

IN THE MATTER OF
TONEMASTER MANUFACTURING COMPANY ET AL.

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

Docket 7301. Complaint, Nov. 14, 1958—Decision, May 9, 1959

Consent order requiring manufacturers in Peoria, Ill., to cease advertising falsely that four named models of their hearing aids were cordless, requiring nothing in the ear, and were invisible; and that they were inventors of the hearing aid contained in the temple of eyeglasses.

Before *Mr. John B. Poindexter*, hearing examiner.

Mr. Kent P. Kratz and *Mr. William A. Somers* for the Commission.

Knoblock & Ott, of Peoria, Ill., for respondents Tonemaster Manufacturing Company, Paul B. H. Smith, and Margaret H. Smith.

INITIAL DECISION AS TO RESPONDENTS

TONEMASTER MANUFACTURING COMPANY, A CORPORATION,
PAUL B. H. SMITH, AND MARGARET H. SMITH, INDIVIDUALLY
AND AS OFFICERS OF SAID CORPORATION

On November 14, 1958, the Federal Trade Commission issued a complaint charging that Tonemaster Manufacturing Company, a corporation, and Paul B. H. Smith, Harold A. Lyons, Margaret H. Smith and John L. Lyons, individually and as officers of said corporation, hereinafter referred to as respondents, had violated the Federal Trade Commission Act by misrepresenting in advertisements that certain of their hearing aids are cordless, invisible, or require nothing in the ear.

After issuance and service of the complaint, the respondent Tonemaster Manufacturing Company, a corporation, Paul B. H. Smith and Margaret H. Smith, individually and as officers of said corporation, and counsel supporting the complaint, entered into an agreement for a consent order. The order disposes of the matters complained about with respect to Tonemaster Manufacturing Company, a corporation, Paul B. H. Smith and Margaret H. Smith, individually and as officers of said corporation. The proceeding with respect to the remaining respondents, Harold A. Lyons and John L. Lyons, will be disposed of by separate initial decision.

Under the agreement, respondents admit the jurisdictional facts

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alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing, and the document includes a waiver by respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it 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 finds that the provisions of the agreement comply with all mandatory requirements of §3.25(b) of the Rules of Practice for Adjudicative Proceedings, and is of the opinion that such order constitutes a proper disposition of this proceeding insofar as it relates to the respondents Tonemaster Manufacturing Company, a corporation, and Paul B. H. Smith and Margaret H. Smith. Accordingly, the hearing examiner accepts such agreement and makes the following jurisdictional findings and issues the following order:

JURISDICTIONAL FINDINGS

1. The respondent Tonemaster Manufacturing Company is a corporation existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 128 South Monroe Street, Peoria, Ill.

2. The individual respondents Paul B. H. Smith and Margaret H. Smith are president and treasurer, respectively, of said corporate respondent. These individual respondents formulate, direct and control the acts, policies and practices of the corporate respondent.

3. 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 respondents Tonemaster Manufacturing Company, a corporation, and its officers, and Paul B. H. Smith and Margaret H. Smith, 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, or distribution of their hearing aid devices designated as Midget Cordless Earette—Model MCE-3, Midget Eyeglass—Model MEG-7, Midget Cordless Barrette—

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Model MCB-5, and Templette—Model T-8, 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 the dissemination of, 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, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said devices, or any of them, which advertisement represents, directly or by implication:

(a) That said devices are cordless or do not require the use of a cord unless in close connection therewith and with equal prominence it is stated that a plastic tube runs from the device to the ear;

(b) That said devices do not require a button or other accessory to be inserted in the ear;

(c) That their hearing aids, or any of them are invisible;

(d) That respondents, or any of them originated or invented the hearing aid designated as Midget Cordless Earett—Model MCE-3; or originated or invented any other hearing aid offered for sale by them, unless such is the fact.

2. Disseminating, or causing the dissemination of any advertisement by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of respondents' devices 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 AS TO
TONEMASTER MANUFACTURING COMPANY, PAUL B. H. SMITH
AND MARGARET H. SMITH AND ORDER TO FILE
REPORT OF COMPLIANCE

The Commission having considered the initial decision of the hearing examiner wherein he accepted an agreement containing a consent order to cease and desist executed on behalf of the corporate respondent, Tonemaster Manufacturing Company, and by respondents Paul B. H. Smith and Margaret H. Smith, individually and as officers of said corporation, as well as by respondents' counsel and by counsel in support of the complaint,

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service of which initial decision was completed on April 8, 1959; and:

It appearing that the initial decision may be deficient in that it fails to incorporate the substance of certain pertinent provisions of the agreement of the parties:

It is ordered, That said initial decision be, and it hereby is, amended by inserting between the second and third paragraphs thereof the following paragraph:

Under the agreement, respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing, and the document includes a waiver by respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

It is further ordered, That the initial decision as so modified shall on the 9th day of May 1959, become the decision of the Commission.

It is further ordered, That respondents Tonemaster Manufacturing Company, a corporation, and Paul B. H. Smith, and Margaret H. Smith, individually and as officers 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 contained in said initial decision.

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IN THE MATTER OF
AIRTEX PRODUCTS, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(a) OF THE CLAYTON ACT

Docket 6816. Complaint, June 11, 1957—Decision, May 12, 1959

Consent order requiring a Fairfield, Ill., manufacturer of automotive replacement parts, including fuel and water pumps, to cease violating Sec. 2(a) of the Clayton Act by such practices as allowing group wholesalers off-scale discounts or rebates totaling 18% of current list prices on all of their purchases while giving independent wholesale customers a maximum discount of 8% on the first \$1,500 of purchases in each year; and Placing *in camera* pertinent cost study material attached to the agreement.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated and is now violating the provisions of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C., Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Airtex Products, Inc., respondent herein, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 407 West Main Street, Fairfield, Ill.

PAR. 2. Respondent is engaged in the business of manufacturing and selling automotive replacement parts, including fuel and water pumps, and rebuilding and selling used automotive fuel pumps. Respondent's total sales in 1955 exceeded \$7,500,000.

Respondent manufactures and rebuilds said automotive replacement parts in its factory in Fairfield, Ill., and sells and ships such parts to more than one thousand automotive replacement parts wholesalers located throughout the United States and in the District of Columbia. Respondent in the sale of said parts has at all times relevant herein been and now is engaged in commerce, as "commerce" is defined in the amended Clayton Act.

PAR. 3. Among respondent's more than one thousand wholesaler customers are many who have banded together into or-