

Complaint

116 F.T.C.

IN THE MATTER OF

CENTER FOR IMPROVED COMMUNICATIONS, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3433. Complaint, June 15, 1993--Decision, June 15, 1993*

This consent order requires, among other things, the New York corporation and its officer to correct false and deceptive claims in Yellow Pages advertisements, prominently post corrected information about Medicare coverage in their offices or provide it to consumers prior to purchase, and prohibits them from misrepresenting the coverage provided by any medical insurance for any hearing-related device or service they offer in the future.

*Appearances*For the Commission: *Collot Guerard* and *Eileen Harrington*.For the respondents: *Pro se*.

COMPLAINT

The Federal Trade Commission, having reason to believe that Center for Improved Communications, a corporation, and Jack Brown, individually and as an officer of Center for Improved Communications, ("respondents"), have violated certain provisions of the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Center for Improved Communications is a New York corporation with its main office and principal place of business located at 9720 Flatlands Avenue, Brooklyn, New York. Another office is located at 1301 57th Street, Brooklyn, New York.

PAR. 2. Respondent Jack Brown is an audiologist who is an officer of Center for Improved Communications. He formulates,

directs and controls the policies, acts and practices of Center for Improved Communications, and his address is the same as said corporation.

PAR. 3. Respondents are, and have been, selling hearing aids and offering hearing tests to the public. Hearing aids are a "device" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act, 15 U.S.C. 52 and 55.

PAR. 4. The acts and practices of respondents alleged in this complaint are, and have been, in or affecting commerce, as commerce is defined in the Federal Trade Commission Act.

PAR. 5. Respondents have placed, or caused to be placed, advertising for hearing aids in various Yellow Pages directories distributed to the general public, as a means of inducing the public to buy their products and services.

PAR. 6. Respondents' advertising includes, but is not necessarily limited to, the attached Exhibit A. This advertising contains the following statement:

"Hearing Aids ... Complete Audiological Evaluations ... Medicare ... Accepted."

PAR. 7. Through the use of the statement contained in the advertisement referred to in paragraph six, including but not necessarily limited to the advertisement attached as Exhibit A, respondents have represented, directly or by implication, that Medicare will pay for the costs of hearing aids purchased from respondents.

PAR. 8. In truth and fact, Medicare will not pay for the costs of hearing aids purchased from respondents. Therefore, the representation made in paragraph seven was, and is, false and misleading.

PAR. 9. Through the use of the statement contained in the advertisement referred to in paragraph six, including but not necessarily limited to the advertisement attached as Exhibit A, respondents have represented, directly or by implication, that Medicare will pay for the costs of hearing tests provided by respondents.

PAR. 10. In the advertising described in paragraph six, respondents have failed to disclose that Medicare does not pay for the costs of the hearing tests provided by respondents unless they are performed by order of a physician for the purpose of obtaining additional information necessary for the physician's evaluation of the need for or the appropriate type of medical or surgical treatment for a hearing deficit or related medical problem. In light of the representation made in paragraph nine these facts would be material to consumers in deciding whether to seek respondents' services and the failure to disclose these facts was, and is, deceptive.

PAR. 11. The dissemination by respondents of the aforesaid false and misleading representations as alleged in this complaint constituted, and now constitutes, an unfair or deceptive act or practice and the making of false advertisements in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act, 15 U.S.C. 45(a) and 52.

EXHIBIT A

NYC Brooklyn 7/90

BROOKLYN HEARING AID CENTER
COMPLETE HEARING SERVICES
BY PROFESSIONAL AUDIOLOGISTS
BROOKLYN'S ONLY AUTHORIZED CENTERS OF
Miracle-Ear HEARING INSTRUMENTS

SPECIALISTS IN THE FITTING OF
 DIGITAL HEARING AIDS
 STATE OF THE ART EQUIPPED OFFICES
 INCLUDING COMPUTERIZED HEARING AID
 ANALYZER, AND REAL EAR MEASUREMENT.
 ALL PROFESSIONAL SERVICES PERFORMED
 EXCLUSIVELY BY N.Y. STATE LIC. AUDIOLOGISTS
 SALES, SERVICE ON ALL MAKES & MODELS

INSURANCE ASSIGNMENT ACCEPTED FOR:
 MEDICARE • OH • MEDICAID • EMPLOYE PLAN • HEALTHWAYS
 HEALTH CARE • TRAVELERS • TOTAL HEALTH • HMO ACCEPTED

RICHARD KANER, M.A., C.C.C. - DIRECTOR

Serving Brooklyn For Over 10 Yrs

3 CONVENIENT LOCATIONS

BAY RIDGE 8502 4TH AVE. 745-6363
 BROOKLYN HTS. 142 JONAH BENET ST (RM 83) 855-4330
 BRONX BEACH 3503 OCEAN PARK 449-9800

NY State Licensed Audiologists ASHA Certified
NY State Licensed Speech Pathologist ASHA Certified

HEARING AIDS
 COMPLETE AUDIOLOGICAL EVALUATIONS
 SCIENTIFIC FITTING
 LATEST STATE OF THE ART INSTRUMENTS

BUY • RENT • REPAIR
 • LOANERS AT NO CHARGE •
 PARTS • BATTERIES • CORDS
 • Medicaid, Medicare & Most Insurance Plans Accepted
 • Special Attention To Senior Citizens
 • Home Visits Arranged By Appointment
 • Authorized Specialist For Most Major Manufacturers

Center for Improved Communications

Jack Brown, Director
 CANARSIE • FLATBUSH 257-9092
 BORO PARK • BAY RIDGE 438-4062

Hearing Aids
 ALL HEARING AID CENTER
 142 JONAH BENET ST (RM 83) 855-4330
 142 JONAH BENET ST (RM 83) 855-4330
 142 JONAH BENET ST (RM 83) 855-4330

AMERICAN HEARING CENTER
 AUDIOLOGISTS SPECIALIZING IN THE
 ANALYSIS, DIAGNOSIS & CARE OF THE
 HEARING IMPAIRED OF ALL AGES
 • CLOSED CAPTIONING EQUIPMENT
 • SURTITING
 • TELEPHONE TV AMPLIFIERS
 • SURTITING
 • DECEMBER HOSPITAL, RECOMMENDED
 • MEDICAID ACCEPTED
 • PATIENTS ONLY FOR ALL BRANCHES
 ASK ABOUT OUR GUARANTEED
 SATISFACTION FOR PRECISION
 TESTING FITTING AND REPAIRS
 CALL FOR FREE BROCHURE
 BROOKLYN QUEENS
 745-5169 745-5169
 748-2630 261-6800

Belone
 Free Electronic Hearing Tests For The Purpose of Hearing and Fitting Hearing Aids. Service At Home. Personal Service. Batteries. Exchanges. Service Plan.
 "FOR INFORMATION, CALL"
 BELTONE HEARING AID SERVICE
 BELTONE HEARING AID SERVICE
 BELTONE HEARING AID SERVICE
 BELTONE HEARING AID SERVICE

Sheephead Bay
 Hearing Aids & Evaluations
 N.Y.S. Lic. Audiologist
 8001 SHEEPHEAD BLVD. 8th Floor, Sheepshead Bay
 Ask About Our Free Consultation
 9311 Ave Z 743-8223

EXHIBIT A

DINING OUT?

Call the restaurant for a reservation, and ask for your favorite table.

DECISION AND ORDER

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

Respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the aforesaid draft complaint, 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 thereafter considered the matter and having determined that it had reason to believe that respondents have violated the said Act, and that the 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 sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Center for Improved Communications is a New York Corporation, with its office and principal place of business located at 9720 Flatlands Avenue, Brooklyn, New York. Another office is located at 1301 57th Street, Brooklyn, New York.

Respondent Jack Brown is an audiologist who is an officer of Center for Improved Communications. He formulates, directs and controls the policies, acts and practices of Center for Improved Communications, and his address is 1301 57th Street, Brooklyn, New York.

Respondents are, and have been, selling hearing aids and offering hearing tests to the public.

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

ORDER

I.

It is ordered, That respondents Center for Improved Communications, a New York corporation, its successors and assigns, and its officers, and Jack Brown, individually and as an officer of said corporation; and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, affiliate, partnership, sole proprietorship, or other device, in connection with the advertising, promotion, sale, distribution or offering for sale of any hearing-related device or service in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting, directly or by implication, in any manner that Medicare will pay for the costs of such device or service.

B. Misrepresenting, directly or by implication, in any manner that other types of medical insurance, whether federal, state, or private, will cover the costs of such device or service.

II.

It is further ordered, That respondents Center for Improved Communications, a corporation, its successors and assigns, and its officers, and Jack Brown, individually and as an officer of said corporation, within fifteen (15) days after this order becomes final, send a certified letter to the publishers of all Yellow Pages directories that contain the representations in paragraphs seven and nine of the complaint. The letter shall state that any statements

representing, directly or by implication, that Medicare will pay for the costs of hearing aids are to be eliminated from the next appearing edition in which it is possible to make changes, and in all subsequent editions. The letter shall also state that any statements representing, directly or by implication, that Medicare will pay for the costs of hearing tests are to be eliminated from the next appearing edition in which it is possible to make changes, and in all subsequent editions, unless the representation is qualified by a statement that the hearing tests must be ordered in advance by a physician for medical diagnostic purposes. Respondents shall include a copy of this order with the letter.

III.

It is further ordered, That respondents Center for Improved Communications, a corporation, its successors and assigns, and its officers, and Jack Brown, individually and as an officer of said corporation, within fifteen (15) days after this order becomes final, either:

A. Post in each of the locations in which respondents do business, a prominent notice that is at least 12" by 15" in size that states clearly and conspicuously the following:

MEDICARE DOES NOT COVER THE COSTS OF HEARING AIDS.
MEDICARE ALSO DOES NOT COVER THE COSTS OF HEARING
TESTS CONDUCTED IN THIS OFFICE UNLESS THE TESTS ARE FIRST
ORDERED BY A PHYSICIAN FOR MEDICAL DIAGNOSTIC PUR-
POSES.

This notice shall be clearly and conspicuously posted in the reception area so that it is visible to consumers as they enter the business location, and in each of the rooms where the hearing tests are conducted; or

B. Provide each consumer prior to any discussion about the consumer's hearing problem a notice that is at least 8 1/2" by 11" in size that states clearly and conspicuously the following:

MEDICARE DOES NOT COVER THE COSTS OF HEARING AIDS. MEDICARE ALSO DOES NOT COVER THE COSTS OF HEARING TESTS CONDUCTED IN THIS OFFICE UNLESS THE TESTS ARE FIRST ORDERED BY A PHYSICIAN FOR MEDICAL DIAGNOSTIC PURPOSES.

Respondents shall obtain the consumer's signature on the notice. The signed notices shall be available to representatives of the Federal Trade Commission for inspection for a period of three (3) years from the date of service of this order.

C. The requirements described in (A) and (B) of this paragraph shall be followed for no less than two (2) years after the last date of distribution by the publisher to the general public of the Yellow Pages directories containing the representations in paragraphs seven and nine of the complaint.

IV.

It is further ordered, That respondents Center for Improved Communications, a corporation, its successors and assigns, and its officers, and Jack Brown, individually and as an officer of said corporation, shall, for three (3) years after the date of this order, maintain and upon request make available to representatives of the Federal Trade Commission for inspection and copying all records demonstrating compliance with this order including but not necessarily limited to:

- (1) Communications with publishers of the Yellow Page directories regarding the representations in paragraphs seven and nine of the complaint, and
- (2) The notices required by paragraph III(A) and (B) above.

V.

It is further ordered, That respondents shall, within thirty (30) days after service upon them of this order, distribute a copy of the order to each of their operating divisions, subsidiaries, and related offices, to each of their managerial employees, to each of their employees responsible for advertising, and to each of their officers, agents, representatives or employees selling hearing aids and/or offering hearing tests.

VI.

It is further ordered, That the corporate respondent shall notify the Commission at least thirty (30) days prior to any proposed change in respondent such as dissolution, assignment, purchase, or sale resulting in a change of ownership or business structure, or any other change in respondent that may affect compliance obligations arising out of this order.

VII.

It is further ordered, That the individual respondent shall hereafter promptly notify the Commission in the event of the discontinuance of his present business or employment and, for a period of five (5) years from the date of service of this order, shall promptly notify the Commission of each affiliation with a new business or a new employment whose activities would or might include the sale of hearing aids, and/or the offering of hearing tests, each such notice to include the respondent's new business address and a statement of the nature of such business or employment and a description of the respondent's expected duties and responsibilities.

VIII.

It is further ordered, That respondents shall, within sixty (60) days after service 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 all requirements of this order.

IN THE MATTER OF

SHERWIN BASIL

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3434. Complaint, June 15, 1993--Decision, June 15, 1993*

This consent order requires, among other things, the California hearing aid seller to correct false and deceptive claims in Yellow Pages advertisements, prominently post corrected information about Medicare coverage in his offices or provide it to consumers prior to purchase, and prohibits him from misrepresenting the coverage provided by any medical insurance for any hearing-related device or service he offers in the future.

Appearances

For the Commission: *Collot Guerard* and *Eileen Harrington*.

For the respondent: *Pro se*.

COMPLAINT

The Federal Trade Commission, having reason to believe that Sherwin Basil, individually and d/b/a Audio Logics, ("respondent"), has violated certain provisions of the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Sherwin Basil, individually and d/b/a Audio Logics, is a resident of California. Respondent's main office and principal place of business is located at 1165 E. San Antonio, Long Beach, California. Another office is located at 1919 North Fairview Avenue, Suite 204, Santa Ana, California.

PAR. 2. Respondent is an audiologist who is, and has been, selling hearing aids and offering hearing tests to the public.