

Such advertisement shall be run no later than sixty (60) days after service upon respondents of this order.

It is further ordered, That respondents cease and desist from representing, directly or indirectly, in their advertising, promotional material, package label, or any other similar material that their vitamin, mineral, or vitamin and mineral products have "super potency," and from using the word "super" or any word of similar import or meaning as a part of the trade name of their vitamin, mineral, or vitamin and mineral products.

It is further ordered, That respondents 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 change in the corporation which may affect compliance obligations arising out of the order.

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

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

IN THE MATTER OF

GEORGE V. DUGAN D/B/A GEORGE DUGAN CHEVROLET

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

Docket C-2525. Complaint, July 30, 1974—Decision, July 30, 1974

Consent order requiring a Klamath Falls, Oreg., new and used automobile dealer, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of credit, such information as required by Regulation Z of the said Act.

Appearances

For the Commission: *Michael A. Katz, Stephen A. Kikuchi and Thornton P. Percival.*

For the respondent: *Robert D. Boivin, Klamath Falls, Oreg.*

Complaint

84 F.T.C.

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that George V. Dugan, an individual trading and doing business as George Dugan Chevrolet, hereinafter sometimes referred to as respondent, has violated the provisions of said Acts and implementing regulation, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent George V. Dugan is an individual trading and doing business as George Dugan Chevrolet, with his principal office and place of business located at 677 South Seventh Street, Klamath Falls, Ore.

Par. 2. Respondent is now and for some time last past has been engaged in the offering for sale, and retail sale of new and used motor vehicles to the public.

Par. 3. In the ordinary course and conduct of the business as aforesaid, respondent regularly extends consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

Par. 4. Subsequent to July 1, 1969, respondent, in the ordinary course of business as aforesaid, and in connection with his credit sales, as "credit sale" is defined in Regulation Z, has caused and is causing customers to execute a binding order, hereinafter referred to as the "Order Contract." In some instances, respondent has caused and is causing customers to execute blank retail installment contracts. Respondent does not provide customers with any other consumer credit cost disclosures before the transaction is consummated, except in those instances noted in Paragraph Five below, when respondent furnishes a completed retail installment contract.

By and through the use of the order contract, respondent:

1. Fails to disclose the amount of credit extended, and to describe that amount as the "amount financed," as required by Section 226.8(c)(7) of Regulation Z.

2. Fails to disclose the sum of all charges required by Section 226.4 of Regulation Z to be included therein, and to describe that sum as the "finance charge," as required by Section 226.8(c)(8)(i) of Regulation Z.

3. Fails to disclose the sum of the cash price, all charges which are

included in the amount financed but which are not part of the finance charge, and the finance charge, and to describe that sum as the "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.

4. Fails to disclose the annual percentage rate, computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

5. Fails in some instances to disclose the number, amounts and due dates or periods of payments scheduled to repay the indebtedness, as required by Section 226.8(b)(3) of Regulation Z.

6. Fails to disclose the sum of the payments scheduled to repay the indebtedness, and to describe that sum as the "total of payments," as required by Section 226.8(b)(3) of Regulation Z.

7. Fails to identify the amount or the method of computing the amount of any default, delinquency or similar charge payable in the event of late payments, as required by Section 226.8(b)(4) of Regulation Z.

8. Fails to describe or identify the type of security interest held or to be retained or acquired by the creditor in connection with the extension of credit, as required by Section 226.8(b)(5) of Regulation Z.

9. Fails to identify the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation, and to state the amount or method of computation of any charge deductible from any rebate of unearned finance charge which may be credited to the obligation or refunded to the customer, as required by Section 226.8(b)(7) of Regulation Z.

10. Fails to furnish to the customer a duplicate of the instrument or other statement containing the disclosures prescribed by Section 226.8 of Regulation Z, as required by Section 226.8(a) of Regulation Z.

Par. 5. Subsequent to July 1, 1969, respondent, in the ordinary course of business, and in connection with his credit sales, as "credit sale" is defined in Regulation Z, has caused and is causing customers to execute, in addition to said order contract, a retail installment contract, hereinafter referred to as the "Installment Contract." In some instances, respondent furnishes the customer with a completed copy of the installment contract before the transaction is consummated but does not make any other consumer credit cost disclosures, with the exception of those set forth in the order contract.

By and through such use of the installment contract, respondent has failed to include in the finance charge certain charges or premiums for credit life and/or disability insurance when a specific dated and separately signed affirmative written indication of the customer's desire for

such insurance was not obtained as prescribed by Section 226.4(a)(5)(ii) of Regulation Z. Respondent has thereby failed to determine and disclose the finance charge accurately as required by Sections 226.4 and 226.8(c)(8)(i) of Regulation Z, and to compute and disclose the annual percentage rate accurately to the nearest quarter of one percent, as required by Sections 226.5(b) and 226.8(b)(2) of Regulation Z.

Par. 6. Pursuant to Section 103(q) of the Truth in Lending Act, respondent's aforesaid failures to comply with the provisions of Regulation Z constitute 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 Seattle Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

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

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

1. Respondent George V. Dugan is an individual trading and doing business as George Dugan Chevrolet with his principal office and place of business located at 677 South Seventh Street, Klamath Falls, Oreg.
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

It is ordered, That respondent George V. Dugan, an individual trading and doing business as George Dugan Chevrolet, or under any other name or names, and respondent's successors, assigns, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension of consumer credit or any advertisement to aid, promote or assist directly or indirectly an extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. §226) of the Truth in Lending Act (Pub.L. 90-321, 15 U.S.C. 1601, *et seq.*), do forthwith cease and desist from:

1. Failing to disclose the amount of credit extended, and to describe that amount as the "amount financed," as required by Section 226.8(c)(7) of Regulation Z.

2. Failing to disclose the sum of all charges required by Section 226.4 of Regulation Z to be included therein, and to describe that sum as the "finance charge," as required by Section 226.8(c)(8)(i) of Regulation Z.

3. Failing to disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, and to describe that sum as the "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.

4. Failing to compute and disclose the annual percentage rate accurately to the nearest quarter of one percent, as required by Sections 226.5(b) and 226.8(b)(2) of Regulation Z.

5. Failing to disclose the number, amounts and due dates or periods of payments scheduled to repay the indebtedness, and the sum of such payments, and to describe that sum as the "total of payments," as required by Section 226.8(b)(3) of Regulation Z.

6. Failing to identify the amount or the method of computing the amount of any default, delinquency or similar charge payable in the event of late payments, as required by Section 226.8(b)(4) of Regulation Z.

7. Failing to describe or identify the type of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, as required by Section 226.8(b)(5) of Regulation Z.

8. Failing to identify the method of computing any unearned

portion of the finance charge in the event of prepayment of the obligation, and to state the amount or method of computation of any charge deductible from any rebate of unearned finance charge which may be credited to the obligation or refunded to the customer, as required by Section 226.8(b)(7) of Regulation Z.

9. Failing to furnish to the customer, before the transaction is consummated, a duplicate of the instrument or other statement containing the disclosures required by Section 226.8 of Regulation Z, as required by Section 226.8(a) of Regulation Z.

10. Failing to itemize and include in the finance charge, for purposes of disclosure of the finance charge and computation of the annual percentage rate, any and all charges or premiums for credit life or disability insurance unless respondent has obtained a specific dated and separately signed affirmative written indication of the customer's desire for such insurance coverage as prescribed by Section 226.4(a)(5)(ii) of Regulation Z.

11. Failing, in any consumer credit transaction or advertisement, to make all disclosures, determined in accordance with Sections 226.4 and 226.5 of Regulation Z, at the time and in the manner, form and amounts required by Sections 226.6, 226.7, 226.8 and 226.10 of Regulation Z.

It is further ordered, That respondent deliver a copy of this order to cease and desist to all present and future personnel of respondent engaged in the consummation of any extension of consumer credit or in any aspect of the preparation, creation or placing of advertising, and that respondent secure from each such person a signed statement acknowledging receipt of said order.

It is further ordered, That respondent prominently display the following notice in two or more locations in that portion of respondent's business premises most frequented by prospective customers, and in each location where customers normally sign consumer credit documents or other binding instruments. Such notices shall be considered prominently displayed only if so positioned as to be easily observed and read by the intended individuals:

NOTICE TO CREDIT CUSTOMERS

IF THE DEALER IS FINANCING OR ARRANGING THE FINANCING OF YOUR PURCHASE, YOU ARE ENTITLED TO CONSUMER CREDIT COST DISCLOSURES AS REQUIRED BY THE FEDERAL TRUTH IN LENDING ACT. THESE MUST BE PROVIDED TO YOU IN WRITING BEFORE YOU ARE ASKED TO SIGN ANY DOCUMENT OR OTHER PAPERS WHICH WOULD BIND YOU TO SUCH A PURCHASE.

This notice required by order of the Federal Trade Commission.

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

It is further ordered, That the respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a written report setting forth in detail the manner and form of its compliance with this order.

IN THE MATTER OF

FROZEN FOOD FORUM, INC., ET AL.

Docket 8890. Interlocutory Order, Aug. 5. 1974

Order establishing periods of time for filing and length of briefs by counsel supporting the complaint and respondent respectively, on the question of whether, in view of the unavailability of evidence, this proceeding should be dismissed.

Appearances

For the Commission: *William E. Mumford, Lewis F. Parker, Joel S. Thwaites, Ronald C. Cougill and Charles C. Murphy, Jr.*

For the respondents: *Arnall, Golden & Gregory, Atlanta, Ga. and W. A. Bentley, Chickering & Gregory, San Francisco, Calif.*

In view of the Commission's request to the United States District Court for the Northern District of Georgia to dismiss the subpoena enforcement proceeding against respondents, with the result that the evidence called for by the subpoenas will not be produced, the Commission has determined to consider whether to dismiss this proceeding:

Accordingly, *It is ordered,* That complaint counsel shall within thirty (30) days from the date of this order serve and file a brief (not to exceed fifty (50) pages) with the Commission limited to the following question: whether, in view of the unavailability of evidence, this proceeding should be dismissed. Upon receipt of complaint counsel's brief, respondents may within twenty (20) days serve and file a reply brief (not to exceed (50) pages) limited to the same question.

Complaint

84 F.T.C.

IN THE MATTER OF

DAHLBERG ELECTRONICS, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 8929. Complaint, May 8, 1973—Decision, Aug. 6, 1974*

Consent order requiring a Minneapolis, Minn., manufacturer of hearing aids, among other things to cease imposing customer and territorial restrictions and exclusive dealing requirements on its dealers; maintaining resale prices; restricting dealers in cooperative advertising from stating that dealers deal in other brands of hearing aids. Failing to include warranties with products sold by respondents. Further, respondent is required to place in a trade journal a full-page ad clearly disclosing particulars of the order, and to maintain for a ten-year period a file record of any refusal to sell.

Appearances

For the Commission: *Alan I. Leibowitz, L. Barry Costilo, Dennis R. Carluzzo and James C. Donoghue.*

For the respondent: *Arent, Fox, Kintner, Plotkin & Kahn, Wash., D. C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (Title 15, U.S.C. Section 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 party identified in the caption hereof, and more particularly described and referred to hereinafter as respondent, has 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 complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Dahlberg Electronics, Inc., (hereinafter sometimes referred to as "Dahlberg") is a corporation organized under the laws of the State of Minnesota, with its principal office and place of business at 7731 Country Club Drive, Minneapolis, Minn. Dahlberg is a wholly-owned subsidiary of Detection Sciences, Inc., a Minnesota Corporation, with its office and principal place of business located at 7731 Country Club Drive, in the city of Minneapolis, State of Minnesota.

Par. 2. Respondent is engaged in the business of manufacturing, distributing, selling and repairing of hearing aids and related articles, sometimes referred to as "Dahlberg products." It distributes and sells

to selected retail dealers located throughout the United States, who then resell to the general public.

PAR. 3. In the course and conduct of its business, respondent ships or causes to be shipped hearing aids from its facilities in the State of Minnesota to selected retail dealers throughout the United States. There is now and has been for several years a constant and substantial flow of respondent's hearing aids 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, respondent's selected retail dealers in the course and conduct of their business of offering for sale and selling Dahlberg hearing aids 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 respondent is in substantial competition in commerce with others engaged in the manufacturing, distributing, selling and repairing of hearing aids.

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 Dahlberg, accounted for approximately 50 percent of the dollar value of shipments, the top eight companies accounted for approximately 70 percent of such shipments; and the top twenty companies accounted for over 90 percent of the industry's shipments.

PAR. 7. In 1970, respondent Dahlberg was the third largest hearing aid manufacturer with sales in excess of \$4 million, representing an estimated 8 percent of the market. It and its corporate predecessors have manufactured hearing aids since 1949.

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 percent 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 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 percent 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 a parallel course 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

(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 percent 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 of 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 respondent as alleged in Paragraphs Ten and Eleven.

PAR. 10. In the course and conduct of its business of manufacturing, distributing, selling and repairing its hearing aids in commerce, Dahlberg pursues the following course of action:

A. It requires its selected dealers to sell Dahlberg hearing aids within assigned geographic territories;

B. It requires its selected dealers to deal exclusively in Dahlberg hearing aids;

C. It fixes, establishes, controls and maintains the retail prices at which its selected dealers sell or repair Dahlberg hearing aids;

D. It prohibits its dealers from dealing with certain potential customers;

E. It prevents others, not its dealers, from dealing in, or repairing Dahlberg products;

F. It appropriates and uses for its own purposes the names and addresses of its dealers' customers.

PAR. 11. In furtherance of this course of action, respondent has been and now is engaged alone or with its dealers in the following acts and practices, among others:

(1) Respondent uses agreements or understandings which

(a) require a dealer to sell Dahlberg hearing aids only to customers found within an assigned territory;

(b) require a dealer to sell Dahlberg hearing aids in preference to other brands;

(c) require a dealer to submit to respondent the name and address of each customer who purchases a Dahlberg hearing aid;

(d) allow for termination of the contract upon dealer's violation of any provision thereof;

(2) Respondent refuses 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 Dahlberg hearing aids;

(3) Respondent represents to its dealers that if a dealer sells other brands of hearing aids, Dahlberg has the right to convert the standard-form dealer contract into a so-called Limited Dealer Agreement under which dealers have no right, on a proportionately equal basis, or otherwise, to such services or facilities as advertising, sales management, operating and technical assistance, provided by respondent to full dealers; and the respondent expressly reserves the right to appoint other dealers in the territory assigned to such a limited dealer;

(4) Respondent offers to its full dealers a cooperative advertising plan which provides that Dahlberg will not share the cost of any dealer advertisements in another dealer's territory, or which mention in any way that the dealer also offers for sale other brands of hearing aids; limited dealers have no right to a cooperative advertising plan, on a proportionately equal basis with full dealers, or otherwise;

(5) Respondent represents to its dealers that it will not assign additional dealers to the territory of an existing dealer who complies with the requirement that he sell and promote the sale of Dahlberg hearing aids in preference to any other brand;

(6) Respondent requires its dealers to accept and fulfill sales quotas for their assigned territories; as fixed from time to time by the respondent;

(7) Respondent refuses to issue its express product warranty unless and until the dealer from whom the hearing aid was purchased forwards the retail purchaser's name and address to respondent;

(8) Respondent requires dealers whose advertising may reach into other dealers' territories to surrender to such other dealers the names of prospective purchasers responding to such advertising if they reside in such other dealers' territories;

(9) Respondent supplies a dealer only with names of prospective customers arising in the dealers' assigned territory;

(10) Respondent issues to its dealers price lists or provides other means by which the retail prices for Dahlberg hearing aids are set forth;

(11) Respondent refuses to sell Dahlberg repair parts or to provide schematics to all dealers, or to persons engaged in the business of repairing or servicing hearing aids;

(12) Respondent refuses to supply promotional and advertising materials, price lists, hearing aid specifications or performance information to all dealers;

(13) Respondent prohibits its selected dealers from selling Dahlberg hearing aids to other dealers of hearing aids;

(14) Respondent has the right to terminate the standard-form contract without cause upon thirty days notice to the dealer; and the limited contract without cause upon seven days notice; and

(15) Respondent provides in both contracts that in the event of termination, Dahlberg has the right to repurchase the terminated dealer's inventory of Dahlberg products.

PAR. 12. The acts and practices of respondent 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 respondent and other manufacturers of hearing aids has been hindered and suppressed;

(2) Competition among dealers dealing in Dahlberg hearing aids 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 Dahlberg hearing aids 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 respondent have been deprived of their right to repair or service Dahlberg hearing aids.

PAR. 13. The aforesaid acts and practices of respondent 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.

DECISION AND ORDER

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

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid complaint, a statement that the signing of 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 accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and after having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its rules, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

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

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 Dahlberg Electronics, Inc., and its subsidiaries, divisions, affiliates, successors, assigns, officers, directors, agents, representatives and employees, directly or indirectly, or through any corporate or other device, in connection with the manufacturing, distribution, advertising, offering for sale, sale or repair of its own brand name or trademark hearing aids, or related products, in commerce as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

1. Entering into, maintaining, preserving, or enforcing, by refusal to sell or repair, setting of sales quota or equivalent thereof, termination or threat thereof, communicated expectation or request, or in any other manner, any arrangement or method of doing

business with a dealer of hearing aids and/or accessories which has the purpose or effect of precluding or preventing a dealer from selling the product of one or more other hearing aid manufacturers;

2. Refusing to make available promptly upon request

(a) a hearing aid, accessory or any written materials necessary to fit and sell such hearing aid or accessory, to any dealer engaged in the sale of hearing aids, if respondent makes such products available to any dealer, other than a dealer to whom hearing aids are made available pursuant to this paragraph, located within 100 miles of the requesting dealer, or

(b) a repair or replacement part or any written materials necessary to repair or replace such hearing aid, to any person engaged in the repair of hearing aids when requested for such purpose, if respondent makes repair or replacement parts available to any dealer for such purpose, *Provided however*, That respondent may impose a \$10. minimum order requirement for such parts;

(c) repair service on a nondiscriminatory basis with respect to a hearing aid manufactured by respondent when requested by any dealer who sold such aid;

Provided, however, That if no other provision of this order is violated thereby:

(1) respondent may require as a condition to the availability directly from it of any of its products that the dealer or person referred to in 2(a), (b) or (c) above has received instruction or met standards necessary for the fitting, servicing and/or repairing of respondent's hearing aids which are required at that time of all then existing dealers of respondent's products or all persons then engaged in the repair of respondent's products, so long as such instruction, if made available to any dealer or person, is made available by respondent on reasonable terms and conditions to all dealers or persons wanting to deal in or repair respondent's product,

(2) respondent may refuse to make available directly from it any of its products to any dealer or person if such requesting dealer or person is able promptly to obtain the product from another dealer or distributor at respondent's price to such dealer for a single unit (meaning the same price and discount terms available from respondent) plus a reasonable handling charge, and

(3) respondent may refuse to make available directly from it any of its products or services to any dealer or person on other

grounds related to that dealer's or person's professional competence or ethical conduct, so long as such refusals are uniformly made where such grounds exist;

3. Entering into, maintaining, preserving or enforcing by refusal to sell or repair, setting of sales quota or equivalent thereof, termination or threat thereof, communicated expectation or request, report of sale, warranty limitation, use of names or addresses of a dealer's customers, or in any other manner, any arrangement or method of doing business which has the purpose or effect of restricting or limiting

(a) the territory or area in which a dealer of respondent's hearing aids advertises, offers for sale, sells or repairs such products, or

(b) the person or persons with whom a dealer of respondent's hearing aids deals;

4. Failing to return any hearing aid submitted to respondent for repair directly to the person who submitted such product for repair, unless otherwise instructed in writing by such person;

5. Fixing, establishing, stabilizing, maintaining or suggesting the prices at which a dealer of respondent's hearing aids may or shall advertise, offer for sale, or sell to the public, or a person repairing respondent's hearing aid may repair, such products; *Provided, however,* That nothing in this order shall prohibit respondent after ten years from the date of entry of this order from exercising any lawful rights it may then have under the Miller-Tydings Act, 50 Stat. 693 (1937) and the McGuire Act, 66 Stat. 632 (1952) with respect to hearing aids.

6. Requiring that a dealer participating in respondent's cooperative advertising program must not state or imply, in such cooperative advertisements, that the dealer also deals in other brands of hearing aids; *Provided, however,* That respondent may continue to prohibit in such cooperative advertisement the stating of other brand names of hearing aids;

7. Requiring or coercing a dealer of respondent's hearing aids to submit to respondent the names or addresses of any customers of such dealer, or, with respect to such customer names or addresses obtained from a dealer after the effective date of this order, maintaining, using, publishing or disseminating them for any purpose, without securing the free and informed written consent of the dealer for each such purpose based upon full disclosure to the dealer of the specific uses and disseminations which would be made of the customer names. No such consent shall be sought for other

