

mission a report in writing setting forth in detail the manner and form in which they have complied with the order.

*It is further ordered,* That respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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IN THE MATTER OF

LLOYD HEARING AID CORPORATION, ET AL.

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

*Docket C-1836. Complaint, Dec. 28, 1970—Decision, Dec. 28, 1970*

Consent order requiring a Rockford, Ill., distributor of hearing aids and parts and accessories therefor to cease misrepresenting that respondent sells "America's Largest Selection of Hearing Aids," misrepresenting the number of times a hearing aid battery can be recharged, that its hearing aids are the most powerful on the market, exaggerating the savings to customers, misrepresenting that any hearing aid it sells is a new invention, failing to disclose the nature of its guarantees, and failing to disclose that diagnosis of hearing defects by mail is inadequate.

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 Lloyd Hearing Aid Corporation, a corporation, and Lloyd D. Kling and Marvin Palmquist, individually and as officers of said corporation, 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 Lloyd Hearing Aid Corporation 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 905 Ninth Street, in the city of Rockford, State of Illinois.

Respondents Lloyd D. Kling and Marvin Palmquist are individuals and officers of the corporate respondent. They formulate, direct and control the policies, acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their 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 offering for sale, sale, and distribution of hearing aids and parts and accessories therefor which come within the classification of a device as "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 products, when sold, to be shipped and transported from their place of business in the State of Illinois 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 products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their 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 and distribution of hearing aid devices and parts and accessories therefor of the same general kind and nature as those sold by respondents.

PAR. 5. In the course and conduct of their business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning their said products 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 magazines and other advertising media for the purpose of inducing and which were likely to induce, directly or indirectly the purchase of said products, and have disseminated and caused the dissemination of, advertisements concerning said products 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 products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. Among and typical of the statements and representations contained in said advertising used and disseminated by respondents as hereinabove set forth, are the following:

America's Largest Selection of HEARING AIDS.

DK-20 NICAD batteries . . . can be recharged from 750 to 1000 times.

2 DK-20 NICAD rechargeable batteries . . . will give 3 to 4 years battery service.

MODEL 403 are the most powerful HEARING AID TEMPLES obtainable anywhere.

## Complaint

77 F.T.C.

Lloyd Model 008 is the most powerful BEHIND-THE-EAR Aid on the market.

Hearing Aids at  $\frac{2}{3}$  off Regular Dealer's Prices and 65% to 70% lower than regular dealer's prices.

At 65% to 70% LOWER THAN REGULAR DEALER'S PRICES.

These new miracle Lloyd Aids are available . . . .

You Get One-Year Warranty.

HEAR WELL AGAIN.

PAR. 7. By and through the use of said advertisements, and others of similar import and meaning but not expressly set out herein, the respondents have represented, and are now representing, directly or by implication that:

1. They offer for sale the largest selection of hearing aids in America.

2. Hearing aid batteries advertised can be recharged from 750 to 1000 times and that two such rechargeable batteries will give 3 to 4 years service under normal use and conditions.

3. Certain hearing aids sold by proposed respondents are the "most powerful" that can be obtained (a) "anywhere" and (b) "on the market."

4. They sell hearing aids at prices that are substantially lower than those being charged by others for the same merchandise in their trade area.

5. They merchandise a hearing aid which is a new invention or involves a new mechanical or scientific principle.

6. That hearing aids are warranted, without a clear and conspicuous disclosure of the nature and extent of the warranty, the manner in which the warrantor will perform thereunder, and the identity of the warrantor.

7. That the hearing aids advertised will be beneficial to all persons with a hearing disability.

PAR. 8. In truth and in fact:

1. Respondents do not have America's largest selection of hearing aids.

2. DK-20 NICAD batteries are not rechargeable from 750 to 1000 times, and two DK-20 NICAD batteries do not have a life span of three years.

3. The hearing aids sold by proposed respondents are not the most powerful hearing aids obtainable anywhere, or the most powerful aids on the market, and such hearing aids will not be beneficial to all persons with a hearing disability.

4. Respondent's prices are not  $\frac{2}{3}$  off regular dealer's prices and are not 65 percent to 70 percent lower than regular dealer's prices,

or otherwise substantially lower than those being charged by others for the same merchandise in their trade area.

5. The advertised aids are not new inventions and do not involve a new mechanical or scientific principle.

6. The one year warranty has certain conditions and limitations not disclosed in the advertising thereof.

7. The advertised aids will not prove beneficial to all persons with a hearing disability.

Therefore, the advertisements referred to in Paragraphs Five, Six and Seven 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 as set forth in Paragraphs Five, Six and Seven herein were and are false, misleading and deceptive.

PAR. 9. In the course and conduct of their aforesaid business, respondents by and through the use of advertising invite persons with a hearing disability to complete the questionnaire furnished by respondents and return the same by mail so that respondents can select a hearing aid that is suited to the individual's loss.

Respondents represent by and through the use of the aforesaid advertising that such procedure or method, including the completion and return of the questionnaire by the purchaser or prospective purchaser, is adequate, effective and reliable to determine the hearing loss of an individual and to select the hearing aid suited to his or her hearing loss.

In truth and in fact, the aforesaid procedure or method is not adequate, effective or reliable to determine the nature or extent of the hearing loss of an individual or to select the hearing aid that is suited to the loss of the person furnishing information on the questionnaire.

PAR. 10. The use by respondents of the aforesaid false, misleading and deceptive acts and practices has had and now has the capacity and tendency to mislead members of the purchasing public into the mistaken and erroneous belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' devices by reason of said mistaken and erroneous belief, and by reason of said misleading and deceptive acts and practices.

PAR. 11. 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 Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Industry Guidance proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure described in § 2.34(b) of its Rules the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

(1) Respondent Lloyd Hearing Aid Corporation 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 905 9th Street, in the city of Rockford, State of Illinois.

Respondent Lloyd D. Kling is an individual and an officer of the corporation, and his address is the same as that of said corporation.

Respondent Marvin Palmquist is an individual and an officer of the corporation, and his address is the same as that of said corporation.

(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

*It is ordered,* That respondents Lloyd Hearing Aid Corporation, a corporation, and Lloyd D. Kling and Marvin Palmquist, 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 any hearing aid device or any component thereof, or any device represented as aiding defective hearing, do forthwith cease and desist from directly or indirectly:

A. 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:

(1) Represents directly or indirectly that respondents offer for sale and sell "America's Largest Selection of Hearing Aids."

(2) Misrepresents in any manner the number of times a battery for use in a hearing aid can be recharged.

(3) Misrepresents in any manner the number of years, or other period of time, that a battery or combination of batteries for use in a hearing aid will perform.

(4) Represents that any hearing aid sold by the respondents is the most powerful on the market, or otherwise represents that any hearing aid has a greater general effectiveness than is the fact, or that any hearing aid will compensate for a greater degree or extent of hearing loss than is true.

(5) Uses the words " $\frac{2}{3}$  off Regular Dealer's Prices" or "65% to 70% LOWER THAN REGULAR DEALER'S PRICES," or words of similar import and meaning, to represent that by purchasing respondents' products, customers are afforded savings amounting to the difference between respondents' price and a compared price for the same merchandise in respondents' trade area, unless a substantial number of principal retail outlets in the trade area regularly sell said merchandise at the compared price or some higher price.

(6) Misrepresents, in any manner, the amount of savings available to purchasers or prospective purchasers of respondents' merchandise at retail.

(7) Misrepresents that any hearing aid is a new invention or involves a new mechanical or scientific principle

through use of the word "miracle" or in any other manner.

(8) Represents that a hearing aid is guaranteed, whether expressed in terms of "guarantee" or "warranty," unless in immediate conjunction therewith the nature and extent of the guarantee, the manner in which the guarantor will perform under the guarantee, and the identity of the guarantor, are clearly and conspicuously disclosed.

(9) Represents that any hearing aid will benefit persons suffering from any hearing disability unless in immediate conjunction with such representation a clear and conspicuous disclosure is made that in some cases of hearing loss, a hearing aid will not be beneficial.

(10) Represents, directly or by implication that respondents can determine the nature or degree of hearing loss upon written information furnished by the purchaser by mail or that the information furnished and the evaluation thereof by respondents or their agents or employees is an adequate, effective or reliable procedure or method to select a hearing aid suited to the individual's hearing loss.

B. Disseminating or causing the dissemination of, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said products in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations or misrepresentations prohibited in Paragraph "A." hereof.

*It is further ordered,* That respondents Lloyd Hearing Aid Corporation, a corporation, and Lloyd D. Kling and Marvin Palmquist, 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 any hearing aid device or any component thereof, or any device represented as aiding defective hearing, or services in connection with the offering for sale, sale or distribution of said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Failing to clearly and conspicuously disclose to purchasers and prospective purchasers prior to acceptance of an order to purchase a hearing aid that furnishing information by mail and the evaluation thereof by respondents or their agents or employees is not an adequate, effective or reliable procedure or method to determine the nature or degree of hearing loss or to select a hearing aid suited to the individual's hearing loss.

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## Decision and Order

(2) Failing to clearly and conspicuously disclose on any questionnaire sent to a prospective purchaser or purchaser of a hearing aid to obtain information concerning the hearing ability or disability of any individual or regarding any hearing aid he or she has worn or is currently wearing, that furnishing such information by mail and the evaluation thereof by respondents is not an adequate, effective or reliable procedure or method to determine the nature or extent of hearing loss or to select a hearing aid suited to the individual's hearing loss.

*It is further ordered,* That respondents shall maintain full and adequate records which disclose the facts upon which any savings claims, including former price, retail price and comparable value claims are based and from which the validity of such claims can be determined.

*It is further ordered,* That the respondent corporation shall forthwith distribute a copy of this order to cease and desist to all subsidiaries, affiliates, offices, employees and agents which are now or hereafter created, elected, employed or appointed.

*It is further ordered,* That the respondents Lloyd Hearing Aid Corporation, a corporation, and Lloyd D. Kling and Marvin Palmquist, 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, and in addition such other reports as may thereafter be directed.

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IN THE MATTER OF

## HANK'S AUTO SALES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF  
THE TRUTH IN LENDING AND THE FEDERAL TRADE COMMISSION ACTS

*Docket C-1837. Complaint, Dec. 30, 1970—Decision, Dec. 30, 1970*

Consent order requiring a Cleveland, Ohio, seller of used automobiles to cease violating the Truth in Lending Act by failing to use the following terms