

IN THE MATTER OF

DAHLBERG ELECTRONICS, INC.

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

Docket 9013. Complaint, Jan. 29, 1975 — Decision, Sept. 8, 1976

Consent order requiring a Minneapolis, Minn., manufacturer of hearing aids and hearing aid products among other things to cease misrepresenting the beneficial results of using its merchandise; misrepresenting the performance characteristics, efficacy and uniqueness of its products; furnishing means and/or instrumentalities of misrepresentation or deception; and failing to maintain records which are both accurate and adequate. Further, should a final trade regulation rule regarding hearing aids be promulgated, such rule shall supersede this order to the extent that any requirement or prohibition herein is omitted by the rule or differs from the corresponding portion of the rule.

Appearances

For the Commission: *Wallace S. Snyder.*

For the respondent: *Reinhold F. Hollender*, Minneapolis, Minn., and *Jack L. Lahr* and *John C. Fillippini, Arent, Fox, Kintner, Plotkin & Kahn*, Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Dahlberg Electronics, Inc. hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Dahlberg Electronics, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota with its principal place of business located at Golden Valley, Minnesota.

PAR. 2. Respondent is now, and for some time last past has been engaged in the advertising, offering for sale, sale and distribution of hearing aids which come within the classification of device as the term "device" is defined in the Federal Trade Commission Act, to dealers, distributors, licensees, retailers, salespersons, representatives or agents thereof, for resale to the public.

PAR. 3. In the course and conduct of its business as aforesaid, respondent causes, and for some time last past has caused, its devices

when sold to be shipped from its place of business in the State of Minnesota to purchasers thereof located in various other States of the United States, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said devices in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business and at all times mentioned herein, respondent has been, and is now, in substantial competition in commerce with corporations, firms and individuals likewise engaged in the sale of hearing aids of the same general kind and nature as the devices sold by respondent.

PAR. 5. Respondent in the course and conduct of its business and for the purpose of inducing the purchase of said devices has furnished and supplied to dealers, distributors, licensees, retailers, salespersons, representatives or agents thereof, who sell said devices to the public, various types of advertising materials, including, but not limited to advertisements, sales manuals, brochures, advertising mailers, ad mats and other sales aid materials.

Respondent has assisted, aided, provided payments to and otherwise cooperated with its dealers, distributors, licensees, retailers, salespersons, representatives, or agents thereof, in the advertising of said devices.

PAR. 6. In the course and conduct of its business respondent has disseminated, and does now disseminate, certain advertisements by use of the United States mail and by various means in commerce as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements inserted in periodicals of general circulation, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said devices, and has disseminated, and caused the dissemination of, advertisements concerning said devices by various means, including those aforesaid, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said devices in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. Typical and illustrative of the advertisements referred to in Paragraphs Five and Six, but not all-inclusive thereof, are the advertisements attached hereto.

PAR. 8. Through the attached advertisements and similar advertisements not expressly set out herein, and otherwise, respondent has represented directly or by implication that:

1. Respondent merchandises a hearing aid which is a new invention or involves new model features or a new mechanical, engineering or scientific concept or principle in hearing aid capability.

2. Respondent's hearing aids will be beneficial to persons with a hearing loss regardless of the type or extent of loss.

3. Respondent's hearing aids will enable persons with a hearing loss to distinguish and understand speech sounds in group or noisy situations.

4. Respondent's hearing aids will help those persons who hear but do not understand.

5. Respondent's hearing aid glasses designed for bone conduction will be beneficial to persons with hearing loss regardless of the type or extent of loss.

6. Respondent's hearing aids will restore natural hearing to wearers and will enable wearers of such devices to hear sounds naturally.

7. Use of respondent's hearing aids can reverse, halt or retard the progression of a hearing loss.

PAR. 9. In truth and in fact:

1. The hearing aids referred to in the advertisements cited in Paragraph Seven and in other advertisements are not new inventions nor do they involve model features or mechanical, engineering or scientific concepts or principles in hearing aid capability that are new.

2. Many persons with a hearing loss will not receive any significant benefit from any hearing aid.

3. Many persons with a hearing loss will not be able to consistently distinguish and understand speech sounds in group and noisy situations by using any hearing aid.

4. In many instances, persons who hear but do not understand have a discrimination problem that cannot be helped by respondent's hearing aids.

5. Many persons with a hearing loss will not benefit from the use of a bone conduction hearing aid.

6. No hearing aid will restore natural hearing to the wearers thereof nor will it enable such persons to hear sounds naturally.

7. No hearing aid will reverse, halt or retard the progression of hearing loss.

Therefore, the advertisements referred to in Paragraphs Five through Eight were, and are, misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act and the aforesaid statements and representations referred to in Paragraphs Five through Eight were and are false, misleading and deceptive.

PAR. 10. Through the use of the aforesaid advertisements, respondent has represented, directly or by implication, that at the time that respondent made the claims set forth in Paragraph Eight, respondent had a reasonable basis for such claims.

PAR. 11. In truth and in fact, at the time that respondent made the claims set forth in Paragraph Eight, respondent had no reasonable basis from which to conclude that such claims were true.

Therefore, the statements and representations set forth in Paragraph Eight were, and are, deceptive or unfair acts or practices.

PAR. 12. At the time that respondent made the claims set forth in Paragraph Eight, respondent had no reasonable basis to support such claims.

Therefore, the making of the claims set forth in Paragraph Eight was, and is, a deceptive or unfair act or practice.

PAR. 13. The following statement constitutes a material fact with respect to the making of any claim regarding the hearing capability or hearing quality of any hearing aid:

Many persons with a hearing loss will not receive any significant benefit from any hearing aid.

PAR. 14. The advertisements referred to in Paragraphs Five through Eight contain claims regarding the hearing capability or the hearing quality of respondent's hearing aids and fail to disclose the material fact set forth in Paragraph Thirteen. Therefore, those advertisements were and are "false advertisements" as that term is defined in the Federal Trade Commission Act, and respondent's failure to disclose said material fact in connection with each such claim for its hearing aids was, and is, an unfair or deceptive act or practice.

PAR. 15. The dissemination by respondent of the aforesaid false advertisements and the use of the aforesaid unfair or deceptive acts or practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said advertisements and representations were, and are, true and into the purchase of substantial quantities of respondent's devices by reason of said erroneous belief.

PAR. 16. The aforesaid acts and practices of respondent, as herein alleged, including the dissemination of false advertisements, and the making of representations without a reasonable basis as aforesaid, were, and are, all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act.

Complaint



**NEWSPAPER ADVERTISING
BASIC ADS**

ATTACHMENT A

FOR MILD NERVE DEAFNESS

NEW!
Miracle Ear

OUR RECOMMENDATION for those who hear sounds but don't always understand words!

Just slip it in your ear! When you need HEARING LIFT!

PROVEN IN USE

- ★ Remarkable new design—smaller than ever before!
- ★ Natural colored, contoured to blend with the shape of your ear!
- ★ Proven in Use! Happily worn by thousands!
- ★ NO CORDS, NO TUBES, Nothing in your clothes or in your hair!

NO CORDS • NO TUBES • NO WIRES

Miracle Ear

EXCLUSIVELY FROM
DAHLBERG ELECTRONICS, INC.

© 1972—
Dahlberg Electronics, Inc.
U.S. PATS.: 3,197,576;
3,197,577; D200,858

If you can hear sounds but can't always understand words... SEND THIS COUPON NOW! NO OBLIGATION.

DEALER'S FIRM NAME
ADDRESS AND PHONE

Tell me how to hear again in both ears without using hearing aids that have cords or tubes.

Name _____
Address _____
City _____ State _____ Zip _____

Ad No. MA 11
3 x 5 1/8 in. (100 lines)

The elements in this mail may be used in local editions of this advertisement provided the identity thereof as compared to Dahlberg advertisement elements as set forth in the Co-op Advertising Manual.

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

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Complaint

88 F.T.C.



NEWSPAPER ADVERTISING BASIC ADS

ATTACHMENT B

I'M NOT DEAF!

Under normal conditions, I hear well enough. But sometimes my ultraminature Dahlberg Miracle-Ear hearing aid is a blessing. I just put it in my ear and I hear more clearly. It is so natural sounding—nothing above my ear, or below my ear. Nothing behind my ear or in front of my ear. No tubes, no wires, no scratchy sounds. It is especially designed for those who hear but do not always understand—a classic symptom of nerve impairment. If diagnosis shows you have this type of loss, this modern hearing aid may give you the extra "life" you need to live a full and active life!



Rush this coupon. You'll receive a descriptive pamphlet promptly.

*ASK YOUR DOCTOR ABOUT
DAHLBERG HEARING AIDS.



Dealer's Individual Name
Dealer Firm Name, Address
Please rush full information
on the Miracle-Ear.
Name _____
Address _____
City _____
State _____ Zip _____

MA 24

2 COL. X 45 lines (90h.)

The elements in this ad may be used in local adaptations of this advertisement provided the locally devised ad conforms to Dahlberg advertising standards as set forth in the Co-op Advertising Manual.

DAHLBERG ELECTRONICS INC. GOLDEN VALLEY, MINNEAPOLIS, MINNESOTA 55427

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NEWSPAPER ADVERTISING BASIC ADS

ATTACHMENT C

Mild Nerve Deafness?
 If you hear sounds but can't always understand the words—a classic symptom of nerve impairment.

HEAR YOUNG AGAIN

NO CORDS • NO TUBES • NO WIRES
 Miracle-Ear

OUR RECOMMENDATION*

Miracle-Ear®

DEVELOPED AND PATENTED BY DAHLBERG ELECTRONICS, INC.
 Proven in use! MIRACLE-EAR HAS HELPED COUNTLESS who could never hear clearly—they heard sounds, but words were jumbled. If diagnosis* shows you have this type of mild loss, Miracle-Ear may enable you to hear more clearly AND BETTER UNDERSTAND what people say, even in groups, church or meetings. Join the multitudes who now HEAR AGAIN MORE CLEARLY with Miracle-Ear.

***ASK YOUR DOCTOR ABOUT DAHLBERG HEARING AIDS**

U. S. PAT. 2,187,871; 2,187,872; 2,187,873; 2,187,874

Dealer's Firm Name _____
 Address _____
 Telephone _____
 Name _____
 Address _____
 City _____ State _____ Zip _____

SEND NOW

MA 27
2 COL. X 85 lines (170 li.)

The elements in this mat may be used in local editions of this advertisement provided the local device is conforming to Dahlberg advertising standards as set forth in the Copy Advertising Manual.

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

Complaint

88 F.T.C.



NEWSPAPER ADVERTISING BASIC ADS

ATTACHMENT D



You're not deaf . . . you hear, but it is often difficult for you to understand the world. MIRACLE-EAR® was made for you. Dahlberg was the first manufacturer to design, engineer and patent a self-contained, all-in-the-ear instrument specifically to help such mild hearing impairment.

MIRACLE-EAR® may be exactly what you need to keep your hearing sharp BEFORE more serious correction is required. No one can duplicate the years of advanced experience Dahlberg has put into this modern, space-age solution to the correction of hearing, the Miracle-Ear®.

ACT NOW! SEE HOW MIRACLE-EAR® CAN HELP YOU!

Mail for
FREE
information!

MIRACLE-EAR® Dept. 0000, P. O. Box 549
Minneapolis, Minn. 55440
Please tell me how I may understand words more
clearly with Miracle-Ear®.
Name _____
Address _____
City _____ State _____ Zip _____

MA 32
2 COL. X 70 lines (140 li.)

The elements in this mail may be used in local
reproductions of this advertisement provided the locally
printed ad conforms to Dahlberg advertising stan-
dards as set forth in the Copy Advertising Manual.

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

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Complaint



**NEWSPAPER ADVERTISING
BASIC ADS**

ATTACHMENT E

HEARING AIDS?
 THEY SURE DON'T MAKE
 THEM LIKE THEY
 USED TO...
THANK GOODNESS.

Thank goodness hard-of-hearing people don't have to be subjected to those huge, old-fashioned boxes with dangling wires and battery packs. The Dahlberg Hearing Aids of today are tiny beyond comprehension -- why, THEY'RE DOWNRIGHT GOOD-LOOKING! -- Yet, they're many times more powerful than hearing aids used to be. There's a Dahlberg aid to fit every need -- whether it's for lunks, type of hearing loss, or The Pocket Book.

MIRACLE EAR[®]
 P.O. Box 549
 Minneapolis, Minnesota 55440

DAHLBERG
 HEARING AIDS
 AUTHORIZED DEALER

YES! Tell me how I may be able to hear again without using hearing aids that have wires, tubes or cords.

NAME _____
 ADDRESS _____
 CITY _____
 STATE _____ ZIP _____

© 1975 DAHLBERG ELECTRONICS, INC.

MA 37

2 COL. X 80 lines (160 H.)

The elements in this unit may be used in local adaptations of this advertisement provided the layout device is conforming to Dahlberg advertising standards as set forth in the Group Advertising Manual.

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



**NEWSPAPER ADVERTISING
BASIC ADS**

ATTACHMENT F

**Hear with nothing
in your ear.**



These are the new kind of glasses that help you hear—and who'd ever guess? Because there's nothing in the ear. No wires. No cords. No tubes. No buttons. What you see here is all there is to see. Simply slip them on, and the tiny electronic system built in the sidepieces picks up and transmits sound directly to your inner ear through the principle of bone conduction. It's called Touche™—by Dahlberg Electronics, makers of the famous Miracle-Ear® hearing aid. Mail the coupon if you'd like more information. Ask your doctor about it. It wasn't designed to solve everyone's hearing problem, but it may very well help yours.

TOUCHE
 DAHLBERG ELECTRONICS
 DEPT. 0000, P.O. BOX 144
 MINNEAPOLIS, MINN. 55440

Yes, I'd like to know more about how the Touche hearing aid may help me to hear with nothing in my ear. I understand there is no obligation.

I now use a (check one)
 Behind the ear
 Behind the ear type
 All in the ear type No aid

NAME _____
 ADDRESS _____
 CITY _____
 STATE _____ ZIP _____

© 1988 DAHLBERG ELECTRONICS, INC. DAHLBERG AND MIRACLE-EAR ARE REGISTERED TRADEMARKS. U.S. PAT. 4,800,100 AND 4,800,101.

MA 38

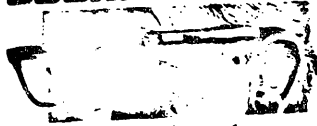
1 COL. X 110 lines (110 fl.)

The elements in this mail may be used to local adaptations of this advertisement provided the locally devised ad conforms to Dahlberg advertising standards as set forth in the Co-op Advertising Manual.

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

Seeing...and hearing...is believing!

TOUCHE®



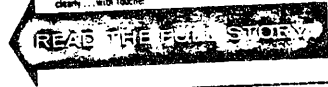
The astonishing glasses that help many to hear... with absolutely nothing in either ear.

Touche eyeglass hearing aid -- from Dahlberg Electronics, makers of the famous Miracle-Ear® hearing aids.

THINK ABOUT IT! If you're already wearing glasses, you won't be adding a single item to your "personal accessories" by turning to Touche® for hearing help. Nothing to carry in your pocket! Nothing in your ear! (Thanks to the principle of bone conduction.)

DAHLBERG ELECTRONICS, INC.

A warning symbol on the product part or package connects Touche is not the answer for all types of hearing loss, but you may be one of the fortunate few who may enjoy the thrill of hearing more clearly... with Touche!



hear with nothing in your ear

FIRST CLASS PERMIT NO. 888 MINNEAPOLIS, MINN.

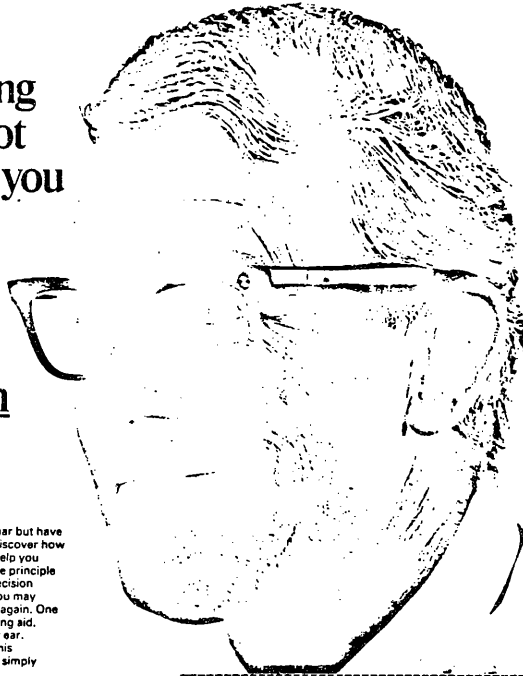
BUSINESS REPLY MAIL

Postage will be paid by Addressee Dept. D91-33 P.O. Box 849 Minneapolis, Minnesota 55440

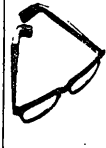


ATTACHMENT G(2)

These
astonishing
glasses not
only help you
see...
they help
you hear
with
nothing in
your ear.



No wires!
No tubes!
No earpieces!
Just your glasses! If you can hear but have
trouble distinguishing words, discover how
the Touché[®] hearing aid may help you
hear more clearly. Thanks to the principle
of bone conduction and the precision
workmanship of the Touché, you may
enjoy the thrill of good hearing again. One
unit serves as glasses and hearing aid.
There's nothing to wear in your ear.
Act now! For the full story on this
comfortable way to a fuller life, simply
mail the card below. There
is no obligation.



FILL OUT, TEAR OUT AND MAIL THIS POSTAGE-PAID CARD FOR FREE INFORMATION ON THE DAHLBERG ELECTRONICS TOUCHÉ

You'll like to know more about how the Touché may help you hear with nothing in your ear. (Thanks to the principle of bone conduction!) Understand there is no obligation.

I have seen a fitting unit:

All-in-the-ear type, Canal type, Behind-the-ear type,
 In-the-ear type, No aid.

NAME _____

ADDRESS _____

CITY _____

STATE _____ ZIP _____

© 1987 Dahlberg Electronics, Inc. Dahlberg is a registered trademark.

ML 48

DECISION AND ORDER

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

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

The Commission having thereafter accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 3.25(d) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

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

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

ORDER

PART I

It is ordered, That Dahlberg Electronics, Inc., a corporation, its successors and assigns, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of hearing aids, do forthwith cease and desist from:

1. Disseminating or causing the dissemination of any advertisement, by means of the United States mail or by any means in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, which

(a) Represents, directly or by implication, that:

(1) Respondent merchandises a hearing aid which is a new invention or involves a new mechanical, engineering or scientific concept or principle in hearing aid capability unless [1] respondent possesses and relies upon competent and reliable scientific or medical evidence which

establishes that respondent merchandises such a hearing aid which is a new invention or involves a new mechanical, engineering or scientific concept or principle in hearing aid capability; [2] the invention, concept or principle represents a significant benefit to users of the hearing aid; [3] respondent clearly and conspicuously describes the new invention, concept, or principle, and the significant benefit to the user of the hearing aid, in the advertisement; and [4] respondent maintains in its records, subject to reasonable inspection by Commission staff members, the competent and reliable scientific or medical evidence upon which it relies to support such claim until three (3) years after the last dissemination of any such claim.

(2) Respondent's hearing aid or its shape, design or any other model feature is new, or that respondent merchandises a hearing aid which is a new invention or involves a new mechanical, engineering or scientific concept or principle when such hearing aid or its shape, design or any other model feature or invention, mechanical, engineering or scientific concept or principle has been marketed in the United States for a period greater than one year. *Provided, however*, that such one-year time period shall not begin to run during the test marketing of such new model or feature where such test marketing program does not cover more than fifteen percent (15%) of the population, does not exceed six (6) months in duration, and is conducted in good faith for test purposes only.

(3) Respondent's hearing aids will be beneficial to persons with a hearing loss regardless of the type or extent of loss.

(4) Use of respondent's hearing aids will enable all persons with a hearing loss to consistently distinguish or understand speech sounds in noisy situations.

(5) Use of respondent's hearing aids will enable all persons with a hearing loss to consistently distinguish or understand speech sounds in group situations.

(6) Respondent's hearing aids will help all or most persons to discriminate speech sounds where they hear but do not understand.

(7) Respondent's bone conduction hearing aid glasses will be beneficial to persons with hearing loss unless in immediate conjunction therewith it is clearly and conspicuously disclosed that such aids are primarily designed for conductive hearing loss.

(8) Respondent's hearing aids will restore natural hearing to wearers or will enable wearers of such devices to hear sounds naturally.

(9) Use of respondent's hearing aids can reverse, halt, or retard the progression of a hearing loss.

(b) The disclosure required by Part I, paragraph 1(a)(7) of this Order shall be made as follows: In print advertisements, the disclosure shall

be displayed in type size which is at least the same size as that representation which creates the requirement for such disclosure. In television advertisements, the disclosures shall conform in all respects to the Commission's Statement of Enforcement Policy of October 21, 1970 (See Vol. 2 CCH Trade Regulation Reported Section 7569.09). The disclosure required by Part I, paragraph 1(a)(7) shall be made in immediate conjunction with the representation to which it relates. In all cases, the disclosure in print, radio and television advertisements shall be made in a clear and conspicuous manner and shall be presented in the language principally employed in the advertisement (*e.g.*, English, Spanish).

(c) In the event the Federal Trade Commission promulgates a final trade regulation rule which omits a requirement or prohibition or whose requirements or prohibitions differ in any manner with respect to the representations dealt with in any sub-paragraph of Paragraph 1 of Part I, of this order, such omissions, requirements or prohibitions with respect to such representations imposed by the rule shall, on the effective date of the rule, supersede and replace or cause to be automatically deleted the corresponding and differing sub-paragraphs of Paragraph 1, Part I, of this order.

2. Making, directly or indirectly, any statement or representation in any advertising or sales promotional material as to any feature (excluding physical appearance), or performance characteristic of, or the uniqueness, superiority or efficacy of any of respondent's hearing aids or any component part thereof, unless prior to the time of such statement or representation respondent had a reasonable basis for same, which shall consist of competent and reliable scientific or medical evidence.

3. Failing to maintain accurate and adequate records which may be inspected by Commission staff members upon reasonable notice:

(a) which contain documentation in support of any claim included in any advertising or sales promotional material disseminated by respondent, or any of its divisions' or subsidiaries' officers or employees, which claim concerns any feature (excluding physical appearance), or performance characteristic of or the uniqueness, superiority or efficacy of, any of respondent's hearing aids or any component part thereof; and

(b) which provided the basis upon which respondent relied at the time any such claim was made.

Such records shall be maintained by respondent for so long as any such material is disseminated by respondent or any of its divisions' or subsidiaries' officers or employees, or by its dealers, distributors, licensees, retailers, representatives or agents thereof, in cooperation

with respondent, and for a further period of three (3) years after the last dissemination of any such material.

4. Disseminating, or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of hearing aids in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited in paragraph 1 of Part I of this order.

PART II

It is further ordered, That Dahlberg Electronics, Inc., a corporation, its successors and assigns, and respondent's agents, representatives, officers and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale, or distribution of hearing aids in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act shall not:

1. Misrepresent, directly or indirectly, any feature or performance characteristic of any of respondent's hearing aids or any component part thereof.

2. Supply any dealer, distributor, licensee, retailer, salesperson, representative or agent thereof, with advertisements, sales manuals, brochures, advertising mats, or any other advertising or sales aid materials for the purpose of inducing or which are likely to induce, directly or indirectly, the purchase of respondent's devices, and which contain any of the false, misleading or deceptive representations prohibited in this order.

PART III

It is further ordered, That Dahlberg Electronics, Inc., a corporation and its successors and assigns, shall:

1. Within thirty (30) days after the effective date of this order, or within thirty (30) days after any dealer, distributor, licensee or retailer attains such status, distribute a copy of this order, by certified or registered mail, return receipt required, to each of respondent's known dealers, distributors, licensees, or retailers, who are now or in the future become engaged in the advertising, offering for sale, sale or distribution of respondent's hearing aids to the consuming public, except with respect to respondent's hearing aids advertised, offered for sale, sold or distributed under a private label by a party other than respondent, this requirement shall be limited to sending a copy of the order to the person responsible for the advertising of respondent's hearing aids under the

private label at the principal office of the private label purchaser of respondent's hearing aid.

2. Supply, upon request, proof of distribution to, and make available to the Federal Trade Commission for inspection and review, the names and addresses of those parties to whom respondent distributed a copy of this order as required by paragraph 1 of Part III of this order.

3. Inform each appropriate party described in paragraph 1 above that respondent shall not participate in any way in any advertisement which fails to comply with Part I of this order.

4. Not pay for, compensate for, print, mail or in any other way, directly or indirectly, through discounts, services, or any other benefit in lieu of direct payment, or otherwise participate in any manner in the preparation of, payment for, or dissemination of any of the advertisements of any party described in paragraph 1 above at any time if any such advertisement fails to comply with Part I of this order.

5. Within thirty (30) days after the effective date of this order, institute a program for reviewing any advertisement submitted by respondent's dealers, distributors, licensees, retailers, representatives or agents thereof, pursuant to respondent's cooperative advertising or similar program for advertising credit or other consideration.

PART IV

It is further ordered, That respondent submit to the Federal Trade Commission, within sixty (60) days from the effective date of this order, a detailed report describing the actions that respondent has taken in order to comply with said order.

In addition, respondent shall, for a period of three (3) years at one-year intervals from the effective date of this order, submit to the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of any subsidiary or any other change in the corporate structure which may affect any compliance obligation arising out of this order.

It is further ordered, That the respondent shall forthwith distribute a copy of this order to each of its operating divisions.

Commissioner Dole did not participate by reason of absence.

Complaint

88 F.T.C.

IN THE MATTER OF
BELTONE ELECTRONICS CORPORATION

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

Docket 9014. Complaint, Jan. 29, 1975 — Decision, Sept. 8, 1976

Consent order requiring a Chicago, Ill., hearing aid manufacturer, among other things to cease misrepresenting the uniqueness, benefits, characteristics and efficacy of its products. The respondent is also prohibited from disseminating and supplying misleading or deceptive promotional materials. Further, respondent is required to maintain appropriate records and institute a program for reviewing its advertising.

Appearances

For the Commission: *Wallace S. Snyder* and *Sally W. Thompson*.
For the respondent: *Donald A. Mackay*, *Sidley & Austin*, Chicago, Ill., *Elroy H. Wolff*, *Sidley & Austin*, Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Beltone Electronics Corporation, a corporation, and Sam Posen, David H. Barnow and Chester K. Barnow, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Beltone Electronics Corporation is a corporation, hereinafter referred to as the corporate respondent, organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 4201 West Victoria St., Chicago, Illinois.

Sam Posen is an individual, who is an officer and a director of the corporate respondent. He, with his wife, Faye Posen, is the founder and major stockholder of the corporate respondent, controlling, approving and authorizing the acts and practices of the corporate respondent and the remaining individual respondents, including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondent.

Respondent David H. Barnow is an individual who is an officer and a stockholder of the corporate respondent. Respondent Chester K.

Barnow is an individual who is a director and a stockholder of the corporate respondent. They cooperate in the formulation, direction and control of the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their business address is the same as that of the corporate respondent.

The individual respondent and Faye Posen own almost all of the corporate stock of the corporate respondent, which is a closely held, family corporation.

PAR. 2. Respondents are now, and for some time last past have been engaged in advertising, offering for sale, sale and distribution of hearing aids which come within the classification of device as the term "device" is defined in the Federal Trade Commission Act, to dealers and distributors for resale to the public.

PAR. 3. In the course and conduct of its business, as aforesaid, respondents cause, and for some time last past have caused, their said devices when sold to be shipped from their place of business in the State of Illinois to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said devices in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals likewise engaged in the sale of hearing aids of the same general kind and nature as the devices sold by respondents.

PAR. 5. Respondents in the course and conduct of their business, and for the purpose of inducing the purchase of said devices have furnished and supplied to dealers, distributors, licensees, retailers, salesmen, and representatives and agents thereof, who sell said devices to the public, various types of advertising materials, including but not limited to advertisements, sales manuals, brochures, advertising mailers, ad mats, and other sales aid materials.

Respondents have assisted, aided, provided payments to and otherwise cooperated with their dealers, distributors, licensees, retailers, salesmen, and representatives and agents thereof, in the advertising of said devices.

PAR. 6. In the course and conduct of their business, respondents have disseminated, and now disseminate, certain advertisements by the use of the United States mail, and by various means, in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements inserted in periodicals of general circulation or broadcast on radio or television, for the purpose of inducing and which are likely to induce, directly or indirectly the

