

IN THE MATTER OF
THE TELEX CORPORATION

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

Docket C-1975. Complaint, July 20, 1971—Decision, July, 20, 1971

Consent order requiring a Tulsa, Okla., distributor of hearing aids to cease misrepresenting that its hearing aid is a new invention, is invisible when worn, will benefit all persons with hearing difficulty, failing to disclose that respondent or its salesmen are engaged in selling hearing aids, or misrepresenting in any manner the nature of respondent's business and the merits 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 The Telex Corporation, hereinafter referred to as respondent, has 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 The Telex Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal place of business located at 41st and Sheridan Road, Box 1526, Tulsa, Oklahoma.

PAR. 2. Respondent is now, and for some time last past has been, through its operating division, at times referred to as Telex Acoustics, Telex Acoustic Products, and/or The Telex Communications

Division, 9600 Aldrich Avenue South, Minneapolis, Minnesota, 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, to dealers and distributors for resale to the public.

PAR. 3. In the course and conduct of its business as aforesaid, respondent now causes, and for some time last past has caused, its said devices when sold to be shipped from its place of business in Minnesota to purchasers thereof located in various other States of the United States, and maintains and at all times mentioned herein has 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 its business, and at all times mentioned herein, respondent has been, and is now, in substantial competition, in commerce, with corporations, firms and individuals likewise engaged in the sale of hearing aids of the same general kind and nature as the devices sold by respondent.

PAR. 5. Respondent in the course and conduct of its business for the purpose of inducing the purchase of said devices has furnished and supplied to dealers and distributors, and to the agents and representatives thereof, who sell said devices to the public, various types of advertising literature, including but not limited to, sales manuals, brochures, advertising mailers, ad mats, and other sales aid materials.

Respondent has assisted, aided, and cooperated with its dealers and distributors in the advertising of said devices in newspapers and periodicals of general circulation, as well as in radio and television broadcasts.

Advertising brochures and sales aid material furnished by respondent to its dealers and distributors are displayed by them, and by their agents and representatives, to prospective purchasers of hearing aids, are used by them as sales aids in the display and demonstration of said devices, and/or are distributed by them to persons with hearing disabilities to interest such persons in the purchase of one or more of respondent's devices. Statements and representations, made by said dealers and distributors and their agents and representatives to prospective purchasers to induce the purchase of one or more of respondent's hearing aids, are therefore, in large part suggested by, and have the expressed or implied approval of the respondent; and sales made in the course, or as a result of said sales

talks, displays and demonstrations inure to the benefit of the respondent.

PAR. 6. In the course and conduct of its business respondent has disseminated, and does now disseminate, certain advertisements 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 periodicals of general circulation, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said devices; and has disseminated and caused the dissemination of advertisements concerning said devices by various means, including those aforesaid, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said devices in commerce as "commerce" is defined in the Federal Trade Commission Act.

Through the above advertisements disseminated as aforesaid and through the advertising material distributed to its dealers and distributors, as described in Paragraph Five hereof, and otherwise, respondent has represented directly and by implication that:

1. It merchandises a hearing aid which is a new invention or involves a new mechanical or scientific principle.
2. Its hearing aids are invisible or indiscernible when worn.
3. Its hearing aids will be beneficial regardless of an individual's type of hearing disability.
4. Its hearing aids will enable purchasers thereof to consistently distinguish and understand sounds in group situations or when background noise is present.

PAR. 7. In truth and in fact:

1. The hearing aids merchandised by respondent are not new inventions nor do they involve new mechanical or scientific principles.
2. The hearing aids merchandised by respondent are not invisible or indiscernible when worn.
3. Respondent's hearing aids will not prove beneficial to all persons with a hearing disability.
4. Respondent's hearing aids will not enable many individuals with hearing disabilities to consistently distinguish and understand sounds in group situations or when background noise is present.

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 Paragraph Six were false, misleading and deceptive.

PAR. 8. In the course and conduct of its business respondent by the use of advertising mailers including reply cards attached thereto, by advertisements placed in periodicals of general circulation, and otherwise, invite and have invited, the addressees and/or readers of the said advertisements to return the reply cards or to respond to the advertisements in order to receive a "free" book on ways to improve their hearing, a "free" booklet on nerve deafness, and/or other publications represented as informative and helpful to persons with hearing disabilities. Such mailers and advertisements are so designed as to give the impression and to lead recipients thereof to believe that such "free" book and other "free" information offers by respondent are bona fide offers, in the nature of a public service; and that no further contact or obligation other than said "free" information will result from such answer or reply.

To the contrary, however, respondent is not in a bona fide business of dispensing "free" books, or other information, concerning hearing disabilities, nor is it engaged in such acts as a public service. The names of persons who respond to the advertising mailers, and to other advertisements of respondent, are furnished by respondent to its dealers and distributors located in or near the vicinity of the persons so responding. Such names are forwarded to said dealers and distributors as "leads" to prospective purchasers of respondent's hearing aids.

Persons sending in respondent's reply cards, and/or answering respondent's advertisements have, thereafter, been visited in their homes by respondent's dealers and distributors and/or salesmen, agents and representatives thereof, who have attempted to, and often succeeded in, selling such persons one or more of respondent's hearing aids.

PAR. 9. The dissemination by respondent of the aforesaid false advertisements, and the use of the aforesaid false, misleading and deceptive acts 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 purchase of substantial quantities of respondent's devices by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of the respondent, 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 respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce 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 respondent named in the caption hereof with violation of the Federal Trade Commission Act, and respondent 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

Respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by respondent 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 thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed agreement and placed such agreement 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, makes the following jurisdictional findings and enters the following order.

1. Respondent, the Telex Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal place of business located at 41st and Sheridan Road, Box 1526, Tulsa, Oklahoma.

Respondent's operating division, at times referred to as Telex Acoustics, Telex Acoustic Products, and/or the Telex Communications Division, is located at 9600 Aldrich Avenue South, Minneapolis, Minnesota.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

PART I

It is ordered, That respondent The Telex Corporation, a corporation, and its officers, and respondent's 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, 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) Respondent merchandises a hearing aid which is a new invention or involves a new mechanical or scientific principle.

(b) Respondent's hearing aids are either invisible or indiscernible when worn.

(c) Respondent's hearing aids will be beneficial to individuals with hearing problems unless in immediate conjunction therewith it is clearly and conspicuously disclosed that not all individuals suffering from a hearing loss will benefit from use of a hearing aid.

(d) Use of respondent's hearing aids will enable an individual with a hearing disability to consistently 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 disability will not receive such benefits from the use of a hearing aid.

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) Respondent is engaged in the manufacture and distribution of hearing aids for sale to the public

(b) Persons who reply to advertisements may be contacted by salesmen, or otherwise, for the purpose of inducing them to purchase a hearing aid.

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 of Part I of this order or fails to comply with the affirmative requirements of Paragraph 2 of Part I hereof.

PART II

It is ordered, That respondent The Telex Corporation and its officers, and respondent's 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting in any manner:

- (a) The nature or purpose of respondent's business.
- (b) The merits and effectiveness of respondent's hearing aids.

2. Supplying or placing in the hands of any franchised dealer, distributor or any salesman, representative, or agent thereof, sales manuals, brochures, advertising mats, or any other advertising, or sales aid materials for the purpose of inducing or which are likely to induce, directly or indirectly, the purchase of respondent's devices, and which contain any of the false, misleading or deceptive representations prohibited in this order, or which are designed for use, or could be used, to carry out or enhance the practices prohibited in this order.

3. 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, and any other person now engaged or who becomes engaged in the sale of hearing aids as respondent's agent, representative or employee; and failing to secure a signed statement from each of said persons acknowledging receipt of a copy thereof.

4. 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 corporation which may effect compliance obligations arising out of the order.

It is further ordered, That respondent shall, within sixty (60) days after service of this order, file with the Commission a written report setting forth in detail the manner and form of its compliance with this order.

Complaint

79 F.T.C.

IN THE MATTER OF

ZIMET INTERNATIONAL CORPORATION, ET AL.

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

Docket C-1976. Complaint, July 20, 1971—Decision, July 20, 1971

Consent order requiring a New York City wholesaler of furs to cease falsely or deceptively invoicing its furs or fur products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Zimet International Corporation, a corporation, and Jesse Zimet, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling 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 Zimet International Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondent Jesse Zimet is an officer of the corporate respondent. He formulates, directs and controls the acts, practices and policies of the said corporate respondent including those hereinafter set forth.

Respondents are wholesalers of furs with their office and principal place of business located at 232 West 30th Street, New York, New York.

PAR. 2. Respondents are now and for some time last past have been, engaged in the introduction into commerce, and in the sale, advertising and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and have sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of furs which have been shipped and received in commerce; and have introduced into commerce, sold, advertised and offered for sale in commerce and transported and distributed in commerce, furs, as the terms "commerce,"