

IN THE MATTER OF
OTARION, INC., ET AL.

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

Docket 6757. Complaint, Apr. 3, 1957—Decision, Sept. 21, 1957

Consent order requiring a manufacturer of hearing aid instruments, parts, and accessories in Dobbs Ferry, N.Y., and its franchise distributor in the District of Columbia, to cease representing falsely in advertisements in newspapers, magazines, circulars, etc., furnished by said manufacturer to its distributors in the form of mats, that their "Listener" hearing aid was cordless, could not be seen, required nothing in either ear, and was completely contained in and could not be distinguished from ordinary eyeglasses.

Mr. Kent P. Kratz for the Commission.

Benjamin, Galton & Robbins, of New York, N.Y., for respondents.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 3, 1957, issued and subsequently served its complaint in this proceeding against respondents Otarion, Inc., a corporation existing and doing business under and by virtue of the laws of the State of New York, Leland E. Rosemond, individually and as president-treasurer of Otarion, Inc., Rosemond Hearing Aid Company, Inc., a corporation existing and doing business under and by virtue of the laws of the District of Columbia, and Ward T. Rosemond, individually and as president of Rosemond Hearing Aid Company, Inc. The office and principal place of business of respondents Otarion, Inc. and Leland E. Rosemond is located at 185-7 Ashford Avenue, Dobbs Ferry, New York, and that of respondents Rosemond Hearing Aid Company, Inc. and Ward T. Rosemond is located at 1410 New York Avenue, N.W., Washington, D.C.

On August 5, 1957, there was submitted to the undersigned hearing examiner an agreement between respondents and counsel supporting the complaint providing for the entry of a consent order. By the terms of said agreement, respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. By such agreement, respondents waive any further procedural steps before the hearing examiner and

the Commission; waive the making of findings of fact and conclusions of law; and waive all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement. Such agreement further provides that it disposes of all of this proceeding as to all parties; that the record on which this initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the latter shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; 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; and that the following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondents, and, when so entered, it shall have the same force and effect as if entered after a full hearing, and may be altered, modified, or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order.

The hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued.

1. Respondent Otation, Inc. is a corporation existing and doing business under the laws of the State of New York, with its office and principal place of business located at 185-7 Ashford Avenue, Dobbs Ferry, New York. Respondent Leland E. Rosemond is president-treasurer of said corporation, with his office and principal place of business located at the same address as the corporate respondent. Respondent Rosemond Hearing Aid Company, Inc., is a corporation existing and doing business under the laws of the District of Columbia, with its office and principal place of business located at 1410 New York Avenue, N.W., Washington, D.C. Respondent Ward T. Rosemond is president of said corporation, with his office and principal place of business located at 1410 New York Avenue, N.W., Washington, D.C. Respondent Leland E. Rosemond is the principal stockholder of the corporate respondent Otation, Inc. and respondent Ward T. Rosemond is the principal stockholder of the corporate respondent Rosemond Hearing Aid Company, Inc.

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.

Decision

54 F.T.C.

ORDER

It is ordered. That respondents Otarion, Inc., a corporation, and its officers; Leland E. Rosemond, individually and as an officer of Otarion, Inc.; Rosemond Hearing Aid Company, Inc., a corporation, and its officers; Ward T. Rosemond, individually and as an officer of Rosemond Hearing Aid Company, Inc., and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the hearing aid device known as "The Listener" or any other device of substantially the same construction or operation whether sold under the same 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 mail or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said product, which advertisement:

(a) Represents, directly or by implication, that said hearing aid devices are invisible or cannot be seen.

(b) Represents, directly or by implication, that when wearing said device nothing is required to be placed in the ear.

(c) Represents, directly or by implication, that said device is nothing more than a pair of eyeglasses.

(d) Uses the words or phrases "No ear button," "No cord," "100% cordless" or other words or phrases of the same or similar import or meaning, unless in close connection therewith and with equal prominence it is stated that a visible plastic tube runs from the eyeglass frame to the ear.

2. Disseminating any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of respondents' product in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations prohibited in paragraph 1 of this order.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Sec. 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 21st day of September, 1957, become the decision of the Commission; and, accordingly:

It is ordered. That the respondents herein shall, within sixty (60) days after service upon them for 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.

Decision

IN THE MATTER OF
THE MAYDAY CORPORATION ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS*Docket 6785. Complaint, Apr. 26, 1957—Decision, Sept. 21, 1957*

Consent order requiring a Cleveland, Ohio, furrier to cease violating the Fur Products Labeling Act by failing to comply with the labeling and invoicing requirements; by advertising which failed to disclose that certain fur products were composed of artificially colored fur, which contained the names of animals other than those producing certain fur, and which misrepresented prices and values; and by failing to maintain adequate records as a basis for such pricing claims.

Mr. Harry E. Middleton, Jr., for the Commission.

Mr. Wm. R. Brunn, of *Halle, Haber, Berick & McNulty*, of Cleveland, Ohio, for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding charges that The Mayday Corporation, a corporation, doing business as K. B. Company, David G. Kangesser, and May Kangesser, erroneously referred to in the complaint as Mae Kangesser, hereinafter called respondents, have violated the provisions of the Federal Trade Commission Act, the Fur Products Labeling Act, and the Rules and Regulations promulgated thereunder in the sale, advertising and distribution, in commerce, of fur products.

After issuance and service of the complaint, counsel supporting the complaint, respondents, and their counsel, entered into an agreement for a consent order. The agreement has been approved by the Director and Assistant Director of the Bureau of Litigation. The order corrects the misspelling of the respondent May Kangesser's name and disposes of the matters complained about.

The material provisions of said agreement are as follows: Respondents admit all jurisdictional facts; the complaint may be used in construing the terms of the order; the order shall have the same force and effect as if entered after a full hearing and the said agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission; respondents waive the requirement that the decision must contain a statement of findings of fact and conclusion of law; respondents waive further procedural steps before the hearing examiner and the Commission, and the order may be altered, modified, or set aside