

Complaint

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IN THE MATTER OF
FORREST A. JONES DOING BUSINESS AS
OREGON HEARING CENTER, ETC., ET AL.

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

Docket 6414. Complaint, Sept. 19, 1955—Decision, Apr. 28, 1956

Consent order requiring two individuals, one doing business in Portland, Oreg., and San Francisco, Calif., and both operating as partners in Seattle, Wash., to cease using "bait" advertising to sell their several types of hearing aids and making various false claims in advertising in newspapers and circulars and by radio broadcasts concerning them.

Before *Mr. William L. Pack*, hearing examiner.

Mr. John J. McNally for the Commission.

Mr. Theodore D. Lachman, of Portland, Oreg., for respondents.

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 Forrest A. Jones, an individual doing business as Oregon Hearing Center, California Hearing Center and Western Hearing Center, and Forrest A. Jones and John A. Holm, individuals and copartners doing business as Washington Hearing Center, 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 Forrest A. Jones is an individual doing business as Oregon Hearing Center, with his principal place of business located at 421 S. W. Sixth Avenue, Portland, Oregon; said respondent is also doing business as California Hearing Center and as Western Hearing Center at 17 Grant Avenue, San Francisco, California. Respondents Forrest A. Jones and John A. Holm are individuals trading as copartners and doing business as Washington Hearing Center, with their principal place of business at 1520 Westlake Avenue, Seattle, Washington.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in the advertising and sale of hearing aids and accessories, and in the advertising and sale of other products represented to be hearing aids, to members of the general public.

All of these products are devices, as "device" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business, respondents cause and have caused their said devices, when sold, to be shipped from the State of Oregon to the purchasers thereof located in various other States of the United States; respondents also cause and have caused their said devices to be shipped from the State of Oregon to respondents' stores located in the States of California and Washington. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in their said devices in commerce between and among the various States of the United States.

PAR. 4. Respondents, at all times mentioned herein, have been in substantial competition, in commerce, with other persons and with corporations, firms and partnerships engaged in the sale of hearing aid devices.

PAR. 5. In the course and conduct of the aforesaid business, respondents, subsequent to March 21, 1938, have disseminated and caused the dissemination of advertisements concerning the aforesaid devices 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, by circulars and by radio continuities broadcast by stations with sufficient power to carry such broadcasts across State lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said devices; and respondents have disseminated and caused the dissemination of advertisements by various means, including but not limited to the means aforesaid, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said devices in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. By means of statements made in advertisements disseminated as aforesaid, respondents have represented, directly and by implication, that:

1. The earphone receivers offered for sale are complete hearing aids, are transistor-powered aids, are invisible and will provide hearing to the deaf, will fit any ear, and have the approval of the American Medical Association and medical councils affiliated therewith.

2. The bone conduction type of hearing aids offered for sale by respondents is a recent invention, is invisible, and enables deaf persons to hear every sound as well as do normal-hearing persons.

3. The "Hear-Mold," "Tru-Ear" and "Ear-Aid" plastic ear canal openers offered for sale will enable all or most deaf people to hear

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again, are the natural way to better hearing, and were developed at a laboratory owned by respondents.

4. The air conduction hearing aids offered for sale enable deaf persons to "hear everything"; to "hear better, farther, more naturally" than with competitive brands of hearing aids; and give "super power."

PAR. 7. The advertisements containing the aforesaid representations were and 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:

1. The earphone receivers offered for sale by respondents are not complete hearing aids, are not transistor-powered aids, are not invisible, will not provide hearing to the deaf, will not fit any ear, and are not now, and have not been, approved by the American Medical Association or any councils affiliated therewith.

2. The bone conduction type of hearing aids offered for sale by respondents is not a recent invention, is not invisible and does not enable deaf persons to hear every sound as well as do normal-hearing persons.

3. The "Hear-Mold," "Tru-Ear" and "Ear-Aid" plastic ear canal openers offered for sale by respondents will not enable all or most deaf people to hear again, are not the natural way for most deaf people to obtain better hearing, and were not developed at a laboratory owned by respondents. These devices are useful only in cases wherein the deafness is due to a collapse or a partial collapse of the external ear canal. Such conditions are practically nonexistent. In the most recent of advertisements of this device, respondents have added qualifying words to indicate the device is to be used in the case of a collapse or a partial collapse of the ear canal. However, respondents do not, even in these advertisements, inform the reader that such a defect occurs so seldom as to be an insignificant factor in the cause of deafness. On the contrary, these advertisements convey the opposite impression.

4. The air conduction hearing aids offered for sale do not enable deaf persons to hear everything; or to hear better, farther or more naturally than with competitive brands of hearing aids and their performance is subject to the same limitations and restrictions which competitive brands of hearing aids encounter.

PAR. 8. The use by respondents of the said false advertisements with respect to their devices has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements and representations contained in the advertisements are

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true; and into the purchase of substantial quantities of said devices by reason of said erroneous and mistaken belief.

PAR. 9. In the course and conduct of their business, respondents, through the use of newspapers, radio broadcasts, and circulars disseminated through the United States mails, and other forms of advertising, have made certain other statements respecting the devices offered by them and the prices thereof. Among and typical, but not all inclusive, of the statements made by respondents, were the following:

Wearing nothing in your ear except this tiny device. \$39.50 full price.

- Not a Gadget
- Not a Come-on!
- But a truly fine complete Hearing Aid.

Imagine a complete hearing aid that weighs less than 3 ounces * * * the total cost just \$39.50.

The Natural Way to Better Hearing

Not \$200 not \$150 not \$75 only \$39.50 complete!

Ready for use! No other expense.

Ear-Aid

The Natural Way to Hear Better

Weights less than $\frac{1}{4}$ ounce.

Not \$200

Not \$150

Not \$75

But Only \$19.50 complete ready to wear

No Batteries

No Cords

No Ear Buttons

No Tubes

Not Electrical

Will Not Wear Out

First Cost Only Cost

PAR. 10. Through the use of the statements set forth in Paragraph Nine herein, and others of similar import not specifically set forth herein, respondents represented, directly or by implication, that they were making a bona fide offer to sell the devices referred to or described in said advertisements.

PAR. 11. The aforesaid representations were false, misleading and deceptive. In truth and in fact, respondents' said offers were not bona fide offers to sell the devices referred to or described in said advertisements. On the contrary, respondents' said offers were made for the purpose of developing leads to prospective purchasers of different and more expensive devices than those referred to or described in said advertisements.

In numerous instances, persons attracted by respondents' advertisements, upon visiting respondents' places of business or upon being visited by respondents' sales people in their homes or offices, were

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informed by the sales people in effect that the advertised devices would not aid their hearing, were not correctly described in the advertisements, or were not desirable as hearing aids. The sales people often failed to even demonstrate said devices to prospective purchasers, but attempted to and did describe, demonstrate, and in many instances sold, different or more expensive devices than those described or referred to in said advertisements, to such persons.

PAR. 12. The aforesaid representations set forth in Paragraphs Nine through Eleven had the tendency and capacity to induce and did induce members of the purchasing public to contact respondents and to purchase devices which they would not have otherwise purchased from respondents except for such practices.

PAR. 13. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public, and of respondents' competitors, and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with misrepresenting hearing aids and accessories sold by them, in violation of the Federal Trade Commission Act. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; and that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an adequate basis for an appropriate disposition of the proceeding, the

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agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent Forrest A. Jones is an individual doing business as Oregon Hearing Center, with his principal place of business located at 421 S. W. Sixth Avenue, Portland, Oregon. He also does business as California Hearing Center and as Western Hearing Center at 17 Grant Avenue, San Francisco, California. This respondent and respondent John A. Holm, an individual, are copartners doing business as Washington Hearing Center, with their principal place of business at 1520 Westlake Avenue, Seattle, Washington.

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

ORDER

It is ordered, That respondent Forrest A. Jones, an individual doing business as Oregon Hearing Center, California Hearing Center, Western Hearing Center, or under any other trade name or names, and respondents Forrest A. Jones and John A. Holm, as individuals or as copartners trading as Washington Hearing Center or under any other trade name or names, and respondents' representatives, agents or employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of hearing aids and of other devices represented to be hearing aids, do cease and desist from directly or indirectly:

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

(a) The canal ear phone receivers offered for sale are:

(1) Complete hearing aids or will, in themselves, provide hearing to persons suffering from hearing loss;

(2) Are transistor-powered aids;

(3) Are invisible;

(4) Will fit any ear;

(5) Have the approval of the American Medical Association, or of any medical councils affiliated therewith, when such is contrary to the fact.

(b) The bone conduction type of hearing aids offered for sale by respondents are a recent invention, are invisible, or that they will enable persons suffering from hearing loss to hear as well as normal-hearing persons.

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(c) The non-powered ear canal inserts advertised or offered for sale by respondents, whether designated "Hear-Mold", "True-Ear", "Ear-Aid", or by any other name or names, or any device of similar design, construction, or properties:

- (1) Provide a natural way to better hearing;
- (2) Were developed at respondents' laboratory;
- (3) Will be of any benefit to persons suffering from deafness or hearing loss except in instances when deafness or hearing loss is caused by collapse or partial collapse of the ear canal and unless such advertisements disclose that such causes are infrequent.

(d) The air conduction hearing aids offered for sale will enable persons suffering from hearing loss:

- (1) To hear everything;
- (2) To hear farther, or more naturally than they would by using competitive brands of 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 any such devices 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 respondent Forrest A. Jones, an individual doing business as Oregon Hearing Center, California Hearing Center, Western Hearing Center, or under any other trade name or names, and respondents Forrest A. Jones and John A. Holm, as individuals or as copartners trading as Washington Hearing Center, or under any other trade name or names, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of hearing aids and accessories in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that hearing aids and accessories are offered for sale when such offer is not a bona fide offer to sell the merchandise so offered.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 28th day of April 1956, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents herein 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.

Opinion

IN THE MATTER OF
THE YALE & TOWNE MANUFACTURING COMPANY

Docket 6232. Order and opinion, May 1, 1956

Interlocutory order denying joint petition by respondents in separate proceedings for leave to intervene for filing brief amicus curiae and to participate in oral argument.

Before *Mr. Frank Hier*, hearing examiner.

Mr. William H. Smith and *Mr. Brockman Horne* for the Commission.

Milbank, Tweed, Hope & Hadley, of New York City, for The Yale & Towne Manufacturing Co.

Kirkland, Fleming, Green, Martin & Ellis, of Washington, D. C., for Clark Equipment Co.

Brown, Lund & Fitzgerald, of Washington, D. C., for Lewis-Shepard Co.

McBride & Baker, of Chicago, Ill., for Hyster Co.

Stage & Butler, of Cleveland, Ohio, for The Elwell Parker Electric Co.

Mr. Fayette S. Dunn, of New York City, for Otis Elevator Co.

ORDER DENYING PETITION FOR LEAVE TO INTERVENE

A joint petition having been filed by Clark Equipment Company, Lewis-Shepard Company, Hyster Company, The Elwell Parker Electric Company, and Otis Elevator Company, for leave to intervene in this proceeding for the purpose of filing a brief amicus curiae and participating in oral argument before the Commission on appeal of counsel in support of the complaint from the initial decision of the hearing examiner; and

The Commission having determined, for the reasons set forth in the accompanying opinion, that the request should not be allowed:

It is ordered, That the aforesaid joint petition for leave to intervene be, and it hereby is, denied.

Commissioner Mason dissenting and Commissioner Gwynne not participating.

ON APPLICATION FOR LEAVE TO INTERVENE

Per Curiam:

This matter is before the Commission upon a joint petition, filed by counsel for Clark Equipment Company, Lewis-Shepard Company, Hyster Company, The Elwell Parker Electric Company and Otis