

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.

Hearings 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. 3. Respondent is the owner of Audio-Logics and he formulates, directs and controls the policies, acts and practices of Audio-Logics.

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

PAR. 5. Respondent has 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 respondent's products and services.

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

"Hearing Tests ... Hearing Aids ... MEDICARE"

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

PAR. 8. In truth and fact, Medicare will not pay for the costs of hearing aids purchased from respondent. 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 limited to the advertisement attached as Exhibit A, respondent has represented, directly or by implication, that Medicare will pay for the costs of hearing tests provided by respondent.

PAR. 10. In the advertising described in paragraph six, respondent has failed to disclose that Medicare does not pay for the costs of the hearing tests provided by respondent unless they are performed by order of a physician for the purpose of obtaining additional information necessary for the physicians 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 respondent's services, and the failure to disclose these facts was, and is, deceptive.

PAR. 11. The dissemination by respondent 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

DISCUSSION

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of respondent named in the caption hereof, and respondent 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 respondent with violation of the Federal Trade Commission Act; and

Respondent, his attorneys, 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 aforesaid draft complaint, a statement that the signing of said 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 considered the matter and having determined that it had reason to believe that the respondent has 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 Sherwin Basil is a California resident doing business as Audio Logics, a sole proprietorship. 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.

Respondent Sherwin Basil is an audiologist who is, and has been, selling hearing aids and offering hearing tests to the public. He owns Audio-Logics and he formulates, directs and controls the policies, acts and practices of Audio-Logics.

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

I.

It is ordered, That respondent Sherwin Basil, individually and d/b/a Audio Logics, respondent's successors and assigns, and respondent's 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 respondent Sherwin Basil, individually and d/b/a Audio-Logics, and respondent's successors and assigns, 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. Respondent shall include a copy of this order with the letter.

III.

It is further ordered, That respondent Sherwin Basil, individually and d/b/a Audio Logics, and respondent's successors and assigns, within fifteen (15) days after this order becomes final, either:

A. Post in each of the locations in which respondent does 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 8½" 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 HIS OFFICE UNLESS THE TESTS ARE FIRST
ORDERED BY A PHYSICIAN FOR MEDICAL DIAGNOSTIC PUR-
POSES.

Respondent 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 respondent Sherwin Basil, individually and d/b/a Audio Logics, and respondent's successors and assigns, 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 respondent shall, within thirty (30) days after service upon respondent of this order, distribute a copy of the order to each of respondent's operating divisions subsidiaries, and related offices, to each of respondent's managerial employees, to each of respondent's employees responsible for advertising, and to each of respondent's officers, agents, representatives or employees selling hearing aids and/or offering hearing tests.

VI.

It is further ordered, That respondent shall hereafter promptly notify the Commission in the event of the discontinuance of respondent's 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.

VII.

It is further ordered, That respondent 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 respondent has complied with all requirements of this order.

Complaint

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IN THE MATTER OF

SUSAN FRUGONE, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3435. Complaint, June 15, 1993--Decision, June 15, 1993*

This consent order requires, among other things, the California hearing aid sellers 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: *Rick P. Lantz*, Los Angeles, CA.

COMPLAINT

The Federal Trade Commission, having reason to believe that Susan Frugone and Patricia Keane, individually and as partners d/b/a Audio Rx Hearing Aids, ("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. Respondents Susan Frugone and Patricia Keane, individually and as partners d/b/a Audio Rx Hearing Aids, a partnership, ("respondents"), are residents of California. Respondents' main office and principal place of business is located at 6333 Wilshire Blvd., Suite 307, Los Angeles, California. Another office is located at 4161 Redondo Beach Blvd., Suite 201, Lawndale, California.