

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

and controls the policies, acts and practices of Bay Colony Audiology Center, 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 Aid Evaluations and Sales ... Medicare Assignment 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.

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 Bay Colony Audiology Center is a Massachusetts corporation with its office and principal place of business located at 825 Main Street, South Weymouth, Massachusetts.

Respondent David Citron, III, is an audiologist who is an officer of Bay Colony Audiology Center. He formulates, directs and controls the policies, acts and practices of Bay Colony Audiology Center, and his office and principal place of business is located at the above stated address.

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 is in the public interest.

ORDER

I.

It is ordered, That respondents Bay Colony Audiology Center, a Massachusetts corporation, its successors and assigns, and its officers, and David Citron, III, 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 Bay Colony Audiology Center, a corporation, its successors and assigns, and its officers, and David Citron, III, 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 Bay Colony Audiology Center, a corporation, its successors and assigns, and its officers, and David Citron, III, 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 PURPOSES.

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 ½" 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 Bay Colony Audiology Center, a corporation, its successors and assigns, and its officers, and David Citron, III, 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

BROOKLYN AUDIOLOGY ASSOCS., P.C., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3437. 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: *Collet Guerard* and *Eileen Harrington*.

For the respondents: *Pro se*.

COMPLAINT

The Federal Trade Commission, having reason to believe that Brooklyn Audiology Assocs., P.C., a corporation, and Richard Kaner, individually and as an officer of Brooklyn Audiology Assocs., P.C., ("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 Brooklyn Audiology Assocs., P.C., is a New York corporation with its main office and principal place of business located at 8502 4th Ave., Bay Ridge, Brooklyn, New York. Other offices are located at 3003 Ocean Parkway, Brooklyn, New York, and at 142 Joralemon Street, Brooklyn, New York.