

*It is further ordered,* That the respondents herein 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 this order.

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IN THE MATTER OF  
REGAL AUDIO INSTRUMENTS ET AL.

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

*Docket C-849. Complaint, Oct. 12, 1964—Decision, Oct. 12, 1964*

Consent order requiring distributors of "Ultima" hearing aids in Buffalo, N.Y., to cease representing falsely in advertising that the device was unconditionally guaranteed, that respondent individual had been employed by NASA for many years and participated in the development of Project Mercury space capsules, that the "Ultima" hearing aid had a permanent source of power which would never need replacement, that it would bring every wearer's hearing up to normal levels, and that it was approved and endorsed by the Federal Trade Commission, among other false claims.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Regal Audio Instruments, a corporation, Ultima Audio, Inc., a corporation, and Endel Are, individually and as an officer of said corporations, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Regal Audio Instruments, is a corpora-

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tion organized, existing and doing business under and by virtue of the laws of Canada, with principal places of business at Fort Erie, Ontario, Canada, and at 505 Pearl Street, in the city of Buffalo, State of New York.

Respondent Ultima Audio, Inc., is a corporation organized, 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 505 Pearl Street, in the city of Buffalo, State of New York.

Respondent Endel Are, is an individual and an officer of both corporate respondents. He formulates, directs and controls the acts and practices of the said corporate respondents, including the acts and practices hereinafter set forth. His offices and principal places of business are located at the above stated addresses.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of hearing aids which come within the classification of a device as "device" is defined in the Federal Trade Commission Act. This device is sold and distributed under the name "Ultima."

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said product, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their said business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the said Ultima hearing aid by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said device; and have disseminated, or caused the dissemination of, advertisements concerning said device by various means, including, but not limited to, the aforesaid media, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said device in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among and typical of the statements and representations contained in said advertisements disseminated as hereinabove set forth are the following:

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- (a) \* \* \* each Ultima is fully guaranteed.
- (b) There is a full refund made if it does not give complete satisfaction.
- (c) For many years a scientist with the United States National Aeronautical Space Administration (NASA), Mr. Are was responsible for the development of the Molecular Electronic Amplifier for Space Capsules of Project Mercury.
- (d) No batteries used in Ultima.
- (e) The Power Generator in the Ultima is a permanent device which never needs replacement.
- (f) \* \* \* The Ultima is powered by a Thermocell, more simply known as a power generator. Power is now generated to make the Ultima operate indefinitely with heat from your body.
- (g) The Ultima when binaurally fitted, will correct losses up to 85%.
- (h) \* \* \* It covers easily up to 65 db hearing loss without any feedback problem.
- (i) Volume Controlled Automatically \* \* \* The Ultima has a built in volume control \* \* \*.
- (j) The Ultima gives the exact volume and frequency response to bring your hearing to the normal level.
- (k) No distortion, \* \* \*.
- (l) We have supplied to the Federal Trade Commission working models of the Ultima, Circuit Diagrams, Technical Data, Information of our production and fitting methods in order to prove that we have accomplished A Major Break-through in the hearing aid industry. The original correspondence with the FTC and all information is available in our files for inspection.

PAR. 6. By and through the use of the aforementioned statements and representations, and others of similar import and meaning, not specifically set out herein, respondents have represented and are now representing, directly and by implication that:

- (1) The Ultima hearing aid is unconditionally guaranteed.
- (2) The full price will be refunded to any purchaser who is not satisfied with the Ultima hearing aid.
- (3) Endel Are, represented as the inventor and developer of the Ultima hearing aid, was an employee of the National Aeronautics and Space Administration (NASA) for many years and actively participated in the development of equipment for Project Mercury space capsules.
- (4) The Ultima hearing aid requires no batteries for its operation.
- (5) The Ultima hearing aid has a built-in automatic device providing a permanent source of power and never needing replacement.
- (6) The Ultima hearing aid operates on power generated from body heat and will continue to operate in this fashion indefinitely.
- (7) When fitted binaurally the Ultima hearing aid will enable an individual with an 85% hearing loss to hear normally.
- (8) The Ultima hearing aid will cover a 65 decibel hearing loss.
- (9) The Ultima hearing aid contains an automatic device for the control of volume.

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(10) The Ultima hearing aid will bring every wearer's hearing up to normal levels.

(11) The Ultima hearing aid does not distort voices and other sounds.

(12) The Ultima hearing aid was submitted to the Federal Trade Commission for approval, and accepted, approved and endorsed by the Commission.

PAR. 7. In truth and in fact:

(1) The Ultima hearing aid is not unconditionally guaranteed nor is the full purchase price refunded in all cases of dissatisfaction; the advertising does not disclose the manner of performance under the guarantee nor that there are terms and conditions limiting the guarantee and the refund offer; the identity of the guarantor is not disclosed in the advertising and some purchasers are unable to secure performance under the guarantee from either the respondents or their dealers.

(2) Endel Are was never employed by the National Aeronautics and Space Administration (NASA), nor did he have any part in the development of equipment for Project Mercury space capsules.

(3) The power source of the Ultima hearing aid is a cadmium cell battery which must be recharged at frequent intervals.

(4) However fitted, the Ultima hearing aid will not substantially improve the hearing of an individual with an 85% hearing loss.

(5) The Ultima hearing aid will not cover a 65 decibel hearing loss, or substantially improve the hearing of an individual with such a loss.

(6) The Ultima hearing aid does not contain an automatic volume control.

(7) The Ultima hearing aid will not substantially improve the wearer's hearing if the individual has more than a minor hearing loss.

(8) The Ultima hearing aid will cause distortion of voices and other sounds.

(9) The Ultima hearing aid was submitted to the Federal Trade Commission by proposed respondents in the course of an official investigation to determine the truth or falsity of the advertising. The Commission has neither approved nor endorsed the Ultima hearing aid.

Therefore, the advertisements referred to in Paragraph Five were and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act.

PAR. 8. The dissemination by the respondents of the false advertisements, as aforesaid, constituted, and now constitutes, unfair and deceptive acts and practices in commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

## DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Regal Audio Instruments is a corporation organized, existing and doing business under and by virtue of the laws of Canada, with principal places of business at Fort Erie, Ontario, Canada, and at 505 Pearl Street, in the city of Buffalo, State of New York.

Respondent Ultima Audio, Inc., is a corporation organized, 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 505 Pearl Street, in the city of Buffalo, State of New York.

Respondent Endel Are is an individual and an officer of both corporations, and his address is the same as that of said corporations.

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.

## ORDER

## PART I

*It is ordered,* That respondents Regal Audio Instruments, a corporation, Ultima Audio, Inc., a corporation, and their officers and Endel Are, individually and as an officer of said corporations, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of any hearing aid device or any component thereof do forthwith cease and desist from directly or indirectly:

1. Disseminating, or causing the dissemination of, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents directly or by implication that:

(a) The said product is guaranteed unless, in immediate conjunction therewith, there is a clear and conspicuous disclosure of the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform, and unless the guarantor does, in fact, perform in accordance with the guarantee as so represented.

(b) The purchase price of the said product will be refunded unless, in immediate conjunction therewith, there is a clear and conspicuous disclosure of all terms and conditions required for such refund, the identity of the refunder and the procedure necessary to secure the refund, and unless the purchase price is in fact refunded to all persons complying with such terms, conditions and procedure.

(c) The said product was invented or developed by any individual who was at any time employed by the National Aeronautics and Space Administration (NASA) or participated in the development of equipment for Project Mercury space capsules or any other equipment for space exploration; or that respondents' products have been invented or developed by any individual or organization, or by any individual or organization possessed of specified scientific qualifications or experience, unless respondents can establish such to be the facts.

(d) Said hearing aid has been endorsed or approved by the Federal Trade Commission.

#### PART II

*It is further ordered,* That respondents Regal Audio Instruments, a corporation, Ultima Audio, Inc., a corporation, and their officers, and Endel Are, individually and as an officer of said corporations, and respondents' representatives, agents 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 Ultima, or any other device of substantially the same construction or possessing substantially similar properties, or any component thereof, do forthwith cease and desist from directly or indirectly:

1. Disseminating, or causing the dissemination of, by means of the United States mails or by any means in commerce, as "com-

merce" is defined in the Federal Trade Commission Act, any advertisement which represents directly or by implication that:

- (a) The said hearing aid operates on power from any source other than a battery which needs to be recharged at frequent intervals.
- (b) The said hearing aid contains an automatic volume control.
- (c) The said hearing aid, whether fitted monaurally or binaurally will improve the hearing of any individual unless specifically limited to those persons having only a minor hearing loss.
- (d) The said hearing aid does not distort voices or other sounds.

#### PART III

*It is further ordered,* That respondents Regal Audio Instruments, a corporation, Ultima Audio, Inc., a corporation, and their officers, and Endel Are, individually and as an officer of said corporations, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of any hearing aid device, or any component thereof, do forthwith cease and desist from directly or indirectly:

1. Disseminating, or causing to be disseminated, 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 contains any of the representations prohibited in PART I or II hereof.

*It is further ordered,* That the respondents herein 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 this order.

#### IN THE MATTER OF

#### MODERN QUILTERS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE WOOL PRODUCTS LABELING ACTS

*Docket C-850. Complaint, Oct. 14, 1964—Decision, Oct. 14, 1964*

Consent order requiring a Minneapolis, Minn., manufacturer of interlining materials to cease misbranding, falsely guaranteeing and deceptively invoicing