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IN THE MATTER OF
EDWARD BAUM TRADING UNDER HIS OWN NAME AND
AS THE MEGA-EAR-PHONE

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5408. Complaint, Nov. 30, 1945—Decision, Nov. 15, 1949

Where an individual engaged in the interstate sale and distribution of a device designated as the "Mega-Ear-Phone," which was recommended for the correction of deafness and other ear conditions, and which was composed of processed silk with a disk or drum at one end and side walls which extended from the disk in the form of four small flexible cones called "accumulators," intended, when inserted into and along the outer channel of the ear to bring the disk in contact with the ear drum, to expand with the ear and effectively convey sound impulses; in advertising his said product through the mails, newspapers and by booklets, letters and other advertising literature—

- (a) Represented that said device relieved deafness, eliminated head noises, and enabled a deaf person to hear irrespective of the cause and degree of deafness; and that use thereof would restore and improve hearing; and would restore the natural flow of wax in the ear and promote the ear's health in general; The facts being that the placing of said device in the auditory canal and against the ear drum would have no effect on the perceptive or nerve type of deafness, and no favorable influence in the conductive type of cases where there is impairment of the ossicles or bone mechanism of the middle ear; and it would not in other respects accomplish the results above claimed therefor;
- (b) Falsely represented that it would cause thickened membranes of the ear drum to become thinner and would restore elasticity and the proper degree of moisture to the ear drum; that a distended ear drum and dislocated ossicle of the middle ear would be corrected by the use of the device and thereafter held in proper position; and that said device served as a perfect substitute for punctured, perforated, ruptured, or destroyed ear drums;
- (c) Falsely represented that it would not injure the most sensitive and delicate ear and was the latest and most effective device for impaired hearing and deafness and fulfilled every requirement for relief thereof, and that it was beneficial in cases of nervous deafness; the facts being that injury to the ear might result through the manner in which said device was inserted or removed, and use thereof coincident with suppuration of the middle ear might interfere with ear drainage; and other claims therefor were likewise false;
- (d) Represented that the shape of the ear was necessarily as indicated in certain drawings set forth in his advertisements, and that the exact position and placement of his device in the user's ear was the same as that portrayed in the drawings; and that the result to be obtained by use of said device would be the same as indicated by the designated placements as drawn;

The facts being that the auditory canal and membrane varies among individuals in respect to shape and pattern and frequently depart from the contours

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described in his advertising; and there was no assurance that the device would assume the exact position and placement in the ear canal as portrayed;

- (e) Falsely represented that the inflation treatment for deafness for catarrh was harmful, and that his device was a proper substitute therefor in the treatment of such cases;
- (f) Falsely represented that he could determine the proper size of device for any particular customer solely by the answers to questions listed on the "Information Blank"; the facts being it is not possible to determine the size of the auditory canal and the proper size of the device to be furnished solely on the basis of answers to the questions listed; and
- (g) Failed to reveal in his said advertising facts material with respect to the consequences which might result from the insertion, removal, or use of said device under customary conditions, in that unsupervised use by persons suffering from ear disorders of the applicator, syringe, inserter tube, and metal tweezers included with the outfit, was attended with the danger of causing serious traumatic injury to the ear, particularly the membrane or drum and certain of the ossicles;

With tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that said representations were true, and that use of said device and the manner of insertion and withdrawal thereof were free from danger, and thereby to induce its purchase of his said products:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

As respects the fact that the testimony in said proceeding included (1) that of a scientific witness, who testified on behalf of respondent, on the basis of his experience with the device, that it was effective in treating hearing losses due to perforation of the ear drum and in his opinion as an artificial drum when placed in contact with the perforated area, thereby inducing backfire from the Eustachian tube, which might be interfering with sound impulses being conveyed through the middle ear; (2) testimony of eight users of the device, members of the public, who expressed the opinion that they had experienced improvement in their hearing coincident with such use; and (3) testimony of three scientific witnesses—including two who based their opinions in part on the clinical experience of army hospitals which used the device for test purposes on a selected cross-section of patients—that it had no therapeutic value:

The Commission was of the opinion, in view of the pertinent facts concerning deafness, the functioning of the ear, and the nature of said device, that the views of the scientific witnesses that the device had no beneficial effect in the treatment of or as a mechanical aid in cases of deafness or partial deafness, outweighed the evidence submitted to the contrary.

Before *Mr. Henry P. Alden*, trial examiner.

Mr. Charles S. Cox for the Commission.

Buckley & Danzansky, of Washington, D. C., and *Mr. Nathan Griffith*, of Philadelphia, Pa., for respondent.

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 Edward Baum, an individual, hereinafter referred to as the 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 Edward Baum is an individual, and has his office and principal place of business at 6114 Carpenter Street, Philadelphia, Pa. He trades and does business under his own name and also the name "The Mega-Ear-Phone."

PAR. 2. Respondent is now, and has been for more than 4 years last past, engaged in the business of advertising, selling, and distributing a device designated "The Mega-Ear-Phone." Said device is made of an oiled silk material and consists of four truncated hollow cones with diaphragm and is designed for insertion in the external auditory canal.

PAR. 3. Respondent causes said device, when sold, to be transported from his place of business in the State of Pennsylvania to the purchasers thereof located in various States of the United States other than the State of Pennsylvania and in the District of Columbia and at all times mentioned herein has maintained a course of trade in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of his aforesaid business, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said device by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said device, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said device in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as herein above set forth, by the United States mails, by advertisements inserted in newspapers, and by booklets, letterheads, and other advertising literature, are the following:

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DEAFNESS, THE MEGA-EAR-PHONE

A comfortable, invisible (non-rubber) ear device, relieves CATARRAH, DEAFNESS. Stops Head Noises. Makes Words More Plainly Understood. A perfect substitute for ruptured or destroyed ear drums. Easily inserted. Immediate results.

A prompt reply will bring "quick relief".

After considering every word in the booklet (we urge you to do this) you'll understand *why* and *how* the MEGA-EAR-PHONE relieves Deafness. To restore Hearing, some artificial means must correct disordered Ear Parts, or replace those Partially or Wholly Destroyed.—

THE MEGA-EAR-PHONE COMES NEARER CORRECTING OR REPLACING THE NATURAL EAR DRUM AND TINY EAR BONES than any known device. Sometimes the drum distended and thickened (Fig. 2, p. 8)—Perforated, Punctured or ruptured (illustrated on pp. 10 and 11)—Sometimes entirely gone (pp. 12 and 13). In these varied conditions the distention is corrected, cavity sealed—the Gap is bridged, Irritation barred, membrane thinned—natural waxy secretion (Ear-Wax) restored and the Ear's Health—in general—Promoted by the MEGA-EAR-PHONE.

Relief—perhaps a new world—is within your reach for a nominal sum of \$10—.

To correct the many causes of Deafness or impaired hearing, the MEGA-EAR-PHONE is in reality the embodiment of practical and scientific principles, fulfilling in every detail every requirement of a perfect device, proving a substitute when the natural drums are partially or entirely destroyed, perforated, ruptured, or punctured, and acting precisely the same as the natural Drum; especially when the drum has become thickened, deadened, relaxed and weakened, or in bone separation, the MEGA-EAR-PHONE supplies the deficiency.

Directions for inserting and the use of the Mega-Ear-Phone—. Make sure that the canal is free from wax or accumulation of any kind—mop gently until dry, using cotton twisted around wooden applicator—Hold the inserter with phone engaged—push gently inward—until contact is felt with the natural drum, which is about one inch from the external meatus or opening.

If there is any doubt that the phones are not in the proper position—the reverse end of the tube should be used—. The four sound accumulators act not unlike a bushing, adheres to the channel walls and retains the device in position—. The only necessity for the removal of the phones will be the accumulation of ceramen (Ear Wax)—and removal—is easily accomplished with a small pair of tweezers.

The next illustration shows the appearance of the Internal Ear when the condition is corrected by the proper application of the Mega-Ear-Phone.

CATARRHAL DEAFNESS RESULTING IN DISTENDED DRUM AND DIS-LOCATED OSSICLES CORRECTED BY THE MEGA-EAR-PHONE * * *

(Drawing of cross-section of an ear showing Mega-Ear-Phone in position). It exerts gentle pressure on the Drum, restoring and pushing it back into its natural position, where it is retained. At the same time it gradually and gently brings the little bones to the correct angle, restoring them to their proper alignment. It takes away the strain and pressure on the Inner Drum. The head noises and other annoying symptoms are suppressed and the hearing materially improved. This is the starting point towards recovery.

TOTAL DESTRUCTION OF DRUM AND OSSICLES.

(Drawing of cross-section of an ear with drum destroyed, leaving inner ear exposed. This drawing is followed by another similar thereto, but with a drawing of the Mega-Ear-Phone in position for such cases.)

This illustration shows the wonderful effectiveness of The Mega-Ear-Phone in this condition. It takes the place of both Ear Drum and Ossicles, which are entirely destroyed. It bridges the gap from the rim of the Drum to the stump of the stirrup bone attached to the Inner Drum; fulfilling every requirement of a mechanical substitute, hermetically sealing the cavity of the delicate Middle Ear, the accumulators of the appliance transmitting the concentrated sounds directly to the Inner Drum.

Nervous deafness—the Mega-Ear-Phone proves of great benefit in such cases, by increasing the sound vibration, sustaining the Drum and stimulating and training the weak and feeble nerve to more acutely perceive the sound impression and convey it more quickly.

The Mega-Ear-Phones are sent to you in a case containing six pairs and all the necessary accessories to enable one to take care of one's self. (The correct size is determined from your answers on the information blank.) (In this manner a perfect fit is assured.)

PAR. 5. By use of the representations hereinabove set forth in paragraph 4 and other representations similar thereto, not specifically set forth herein, respondent represents that his device "MEGA-EAR-PHONE" relieves deafness, eliminates head noises, and enables a deaf person to hear, irrespective of the cause and degree of deafness; that its use will restore hearing; that it will restore the natural flow of wax in the ear and the ear's health in general; that it causes thickened membranes of the ear to become thinner and restores the proper degree of moisture and elasticity to the ear drum; that a distended ear drum and dislocated ossicles will be corrected by the use of said device and thereafter held in proper position; that it serves as a perfect substitute for punctured, perforated, ruptured or destroyed ear drums; that it will not injure the most sensitive and delicate ear, and is the latest and most effective device for impaired hearing, hardness of hearing and deafness, and fulfills every requirement for the relief thereof; that the inflation treatment for deafness from catarrh is harmful and that respondent's device is the proper substitute therefor in the treatment of such cases; that the cross-sections of the human ear are as indicated in the drawings and said advertisements, and that the exact position and placement of respondent's device in the user's ear is the same as that indicated in the drawing; that the results to be obtained by the use of said device will be that as indicated by the designated corrected placements as drawn; that said device is beneficial in cases of nervous deafness and that respondent can determine the proper size of his

said device for any particular customer solely from the answers to questions listed on the "Information Blank."

PAR. 6. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact, the use of said device "Mega-Ear-Phone" will not relieve deafness, will not eliminate head noises, nor will it enable a deaf person to hear. The use of said device will not restore a deaf person's hearing, nor will it restore the proper flow of natural wax in the ear or the ear's health in general. Its use will not cause thick membranes of the ear to become thinner, restore moisture or elasticity to the ear drum, nor will it correct a distended ear drum or dislocated ossicles. It will not serve as a substitute for punctured, perforated, ruptured, or destroyed ear drums. Its use may irritate and injure the ear. Furthermore, injury may result through the manner in which the device is inserted or removed from the ear by following the directions for use. The inflation treatment for deafness from catarrh is not harmful when administered by a competent physician, and the use of respondent's device is not a proper and competent substitute for such treatment. The drawings of the cross-section of the human ear as portrayed in said advertisements are incorrect in that the human ear conforms to various shapes and patterns and respondent's device does not occupy the position in the ear nor accomplish the results as indicated in the drawings. Respondent's device is of no value in the treatment of nervous deafness. It is impossible to determine the size of the auditory canal and the proper size of the device to be furnished from the answers to questions listed in respondent's information blank. In truth and in fact, respondent's said device is of no value in the treatment of or as a mechanical aid in cases of deafness or partial deafness, regardless of cause.

PAR. 7. Respondent's advertisements, disseminated as aforesaid, constitute false advertising for the further reason that they fail to reveal facts material in the light of such representations or material with respect to the consequences which may result from the use of said device to which the advertisements relate, under the conditions prescribed in such advertisements, or under such conditions as are customary or usual. In truth and in fact, the directions and instructions for the use of respondent's said device require that the user clean his ears before inserting the device by using a wooden stick with a cotton swab on the end and that the device is to be inserted by using a slotted stick designated as an "inserter" and the use of a pair of metal tweezers when removing the Mega-Ear-Phones. The use of a wooden stick or metal object inside the auditory canal is potentially dangerous, and may result in serious injury to the ear and hearing.

PAR. 8. The use by the respondent of the foregoing false, misleading, and deceptive statements and representations has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and that the use of said device and manner of insertion are free from danger and injury, and to induce a substantial portion of the purchasing public because of such erroneous and mistaken belief to purchase respondent's said devices.

PAR. 9. The aforesaid acts and practices of respondent, as hereinabove alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 30, 1945, issued and subsequently served its complaint in this proceeding upon the respondent, Edward Baum, an individual trading under his own name and as The Mega-Ear-Phone, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. Thereafter, a stipulation was entered into between counsel supporting the complaint and the respondent, which provided among other things for amending the complaint in respect to certain typographical errors appearing therein. Subsequently testimony and other evidence in support of and in opposition to the allegations of the complaint as amended were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission upon the complaint as amended, testimony and other evidence, recommended decision of the trial examiner, brief in support of the complaint as amended (no brief having been filed on behalf of respondent), and oral argument; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Edward Baum, is an individual trading and doing business under his own name and as The Mega-Ear-

Phone, with his principal office and place of business located at 6114 Carpenter Street, Philadelphia, Pa.

PAR. 2. Respondent is engaged in the sale and distribution to the purchasing public of a device designated as the Mega-Ear-Phone, which is recommended for the correction of deafness and other ear conditions. Respondent's product is sold as a set or outfit, comprising six pairs of Mega-Ear-Phones, together with a syringe for cleansing the ear, wooden applicators, cotton, injection tube, metal tweezers, and a container of oil. Made in four sizes, the Mega-Ear-Phone is composed of silk which has been processed and as folded into its finished form has a disk or drum at one end and side walls which extend from the disk in the form of four small flexible cones called "accumulators." When inserted into and along the outer channel of the ear for the distance necessary to bring the disk in contact with the ear drum, the accumulators are intended to expand with the ear and effectively convey sound impulses.

Respondent causes his products, the Mega-Ear-Phone and its accessories, when sold, to be transported from his place of business in the State of Pennsylvania to purchasers located in various States of the United States other than the State of Pennsylvania, and maintains a course of commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of his aforesaid business the respondent has disseminated, and has caused and is now causing the dissemination of, false advertisements concerning his Mega-Ear-Phone sets by the United States mails and by various means in commerce as "commerce" is defined in the Federal Trade Commission Act. Such advertisements are disseminated for the purpose of inducing, and are likely to induce, directly or indirectly, the purchase of respondent's Mega-Ear-Phone in commerce as "commerce" is defined in such act. Among and typical of the false, misleading, and deceptive advertisements and representations contained in such false advertisements disseminated and caused to be disseminated by the United States mails, by advertisements in newspapers, by booklets, letters, and other advertising literature, are the following:

DEAFNESS, THE MEGA-EAR-PHONE—A Comfortable, Invisible (not rubber) Ear Device, relieves CATARRH DEAFNESS. Stops HEAD NOISES. Makes Words More Plainly Understood. A perfect substitute for ruptured or destroyed ear drums. Easily inserted. Immediate results.

A Prompt Response Will Bring "Quick Relief."

After considering every word in the booklet (we urge you to do this) you'll understand *why* and *how* the MEG-EAR-PHONE relieves Deafness. To restore Hearing, some artificial means must correct disordered Ear Parts, or replace those Partially or Wholly Destroyed. * * *

THE MEGA-EAR-PHONE COMES NEARER CORRECTING OR REPLACING THE NATURAL EAR DRUM AND TINY EAR BONES than any known device. Sometimes the Drum is distended and thickened (Fig. 2 Page 8)—Perforated, Punctured or Ruptured (Illustrated on Pages 10 and 11)—Sometimes entirely gone (Pages 12 and 13). In these varied conditions the distention is corrected, cavity sealed—the Gap is bridged, Irritation barred, membrane thinned—Natural waxy secretion (Ear-Wax) restored and the Ear's Health—in general—Promoted by "THE MEGA-EAR-PHONE."

* * * provides a substitute for the destroyed part of the natural Drum.

THE INVISIBLE MEGA-EAR-PHONE is the latest and most effective device for the relief of impaired hearing or deafness of any degree.

NERVOUS DEAFNESS * * * The Mega-Ear-Phone proves a great benefit in such cases, by increasing the sound vibration, sustaining the Drum and stimulating and training the weak and feeble nerve to more acutely perceive the sound impression and convey it more quickly.

NON-IRRITATING—The Mega-Ear-Phone cannot possibly irritate or injure the most sensitive and delicate ear, yet it proves a powerful aid to hearing.

A HARMFUL TREATMENT OF DEAFNESS * * * the Inflation Treatment. * * *

The next illustration shows the appearance of the Internal Ear when the condition is corrected by the proper application of the Mega-Ear-Phone.

CATARRHAL DEAFNESS RESULTING IN DISTENDED DRUM AND DIS-LOCATED OSSICLES CORRECTED BY THE MEGA-EAR-PHONE * * * [Drawing of cross-section of an ear showing Mega-Ear-Phone in position.] It exerts gentle pressure on the Drum, restoring and pushing it back into its natural position, where it is retained. At the same time it gradually and gently brings the little bones to the correct angle, restoring them to their proper alignment. It takes away the strain and pressure from the Inner Drum. The head noises and other annoying symptoms are suppressed and the hearing materially improved. This is the starting point toward recovery. * * *

TOTAL DESTRUCTION OF DRUM AND OSSICLES * * * [Drawing of cross-section of an ear with drum destroyed, leaving inner ear exposed. This

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drawing is followed by another similar thereto, but with a drawing of the Mega-Ear-Phone in position for such cases.] This illustration shows the wonderful effectiveness of the Mega-Ear-Phone in this condition. It takes the place of both Ear Drum and Ossicles, which are entirely destroyed. It bridges the gap from the rim of the Drum to the stump of the Stirrup bone, attached to the Inner Drum; fulfilling every requirement of a mechanical substitute, hermetically sealing the cavity of the delicate Middle Ear, the accumulators of the appliance transmitting the concentrated sounds directly to the Inner Drum.

The Mega-Ear-Phones are sent to you in a case containing six pairs and all the necessary accessories to enable one to take care of one's self. * * * The correct size is determined from your answers on the Information Blank. In this manner a perfect fit is always assured.

PAR. 4. By use of the foregoing representations and other representations similar thereto, not specifically set forth herein, respondent represents that the Mega-Ear-Phone relieves deafness, eliminates head noises, and enables a deaf person to hear, irrespective of the cause and degree of deafness; that the use of respondent's device will restore and improve hearing; that it will restore the natural flow of wax in the ear and promote the ear's health in general; that it will cause thickened membranes of the ear drums to become thinner and will restore elasticity and the proper degree of moisture to the ear drum; that a distended ear drum and dislocated ossicles of the middle ear will be corrected by the use of respondent's device and thereafter held in proper position. Respondent further represents that the Mega-Ear-Phone serves as a perfect substitute for punctured, perforated, ruptured, or destroyed ear drums; that it will not injure the most sensitive and delicate ear and is the latest and most effective device for impaired hearing and deafness and fulfills every requirement for the relief thereof; that said device is beneficial in cases of nervous deafness; that the shape of the human ear is necessarily as indicated in certain drawings set forth in respondent's advertisements and that the exact position and placement of respondent's device in the user's ear is the same as that portrayed in the drawings; that the results to be obtained by the use of said device will be the same as indicated by the designated placements as drawn; that the inflation treatment for deafness from catarrh is harmful and that respondent's device is a proper substitute therefor in the treatment of such cases; and that respondent can determine the proper size of device for any particular customer solely by the answers to questions listed on the "Information Blank."

PAR. 5. The Commission finds that the foregoing representations are grossly exaggerated, falsely, and misleading. Loss of hearing is divided in two categories, conductive and perceptive. The first type

embraces conditions where there is interference with the conduction of sound through the outer and middle ears to the inner ear. The perceptive category, which is also designated as "nerve deafness," refers to any lesion affecting the inner ear, the auditory nerve, or the brain. The outer ear extends to the end of the auditory canal and terminates at the ear drum, a tissue-thin membrane. Sound impulses reaching this membrane are conveyed by the middle ear to the inner ear by means of small bones or ossicles.

The placing of respondent's device into the auditory canal against the ear drum will have no effect on perceptive or nerve type of deafness and will have no favorable influence in conductive cases where there is impairment to the ossicles or bone mechanism of the middle ear. Respondent's device will not relieve deafness or enable a person to hear irrespective of the cause and degree, nor will it eliminate head noises; its use will not restore hearing or the natural flow of wax in the ear, or promote ear health in general. It will not cause the thickened membranes or ear drums to become thinner, or restore elasticity and a proper degree of moisture to the ear drum. The Mega-Ear-Phone will not correct a distended ear drum or dislocated ossicles and is of no value in the treatment of nervous deafness. It is not true that respondent's device serves as a perfect substitute for punctured, perforated, ruptured, or destroyed ear drums. Injury to the ear may result through the manner in which respondent's device is inserted or removed, and use of respondent's device coincident with suppuration of the middle ear may interfere with ear drainage.

A scientific witness testifying on behalf of respondent states, on the basis of his experience with the device, that the Mega-Ear-Phone is effective in treating hearing losses due to perforation of the ear drum. In his opinion it serves as an artificial drum when placed in contact with the perforated area, thereby reducing backfire from the Eustachian tube which may be interfering with sound impulses being conveyed through the middle ear. Submitted also on behalf of respondent, in addition to respondent's own testimony, is the testimony of eight users of respondent's device. These members of the public express the opinion that they have experienced improvement in their hearing coincident with use of the Mega-Ear-Phone. On the other hand, three scientific witnesses have testified in effect that the device has no therapeutic value. Two of such witnesses base their opinions in part on the clinical experience of an army hospital which used the device for test purposes on a selected cross-section of patients.

Rupture or perforation of the ear drum may be caused by trauma or by infections in the middle or inner ear. Perforations of the ear

drum of traumatic origin very frequently are accompanied by injury to the ossicles of the middle ear or impairment of the inner ear. In either case such conditions impair hearing and the insertion of a foreign body would not beneficially influence the basic cause of deafness. Perforations of the ear drum may vary from pin point in size to instances in which a large area is affected. Healing of the membrane with scar tissue will ensue in normal course unless the area affected is too large or infection prevents, and respondent's device would be of no benefit in such connection. Since the sound waves already are concentrated within the tube-like auditory canal, there is no possibility, it is concluded, that respondent's device intensifies sound waves reaching the middle ear. Moreover, when inserted without visual observation there is no assurance that the Mega-Ear-Phone will be placed in apposition to the drum or would so remain if placed in such apposition. The Commission is of the opinion, therefore, that the views of the scientific witnesses who have testified that the device has no beneficial effect in the treatment of or as a mechanical aid in cases of deafness or partial deafness outweigh the evidence submitted to the contrary.

Respondent's device is not an effective substitute for the inflation treatment of the catarrhal type of deafness and the inflation treatment is not harmful when administered by a competent physician.

When inserted without visual observation by the user the Mega-Ear-Phone will not accomplish the results indicated in respondent's illustrations, which refer to cross-sections of the human ear, nor is there any assurance that the device will assume the exact position and placement in the ear canal as portrayed. The auditory canal and membrane vary among individuals in respect to shape and pattern, and frequently depart from the contours described in respondent's advertising. It is not possible to determine the size of the auditory canal and the proper size of the device to be furnished solely on the basis of answers to the questions listed on respondent's information blank.

PAR. 6. The unsupervised use by persons suffering from ear disorders of respondent's applicator, syringe, inserter tube, and metal tweezers is attended with the danger of causing serious traumatic injury to the ear, particularly the membrane or drum and certain of the ossicles. The respondent's advertisements contain no statement in respect to such hazard. The Commission therefore finds that said advertisements constitute false advertisements as defined in the Federal Trade Commission Act for the reason that they fail to reveal facts material with respect to the consequences which may result from

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insertion, removal, or use of respondent's device under such conditions as are customary or usual.

PAR. 7. The use by the respondent of the foregoing advertisements has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and that the use of respondent's device and the manner of insertion and withdrawal thereof are free from danger and injury, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's products.

CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, stipulation in respect to amendment of certain typographical errors therein, the testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, the recommended decision of the trial examiner, brief in support of the allegations of the complaint (no brief having been filed on behalf of respondent), and oral argument, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That Edward Baum, individually and trading as The Mega-Ear-Phone, or under any other name, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of his device designated as "Mega-Ear-Phone," or any device of substantially similar character, whether sold under the same name or any other name, do forthwith cease and desist from, directly or indirectly:

- A. Disseminating or causing to be disseminated, by means of the United States mails or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or through inference:

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(1) That said device will relieve deafness or enable a deaf person to hear or that it will be of any value in the treatment or as a mechanical aid for deafness or impaired hearing;

(2) That said device will eliminate head noises;

(3) That said device will restore a proper degree of moisture or elasticity to the ear drum or will restore the natural flow of wax in the ear or promote ear health;

(4) That said device will cause thickened membranes of the ear to become thinner, will correct or hold in proper position a distended ear drum or dislocated ossicles, or will serve as a substitute for punctured, perforated, ruptured, or destroyed ear drums;

(5) That said device will not injure the ear;

(6) That respondent's device is an effective substitute for the inflation treatment or that the inflation treatment for catarrhal deafness is harmful;

(7) That the position of respondent's device in the ear will be as indicated in respondent's drawings or that respondent's device affords the corrected placements of the ear drum and ossicles as portrayed in respondent's advertisements;

(8) That respondent will be enabled to determine the proper size of the device required for a prospective purchaser solely from the answers given by the purchaser to questions in the "Information Blank" sent to him by respondent.

B. Disseminating or causing to be disseminated, by means of the United States mails or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, any advertisement which fails to reveal:

(1) That the insertion and removal of respondent's device by persons not trained in the anatomy of the human ear may cause injury to the ear and to hearing.

C. 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 said device in commerce as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited in paragraph A above or which fails to comply with the requirements of paragraph B.

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

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IN THE MATTER OF

HENRY J. TAYLOR, TRADING UNDER THE NAME AND
STYLE OF THE PACKAGE ADVERTISING CO.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5416. Complaint, Jan. 21, 1946—Decision, Nov. 15, 1949*

Where an individual who (1) was engaged in the manufacture of unpatented waxed-paper bands for advertising or informative use as printed inserts and outserts by bakers in connection with the wrapping of their bread and other bakery products; and in the interstate sale of said bands in competition with other manufacturers except as below set out, and under the trade-mark "Ad-Seal-It," which he had continuously owned or controlled since 1926 and which was registered in the United States Patent Office on January 23, 1945; and (2) formerly owned two patents, issued August 11, 1931, and March 15, 1932, which did not cover said unpatented bands, but respectively covered a method of applying an advertising medium to bakery products, and the resultant improved package "comprising a wrapper of waxed paper enveloping a loaf of bread" and "a narrow band of legend-bearing waxed paper incircling said loaf and said wrapper"—

- (a) Through threats of patent-infringement suits or the incentive of a higher, uniform, and maintained price structure on Ad-Seal-It bands, from time to time prior to January 1, 1939, coerced, persuaded or otherwise induced the principal manufacturers of waxed paper situated east of the Rocky Mountains to enter into agreements which, reciting that the corporation owned or controlled "certain inventions covering Ad-Seal-It and the method of its application and Letters Patent," purported to grant, on the part of his said predecessor corporation, to the particular manufacturer concerned, a nonexclusive license, for the life of the patents and all reissues thereof, etc., and for a specified portion of the United States, to make and sell Ad-Seal-It identification bands, the licensee obligating itself to sell said bands at prices and terms fixed by the corporation, to designate bands produced and sold by it by said trade-mark, and to pay a royalty ranging from 10 to 15 percent on its gross sales thereof, and the corporation having the right to inspect records and accounts relating to the sales of said bands;
- (b) Following the dissolution of his said predecessor corporation on or about December 29, 1938, entered into new agreements (to continue until March 15, 1949) with said manufacturers east of the Rockies, which—reciting that said individual's patents related to an improved bread package, that he was engaged in the business of making and selling to the baking trade certain legend-bearing bands to be used by the bakers in practicing his patents, and that he was then using the trade-mark Ad-Seal-It on the bands sold to bakers—purported also to grant nonexclusive licenses to such manufacturers to make and sell such outserts and inserts to the baking trade, together with the right to issue sublicenses to customers of the licensee, who undertook not to sell bands elsewhere than in the described territory; to cause

an individual, trading under the name and style of Package Advertising Co., hereinafter referred to as respondent, has violated the provisions of section 5 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. Bread as manufactured by most of the bakers in the United States is wrapped in printed waxed paper. However a