

IN THE MATTER OF
MOUNTAIN STATES HEARING SERVICE, INC., ET AL.

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

Docket 8798. Complaint, Sept. 9, 1969—Decision, May 21, 1970

Consent order requiring a Billings, Montana, distributor of hearing aids and accessories to cease misrepresenting that it is a multiple city firm, that it conducts research in hearing disability, that its devices will restore "normal" hearing or prevent its deterioration, failing to disclose its business is selling hearing aids, claiming that its salesmen have been scientifically trained, or misrepresenting in any way its business, sales personnel, or efficacy of its hearing aids.

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 Mountain States Hearing Service, Inc., a corporation, and William R. Vota, individually and as an officer of said corporation, 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 Mountain States Hearing Service, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Montana, with its principal office and place of business located at 4 North Broadway, in the city of Billings, State of Montana.

Respondent William R. Vota is an individual and an officer of the corporate respondent. He formulates, directs and controls the acts and practices hereinafter set forth. His address is Route 3, in the city of Billings, State of Montana.

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 and accessories which come within the classification of device as the term "device" is defined in the Federal Trade Commission Act.

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

PAR. 4. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are in substantial competition in commerce, with corporations, firms and individuals in the sale of hearing aids and accessories of the same general kind and nature as that sold by respondents.

PAR. 5. In the course and conduct of their aforesaid business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the said devices by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers, and by means of radio broadcasts transmitted by radio stations located in the State of Montana, having sufficient power to carry such broadcasts across State lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said devices.

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

Hearing Information Center,
1029 Vermont Ave., N.W.,
Washington, D.C. 20005

Hearing Information Center,
215 Commerce Bldg.,
St. Paul, Minnesota.

. . . From research carried on since 1960, we have found several ways to restore the hearing of such persons—even if they have "nerve loss" or poor hearing in both ears . . .

. . . But a new invention (by a deaf inventor) is proving that you can have good hearing again without surgery . . . it can overcome deafness.

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To learn more about this new way to hear better . . .

STOP DEAFNESS WITHOUT SURGERY! ! !

If you have nerve deafness . . . the most important thing you can do is find out how you can be helped with one of today's newest inventions . . .

. . . CANNOT be seen when you are wearing it.

INVISIBLE HEARING AID? . . . Send for fascinating details on this invisible (when you wear it) hearing instrument. It positively cannot be seen.

Representative and illustrative, albeit neither verbatim nor all inclusive, of oral statements and representations made to prospective purchasers are the following:

If you want to be helped with your hearing problem . . . be sure to contact Mountain States Hearing Service, Inc. . . . The people most qualified to help you are located at Mountain States Hearing Service, Inc.

The Mountain States Hearing Service understands the problems of the hard of hearing . . . that's their business.

The following is a hearing test . . . courtesy of Mountain States Hearing Service, Inc. Here is a 4,000 cycle tone * * *. Perhaps you have a hearing problem . . . perhaps you had difficulty hearing the 4,000 cycles.

PAR. 6. By and through the use of said advertisements, and others of similar import and meaning but not expressly set out herein, and by oral statements and representations of their salesmen and representatives, the respondents have represented, and are now representing, directly or by implication that:

1. They maintain offices or places of business in St. Paul, Minnesota, and Washington, D.C.
2. Their primary activity is the dissemination of free information or that they are other than a profit-making organization, through the use of the assumed name, Hearing Information Center.
3. They conduct or have conducted research in the hearing disability field.
4. They merchandise a hearing aid which is a new invention or involves a new mechanical or scientific principle.
5. They merchandise a hearing aid which will restore or improve an individual's natural or nerve hearing, or will prevent an individual from becoming totally deaf.
6. They merchandise a hearing aid which will be beneficial regardless of an individual's type of hearing disability.
7. They merchandise a hearing aid which is invisible or indiscernible when worn.
8. Their sales personnel have had medical or scientific education or training which enables them to diagnose hearing disabilities or to prescribe the proper hearing aid for an individual with a hearing disability.

9. Difficulty in hearing a 4,000 cycle tone, broadcast over radio, is an indication of a hearing disability.

PAR. 7. In truth and in fact:

1. They do not maintain an office or place of business in any town or city other than Billings, Montana.

2. Their primary activity is not the dissemination of free information, but engaging in, as a profit-making organization, obtaining the names of potential purchasers, offering for sale, sale and distribution of hearing aids and accessories to the public.

3. They do not conduct nor have ever conducted research in the hearing disability field.

4. They do not merchandise a hearing aid which is a new invention or involves a new mechanical or scientific principle.

5. They do not merchandise a hearing air which will restore or improve an individual's natural or nerve hearing, or will prevent an individual from becoming totally deaf.

6. They do not merchandise a hearing aid which will be beneficial regardless of an individual's type of hearing disability.

7. They do not merchandise a hearing aid which is invisible or indiscernible when worn.

8. Their sales personnel have not had medical or scientific education or training which enables them to diagnose hearing disabilities or to prescribe the proper hearing aid for an individual with a hearing disability.

9. Difficulty in hearing a specially emitted tone broadcast over radio or otherwise reproduced, except on equipment in general use in the testing for hearing disabilities, is not an indication of the listener's ability to hear.

Therefore, the advertisements referred to in Paragraphs Five and Six 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, and the aforesaid statements and representations referred to in Paragraphs Five and Six were and are false, misleading and deceptive.

PAR. 8. In the course and conduct of their aforesaid business, respondents by use of advertising mailers, including reply cards attached hereto, invite the addressees to return the reply cards with their addresses to respondents in order to receive helpful information relative to improving their hearing.

Respondents represent through the use of the aforesaid advertising mailers, and the reply cards attached thereto, that they are making a

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bona fide offer to furnish free of charge helpful information to those handicapped by deafness.

In truth and in fact the respondents' aforesaid representations were not and are not bona fide offers to furnish free helpful information as aforesaid, but to the contrary, said representations were, and are made by respondents, for the purpose of developing leads to prospective purchasers of respondents' devices.

In numerous instances persons sending in respondents' reply cards for "free" information were visited in their homes by respondents' salesmen for the purpose of selling respondents' devices, and said salesmen have attempted to and often succeeded in selling such persons respondents' hearing aids.

PAR. 9. The dissemination by respondents of the aforesaid false advertisements and the use of the aforesaid false, misleading and deceptive statements, representations and practices have had, and now have, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said advertisements, statements and representations were and are true and into the purchase of substantial quantities of respondents' devices by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, including the dissemination of false advertisements as aforesaid, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and 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 issued its complaint on September 9, 1969, charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and respondents having been served with a copy of that complaint; and

The Commission having duly determined upon motion duly certified to the Commission that, in the circumstances presented, the public interest would be served by waiver here of the provisions of Section 2.34(d) of its Rules, that the consent order procedure shall not be available after issuance of complaint; and

Respondents and counsel for the complaint having thereafter executed an agreement containing a consent order, an admission by respondents of all jurisdictional facts set forth in the complaint, a

statement that the signing of the agreement by respondents 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 matter and having determined that it provides an adequate basis for appropriate disposition of this proceeding, provisionally accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days; and having received and duly considered the comments from an interested party and having determined that the adoption of the proposal in said comment would not be in the public interest for the reason that it would lessen the effectiveness of the order, now, in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby accepts the agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Mountain States Hearing Service, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Montana, with its principal office and place of business located at 4 North Broadway, in the city of Billings, State of Montana.

Respondent William R. Vota is an individual and an officer of the corporate respondent. He formulates, directs and controls the acts and practices. His address is Route 3, in the city of Billings, State of Montana.

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 Mountain States Hearing Service, Inc., a corporation and its officers, and William R. Vota, individually and as an officer of said corporation, 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 hearing aids and accessories do forthwith cease and desist from:

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, which represents directly or by implication, that:

(a) They maintain an office or place of business in any town or city other than Billings, Montana.

(b) They conduct or have conducted research in the hearing disability field.

(c) They merchandise a hearing aid which is a new invention or involves a new mechanical or scientific principle.

(d) They merchandise a hearing aid which will restore an individual's "natural" or "normal" hearing, will prevent deterioration of an individual's hearing, will prevent an individual from becoming deaf, will physiologically improve or correct a sensorineural hearing disability.

(e) They merchandise a hearing aid which will be beneficial to individuals unless in immediate conjunction therewith it is clearly and conspicuously disclosed that not all individuals suffering from a disability will benefit from use of a hearing aid.

(f) They merchandise a hearing aid which is invisible or indiscernible when worn.

2. 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, which fails to clearly and conspicuously disclose that:

(a) The business of respondents is the sale of hearing aids.

(b) Persons replying to respondents' advertisements will be contacted by salesmen, or otherwise, for the purpose of inducing them to purchase a hearing aid sold by respondents.

3. Disseminating, or causing to be disseminated, by any means, for the purpose of inducing or, which is likely to induce, directly or indirectly, the purchase of hearing aids in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited in Paragraph 1, Part I of this order or fails to comply with the affirmative requirements of Paragraph 2 of Part I hereof.

PART II

It is further ordered, That respondents Mountain States Hearing Service, Inc., a corporation, and its officers and William R. Vota,

individually and 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 aids and accessories in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that:

(a) Their sales personnel have had medical or scientific education or training which enable them to diagnose hearing disabilities or to prescribe the proper hearing aid for an individual with a hearing disability.

(b) Difficulty in hearing a specially emitted tone broadcast over radio or other otherwise reproduced, except on equipment in general use in the testing for hearing disabilities, is an indication of the listener's ability to hear.

2. Misrepresenting, in any manner:

(a) The nature and purpose of their business.

(b) The education or training of their sales personnel.

(c) The efficacy of their hearing aids.

(d) The efficacy or the results of tests, testing devices or testing procedures employed in connection with the hearing of any individual either before or after a sale of said devices to said individual.

3. Failing to deliver a copy of this order to cease and desist to all operating divisions of the corporate respondents and to all officers, managers and salesmen, both present and future, and any other person now engaged or who becomes engaged in the sale of hearing aids as respondents' agent, representative or employee; and to secure a signed statement from each of said persons acknowledging receipt of a copy thereof.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That 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.

Complaint

IN THE MATTER OF

FUNERAL DIRECTORS INSTITUTE INTERNATIONAL,
INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-1739. Complaint, May 21, 1970—Decision, May 21, 1970*

Consent order requiring a Chicago Heights, Ill., public relations agency which sells memberships, advertising and public relations programs to funeral directors, to cease misrepresenting that it is a large organization with several departments, using the words "institute" or "funeral directors institute" as part of its trade or corporate name, exaggerating the benefits accruing to its customers, and misrepresenting the nature and extent of its services.

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 Funeral Directors Institute International, Inc., a corporation, and John T. Arends, individually and as an officer of said corporation, 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 charge in that respect as follows:

PARAGRAPH 1. Respondent Funeral Directors Institute International, Inc., 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 2706 South Chicago Road, Chicago Heights, Illinois.

Respondent John T. Arends is an individual and is an officer of the corporate respondent. Said individual respondent formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of memberships and services in connection therewith to funeral directors, morticians and similar corporations, firms and individuals for use in selling funeral services to the general public.

PAR. 3. In the course and conduct of their business as aforesaid,