

IN THE MATTER OF
THE DAHLBERG COMPANY, ET AL.

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

Docket 7455. Complaint, Mar. 31, 1959—Decision, Mar. 22, 1960

Consent order requiring Minneapolis manufacturers to cease representing falsely in advertising in newspapers, magazines, etc., and by advertising mats, brochures, and other promotional material supplied to their dealers, that their "Miracle Ear," "Solar Ear," and "Optic Ear" hearing aids were buttonless, cordless, and invisible; and that the "Miracle Ear" device provided equally good hearing from all directions and was smaller than was the fact.

Mr. Morton Nesmith for the Commission.

Levitt, Palmer and Rogers, by *Mr. John M. Palmer*, of Minneapolis, Minn., for respondents.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

On March 31, 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 manufacture, sale and distribution of hearing aids, including those designated as "Miracle Ear," "Optic Ear," and "Solar Ear."

On July 9, 1959, a hearing was held in Minneapolis, Minnesota, to take testimony in support of the allegations of the complaint. On December 28, 1959, respondents and their counsel and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist, which disposes of the allegations of the complaint 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 respondent Ralph Campagna who was, until September 18, 1959, an officer of respondent corporation, resigned and severed his connections with respondent corporation. It is agreed that the complaint should be dismissed as to this respondent in his official capacity or as an officer of said corporation, but not individually.

It is also set out in the agreement that the charge contained in the complaint in subparagraph 7 of paragraph 5, viz:

7. "Respondents were the first to introduce the heat powered hearing aid such as the Solar Ear" cannot be sustained, and that

The charges contained in the complaint in subparagraphs 4, 5 and 8 of paragraph 5 of the complaint, viz:

4. "Their Optic Ear and Miracle Ear hearing aids will enable persons suffering from hearing loss to hear more naturally than they would by using competitive hearing aids of similar types."

5. "Their Optic Ear is the only eyeglass type hearing aid with full transistor power for one or both ears."

8. "The Solar Ear was immediately available to the purchasing public at a price no higher than that of a battery powered hearing aid."

were excerpts from advertisements of respondents' distributors for which respondents are not responsible. It is, therefore, agreed that all of the above charges should be dismissed as well as the traverses set out in paragraph 6 with respect to said charges. The agreement disposes of all other matters in this proceeding as to all parties.

Under the terms of the agreement, the 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 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, and 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. The hearing examiner finds that the content of the said agreement meets all the requirements of Section 3.25(b) of the Rules of Practice.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent order, 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 said agreement, the hearing examiner makes the following jurisdictional findings and order:

1. Respondent The Dahlberg Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its office and principal place of business located at Golden Valley, Minneapolis, Minnesota.

Respondents Kenneth H. Dahlberg and Arnold R. Dahlberg are officers of the corporate respondent. They formulate, direct and

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control the acts and practices of the 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 respondents hereinabove named. 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 The Dahlberg Company, a corporation, and its officers, and Kenneth H. Dahlberg and Arnold R. Dahlberg, individually and as officers of said corporation, and Ralph Campagna, individually, 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 known as the Miracle Ear, the Solar Ear and the Optic Ear, or any other device of substantially the same construction or operation, whether sold under the same or any other designation, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated 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 products, which advertisement represents directly or by implication that:

a. There are no buttons, cords or wires attached to their said air conduction hearing aids unless in close connection therewith and with equal prominence it is stated that a plastic tube runs from the device and is attached to an ear mold fitted in the ear.

b. Their hearing aids are invisible when worn.

c. Their hearing aids are hidden behind the ear or concealed within an eyeglass temple, when in fact there is a visible plastic or other type of tube running from the device to the ear; or are worn completely in the ear, except when such is the fact.

d. Their Miracle Ear hearing aid provides true panoramic hearing or equally good hearing from all directions unless the fact is disclosed that it is necessary to wear a hearing aid in each ear.

e. The Miracle Ear is the size depicted in advertisements when the depiction is smaller than the entire Miracle Ear hearing aid, or misrepresenting in any manner the size of any of their hearing aids.

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' products in commerce, as "commerce"

is defined in the Federal Trade Commission Act, which advertisement contains any of the representations prohibited in Paragraph One hereof.

It is further ordered, That the charges in the complaint in subparagraphs 4, 5, 7 and 8 of Paragraph 5, viz.,

4. "Their Optic Ear and Miracle Ear hearing aids will enable persons suffering from hearing loss to hear more naturally than they would by using competitive hearing aids of similar types."

5. Their Optic Ear is the only eyeglass type hearing aid with full transistor power for one or both ears."

7. "Respondents were the first to introduce the heat powered hearing aid such as the Solar Ear."

8. "The Solar Ear was immediately available to the purchasing public at a price no higher than that of a battery powered hearing aid."

be, and the same hereby are, dismissed.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to Ralph Campagna as an officer of respondent corporation, but not individually.

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 22nd day of March, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents The Dahlberg Company, a corporation, and Kenneth H. Dahlberg and Arnold R. Dahlberg, individually and as officers of said corporation, and Ralph Campagna, individually, 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.

IN THE MATTER OF

SONOTONE CORPORATION ET AL.

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