

SONOTONE CORPORATION ET AL.

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

Docket 7466. Complaint, Apr. 2, 1959—Decision, Mar. 22, 1960

Consent order requiring an Elmsford, N.Y., manufacturer to cease representing falsely in advertising that its hearing aids were cordless, buttonless, and invisible.

Mr. Morton Nesmith supporting the complaint.

Mr. John R. Brook of *Breed, Abbott & Morgan*, of New York, N.Y., for respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On April 2, 1959 the Federal Trade Commission, pursuant to the provisions of the Federal Trade Commission Act, issued its complaint against Sonotone Corporation, a corporation, and Irving Schachtel, individually and as an officer of said corporation, (hereinafter referred to as respondents) charging said respondents with violating the Federal Trade Commission Act by disseminating false, deceptive and misleading statements and advertisements in selling, offering for sale and distributing hearing aids, which are classified as "devices" and defined as such in the Federal Trade Commission Act. A true and correct copy of said complaint was served upon respondents as required by law. After being served with the complaint, respondents appeared by counsel and entered into an argument dated January 20, 1960, which purports to dispose of all of this proceeding as to all parties without the necessity of conducting a hearing. The agreement has been signed by the respondents, their counsel, and by counsel supporting the complaint; and has been approved by the Director and the Assistant Director of the Bureau of Litigation of this Commission. Said agreement contains the form of a consent cease and desist order which the parties have agreed is dispositive of the issues involved in this proceeding. On January 27, 1960 the said agreement was submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. The agreement, by all of the parties hereto, provides that the complaint herein will be dismissed as to Irving Schachtel individually, but not as an officer of Sonotone Corporation, for the reason that the proof to be adduced would not bind Irving Schachtel individually but solely as an officer of said corporation. Said agreement further provides that respondents waive any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights they may have to challenge or contest the validity of the order to cease and desist

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entered in accordance with such agreement. The parties have, *inter alia*, by such agreement agreed: (1) The order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing; (2) the complaint may be used in construing the terms of said order; (3) the record herein shall consist solely of the complaint and said agreement; (4) and that said 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.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement of January 20, 1960, containing consent order, and it appearing that the order provided for in said agreement covers all of the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties; the agreement of January 20, 1960 is hereby accepted and ordered filed at the same time that this decision becomes the decision of the Federal Trade Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings; and

The undersigned hearing examiner having considered the agreement and proposed order and being of the opinion that the acceptance thereof will be in the public interest, makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. The Federal Trade Commission has jurisdiction over the parties and the subject matter of this proceeding;

2. Respondent Sonotone Corporation is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at Elmsford, New York;

Respondent Irving Schachtel is president of corporate respondent. His address is the same as that of the corporate respondent;

3. Respondents are engaged in commerce as "commerce" is defined in the Federal Trade Commission Act;

4. The complaint herein states a cause of action against said respondents under the Federal Trade Commission Act, and this proceeding is in the public interest.

ORDER

It is ordered, That the complaint be, and the same hereby is, dismissed as to respondent Irving Schachtel in his individual capac-

ity but not in his capacity as an officer of respondent Sonotone Corporation, a corporation.

It is further ordered. That respondent Sonotone Corporation, a corporation, and its officers, and Irving Schachtel, as an officer 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 known as Models 222, 333, 400 and 500, or any other device of substantially the same construction or operation and design, whether sold under the same or any other model 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) No buttons are attached to said air conduction hearing aids, except Model 222, 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) No wires or cords are attached to said air conduction hearing aids, except Model 222, unless in close connection therewith and with equal prominence it is disclosed that a plastic tube runs from the device to the ear;

(c) Said hearing aids are invisible;

(d) Said hearing aids are completely hidden in the eyeglasses.

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 1 herein.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the hearing examiner's initial decision, filed on January 29, 1960, accepting an agreement containing a consent order to cease and desist, theretofore executed by the respondents and counsel supporting the complaint; and

Respondents, by motion filed on March 7, 1960, having requested that the Commission modify the initial decision to conform with the aforesaid agreement by revising that portion thereof pertaining to the dismissal of the complaint as to the respondent Irving Schachtel

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and by removing therefrom the hearing examiner's findings that the complaint states a cause of action and that the proceeding is in the public interest; and

It appearing that the initial decision is at variance with the aforesaid agreement insofar as it pertains to the dismissal of the complaint as to the respondent Schachtel individually and should be corrected; and

It further appearing that the other findings complained of, while not based on a specific statement in the agreement, are implicit in said agreement and are properly included in the initial decision:

It is ordered, That the initial decision be, and it hereby is, amended by substituting for the second sentence in the first paragraph on page 2 thereof the following:

The agreement, by all of the parties hereto, provides that the complaint herein will be dismissed as to Irving Schachtel, individually, but not as an officer of Sonotone Corporation, for the reason that there is no proof to be adduced to bind him individually.

It is further ordered, That the initial decision as so amended shall, on the 22nd day of March, 1960, become the decision of the Commission.

It is further ordered, That the respondents, Sonotone Corporation, a corporation, and Irving Schachtel, as an officer 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 contained in the aforesaid initial decision as amended.

IN THE MATTER OF
BURLINGTON INDUSTRIES, INC.