

Complaint

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IN THE MATTER OF

MIRACLE HEARING AID, INC. ET AL.

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

Docket 6067. Complaint, Nov. 28, 1952—Decision, June 2, 1953

Where a corporation and an officer thereof, engaged in the interstate sale and distribution of a device designated "Miracle Hearing Aid" designed for insertion in the external auditory canal; in advertising their said product in newspapers and other advertising literature and on letterheads—

- (a) Falsely represented that said device was a hearing aid and that by its use the hearing of deaf persons, or those with a partial or complete loss of hearing, would be benefited;
- (b) Falsely represented that said device had been approved by physicians; and
- (c) Falsely represented that the initial cost thereof was the only expense to the purchaser as there was nothing to wear out or replace;
- (d) Falsely represented through the use of the words "Hearing Aid" as a part of the corporate name and of the trade name, that the device would be of benefit to deaf persons with partial or complete loss of hearing; and
- (e) Failed to reveal facts material with respect to the consequences which might result from the use of the device under prescribed and usual conditions in that they failed to disclose that, used as directed, it might cause serious injury to the auditory canal or ear drum and might cause the extension of an infection should such be present;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations were true, and that the use of said device was free from danger, and because of such erroneous and mistaken belief to purchase respondents' said device:

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

Before *Mr. John Lewis*, hearing examiner.

Mr. A. S. Scott, Jr. for the Commission.

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 Miracle Hearing Aid, Inc., a corporation, and Henry Pollack and Ruth Miller, indi-

vidually 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. The respondent, Miracle Hearing Aid, Inc., is a corporation chartered and doing business under the laws of the State of New Jersey, with its principal place of business located at 587 Main Street, East Orange, New Jersey. The individual respondents, Henry Pollack and Ruth Miller, are, respectively, President and Secretary-Treasurer of corporate respondent with their address the same as that of the corporate respondent and, as such officers, control the acts, practices and policies of corporate respondent.

PAR. 2. Respondents are now, and for more than ten months last past have been, engaged in the business of advertising, selling and distributing a device, as "device" is defined in the Federal Trade Commission Act, designated "Miracle Hearing Aid." Said device consists of a small U-shaped wire with a coil at the base on which a small disc of thin rubber is attached. Said device is designed for insertion in the external auditory canal.

PAR. 3. Respondents cause said device, when sold, to be transported from their place of business in the State of New Jersey to the purchasers thereof located in various States of the United States other than the State of New Jersey and in the District of Columbia and at all times mentioned herein have maintained a course of trade in said device 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 their aforesaid business, respondents have disseminated, and have caused and are now causing the dissemination of, advertisements concerning their said device by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers and other advertising literature and on letterheads; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, advertisements concerning said device, by various means, for the purpose of inducing, and which were and are likely to induce, directly or indirectly, the purchase of said device in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the statements and representations contained in said advertisements, disseminated and caused to be disseminated, as hereinabove set forth, are the following:

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SENSATIONAL, NEW MIRACLE HEARING AID THE NATURAL WAY TO BETTER HEARING.

So close to Natural Hearing . . . it's a Miracle!

You hear Naturally.

Say, "GOODBYE" to DEAFNESS

Does impaired hearing limit YOUR chances in business . . . harm your relationships with your family and friends . . . spoil your enjoyment of life? NOW, you can hear BETTER, CLEARER without cords, batteries, buttons or ear molds. The remarkable new Miracle Hearing Aid is lightweight, tiny . . . hardly visible in your ear! Based on the recognized sound-vibration principle . . . and approved by physicians. Your ONLY expense is the original cost—just \$19.85 complete and ready to use!

Remember . . . No Batteries! NO UPKEEP AFTER PURCHASE

PAR. 5. By use of the aforesaid statements and others similar thereto, not specifically set forth herein, respondents represented that their device is a hearing aid and by its use the hearing of deaf persons, that is, those persons with a partial or complete loss of hearing, will be benefited; that said device has been approved by physicians; and that the initial cost thereof is the only expense to the purchaser as there is nothing to wear out or replace.

Through the use of the words "Hearing Aid" as a part of the name of corporate respondent and as part of the trade name for said device, respondents represented that their said device will be of benefit to deaf persons with partial or complete loss of hearing.

PAR. 6. The foregoing advertisements are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, deaf persons will not be benefited by use of said device. Physicians have not approved the use of this device. Parts of the device will wear out and must be replaced at the expense of the purchaser.

The use by respondents of the words "Hearing Aid" as a part of the corporate respondent's name and as part of the trade name is misleading in material respects since the device will be of no benefit to deaf persons.

PAR. 7. Respondents' advertisements, disseminated as aforesaid, constitute false advertisements for the further reason that they fail to reveal facts 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 said advertisements and under such conditions as are customary and usual. In truth and in fact, the use of the device as directed may cause serious injury to the auditory canal or ear drum. There is a possibility of traumatizing the canal wall or puncturing the ear drum when inserting the device. There is the further possibility of causing the extension of an infection should

this be present. Respondents do not disclose these material facts in their advertising.

PAR. 8. The use by the respondents 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 were and are true and that the use of said device is free from danger and injury, and because of such erroneous and mistaken belief to purchase respondents' said device.

PAR. 9. The aforesaid acts and practices of respondents, 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.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated June 2, 1953, the initial decision in the instant matter of hearing examiner John Lewis, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 28, 1952, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, except the respondent Henry Pollack (as to whom service of the complaint was not made, said respondent having theretofore departed this life), charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. The said respondents failed to file answer to the complaint and failed to appear at the time and place fixed for hearing. At said hearing before the above-named hearing examiner, theretofore duly designated by the Commission, the attorney in support of the complaint moved that the hearing be closed without the taking of testimony and that the hearing examiner proceed, in due course, to find the facts to be as alleged in the complaint and issue an order to cease and desist in the form set forth in the "Notice" portion of said complaint. It appearing that the aforesaid "Notice" provided that the failure of respondents to file timely answer and to appear at the time and place fixed for hearing would be deemed to authorize the

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Commission and the hearing examiner to find the facts to be as alleged in the complaint and to issue an order in the form therein set forth, the hearing examiner granted said motion and the hearing was thereupon closed. Thereafter, the proceeding regularly came on for final consideration by the said hearing examiner upon the complaint and said motion of the attorney in support of the complaint; and said hearing examiner having duly considered the record herein, finds that this proceeding is in the interest of the public and, pursuant to Rules V and VIII of the Rules of Practice of the Commission, makes the following findings as to the facts, conclusion drawn therefrom, and order.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent Miracle Hearing Aid, Inc., is a corporation chartered and doing business under the laws of the State of New Jersey, with its principal place of business located at 587 Main Street, East Orange, New Jersey. Henry Pollack, now deceased, was the President of said corporation during his lifetime and the respondent Ruth Miller was and now is the Secretary-Treasurer of said corporation, the address of the individual respondent being the same as that of the corporate respondent. The individual respondent formulates, directs and controls the acts, practices, and policies of the corporate respondent.

PAR. 2. Respondents are now, and for more than ten months last past have been, engaged in the business of advertising, selling and distributing a device, as "device" is defined in the Federal Trade Commission Act, designated "Miracle Hearing Aid." Said device consists of a small U-shaped wire with a coil at the base of which a small disc of thin rubber is attached. Said device is designed for insertion in the external auditory canal.

PAR. 3. Respondents cause said device, when sold, to be transported from their place of business in the State of New Jersey to the purchasers thereof located in various States of the United States other than the State of New Jersey and in the District of Columbia and at all times mentioned herein have maintained a course of trade in said device 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 their aforesaid business, respondents have disseminated, and have caused and are now causing the dissemination of, advertisements concerning their said device by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers and other advertising literature and on letterheads; and respondents have also

disseminated and are now disseminating, and have caused and are now causing the dissemination of, advertisements concerning said device, by various means, for the purpose of inducing, and which were and are likely to induce, directly or indirectly, the purchase of said device in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the statements and representations contained in said advertisements, disseminated and caused to be disseminated, as hereinabove set forth, are the following:

SENSATIONAL, NEW MIRACLE HEARING AID THE NATURAL WAY TO BETTER HEARING.

So close to Natural Hearing . . . it's a Miracle!

You hear Naturally.

Say, "GOODBYE" to DEAFNESS

Does impaired hearing limit YOUR chances in business . . . harm your relationships with your family and friends . . . spoil your enjoyment of life? NOW, you can hear BETTER, CLEARER without cords, batteries, buttons or ear molds. The remarkable new Miracle Hearing Aid is lightweight, tiny . . . hardly visible in your ear! Based on the recognized sound-vibration principle . . . and approved by physicians. Your ONLY expense is the original cost—just \$19.85 complete and ready to use!

Remember . . . No Batteries! NO UPKEEP AFTER PURCHASE

PAR. 5. By use of the aforesaid statements and others similar thereto, not specifically set forth herein, respondents represented that their device is a hearing aid and by its use the hearing of deaf persons, that is, those persons with a partial or complete loss of hearing, will be benefited; that said device has been approved by physicians; and that the initial cost thereof is the only expense to the purchaser as there is nothing to wear out or replace.

Through the use of the words "Hearing Aid" as a part of the name of corporate respondent and as part of the trade name for said device, respondents represented that their said device will be of benefit to deaf persons with partial or complete loss of hearing.

PAR. 6. The foregoing advertisements are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, deaf persons will not be benefited by use of said device. Physicians have not approved the use of this device. Parts of the device will wear out and must be replaced at the expense of the purchaser.

The use by respondents of the words "Hearing Aid" as a part of the corporate respondent's name and as part of the trade name is misleading in material respects since the device will be of no benefit to deaf persons.

PAR. 7. Respondents' advertisements, disseminated as aforesaid, constitute false advertisements for the further reason that they fail to reveal facts material with respect to the consequences which may

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result from the use of said device to which the advertisements relate, under the conditions prescribed in said advertisements and under such conditions as are customary and usual. In truth and in fact, the use of the device as directed may cause serious injury to the auditory canal or ear drum. There is a possibility of traumatizing the canal wall or puncturing the ear drum when inserting the device. There is the further possibility of causing the extension of an infection should this be present. Respondents do not disclose these material facts in their advertising.

PAR. 8. The use by the respondents 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 were and are true and that the use of said device is free from danger and injury, and because of such erroneous and mistaken belief to purchase respondents' said device.

CONCLUSION

The aforesaid acts and practices of respondents, as hereinabove 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

It is ordered, That the respondent, Miracle Hearing Aid, Inc., a corporation, and its officers, and respondent Ruth Miller, individually and as an officer of said corporation, and their respective representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of their device now designated as Miracle Hearing Aid, or any other device of substantially similar construction or design or possessing substantially similar properties whether sold under the same name or any other name do forthwith cease and desist from, directly or indirectly:

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

(a) That the use of said device enables persons with complete loss of hearing to hear; that its use improves the hearing of persons with impaired hearing; or that it is of any value as a hearing aid.

(b) That physicians have approved this device.

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(c) That the initial cost of said device is the only cost to the purchaser.

2. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement fails to reveal that the use of said device may result in serious injury to the auditory canal and ear drum.

3. Disseminating or causing to be disseminated any advertisement, 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, which advertisement contains any representations prohibited in paragraph 1 of this order or which fails to comply with the affirmative requirements set forth in paragraph 2 of this order.

It is further ordered, That the respondent, Miracle Hearing Aid, Inc., a corporation, and its officers, and respondent Ruth Miller, individually and as an officer of said corporation, and their respective representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of their device now designated as Miracle Hearing Aid, or any other device of substantially similar construction or design or possessing substantially similar properties whether sold under the same name or any other name do forthwith cease and desist from directly or indirectly:

Using the words "Hearing Aid" or any other word or words of similar import or meaning as a part of their corporate or trade name.

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondent Henry Pollack, deceased.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents Miracle Hearing Aid, Inc., a corporation, and Ruth Miller, individually and as an officer of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of June 2, 1953].

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IN THE MATTER OF

RUDOLPH R. SIEBERT, TRADING AS RUDOLPH R.
SIEBERT COMPANY AND AS R. R. SIEBERT COMPANY

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

Docket 6085. Complaint, Mar. 18, 1953—Decision, June 6, 1953

Where an individual engaged in the manufacture and interstate sale and distribution of a liquid silver polish designated "Pernet", which, containing about 30% carbon tetrachloride, bore no warning as to the dangers attendant upon its use, and was guaranteed in advertising as containing no "abrasives, cyanide or other harmful materials used in some silver polishes", with "nothing injurious or harmful", and as not harming the skin—

Represented directly and by implication that said product contained no injurious or harmful ingredients and was safe under all conditions of use as a silver polish, through aforesaid statements and failure to place a warning on the label thereof; when, in fact, by virtue of its tetrachloride content, it was a poison, the fumes of which, inhaled, might cause serious illness or even death, in a closed room, in absence of adequate ventilation, and might cause injury to the skin when contact therewith was frequent or prolonged; With effect of deceiving a substantial portion of the purchasing public into the erroneous belief that said product was safe under all conditions of use, and inducing purchase and use of substantial quantities thereof under potentially dangerous conditions, and with capacity and tendency so to do; and with result of placing in the hands of retailers and others a means whereby prospective purchasers and users might be deceived and misled:

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

Before *Mr. John Lewis*, hearing examiner.

Mr. Harold A. Kennedy for the Commission.

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 Rudolph R. Siebert, an individual 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,