

Complaint

116 F.T.C.

IN THE MATTER OF

CENTER FOR IMPROVED COMMUNICATIONS, ET AL.

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

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

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

COMPLAINT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT A

NYC Brooklyn 7/90 3143375

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

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

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

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

Serving Brooklyn For Over 10 Yrs

3 CONVENIENT LOCATIONS

BAY RIDGE BROOKLYN HTS. BRONX BEACH
 8502 47th AVE. 142 JONAS MEYER ST (RM 88) 3003 OCEAN PARK

745-6363 855-4330 449-9800

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

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

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

Center for Improved Communications

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

Hearing Aids

AMERICAN HEARING CENTER

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

- CLOSED CAPTIONING EQUIPMENT
- PLURAL CLOCKS
- TELEPHONE TV AMPLIFIERS
- DECEMBER HOSPITAL RECOMMENDED
- MEDICAID ACCEPTED
- PARTS REPLACEMENTS FOR ALL BRANDS

ASK ABOUT OUR GUARANTEED SATISFACTION FOR PRECISION TESTING FITTING AND REPAIRS

CALL FOR FREE BROCHURE


BROOKLYN QUEENS
 480 85th ST. 116-18 QUEENS BLVD
745-5169 FOREST HILLS
748-2630 261-6800

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

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

EXHIBIT A

DINING OUT?



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

DECISION AND ORDER

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

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

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

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

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

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

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

ORDER

I.

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

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

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

II.

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

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

III.

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

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

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

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

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

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

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

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

IV.

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

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

V.

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

VI.

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

VII.

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

VIII.

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

IN THE MATTER OF

SHERWIN BASIL

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

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

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

Appearances

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

For the respondent: *Pro se*.

COMPLAINT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT A

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

CONES LONG BEACH HEARING AIDS SPECIALISTS

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

All Major Brands of Hearing Aids
SALES & SERVICE

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

432-8961

427 ATLANTIC AVE. - LONG BEACH

EXCELLENCE IN SERVICE FOR OVER 35 YEARS

Hearing Aids

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

EMERGENCY DENTIST
TDD 924-1072
7 DAYS A WEEK

3000 Central Express 924-4668
1100 E. Ocean St. 924-2272
All Hearing Aid Specialists 987-0884
See Advertisements On This Page

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BALANCE & EYE DECISIONS

EAR DISEASES VERTIGO
OTOLOGY & NEURO-OTOLOGY
AUDIOLOGIC & VESTIBULAR LAB
HEARING TUNNALS
FACIAL PARALYSIS - PAIN
MICROSURGICAL LASER SURGERY
EVALUATION & TREATMENT
HEARING AIDS - COMPLETED EVAL
Suite 304
Surrey Plaza at Sherman Center
1242 Sherman St.
Long Beach, CA 90801-2110
Tel 448-4738

Professional Hearing Services 422-9110
2215 South St.

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

ARTESIA CERRITOS HEARING AID CENTER

11416 Artesia Blvd. Artesia, CA 90201 422-5771
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AUDIO-LOGICS 30 YEARS OF QUALITY SERVICE
Hearing Aids
Diagrams & Illustrations
Technical Information
Hear PC Aids
Hear PC Aids
Hear PC Aids

422-3388

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Advocate Here-It Pays

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Miracle-Ear Centers

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

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

40 YEARS EXPERIENCE CALL NOW FOR AN APPOINTMENT

LONG BEACH 432-0459 LAKWOOD 830-3410 TORRANCE 214-2288
445 Pine Ave. 445 Pine Ave. 445 Pine Ave.
101 Lakewood Center 101 Lakewood Center 101 Lakewood Center

BROWN-POTTER HEARING AID CENTER

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

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Welfare, Union & U.S. Government Plans Accepted

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

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MALLYE B. CARPENTIER
CERTIFIED HEARING INSTRUMENT SPECIALIST

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Under the level of the hearing aid
Suite 104
210 E. 7th St. Long Beach, CA 90801

The Center For Better Hearing Inc.

HEARING AIDS

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

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107 E. 8th L.B.

A.C.E. Hearing Aid Specialists

Most Advanced Hearing Aids Available

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

M. JOE HUGHES **987-0884**

4115 E. 7th St. Suite B Long Beach

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

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

EXHIBIT A

DECISION AND ORDER

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

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

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

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

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

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

ORDER

I.

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

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

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

II.

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

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

III.

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

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

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

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

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

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

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

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

IV.

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

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

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

V.

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

VI.

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

VII.

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

Complaint

116 F.T.C.

IN THE MATTER OF

SUSAN FRUGONE, ET AL.

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

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

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

COMPLAINT

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

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

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

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

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

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

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

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

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

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

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

