

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 1/2 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 standards as set forth in the Co-op Advertising Manual.

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

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Complaint

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**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

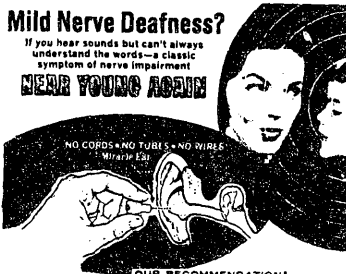
2 COL. X 45 lines (90h.)  
 The elements in this ad may be used in local adaptations of this advertisement provided the locally devised ad conforms to Dahlberg advertising standards as set forth in the Co-op Advertising Manual.

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

Form with fields for Dealer's Firm Name, Address, Name, City, State, Zip. Includes a small illustration of a hearing aid and the text '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 local dealer is in accordance with Dahlberg advertising standards as set forth in the Copy Advertising Manual.

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

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

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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<sup>®</sup>  
 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 as conforms 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

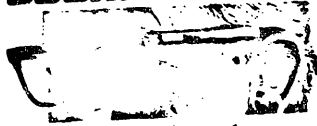
1 COL. X 110 lines (110 li.)

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**<sup>®</sup>



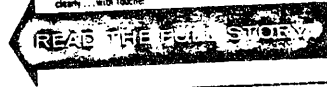
The astonishing glasses that help many to hear... with absolutely nothing in either ear.

Touche eyeglass hearing aid -- from Dahlberg Electronics, makers of the famous Miracle-Ear<sup>®</sup> 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<sup>®</sup> 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

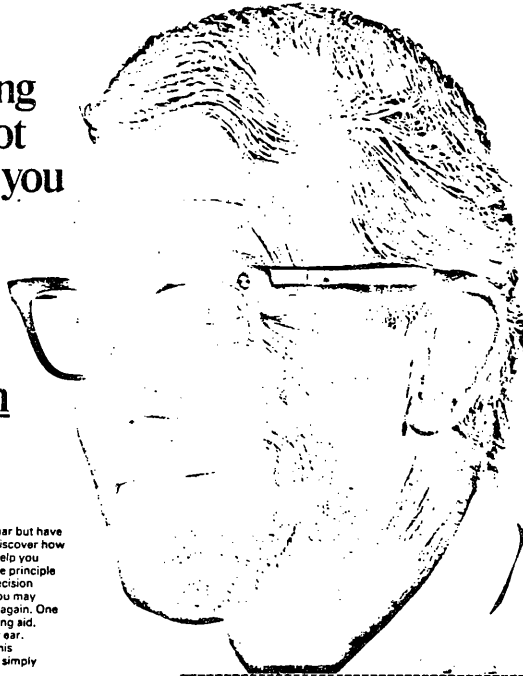
FIRST CLASS PERMIT NO. 888 MINNEAPOLIS, MINN.

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

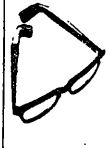
Postage will be paid by  
Dept. DPL-33  
P.O. Box 849  
Minneapolis, Minnesota 55440



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<sup>®</sup> 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 seen a (check one):

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. 88-48

## 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*

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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.

