

Consent Settlement

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IN THE MATTER OF
THE DAHLBERG COMPANY ET AL.

CONSENT SETTLEMENT IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6143. Complaint, Nov. 18, 1953—Decision, Apr. 27, 1954

Where a corporation and its three officers, engaged in the interstate sale and distribution of their "Dahlberg Tru-Sonic Canal Earphone", which was sold as an accessory or attachment for hearing aids and was designed to be inserted in the ear canal; in advertising in newspapers and circulars and other media—

- (a) Falsely represented that said device would fit the ear canals of all persons and that when inserted in the ear canal, it was hidden and out of sight;
- (b) Falsely represented that it had been accepted by the American Medical Association; and
- (c) Falsely represented that it was so constructed that it would fit all hearing aids:

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.

Before *Mr. James A. Purcell*, hearing examiner.

Mr. Charles S. Cox for the Commission.

Mackall, Crounse, Moore, Helmey & Palmer, of Minneapolis, Minn., for respondents.

CONSENT SETTLEMENT ¹

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on November 18, 1953, issued and subsequently served its complaint on the respondents named in the caption hereof, charging them with unfair and deceptive acts and practices, in violation of the provisions of said Act.

Respondents desiring that this proceeding be disposed of by the Consent Settlement procedure in Rule V of the Commission's Rules of Practice, solely for the purposes of this proceeding, and review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the Consent Settlement here-

¹ The Commission's "Notice" announcing and promulgating the consent settlement as published herewith, follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on April 27, 1954, and ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

The time for filing report of compliance pursuant to the aforesaid order runs from the date of service hereof.

inafter set forth, and in lieu of the answer to said complaint heretofore filed and which upon acceptance by the Commission of this settlement, is to be withdrawn from the record, hereby :

1. Admit all the jurisdictional allegations set forth in the complaint.
2. Consent that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order to cease and desist. It is understood that respondents, in consenting to the Commission's entry of said findings as to the facts, conclusion and order to cease and desist, specifically refrain from admitting or denying that they have engaged in any of the acts or practices stated therein to be in violation of law.

3. Agree that according to information furnished by respondent, The Dahlberg Company, the name of one of the vice presidents of said corporation was Lester W. Wilbrecht but that this information was in error and that the correct name of this individual named in the complaint as Lester W. Wilbrecht is Lester L. Wilbrecht. It is further agreed that the correct name Lester L. Wilbrecht may be incorporated in the following consent settlement with the same force and effect as if the correct name had been incorporated in the complaint.

4. The parties recognize that while respondents' advertisements set out in Paragraph 4 of the complaint state that their device, when inserted in the ear canal, is completely hidden and out of sight, Paragraph 5 of the complaint does not specifically charge that respondents have so represented.

The parties further recognize that Paragraph 6 of the complaint expressly alleges that such representations are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act and construe the complaint as having raised the issue as to the misleading nature of such representations.

5. Agree that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in Paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission had reason to believe were unlawful, the conclusion based thereon, and the order to cease and desist, all of which respondents consent may be entered herein in final disposition of this proceeding, are as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The Dahlberg Company, is a corporation organized, existing, and doing business by virtue of the laws of the State of Minnesota, with its office and principal place of business

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located at Golden Valley in the City of Minneapolis 22, State of Minnesota. Individual respondents Kenneth H. Dahlberg, Arnold R. Dahlberg, John Palmer, and Lester L. Wilbrecht, are president, vice president and treasurer, secretary, and vice president in charge of engineering, respectively, of respondent, The Dahlberg Company, a corporation. All of said individual respondents, except John Palmer, have acted, and now act, in conjunction with each other in formulating, directing and controlling the business, acts, practices and policies of said corporate respondent, including the advertising claims made directly and indirectly by said respondent, The Dahlberg Company, a corporation.

Respondent John Palmer executed an affidavit to the effect that he has not in the past and does not now, nor will he in the future, engage in the general business activities of the respondent, The Dahlberg Company, a corporation; he has had no occasion to determine the policy for the day-to-day practices of said corporate respondent, nor has he participated in policy decisions regarding the advertising methods or materials of said corporate respondent.

By reason of the matter set out in said affidavit the Commission finds that the said complaint, insofar as it relates to the respondent John Palmer as an individual and as an officer of respondent, The Dahlberg Company, a corporation, should be dismissed. The word "respondents" as hereinafter used does not include John Palmer.

PAR. 2. Respondents, for more than two years last past, have been engaged in the sale and distribution of a device designated as "Dahlberg Tru-Sonic Canal Earphone." Said device consists of a tip, a length of clear plastic tubing, an adaptor and a receiver, plus a wire cord with a plug attachment. It is sold as an accessory or attachment for hearing aids and designed to be inserted in the ear canal. Respondents sell said device through distributors located in various States of the United States.

PAR. 3. Respondents cause said device, when sold to be transported from its place of business in the State of Minnesota to purchasers thereof located in various States of the United States and, at all times mentioned herein, have maintained a course of trade in commerce among and between the various States of the United States.

PAR. 4. In the conduct of the aforesaid business, respondents have disseminated and caused the dissemination of advertisements concerning their said device by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers and circulars and in other advertising media for the purpose of inducing and which were likely to induce, directly

or indirectly, the purchase of their said device; and respondents have also disseminated and caused the dissemination of advertisements concerning their said device by various means for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of their said device in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the statements contained in said advertisements, disseminated as aforesaid, are the following:

DEAF or just HARD OF HEARING?

Now a new invention, the Dahlberg Canal Earphone, a feature of the Dahlberg hearing device, helps you hear and hides your deafness too * * *

(Drawing of outer ear with diagram indicating the placement of the Dahlberg Tru-Sonic Canal Earphone in Ear Canal)	THE BEST NEWS YET for the HARD OF HEARING NEW Dahlberg Tru-Sonic Canal Earphone
--	--

No earmold!

Fits any ear!

Near-natural Hearing!

Yes, it's true! We now offer the world's first real aid-power receiver small enough to fit inside your ear * * * And it's out of sight! Completely hidden! * * *

DON'T WAIT! TRY IT TODAY! YOU'LL thrill to a new and completely different hearing experience. Dahlberg Hearing Aids are accepted by the American Medical Association.

Out of sight! No earmold! Fits any ear—all hearing aids.

PAR. 5. Through the use of the aforesaid statements and others of the same import, but not specifically set forth, respondents represented that their "Dahlberg Tru-Sonic Canal Earphone" will fit the ear canals of all persons; that when inserted in the ear canal, said device is hidden and out of sight; that said device has been accepted by the American Medical Association; and that said device is so constructed that it will fit all hearing aids.

PAR. 6. The said 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, the "Dahlberg Tru-Sonic Canal Earphone" will not fit all sizes of ear canals. Said device, when inserted into the ear canal, is not hidden nor out of sight. Said device has not been accepted by the American Medical Association. It is not so constructed that it will fit all hearing aids.

PAR. 7. 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 are true, and to induce

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a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' said device.

CONCLUSION

The aforesaid acts and practices of respondents, 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

It is ordered, That respondent, The Dahlberg Company, a corporation, and its officers, respondents Kenneth H. Dahlberg, Arnold R. Dahlberg and Lester L. Wilbrecht, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of the device designated as the "Dahlberg Tru-Sonic Canal Earphone," 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:

1. 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 that said device:

- (a) Will fit the ear canals of all persons;
- (b) Is hidden or out of sight when inserted in the ear canal;
- (c) Has been accepted by the American Medical Association;
- (d) Will fit all hearing aids.

2. 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 1 above.

It is further ordered, That the complaint be, and it is hereby dismissed against respondent John Palmer, individually and as an officer of respondent, The Dahlberg Company, a corporation.

It is further ordered, That the respondents 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 this order.

The Dahlberg Company,
a corporation,

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By (Sgd) Kenneth H. Dahlberg,
President.

(Sgd) Kenneth H. Dahlberg
KENNETH H. DAHLBERG,

(Sgd) Arnold R. Dahlberg
ARNOLD R. DAHLBERG,

(Sgd) Lester L. Wilbrecht
LESTER L. WILBRECHT,
Individually and as officers of
The Dahlberg Company.

March 12, 1954.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this the 27th day of April 1954.

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IN THE MATTER OF
JOSEPH ROSENBLUM AND SADIE ROSENBLUM DOING
BUSINESS AS MODERN MANNER CLOTHES

*Docket 5263. Complaint, Jan. 2, 1945—Findings and order, Dec. 19, 1950, 47
F. T. C. 712. Order vacating, etc. and opinion, May 4, 1954*

Charge: Advertising falsely as to free wearing apparel.

Before *Mr. George Biddle*, hearing examiner.

Mr. Harold A. Kennedy for the Commission.

Mr. Copal Mintz, of New York City, for respondents.

ORDER DISPOSING OF RESPONDENTS' MOTION TO VACATE CEASE AND
DESIST ORDER AND FOR OTHER RELIEF; VACATING CEASE AND DESIST
ORDER; AND DISMISSING COMPLAINT

This matter having come on to be heard by the Commission upon respondents' motion (a) that the order to cease and desist entered herein on December 19, 1950, be vacated and that an order be entered dismissing the complaint in its entirety, (b) that Paragraphs Five and Six of the findings as to the facts and the conclusion be stricken and that the findings and conclusion recommended by the respondents be substituted therefor, and (c) that counsel to the Commission be authorized and directed to join in an application to the United States Court of Appeals for the Second Circuit to vacate the order to cease and desist made and entered by that Court and to enter in lieu thereof a decree dismissing the proceedings, and answer to said motion filed by counsel supporting the complaint; and

The Commission having duly considered said motion, answer thereto, and the record herein, and being of the opinion that, for the reasons set forth in the accompanying opinion of the Commission, the said motion should be granted to the extent indicated in the said opinion, and that the order to cease and desist heretofore entered in this proceeding should be vacated and the complaint dismissed in its entirety:

It is ordered, That the respondents' said motion be, and it hereby is, granted to the extent indicated in the accompanying opinion of the Commission.

It is further ordered, That the order to cease and desist entered herein on December 19, 1950, be, and it hereby is, vacated.

It is further ordered, That the complaint in this matter be, and it hereby is, dismissed.