

Complaint

88 F.T.C.

IN THE MATTER OF  
BELTONE ELECTRONICS CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

*Docket 9014. Complaint, Jan. 29, 1975 — Decision, Sept. 8, 1976*

Consent order requiring a Chicago, Ill., hearing aid manufacturer, among other things to cease misrepresenting the uniqueness, benefits, characteristics and efficacy of its products. The respondent is also prohibited from disseminating and supplying misleading or deceptive promotional materials. Further, respondent is required to maintain appropriate records and institute a program for reviewing its advertising.

*Appearances*

For the Commission: *Wallace S. Snyder* and *Sally W. Thompson*.  
For the respondent: *Donald A. Mackay*, *Sidley & Austin*, Chicago, Ill., *Elroy H. Wolff*, *Sidley & Austin*, Washington, D.C.

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 Beltone Electronics Corporation, a corporation, and Sam Posen, David H. Barnow and Chester K. Barnow, individually and as officers 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 Beltone Electronics Corporation is a corporation, hereinafter referred to as the corporate respondent, organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 4201 West Victoria St., Chicago, Illinois.

Sam Posen is an individual, who is an officer and a director of the corporate respondent. He, with his wife, Faye Posen, is the founder and major stockholder of the corporate respondent, controlling, approving and authorizing the acts and practices of the corporate respondent and the remaining individual respondents, including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondent.

Respondent David H. Barnow is an individual who is an officer and a stockholder of the corporate respondent. Respondent Chester K.

Barnow is an individual who is a director and a stockholder of the corporate respondent. They cooperate in the formulation, direction and control of the 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.

The individual respondent and Faye Posen own almost all of the corporate stock of the corporate respondent, which is a closely held, family corporation.

PAR. 2. Respondents are now, and for some time last past have been engaged in 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, respondents 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 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 devices 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 likewise engaged in the sale of hearing aids of the same general kind and nature as the devices sold by respondents.

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

Respondents have assisted, aided, provided payments to and otherwise cooperated with their dealers, distributors, licensees, retailers, salesmen, and representatives and agents thereof, in the advertising of said devices.

PAR. 6. In the course and conduct of their business, respondents have disseminated, and now disseminate, certain advertisements by the use of the United States mail, 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 or broadcast on radio or television, for the purpose of inducing and which are likely to induce, directly or indirectly the

purchase of their said devices, and have 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.

PAR. 7. Typical and illustrative of the representations contained in the advertisements referred to in Paragraphs Five and Six, but not all inclusive thereof, are the following:

a. Is there someone you know—some friend or loved one, who wears a hearing aid but *still doesn't hear well*? Then tell him about the *Beltone Largo*, a totally *new* body-worn hearing aid. Largo, by Beltone is *the effective* aid for really *severe* hearing losses. The Largo is built around the new Dyna-Couple Amplifier—patent pending, and exclusive with Beltone. It actually delivers *pure hearing power* with *remarkable clarity*—and what a difference this can mean to anyone who is trying to hear and understand with an aid that can't deliver enough power!

b. Beltone Vivo the first completely new hearing aid design in years! There's never been anything like this before! \* \* \* For a new degree of solid sound. Clear and distinct. Vivo is the years-ahead hearing help. So powerful, it helps even some serious losses. \* \* \* With a new patent pending Beltone AccuFit Earseal that shapes itself to fit snugly in your ear canal. Contoured for comfort and naturally shaded to escape notice, the Vivo is the most *in* the ear, all in-the-ear aid yet \* \* \* the new hearing help that makes every other in-the-ear aid obsolete. New hideability, new clarity of sound, new easy listening.

c. Beltone Cantata \* \* \* new frontfocus power is always on target for relaxed, comfortable hearing! \* \* \* new amplifier \* \* \* newly improved, smaller-than-ever version of Beltone's famous patented Micro-Module Circuit\* \* \*This remarkable, subminiature circuit is another exclusive from Beltone research.

d. The exciting new Beltone AccuSound System (patent pending) — a Beltone exclusive — brings a new clarity of sound to in-the-ear aids.

e. Beltone's exclusive patented Micro-Module Circuit has enabled Beltone engineers to design the Prelude so that all working components and parts hide discreetly in the most unnoticeable spot of all—behind the top of the ear.

f. Nerve deafness can be helped! \* \* \* Nerve deafness, a common cause of hearing impairment, *can be helped*, even though there is no surgical or medical cure. If you say, "I can hear but I can't understand", I invite you to write, today, for this valuable free brochure, "The Truth About Nerve Deafness." Find out, for yourself, how nerve deafness can be helped.

g. Nerve deafness is the most common kind of hearing loss, and many people think it can't be helped. But even though there is no surgical or medical cure available, nerve deafness *can* be helped. If you say to yourself, "I can hear, but I can't understand," you may be suffering from nerve deafness. Beltone invites you to find out, now, how you can be helped.

h. Beltone's new Andante actually weighs only one-quarter of an ounce—hardly more than this folder! Yet, for all its tiny size, it delivers truly remarkable performance —

brilliant, clear, natural-sounding. More important still, the Andante is a *full performance* aid, packed with enough power for even serious losses \* \* \* You'll notice a wonderful improvement in what hearing specialists call "speech discrimination" -- your all-important ability not just to *hear* sounds, but to *understand clearly!* You hear without straining, even in noisy surroundings.

i. Every so often folks come in to see our Beltone consultants with hearing problems they fear are "too serious to do anything about." After tests, they try one of Beltone's super-powered aids and are amazed. These are folks who despaired of ever hearing comfortably or easily again. \* \* \* If you've been told your hearing problem can't be helped, I urge you to come in soon.

j. Yes, Beltone Presto is *ideal* for mild *nerve deafness*, the most *common* form of hearing loss.

k. New Beltone hearing aids are bringing hearing help to thousands—even those who were told they were "too deaf to be helped."

l. You have a variety of choice when you select a Beltone Hearing Aid. You may prefer the subminiature aid that fits snugly behind the ear, yet corrects even severe losses.

m. "Here it is, Beltone's Cantata — with *reserve power* for clear hearing; enough even for serious losses, thanks to *two* power settings.

n. The sensational, new Etude/8 \* \* \* Better hearing in ordinary conversation \* \* \* Better hearing in a group gathering \* \* \* Want to feel confident in a group? \* \* \* Etude/8 tunes you in so you're missing less, enjoying more!

o. Beltone's Andante helps you hear clearly, confidently even in noisy surroundings.

p. What's more, many users who field tested the Symphony for us told us how well they could hear even in noisy places.

q. More than that, it's a *great* hearing aid—with all the improvements, all the features that have brought clear, "natural" hearing back to so many Beltone wearers.

PAR. 8. Through the above representations, and others of similar import and meaning but not expressly set out herein, respondents have represented, directly or by implication that:

1. Respondents merchandise a hearing aid which is a new invention or involves new model features or a new mechanical, engineering or scientific concept or principle in hearing aid capability.

2. Certain of respondents' hearing aids or component parts thereof are unique, special or exclusive in that they:

(a) are superior to all other hearing aids or component parts thereof used for hearing loss, or

(b) contain or embody certain inventions, features (excluding physical appearance), concepts, or principles not contained or embodied in any other hearing aids or component parts thereof used for hearing loss.

3. Respondents' hearing aids will be beneficial to persons with a hearing loss, regardless of the type or extent of loss.

4. Respondents' hearing aids will enable persons with a hearing loss to distinguish and understand speech sounds in noisy or group situations.

5. Respondents' hearing aids will help those persons who hear but do not understand.

6. Respondents' hearing aids will restore natural hearing to wearers and will enable wearers of such devices to hear sounds naturally.

PAR. 9. In truth and in fact:

1. The hearing aids referred to in the representations contained in Paragraph Seven, and in other advertisements, are not new inventions nor do they involve model features or mechanical, engineering or scientific concepts or principles in hearing aid capability that are new.

2. The hearing aids referred to in the representations contained in Paragraph Seven, and in other advertisements, or the component parts thereof are not unique, special or exclusive in that they;

(a) are not superior to all other hearing aids or component parts thereof used for hearing loss; or

(b) do not contain or embody features (excluding physical appearance), concepts or principles not contained in other hearing aids or component parts thereof used for hearing loss.

3. Many persons with a hearing loss will not receive any significant benefit from any hearing aid.

4. Many persons with a hearing loss will not be able to consistently distinguish and understand speech sounds in noisy or group situations by using any hearing aid.

5. In many instances, persons who hear but do not understand have a discrimination problem that cannot be helped by any hearing aid.

6. No hearing aid will restore natural hearing to the wearers thereof nor will it enable such persons to hear sounds naturally.

Therefore, the advertisements referred to in Paragraphs Five through Eight 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 through Eight were and are false, misleading and deceptive.

PAR. 10. Through the use of the aforesaid advertisements, respondents have represented, directly or by implication, that at the time respondents made the claims set forth in Paragraph Eight respondents had a reasonable basis for such claims.

PAR. 11. In truth and in fact, at the time that respondents made the

claims set forth in Paragraph Eight, respondents had no reasonable basis from which to conclude that such claims were true.

Therefore, the statements and representations set forth in Paragraph Eight were, and are, deceptive or unfair acts or practices.

PAR. 12. At the time that respondents made the claims set forth in Paragraph Eight, respondents had no reasonable basis to support such claims.

Therefore, the making of the claims set forth in Paragraph Eight was, and is, a deceptive or unfair act or practice.

PAR. 13. The following statement constitutes a material fact with respect to the making of any claim regarding the hearing capabilities or hearing quality of any hearing aid:

Many persons with a hearing loss will not receive any significant benefit from any hearing aid.

PAR. 14. The advertisements referred to in Paragraphs Five through Eight contain claims regarding the hearing capability or hearing quality of respondents' hearing aids and fail to disclose the material fact set forth in Paragraph Thirteen. Therefore, those advertisements were and are "false advertisements" as that term is defined in the Federal Trade Commission Act, and respondents' failure to disclose said material fact in connection with each such claim for their hearing aids was, and is, an unfair or deceptive act or practice.

PAR. 15. The dissemination by respondents of the aforesaid false advertisements, and the use of the aforesaid unfair or deceptive acts or practices has had, and now has the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said advertisements and the representations contained therein were, and are, true and into the purchase of substantial quantities of respondents' devices by reason of said erroneous and mistaken belief.

PAR. 16. The aforesaid acts and practices of respondents, as herein alleged, including the dissemination of false advertisements and the making of representations without a reasonable basis, 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 or deceptive acts or practices in commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act.

#### DECISION AND ORDER

The Federal Trade Commission having issued a complaint which charges respondent Beltone Electronics Corporation with violating the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid complaint, 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 alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 3.25(d) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Beltone Electronics Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 4201 West Victoria St., Chicago, Illinois.

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

#### ORDER

#### PART I

*It is ordered*, That Beltone Electronics Corporation, a corporation, its successors and assigns, 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, do forthwith cease and desist from:

1. Disseminating or causing the dissemination of any advertisement, by means of the United States mail or by any means in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, which

(a) Represents, directly or by implication, that:

(1) Respondent merchandises a hearing aid which is a new invention or involves a new mechanical, engineering or scientific concept or principle in hearing aid capability unless [1] respondent possesses and relies upon competent and reliable scientific or medical evidence which establishes that respondent merchandises such a hearing aid which is a new invention or involves a new mechanical, engineering or scientific concept or principle in hearing aid capability; [2] the invention, concept or principle represents a significant benefit to users of the hearing aid; [3] respondent clearly and conspicuously describes the new invention,

concept, or principle, and the significant benefit to the user of the hearing aid, in the advertisement; and [4] respondent maintains in its records, subject to reasonable inspection by Commission staff members, the competent and reliable scientific or medical evidence upon which it relies to support such claim until three (3) years after the last dissemination of any such claim.

(2) Respondent's hearing aid or its shape, design or any other model feature is new, or that respondent merchandises a hearing aid which is a new invention or involves a new mechanical, engineering or scientific concept or principle when such hearing aid or its shape, design or any other model feature or invention, mechanical, engineering or scientific concept or principle has been marketed in the United States for a period greater than one year. Provided, however, that such one-year time period shall not begin to run during the test marketing of such new model or feature where such test marketing program does not cover more than fifteen percent (15%) of the population, does not exceed six (6) months in duration, and is conducted in good faith for test purposes only.

(3) Respondent's hearing aids will be beneficial to persons with a hearing loss regardless of the type or extent of loss.

(4) Use of respondent's hearing aids will enable all persons with a hearing loss to consistently distinguish or understand speech sounds in noisy situations.

(5) Use of respondent's hearing aids will enable all persons with a hearing loss to consistently distinguish or understand speech sounds in group situations.

(6) Respondent's hearing aids or component parts thereof (a) are unique or superior to all other hearing aids used for hearing loss; or (b) embody inventions, features (excluding physical appearance), concepts or principles not contained or embodied in any other hearing aid or component parts thereof used for hearing loss unless [1] respondent possesses and relies upon competent and reliable scientific or medical evidence which establishes that its hearing aids or component parts thereof (a) are unique and superior to all other hearing aids used for hearing loss, and (b) embody inventions, features, concepts or principles not contained or embodied in any other hearing aids or component parts thereof used for hearing loss; [2] the hearing aid or component part, invention, feature, concept or principle represents a significant benefit to users of the hearing aid; [3] respondent clearly and conspicuously describes the nature of the uniqueness or superiority claim made in the advertisement, including the nature of the benefit to the consumer attributed to the invention, feature, concept or principle embodied in any such hearing aid; and [4] respondent maintains in its records,

subject to reasonable inspection by Commission staff members, the competent and reliable scientific or medical evidence upon which it relies to support such claim until three (3) years after the last dissemination of any such claim.

(7) Respondent's hearing aids will help all or most persons to discriminate speech sounds where they hear but do not understand.

(8) Respondent's hearing aids will restore natural hearing to wearers or will enable wearers of such devices to hear sounds naturally.

(b) In the event the Federal Trade Commission promulgates a final trade regulation rule which omits a requirement or prohibition or whose requirements or prohibitions differ in any manner with respect to the representations dealt with in any sub-paragraph of Paragraph 1 of Part I, of this order, such omissions, requirements or prohibitions with respect to such representations imposed by the rule shall, on the effective date of the rule, supersede and replace or cause to be automatically deleted the corresponding and differing sub-paragraphs of Paragraph 1, Part I, of this order.

2. Making, directly or indirectly, any statement or representation in any advertising or sales promotional material as to any feature (excluding physical appearance), or performance characteristic of, or the uniqueness, superiority or efficacy of any of respondent's hearing aids or any component part thereof, unless prior to the time of such statement or representation respondent had a reasonable basis for same, which shall consist of competent and reliable scientific or medical evidence.

3. Failing to maintain accurate and adequate records which may be inspected by Commission staff members upon reasonable notice:

(a) which contain documentation in support of any claim included in any advertising or sales promotional material disseminated by respondent, or any of its divisions' or subsidiaries' officers or employees, which claim concerns any feature (excluding physical appearance), or performance characteristic of or the uniqueness, superiority or efficacy of, any of respondent's hearing aids or any component part thereof; and

(b) which provided the basis upon which respondent relied at the time any such claim was made. Such records shall be maintained by respondent for so long as any such material is disseminated by respondent or any of its divisions' or subsidiaries' officers or employees, or by its dealers, distributors, licensees, retailers, representatives or agents thereof, in cooperation with respondent, and for a further period of three (3) years after the last dissemination of any such material.

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 or affecting 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.

## PART II

*It is further ordered*, That Beltone Electronics Corporation, a corporation, its successors and assigns, and respondent's agents, representatives, officers and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale, or distribution of hearing aids in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act shall not:

1. Misrepresent, directly or indirectly, any feature or performance characteristic of any of respondent's hearing aids or any component part thereof.
2. Supply any dealer, distributor, licensee, retailer, salesperson, representative or agent thereof, with advertisements, 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.

## PART III

*It is further ordered*, That Beltone Electronics Corporation, a corporation and its successors and assigns, shall:

1. Within thirty (30) days after the effective date of this order, or within thirty (30) days after any dealer, distributor, licensee or retailer attains such status, distribute a copy of this order, by certified or registered mail, return receipt required, to each of respondent's known dealers, distributors, licensees, or retailers, who are now or in the future become engaged in the advertising, offering for sale, sale or distribution of respondent's hearing aids to the consuming public, except with respect to respondent's hearing aids advertised, offered for sale, sold or distributed under a private label by a party other than respondent, this requirement shall be limited to sending a copy of the order to the person responsible for the advertising of respondent's hearing aids under the private label at the principal office of the private label purchaser of respondent's hearing aid.
2. Supply, upon request, proof of distribution to, and make available to the Federal Trade Commission for inspection and review, the names

and addresses of those parties to whom respondent distributed a copy of this order as required by paragraph 1 of Part III of this order.

3. Inform each appropriate party described in paragraph 1 above that respondent shall not participate in any way in any advertisement which fails to comply with Part I of this order.

4. Not pay for, compensate for, print, mail or in any other way, directly or indirectly, through discounts, services, or any other benefit in lieu of direct payment, or otherwise participate in any manner in the preparation of, payment for, or dissemination of any of the advertisements of any party described in paragraph 1 above at any time if any such advertisement fails to comply with Part I of this order.

5. Within thirty (30) days after the effective date of this order, institute a program for reviewing any advertisement submitted by respondent's dealers, distributors, licensees, retailers, representatives or agents thereof, pursuant to respondent's cooperative advertising or similar program for advertising credit or other consideration.

#### PART IV

*It is further ordered,* That respondent submit to the Federal Trade Commission, within sixty (60) days from the effective date of this order, a detailed report describing the actions that respondent has taken in order to comply with said order.

In addition, respondent shall, for a period of three (3) years at one-year intervals from the effective date of this order, submit to the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

*It is further ordered,* That respondent 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 any subsidiary or any other change in the corporate structure which may affect any compliance obligation arising out of this order.

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

Commissioner Dole did not participate by reason of absence.

IN THE MATTER OF  
CREATIVE REPLACEMENTS, INC., ET AL.

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

*Docket 9020. Complaint, March 12, 1975 — Decision, Sept. 8, 1976*

Consent order requiring a Brooklyn, N.Y., manufacturer and seller of hair replacement products, among other things, to cease misrepresenting guarantees, appearance, durability, care and safety of their hair replacement implant System; failing to disclose that the System involves surgical procedures which can result in pain, infection, scarring and skin disorders; and requires continuing special care. Additionally, order requires that prospective customers be advised to seek medical consultation prior to purchase of implant System; that 15 percent of all advertisements be devoted to warning disclosure statements; and provides for a "cooling-off" period during which customers may cancel their contracts without forfeiting their deposits.

*Appearances*

For the Commission: *Harold F. Moody and Rodney E. Gould.*

For the respondents: *Edward H. Weinberg, Simon, Wasserman & Weinberg, Great Neck, N.Y.*

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 above-captioned corporations and individuals, more particularly described and referred to hereinafter 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 Creative Replacements, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 2335 Coney Island Ave., Brooklyn, New York.

Respondent Nu-Hair Replacement Center, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 2335 Coney Island Ave., Brooklyn, New York.

Respondent United Hair Extension, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 2335 Coney Island Ave., Brooklyn, New York.