IN THE MATTER OF

AMERICAN EXPRESS COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND TRUTH IN LENDING ACTS

Docket C-3129. Complaint, Jan. 9, 1984—Decision, Jan. 9, 1984

This order requires a New York City credit card company, among other things, to cease failing to prevent computerized collection letters from being sent to cardholders who have written the company of a billing error and who are withholding payment pending resolution of the dispute. Respondent must forfeit the amount in dispute, up to $50, should it fail to comply with the Fair Credit Billing Act's billing error resolution procedures and maintain for at least two years, records evidencing compliance with the Act's provisions. Further, respondent must resolve billing errors involving foreign merchants within the lesser of 90 days or 2 complete billing cycles from the date of receiving a billing error notice.

Appearances

For the Commission: *Ronald G. Issac, Jonathan D. Jerison* and *Arthur B. Patrizio.*

For the respondent: *Ronald J. Greene, Christopher R. Lipsett* and *Clifford B. Hendler, Wilmer, Cutler & Pickering,* Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that American Express Company, a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Acts and the implementing regulation promulgated under the Truth in Lending 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:

For the purposes of this complaint, the terms *billing error, card-*

holder, card issuer, credit card, and *proper written notification of a billing error* shall be defined as these terms are defined in Regulation Z (12 CFR 226), the implementing regulation of the Truth in Lending Act (15 U.S.C. 1601 *et seq.*), duly promulgated by the Board of Governors of the Federal Reserve System.[1]

PARAGRAPH 1. Respondent American Express Company 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 American Express Plaza, New York, New York.

PAR. 2. For some time in the past before January 1, 1983, respondent had been engaged in the issuing of American Express Cards which could be used to charge the costs of travel and entertainment services and merchandise purchased from stores and other establishments that honor such Cards. Since January 1, 1983, such Cards have been issued by a wholly-owned subsidiary of respondent.

PAR. 3. In the ordinary course of its business as aforesaid, respondent was a "card issuer." Thus, pursuant to Section 226.2(s) of Regulation Z, respondent was a "creditor" for purposes of Section 226.14 of Regulation Z.

PAR. 4. In some instances, respondent's collection procedures provided for computer-generated collection letters to be sent automatically to cardholders whose accounts were delinquent. Upon receipt of proper written notification of a billing error from a cardholder who had withheld payment of a disputed amount, respondent instructed its computers to cease all collection activity for a specified period of time. In some instances, billing errors were not resolved within this specified period and respondent's employees failed to prevent the computer from resuming automated collection activity with respect to disputed amounts. As a result, in some instances respondent mailed or delivered or caused to be mailed or delivered to cardholders collection letters demanding payment of amounts alleged to be in error prior to resolving the dispute as required by Section 226.14(a)(2) of Regulation Z.

PAR. 5. In some instances, after receiving proper written notification of a billing error concerning a transaction outside the United States between a cardholder and a foreign business entity that honors respondent's Card, respondent failed to resolve the billing error within the lesser of ninety (90) days or two (2) complete billing cycles from the date of receipt of proper written notification of a billing error, as required by Section 226.14(a)(2) of Regulation Z.

PAR. 6. By and through the acts and practices alleged in Paragraphs

[1] All reference to the Truth in Lending Act and Regulation Z contained in this complaint shall refer to the Truth in Lending Act as amended to March 23, 1976 and Regulation Z as amended to March 23, 1977.

Four and Five, respondent forfeited the right to collect from the cardholder the amount indicated by the cardholder to be a billing error (whether or not such amount was in fact in error) and any finance charges, late payment charges, or other charges imposed thereon up to a maximum of $50 for each item or transaction indicated by the cardholder to be a billing error. In some of these instances, respondent failed to forfeit amounts that it should have legally forfeited, in violation of Section 226.14(f) of Regulation Z.

PAR. 7. In the ordinary course and conduct of its business, respondent retained certain correspondence and computerized, microfilmed, and other records relating to its handling of billing errors. In some instances before August 1981, respondent did not retain adequate evidence of compliance with Section 226.14 of Regulation Z for a period of two (2) years, as required by Section 226.6(i) of Regulation Z.

PAR. 8. Pursuant to Section 103(s) of the Truth in Lending Act, respondent's aforesaid failures to comply with the provisions of Regulation Z constituted violations of that Act and, pursuant to Section 108 thereof, respondent has thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed

consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent American Express Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at American Express Plaza, in the City of New York, State of New York.

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

ORDER

For purposes of this Order, the terms *billing error, billing-error notice, cardholder, consumer credit, credit card,* and *state* shall be defined as these terms are defined in Regulation Z (12 CFR 226), the implementing regulation of the Truth in Lending Act (15 U.S.C. 1601 *et seq.*).[1]

It is ordered, That respondent American Express Company, a corporation, its successors and assigns in any state, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device in any state, in connection with any consumer credit transaction involving the use of any credit card issued by respondent to a resident of any state, do forthwith cease and desist from:

1. Failing, following respondent's receipt of a billing-error notice from a cardholder who has withheld payment of a disputed amount, to prevent respondent's computerized collection procedures from causing collection letters to be mailed to the cardholder to collect any portion of an amount indicated in the cardholder's notice as being a billing error (or any finance charge, late payment charge, or other charge computed on such disputed amount) prior to resolving the dispute, as required by Section 226.13(d)(1) of Regulation Z.

2. Failing, following respondent's receipt of a billing-error notice from a cardholder concerning a transaction outside the United States between the cardholder and a foreign business entity that honors any credit card issued by respondent, to resolve the billing error within

[1] All reference to the Truth in Lending Act and Regulation Z contained in this Order shall refer to the Truth in Lending Act as amended to March 31, 1980 and Regulation Z as amended to April 1, 1981.

the lesser of ninety (90) days or two (2) complete billing cycles from the date of receipt of the billing-error notice, as required by Section 226.13(c)(2) of Regulation Z.

3. Failing to establish procedures which will require that, if correspondence is received from cardholders alleging, or reciting facts which on their face show, noncompliance with Sections 226.13(c) or (d)(1) of Regulation Z, such correspondence will be forwarded to personnel with authority to take appropriate action to comply with the forfeiture provision of Section 161(e) of the Truth in Lending Act.

4. Failing to keep evidence of compliance with Section 226.13 of Regulation Z for a period of two (2) years, as required by Section 226.25(a) of Regulation Z.

Provided, That respondent shall not be liable for a civil penalty for any violation of this Order if it shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error or mistake notwithstanding the maintenance of procedures reasonably adapted to avoid any such error or mistake.

It is further ordered, That respondent distribute a copy of this Order to each of respondent's present and future supervisory personnel who are responsible for operations relating to resolution of credit card billing errors, and that respondent secure a signed statement acknowledging receipt of a copy of this Order from each such person.

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 subsidiaries, or any other changes in the corporation that may affect compliance obligations rising out of this Order.

It is further ordered, That respondent herein shall, within ninety (90) days after service upon it of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

IN THE MATTER OF

AMERICAN HOME PRODUCTS CORPORATION

Docket 8918. Interlocutory Order, Jan. 12, 1984

ORDER DENYING PETITION TO REOPEN AND ORDER TO SHOW CAUSE

On September 9, 1981, the Commission issued an opinion and order to cease and desist against American Home Products Corporation ("AHP") and the C.T. Clyne Co., Inc., corporate successor to AHP's advertising agency. In its opinion, the Commission held that AHP had engaged in various deceptive practices in violation of Section 5 of the FTC Act in connection with advertising for the aspirin-based pain relievers Anacin and Arthritis Pain Formula. The Commission's order contained provisions designed to secure cessation of these violations and prevent related ones. 98 F.T.C. 362.

AHP sought review of portions of the Commission's order in the United States Court of Appeals for the Third Circuit. On December 3, 1982, the court of appeals affirmed the Commission's order in all respects, save for paragraph II(D), which it ordered deleted. On December 28, 1982, the court denied AHP's petition for rehearing and suggestion of rehearing *en banc.*

On April 8, 1983, no petition for certiorari having been filed by AHP, the Commission entered its modified order to cease and desist, pursuant to the mandate of the Third Circuit. The modified order was identical to the order of September 9, 1981, save for court-ordered deletion of paragraph II(D). By separate order of April 8, 1982, the Commission stayed its modified order as to AHP until the later of September 30, 1983, or 90 days following disposition of a petition to reopen filed no later than April 15, 1983.[1]

On April 15, 1983, AHP filed a petition to reopen the modified order of April 8, 1983, asking that it be stayed until the orders in *Bristol-Myers Company,* Docket No. 8917 [102 F.T.C. 21 (1983)], and *Sterling Drug Inc.,* Docket No. 8919 [102 F.T.C. 395 (1983)], became final. In the alternative, AHP requested that paragraph I(B) of the order, the so-called "substantial question" provision, be stayed pending the outcome of the *Bristol* and *Sterling* cases, and that paragraph III, requiring disclosure that Anacin and Arthritis Pain Formula contain aspirin in advertisements that make performance claims for the products, be modified to require disclosure of aspirin content for a

[1] The Commission's stay was issued in response to AHP's letter request of March 15, 1982. In a letter of March 18, 1982 responding to that request, the Commission advised AHP that upon expiration of the time for Supreme Court review of the order, and in the event that no review had been sought, the Commission would enter a stay on the terms of that ultimately entered.

limited period of time in a specified percentage of all advertisements for Anacin and APF, and thereafter only in a smaller class of advertisements than required by the Commission's order.

By letter of August 1, 1983, AHP waived any claim that its petition for reopening be decided within the 120 day period specified by Section 5(b) of the FTC Act, 15 U.S.C. 45(b). By memorandum of October 3, 1983, AHP purported to withdraw that part of its petition for reconsideration that agreed to reformulation of an order, and instead requested only that the Commission stay the effect of the entire order against it until judicial review of the orders against Bristol-Myers Corp. and Sterling Drug, issued on July 5, 1983, was complete and the orders have become final. By memorandum of November 23, 1983, Commission staff replied to AHP's petition for reopening, recommending that it be denied, except that paragraph I(B) be modified to grant AHP the option of making comparative efficacy claims where it possessed a "reasonable basis" therefor. On December 12, 1983, AHP filed a reply reiterating its position that the order against it should be stayed.

It thus appears that the Commission now has before it a petition for reopening by American Home Products, which consists only of a request that the order, in its entirety, be stayed for the indefinite duration of the Bristol and Sterling appeals. That petition for reopening is hereby denied, and unless further modified, the Commission's final order of April 8 will, therefore, take effect 90 days from the date of this order. We will maintain our stay of paragraph I(B) of the order, however, pending resolution of the show cause proceeding initiated by this order.

There is absolutely no basis for a stay of the Commission's entire order, as AHP now seeks. The Commission found that AHP had engaged in numerous serious violations of law, involving deceptive advertising. As to some of these findings of violation and related order provisions, AHP did not even seek judicial review. As to those findings of violation of which AHP did seek review, *all* were judicially affirmed, although one order provision was deleted. There is no provision of equity or law which requires that a party found to have engaged in deceptive practices be left free of restraint to repeat them until such time as judicial proceedings against competitors are completed. To the contrary, the case law makes plain the Commission's authority to exercise prosecutorial discretion in the choice of its targets and the order in which it pursues and places them under order. *FTC* v. *Universal-Rundle Corp.*, 387 U.S. 244, 251 (1967); *Moog Indus., Inc.* v. *FTC*, 355 U.S. 411, 413 (1958); *Encyclopedia Britannica* v. *FTC*, 605 F.2d 964, 974 (7th Cir. 1979), *cert. denied*, 445 U.S. 934 (1980); *Johnson Prods. Co.* v. *FTC*, 549 F.2d 35, 41 (7th Cir. 1977).

The Third Circuit in affirming the Commission's order in this case, observed that

> There is no contention that the Commission abused its discretion by refusing, in its denial of AHP's petition for rehearing, to stay its Order until proceedings against AHP's competitors, Sterling Drug and Bristol-Myers, have been completed.

695 F.2d at 714. The court did indicate that "it would not seem unreasonable that in the interest of fairness a stay be granted at least with respect to part I(B) of the order," *Id.*,[2] but it also cited with approval the case law holding that simultaneity of prosecution and order finality is not required, and observed that "we do not suggest that the Commission should ignore the interests of scrupulous competitors who forego misleading claims," *Id.* at n.51, to which might also be added, the interests of consumers subjected to those claims.

AHP appears to believe that a stay should be granted because the Second and Ninth Circuits, in which Bristol and Sterling respectively have sought review of their orders, might modify them in some unspecified respect, thus entitling AHP to return and seek the same modifications in its order.

Even assuming, *arguendo,* that decisions by the Second or Ninth Circuits as to *Bristol* and *Sterling* would be grounds for reopening a final order as to AHP that has been affirmed and enforced by the Third Circuit, AHP's position is overbroad, for the petitions in both *Bristol* and *Sterling* focus on limited portions of those orders, and raise not even a theoretical possibility of undermining the underpinnings of portions of the AHP order. Moreover, factual differences between the cases cast doubt on the relevance of the *Sterling* and *Bristol* decisions to AHP's. In any event, compliance with the judicially affirmed, final order entered against it would in no way prevent AHP from seeking modification of that order at some later time should it believe circumstances warrant. *See* 15 U.S.C. 45(b). That highly speculative possibility, however, is hardly grounds for AHP to escape in the interim the force of an order designed to prevent proven violations of law.

For all these reasons, AHP's suggestion that the entire order against it be held in abeyance is not well taken, and is hereby rejected. In one respect, however, the AHP order is clearly inconsistent with the *Sterling* and *Bristol* orders entered by the Commission. Complaint counsel would remedy this situation by granting AHP the option under paragraph I(B) to make comparative analgesic efficacy claims supported by a reasonable basis as articulated in the *Bristol* and

[2] The modification proposed by the Commission in the Order to Show Cause, *infra*, would obviate the Third Circuit's concern, by allowing AHP as an alternative method of compliance with paragraph I(B) the same approach as contained in the orders against Bristol and Sterling.

Sterling decisions. Under complaint counsel's proposal, AHP would have the option, when making comparative efficacy claims for analgesics, of complying with the order affirmed by the Third Circuit, or with the reasonable basis provision entered by the Commission in the *Bristol* and *Sterling* orders.

The Commission believes that complaint counsel's proposal has merit, and will order the parties to show cause within 15 days why it should not be adopted. The show cause period will also permit AHP and staff one final opportunity to discuss staff's proposal.

Therefore,

It is ordered, That respondent's petition to reopen of April 15, 1983, as subsequently modified by memorandum of October 3, 1983, be denied. Pursuant to its stay order of April 8, 1983, the Commission's modified order of April 8, 1983 shall take effect 90 days from the date of this order, except for paragraph I(B), which shall remain stayed pending proceedings on the Order to Show Cause.

It is further ordered, That the parties shall, within fifteen days from the date of this order, show cause if any there be, why the Commission's order of April 8, 1983, should not be reopened and modified to the extent of permitting AHP to comply with paragraph I(B) of the order by possessing a reasonable basis for comparative claims of efficacy made for analgesic products.

IN THE MATTER OF

THE MAICO COMPANY

ORDER TO SET ASIDE IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket 5822. Consent Order, May 22, 1955—Order To Set Aside, Jan. 13, 1984

On Jan. 13, 1984, the Federal Trade Commission set aside the May 22, 1955 order issued against The Maico Co. (51 F.T.C. 1197), in light of its actions in *Beltone Electronics Corp.*, Dkt. 8928 [100 F.T.C. 68 (1982)] and *Dahlberg Electronics Corp.*, Dkt. 8229 [101 F.T.C. 703 (1983)], which set aside prohibitions on the companies' use of exclusive dealing arrangements.

ORDER TO SET ASIDE ORDER TO CEASE AND DESIST

On May 22, 1955, the Federal Trade Commission issued an order against The Maico Company in Docket No. 5822 prohibiting Maico, in the sale of its own brand name hearing aids, from imposing exclusive dealing arrangements upon its dealers. [51 F.T.C. 1197]

Two of Maico's larger competitors are now permitted by recent Commission actions to engage in the same exclusive dealing practices contained in the order against Maico. On July 26, 1982, the Commission dismissed the complaint in *Beltone Electronics Corp.*, Docket No. 8928 [100 F.T.C. 68], challenging, among other things, the same practices prohibited by the order against Maico. On April 11, 1983, the Commission in *Dahlberg Electronics, Inc.*, Docket No. 8929 [101 F.T.C. 703], set aside prohibitions on Dahlberg's use of exclusive dealing arrangements, which were similar to those contained in the order against Maico.

On December 7, 1983, the Commission, pursuant to Section 3.72(b) of the Commission's Rules of Practice, 16 C.F.R. 3.72(b), issued to Maico an order to show cause why the proceeding herein should not be reopened to set aside the final cease and desist order in Docket No. 5822, prohibiting Respondent's use of exclusive dealing arrangements. Respondent was provided an opportunity to object to the proposed set aside of the order against it, and having failed to do so, is now deemed to have consented to such action. In view of the Commission's actions in *Beltone* and *Dahlberg,* the Commission believes that this modification is in the public interest.

Accordingly,

It is hereby ordered, That this matter be, and it hereby is, reopened and that the order herein shall be set aside as of the effective date of this order.

IN THE MATTER OF

MAICO HEARING INSTRUMENTS, INC.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket 8927. Consent Order, Aug. 4, 1976—Modifying Order, Jan. 13, 1984

The Federal Trade Commission has modified the order issued against Maico Hearing Instruments, Inc. on Aug. 4, 1976 (88 F.T.C. 214). The modified order permits the company to suggest resale prices to its dealers and impose standards on the kinds of customers and territories its dealers can serve. The modification leaves intact the prohibition against resale price maintenance.

ORDER MODIFYING ORDER TO CEASE AND DESIST

On Aug. 4, 1976, the Federal Trade Commission issued an order against Maico Hearing Instruments, Inc. in Docket No. 8927 prohibiting Maico, in the sale of its own brand name hearing aids, from imposing exclusive dealing arrangements and customer and territorial restraints upon its dealers. [88 F.T.C. 214]

Two of Maico's larger competitors are now permitted by recent Commission actions to engage in the same non-price vertical restraints contained in the order against Maico. On July 26, 1982, the Commission dismissed the complaint in *Beltone Electronics Corp.,* Docket No. 8928 [100 F.T.C. 68], challenging the same practices prohibited by the order against Maico. On April 11, 1983, the Commission modified the order in *Dahlberg Electronics, Inc.,* Docket No. 8929 [101 F.T.C. 703], which is also similar to the order against Maico, to set aside prohibitions on Dahlberg's use of certain non-price vertical restraints. Further, it modified that order's ban on resale price maintenance to permit Dahlberg to suggest retail prices to its dealers.

On December 7, 1983, the Commission, pursuant to Section 3.72(b) of the Commission's Rules of Practice, 16 C.F.R. 3.72(b), issued to Maico an order to show cause why the proceeding herein should not be reopened to set aside provisions of the final cease and desist order in Docket No. 8927, prohibiting Respondent's use of exclusive dealing arrangements and customer and territorial restrictions. Respondent was provided an opportunity to object to the proposed modification of the order against it, but has instead consented to such modification. In view of the Commission's actions in *Beltone* and *Dahlberg,* the Commission believes that this modification is in the public interest.

Accordingly,

It is hereby ordered, That this matter be, and it hereby is, reopened

and that Paragraphs No. 1, 2, 3, 4, 6, 7, 8 and 9 of Part I shall be set aside as of the effective date of this order.

It is further ordered, That Paragraph No. 5 of Part I be modified as of the effective date of this order by striking "5" and "or suggesting" and inserting "or" after "stabilizing,".

IN THE MATTER OF

SONOTONE CORPORATION

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket C-2414. Consent Order, June 19, 1973—Modifying Order, Jan. 13, 1984

The Federal Trade Commission has modified the order issued against Sonotone Corp. on June 19, 1973 (82 F.T.C. 1802). The modified order permits the company to suggest resale prices to its dealers, and impose standards on the kinds of customers and territories its dealers can serve. The modification leaves intact the prohibition against resale price maintenance.

ORDER MODIFYING ORDER TO CEASE AND DESIST

On June 19, 1973, the Federal Trade Commission issued an order against Sonotone Corporation in Docket No. C–2414 prohibiting Sonotone, in the sale of its own brand name hearing aids, from imposing exclusive dealing arrangements and customer and territorial restraints upon its dealers. [82 F.T.C. 1802]

Two of Sonotone's larger competitors are now permitted by recent Commission actions to engage in the same non-price vertical restraints contained in the order against Sonotone. On July 26, 1982, the Commission dismissed the complaint in *Beltone Electronics Corp.,* Docket No. 8928 [100 F.T.C. 68], challenging the same practices prohibited by the order against Sonotone. On April 11, 1983, the Commission modified the order in *Dahlberg Electronics, Inc.,* Docket No. 8929 [101 F.T.C. 703], which is also similar to the order against Sonotone, to set aside prohibitions on Dahlberg's use of certain non-price vertical restraints. Further, it modified that order's ban on resale price maintenance to permit Dahlberg to suggest retail prices to its dealers.

On December 7, 1983, the Commission, pursuant to Section 3.72(b) of the Commission's Rules of Practice, 16 C.F.R. 3.72(b), issued to Sonotone an order to show cause why the proceeding herein should not be reopened to set aside provisions of the final cease and desist order in Docket No. C–2414, prohibiting Respondent's use of exclusive dealing arrangements and customer and territorial restrictions. Respondent was provided an opportunity to object to the proposed modification of the order against it, and having failed to do so, is now deemed to have consented to such modification. In view of the Commission's actions in *Beltone* and *Dahlberg,* the Commission believes that this modification is in the public interest.

Accordingly,

It is hereby ordered, That this matter be, and it hereby is, reopened and that Paragraphs No. 1, 2, 3, 4, 6, 7, 8 and 9 of Part I shall be set aside as of the effective date of this order.

It is further ordered, That Paragraph No. 5 of Part I be modified as of the effective date of this order by striking "5" and "or suggesting" and inserting "or" after "stabilizing,".

IN THE MATTER OF

RADIOEAR CORPORATION

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket C–2419. Consent Order, June 26, 1973—Modifying Order, Jan. 13, 1984

The Federal Trade Commission has modified the order issued against Radioear Corp. on June 26, 1973 (82 F.T.C. 1830). The modified order permits the company to suggest resale prices to its dealers, and impose standards on the kinds of customers and territories its dealers can serve. The modification leaves intact the prohibition against resale price maintenance.

ORDER MODIFYING ORDER TO CEASE AND DESIST

On June 26, 1973, the Federal Trade Commission issued an order against Radioear Corporation in Docket No. C–2419 prohibiting Radioear, in the sale of its own brand name hearing aids, from imposing exclusive dealing arrangements and customer and territorial restraints upon its dealers. [82 F.T.C. 1830]

Two of Radioear's larger competitors are now permitted by recent Commission actions to engage in the same non-price vertical restraints contained in the order against Radioear. On July 26, 1982, the Commission dismissed the complaint in *Beltone Electronics Corp.*, Docket No. 8928 [100 F.T.C. 68], challenging the same practices prohibited by the order against Radioear. On April 11, 1983, the Commission modified the order in *Dahlberg Electronics, Inc.*, Docket No. 8929 [101 F.T.C. 703], which is also similar to the order against Radioear, to set aside prohibitions on Dahlberg's use of certain non-price vertical restraints. Further, it modified that order's ban on resale price maintenance to permit Dahlberg to suggest retail prices to its dealers.

On December 7, 1983, the Commission, pursuant to Section 3.72(b) of the Commission's Rules of Practice, 16 C.F.R. 3.72(b), issued to Radioear an order to show cause why the proceeding herein should not be reopened to set aside provisions of the final cease and desist order in Docket No. C–2419, prohibiting Respondent's use of exclusive dealing arrangements and customer and territorial restrictions. Respondent was provided an opportunity to object to the proposed modification of the order against it, and having failed to do so, is now deemed to have consented to such modification. In view of the Commission's actions in *Beltone* and *Dahlberg*, the Commission believes that this modification is in the public interest.

Accordingly,

It is hereby ordered, That this matter be, and it hereby is, reopened and that Paragraphs No. 1, 2, 3, 4, 6, 7, 8 and 9 of Part I shall be set aside as of the effective date of this order.

It is further ordered, That Paragraph No. 5 of Part I be modified as of the effective date of this order by striking "5" and "or suggesting" and inserting "or" after "stabilizing,".