

IN THE MATTER OF

DAHLBERG ELECTRONICS, INC.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket 8929. Final Order, Aug. 6, 1974—Modifying Order, April 11, 1983

The Federal Trade Commission has reopened this matter and modified its order issued on Aug. 6, 1974 (84 F.T.C. 222), to permit the company to suggest resale prices to its dealers. The modified order leaves intact the prohibition against resale price maintenance.

ORDER MODIFYING DECISION AND ORDER

On November 24, 1982, respondent Dahlberg, Inc., formerly known as Dahlberg Electronics, Inc, filed a Request to Reopen Proceeding and to Set Aside Consent Order. The request was filed pursuant to Section 2.51 of the Commission's Rules of Practice. It was placed on the public record for comments. No comments were received.

Respondent asks the Commission to reopen this proceeding and to set aside the order to cease and desist entered on August 6, 1974. The order generally prohibits respondent in the sale of its own brand name hearing aids from, among other things, employing exclusive dealerships and dealer territorial and customer restrictions and from engaging in resale price maintenance and requires respondent to deal with all persons competing with its dealers.

Respondent relies on changed conditions of fact and law and the public interest in seeking to have the proceeding reopened and the order set aside. It relies principally on the Commission's recent opinion and decision in *Beltone Electronics Corp.*, Docket No. 8928 (July 6, 1982) [100 F.T.C. 68]. In that matter, the Commission dismissed a complaint against another manufacturer of hearing aids that the Commission had issued on May 8, 1973, simultaneously with the complaint issued in this matter.

The Commission has considered respondent's request and other relevant information and determined that respondent has demonstrated that it would be in the public interest to reopen the proceeding to set aside Subparagraph Nos. 1, 2, 3, 4, 6, 7, 8, and 9 of Paragraph I of the order. However, the Commission will not be precluded from taking enforcement action concerning such practices when the Commission has reason to believe that they violate the law.

The Commission has further considered whether to modify as requested by respondent Subparagraph No. 5 of Paragraph I, the prohi-

bition against resale price maintenance. In this regard, the Commission has determined it would be in the public interest to modify the paragraph to terminate the prohibition against suggested resale prices.

Accordingly,

It is ordered, That this matter be, and it hereby is, reopened and that Subparagraph Nos. 1, 2, 3, 4, 6, 7, 8, and 9 of Paragraph I shall be set aside as of the effective date of this order.

It is further ordered, That Subparagraph No. 5 of Paragraph I be modified as of the effective date of this order by striking "5" and "or suggesting" and inserting "or" after "stabilizing,".

IN THE MATTER OF

AMREP CORPORATION

*Docket 9018. Interlocutory Order, April 11, 1983*ORDER DENYING RESPONDENT'S MOTION TO DISMISS THE COMPLAINT
FOR MOOTNESS AND LACK OF PUBLIC INTEREST

By motion dated January 17, 1983, as supplemented by an affidavit in support of the motion filed February 3, 1983, respondent has moved for an order dismissing the complaint for mootness and lack of public interest. Further, the respondent requests that the Commission reopen the record to consider the developments set out in the motion which, in its view, require the Commission to dismiss this complaint.

Respondent argues that five events have occurred since the close of the record in this proceeding which render further proceedings moot. Respondent notes the settlement of certain class actions by buyers of land at Rio Rancho Estates, the sale of all remaining unsold vacant land at Silver Spring Shores to General Development Corporation [100 F.T.C. 488], the transfer of "substantially all" of the land at El Dorado, the reconveyance of land at Oakmont Shores to the trustee in bankruptcy of the former owner, and the enactment of amendments to the Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701, *et seq.*, and the regulations thereunder. As a result of all of these changed circumstances, respondent argues that it is no longer selling much of the land involved in the complaint, and that future sales will be governed by the stronger protections now present in the amended Interstate Land Sales Full Disclosure Act. Accordingly, respondent argues, any possible Commission order is unnecessary.

On January 31, 1983, complaint counsel filed an answer in opposition to the respondent's motion.

The Commission sees no reason to reopen the record to evaluate the impact of these developments on any potential order which it may adopt in this matter. The reconveyance of lots at Oakmont Shores to the Trustee in Bankruptcy occurred in 1975, and is reflected in the record. (*See, e.g.*, Initial Decision at pp. 73-74.) Similarly, information and arguments concerning the effect of class action settlements, and the amendments to the Interstate Land Sales Full Disclosure Act and the regulations thereunder, are reflected in the record and the briefs. (*See, e.g.*, Denial of Respondent's Motion for an Order Pursuant to 5 U.S.C. 557(d)(1), (12/12/78); Ruling on "Respondent's Motion to Take Official Notice and for a Hearing on Form and Content of Relief" (6/11/79); Respondent's Reply to Complaint Counsel's Answer to Re-