

Interlocutory Order

100 F.T.C.

IN THE MATTER OF

BELTONE ELECTRONICS CORPORATION, ET AL.

*Docket 8928. Interlocutory Order, July 6, 1982*ORDER EXTENDING INTERIM *IN CAMERA* TREATMENT AND ORDERING  
MOVANTS TO SHOW CAUSE

By order of October 19, 1979, the Administrative Law Judge granted *in camera* treatment to certain exhibits in this record which is to expire on the date of the Commission's Final Order in this matter unless extended by the Commission. The respondent and a number of non-party corporations have now filed requests for extension of that *in camera* coverage.<sup>1</sup> Some of them requested permanent extensions, others requested ten years, and still others specified no period of time.

The information held *in camera* consists mainly of sales and profit data for the years 1970-1978 as well as certain other equally old information about selling methods and product plans. In addition, respondent's income statements, accountants' reports, warranty card analysis and advertising expenses for that period of time were placed in the *in camera* record.

While the ALJ made public some *in camera* information in his Order Certifying the Record on Remand, June 27, 1980, we have found it unnecessary to use any additional *in camera* data in our Opinion. The only question before us, therefore, is whether the protected information should remain *in camera* and, if so, for how long.

Based upon our analysis of this market and the nature and especially the age of the information in question, we do not believe that the material is so secret and material to the business submitting it that "clearly defined, serious injury" is likely to result from its disclosure at this point. *H. P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961); *General Foods Corporation*, 95 F.T.C. 352 (1980). Nonetheless, we find it appropriate to extend the *in camera* treatment for the present and permit the movants to show cause why the exhibits in question should not be placed on the public record. Therefore,

*It is ordered*, That the exhibits and information presently in the *in*

<sup>1</sup> "Respondents' Motion for Continued In Camera Treatment," October 15, 1980; Dahlberg Electronics Corp., "Request for Continuation of Confidential Status of Documents Produced Pursuant to Subpoena in Beltone Electronics Corp., Dkt. No. 8928," July 28, 1980; Maico Hearing Instruments, Inc., "Motion for an Order Granting In Camera Treatment for Certain Exhibits," September 10, 1980; Audiotone (Lear Siegler, Inc.), untitled letter of August 14, 1980; Siemens Hearing Instruments Inc., "Motion for Continued Special In Camera Treatment for Documents Containing Non-Party Sales and Profit Data," September 22, 1980; Fidelity Electronics, Ltd., untitled letter of August 20, 1980.

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*camera* record of this proceeding shall remain *in camera* for an indefinite interim period, and

*It is further ordered,* That the movants should file arguments within ten (10) days of the issuance of this order showing good cause why the *in camera* information should not be placed on the public record. If complaint counsel choose to do so, they may also file a statement on the *in camera* status of the exhibits in question within the same period of time.

Complaint

100 F.T.C.

## IN THE MATTER OF

## BELTONE ELECTRONICS CORPORATION, ET AL.

DISMISSAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED  
VIOLATION OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket 8928. Complaint, May 8, 1973—Dismissal Order, July 6, 1982*

This order dismisses the complaint charging a leading hearing aid manufacturer and three company officials with imposing territorial and customer restrictions, and exclusive dealing requirements upon its dealers. The Commission reversed the 1980 decision of the Administrative Law Judge, finding that Beltone's distributional practices do not adversely affect competition between manufacturers or between dealers.

*Appearances*

For the Commission: *Joseph S. Brownman, L. Barry Costilo, James C. Donoghue, Dennis R. Carluzzo, Paul M. Rose, Alan K. Palmer and Owen M. Johnson.*

For the respondents: *Elroy H. Wolff and Linda S. Peterson, Sidley & Austin, Washington, D.C., Donald A. MacKay, Sidley & Austin, Chicago, Ill., John J. Zel, in-house counsel, Chicago, Ill. and Julian R. Wilhelm, Chicago, Ill.*

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (15 U.S.C. 41, *et seq.*) and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the parties identified in the caption hereof, and more particularly described and referred to hereinafter as respondents, have violated the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its charges as follows:

PARAGRAPH 1. Respondent Beltone Electronics Corporation (hereinafter sometimes referred to as "Beltone") is a corporation organized under the laws of the State of Illinois, with its principal office and place of business at 4201 West Victoria St., Chicago, Illinois.

Respondent Sam Posen is an individual, 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, control-

ling, approving and authorizing 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. [2]

Respondent David H. Barnow is an individual, an officer and a stockholder of the corporate respondent. Respondent Chester K. Barnow is an individual, a director and a stockholder of the corporate respondent. They formulate, direct and control the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. Their business address is the same as that of the corporate respondent.

The individual respondents 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 the business of manufacturing, distributing, selling and repairing of Beltone brand hearing aids, batteries, hearing test equipment, and related articles, sometimes referred to as "Beltone products." They distribute and sell to selected retail dealers located throughout the United States, who then resell to the general public.

PAR. 3. In the course and conduct of their business, respondents ship or cause to be shipped their products from their facilities in the State of Illinois to selected retail dealers throughout the United States. There is now and has been for several years a constant and substantial flow of respondents' products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Except to the extent that competition has been restrained by reason of the practices hereinafter alleged, respondents' selected retail dealers, in the course and conduct of their business of offering for sale and selling Beltone products, are in substantial competition in commerce with one another and with dealers engaged in the offering for sale and selling of other brands of hearing aids and related products; and respondents are in substantial competition in commerce with others engaged in the manufacturing, distributing, selling and repairing of hearing aids and related products. [3]

PAR. 5. Trade and commerce in the United States in hearing aids is substantial. In 1970, the total value of shipments amounted to approximately \$50 million at the manufacturers' prices, and is estimated to have exceeded \$175 million at retail prices. In 1970, about fifty domestic manufacturers, domestic subsidiaries of foreign manufacturers and domestic distributors of foreign manufacturers sold approximately 510,000 hearing aids through 5,000 retail dealers who employed over 10,000 salesmen.

PAR. 6. In 1970, the top four companies in the hearing aid industry, including respondent Beltone, accounted for approximately 50% of the dollar value of shipments; the top eight companies accounted for approximately 70% of such shipments; and the top twenty companies accounted for over 90% of the industry's shipments.

PAR. 7. In 1970, respondent Beltone, which has manufactured hearing aids since 1941, had sales in excess of ten million dollars, more than any other seller of hearing aids in the United States.

PAR. 8. Hearing aids are sold by the manufacturers directly to the retail dealers, who resell the hearing aids to members of the general public. Wholesalers are rarely used in the distribution process.

Approximately 60% of the retail sales of hearing aids occur as a result of an initial, direct contact between the hearing aid dealer and the hearing handicapped, while most of the remaining sales are made after the hearing handicapped are referred to dealers by medical doctors or hearing clinics. It is the practice among medical doctors and hearing clinics, after having determined that an individual may benefit from use of a hearing aid, to recommend a hearing aid to the patient by the brand name and model, rather than by its general performance characteristics. This is done on the basis of actual tests with hearing aids which have been placed with such doctors or clinics by either the manufacturers or dealers. Then, because the doctors and clinics do not sell hearing [4]aids, the patient is referred to the hearing aid dealer in his locale who deals in the brand of hearing aid recommended. While the average price of a hearing aid to a dealer is about \$100, the average retail price to the hearing handicapped is about \$350. More than 50% of the persons with hearing impairment who purchase hearing aids are over 65 years of age.

PAR. 9. In the distribution and sale of their hearing aids, a number of the manufacturers of hearing aids for many years have used and pursued parallel courses of business behavior.

Among such courses of business behavior are the following:

- (1) distributing and selling their hearing aids directly to selected retail dealers, refusing to deal with all other dealers;
- (2) entering into agreements or understandings with their dealers, which agreements:
  - (a) establish territories within which the dealers may advertise and sell their products,
  - (b) require exclusive dealing in the manufacturers' products,

- (c) assign sale or purchase quotas to be met by their dealers,
  - (d) encourage or require the use of the manufacturers' brand name in the dealers' trade styles,
  - (e) restrict the classes of customers with whom their dealers may deal,
  - (f) require their dealers to submit the names and addresses of their customers to the manufacturers,
  - (g) permit the manufacturers to terminate such agreements without cause upon thirty days notice, and [5]
  - (h) in the event of such termination permit the manufacturers to repurchase the terminated dealers' products purchased from such manufacturers;
- (3) refusing to issue the express product warranty to consumers unless and until their dealers have reported the names and addresses of their customers to the manufacturers;
- (4) encouraging or requiring their dealers to participate in cooperative advertising programs which preclude mention that the dealers offer competing brands of hearing aids for sale;
- (5) engaging in extensive national brand advertising of their hearing aids;
- (6) suggesting to their dealers retail prices for hearing aids which are often more than 300% above the manufacturers' prices to the dealers, with such dealers generally selling at such suggested retail prices;
- (7) selling repair parts and offering repair service only to their selected dealers, refusing to sell such parts to all others, including independent repairmen or repair centers, and refusing to offer repair service to all other dealers.

The effect of the aforesaid parallel courses of business behavior has been to eliminate intra-brand and to hinder or suppress inter-brand competition in the hearing aid industry, and, further, to aggravate the unfair and anticompetitive effect of the acts and practices of the respondents as alleged in Paragraphs Ten and Eleven.

PAR. 10. In the course and conduct of their business of manufacturing, distributing, selling and repairing their products in commerce, respondents pursue the following course of action:

- A. They require their selected dealers to sell Beltone products within assigned geographic territories;
- B. They require their selected dealers to deal exclusively in Beltone hearing aids; [6]

C. They prohibit their dealers from dealing with certain potential customers;

D. They prevent others, not their dealers, from dealing in, or repairing Beltone products;

E. They appropriate and use for their own purposes the names and addresses of their dealers' customers.

PAR. 11. In furtherance of this course of action, respondents have been and now are engaged alone or with their dealers in the following acts and practices, among others:

(1) Respondents use agreements or understandings which

(a) require a dealer to sell Beltone products within an assigned territory;

(b) require a dealer to achieve a sales quota by selling Beltone products within that assigned territory;

(c) require a dealer to sell Beltone products only to customers found within the assigned territory;

(d) require a dealer to submit to the respondents the name and address of each customer who purchases Beltone products;

(e) condition the express product warranty on the submission of the name and address of each such customer to the respondents;

(f) require a dealer to participate in Beltone cooperative advertising and other sales promotion programs;

(g) allow for immediate termination of the contract upon dealer's violation of any provision thereof; [7]

(2) Respondents engage in extensive national advertising, such as offers of free models of a "non-operative hearing aid", whereupon they send to their selected dealers, as the so-called "leads", the names of those persons responding to such advertising who reside in such dealers' territories, prohibiting the use of such names for any purpose other than to sell Beltone products;

(3) Respondents have for many years expressed, advocated, communicated or emphasized to their selected dealers Beltone's "one-brand merchandising philosophy", meaning Beltone's business policy of advocating, persuading or pressuring its selected dealers to sell only Beltone brand of products to the exclusion of competitive brands, and have referred to such action by its dealers as "dealer loyalty", continually encouraging, praising or rewarding it;

(4) Respondents have for many years expressed, communicated, or emphasized to their selected dealers Beltone's business policy of dissuading, discouraging, or prohibiting sales of competitive brands by such dealers by means of, among others, persuasion, pressure,

harassment, coercion, or intimidation of such dealers to sell only Beltone products and not to sell other brands;

(5) Respondents refuse to sell to all but a few dealers, selected in such a manner that each of such selected dealers enjoys territorial exclusivity so that he is not in competition with any other dealer selling Beltone products;

(6) Respondents refuse to sell Beltone repair parts or to provide schematics to all dealers, or to persons engaged in the business of repairing or servicing hearing aids;

(7) Respondents refuse to supply Beltone promotional and advertising materials, price lists, hearing aid specifications or performance information to all dealers;

(8) Respondents prohibit their selected dealers from selling Beltone products to other dealers of hearing aids;

(9) Respondents require their selected dealers to use the Beltone brand name, in conjunction with a geographic identification of the dealers' locations, or otherwise, in the dealers' trade styles; [8]

(10) Respondents provide in their standard-form contract that a dealer is prohibited from doing any act, making any representation, or advertising in any manner which may adversely affect Beltone products or any other Beltone dealer;

(11) Respondents provide in their standard-form contract that Beltone has the right to terminate the contract, at any time, upon thirty days notice to the dealer;

(12) Respondents provide in said contract that in the event of termination:

(a) a dealer is required to return to the respondents the names and addresses of Beltone product users;

(b) a dealer is prohibited from using his business telephone number, and the respondents can order a transfer of telephone service under such number to a person of their choice, or order that such service be cancelled immediately;

(c) a dealer is prohibited from advertising Beltone products, new or used, or Beltone repair service;

(d) Beltone has the right to repurchase the terminated dealer's inventory of Beltone products, and

(e) Beltone is not obligated to repair any out-of-warranty Beltone products sent to it by such a dealer.

PAR. 12. The acts and practices of respondents enumerated hereinabove in Paragraphs Ten and Eleven, taken either individually or collectively, are oppressive, coercive, unfair and anticompetitive, and have the tendency and capacity of hindering, suppressing



or eliminating competition, or constitute unfair methods of competition, or unfair acts or practices, with the following effects, among others:

- (1) Competition between respondents and other manufacturers of hearing aids has been hindered and suppressed; [9]
- (2) Competition among dealers dealing in Beltone products has been eliminated;
- (3) Such dealers have been deprived of their freedom to select their customers and otherwise to function as free and independent businessmen;
- (4) Such dealers have been deprived of their ownership of, and freedom to maintain, confidential lists of their customers;
- (5) Competition among dealers dealing in Beltone products and dealers dealing in other brands of hearing aids has been hindered and suppressed;
- (6) Retail dealers of hearing aids have been deprived of their freedom to act in the best interests of the hearing-impaired public;
- (7) Consumers have been deprived of their right to fair and impartial recommendations from dealers in the selection of hearing aids for the alleviation of their hearing impairment;
- (8) Consumers have been deprived of the benefits of free competition;
- (9) Those engaged in the repairing or servicing of hearing aids in competition with respondents have been deprived of their right to repair or service Beltone hearing aids.

PAR. 13. The aforesaid acts and practices of respondents have the tendency unduly to restrict and restrain competition and have injured, hindered, suppressed, lessened or eliminated actual or potential competition, are to the prejudice and injury of the public, and constitute unfair methods of competition in commerce and unfair acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

#### INITIAL DECISION

BY MILES J. BROWN, ADMINISTRATIVE LAW JUDGE

SEPTEMBER 2, 1976

#### PRELIMINARY STATEMENT

The Federal Trade Commission issued its complaint in this matter on May 8, 1973, charging respondents with unfair methods of competition in commerce and unfair acts and practices in commerce,

in violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45). [2]

By answers duly filed, respondents denied that they had violated the Federal Trade Commission Act as alleged in the complaint. The three individual respondents, although admitting that they were officers, directors, or employees of the corporate respondent and that they participated in the direction and management of the corporation in accordance with applicable Illinois law and the articles of incorporation and the bylaws of the corporate respondent, denied that they were engaged in the business of manufacturing, selling, distributing or repairing of Beltone brand products.

After extensive pretrial discovery, adjudicative hearings commenced on July 15, 1974, and were concluded on November 24, 1975, after 115 days of actual trial. The Commission's case-in-chief consumed 29 trial days and respondents' answering case, which commenced on December 3, 1974, consumed the remaining 86 trial days. Hearings were held in Washington, D. C. (47 days), Chicago, Illinois (49 days), San Francisco, California (10 days) and New Orleans, Louisiana (9 days).

On January 13, 1976, the Administrative Law Judge issued an order receiving substitute documents into evidence and closing the record for receipt of evidence. On March 15, 1976, the Commission granted the Administrative Law Judge's request for an extension of time until September 3, 1976, in which to file the Initial Decision. The parties filed proposed findings on June 15 and respondents filed a reply brief on June 30.

Although many factors contributed to the inordinate time lag between Complaint and Initial Decision, the pace at which this case was to be run was set when counsel supporting the complaint were forced to move for postponement of the second phase of hearings scheduled to commence in September 1974, on the grounds that the Bureau of Competition did not have funds to bring witnesses to Washington in this matter after President Nixon vetoed the Federal Trade Commission's appropriation bill (see Order Setting Additional Dates for Adjudicative Hearings dated August 7, 1974; Motion for Continuance and Resetting of Hearings dated August 30, 1974).

Any motions appearing on the record not heretofore or hereby specifically ruled upon either directly or by the necessary effect of the conclusions in this Initial Decision are hereby denied. [3]

The proposed findings and conclusions submitted by counsel have been given careful consideration and to the extent not adopted by this decision, in the form proposed or in substance, are rejected as not supported by the evidence or as immaterial.

Attached to this decision as "Appendix A" is a 15-page tabulation entitled "Conduct of Respondents' Dealer Witnesses Re: Other Brand and Out-of-Territory Sales", a reproduction of "Appendix A" to complaint counsel's proposed findings. On review of the record citations contained therein, the Administrative Law Judge is satisfied that the information in "Appendix A" is accurate, and it is adopted as support for certain findings and conclusions contained in this Initial Decision.

Some of the abbreviations used in this decision are as follows:

- CX - Commission's Exhibits
- RX - Respondent's Exhibits
- Compl. - Commission's complaint
- Ans. - Answer of Corporate Respondent
- Ans. (name) - Individual Respondent's Answer
- CSCPF - Counsel supporting the complaint's proposed findings of fact, conclusions of law and order
- RPF - Respondents' proposed findings
- Resp. Ans. Br. - Respondents' answering brief.

Page references to the transcript of record do not have an identifying prefix (such as Tr. or R.) but are followed by the names of the witnesses if such identities are not obvious from the text of the decision.

This case focuses on the business relationship that has existed and exists between Beltone Electronics Corporation ("Beltone"), including the individual respondents, and the so-called "authorized" or "selected" dealers. In this respect the complaint alleges that respondents are engaged in the business of manufacturing, distributing, selling, and repairing hearing aids and related products in interstate commerce and that in the course and conduct of said business they pursue a course of action whereby (Compl. par. 10):

- (a) They require their selected retail dealers to sell Beltone products within assigned geographic territories; [4]
- (b) They require their selected dealers to deal exclusively in Beltone hearing aids;
- (c) They prohibit their dealers from dealing with certain potential customers;
- (d) They prevent others, not their dealers, from dealing in or repairing Beltone products; and
- (e) They appropriate and use for their own purposes the names and addresses of their dealers' customers.

The principal evidence of this business relationship is contained in

the various formal written agreements between Beltone and its dealers.<sup>1</sup> In addition, contacts, personal or by way of written correspondence, between Beltone's employees and the dealers are important, and the testimony of both types of witness constitute the major part of the 19,000-plus paged transcript of testimony. Beltone's overall business policies are also disclosed in the testimony of its officers as well as in various documents, some being internal memoranda and some being formal manuals that are supplied to its authorized dealers. As to these evidentiary matters, the complaint alleged that in furtherance of the course of action alleged to be pursued in paragraph 10 thereof, respondents "have been and now are engaged alone or with their dealers in the following acts and practices, among others" (Compl. par. 11):

- (1) Respondents use agreements or understandings which
  - (a) require a dealer to sell Beltone products within an assigned territory;
  - (b) require a dealer to achieve a sales quota by selling Beltone products within that assigned territory;
  - (c) require a dealer to sell Beltone products only to customers found within the assigned territory; [5]
  - (d) require a dealer to submit to the respondents the name and address of each customer who purchases Beltone products;
  - (e) condition the express product warranty on the submission of the name and address of each such customer to the respondents;
  - (f) require a dealer to participate in Beltone cooperative advertising and other sales promotion programs;
  - (g) allow for immediate termination of the contract upon dealer's violation of any provision thereof;
- (2) Respondents engage in extensive national advertising, such as offers of free models of a "non-operative hearing aid", whereupon they send to their selected dealers, as the so-called "leads", the names of those persons responding to such advertising who reside in such dealers' territories, prohibiting the use of such names for any purpose other than to sell Beltone products;
- (3) Respondents have for many years expressed, advocated, communicated or emphasized to their selected dealers Beltone's "one-brand merchandising philosophy", meaning Beltone's business policy of advocating, persuading or pressuring its selected dealers to

<sup>1</sup> Attached to this opinion as "Appendix B" is a typed reproduction of the contents of CX 401, a "Franchise Agreement" between Beltone Electronics Corporation and Hearing Aids Services, Inc., d/b/a Beltone Hearing Aid Service, Winchester, Virginia. This form of agreement was used between approximately August 1969 and June 22, 1971, and is considered to be representative of most of the agreements in effect during the period of time relevant to the issues raised in the complaint.

sell only Beltone brand of products to the exclusion of competitive brands, and have referred to such action by its dealers as "dealer loyalty", continually encouraging, praising or rewarding it;

(4) Respondents have for many years expressed, communicated, or emphasized to their selected dealers Beltone's business policy of dissuading, discouraging, or prohibiting sales of competitive brands by such dealers by means of, among others, persuasion, pressure, harassment, coercion, or intimidation of such dealers to sell only Beltone products and not to sell other brands;

(5) Respondents refuse to sell to all but a few dealers, selected in such a manner that each of such selected dealers enjoys territorial exclusivity so that he is not in competition with any other dealer selling Beltone products;

(6) Respondents refuse to sell Beltone repair parts or to provide schematics to all dealers, or to persons engaged in the business of repairing or servicing hearing aids; [6]

(7) Respondents refuse to supply Beltone promotional and advertising materials, price lists, hearing aid specifications of performance information to all dealers;

(8) Respondents prohibit their selected dealers from selling Beltone products to other dealers of hearing aids;

(9) Respondents require their selected dealers to use the Beltone brand name, in conjunction with a geographic identification of the dealers' locations, or otherwise, in the dealers' trade styles;

(10) Respondents provide in their standard-form contract that a dealer is prohibited from doing any act, making any representation, or advertising in any manner which may adversely affect Beltone products or any other Beltone dealer;

(11) Respondents provide in their standard-form contract that Beltone has the right to terminate the contract, at any time, upon thirty days notice to the dealer;

(12) Respondents provide in said contract that in the event of termination:

(a) a dealer is required to return to the respondents the names and addresses of Beltone product users;

(b) a dealer is prohibited from using his business telephone number and the respondents can order a transfer of telephone service under such number to a person of their choice, or order that such service be cancelled immediately;

(c) a dealer is prohibited from advertising Beltone products, new or used, or Beltone repair service;

(d) Beltone has the right to repurchase the terminated dealer's inventory of Beltone products; and

(e) Beltone is not obligated to repair any out-of-warranty Beltone products sent to it by such a dealer. [7]

The general make-up of the hearing aid industry, including some information about the major manufacturers, is contained in the testimony of the so-called industry witnesses and a Commission employee-accountant witness. Certain technical aspects of the hearing aid business were presented by audiologists, and each side presented the testimony of an expert witness who rendered an opinion about the effects on competition alleged in the complaint. Those alleged effects, or the tendency and capacity to result therein, were, among others (Compl. par. 12):

(1) Competition between respondents and other manufacturers of hearing aids has been hindered and suppressed;

(2) Competition among dealers dealing in Beltone products has been eliminated;

(3) Such dealers have been deprived of their freedom to select their customers and otherwise to function as free and independent businessmen;

(4) Such dealers have been deprived of their ownership of, and freedom to maintain, confidential lists of their customers;

(5) Competition among dealers dealing in Beltone products and dealers dealing in other brands of hearing aids has been hindered and suppressed;

(6) Retail dealers of hearing aids have been deprived of their freedom to act in the best interests of the hearing-impaired public;

(7) Consumers have been deprived of their right to fair and impartial recommendations from dealers in the selection of hearing aids for the alleviation of their hearing impairment;

(8) Consumers have been deprived of the benefits of free competition;

(9) Those engaged in the repairing [or] servicing of hearing aids in competition with respondents have been deprived of their right to repair or service Beltone hearing aids. [8]

Attached to this decision as "Appendix C" is a short glossary relating to the hearing aid industry and to Beltone's business as reflected in this record and decision.

Having reviewed the entire record in this proceeding, and having considered the demeanor of the witnesses as they testified, together with the pleadings, the proposed findings, conclusions, and arguments submitted by counsel supporting the complaint and counsel for respondents, I make the following findings of fact based on the record considered as a whole:

