**

ATTACHMENT E

HEARING AIDS?
 THEY SURE DON'T MAKE
 THEM LIKE THEY
 USED TO...
THANK GOODNESS.

Thank goodness hard-of-hearing people don't have to be subjected to those huge, old-fashioned boxes with dangling wires and battery packs. The Dahlberg Hearing Aids of today are tiny beyond comprehension -- why, THEY'RE DOWNRIGHT GOOD-LOOKING! -- Yet, they're many times more powerful than hearing aids used to be. There's a Dahlberg aid to fit every need -- whether it's for lunks, type of hearing loss, or The Pocket Book.

MIRACLE EAR[®]
 P.O. Box 549
 Minneapolis, Minnesota 55440

DAHLBERG
 HEARING AIDS
 AUTHORIZED DEALER

YES! Tell me how I may be able to hear again without using hearing aids that have wires, tubes or cords.

NAME _____
 ADDRESS _____
 CITY _____
 STATE _____ ZIP _____

© 1975 DAHLBERG ELECTRONICS, INC.

MA 37

2 COL. X 80 lines (160 H.)

The elements in this mail may be used in local adaptations of this advertisement provided the local device is conforming to Dahlberg advertising standards as set forth in the Group Advertising Manual.

DAHLBERG ELECTRONICS INC. · GOLDEN VALLEY, MINNEAPOLIS, MINNESOTA 55427



**NEWSPAPER ADVERTISING
BASIC ADS**

ATTACHMENT F

**Hear with nothing
in your ear.**



These are the new kind of glasses that help you hear—and who'd ever guess? Because there's nothing in the ear. No wires. No cords. No tubes. No buttons. What you see here is all there is to see. Simply slip them on, and the tiny electronic system built in the sidepieces picks up and transmits sound directly to your inner ear through the principle of bone conduction. It's called Touche™—by Dahlberg Electronics, makers of the famous Miracle-Ear® hearing aid. Mail the coupon if you'd like more information. Ask your doctor about it. It wasn't designed to solve everyone's hearing problem, but it may very well help yours.

TOUCHE
 DAHLBERG ELECTRONICS
 DEPT. 0000, P.O. BOX 144
 MINNEAPOLIS, MINN. 55440

Yes, I'd like to know more about how the Touche hearing aid may help me to hear with nothing in my ear. I understand there is no obligation.

I now use a (check one)
 Behind the ear type
 All in the ear type No aid

NAME _____
 ADDRESS _____
 CITY _____
 STATE _____ ZIP _____

© 1988 DAHLBERG ELECTRONICS, INC. DAHLBERG AND MIRACLE-EAR ARE REGISTERED TRADEMARKS. U.S. PAT. 4,800,100 AND 4,800,101.

MA 38

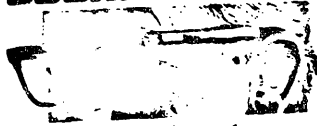
1 COL. X 110 lines (110 fl.)

The elements in this mail may be used to local adaptations of this advertisement provided the locally devised ad conforms to Dahlberg advertising standards as set forth in the Co-op Advertising Manual.

DAHLBERG ELECTRONICS INC. • GOLDEN VALLEY, MINNEAPOLIS, MINNESOTA 55427

Seeing...and hearing...is believing!

TOUCHE[®]



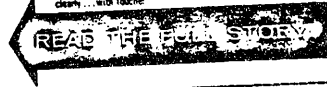
The astonishing glasses that help many to hear... with absolutely nothing in either ear.

Touche eyeglass hearing aid -- from Dahlberg Electronics, makers of the famous Miracle-Ear[®] hearing aids.

THINK ABOUT IT! If you're already wearing glasses, you won't be adding a single item to your "personal accessories" by turning to Touche[®] for hearing help. Nothing to carry in your pocket! Nothing in your ear! (Thanks to the principle of bone conduction.)

DAHLBERG ELECTRONICS, INC.

A warning symbol on the product part or package connects Touche is not the answer for all types of hearing loss, but you may be one of the fortunate few who may enjoy the thrill of hearing more clearly... with Touche!



hear with nothing in your ear

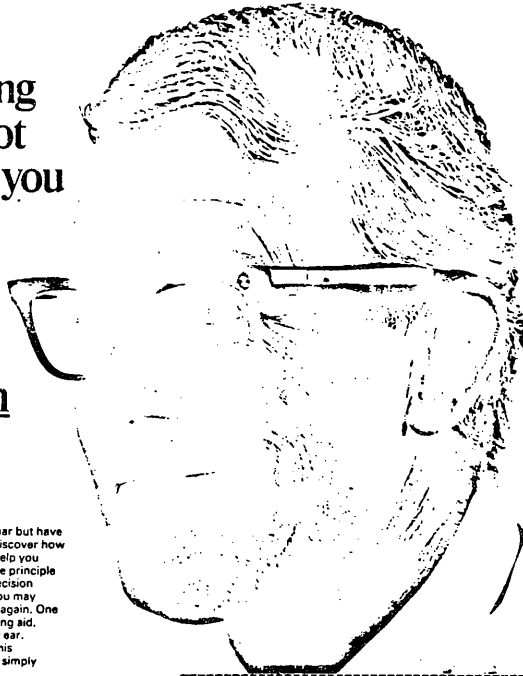
FIRST CLASS PERMIT NO. 888 MINNEAPOLIS, MINN.

BUSINESS REPLY MAIL
On Package Postage Will Be Paid by the United States

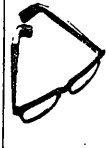
Postage will be paid by
Dept. DPL-33
P.O. Box 849
Minneapolis, Minnesota 55440



These
astonishing
glasses not
only help you
see...
they help
you hear
with
nothing in
your ear.



No wires!
No tubes!
No earpieces!
Just your glasses! If you can hear but have
trouble distinguishing words, discover how
the Touché[®] hearing aid may help you
hear more clearly. Thanks to the principle
of bone conduction and the precision
workmanship of the Touché, you may
enjoy the thrill of good hearing again. One
unit serves as glasses and hearing aid.
There's nothing to wear in your ear.
Act now! For the full story on this
comfortable way to a fuller life, simply
mail the card below. There
is no obligation.



FILL OUT, TEAR OUT AND MAIL THIS POSTAGE-PAID CARD FOR FREE INFORMATION ON THE DAHLBERG ELECTRONICS TOUCHÉ

You'll like to know more about how the Touché may help you hear with nothing in your ear. (Thanks to the principle of bone conduction!) Understand there is no obligation.

I have used a different unit:

All-in-the-ear type, Canal type, Behind-the-ear type,
 In-earpiece type, No aid.

NAME _____

ADDRESS _____

CITY _____

STATE _____ ZIP _____

© 1987 Dahlberg Electronics, Inc. Dahlberg is a registered trademark.

ML 48

DECISION AND ORDER

The Federal Trade Commission having issued a complaint which charges respondent Dahlberg Electronics, Inc. with violating the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid complaint, a statement that the signing of the 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 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 3.25(d) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Dahlberg Electronics, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its office and principal place of business located at 7731 Country Club Dr., Minneapolis, Minnesota.

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

PART I

It is ordered, That Dahlberg Electronics, Inc., a corporation, its successors and assigns, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of hearing aids, do forthwith cease and desist from:

1. Disseminating or causing the dissemination of any advertisement, by means of the United States mail or by any means in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, which

(a) Represents, directly or by implication, that:

(1) Respondent merchandises a hearing aid which is a new invention or involves a new mechanical, engineering or scientific concept or principle in hearing aid capability unless [1] respondent possesses and relies upon competent and reliable scientific or medical evidence which

establishes that respondent merchandises such a hearing aid which is a new invention or involves a new mechanical, engineering or scientific concept or principle in hearing aid capability; [2] the invention, concept or principle represents a significant benefit to users of the hearing aid; [3] respondent clearly and conspicuously describes the new invention, concept, or principle, and the significant benefit to the user of the hearing aid, in the advertisement; and [4] respondent maintains in its records, subject to reasonable inspection by Commission staff members, the competent and reliable scientific or medical evidence upon which it relies to support such claim until three (3) years after the last dissemination of any such claim.

(2) Respondent's hearing aid or its shape, design or any other model feature is new, or that respondent merchandises a hearing aid which is a new invention or involves a new mechanical, engineering or scientific concept or principle when such hearing aid or its shape, design or any other model feature or invention, mechanical, engineering or scientific concept or principle has been marketed in the United States for a period greater than one year. *Provided, however*, that such one-year time period shall not begin to run during the test marketing of such new model or feature where such test marketing program does not cover more than fifteen percent (15%) of the population, does not exceed six (6) months in duration, and is conducted in good faith for test purposes only.

(3) Respondent's hearing aids will be beneficial to persons with a hearing loss regardless of the type or extent of loss.

(4) Use of respondent's hearing aids will enable all persons with a hearing loss to consistently distinguish or understand speech sounds in noisy situations.

(5) Use of respondent's hearing aids will enable all persons with a hearing loss to consistently distinguish or understand speech sounds in group situations.

(6) Respondent's hearing aids will help all or most persons to discriminate speech sounds where they hear but do not understand.

(7) Respondent's bone conduction hearing aid glasses will be beneficial to persons with hearing loss unless in immediate conjunction therewith it is clearly and conspicuously disclosed that such aids are primarily designed for conductive hearing loss.

(8) Respondent's hearing aids will restore natural hearing to wearers or will enable wearers of such devices to hear sounds naturally.

(9) Use of respondent's hearing aids can reverse, halt, or retard the progression of a hearing loss.

(b) The disclosure required by Part I, paragraph 1(a)(7) of this Order shall be made as follows: In print advertisements, the disclosure shall

be displayed in type size which is at least the same size as that representation which creates the requirement for such disclosure. In television advertisements, the disclosures shall conform in all respects to the Commission's Statement of Enforcement Policy of October 21, 1970 (See Vol. 2 CCH Trade Regulation Reported Section 7569.09). The disclosure required by Part I, paragraph 1(a)(7) shall be made in immediate conjunction with the representation to which it relates. In all cases, the disclosure in print, radio and television advertisements shall be made in a clear and conspicuous manner and shall be presented in the language principally employed in the advertisement (*e.g.*, English, Spanish).

(c) In the event the Federal Trade Commission promulgates a final trade regulation rule which omits a requirement or prohibition or whose requirements or prohibitions differ in any manner with respect to the representations dealt with in any sub-paragraph of Paragraph 1 of Part I, of this order, such omissions, requirements or prohibitions with respect to such representations imposed by the rule shall, on the effective date of the rule, supersede and replace or cause to be automatically deleted the corresponding and differing sub-paragraphs of Paragraph 1, Part I, of this order.

2. Making, directly or indirectly, any statement or representation in any advertising or sales promotional material as to any feature (excluding physical appearance), or performance characteristic of, or the uniqueness, superiority or efficacy of any of respondent's hearing aids or any component part thereof, unless prior to the time of such statement or representation respondent had a reasonable basis for same, which shall consist of competent and reliable scientific or medical evidence.

3. Failing to maintain accurate and adequate records which may be inspected by Commission staff members upon reasonable notice:

(a) which contain documentation in support of any claim included in any advertising or sales promotional material disseminated by respondent, or any of its divisions' or subsidiaries' officers or employees, which claim concerns any feature (excluding physical appearance), or performance characteristic of or the uniqueness, superiority or efficacy of, any of respondent's hearing aids or any component part thereof; and

(b) which provided the basis upon which respondent relied at the time any such claim was made.

Such records shall be maintained by respondent for so long as any such material is disseminated by respondent or any of its divisions' or subsidiaries' officers or employees, or by its dealers, distributors, licensees, retailers, representatives or agents thereof, in cooperation

with respondent, and for a further period of three (3) years after the last dissemination of any such material.

4. Disseminating, or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of hearing aids in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited in paragraph 1 of Part I of this order.

PART II

It is further ordered, That Dahlberg Electronics, Inc., a corporation, its successors and assigns, and respondent's agents, representatives, officers and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale, or distribution of hearing aids in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act shall not:

1. Misrepresent, directly or indirectly, any feature or performance characteristic of any of respondent's hearing aids or any component part thereof.

2. Supply any dealer, distributor, licensee, retailer, salesperson, representative or agent thereof, with advertisements, sales manuals, brochures, advertising mats, or any other advertising or sales aid materials for the purpose of inducing or which are likely to induce, directly or indirectly, the purchase of respondent's devices, and which contain any of the false, misleading or deceptive representations prohibited in this order.

PART III

It is further ordered, That Dahlberg Electronics, Inc., a corporation and its successors and assigns, shall:

1. Within thirty (30) days after the effective date of this order, or within thirty (30) days after any dealer, distributor, licensee or retailer attains such status, distribute a copy of this order, by certified or registered mail, return receipt required, to each of respondent's known dealers, distributors, licensees, or retailers, who are now or in the future become engaged in the advertising, offering for sale, sale or distribution of respondent's hearing aids to the consuming public, except with respect to respondent's hearing aids advertised, offered for sale, sold or distributed under a private label by a party other than respondent, this requirement shall be limited to sending a copy of the order to the person responsible for the advertising of respondent's hearing aids under the

private label at the principal office of the private label purchaser of respondent's hearing aid.

2. Supply, upon request, proof of distribution to, and make available to the Federal Trade Commission for inspection and review, the names and addresses of those parties to whom respondent distributed a copy of this order as required by paragraph 1 of Part III of this order.

3. Inform each appropriate party described in paragraph 1 above that respondent shall not participate in any way in any advertisement which fails to comply with Part I of this order.

4. Not pay for, compensate for, print, mail or in any other way, directly or indirectly, through discounts, services, or any other benefit in lieu of direct payment, or otherwise participate in any manner in the preparation of, payment for, or dissemination of any of the advertisements of any party described in paragraph 1 above at any time if any such advertisement fails to comply with Part I of this order.

5. Within thirty (30) days after the effective date of this order, institute a program for reviewing any advertisement submitted by respondent's dealers, distributors, licensees, retailers, representatives or agents thereof, pursuant to respondent's cooperative advertising or similar program for advertising credit or other consideration.

PART IV

It is further ordered, That respondent submit to the Federal Trade Commission, within sixty (60) days from the effective date of this order, a detailed report describing the actions that respondent has taken in order to comply with said order.

In addition, respondent shall, for a period of three (3) years at one-year intervals from the effective date of this order, submit to the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of any subsidiary or any other change in the corporate structure which may affect any compliance obligation arising out of this order.

It is further ordered, That the respondent shall forthwith distribute a copy of this order to each of its operating divisions.

Commissioner Dole did not participate by reason of absence.

Complaint

88 F.T.C.

IN THE MATTER OF
BELTONE ELECTRONICS CORPORATION

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

Docket 9014. Complaint, Jan. 29, 1975 — Decision, Sept. 8, 1976

Consent order requiring a Chicago, Ill., hearing aid manufacturer, among other things to cease misrepresenting the uniqueness, benefits, characteristics and efficacy of its products. The respondent is also prohibited from disseminating and supplying misleading or deceptive promotional materials. Further, respondent is required to maintain appropriate records and institute a program for reviewing its advertising.

Appearances

For the Commission: *Wallace S. Snyder* and *Sally W. Thompson*.
For the respondent: *Donald A. Mackay*, *Sidley & Austin*, Chicago, Ill., *Elroy H. Wolff*, *Sidley & Austin*, Washington, D.C.

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 Beltone Electronics Corporation, a corporation, and Sam Posen, David H. Barnow and Chester K. Barnow, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Beltone Electronics Corporation is a corporation, hereinafter referred to as the corporate respondent, organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 4201 West Victoria St., Chicago, Illinois.

Sam Posen is an individual, who is an officer and a director of the corporate respondent. He, with his wife, Faye Posen, is the founder and major stockholder of the corporate respondent, controlling, approving and authorizing the acts and practices of the corporate respondent and the remaining individual respondents, including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondent.

Respondent David H. Barnow is an individual who is an officer and a stockholder of the corporate respondent. Respondent Chester K.

Barnow is an individual who is a director and a stockholder of the corporate respondent. They cooperate in the formulation, direction and control of the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their business address is the same as that of the corporate respondent.

The individual respondent and Faye Posen own almost all of the corporate stock of the corporate respondent, which is a closely held, family corporation.

PAR. 2. Respondents are now, and for some time last past have been engaged in advertising, offering for sale, sale and distribution of hearing aids which come within the classification of device as the term "device" is defined in the Federal Trade Commission Act, to dealers and distributors for resale to the public.

PAR. 3. In the course and conduct of its business, as aforesaid, respondents cause, and for some time last past have caused, their said devices when sold to be shipped from their place of business in the State of Illinois to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said devices in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals likewise engaged in the sale of hearing aids of the same general kind and nature as the devices sold by respondents.

PAR. 5. Respondents in the course and conduct of their business, and for the purpose of inducing the purchase of said devices have furnished and supplied to dealers, distributors, licensees, retailers, salesmen, and representatives and agents thereof, who sell said devices to the public, various types of advertising materials, including but not limited to advertisements, sales manuals, brochures, advertising mailers, ad mats, and other sales aid materials.

Respondents have assisted, aided, provided payments to and otherwise cooperated with their dealers, distributors, licensees, retailers, salesmen, and representatives and agents thereof, in the advertising of said devices.

PAR. 6. In the course and conduct of their business, respondents have disseminated, and now disseminate, certain advertisements by the use of the United States mail, and by various means, in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements inserted in periodicals of general circulation or broadcast on radio or television, for the purpose of inducing and which are likely to induce, directly or indirectly the

purchase of their said devices, and have disseminated, and caused the dissemination of, advertisements concerning said devices by various means, including those aforesaid, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said devices in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. Typical and illustrative of the representations contained in the advertisements referred to in Paragraphs Five and Six, but not all inclusive thereof, are the following:

a. Is there someone you know—some friend or loved one, who wears a hearing aid but *still doesn't hear well*? Then tell him about the *Beltone Largo*, a totally *new* body-worn hearing aid. Largo, by Beltone is *the effective* aid for really *severe* hearing losses. The Largo is built around the new Dyna-Couple Amplifier—patent pending, and exclusive with Beltone. It actually delivers *pure hearing power* with *remarkable clarity*—and what a difference this can mean to anyone who is trying to hear and understand with an aid that can't deliver enough power!

b. Beltone Vivo the first completely new hearing aid design in years! There's never been anything like this before! * * * For a new degree of solid sound. Clear and distinct. Vivo is the years-ahead hearing help. So powerful, it helps even some serious losses. * * * With a new patent pending Beltone AccuFit Earseal that shapes itself to fit snugly in your ear canal. Contoured for comfort and naturally shaded to escape notice, the Vivo is the most *in* the ear, all in-the-ear aid yet * * * the new hearing help that makes every other in-the-ear aid obsolete. New hideability, new clarity of sound, new easy listening.

c. Beltone Cantata * * * new frontfocus power is always on target for relaxed, comfortable hearing! * * * new amplifier * * * newly improved, smaller-than-ever version of Beltone's famous patented Micro-Module Circuit* * *This remarkable, subminiature circuit is another exclusive from Beltone research.

d. The exciting new Beltone AccuSound System (patent pending) — a Beltone exclusive — brings a new clarity of sound to in-the-ear aids.

e. Beltone's exclusive patented Micro-Module Circuit has enabled Beltone engineers to design the Prelude so that all working components and parts hide discreetly in the most unnoticeable spot of all—behind the top of the ear.

f. Nerve deafness can be helped! * * * Nerve deafness, a common cause of hearing impairment, *can be helped*, even though there is no surgical or medical cure. If you say, "I can hear but I can't understand", I invite you to write, today, for this valuable free brochure, "The Truth About Nerve Deafness." Find out, for yourself, how nerve deafness can be helped.

g. Nerve deafness is the most common kind of hearing loss, and many people think it can't be helped. But even though there is no surgical or medical cure available, nerve deafness *can* be helped. If you say to yourself, "I can hear, but I can't understand," you may be suffering from nerve deafness. Beltone invites you to find out, now, how you can be helped.

h. Beltone's new Andante actually weighs only one-quarter of an ounce—hardly more than this folder! Yet, for all its tiny size, it delivers truly remarkable performance —

brilliant, clear, natural-sounding. More important still, the Andante is a *full performance* aid, packed with enough power for even serious losses * * * You'll notice a wonderful improvement in what hearing specialists call "speech discrimination" -- your all-important ability not just to *hear* sounds, but to *understand clearly!* You hear without straining, even in noisy surroundings.

i. Every so often folks come in to see our Beltone consultants with hearing problems they fear are "too serious to do anything about." After tests, they try one of Beltone's super-powered aids and are amazed. These are folks who despaired of ever hearing comfortably or easily again.* * * If you've been told your hearing problem can't be helped, I urge you to come in soon.

j. Yes, Beltone Presto is *ideal* for mild *nerve deafness*, the most *common* form of hearing loss.

k. New Beltone hearing aids are bringing hearing help to thousands—even those who were told they were "too deaf to be helped."

l. You have a variety of choice when you select a Beltone Hearing Aid. You may prefer the subminiature aid that fits snugly behind the ear, yet corrects even severe losses.

m. "Here it is, Beltone's Cantata — with *reserve power* for clear hearing; enough even for serious losses, thanks to *two* power settings.

n. The sensational, new Etude/8 * * * Better hearing in ordinary conversation * * * Better hearing in a group gathering * * * Want to feel confident in a group? * * * Etude/8 tunes you in so you're missing less, enjoying more!

o. Beltone's Andante helps you hear clearly, confidently even in noisy surroundings.

p. What's more, many users who field tested the Symphony for us told us how well they could hear even in noisy places.

q. More than that, it's a *great* hearing aid—with all the improvements, all the features that have brought clear, "natural" hearing back to so many Beltone wearers.

PAR. 8. Through the above representations, and others of similar import and meaning but not expressly set out herein, respondents have represented, directly or by implication that:

1. Respondents merchandise a hearing aid which is a new invention or involves new model features or a new mechanical, engineering or scientific concept or principle in hearing aid capability.

2. Certain of respondents' hearing aids or component parts thereof are unique, special or exclusive in that they:

(a) are superior to all other hearing aids or component parts thereof used for hearing loss, or

(b) contain or embody certain inventions, features (excluding physical appearance), concepts, or principles not contained or embodied in any other hearing aids or component parts thereof used for hearing loss.

3. Respondents' hearing aids will be beneficial to persons with a hearing loss, regardless of the type or extent of loss.

4. Respondents' hearing aids will enable persons with a hearing loss to distinguish and understand speech sounds in noisy or group situations.

5. Respondents' hearing aids will help those persons who hear but do not understand.

6. Respondents' hearing aids will restore natural hearing to wearers and will enable wearers of such devices to hear sounds naturally.

PAR. 9. In truth and in fact:

1. The hearing aids referred to in the representations contained in Paragraph Seven, and in other advertisements, are not new inventions nor do they involve model features or mechanical, engineering or scientific concepts or principles in hearing aid capability that are new.

2. The hearing aids referred to in the representations contained in Paragraph Seven, and in other advertisements, or the component parts thereof are not unique, special or exclusive in that they;

(a) are not superior to all other hearing aids or component parts thereof used for hearing loss; or

(b) do not contain or embody features (excluding physical appearance), concepts or principles not contained in other hearing aids or component parts thereof used for hearing loss.

3. Many persons with a hearing loss will not receive any significant benefit from any hearing aid.

4. Many persons with a hearing loss will not be able to consistently distinguish and understand speech sounds in noisy or group situations by using any hearing aid.

5. In many instances, persons who hear but do not understand have a discrimination problem that cannot be helped by any hearing aid.

6. No hearing aid will restore natural hearing to the wearers thereof nor will it enable such persons to hear sounds naturally.

Therefore, the advertisements referred to in Paragraphs Five through Eight were and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act, and the aforesaid statements and representations referred to in Paragraphs Five through Eight were and are false, misleading and deceptive.

PAR. 10. Through the use of the aforesaid advertisements, respondents have represented, directly or by implication, that at the time respondents made the claims set forth in Paragraph Eight respondents had a reasonable basis for such claims.

PAR. 11. In truth and in fact, at the time that respondents made the

claims set forth in Paragraph Eight, respondents had no reasonable basis from which to conclude that such claims were true.

Therefore, the statements and representations set forth in Paragraph Eight were, and are, deceptive or unfair acts or practices.

PAR. 12. At the time that respondents made the claims set forth in Paragraph Eight, respondents had no reasonable basis to support such claims.

Therefore, the making of the claims set forth in Paragraph Eight was, and is, a deceptive or unfair act or practice.

PAR. 13. The following statement constitutes a material fact with respect to the making of any claim regarding the hearing capabilities or hearing quality of any hearing aid:

Many persons with a hearing loss will not receive any significant benefit from any hearing aid.

PAR. 14. The advertisements referred to in Paragraphs Five through Eight contain claims regarding the hearing capability or hearing quality of respondents' hearing aids and fail to disclose the material fact set forth in Paragraph Thirteen. Therefore, those advertisements were and are "false advertisements" as that term is defined in the Federal Trade Commission Act, and respondents' failure to disclose said material fact in connection with each such claim for their hearing aids was, and is, an unfair or deceptive act or practice.

PAR. 15. The dissemination by respondents of the aforesaid false advertisements, and the use of the aforesaid unfair or deceptive acts or practices has had, and now has the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said advertisements and the representations contained therein were, and are, true and into the purchase of substantial quantities of respondents' devices by reason of said erroneous and mistaken belief.

PAR. 16. The aforesaid acts and practices of respondents, as herein alleged, including the dissemination of false advertisements and the making of representations without a reasonable basis, as aforesaid, were, and are, all to the prejudice and injury of the public and of respondents' competitors, and constituted, and now constitute, unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having issued a complaint which charges respondent Beltone Electronics Corporation with violating the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid complaint, a statement that the signing of the 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 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 3.25(d) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Beltone Electronics Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 4201 West Victoria St., Chicago, Illinois.

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

PART I

It is ordered, That Beltone Electronics Corporation, a corporation, its successors and assigns, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of hearing aids, do forthwith cease and desist from:

1. Disseminating or causing the dissemination of any advertisement, by means of the United States mail or by any means in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, which

(a) Represents, directly or by implication, that:

(1) Respondent merchandises a hearing aid which is a new invention or involves a new mechanical, engineering or scientific concept or principle in hearing aid capability unless [1] respondent possesses and relies upon competent and reliable scientific or medical evidence which establishes that respondent merchandises such a hearing aid which is a new invention or involves a new mechanical, engineering or scientific concept or principle in hearing aid capability; [2] the invention, concept or principle represents a significant benefit to users of the hearing aid; [3] respondent clearly and conspicuously describes the new invention,

concept, or principle, and the significant benefit to the user of the hearing aid, in the advertisement; and [4] respondent maintains in its records, subject to reasonable inspection by Commission staff members, the competent and reliable scientific or medical evidence upon which it relies to support such claim until three (3) years after the last dissemination of any such claim.

(2) Respondent's hearing aid or its shape, design or any other model feature is new, or that respondent merchandises a hearing aid which is a new invention or involves a new mechanical, engineering or scientific concept or principle when such hearing aid or its shape, design or any other model feature or invention, mechanical, engineering or scientific concept or principle has been marketed in the United States for a period greater than one year. Provided, however, that such one-year time period shall not begin to run during the test marketing of such new model or feature where such test marketing program does not cover more than fifteen percent (15%) of the population, does not exceed six (6) months in duration, and is conducted in good faith for test purposes only.

(3) Respondent's hearing aids will be beneficial to persons with a hearing loss regardless of the type or extent of loss.

(4) Use of respondent's hearing aids will enable all persons with a hearing loss to consistently distinguish or understand speech sounds in noisy situations.

(5) Use of respondent's hearing aids will enable all persons with a hearing loss to consistently distinguish or understand speech sounds in group situations.

(6) Respondent's hearing aids or component parts thereof (a) are unique or superior to all other hearing aids used for hearing loss; or (b) embody inventions, features (excluding physical appearance), concepts or principles not contained or embodied in any other hearing aid or component parts thereof used for hearing loss unless [1] respondent possesses and relies upon competent and reliable scientific or medical evidence which establishes that its hearing aids or component parts thereof (a) are unique and superior to all other hearing aids used for hearing loss, and (b) embody inventions, features, concepts or principles not contained or embodied in any other hearing aids or component parts thereof used for hearing loss; [2] the hearing aid or component part, invention, feature, concept or principle represents a significant benefit to users of the hearing aid; [3] respondent clearly and conspicuously describes the nature of the uniqueness or superiority claim made in the advertisement, including the nature of the benefit to the consumer attributed to the invention, feature, concept or principle embodied in any such hearing aid; and [4] respondent maintains in its records,

subject to reasonable inspection by Commission staff members, the competent and reliable scientific or medical evidence upon which it relies to support such claim until three (3) years after the last dissemination of any such claim.

(7) Respondent's hearing aids will help all or most persons to discriminate speech sounds where they hear but do not understand.

(8) Respondent's hearing aids will restore natural hearing to wearers or will enable wearers of such devices to hear sounds naturally.

(b) In the event the Federal Trade Commission promulgates a final trade regulation rule which omits a requirement or prohibition or whose requirements or prohibitions differ in any manner with respect to the representations dealt with in any sub-paragraph of Paragraph 1 of Part I, of this order, such omissions, requirements or prohibitions with respect to such representations imposed by the rule shall, on the effective date of the rule, supersede and replace or cause to be automatically deleted the corresponding and differing sub-paragraphs of Paragraph 1, Part I, of this order.

2. Making, directly or indirectly, any statement or representation in any advertising or sales promotional material as to any feature (excluding physical appearance), or performance characteristic of, or the uniqueness, superiority or efficacy of any of respondent's hearing aids or any component part thereof, unless prior to the time of such statement or representation respondent had a reasonable basis for same, which shall consist of competent and reliable scientific or medical evidence.

3. Failing to maintain accurate and adequate records which may be inspected by Commission staff members upon reasonable notice:

(a) which contain documentation in support of any claim included in any advertising or sales promotional material disseminated by respondent, or any of its divisions' or subsidiaries' officers or employees, which claim concerns any feature (excluding physical appearance), or performance characteristic of or the uniqueness, superiority or efficacy of, any of respondent's hearing aids or any component part thereof; and

(b) which provided the basis upon which respondent relied at the time any such claim was made. Such records shall be maintained by respondent for so long as any such material is disseminated by respondent or any of its divisions' or subsidiaries' officers or employees, or by its dealers, distributors, licensees, retailers, representatives or agents thereof, in cooperation with respondent, and for a further period of three (3) years after the last dissemination of any such material.

4. Disseminating, or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of hearing aids in or affecting commerce as

“commerce” is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited in paragraph 1 of Part I of this order.

PART II

It is further ordered, That Beltone Electronics Corporation, a corporation, its successors and assigns, and respondent's agents, representatives, officers and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale, or distribution of hearing aids in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act shall not:

1. Misrepresent, directly or indirectly, any feature or performance characteristic of any of respondent's hearing aids or any component part thereof.
2. Supply any dealer, distributor, licensee, retailer, salesperson, representative or agent thereof, with advertisements, sales manuals, brochures, advertising mats, or any other advertising or sales aid materials for the purpose of inducing or which are likely to induce, directly or indirectly, the purchase of respondent's devices, and which contain any of the false, misleading or deceptive representations prohibited in this order.

PART III

It is further ordered, That Beltone Electronics Corporation, a corporation and its successors and assigns, shall:

1. Within thirty (30) days after the effective date of this order, or within thirty (30) days after any dealer, distributor, licensee or retailer attains such status, distribute a copy of this order, by certified or registered mail, return receipt required, to each of respondent's known dealers, distributors, licensees, or retailers, who are now or in the future become engaged in the advertising, offering for sale, sale or distribution of respondent's hearing aids to the consuming public, except with respect to respondent's hearing aids advertised, offered for sale, sold or distributed under a private label by a party other than respondent, this requirement shall be limited to sending a copy of the order to the person responsible for the advertising of respondent's hearing aids under the private label at the principal office of the private label purchaser of respondent's hearing aid.
2. Supply, upon request, proof of distribution to, and make available to the Federal Trade Commission for inspection and review, the names

and addresses of those parties to whom respondent distributed a copy of this order as required by paragraph 1 of Part III of this order.

3. Inform each appropriate party described in paragraph 1 above that respondent shall not participate in any way in any advertisement which fails to comply with Part I of this order.

4. Not pay for, compensate for, print, mail or in any other way, directly or indirectly, through discounts, services, or any other benefit in lieu of direct payment, or otherwise participate in any manner in the preparation of, payment for, or dissemination of any of the advertisements of any party described in paragraph 1 above at any time if any such advertisement fails to comply with Part I of this order.

5. Within thirty (30) days after the effective date of this order, institute a program for reviewing any advertisement submitted by respondent's dealers, distributors, licensees, retailers, representatives or agents thereof, pursuant to respondent's cooperative advertising or similar program for advertising credit or other consideration.

PART IV

It is further ordered, That respondent submit to the Federal Trade Commission, within sixty (60) days from the effective date of this order, a detailed report describing the actions that respondent has taken in order to comply with said order.

In addition, respondent shall, for a period of three (3) years at one-year intervals from the effective date of this order, submit to the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of any subsidiary or any other change in the corporate structure which may affect any compliance obligation arising out of this order.

It is further ordered, That the respondent shall forthwith distribute a copy of this order to each of its operating divisions.

Commissioner Dole did not participate by reason of absence.

IN THE MATTER OF
CREATIVE REPLACEMENTS, INC., ET AL.

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

Docket 9020. Complaint, March 12, 1975 — Decision, Sept. 8, 1976

Consent order requiring a Brooklyn, N.Y., manufacturer and seller of hair replacement products, among other things, to cease misrepresenting guarantees, appearance, durability, care and safety of their hair replacement implant System; failing to disclose that the System involves surgical procedures which can result in pain, infection, scarring and skin disorders; and requires continuing special care. Additionally, order requires that prospective customers be advised to seek medical consultation prior to purchase of implant System; that 15 percent of all advertisements be devoted to warning disclosure statements; and provides for a "cooling-off" period during which customers may cancel their contracts without forfeiting their deposits.

Appearances

For the Commission: *Harold F. Moody and Rodney E. Gould.*

For the respondents: *Edward H. Weinberg, Simon, Wasserman & Weinberg, Great Neck, 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 the above-captioned corporations and individuals, more particularly described and referred to hereinafter as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Creative Replacements, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 2335 Coney Island Ave., Brooklyn, New York.

Respondent Nu-Hair Replacement Center, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 2335 Coney Island Ave., Brooklyn, New York.

Respondent United Hair Extension, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 2335 Coney Island Ave., Brooklyn, New York.

Respondent Nu-Hair International of Atlanta, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business located at 3958 Peachtree Road, Atlanta, Georgia. This corporation functions as a branch office of corporate respondent Nu-Hair Replacement Center, Inc.

Respondent Jerome Schrank (also known as Jerry Jay) is an individual and an officer of corporate respondents Creative Replacements, Inc., Nu-Hair Replacement Center, Inc., United Hair Extension, Inc., and Nu-Hair International of Atlanta, Inc.

He formulates, directs and controls the acts and practices of said corporate respondents, including the acts and practices hereinafter set forth. His business address is 2335 Coney Island Ave., Brooklyn, New York.

Respondent Nu-Hair International of Boston, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with its principal office and place of business located at 120 Cambridge St., Burlington, Massachusetts. This corporation is a licensee of respondent Creative Replacements, Inc. Prior to August 9, 1973 respondent Nu-Hair International of Boston, Inc. functioned as a branch office of respondent Nu-Hair Replacement Center, Inc.

Respondent Arthur L. Mazur is an individual and officer of corporate respondent Nu-Hair International of Atlanta, Inc. and director of corporate respondent Nu-Hair International of Boston, Inc.

Individual respondent Arthur L. Mazur, together with individual respondent Jerome Schrank, formulates, directs and controls the acts and practices of corporate respondent Nu-Hair International of Atlanta, Inc., including the acts and practices hereinafter set forth. The business address of respondent Arthur L. Mazur is 120 Cambridge St., Burlington, Massachusetts.

Respondent Michael B. Kaufman is an individual and officer of corporate respondent Nu-Hair International of Boston, Inc. Together with individual respondent Arthur L. Mazur he formulates, directs and controls the acts and practices of corporate respondent Nu-Hair International of Boston, Inc., including the acts and practices hereinafter set forth. The business address of respondent Michael B. Kaufman is 120 Cambridge Street, Burlington, Massachusetts.

All of the aforementioned respondents cooperate and act together in the carrying out of the acts and practices hereinafter set forth.

PAR. 2. Respondent Creative Replacements, Inc. manufactures and distributes hair replacement products and allied items and grants licenses to licensees via a License-Distributor Agreement for the

promotion and sale of a medical implant hair replacement system, and promotes on its own behalf and on behalf of its licensees said hair replacement system. (Hereinafter sometimes referred to as the "Creative Implant Method".)

The Creative Implant Method, has been, and is, being marketed under the name "Medical Implant System" (hereinafter sometimes referred to as the "System") by respondent Creative Replacements, Inc. through a licensee, respondent Nu-Hair International of Boston, Inc. doing business as Headquarters. The System involves a surgical procedure whereby a teflon coated stainless steel thread is used to stitch five to nine hollow metal cylinders or clips into the scalp of respondents' customers. A polyethylene gridwork base, to which wefts of hair have been attached, is then affixed to the cylinders or clips.

The licensee sells, installs and maintains the system manufactured and distributed by Creative Replacements, Inc., except that the surgical procedure is performed by a medical doctor.

The licensees' right to use the "Creative" trade name and the Creative Implant Method are derived from a "License-Distributor Agreement" with respondent Creative Replacements, Inc. The License-Distributor Agreement provides, *inter alia* for an annual license fee to be paid to respondent Creative Replacements, Inc. by the licensee; for respondent Creative Replacements, Inc. to supply advertising, display materials and advertising mats to its licensees, and to provide information regarding the Creative Implant Method to any medical doctor selected by the licensees to act as medical practitioner for purposes of applying the Creative Implant Method to licensees' clients.

In the manner aforesaid, respondent Creative Replacements, Inc. furnishes the means, instrumentalities, services and facilities for, and condones, approves, and accepts the pecuniary and other benefits flowing from the acts and practices hereinafter set forth of respondent's licensees.

Respondent Nu-Hair Replacement Center, Inc. is engaged in the manufacture and advertising, offering for sale and sale of the Medical Implant Hair Replacement System to the general public in the metropolitan New York City area.

Respondent United Hair Extension, Inc. is engaged in the advertising, offering for sale and sale of the Medical Implant Hair Replacement System to the general public in the metropolitan New York City area.

Respondent Nu-Hair International of Atlanta, Inc. is engaged in the advertising, offering for sale and sale of the Medical Implant Hair Replacement System to the general public in Atlanta, Georgia.

PAR. 3. In the course and conduct of their business, respondent Creative Replacements, Inc. and individual respondent Jerome Schrank

transmit advertising and public relations materials, contracts, letters, instruction sheets, and other written instruments and communications, and oral communications, from respondents' place of business in the State of New York, to their licensee located in the Commonwealth of Massachusetts and to their branch office located in the State of Georgia; in addition, respondents at their place of business in the State of New York, derive income, including but not limited to license fees, from their licensee located in the Commonwealth of Massachusetts. As a result of such transmittal of advertising and public relations material, such written instruments and communications and oral communication, and such income, respondents Creative Replacements, Inc. and Jerome Schrank have maintained a substantial course of trade in or affecting commerce, as "commerce" is used in Sections 5 and 12 of the Federal Trade Commission Act.

And in addition, respondents Creative Replacements, Inc. and Jerome Schrank, directly and through their licensee and respondents Nu-Hair Replacement Center, Inc., United Hair Extension, Inc., Nu-Hair International of Atlanta, Inc., Nu-Hair International of Boston, Inc., Jerome Schrank, Arthur L. Mazur and Michael B. Kaufman directly, have disseminated and caused the dissemination of, advertisements concerning their said System by the United States mail and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements inserted in newspapers of general circulation, brochures and in oral sales presentations to prospective purchasers and purchasers, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said System; and respondents have also disseminated, and caused the dissemination of, advertisements concerning their System by the aforesaid means for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of their said System in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the purchase of the System, respondents have made and are now making numerous statements and representations in advertisements inserted in newspapers and magazines of general circulation, brochures, other promotional literature and in oral presentations to prospective purchasers. Typical of the statements and representations contained in said advertisements, brochures, promotional literature and oral presentations, but not all inclusive thereof, are the following:

A. *Newspaper Advertisements*

347

Complaint

TESTED.PERFECTED.SAFE.PERMANENT!

* * * * *

SWIM.SHOWER.SHAMPOO.COMB IT!

* * * * *

With our ingenious invention you can have a full head of hair in just two hours that cannot come off. It offers economy because there are not return visits required.

* * * * *

GUARANTEE---You must be completely satisfied at time of delivery or there is absolutely no charge.

B. *Brochures*

The actual medical work performed is relatively a painless surgical procedure, thus becoming part of the client's anatomy—like your own hair again.

* * * * *

Nu-Hair is a revolutionary technique of hair addition and extension of existing hair for both men and women. It's called "IMPLANTING" hair where none exists, making it a part of you.

* * * * *

Through the years, the buying public always knew that a hairpiece was only a temporary way of having hair, and the embarrassment of a hairpiece was there. — Thanks to a new discovery hair restoration has been achieved to a new and exciting dimension, through a simple medical implant technique.

* * * * *

PERMANENT HAIR IN JUST 2 HOURS!
WITHOUT WEAVING OR TRANSPLANTS
NO FUSS.NO MUSS.NO GLUE OR TAPE

* * * * *

No return visits for tightening, taping, knotting

* * * * *

SWIM IN IT.SHOWER IN IT. EXERCISE IN IT. DANCE IN IT

C. *Oral Representations*

The Nu-Hair System will look like your own hair, can be cared for like your own hair and can be treated like your own hair.

* * * * *

Complaint

88 F.T.C.

The process is permanent, and after you get the System you will be able to swim, shower and carry on activities just like it was your own hair.

* * * * *

The hair applied will look just like your own hair, can be cared for just like your own hair and you can engage in physical activities as if its your own hair.

PAR. 5. Through the use of the above statements and representations, and others of similar import and meaning, but not expressly set out herein, respondents have represented, directly or by implication, that:

1. The System does not involve wearing a hairpiece or toupee.
2. The hair applied becomes a permanent part of the anatomy like natural hair and has characteristics of natural hair, including the following:
 - a. The same appearance as natural hair upon normal observation and upon extreme close-up examination.
 - b. It may be cared for like natural hair, particularly in that actions such as washing, combing, brushing, and shampooing may be performed on it in the same manner as might a person with natural hair.
 - c. The wearer may engage in physical activities with as much disregard for his applied hair as might a person with natural hair.
3. After the System has been applied it is safe for all wearers.
4. After the System has been applied, the wearer can care for it himself and will not have to seek professional or skilled assistance in maintaining it, and that the customer will not incur charges over and above the charge for installing the System.
5. The customer receives an unconditional guarantee if he is not satisfied with the System at the time of delivery.

PAR. 6. In truth and in fact,

1. The System does not involve the wearing of a hairpiece or toupee, inasmuch as the affixing of the wefts of hair to the polyethylene gridwork base creates what is essentially a hairpiece or toupee.
2. The hair applied does not become a permanent part of the anatomy like natural hair. The System involves teflon coated stainless steel sutures which are stitched into the scalp by a surgical procedure and which may be rejected by the body. The hair applied differs from natural hair in many respects, including the following:
 - a. It does not have same appearance as natural hair in a substantial number of instances. It is often discernible as a hair piece or toupee upon normal observation, and upon extreme closeup examination.
 - b. It cannot be cared for like natural hair, but requires special care and handling. Strong pulling on the applied hair, such as may be expected to occur in washing, combing, brushing, and shampooing, can cause pain because of the pressure exerted on the sutures in the scalp,

may cause bleeding, and may cause the sutures to pull out. As a consequence, washing the applied hair and scalp requires extra care. Unless extra care is taken while washing the hair and scalp, foreign particles and dead skin tissue tend to accumulate beneath the base and become a significant source of irritation. The hair styles into which the applied hair may be combed or brushed without professional treatments are limited.

c. The wearer may not engage in physical activities with as much disregard for his applied hair as might a person with natural hair. The wearer must at all times be careful that the applied hair does not pull or get pulled, or become tangled, or strained. Discomfort and pain may be caused by common actions, such as rolling the head on a pillow during sleep.

3. The System applied is not safe for all wearers. Wearers may experience discomfort and pain from the teflon coated stainless steel sutures and from pulling normally incident to wearing the hairpiece. There is a risk of infection, irritation and skin disease as a result of the surgical procedure and as a result of the sutures remaining in the scalp.

4. The wearer cannot in most instances care for the applied hair himself; he must seek professional or skilled assistance on many occasions. Medical problems associated with the surgical procedure or the continuing presence of teflon coated stainless steel thread in the scalp may require subsequent visits to a medical doctor. Wearers having some natural hair under the hair applied by respondents would have to have a haircut at regular intervals and such hair would be difficult to cut without skilled assistance and a substantial additional charge for such service would be incurred. Respondents' applied hair is subject to bleaching in sunlight and other discoloration normally associated with hairpieces, and where the hairpiece has been color-dyed, loss of dye through washing and normal wear; thus, replacement wefts of hair or hairpieces are required at intervals in order to maintain a color match with any natural hair the wearer may have. Because of the difficulty in washing the hair and scalp described previously in Paragraph Six, assistance is often required to wash the hair.

5. The customer does not receive an unconditional guarantee if he is not satisfied with the System at the time of delivery, in that such guarantee is subject to conditions and limitations.

Therefore, respondents' statements, representations, acts and practices, as set forth in Paragraphs Four and Five, were and are false, misleading, unfair or deceptive acts or practices.

PAR. 7. In the course and conduct of their business, respondents have represented in advertisements, brochures and by oral representations the asserted advantages of their System, as hereinbefore described.

Respondents have represented their System to be relatively painless, and in no case have respondents in their advertisements, brochures and oral representations disclosed:

A. That clients may experience discomfort and pain as a result of the surgical procedure, from the teflon coated stainless steel sutures themselves, and from pulling normally incident to wearing the hairpiece.

B. That clients will be subject to the risk of irritation, infection, and skin diseases as a result of the surgical procedure and as a result of the teflon coated stainless steel thread remaining in the scalp; and

C. That permanent scarring to the scalp may result from the required surgical procedures, and as a result of the teflon coated stainless steel thread remaining in the scalp.

The consequences described in this paragraph have in fact occurred, and to a reasonable medical certainty can be expected to occur, and respondents knew, and had reason to know, that they could be expected to occur.

Therefore, the respondents' non-disclosure of material facts, as set forth in Paragraph Seven, was and is false, misleading, unfair and deceptive.

PAR. 8. For the purpose of inducing the purchase of their hair replacement system, respondents entice members of the purchasing public to their Centers with advertisements such as, "* * * you can have a full head of hair in just two hours that cannot come off," and like advertisements designed to attract members of the purchasing public concerned about their hair loss, and with offers of free information without any obligations.

In most cases respondents do not disclose details of their System unless and until a prospect visits a Center. When members of the purchasing public have visited a Center, they have been subjected to sales pressure, for the purpose of persuading them to sign a contract for the application of the System, and to make a substantial down payment, without being afforded a reasonable opportunity to consider and comprehend the scope and extent of the contractual obligations involved, the seriousness of the surgical procedure and the possibilities of discomfort, pain, disease, or disfigurement related to the continued presence of the teflon coated stainless steel thread in the scalp. Persons are urged to sign such contracts and make such down payments through the use of sales presentations employing the following practice, among others:

A. Inducing prospects to sign contracts and/or make down payments before they have consulted a medical doctor and freely and openly discussed with such doctor the medical risks and consequences of

the surgical procedure, and of the teflon coated stainless steel thread being embedded in their scalp. Such consultations typically occur immediately before the commencement of surgery, by which time the client is likely to feel pressured to go through with the application.

Therefore, respondents' statements, representations, acts and practices as set forth in Paragraph Eight, were and are false, misleading, unfair or deceptive acts or practices.

PAR. 9. In the course and conduct of their business, and at all times mentioned herein, respondents have been and are in substantial competition in or affecting commerce with corporations, firms, and individuals, in the sale of cosmetics, devices and treatments for the concealment of baldness.

PAR. 10. The use by respondents of the above false, misleading, unfair or deceptive statements, representations, acts and practices and their failure to disclose material facts has had, and now has, the capacity and tendency to mislead consumers, and to unfairly induce consumers to hurriedly and precipitately sign contracts for the application of the Medical Implant Hair Replacement System, and to make partial or full payment therefor, without affording them reasonable opportunity to consider and comprehend the scope and extent of the contractual obligations involved, or the seriousness of the surgical procedure and the possibilities of discomfort, pain, disease and disfigurement related thereto, and related to the continual presence of the teflon coated stainless steel thread in the scalp, or to compare prices, techniques, and devices available from competing corporations, firms and individuals selling baldness concealment cosmetics, devices, and treatments to the purchasing public.

PAR. 11. The respondents' acts and practices alleged herein are to the prejudice and injury of the purchasing public, and to respondents' competitors, and constitute unfair methods of competition in or affecting commerce, and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act, and false advertisements disseminated by United States mail, and in commerce, in violation of Section 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having issued its complaint on March 12, 1975, charging the respondents named in the caption hereto with violation of the Federal Trade Commission Act, and respondents having been served with a copy of that complaint; and

Respondents 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 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 set forth in such complaint, and waivers and provisions as required by the Commission's Rules; and

The Commission having withdrawn the matter from adjudication for the purpose of considering the agreement containing consent order; and

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 3.25(d) of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Respondent Creative Replacements, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 2335 Coney Island Ave., Brooklyn, New York.

Respondent Nu-Hair Replacement Center, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 2335 Coney Island Ave., Brooklyn, New York.

Respondent United Hair Extension, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 2335 Coney Island Ave., Brooklyn, New York.

Respondent Nu-Hair International of Atlanta, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business located at 3958 Peachtree Road, Atlanta, Georgia. This corporation functions as a branch office of corporate respondent Nu-Hair Replacement Center, Inc.

Respondent Jerome Schrank (AKA Jerry Jay) is an individual and an officer of corporate respondents Creative Replacements, Inc., Nu-Hair Replacement Center, Inc., United Hair Extension, Inc., and Nu-Hair International of Atlanta, Inc.

He formulates, directs and controls the acts and practices of said corporate respondents, including the acts and practices hereinafter set forth. His business address is 2335 Coney Island Ave., Brooklyn, New York.

Respondent Nu-Hair International of Boston, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with its principal office and

place of business located at 120 Boylston St., Boston, Massachusetts. This corporation is a licensee of respondent Creative Replacements, Inc. Prior to August 9, 1973 respondent Nu-Hair International of Boston, Inc. functioned as a branch office of respondent Nu-Hair Replacement Center, Inc.

Respondent Arthur L. Mazur is an individual and officer of corporate respondent Nu-Hair International of Atlanta, Inc. and director of corporate respondent Nu-Hair International of Boston, Inc.

Individual respondent Arthur L. Mazur, together with individual respondent Jerome Schrank, formulates, directs and controls the acts and practices of corporate respondent Nu-Hair International of Atlanta, Inc., including the acts and practices hereinafter set forth. The business address of respondent Arthur L. Mazur is 120 Boylston St., Boston, Massachusetts.

Respondent Michael B. Kaufman is an individual and officer of corporate respondent Nu-Hair International of Boston, Inc. Together with individual respondent Arthur L. Mazur he formulates, directs and controls the acts and practices of corporate respondent Nu-Hair International of Boston, Inc., including the acts and practices hereinafter set forth. The business address of respondent Michael B. Kaufman is 120 Boylston St., Boston, Massachusetts.

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

It is ordered, That respondents Creative Replacements, Inc., a corporation, Nu-Hair Replacement Center, Inc., a corporation, doing business as Nu-Hair Replacement Centres International, Ltd., United Hair Extension, Inc., a corporation, doing business as Permanent International, Nu-Hair International of Atlanta, Inc., a corporation, doing business as Nu-Hair International of Atlanta, Nu-Hair International of Boston, Inc., a corporation, their successors and assigns, and their officers, and Jerome Schrank (AKA Jerry Jay), Michael B. Kaufman, and Arthur L. Mazur, individually and as officers and/or directors of said corporations, or any of them, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, or distribution of an implant hair replacement system (hereinafter sometimes referred to as the "System"), or other hair replacement product or process involving surgery, (hereinafter sometimes referred to as the "System") do forthwith cease and desist from:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails, or by any means in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or indirectly:

(a) That the System does not involve wearing a device or cosmetic which is like a hairpiece or toupee;

(b) That after the System has been applied, the hair applied will become a permanent part of the anatomy like natural hair, or will have the following characteristics of natural hair:

(i) The same appearance in all applications as natural hair, upon normal observation, and upon extreme closeup examination;

(ii) It may be cared for like natural hair, particularly in that actions such as washing, combing, brushing and mussing might be performed on it in the same manner as might a person with natural hair;

(iii) The wearer may engage in physical activity and movement with the same disregard for his applied hair as he would if he had natural hair.

(c) That after the System has been applied it is safe for all wearers.

(d) That after the System has been applied, the customer can care for it himself, and will not have to seek professional or skilled assistance in maintaining the System, or that the customer will not incur maintenance costs over and above the cost of applying the System.

(e) That such products and the System are guaranteed unless the nature and extent of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed; and unless respondents promptly and fully perform all of their obligations and requirements, directly or impliedly represented, under the terms of each such guarantee.

2. Communicating orally or in writing, or in any other manner, directly or by implication, any of the representations prohibited in Paragraph 1 hereof.

3. Failing to disclose, clearly and conspicuously, in all advertising, brochures and promotional materials, and in all oral sales presentations, in offering for sale, selling or distributing the System, that:

(a) The System involves a surgical procedure resulting in the implantation of sutures in the scalp, to which hair is affixed.

(b) By virtue of the surgical procedure involving implantation of sutures in the scalp, and by virtue of the sutures remaining in the scalp, there is a risk of discomfort and pain, and some risk of infection, scarring and other skin disorders.

(c) Continuing special care of the System is necessary to minimize the risks referred to in subparagraph (b) of this paragraph, and such care may involve additional costs for medications and assistance.

(d) The purchaser is advised to consult with his personal physician about the System before deciding whether to purchase it.

Respondents shall set forth the above disclosures separately and conspicuously from the balance of each advertisement or presentation used in connection with the advertising, offering for sale, sale, or distribution of the System, and shall devote no less than 15 percent of each advertisement or presentation to such disclosures. *Provided, however,* that in advertisements which consist of less than ten column inches in newspapers or periodicals, and in radio or television advertisements with a running time of one minute or less, respondents may substitute the following statement, in lieu of the above requirements:

“Warning: This application involves surgery whereby sutures are placed in the scalp. Discomfort, pain, and medical problems may occur. Continuing care is necessary. Consult your own physician.”

No less than 15 percent of such advertisements shall be devoted to this disclosure, such disclosure shall be set forth clearly and conspicuously from the balance of each of such advertisements, and if such disclosure is in a newspaper or periodical, it shall be in at least ten point type.

4. Disseminating, or causing the dissemination of any advertisement, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, of said System, or any other product, which advertisements contain any of the representations prohibited in Paragraph 1 hereof, or which fail to make any of the disclosures required by Paragraph 3 herein.

It is further ordered, That respondents provide prospective purchasers with a separate disclosure sheet containing the information required in Paragraph 3 of this order, subparagraphs (a) through (d), thereof, and that respondents advise such prospective purchasers, subsequent to receipt of such disclosure sheet, to consult with a duly licensed physician who is not associated, directly or indirectly, financially or otherwise, with the respondents regarding the nature of the surgery to be done, the risks of discomfort and pain, and possible risks of infection, scarring, and other skin disorders.

It is further ordered, That no contract for application of respondents’ system shall become binding on the purchaser prior to midnight of the seventh day, excluding Sundays and legal holidays, after the day on which said contract for application of the system was executed, and that:

1. Respondents shall clearly and conspicuously disclose orally prior

to the time of sale, and in writing on any contract, promissory note or other instrument executed by the purchaser in connection with the sale of the system, that the purchaser may rescind or cancel any obligation incurred, by mailing or delivering a notice of cancellation to the office responsible for the sale prior to midnight of the seventh day, excluding Sundays and legal holidays, after the day on which said contract for application of the system was executed.

2. Respondents shall provide a separate and clearly understandable form which the purchaser may use as a notice of cancellation.

3. Respondents shall not fail or refuse to honor any valid notice of cancellation by a purchaser and within 10 business days after receipt of such notice, to refund all payments made under the contract or sale and to cancel and return any negotiable instrument executed by the purchaser in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

4. Respondents shall not negotiate any contract, promissory note, or other instrument of indebtedness to a finance company or other third party prior to midnight of the tenth day, excluding Sundays and legal holidays, after the day on which said contract for application of the system was executed.

It is further ordered, That whenever respondents perform the application of the system on a customer within 48 hours from the time of that customer's initial contact with respondents, said customer may rescind or cancel any contract or agreement executed and any obligation incurred, by mailing or delivering a notice of cancellation to the office responsible for the sale prior to midnight of the third day, excluding Sundays and legal holidays, after the day on which the system was applied.

In the event of such cancellation, respondents shall refund all payments made within 10 business days after receipt of notice of such cancellation, provided that said customer shall assume any cost incurred for the removal of the system.

It is further ordered, That respondents serve a copy of this order upon each physician participating in application of respondents' system, and obtain written acknowledgement of the receipt thereof. Respondents shall retain such acknowledgements for so long as such persons continue to participate in the application of respondents' system.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in any corporate respondent, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, licensees, or franchisees, or any other change in the

corporation which may affect compliance obligations arising out of the order.

It is further ordered, That in the event that any corporate respondent merges with another corporation or transfers all or a substantial part of its business or assets to any other corporation or to any other person, said respondent shall require such successor or transferee to file promptly with the Commission a written agreement to be bound by the terms of this order; *provided* that if said respondent wishes to present to the Commission any reasons why said order should not apply in its present form to said successor or transferee, it shall submit to the Commission a written statement setting forth said reasons prior to the consummation of said succession or transfer.

It is further ordered, That respondents forthwith distribute a copy of this order to each of their operating divisions, offices, departments or affiliated corporations.

It is further ordered, That respondent Creative Replacements, Inc. serve a copy of this order upon each present and every future licensee or distributor, and obtain written acknowledgement of the receipt thereof; and that respondent obtain from each present and future licensee or distributor an agreement in writing (1) to abide by the terms of this order, and (2) to cancellation of their license for failure to do so; and that respondent cancel the license of any licensee or distributor that fails to abide by the terms of this order.

It is further ordered, That respondents shall forthwith deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the offering for sale, sale or distribution of respondents' System or in any aspect of preparation, creation or placing of advertising, and that respondents secure a signed statement acknowledging the receipt of said order from each such person.

It is further ordered, That the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment. Such notice shall include respondents' current business address and a statement as to the nature of the business or employment in which they are engaged as well as a description of their duties and responsibilities.

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

Commissioner Dole did not participate by reason of absence.

Complaint

88 F.T.C.

IN THE MATTER OF

KRAFTCO CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT AND SEC. 8 OF THE CLAYTON
ACT

Docket 9035. Complaint, June 17, 1975 — Decision, Sept. 9, 1976*

Consent order requiring a Glenview, Ill., manufacturer and seller of margarine, edible oils, and barbecue sauce, among other things to cease permitting individuals to simultaneously serve on its Board of Directors and that of its competitor, SCM Corporation and, for a period of four years, to annually obtain from current and prospective board members written certification that they are not serving on the boards of competitive companies. Additionally, the order prohibits respondent from seating on its Board of Directors, any individual who fails to furnish such written certification.

Appearances

For the Commission: *Ronald A. Bloch, Clinton R. Batterton, and Joseph Tasker, Jr.*

For the respondent: *Chadwell, Keyser, Ruggles, McGee & Hastings, Chicago, Ill.; Hoosin & Taffe, Glenview, Ill.; Sullivan & Cromwell, New York City; Ballard, Spahr, Andrews & Ingersoll, Philadelphia, Pa.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondents have been and are in violation of the provisions of Section 8 of the Clayton Act, as amended, and Section 5(a)(1) of the Federal Trade Commission Act, and that a proceeding in respect thereof would be in the public interest, issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Kraftco, Inc. (hereinafter "Kraftco") is a Delaware corporation, and maintains its principal office at Kraftco Court, Glenview, Illinois. Kraftco has capital, surplus, and undivided profits aggregating more than one million dollars, and is engaged in whole or in part in commerce as "commerce" is defined in Section 1 of the Clayton Act and Section 4 of the Federal Trade Commission Act.

PAR. 2. Respondent SCM Corporation (hereinafter "SCM") is a New York corporation, and maintains its principal office at 299 Park Ave., New York, New York. SCM has capital, surplus, and undivided profits aggregating more than one million dollars, and is engaged in whole or

* For decision concerning Richard C. Bond, *see*, 87 F.T.C. 809, and decision concerning SCM Corporation is pending.

in part in commerce as "commerce" is defined in Section 1 of the Clayton Act and Section 4 of the Federal Trade Commission Act.

PAR. 3. Respondent Richard C. Bond is a resident of the Commonwealth of Pennsylvania.

PAR. 4. Respondent Bond is a member of the Board of Directors of each of the herein named corporate respondents.

PAR. 5. The business of the corporate respondents, Kraftco and SCM, includes the manufacture and sale in commerce of margarine, edible oils, and barbecue sauce.

PAR. 6. Kraftco and SCM, by the nature of their margarine, edible oil, and barbecue sauce business and location of operations with respect to said products, are competitors of each other. The elimination of competition with respect thereto by agreement between Kraftco and SCM would constitute a violation of the antitrust laws.

PAR. 7. Therefore, the simultaneous presence of respondent Richard C. Bond on the Board of Directors of respondents Kraftco and SCM constitutes a violation of Section 8 of the Clayton Act and Section 5(a)(1) of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having heretofore issued its complaint charging the respondent named in the caption hereto with violation of Section 8 of the Clayton Act and Section 5(a)(1) of the Federal Trade Commission Act, and the respondent having been served with a copy of the complaint and with a copy of the notice of contemplated relief accompanying said complaint; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint heretofore issued, 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 issued an order withdrawing the matter described in the caption hereto from adjudication for the purpose of considering the proposed consent agreement pursuant to Section 3.25 of its Rules; and

The Commission, having considered the agreement and having provisionally accepted same, and the agreement containing a consent order having thereupon been placed on the public record for a period of sixty (60) days, and no comments having been filed, now in further conformity with the procedure prescribed in Section 3.25 of its Rules,

the Commission hereby issues its decision in disposition of the proceeding against the above-named respondent, makes the following jurisdictional findings, and enters the following order:

1. Respondent, Kraftco Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office located at Kraftco Court, Glenview, Illinois.

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

ORDER

I

It is ordered, That Kraftco Corporation (identified in the complaint as "Kraftco, Inc."), a Delaware corporation, its successors and assigns, do forthwith cease and desist from permitting any individual to serve on its Board of Directors if such individual is or would be at the same time a director of SCM Corporation, so long as Kraftco and SCM Corporation compete in the production or sale of any product.

II

It is further ordered, That within ninety (90) days of the date of service of this order and annually in each of the four (4) years thereafter, Kraftco shall transmit to each member of its Board of Directors (except directors whose terms expire at the next election and who are not standing for re-election), and each nominee for directorship who is not then a director, a list of the following products: (a) cheese, (b) fluid milk, (c) ice cream, (d) barbecue sauce, (e) edible oils, (f) margarine, and (g) any product in which Kraftco had sales which accounted for 5 percent or more of Kraftco's gross revenues in the preceding fiscal year. "Product" as used in category (g) of this paragraph shall mean the four-digit industry code (SIC) classifications published by the Bureau of the Census in its latest *Numerical List of Manufactured Products*. Kraftco shall also request that each director or nominee certify to Kraftco in writing that he or she does not serve on the Board of Directors of any corporation which is engaged in competition with Kraftco in the manufacture or sale in the United States of any product listed by Kraftco where the sales of such product by the corporation (exclusive of sales at retail to consumers) exceed \$1,000,000 per year. The provisions of this paragraph shall not apply where: (i) the other corporation on whose Board of Directors such

nominee or director also serves controls 50 percent or more of the voting stock of Kraftco ("parent"); (ii) Kraftco controls, directly or indirectly through subsidiaries, 50 percent or more of the voting stock of the other corporation on whose Board of Directors such nominee or director also serves ("subsidiary"); or (iii) 50 percent or more of the voting stock of the other corporation on whose Board of Directors such nominee or director also serves is held by a corporation which also holds 50 percent or more of the voting stock of Kraftco ("sister"). "Corporation" as used herein shall include parent, subsidiary or sister corporations.

III

It is further ordered, That for a period ending five (5) years from the date of service upon it of this order, Kraftco shall not permit on its Board of Directors any nominee or director who fails to submit a written certification pursuant to Paragraph II above, either because he or she cannot truthfully submit such written certification or for whatever other reason, or with respect to whom a reasonably diligent investigation by Kraftco would reveal that such certification cannot truthfully be made. The prohibition contained in this paragraph shall not apply where (a) Kraftco, or any corporation on the Board of Directors of which a nominee or director of Kraftco also serves, cease to be competitors; or (b) said nominee or director ceases to serve on the Board of Directors of such other competitor corporation. Notwithstanding any other provision of this order, any director or nominee shall not be prohibited by this order from serving on the Board of Directors of Kraftco, if Kraftco has shown to the satisfaction of the Federal Trade Commission or to any other court of competent jurisdiction, in a final nonappealable determination, that there is no competition as defined in Section 8 of the Clayton Act and Section 5(a)(1) of the Federal Trade Commission Act between Kraftco and the other corporation on whose Board he or she serves in the manufacture or sale of any product required to be listed by Kraftco pursuant to Paragraph II of this order.

IV

It is further ordered, That within ninety (90) days of the service of this order, and annually for each of the four years thereafter, Kraftco shall file with the Commission a written report setting forth in detail the manner and form in which it has complied with this order. If compliance with this order requires any member of Kraftco's Board of Directors to resign or to be removed from the Board of Directors of Kraftco, or of another corporation, Kraftco shall be allowed a

reasonable period of time, but in no event longer than ninety (90) days, within which to take any legal or other steps which are necessary to secure compliance with this order. Nothing in this order shall be construed to exempt Kraftco from complying with the antitrust laws or the Federal Trade Commission Act and the fact that any activity is not prohibited by this order shall not bar a challenge to it under such laws.

v

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

Commissioner Dole did not participate by reason of absence.

IN THE MATTER OF
JIM WALTER CORPORATION

Docket 8986. Order, Sept. 10, 1976

Denial of motion to postpone oral argument.

Appearances

For the Commission: *John J. O'Malley.*

For the respondent: *John J. Voortman, W. Donald McSweeney and Susan A. Henderson, Schiff, Hardin & Waite, Chicago, Ill. Dan L. Saltsman, Tampa, Fla.*

ORDER DENYING MOTION TO POSTPONE ORAL ARGUMENT

Respondent moves for a postponement of the oral argument in this matter from September 15, 1976, until some date after October 1976. According to the motion, respondent's lead attorney has been engaged in a trial in the United States District Court for the Eastern District of Wisconsin since May 3, 1976, and expects to be so engaged through a substantial part of October 1976.

While the Commission has been willing to grant short postponements to accommodate irreconcilable scheduling conflicts, a six-week postponement is unwarranted, especially in view of the lack of any showing that another attorney could not be assigned to argue the appeal. *See American General Insurance Co., Dkt. No. 8847, Order Denying Complaint Counsel's Motion to Postpone Oral Argument, June 8, 1976.* Furthermore, the motion is untimely since there is no indication that counsel could not have perceived his need for a continuance before this late date. Accordingly,

It is ordered, That the aforesaid motion be, and it hereby is, denied. Commissioner Dole not participating by reason of absence.

Complaint

88 F.T.C.

IN THE MATTER OF
SONOTONE CORPORATION

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

Docket 9009. Complaint, Jan. 29, 1975 — Decision, Sept. 13, 1976

Consent order requiring an Elmsford, N.Y. manufacturer of hearing aids, among other things to cease making false, deceptive and unsubstantiated claims and representations concerning the benefits, characteristics, efficacy and uniqueness of its products. Further, the order prohibits respondent from disseminating or supplying promotional materials containing misleading and deceptive representations. Additionally, respondent is required to institute a reviewing program for all its advertising and maintain appropriate records.

Appearances

For the Commission: *William S. Busker* and *Mark A. Heller*.

For the respondent: *William Dzuork*, General Counsel, Sonotone Corporation.

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 Sonotone Corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Sonotone Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal place of business located at Saw Mill River Road, Elmsford, New York.

Sonotone is a wholly-owned subsidiary of Charles Pindyck, Inc. Charles Pindyck, Inc. has its principal office located at Saw Mill River Road, Elmsford, New York.

PAR. 2. Respondent is now, and for some time last past has been engaged in the advertising, offering for sale, sale and distribution of hearing aids which come within the classification of device as the term "device" is defined in the Federal Trade Commission Act, to dealers, distributors, licensees, retailers, salespersons, representatives or agents thereof, for resale to the public.

PAR. 3. In the course and conduct of its business as aforesaid, respondent causes, and for some time last past has caused, its devices

when sold to be shipped from its place of business in the State of New York to purchasers thereof located in various other States of the United States, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said devices in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business and at all times mentioned herein, respondent has been, and is now, in substantial competition in commerce with corporations, firms and individuals likewise engaged in the sale of hearing aids of the same general kind and nature as the devices sold by respondent.

PAR. 5. Respondent in the course and conduct of its business and for the purpose of inducing the purchase of said devices has furnished and supplied to dealers, distributors, licensees, retailers, salespersons, representatives or agents thereof, who sell said devices to the public, various types of advertising materials, including, but not limited to advertisements, sales manuals, brochures, advertising mailers, ad mats and other sales aid materials.

Respondent has assisted, aided, provided payments to and otherwise cooperated with its dealers, distributors, licensees, retailers, salespersons, representatives, or agents thereof, in the advertising of said devices.

PAR. 6. In the course and conduct of its business respondent has disseminated, and does now disseminate, certain advertisements by use of the United States mail and by various means in commerce as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements inserted in periodicals of general circulation, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said devices, and has disseminated, and caused the dissemination of, advertisements concerning said devices by various means, including those aforesaid, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said devices in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. Typical and illustrative of the representations contained in the advertisements referred to in Paragraphs Five and Six, but not inclusive thereof, are the following:

Model 670-S- A new concept in hearing help.

The Sonotone Model 670-S offers a completely new concept in hearing aid capability.

A GREAT NEW HEARING AID FOR SERIOUS HEARING PROBLEMS.

One great new hearing aid series — with four model variations to provide each person with only what he needs and wants for better hearing.

The Sonotone Series 80 Models Provide the Better Hearing Needed For Each Individual Problem.

There's a Sonotone hearing aid for every fittable hearing loss.

With better hearing, you'll enjoy meeting new people and participating in group conversations at social events.

What most people will notice is your cheerful active return to the world of wonderful sounds. You can again enjoy your family and your friends—at home, at parties, on the job, at church.

Newest Hearing Help — Sonotone has a unique DISCRIMINATOR earmold for additional help with hearing nerve problems.

Acoustic Shutter — This unique development in the Sonotone ceramic microphone provides better listening performance, plus improved individualized fittings for each person's loss, whether air conduction or bone conduction.

PAR. 8. Through the above representations, and others of similar import and meaning but not expressly set out herein, respondent has represented directly or by implication that:

1. It merchandises a hearing aid which is a new invention or involves new model features or a new mechanical, engineering or scientific concept or principle in hearing aid capability.

2. Certain of its hearing aids or component parts thereof are unique, special or exclusive in that they

(a) are superior to all other hearing aids or component parts thereof used for hearing loss; or

(b) contain or embody certain inventions, features (excluding physical appearance), concepts or principles not contained or embodied in any other hearing aids or component parts thereof used for hearing loss.

3. Respondent's hearing aids will be beneficial to persons with a hearing loss, regardless of the type or extent of loss.

4. Respondent's hearing aids will enable persons with a hearing loss to distinguish and understand speech sounds in noisy or group situations.

PAR. 9. In truth and in fact:

1. The hearing aids referred to in the representations contained in Paragraph Seven, and in other advertisements, are not new inventions nor do they involve model features or mechanical, engineering or scientific concepts or principles in hearing aid capability that are new.

2. The hearing aids or component parts thereof, referred to in the

representations contained in Paragraph Seven, and in other advertisements, are not unique, special or exclusive in that they

(a) are not superior to all other hearing aids or component parts thereof used for hearing loss; and

(b) do not contain or embody certain inventions, features (excluding physical appearance), concepts or principles not contained or embodied in any other hearing aids or component parts thereof used for hearing loss.

3. Many persons with a hearing loss will not receive any significant benefit from any hearing aid.

4. Many persons with hearing loss will not be able to consistently distinguish and understand speech sounds in noisy or group situations by using any hearing aid.

Therefore, the advertisements referred to in Paragraphs Five through Eight were, and are, misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act and the aforesaid statements and representations referred to in Paragraphs Five through Eight were and are false, misleading and deceptive.

PAR. 10. Through the use of the aforesaid advertisements, respondent has represented, directly or by implication, that at the time that respondent made the claims set forth in Paragraph Eight, respondent had a reasonable basis for such claims.

PAR. 11. In truth and in fact, at the time that respondent made the claims set forth in Paragraph Eight, respondent had no reasonable basis from which to conclude that such claims were true.

Therefore, the statements and representations set forth in Paragraph Eight were, and are, deceptive or unfair acts or practices.

PAR. 12. At the time that respondent made the claims set forth in Paragraph Eight, respondent had no reasonable basis to support such claims.

Therefore, the making of the claims set forth in Paragraph Eight was, and is, a deceptive or unfair act or practice.

PAR. 13. The following statement constitutes a material fact with respect to the making of any claim regarding the hearing capability or hearing quality of any hearing aid:

Many persons with a hearing loss will not receive any significant benefit from any hearing aid.

PAR. 14. The advertisements referred to in Paragraphs Five through Eight contain claims regarding the hearing capability or the hearing quality of respondent's hearing aids and fail to disclose the material fact set forth in Paragraph Thirteen. Therefore, those advertisements

were and are "false advertisements" as that term is defined in the Federal Trade Commission Act, and respondent's failure to disclose said material fact in connection with each such claim for its hearing aids was, and is, an unfair or deceptive act or practice.

PAR. 15. The dissemination by respondent of the aforesaid false advertisements and the use of the aforesaid unfair or deceptive acts or practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said advertisements and representations were, and are, true and into the purchase of substantial quantities of respondent's devices by reason of said erroneous belief.

PAR. 16. The aforesaid acts and practices of respondent, as herein alleged, including the dissemination of false advertisements, and the making of representations without a reasonable basis as aforesaid, were, and are, all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having issued a complaint which charges respondent Sonotone Corporation with violating the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid complaint, a statement that the signing of the 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 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 3.25(d) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Sonotone Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at Saw Mill Road, Elmsford, New York.

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

PART I

It is ordered, That Sonotone Corporation, a corporation, its successors and assigns, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of hearing aids, do forthwith cease and desist from:

1. Disseminating or causing the dissemination of any advertisement, by means of the United States mail or by any means in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, which

(a) Represents, directly or by implication, that:

(1) Respondent merchandises a hearing aid which is a new invention or involves a new mechanical, engineering or scientific concept or principle in hearing aid capability unless [1] respondent possesses and relies upon competent and reliable scientific or medical evidence which establishes that respondent merchandises such a hearing aid which is a new invention or involves a new mechanical, engineering or scientific concept or principle in hearing aid capability; [2] the invention, concept or principle represents a significant benefit to users of the hearing aid; [3] respondent clearly and conspicuously describes the new invention, concept, or principle, and the significant benefit to the user of the hearing aid, in the advertisement; and [4] respondent maintains in its records, subject to reasonable inspection by Commission staff members, the competent and reliable scientific or medical evidence upon which it relies to support such claim until three (3) years after the last dissemination of any such claim.

(2) Respondent's hearing aid or its shape, design or any other model feature is new, or that respondent merchandises a hearing aid which is a new invention or involves a new mechanical, engineering or scientific concept or principle when such hearing aid or its shape, design or any other model feature or invention, mechanical, engineering or scientific concept or principle has been marketed in the United States for a period greater than one year. *Provided, however*, that such one-year time period shall not begin to run during the test marketing of such new model or feature where such test marketing program does not cover more than fifteen percent (15%) of the population, does not exceed six (6) months in duration, and is conducted in good faith for test purposes only.

(3) Respondent's hearing aids will be beneficial to persons with a hearing loss regardless of the type or extent of loss.

(4) Use of respondent's hearing aids will enable all persons with a hearing loss to consistently distinguish or understand speech sounds in noisy situations.

(5) Use of respondent's hearing aids will enable all persons with a hearing loss to consistently distinguish or understand speech sounds in group situations.

(6) Respondent's hearing aids or component parts thereof (a) are unique or superior to all other hearing aids used for hearing loss; or (b) embody inventions, features (excluding physical appearance), concepts or principles not contained or embodied in any other hearing aid or component parts thereof used for hearing loss unless [1] respondent possesses and relies upon competent and reliable scientific or medical evidence which establishes that its hearing aids or component parts thereof (a) are unique and superior to all other hearing aids used for hearing loss, and (b) embody inventions, features, concepts or principles not contained or embodied in any other hearing aids or component parts thereof used for hearing loss; [2] the hearing aid or component part, invention, feature, concept or principle represents a significant benefit to users of the hearing aid; [3] respondent clearly and conspicuously describes the nature of the uniqueness or superiority claim made in the advertisement, including the nature of the benefit to the consumer attributed to the invention, feature, concept or principle embodied in any such hearing aid; and [4] respondent maintains in its records, subject to reasonable inspection by Commission staff members, the competent and reliable scientific or medical evidence upon which it relies to support such claim until three (3) years after the last dissemination of any such claim.

(b) In the event the Federal Trade Commission promulgates a final trade regulation rule which omits a requirement or prohibition or whose requirements or prohibitions differ in any manner with respect to the representations dealt with in any sub-paragraph of Paragraph 1 of Part I, of this order, such omissions, requirements or prohibitions with respect to such representations imposed by the rule shall, on the effective date of the rule, supersede and replace or cause to be automatically deleted the corresponding and differing sub-paragraphs of Paragraph 1, Part I, of this order.

2. Making, directly or indirectly, any statement or representation in any advertising or sales promotional material as to any feature (excluding physical appearance), or performance characteristic of, or the uniqueness, superiority or efficacy of any of respondent's hearing aids or any component part thereof, unless prior to the time of such

statement or representation respondent had a reasonable basis for same, which shall consist of competent and reliable scientific or medical evidence.

3. Failing to maintain accurate and adequate records which may be inspected by Commission staff members upon reasonable notice:

(a) which contain documentation in support of any claim included in any advertising or sales promotional material disseminated by respondent, or any of its divisions' or subsidiaries' officers or employees, which claim concerns any feature (excluding physical appearance), or performance characteristic of or the uniqueness, superiority or efficacy of, any of respondent's hearing aids or any component part thereof; and

(b) which provided the basis upon which respondent relied at the time any such claim was made.

Such records shall be maintained by respondent for so long as any such material is disseminated by respondent or any of its divisions' or subsidiaries' officers or employees, or by its dealers, distributors, licensees, retailers, representatives or agents thereof, in cooperation with respondent, and for a further period of three (3) years after the last dissemination of any such material.

4. Disseminating, or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of hearing aids in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited in paragraph 1 of Part I of this order.

PART II

It is further ordered, That Sonotone Corporation, a corporation, its successors and assigns, and respondent's agents, representatives, officers and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale, or distribution of hearing aids in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act shall not:

1. Misrepresent, directly or indirectly, any feature or performance characteristic of any of respondent's hearing aids or any component part thereof.

2. Supply any dealer, distributor, licensee, retailer, salesperson, representative or agent thereof, with advertisements, sales manuals, brochures, advertising mats, or any other advertising or sales aid materials for the purpose of inducing or which are likely to induce, directly or indirectly, the purchase of respondent's devices, and which

contain any of the false, misleading or deceptive representations prohibited in this order.

PART III

It is further ordered, That Sonotone Corporation, a corporation and its successors and assigns, shall:

1. Within thirty (30) days after the effective date of this order, or within thirty (30) days after any dealer, distributor, licensee or retailer attains such status, distribute a copy of this order, by certified or registered mail, return receipt required, to each of respondent's known dealers, distributors, licensees, or retailers, who are now or in the future become engaged in the advertising, offering for sale, sale or distribution of respondent's hearing aids to the consuming public, except with respect to respondent's hearing aids advertised, offered for sale, sold or distributed under a private label by a party other than respondent, this requirement shall be limited to sending a copy of the order to the person responsible for the advertising of respondent's hearing aids under the private label at the principal office of the private label purchaser of respondent's hearing aid.

2. Supply, upon request, proof of distribution to, and make available to the Federal Trade Commission for inspection and review, the names and addresses of those parties to whom respondent distributed a copy of this order as required by paragraph 1 of Part III of this order.

3. Inform each appropriate party described in paragraph 1 above that respondent shall not participate in any way in any advertisement which fails to comply with Part I of this order.

4. Not pay for, compensate for, print, mail or in any other way, directly or indirectly, through discounts, services, or any other benefit in lieu of direct payment, or otherwise participate in any manner in the preparation of, payment for, or dissemination of any of the advertisements of any party described in paragraph 1 above at any time if any such advertisement fails to comply with Part I of this order.

5. Within thirty (30) days after the effective date of this order, institute a program for reviewing any advertisement submitted by respondent's dealers, distributors, licensees, retailers, representatives or agents thereof, pursuant to respondent's cooperative advertising or similar program for advertising credit or other consideration.

PART IV

It is further ordered, That respondent submit to the Federal Trade Commission, within sixty (60) days from the effective date of this order,

a detailed report describing the actions that respondent has taken in order to comply with said order.

In addition, respondent shall, for a period of three (3) years at one-year intervals from the effective date of this order, submit to the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of any subsidiary or any other change in the corporate structure which may affect any compliance obligation arising out of this order.

It is further ordered, That the respondent shall forthwith distribute a copy of this order to each of its operating divisions.

Commissioner Dole did not participate by reason of absence.

Order

88 F.T.C.

IN THE MATTER OF
THE RAYMOND LEE ORGANIZATION, INC., ET AL.

Docket 9045. Order, Sept. 13, 1976

Denial of motion for joinder of another party.

Appearances

For the Commission: *Harriet G. Mulhern.*

For the respondents: *M. I. Lewis, Lans, Feinberg & Cohen*, New York City for The Raymond Lee Organization, Inc. and Raymond Lee. *M. C. Michael, Schwenke & Devine*, New York City for Lawrence Peska.

ORDER DENYING MOTION FOR JOINDER OF ANOTHER PARTY

This matter is before us on the administrative law judge's certification of a motion filed by respondents The Raymond Lee Organization, Inc., and Raymond Lee to join as a respondent in this proceeding Lawrence Peska Associates, Inc. The ALJ recommends that the motion be denied for the following reasons: (1) addition of a new party would substantially delay the trial of this proceeding, which is now scheduled to commence on September 20, 1976; and (2) an order entered against Lawrence Peska, if warranted by the record, would provide the public "substantial protection."¹

We agree with the ALJ that respondents have failed to make a showing sufficient to warrant the addition of a new party on the eve of trial. Accordingly,

It is ordered, That the aforesaid motion be, and it hereby is, denied.
Commissioner Dole not participating by reason of absence.

¹ Order (1) Denying Respondents' ("RLO's") Motion for Reconsideration of Motion for Extensions of Time or Alternatively for Permission to Appeal to Commission and (2) Certifying to the Commission RLO's Motion for Joinder of Another Party, at 5-6.

Complaint

IN THE MATTER OF

KAUFMAN CARPET CO., INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 9030. Complaint, Apr. 29, 1975 — Decision, Sept. 17, 1976*

Consent orders requiring two carpet testing firms located in East Rockaway, N.Y., and Yonkers, N.Y., among other things to cease furnishing false or misleading carpet testing reports and/or test results; and changing, altering, or excluding pertinent particulars in their test reports.

Consent order requiring a Lodi, N.J., carpet retailer, among other things to cease misrepresenting guarantees, quality and grade of carpeting, authenticity and results of tests in test reports; and failing to conspicuously disclose exclusions, limitations, and conditions of guarantee coverage in conjunction with guarantee statements. Further, respondent is prohibited from influencing or altering the contents or results of test reports; and required to furnish to consumer complainants, by certified mail, true test reports within a specified time period, and to maintain adequate records relating to compliance obligations of the order.

Appearances

For the Commission: *John A. Crowley* and *Shirley F. Sarna*.

For the respondents: *Edward J. Walsh, Jr.*, *Hays, St. John, Abramson & Heilbron*, New York City, *Brian Rappaport*, Brooklyn, N.Y., *Bresler, Kallman, Hackmyer & Walzer*, New York City, *Benjamin Wiener*, Yonkers, 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 Kaufman Carpet Co., Inc., a corporation, Henry Intrator, individually and as an officer of said corporation, Irving L. Mermer and Benjamin Wiener, individually and as co-partners trading and doing business as The Durotone Company, and Alvin Myman, individually, and trading and doing business as A & M Carpet Service Co., hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Kaufman Carpet Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws

of the State of New York, with its office and principal place of business at 370 Essex St., Lodi, New Jersey.

Respondent Henry Intrator is an individual and an officer of Kaufman Carpet Co., Inc. He formulates, directs and controls its policies, acts and practices, including those hereinafter set forth. His business address is the same as that of the corporate respondent.

Respondents Kaufman Carpet Co., Inc. and Henry Intrator are sometimes hereinafter collectively referred to as "Respondent Kaufman."

PAR. 2. Respondents Irving L. Mermer and Benjamin Wiener are individuals and are co-partners trading and doing business as The Durotone Company, with their office at 510 South Broadway, Yonkers, New York. Faye Mermer is an additional co-partner in The Durotone Company but is inactive with respect to the business operations of said company.

Respondents Irving L. Mermer and Benjamin Wiener are sometimes hereinafter collectively referred to as "Respondent Durotone."

PAR. 3. Respondent Alvin Myman is an individual who trades and does business under the name A & M Carpet Service Co., at 742 Longacre Ave., Woodmere, New York.

PAR. 4. Respondent Kaufman, through its subsidiary corporations, has been and is now engaged in the advertising, offering for sale, sale and distribution of carpeting at retail to the general public in several States of the United States.

In the course and conduct of its business, as aforesaid, Respondent Kaufman, through its subsidiary corporations, orders, sells and distributes carpeting in commerce by causing said merchandise to be shipped to and from its warehouse and from the places of business of its various suppliers located in the several States of the United States to the various subsidiary corporations of Kaufman Carpet Co., Inc. for sale at retail to the general public in States other than those in which said shipments originate. The States in which Respondent Kaufman primarily engages in retail sales are New York, New Jersey, Pennsylvania, Connecticut and Massachusetts. Respondent Kaufman's volume of business in the sale and distribution of carpeting is now and has been at all times mentioned herein substantial. Respondent Kaufman and its subsidiary corporations also cause advertising mats, circulars, checks, sales memoranda, policy directives, complaint department correspondence and other documents and communications to be transmitted by the United States Postal Service and by other interstate modes to and from the principal office of Respondent Kaufman and its subsidiary corporations and directly to customers located in the aforementioned several States of the United States.

In the further course and conduct of its business, in cases where disputes arise or claims are made by customers in connection with the purchase of Respondent Kaufman's carpets, Respondent Kaufman has used and is using the services of Respondent Durotone and Respondent Myman to make inspections of and reports on the condition of carpet installed in purchasers' homes which are located in several States of the United States. The inspections and reports have been and are being represented by Respondent Kaufman to be from independent carpet inspection service companies, which representation Respondent Durotone and Respondent Myman knew or should have known was false and misleading. In this manner, Respondent Durotone and Respondent Myman have provided and are providing a service that is an indispensable and necessary part of the scheme used by Respondent Kaufman in the perpetration of the acts and practices hereinafter alleged. Reports of said inspections are forwarded through the United States Postal Service to the Respondent Kaufman's offices in Lodi, New Jersey for further action by Respondent Kaufman.

Therefore, Respondent Kaufman, Respondent Durotone, and Respondent Myman maintain and at all times mentioned herein have maintained a substantial course of trade in said products, services, materials, or reports in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act.

COUNT 1

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One and Four hereof are incorporated herein by reference as if fully set forth verbatim.

PAR. 5. In the course and conduct of its business, for the purpose of inducing the purchase of the aforementioned merchandise, Respondent Kaufman expressly states on the face of its contracts:

"GUARANTEE—WE HEREBY GUARANTEE ALL MATERIALS AND
WORKMANSHIP TO BE FIRST GRADE AND FREE FROM DEFECTS
OTHER THAN THOSE CHARGED TO WEAR AND TEAR."

The above guarantee or others of similar import and meaning appear on the face of the aforementioned contracts of sale issued by Respondent Kaufman through its subsidiary corporations engaged in the sale of carpeting at retail to the general public in the aforementioned several States of the United States.

PAR. 6. By and through the use of the guarantee statement referred to in Paragraph Five above, and other representations and statements

similar thereto but not expressly set forth herein, Respondent Kaufman represents, and has represented, directly or indirectly, that:

- a) Its carpeting is first grade and free from any defects of either carpeting quality or workmanship;
- b) Its carpeting is guaranteed without qualification or limitation; and
- c) All carpeting which is not first grade nor free from defects other than those charged to wear and tear may be returned for adjustment, replacement or full refund of the purchase price.

PAR. 7. In truth and in fact, in a substantial number of instances, Respondent Kaufman has:

- a) Delivered carpeting which was not "first grade;"
- b) Imposed qualifications and limitations on its guarantee; and,
- c) Failed to accept return for adjustment, replacement or full refund of the purchase price, carpeting which is not of first grade or free from defects other than those charged to wear and tear.

Therefore, the guarantee statement referred to in Paragraph Five above is false, misleading and deceptive.

PAR. 8. In the further course and conduct of its business as aforesaid, Respondent Kaufman has printed on the reverse side of its contracts, in a location disconnected, separate and apart from the guarantee statement referred to in Paragraph Five above, the following:

Shading, shedding, fluffing or roll crush do not constitute manufacturing defects. These are inherent characteristics of all pile fabrics.

Missing tufts are not a manufacturing defect. Claims of this type will be entertained only on the basis of reinserting such missing tufts (reburling) without charge for labor and material.

The said clauses are set forth in small size type and interspersed among many other conditions.

PAR. 9. By and through the acts and practices set forth in Paragraph Eight above, Respondent Kaufman has failed to clearly and conspicuously disclose to purchasers those conditions or characteristics which limit and qualify the guarantee statement referred to in Paragraph Five above.

PAR. 10. The failure to clearly and conspicuously disclose the conditions or limitations set forth in Paragraph Eight above in conjunction with the guarantee statement set forth in Paragraph Five above has the capacity and tendency to mislead purchasers into believing that any carpeting purchased will be "first grade" and free from all defects.

The failure to disclose the limitations or conditions affecting the coverage and application of said guarantee clearly and conspicuously

and in conjunction with the statement or other description of said guarantee is unfair, misleading and deceptive.

PAR. 11. In the course and conduct of its business, Respondent Kaufman has failed to disclose, clearly and conspicuously, in conjunction with the guarantee referred to in Paragraph Five above, the identity of the guarantor, the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder. The failure to disclose the aforementioned facts has the capacity and tendency to mislead purchasers or prospective purchasers into the purchase of substantial quantities of Respondent Kaufman's carpeting by reason of said purchasers' or prospective purchasers' erroneous and mistaken belief that said guarantee is unlimited and that all carpeting which is not first grade will be replaced.

Therefore, the guarantee, as aforementioned, is false, misleading and deceptive.

PAR. 12. In the further course and conduct of its business, and in connection with its performance under its guarantee, Respondent Kaufman purports to rely upon reports of carpet inspections conducted by impartial third parties and, in many instances, cites such reports to purchasers seeking performance from Respondent Kaufman under the terms of the guarantee referred to in Paragraph Five above.

PAR. 13. By and through the representations made by Respondent Kaufman with respect to the reports referred to in Paragraph Twelve above, said respondent has represented and is now representing that a purchaser's complaint will be adjusted in an honest, reliable, and forthright manner.

PAR. 14. In truth and in fact in a substantial number of instances, Respondent Kaufman has misrepresented the import of said reports in denying or limiting its liability.

Therefore, the misrepresentation of the import of the reports referred to in Paragraph Twelve above is false, misleading and deceptive.

PAR. 15. In the course and conduct of its business, Respondent Kaufman has engaged in and does engage in the following practices:

a) In a substantial number of instances, Respondent Kaufman has represented to purchasers and governmental agencies that the inspection reports referred to in Paragraph Twelve above have been prepared by impartial third parties and as such are unbiased, professional and beyond the control of Respondent Kaufman;

b) In a substantial number of instances, Respondent Kaufman has represented to purchasers that the reports referred to in Paragraph Twelve above indicate that complaints are unjustified or that the

conditions complained of may be corrected and the carpeting restored to first quality condition; and

c) In a substantial number of instances, Respondent Kaufman has induced purchasers to execute a release discharging Respondent Kaufman or its subsidiary corporations from all liability, past or future, for defects in the carpeting purchased by said purchasers in reliance on the reports referred to in Paragraph Twelve above.

PAR. 16. In truth and in fact:

a) In a substantial number of instances, the inspection reports referred to in Paragraph Twelve above are not unbiased, professional, impartial or beyond the control of Respondent Kaufman because reports unfavorable to Respondent Kaufman have been changed to reports favorable to said respondent and facts relating to the condition of carpeting which would be unfavorable to Respondent Kaufman have been deleted from said reports at the behest of Respondent Kaufman;

b) In a substantial number of instances, the reports referred to in Paragraph Twelve above have been received by Respondent Kaufman stating that said purchasers' complaints are justified or that the conditions complained of could not be corrected and the carpeting restored to first quality condition; and,

c) In a substantial number of instances, Respondent Kaufman has enticed and coerced purchasers into executing the releases described in Paragraph Fifteen (c) by misrepresenting the contents of the inspection reports referred to in Paragraph Twelve above.

Therefore, the acts, practices and representations referred to in Paragraph Fifteen above are unfair, false, misleading and deceptive.

PAR. 17. In the course and conduct of its business, and at all times mentioned herein, Respondent Kaufman has been and is in substantial competition in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, with corporations, firms and individuals engaged in the sale of carpeting.

PAR. 18. The aforesaid acts and practices of Respondent Kaufman were and are to the prejudice and injury of the public and of competitors of Respondent Kaufman Carpet Co., Inc. and constituted and now constitute unfair methods of competition in or affecting commerce and unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs Two, Four, Five, Six, Twelve, Thirteen,

Fourteen, Fifteen and Sixteen hereof are incorporated herein by reference as if fully set forth verbatim.

PAR. 19. In the course and conduct of its business, Respondent Durotone conducts numerous inspection and service calls at the behest of Respondent Kaufman concerning purchaser complaints arising under the terms of the guarantee referred to in Paragraph Five above. Said inspection and service calls are made in the several States of the United States in which Respondent Kaufman and its subsidiary corporations are doing business. Reports of said inspection and service calls are then sent from Respondent Durotone's principal place of business to the principal place of business of Respondent Kaufman.

There is now, and has been, at all times mentioned herein, a substantial and continuous course of trade in said inspections and reports in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 20. In the course and conduct of its business, Respondent Durotone utilizes an inspection report form which contains on its face certain statements and representations. Typical and illustrative of said statements and representations are:

"This report is accurate and impartial, and based on information given by the consumer, and our physical examination and tests."

"Branches: Philadelphia, Pa. - Baltimore, Md.
Washington, D.C. - Bridgeport, Conn."

Through the use of the above statements and representations, Respondent Durotone represents, directly or by implication, that it is reliable, impartial and is of a size and has the technical competence to conduct said tests and examinations and submit an accurate, impartial report on the conditions about which the purchaser complained, and that such reports are based at least in part on tests.

PAR. 21. In truth and in fact:

a) Few, if any, tests are performed on the purchaser's carpeting. In most, if not all, instances Respondent Durotone relies on visual inspection of the carpeting in question.

b) Respondent Durotone has no branch offices in the cities listed on the face of the inspection form referred to in Paragraph Twenty above. Respondent Durotone's only other branch office is located at Silver Spring, Maryland.

Therefore, the representations referred to in Paragraph Twenty above are false, misleading and deceptive.

PAR. 22. In the course and conduct of its business as aforesaid, Respondent Durotone executes inspection reports which are used by

Respondent Kaufman as a basis for settlement of purchaser complaints arising under the terms of the guarantee referred to in Paragraph Five above. Said reports are represented to be impartial, unbiased and accurate.

PAR. 23. In truth and in fact:

a) In a substantial number of instances, the inspection reports referred to in Paragraph Twenty-Two above are not impartial, unbiased or accurate because Respondent Durotone changes, amends or alters the reports pursuant to instructions received from Respondent Kaufman.

b) In a substantial number of instances, Respondent Durotone is not independent because Respondent Kaufman dictates the contents of inspection reports prepared by Respondent Durotone.

Therefore, the representations referred to in Paragraph Twenty-Two above are false, misleading and deceptive.

PAR. 24. In the course and conduct of its business and at all times mentioned herein, Respondent Durotone has been and is in substantial competition in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, with corporations, firms and individuals engaged in the inspection and servicing of carpeting.

PAR. 25. The aforesaid acts and practices of Respondent Durotone were and are to the prejudice and injury of the public and of competitors of Respondent Durotone, and constituted and now constitute unfair methods of competition in or affecting commerce and unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

COUNT III

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs Three, Four, Five, Six, Twelve, Thirteen, Fourteen, Fifteen and Sixteen hereof are incorporated by reference herein as if fully set forth verbatim.

PAR. 26. In the course and conduct of his business, Respondent Myman, through his business A & M Carpet Service Co., conducts numerous inspection and service calls at the behest of Respondent Kaufman concerning purchaser complaints arising under the terms of the guarantee referred to in Paragraph Five above. Said inspection and service calls are made in the several States of the United States in which Respondent Kaufman and its subsidiary corporations are doing business. Reports of said inspection and service calls are then sent from Respondent Myman's principal place of business to the principal place of business of Respondent Kaufman.

There is now, and has been, at all times mentioned herein, a

substantial and continuous course of trade in said inspections and reports in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 27. In the course and conduct of his business as aforesaid, Respondent Myman executes inspection reports which are used by Respondent Kaufman as a basis for settlement with complaining purchasers. Said reports are stated to be impartial, unbiased and accurate because Respondents Kaufman and Myman state that Respondent Myman is an inspection company independent from Respondent Kaufman.

PAR. 28. In truth and in fact, in a substantial number of instances:

a) The inspection reports referred to in Paragraph Twenty-Seven above are not impartial, unbiased or accurate because Respondent Myman withholds material information from the contents of said reports.

b) Respondent Myman is not independent because Respondent Kaufman dictates the contents of inspection reports prepared by Respondent Myman.

Therefore, the representations referred to in Paragraph Twenty-Seven above are false, misleading and deceptive.

PAR. 29. In the course and conduct of his business, and at all times mentioned herein, Respondent Myman has been and is in substantial competition in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act with corporations, firms and individuals engaged in the inspection and servicing of carpeting.

PAR. 30. The aforesaid acts and practices of Respondent Myman were and are to the prejudice and injury of the public and of competitors of Respondent Myman and constituted and now constitute unfair methods of competition in or affecting commerce and unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER AS TO KAUFMAN CARPET CO., INC.

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint; and

The Commission having withdrawn the matter from adjudication for the purpose of considering settlement by the entry of a consent order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the 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 set forth in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 3.25 of its Rules, now in further conformity with the procedure prescribed in Section 3.25 of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Respondent Kaufman Carpet Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 370 Essex St., Lodi, New Jersey.

Respondent Henry Intrator is an individual and an officer of Kaufman Carpet Co., Inc. He formulates, directs and controls the policies, acts and practices of said corporation. His business address is the same as that of said corporation.

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

It is ordered, That respondent Kaufman Carpet Co., Inc., a corporation, its successors and assigns, Henry Intrator, individually and as an officer of said corporation, and respondent Kaufman Carpet Co., Inc.'s officers, agents, representatives and employees directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of carpeting and floor coverings, or any other product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Representing, directly or by implication, that any carpeting or floor coverings offered for sale, sold or distributed by respondents is guaranteed to be of first quality or first grade unless such be the fact; or misrepresenting in any manner the grade or quality of carpeting or floor coverings offered for sale, sold or distributed by respondents.

2. Representing, directly or by implication, that any of said respondents' products, installations or services are warranted or guaranteed, unless the nature and extent of the warranty or guarantee, the identity of the warrantor or guarantor and the manner in which the

warrantor or guarantor will perform thereunder are clearly and conspicuously disclosed in immediate conjunction therewith; and unless respondents promptly and fully perform all of their obligations and requirements, directly or impliedly represented under the terms of each such warranty or guarantee.

3. Failing to set forth in immediate conjunction with any warranty or guarantee statement, in a type size of at least 18 points, all characteristics and conditions of carpeting which are excluded from coverage under the aforementioned warranty or guarantee.

4. Representing to any purchaser, directly or by implication, that test or inspection reports in the possession of respondents are actual results of tests or inspections performed on the purchaser's carpeting by independent, unbiased testing concerns unless such tests or inspections are so devised and conducted as to constitute a reasonable basis for the stated results or conclusions.

5. Representing, directly or by implication, that any carpeting has been tested, unless:

(a) a test has in fact been conducted;

(b) the test is devised and conducted in a manner that assures an accurate evaluation of the condition, quality or characteristic tested; and,

(c) the test results are clearly and accurately represented; or, misrepresenting in any manner the results of any such test.

6. Representing, directly or by implication, that reports of examinations or tests performed on any purchaser's carpeting to determine the existence of manufacturing defects by independent, unbiased testing concerns are authentic and unbiased when in fact they have been altered, amended, added to or subtracted from by respondents or their agents.

7. Influencing, in any manner, the contents of test or inspection reports or the manner of inspection of purchaser's carpeting performed by The Durotone Company, A & M Carpet Service Co. or any other person or organization acting as the result of purchaser complaints made to Kaufman Carpet Co., Inc. or its subsidiary companies.

8. Failing to furnish, by certified mail within ten (10) working days after receipt of an inspection report from Respondent Durotone, Respondent Myman or any other person or organization, a true copy of said report to the purchaser whose inquiry or complaint caused the inspection to be made.

It is further ordered, That respondents distribute a copy of this order to all operating divisions of said corporation, partnership or other entity, and also distribute a copy of this order to all personnel, agents or representatives concerned with the promotion, sale and distribution of

carpeting and floor covering or with the inspection and servicing of carpeting and floor covering and secure from each such person a signed statement acknowledging receipt of said order.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That respondents maintain adequate records, to be furnished upon request to the staff of the Federal Trade Commission, which evidence compliance with the provisions of this order, including but not limited to the names and addresses of all purchasers registering complaints about carpeting purchased from Kaufman Carpet Co., Inc. or its subsidiary companies, correspondence with said persons, all documents relating to the disposition of said complaints and all correspondence, memoranda or documents concerning customer complaints among the respondents in this matter.

It is further ordered, That no provision of this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondents from complying with agreements, orders or directives of any kind obtained by any other agency or act as a defense to actions instituted by municipal or State regulatory agencies. No provision of this order shall be construed to imply that any past or future conduct of respondents complies with the rules and regulations of, or the statutes administered by the Federal Trade Commission.

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

Commissioner Dole not participating by reason of absence.

DECISION AND ORDER AS TO BENJAMIN WIENER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Section 5 of

the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint; and

The Commission having withdrawn the matter from adjudication for the purpose of considering settlement by the entry of a consent order; and

The respondents* and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the 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 set forth in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 3.25 of its Rules, now in further conformity with the procedure prescribed in Section 3.25 of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Respondent Benjamin Wiener is an individual, trading and doing business as The Durotone Company, with his office at 75 Lockwood Ave., Yonkers, New York.
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

It is ordered, That respondent Benjamin Wiener, individually, and trading and doing business as The Durotone Company or under any name or names, his successors and assigns, respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the inspection and servicing of carpeting and floor coverings, or any other product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Furnishing any reports or test results which purport that any product examined, analyzed or tested has no manufacturing defects, unless such reports clearly and accurately state the test results and unless the tests themselves are so devised and conducted as to constitute a reasonable basis for the stated results or conclusions.

* The Commission determined that this Decision and Order should not apply to Irving L. Mermer.

2. Changing, altering or amending, in any manner, the contents of and conclusions contained in any report prepared by respondent as a result of a carpeting inspection or test. However, if a report prepared by respondent is subsequently found to contain errors, respondent may issue a clarifying report where: 1) the original report is specifically identified and referred to; 2) the correction is specifically set forth; and 3) the basis for the correction is fully explained in said corrected report.

3. Failing to include in any report prepared by respondent as a result of a carpeting inspection or test all defects and conditions found to exist with respect to purchaser complaints which respondent was requested to investigate.

4. Representing, directly or by implication, that respondent has branch offices in Philadelphia, Pennsylvania, Baltimore, Maryland, Washington, D.C., Bridgeport, Connecticut or any other location unless respondent maintains an actual office which is staffed during normal business hours in each location.

It is further ordered, That respondent distribute a copy of this order to all operating divisions of said corporation, partnership or other entity, and also distribute a copy of this order to all personnel, agents or representatives concerned with the promotion, sale and distribution of carpeting and floor covering or with the inspection and servicing of carpeting and floor covering and secure from each such person a signed statement acknowledging receipt of said order.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That respondent shall, at all times subsequent to the effective date of this order, maintain complete business records relating to the manner and form of his continuing compliance with this order during the immediately preceding three year period, such records to include copies of all reports pertaining to carpet inspections or tests performed by respondent, and all correspondence, memoranda or documents relating thereto.

It is further ordered, That no provision of this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondent from complying with agreements, orders or directives of any kind obtained by any other agency or act as a defense to actions instituted by municipal or State regulatory agencies. No provision of this order shall be construed to imply that any past or

future conduct of respondent complies with the rules and regulations of, or the statutes administered by the Federal Trade Commission.

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

Commissioner Dole not participating by reason of absence.

DECISION AND ORDER AS TO A & M CARPET SERVICE, INC.

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint; and

The Commission having withdrawn the matter from adjudication for the purpose of considering settlement by the entry of a consent order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the 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 set forth in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 3.25 of its Rules, now in further conformity with the procedure prescribed in Section 3.25 of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Respondent A & M Carpet Service, 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 at P.O. Box 100, East Rockaway, New York.

Respondent A & M Carpet Service of Maryland, Ltd. is a corporation, existing and doing business by virtue of the laws of the State of Delaware, with its office and principal place of business at P.O. Box 100, East Rockaway, New York.

Respondent Alvin Myman is an officer of each of said corporations. He formulates, directs and controls the policies, acts and practices of said corporations, and his business address is the same as that of the corporate respondents.

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

It is ordered, That respondents A & M Carpet Service, Inc., and A & M Carpet Service of Maryland, Ltd., corporations, and Alvin Myman, individually and as an officer of each of said corporations, their successors and assigns, and respondents' officers, agents, representatives and employees directly or through any corporation, subsidiary, division or other device, in connection with the inspection and servicing of carpeting and floor covering, or any other product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Furnishing any reports or test results which purport that any product examined, analyzed or tested has no manufacturing defects, unless such reports clearly and accurately state the test results and unless the tests themselves are so devised and conducted as to constitute a reasonable basis for the stated results or conclusions.

2. Changing, altering or amending, in any manner, the contents of and conclusions contained in any report prepared by respondents as a result of a carpeting inspection or test. However, if a report prepared by respondents is subsequently found to contain errors, respondents may issue a clarifying report where: 1) the original report is specifically identified and referred to; 2) the correction is specifically set forth; and 3) the basis for the correction is fully explained in said corrected report.

3. Failing to include in any report prepared by respondents as a result of a carpeting inspection or test, all defects and conditions found to exist with respect to purchaser complaints which respondents were requested to investigate.

It is further ordered, That respondents distribute a copy of this Order to all operating divisions of said corporation, partnership or other entity, and also distribute a copy of this order to all personnel, agents or representatives concerned with the promotion, sale and distribution of carpeting and floor covering or with the inspection and servicing of carpeting and floor covering and secure from each such person a signed statement acknowledging receipt of said order.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondents such as dissolution, assignment or sale resulting in the emergence of successor corporations, the creation or dissolution of subsidiaries or any other change in the corporations which may affect compliance obligations arising out of the order.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That respondents shall, at all times subsequent to the effective date of this order, maintain complete business records relating to the manner and form of their continuing compliance with this order during the immediately preceding three year period, such records to include copies of all reports pertaining to carpet inspections or tests performed by respondents and all correspondence, memoranda or documents relating thereto.

It is further ordered, That no provision of this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondents from complying with agreements, orders or directives of any kind obtained by any other agency or act as a defense to actions instituted by municipal or State regulatory agencies. No provision of this order shall be construed to imply that any past or future conduct of respondents complies with the rules and regulations of, or the statutes administered by the Federal Trade Commission.

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

Commissioner Dole not participating by reason of absence.

Complaint

88 F.T.C.

IN THE MATTER OF

RELCO, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2837. Complaint, Sept. 17, 1976 — Decision, Sept. 17, 1976*

Consent order requiring a Houston, Tex., electronics manufacturer, among other things to cease misrepresenting the characteristics of its metal detector; misrepresenting the regular selling price of its dog trainer collar; misrepresenting that its trainer collar is waterproof; and failing to disclose relevant facts regarding its products. Further, respondents are required to offer purchasers a 10-day money-back guarantee.

*Appearances*For the Commission: *Leslie L. Robinson.*For the respondents: *Jack W. Thompson, Houston, Tex.*

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 Relco, Inc., a corporation, and Richard T. Harris, as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Relco, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 2210 West 34th St., Houston, Texas.

Respondent Richard T. Harris is president of the corporate respondent. He formulates, directs and controls the acts, policies and practices of corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture, advertising, offering for sale, sale and distribution of electronic metal detectors, animal training collars, welders and other electronic equipment, to members of the general public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from respondent's place of business in the

State of Texas to purchasers thereof located in various other states of the United States. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their products, respondents have made numerous statements and representations in newspaper advertisements, magazine advertisements and other promotional literature respecting the capabilities and characteristics of their product.

Typical and illustrative of the statements and representations contained in said advertisements and promotional material, but not all inclusive thereof, are the following:

\$19.95 up Five Powerful Models New Relco Detectors Send Electronic Beam Far Into Earth To Seek Treasures Lost or Hidden Throughout The Centuries. Signals When Object is Detected. Most Powerful Made.

HALF PRICE SALE ON AMERICA'S LARGEST SELLING ELECTRONIC TRAINER

Regular \$198

Now Half Price - \$99.00

Water-Proof, Climate-Proof Collar unit is completely water-proof and works in sub-freezing cold or blazing sun. Transmitter has telescoping antenna and fits hunting jacket pocket.

WORKS FOR SIX MILES Sensitronix's Powerful New "Full Circle" Trainer. Controls your dog anywhere within this six mile range, over 2500 acres.

PAR. 5. By and through the use of the above quoted statements, representations and others of similar import or meaning, but not specifically set forth herein, and through statements and representations to prospective purchasers, respondents now represent, and have represented, directly or by implication, orally, in writing, or individually, that:

1. Relco Detector Models are the most powerful made in their respective price group.
2. Sensitronix, the electronic dog trainer collar, is being sold for one-half its regular price of \$198.
3. The collar is completely water-proof.
4. The Sensitronix collar with transmitter (trainer) has a range of six linear miles.
5. The Frontiersman model metal detector will detect a nickel

buried five to seven inches, a silver dollar eight to twelve inches and a fairly large bag of coins twenty to thirty inches.

PAR. 6. In truth and in fact:

1. All Relco Metal Detector models are not the most powerful in their respective price group.
2. Sensitronix electronic trainer collar is not being sold for one-half its regular price of \$198 in that its usual selling price is \$99.
3. The Sensitronix electronic trainer collar is not water-proof.
4. The range of the Sensitronix collar and transmitter is less than six linear miles.
5. The Frontiersman model metal detector's ability to detect coins at certain depths is based on a number of parameters and no definite figures are meaningful without qualification.

Therefore, the statements and representations as set forth in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. Furthermore, it was, and is a false, misleading and deceptive act and practice for respondents to seek to sell their products in the manner set forth in Paragraphs Four and Five hereof, while they knew, or as reasonably prudent businessmen, should have known, that their product would not operate and produce results as represented.

PAR. 8. In the course and conduct of their business, and at all times mentioned herein, respondents have been, and are now, in substantial competition, in commerce, with other corporations, firms and individuals engaged in the sale of products of the same general kind and nature as those sold by respondents.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that such statements and representations were, and are, true and into the purchase of substantial numbers of respondents' products by reason of said erroneous and mistaken belief(s).

PAR. 10. The aforesaid acts and practices of respondents as herein alleged were and are all to the prejudice and injury of the public and to respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption

hereof, and the respondents having been furnished thereafter with a copy of draft of the complaint which the Dallas Regional Office proposed to present to the Commission for its consideration and which if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and the respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of the 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 said Act, 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, now in further conformity with procedures 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 Relco, Inc., 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 2220 West 34th St., Houston, Texas.

2. Respondent Richard T. Harris, is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his address is the same as that of said corporation.

3. 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

It is ordered, That respondents Relco, Inc., a corporation, its successors and assigns, its officers, and Richard T. Harris as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation or subsidiary, division or other device, in connection with the advertising, offering for sale, or distribution of electronic metal detectors, animal training collars, welders, or other electronic items in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from representing, directly or by implication, orally or in writing, or visually, that:

1. Relco Metal Detector models are the most powerful in their respective price group.

2. Sensitronix, an electronic dog trainer collar, is regularly priced at any figure unless substantial sales have been made at said figure or amount in the recent and regular course of respondents' business.

3. Any of the dog trainer collars are completely waterproof.

4. The range of the Sensitronix trainer is six (6) linear miles or greater.

5. Relco Metal Detectors will detect coins, minerals, ores, metals, etc., at any specific depth without qualification as to soil contents.

It is further ordered, That respondents shall cease and desist from:

1. Making any statement or representation in any advertisement, promotional material, or any oral sales promotion or solicitation for any product, unless such statement or representation is based upon and supported by prior, independent, fully documented, adequate and well-controlled scientific studies or tests;

2. Failing to maintain copies of all documentation for the studies referred to in subparagraph (1) of this paragraph.

It is further ordered, That respondents shall maintain for at least a one (1) year period, following the effective date of this order, copies of all advertisements, including newspaper, radio and television advertisements, direct mail solicitation literature, and any other promotional literature used in the advertising, promotion and sales of respondents' products.

It is further ordered, That respondents shall include a written statement with the purchase of any Relco Metal Detector or dog trainer collar that the purchaser may, within ten (10) days of the date of purchase or date of receipt, whichever is later, receive a refund of any monies paid for the merchandise if for any reason the purchaser is dissatisfied with the product.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all agencies, operating divisions, and all their present and future personnel engaged in the manufacturing, advertising, offering for sale or sale and/or distribution of the respondents' products, and that respondents secure a signed statement acknowledging receipt of said order from each such person or agency.

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

It is further ordered, That the respondents herein shall, within sixty

(60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Commissioner Dole not participating by reason of absence.

Complaint

88 F.T.C.

IN THE MATTER OF

HONG KONG CUSTOM TAILORS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION, TEXTILE FIBER PRODUCTS
IDENTIFICATION AND WOOL PRODUCTS LABELING ACTS

Docket C-2838. Complaint, Sept. 17, 1976 — Decision, Sept. 17, 1976

Consent order requiring a Washington, D.C., importer and seller of wool and textile fiber products, among other things to cease misbranding and mislabeling its wool and textile fiber products.

Appearances

For the Commission: *Michael Dershowitz.*

For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, the Wool Products Labeling Act of 1939, and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Hong Kong Custom Tailors, Inc., a corporation, Hong Kong Custom Tailors of Maryland, Inc., a corporation, Hong Kong Custom Tailors of Springfield, Virginia, Inc., a corporation, Hong Kong Custom Tailors, Virginia, Inc., a corporation, and Lal I. Keswani, individually and as an officer of said corporations, hereinafter referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939 and the Textile Fiber Products Identification Act, and it now appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Hong Kong Custom Tailors, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business located at 2007 Florida Ave., N.W., Washington, D.C.

Respondent Hong Kong Custom Tailors of Maryland, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business located at Beltway Plaza, Greenbelt, Maryland.

Respondent Hong Kong Custom Tailors of Springfield, Virginia, Inc. is a corporation organized, existing and doing business under and by

virtue of the laws of the Commonwealth of Virginia, with its principal office and place of business located at Springfield Mall, Springfield, Virginia.

Respondent Hong Kong Custom Tailors, Virginia, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal office and place of business located at Tysons Corner Shopping Center, McLean, Virginia.

Individual respondent Lal I. Keswani is an officer of each of the corporate respondents named herein. He formulates, directs and controls the acts and practices of said corporate respondents including the acts and practices hereinafter set forth. His business address is the same as that of corporate respondent Hong Kong Custom Tailors, Inc.

The aforementioned respondents are now, and for some time last past have been, engaged in the importation and sale in the United States of men's clothing and other wearing apparel. Respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents, now and for some time last past, have imported for introduction into commerce, introduced into commerce, transported, distributed, delivered for shipment, shipped, offered for sale, and sold wool products in commerce, as "wool product" and "commerce" are defined in the Wool Products Labeling Act of 1939.

PAR. 3. Certain of said wool products were misbranded by respondents within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were men's suits which were stamped, tagged, labeled, or otherwise identified by respondents as "100% wool" whereas, in truth and in fact, said products contained substantially different fibers and amounts of fibers than represented.

PAR. 4. Certain of said wool products were further misbranded by respondents in violation of the Wool Products Labeling Act of 1939 in that they were not labeled in accordance with the rules and regulations promulgated thereunder in the following respect:

1. Samples, swatches or specimens of wool products used to promote or effect sales of such wool products as men's suits in commerce were not labeled or marked to show the percentage of the total fiber weight of said wool products, exclusive of ornamentation not exceeding 5 per

centum of said total fiber weight of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool, when said percentage by weight of such fiber was 5 per centum or more; and (5) the aggregate of all other fibers, as required by Section 4(a)(2) of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, in violation of Rule 22 of the aforesaid rules and regulations.

PAR. 5. The aforesaid acts and practices of respondents as herein alleged, were, and are, in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, all to the prejudice and injury of the public, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in commerce, within the meaning of the Federal Trade Commission Act, as amended.

PAR. 6. Respondents are now, and for some time last past have been, engaged in the introduction, delivery for introduction, sale, advertising, and offering for sale in commerce, and in the transportation or causing to be transported in commerce, and in the importation into the United States of textile fiber products; and have sold, offered for sale, advertised, delivered, transported or caused to be transported, textile fiber products which have been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported or caused to be transported after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products, as "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 7. Certain of said textile fiber products were misbranded by respondents within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and the rules and regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, invoiced, advertised or otherwise identified as to the name or amount of the constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, were men's suits which contained substantially different amounts and types of fibers than as represented.

PAR. 8. Certain of said textile fiber products were further misbranded by respondents in violation of the Textile Fiber Products Identification Act in that they were not labeled in accordance with the rules and regulations promulgated thereunder in the following respect:

1. Samples, swatches or specimens of textile fiber products used to promote or effect sales of such textile fiber products as men's suits were not labeled to show (1) the true generic names of the fibers

present therein and (2) the percentages of such fibers by weight, as required by Section 4(b) of the Textile Fiber Products Identification Act and the rules and regulations promulgated thereunder, in violation of Rule 21(a) of the aforesaid rules and regulations.

PAR. 9. The aforesaid acts and practices of respondents as herein alleged, were, and are, in violation of the Textile Products Identification Act and the rules and regulations promulgated thereunder, all to the prejudice and injury of the public, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in commerce, under the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Washington, D.C. Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act, as amended, the Wool Products Labeling Act of 1939 and the Textile Fiber Products Identification Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the 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 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 it had reason to believe that the respondents have 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, 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 Hong Kong Custom Tailors, Inc. is a corporation organized, existing and doing business under and by virtue of the laws

of the District of Columbia, with its office and principal place of business located at 2007 Florida Ave., N.W., Washington, D.C.

Respondent Hong Kong Custom Tailors of Maryland, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its office and principal place of business located at Beltway Plaza, Greenbelt, Maryland.

Respondent Hong Kong Custom Tailors of Springfield, Virginia, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its office and principal place of business located at Springfield Mall, Springfield, Virginia.

Respondent Hong Kong Custom Tailors, Virginia, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its office and principal place of business located at Tysons Corner Shopping Center, McLean, Virginia.

Respondent Lal I. Keswani is an officer of said corporations. He formulates, directs and controls the policies, acts and practices of said corporations, and his principal office and place of business is located at 2007 Florida Ave., N.W., Washington, D.C.

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

It is ordered, That respondents Hong Kong Custom Tailors, Inc., a corporation, Hong Kong Custom Tailors of Maryland, Inc., a corporation, Hong Kong Custom Tailors of Springfield, Virginia, Inc., a corporation, Hong Kong Custom Tailors, Virginia, Inc., a corporation, their successors and assigns, and their officers, and Lal I. Keswani, individually and as an officer of said corporate respondents, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the introduction, or importing for introduction into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Falsely and deceptively stamping, tagging, labeling, or otherwise identifying such products as to the character or amount of the constituent fibers contained therein.

2. Failing to securely affix to, or place on, each such product a stamp, tag, label, or other means of identification showing in a clear,

legible and conspicuous manner each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

3. Failing to securely affix labels to samples, swatches or specimens of wool products used to promote or effect sales of such wool products, showing in words and figures plainly legible all the information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered, That respondents Hong Kong Custom Tailors, Inc., a corporation, Hong Kong Custom Tailors of Maryland, Inc., a corporation, Hong Kong Custom Tailors of Springfield, Virginia, Inc., a corporation, Hong Kong Custom Tailors, Virginia, Inc., a corporation, their successors and assigns, and their officers, and Lal I. Keswani, individually and as an officer of said corporate respondents, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the introduction, delivery for introduction, sale, advertising or offering for sale in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

1. Falsely or deceptively stamping, tagging, labeling, invoicing, advertising or otherwise identifying such products as to the name or amount of the constituent fibers contained therein.

2. Failing to affix a stamp, tag, label or other means of identification to each such product showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

3. Failing to securely affix labels to samples, swatches or specimens of textile fiber products used to promote or effect sales of such textile fiber products showing in words and figures plainly legible all the information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

It is further ordered, That respondents shall forthwith deliver a copy of this order to cease and desist to all present and future personnel

engaged in the offering for sale, or sale, of any wool or textile fiber products, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

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

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

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

Commissioner Dole did not participate by reason of absence.

IN THE MATTER OF
CARL STEPP T/A ACE STEREO AND SEWING MACHINE
COMPANY

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

Docket C-2840. Complaint, Sept. 17, 1976 — Decision, Sept. 17, 1976

Consent order requiring a Decatur, Ga., sewing machine retailer, among other things to cease using deceptive terminology and bait and switch sales tactics; failing to disclose conditions and limitations of warranties; and failing to provide foreign language translations of pertinent information. Further, respondent is required to disclose, at the time of sale, that purchasers have the right to a three-day period in which to cancel their contract, and to honor valid cancellations.

Appearances

For the Commission: *Edward J. Carnot* and *Arnold C. Celnicker*.
For the respondent: *Joseph E. Wilkerson, Esq.*, Tucker, Georgia.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, as amended, the Federal Trade Commission having reason to believe that Carl Stepp, an individual trading and doing business as Ace Stereo and Sewing Machine Company, hereinafter sometimes referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

COUNT 1

PARAGRAPH 1. Respondent Carl Stepp is an individual trading and doing business as Ace Stereo and Sewing Machine Company with his principal office and place of business located at 1761 Candler Road, Decatur, Georgia. Respondent has previously traded and done business as Columbia Sewing Machine Company, with his principal office and place of business located at 1777 Candler Road, Decatur, Georgia, and as Glenwood Sewing Center with his principal office and place of business located at 1777 Candler Road, Decatur, Georgia.

PAR. 2. Respondent is now and for some time last past has been engaged in the advertising, offering for sale and selling of sewing machines to the public.

PAR. 3. In the course and conduct of his business, respondent has

disseminated and now disseminates certain advertisements in commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, including but not limited to advertisements for sewing machines inserted in newspapers of general circulation. The purpose and effect of said advertisements is to induce directly or indirectly the purchase of respondent's sewing machines in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course and conduct of his business, and for the purpose of inducing the purchase of sewing machines, respondent has made various statements and representations in classified advertisements in newspapers of general circulation of which the following are typical and illustrative, but not all inclusive thereof:

SEWING MACHINE 1974 SINGER ZIG-ZAG

Unclaimed Layaway

in beautiful walnut cabinet. Repossessed. This machine makes all designs without attachments, makes buttonholes, sews on buttons - blind hems. Will use single or double needle. 20 yr. guarantee. Bal. \$41.00. Cash or terms. Call 288-4708, 289-0774 for free home trial. Or see at 1761 Candler Rd., Decatur. Open daily 9 till 9, Sunday 12 to 6. Off I-20E and 285.

* * * * *

UNCLAIMED LAY-A-WAY LIKE NEW 1974

SINGER ZIG-ZAG

in beautiful Mediterranean cabinet. This machine makes buttonholes, sews on buttons, monograms, does everything and is guaranteed for 20 years. Will use single or double needle. Unpaid balance only \$39.00 cash or easy terms. We honor all charge cards. Call 289-0774 — OR — 284-4708 for free home trial or visit our store and warehouse at 1761 Candler Road, Decatur, Ga., in heart of Candler-Glenwood Shopping Center near I-20 or I-285. Open 9 a.m. till 9 p.m. daily, Sunday 12 to 6 p.m.

PAR. 5. By and through the use of the aforesaid statements and representations and by others of similar import and meaning not specifically set out herein, separately and in connection with the oral statements and representations of his salesmen, respondent has represented directly or by implication:

1. That respondent is making *bona fide* offers to sell the advertised sewing machines on the terms and conditions stated.
2. Through the use of words or abbreviations such as "unclaimed layaway," "repossessed" and "Bal." that the advertised sewing machines were partially paid for by a previous purchaser and are being

offered for the unpaid balance of the purchase price, affording savings in the amount paid on the sewing machine by the previous purchaser.

3. That the advertised sewing machines are unconditionally guaranteed by respondent.

PAR. 6. In truth and in fact:

1. Respondent was not making *bona fide* offers to sell the advertised sewing machines on the terms and conditions stated. Said offers were made for the purpose of obtaining leads as to persons interested in purchasing a sewing machine. After obtaining such leads through response to said advertisements, respondent or his salesmen made no effort to sell the advertised sewing machines. Instead, they exhibited what they represented to be an advertised sewing machine which, because of its poor appearance and condition, was usually rejected on sight by the prospective purchaser. Concurrently, a higher priced machine of superior appearance and condition was presented which, by comparison, disparaged and demeaned the advertised product. By these and other tactics, purchase of the advertised machine was discouraged and respondent, or his salesmen, attempted to and frequently did sell the higher priced machine.

2. Most, if not all, of said advertised sewing machines were not partially paid for by a previous purchaser were not being offered for the unpaid balance of the purchase price, and the represented savings were not afforded to purchasers.

3. Most, if not all, of said sewing machines were not unconditionally guaranteed by respondent. Such guarantees were subject to numerous conditions and limitations which were not disclosed in the advertisements.

Therefore, the statements and representations as set forth in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. In the course and conduct of his aforesaid business and at all times mentioned herein respondent has been and is now in substantial competition in or affecting commerce with corporations, firms and individuals engaged in the sale and distribution of sewing machines of the same general kind and nature as those sold by respondent.

PAR. 8. The use by respondent of the aforesaid false, misleading and deceptive statements, representations, acts and practices has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and to induce a substantial number thereof to purchase respondent's sewing machines at higher prices than said members of the purchasing public had intended to pay.

PAR. 9. The aforesaid acts and practices of respondent as herein alleged were and are all to the prejudice and injury of the public and of respondent's competitors, constitute unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT II

Alleging violations of the Federal Trade Commission Trade Regulation Rule Concerning a Cooling-Off Period for Door-to-Door Sales, 16 C.F.R. §429 (1974), duly promulgated by the Federal Trade Commission, and Section 5 of the Federal Trade Commission Act, as amended, the allegations of Paragraphs One, Two, Three, Four and Seven, hereof, are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 10. In the ordinary course and conduct of his business, as aforesaid, respondent engages in door-to-door sales of consumer goods, as the terms "door-to-door sales" and "consumer goods" are defined in the Federal Trade Commission Trade Regulation Rule Concerning a Cooling-Off Period for Door-to-Door Sales, 16 C.F.R. §429 (1974) (hereinafter referred to as the "Commission Rule").

PAR. 11. Subsequent to June 7, 1974, respondent in the ordinary course and conduct of his business, as aforesaid, and in connection with its door-to-door sales of consumer goods, has failed to comply with subsections (a), (b), (c), (e), (f) and (h) of the Commission Rule.

PAR. 12. Respondent's aforesaid failure to comply with subsections (a), (b), (c), (e), (f) and (h) of the Commission Rule constitutes unfair and deceptive acts or practices in violation of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished with a copy of a draft of complaint which the Atlanta Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act, as amended; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 has violated the said Act, 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, 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:

A. Respondent Carl Stepp is an individual trading and doing business as Ace Stereo and Sewing Machine Company with his principal office and place of business located at 1761 Candler Road, Decatur, Georgia.

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

ORDER

It is ordered, That respondent Carl Stepp, an individual trading and doing business as Ace Stereo and Sewing Machine Company and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or any other device in connection with the advertising, offering for sale, selling or distributing of sewing machines or any other article of merchandise in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Using in any manner a sales plan, scheme or device wherein false, misleading or deceptive statements or representations are made in order to obtain leads or prospects for the sale of sewing machines or other merchandise.
2. Making representations orally, or in writing, directly or by implication purporting to offer sewing machines or other merchandise for sale where the purpose of the representation is not to sell the offered merchandise, but to obtain leads or prospects for the sale of other sewing machines or other merchandise at higher prices.
3. Disparaging in any manner or discouraging the purchase of any sewing machine or other merchandise which is advertised or offered for sale.
4. Representing orally, or in writing, directly or by implication that

any sewing machine or other merchandise is offered for sale when such offer is not a *bona fide* offer to sell such sewing machines or other merchandise.

5. Using words or abbreviations such as "Bal." unless such words or abbreviations correctly describe the advertised sewing machine or other merchandise as partially paid for by a previous purchaser and offered for sale for the unpaid balance of the purchase price.

6. Using words such as "unclaimed layaway" or "repossessed" unless such words correctly describe the sewing machine or other merchandise referred to.

7. Representing orally, or in writing, directly or by implication that any sewing machine or other merchandise is guaranteed unless the nature and extent of the guarantee, the manner in which the guarantor will perform, and the identity of the guarantor are clearly and conspicuously disclosed.

Nothing in this order shall be construed to relieve respondent of his duty to comply with present and future laws, regulations and rules dealing with warranties or guarantees.

It is further ordered, That respondent Carl Stepp, an individual trading and doing business as Ace Stereo and Sewing Machine Company and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or any other device in connection with the door-to-door sale of sewing machines or any other article of merchandise in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Failing to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language, *e.g.*, Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in boldface type of a minimum size of 10 points, a statement in substantially the following form:

"You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

2. Failing to furnish each buyer, at the time he signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned,

“NOTICE OF CANCELLATION,” which shall be attached to the contract or receipt and easily detachable, and which shall contain in 10-point boldface type the following information and statements in the same language, *e.g.*, Spanish, as that used in the contract:

NOTICE OF CANCELLATION

(Enter date of transaction)

You may cancel this transaction, without any penalty or obligation within three (3) business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within ten (10) business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within twenty (20) days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram to

(name of seller)

at *(address of seller's place of business)*

not later than midnight of *(date)*.

I hereby cancel this transaction.

(date)

(buyer's signature)

3. Failing, before furnishing copies of the “Notice of Cancellation” to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

4. Failing to inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel.

5. Misrepresenting in any manner the buyer's right to cancel.

6. Failing or refusing to honor any valid notice of cancellation by a buyer and within ten (10) business days after the receipt of such notice, to (i) refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by the seller; and (iii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

7. Negotiating, transferring, selling, or assigning any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased.

8. Failing, within ten (10) business days of receipt of the buyer's notice of cancellation, to notify him whether the seller intends to repossess or to abandon any shipped or delivered goods.

It is further ordered, That the respondent shall distribute a copy of this order to all present and future employees, salesmen and agents.

It is further ordered, That the respondent promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

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

Commissioner Dole did not participate by reason of absence.