

Decision

IN THE MATTER OF
BELTONE HEARING AID COMPANY ET AL.

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

Docket 7359. Complaint, Jan. 14, 1959—Decision, Oct. 15, 1959

Consent order requiring Chicago manufacturers of hearing aids to cease representing falsely in advertising that their "Hear-N-See" and "Slimette" hearing aid devices have no attached buttons, wires, or cords, were invisible, and were hidden in eyeglasses; that their "Invisible" hearing aid was completely hidden when worn and therefore was invisible, and was their own invention; and that their advertising booklet was offered as a valuable public service to the hard of hearing.

Mr. Morton Nesmith and Mr. Kent P. Kratz for the Commission. Crowell & Leibman, Mr. Robert E. Mason, Jr. of Counsel, of Chicago, Ill., for respondents.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

On January 14, 1959, the Federal Trade Commission issued its complaint against the above-named respondents charging them with violating the provisions of the Federal Trade Commission Act in connection with the advertising and sale of hearing aids, which come within the classification of devices, as the term "device" is defined in the Federal Trade Commission Act. Among said devices are those designated as "Hear-N-See," "Slimette" and "Invisible." On August 17, 1959, respondents Beltone Hearing Aid Company, a corporation, by its duly authorized officer, and Sam F. Posen, and Fannie Posen, individually and as officers of said corporation, and their attorney and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist in accordance with Section 3.25(a) of the Rules of Practice and Procedure of the Commission.

It is set out in the agreement that David H. Barnow is not an officer of the corporation and owns only a very small amount of its stock, and the said agreement contains a recommendation that the complaint be dismissed as to this individual respondent. These facts and additional facts disassociating David H. Barnow from the activities and affairs of the corporate respondent are set out in an affidavit executed by Sam F. Posen, President, Beltone Hearing Aid Company, which is attached to and made a part of the agreement. The term "respondents," as hereinafter used, does not include David H. Barnow.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of this agreement, the complaint and the statement filed April 29, 1959 (signed April 28, 1959) by counsel supporting the complaint as ordered by the hearing examiner on April 14, 1959, and that the cease and desist order set forth in the agreement may be entered without further notice and shall have the same force and effect as if entered after a full hearing. The agreement includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith; and recites that the said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint, and that the complaint and the statement filed April 29, 1959, as ordered by the hearing examiner, may be used in construing the terms of the order.

This proceeding having now come on for final consideration by the hearing examiner on the complaint, the aforesaid agreement for consent order and the statement filed April 29, 1959, as ordered by the hearing examiner, and it appearing that said agreement provides for an appropriate disposition of this proceeding as to all parties, the aforesaid agreement is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Section 3.21 of the Rules of Practice; and in consonance with the terms of the agreement, the hearing examiner makes the following jurisdictional findings and order:

1. Respondent Beltone Hearing Aid 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 2900 West 36th Street, Chicago 32, Illinois.

Respondents Sam F. Posen and Fannie Posen are officers of corporate respondent. They are responsible for the formulation, direction and control of the acts and practices of corporate respondent. Their address is the same as that of the corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the said respondents. The complaint states a cause of action against said respondents under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That respondents Beltone Hearing Aid Company, a corporation, and its officers, and Sam F. Posen and Fannie Posen, 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 hearing aid devices, now known as "Hear-N-See," "Slimette," and "Invisible," or any other device of substantially the same construction or operation, whether sold under the same or any other model designation, do forthwith cease and desist from directly or indirectly:

A. Disseminating or causing to be disseminated any advertising 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 products, which advertisement represents, directly or indirectly:

1. With respect to the "Hear-N-See" and "Slimette" hearing aids:

(a) That no buttons are attached to said hearing aids unless in close connection therewith and with equal prominence it is disclosed that an ear mold or plastic tip is inserted into the ear.

(b) That no wires or cords are attached to said hearing aids unless in close connection therewith and with equal prominence it is disclosed that a plastic tube runs from the device to the ear.

(c) That said hearing aids are invisible.

(d) That said hearing aids are completely hidden in eyeglasses.

2. With respect to the "Invisible" hearing aid:

(a) Through the use of said name or otherwise that said hearing aid is invisible when worn, provided, however, that this prohibition shall not be construed to prohibit respondents from representing that all hearing aid parts are concealed in the temple bars of a pair of eyeglasses when respondents can establish that such is the fact.

(b) That said hearing aid is a Beltone invention unless such is the fact.

3. That any booklet or other publication which consists in part of advertising of respondents' products is a public service booklet or publication unless in close connection therewith and with equal prominence it is disclosed that said booklet or publication also contains advertising.

B. Disseminating any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of respondents' products in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertise-

ment contains any of the representations prohibited in paragraph A herein.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to respondent David H. Barnow.

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 15th day of October, 1959, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Beltone Hearing Aid Company, a corporation, and Sam F. Posen, and Fannie Posen, 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 to cease and desist.