

Complaint

116 F.T.C.

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.

PAR. 2. Respondents are audiologists who 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. 3. Respondents are the owners of, and partners in, Audio Rx Hearing Aids, and they formulate, direct and control the policies, acts and practices of Audio Rx Hearing Aids.

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:

"Audio Rx Hearing Aids ... Sales and Service ... All Major Brands ... Medicare ... welcome."

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. The dissemination by respondents of the aforesaid false and misleading representation 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

[illegible]

Exhibit A

## 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. Respondents Susan Frugone and Patricia Keane are residents of California and partners in Audio Rx Hearing Aids. 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.

Respondents Susan Frugone and Patricia Keane are audiologists who are, and have been, selling hearing aids and offering hearing tests to the public. As partners in Audio Rx Hearing Aids, they

formulate, direct and control the policies, acts and practices of Audio Rx Hearing Aids.

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

## ORDER

### I.

*It is ordered,* That respondents Susan Frugone and Patricia Keane, individually and as partners d/b/a Audio Rx Hearing Aids, a partnership, respondents' successors and assigns, 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 Susan Frugone and Patricia Keane, individually and as partners d/b/a Audio Rx Hearing Aids, a partnership, and respondents' successors and assigns, within fifteen (15) days after this order become final, send a certified letter to the publishers of all Yellow Pages directories that contain the representation in paragraph seven 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. Respondents shall include a copy of the order with the letter.

### III.

*It is further ordered,* That respondents Susan Frugone and Patricia Keane, individually and as partners d/b/a Audio Rx Hearing Aids, a partnership, and their successors and assigns, 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 PUR-  
POSES.

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 representation in paragraph seven of the complaint.

#### IV.

*It is further ordered,* That respondents Susan Frugone and Patricia Keane, individually and as partners d/b/a Audio Rx Hearing Aids, a partnership, and respondents' 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 representation in paragraph seven 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 respondents of this order, distribute a copy of the order to each of respondents' operating-divisions, subsidiaries, and related offices, to each of respondents' managerial employees, to each of respondents' employees responsible for advertising, and to each of respondents' officers, agents, representatives or employees selling hearing aids and/or offering hearing tests.

## VI.

*It is further ordered,* That each individual respondent shall hereafter promptly notify the Commission in the event of the discontinuance of her 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 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.

Complaint

116 F.T.C.

IN THE MATTER OF

BAY COLONY AUDIOLOGY CENTER, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3436. Complaint, June 15, 1993--Decision, June 15, 1993*

This consent order requires, among other things, the Massachusetts 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: *Robert Weinstein, Burn & Levinson*,  
Boston, MA.

## COMPLAINT

The Federal Trade Commission, having reason to believe that Bay Colony Audiology Center, a corporation, and David Citron, III, individually and as an officer of Bay Colony Audiology Center, ("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 Bay Colony Audiology Center is a Massachusetts corporation with its offices and principal place of business located at 825 Main Street, South Weymouth, Massachusetts.

PAR. 2. Respondent David Citron, III, is an audiologist who is an officer of Bay Colony Audiology Center. He formulates, directs