

## Complaint

## IN THE MATTER OF

## COMMUNITY HEARING CENTER, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION ACT*Docket C-1947. Complaint, June 17, 1971—Decision, June 17, 1971*

Consent order requiring a Providence, R.I., seller and distributor of hearing aids to cease advertising that any hearing aid is a new invention, or making other claims without disclosing that some individuals will not be benefited, misrepresenting that its hearing aids are guaranteed, failing to disclose that the firm is selling hearing aids, and misrepresenting in any manner the purpose of the business or the efficacy of its products.

## 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 Community Hearing Center, Inc., a corporation, and Edward J. McElroy, 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. Community Hearing Center, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island, with its principal office and place of business located at 69 Empire Street, in the city of Providence, State of Rhode Island.

Respondent Edward J. McElroy is an individual and an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is 69 Empire Street, in the city of Providence, State of Rhode Island.

PAR. 2. Respondents, under the trade or assumed name of Community Hearing Center, Inc., 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 "device" as the term "device" is defined in the Federal Trade Commission Act. Respondents do not manufacture said devices but purchase them from one or more manufacturers.

PAR. 3. In the course and conduct of their 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 Rhode Island 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 business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning their 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 other advertising media for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said devices; and have disseminated, and caused the dissemination of advertisements concerning said devices 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 devices in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

MODEL OF NEW HEARING AID GIVEN. . . . Here is truly new hope for the hard of hearing.

American and Japanese engineering has produced a new Hearing Miracle.

Now Undreamed of Hearing Help \* \* \* Now everyone can have the hearing help they have always dreamed of. \* \* \*

HEAR CLEARLY AGAIN With Nothing in Either Ear. . . . Thousands of people who suffered from hearing loss are amazed and delighted to discover that, at last, they can hear again with almost unbelievable clearness, yet without any embarrassment.

A bone conduction method makes correction of hearing loss as easy as putting on a pair of attractive glasses. \* \* \*

Worn ALL-IN-EAR . . . NO WIRES . . . Hides Under a dime. \* \* \*

Its Here! The amazing new HEARING AID. \* \* \* So Tiny it hides completely in your ear. \* \* \* So powerful just slip it in and hear instantly. SIZE miniaturized so nothing shows. . . .

This hearing invention has no buttons, no tubes, no bulky batteries. You may wear it without your closest friend realizing its a hearing aid unless you tell them. \* \* \*

. . . a new Hearing Aid that automatically eliminates unpleasant background noises. \* \* \*

PAR. 5. 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 merchandise a hearing aid which is a new invention or involves a new mechanical or scientific principle.
2. Their hearing aids will be beneficial regardless of an individual's type and/or degree of hearing impairment.
3. They merchandise a hearing aid utilizing bone-conduction principles which will be beneficial to an individual regardless of the type and/or degree of the individual's hearing impairment.
4. The hearing aids will enable an individual to consistently distinguish and understand sounds in group situations or when background noise is present.
5. Their hearing aids are invisible or indiscernible when worn.

PAR. 6. In truth and in fact:

1. They do not merchandise a hearing aid which is a new invention or involves a new mechanical or scientific principle.
2. Their hearing aids will not be beneficial to all individuals with a hearing impairment.
3. They do not merchandise a hearing aid utilizing bone-conduction principles which will be beneficial to an individual regardless of the type and/or degree of the individual's hearing impairment.
4. Their hearing aids will not enable individuals with hearing impairments to consistently distinguish and understand sounds in group situations or when background noise is present.
5. The hearing aids they merchandise are not invisible or indiscernible when worn.

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

PAR. 7. In the course and conduct of their business, and for the purpose of inducing the purchase of their hearing devices, respondents have represented that the hearing devices they merchandise are unconditionally guaranteed.

In truth and in fact said hearing devices merchandised by respondents are not unconditionally guaranteed, but, to the contrary, said guarantee is conditional, and the terms, conditions, identity of

the guarantor, nature and extent of the guarantee and manner in which the guarantor will perform thereunder are not disclosed in conjunction with said guarantee representations.

Therefore, the aforesaid guarantee representation is false, misleading and deceptive.

PAR. 8. In the course and conduct of their business, respondents, through the use of advertisements disseminated by advertising mailers, newspapers and other publications, invite individuals who believe they may be suffering from impaired hearing to submit their names to respondents for the purpose of receiving free helpful information, free gifts, or certain devices at discount prices, relative to their hearing problem without obligation of any nature. Respondents through advertising disseminated as aforesaid also invite individuals with hearing problems to attend "Hearing Conferences" held monthly in various cities located in Rhode Island and Massachusetts. Such advertising literature contains the inference that the aforesaid "Hearing Conferences" are conducted by respondents as a public service. In addition, respondents, through the use of the aforesaid advertisements, represent that they seek to obtain information for a survey of individuals suffering from impaired hearing by inviting individuals to submit the names of others who may be suffering from impaired hearing.

In truth and in fact respondents' aforesaid representations were not, and are not, bona fide offers to furnish free of charge, helpful information as aforesaid to individuals suffering from hearing disabilities. Respondents are not in the business of performing such advertised acts as a public service, nor are they engaged in a bona fide survey of those suffering from impaired hearing; but, to the contrary, all of the aforesaid representations were and are made by respondents for the purpose of developing sales leads to prospective purchasers of respondents' hearing devices.

Respondents and respondents' sales personnel have contacted individuals whose names were submitted as aforesaid, and respondents and their sales personnel have attempted to sell, and have often sold, such individuals one or more of respondents' hearing devices.

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 and representations were and are true and into the pur-

chase of substantial quantities of respondents' devices by reason of said erroneous and mistaken beliefs.

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 constituted, and now constitute, 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 the 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 alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34 (b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Community Hearing Center, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island, with its principal office and place of business located at 69 Empire Street, in the city of Providence, State of Rhode Island.

2. Respondent Edward J. McElroy is an individual and an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is 69 Empire Street, in the city of Providence, State of Rhode Island.

3. 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 Community Hearing Center, Inc., a corporation, and Edward J. McElroy, 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, 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 merchandise a hearing aid which is a new invention or involves a new mechanical or scientific principle.

- (b) Their hearing aids will be beneficial to individuals with a hearing impairment unless in immediate conjunction therewith it is clearly and conspicuously disclosed that many individuals with a hearing impairment will not benefit from use of a hearing aid.

- (c) They merchandise a hearing aid utilizing bone-conduction principles which will be beneficial to individuals with a hearing impairment, unless in immediate conjunction therewith it is clearly and conspicuously disclosed that many individuals with a hearing impairment will not benefit from use of a hearing aid utilizing bone-conduction principles.

- (d) Their hearing aids will enable an individual with a hearing impairment to distinguish and understand sounds in group situations or when background noise is present, unless in immediate conjunction therewith it is clearly and conspicuously disclosed that many individuals with a hearing impairment will not receive such benefits from use of a hearing aid.

- (e) Their hearing aids are either invisible or indiscernible when worn.

- (f) Their hearing aids are guaranteed, unless in immediate conjunction therewith the identity of the guarantor, the

nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

(g) Their hearing aids are guaranteed, unless in all instances respondents fully, satisfactorily and promptly perform all of their obligations and requirements under the terms of the guarantee.

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 to the public for a profit.

(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. Misrepresenting in any manner:

(a) The nature and purpose of their business.

(b) The efficacy of their hearing aids.

4. 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 of this order or which fails to comply with the affirmative requirements of Paragraph 2 of this order.

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

6. Failing to notify the Commission at least thirty (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 corporate respondent which may affect compliance obligations arising out of the order.

Recommendations for Final Disposition

78 F.T.C.

*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