

Complaint

116 F.T.C.

IN THE MATTER OF

SALLYE B. CARPENTIER

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3438. 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 her office or provide it to consumers prior to purchase, and prohibits her from misrepresenting the coverage provided by any medical insurance for any hearing-related device or service she offers in the future.

Appearances

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

For the respondent: *Stuart Wallach*, Orange, CA.

COMPLAINT

The Federal Trade Commission, having reason to believe that Sallye B. Carpentier, individually and d/b/a Brown-Potter Hearing Aid Center, ("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 Sallye B. Carpentier, individually and d/b/a Brown-Potter Hearing Aid Center, is a resident of California. Respondent's office and principal place of business is located at 3740 E. 7th Street, Long Beach, California.

PAR. 2. Respondent is a hearing aid dealer who is, and has 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. Respondent is the owner of Brown-Potter Hearing Aid Center and she formulates, directs and controls the policies, acts and practices of Brown-Potter Hearing Aid Center.

PAR. 4. The acts and practices of respondent alleged in this complaint are, and have been, in or affecting commerce, as commerce is defined by 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 Aid Center ... U.S. Government Plans Accepted"

PAR. 7. Through the use of the statement contained in the advertisement referred to at paragraph six, including but not necessarily limited to the advertisement attached as Exhibit A, respondent has represented, directly or by implication, that U.S. Government Plans, including 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. The dissemination by respondent 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.

Complaint

116 F.T.C.

EXHIBIT A

778 Hearing LA-S Long Beach 9/90 YELLOW PAGES "Tells Where To Buy It"

CONES LONG BEACH HEARING AIDS SPECIALISTS

DR. KENNETH G. SMITH
 LICENSED AUDIOLOGIST & HEARING AID SPECIALIST ON STAFF

All Major Brands of Hearing Aids
SALES & SERVICE

30 DAY TRIAL
 MONEY BACK IF NOT SATISFIED
 BATTERIES, ACCESSORIES
 MEDICAL PRIVATE INSURANCE
 FHP KAISER SCAN
 ACCEPTED AT ALL TIMES
 PAYMENTS TO SUIT MOST FINANCIAL CONDITIONS
 DEPENDABLE SERVICE TO CONVALESCENT FACILITIES
 OPEN MONDAY THROUGH FRIDAY 9:00 TO 5:00
 SATURDAY 9:00 TO 12:00

432-8961

427 ATLANTIC AVE. - LONG BEACH

EXCELLENCE IN SERVICE FOR OVER 35 YEARS

Hearing Aids

PROFESSIONAL GROUP-OWNED
 800 W. 1001

EMERGENCY DENTIST
 TDD 924-1072
 7 DAYS A WEEK

1100 S. 10th St. Suite 100 924-6601
 700 924-1272

ALL HEARING AID SPECIALTIES
 4115 E. 7th St. 987-0884

SEE ADVERTISEMENT ON THIS PAGE

APPROVED ASSOCIATES HEARING
 BALANCE & EAR DISORDERS
 EAR DISEASES - VERTIGO
 OTITIS & NEURALGIC PAIN
 ALCOHOLIC & VESTIBULAR LAB
 HEADACHE TUNNELS
 FACIAL PARALYSIS - PAIN
 MICROSURGERY - LASER SURGERY
 EVALUATION & REPAIRMENT
 HEARING AIDS - COMPLETED EVAL

Suite 100
 4115 E. 7th St. at Sherman Center
 924-6601 or 924-1272

Professional Hearing Services
 2313 South 14th 422-9127

Has SOMETHING SPECIAL
 happened to you? Tell them
 yourself, by Long Distance.

ARTESIA CERRITOS HEARING AID CENTER

11811 E. Artesia Blvd. Artesia 402-5771
 See advertisement on back page
 Associated Hearing Aid Center
 429 Pine Ave. 432-0454
 437-2743

AUDIO-LOGICS

INTERVIEW CALLS
 30 YEARS OF
 QUALITY SERVICE
 Hearing Tests
 Diagnostic Evaluation
 Tinnitus Evaluation
 Hearing Aids

MEDICARE & SCAN - DOUGLAS
 ROCKWELL & CO.

422-3388

1147 E. San Antonio Dr.
 Long Beach 432-3388

Artesia Office
 1147 E. San Antonio Dr. 428-4725
 Associated Hearing Aid Center
 429 Pine Ave. 428-2643
 100% FINANCED - NO PAY PLAN

Advertise Here-It Pays.

Miracle-Ear

Miracle-Ear is available
 only at Miracle-Ear Centers.
 Accept no substitutes.

Ask about our
2 Year Hearing Protection Plan

Miracle-Ear Centers

- Batteries & Accessories
- All Makes
- Service/Repairs - All Makes
- Major Credit Cards
- Free Hearing Tests

Featuring quality canal, contour and behind-the-ear instruments.

VISA 40 YEARS EXPERIENCE CALL NOW FOR AN APPOINTMENT

LONG BEACH 432-0459 **LAKEWOOD** 830-2410 **TORRANCE** 214-2288

1400 E. 17th Ave. 1st Floor, Suite 100, Long Beach, CA 90801
 1400 E. 17th Ave. 1st Floor, Suite 100, Long Beach, CA 90801
 1400 E. 17th Ave. 1st Floor, Suite 100, Long Beach, CA 90801

BROWN-POTTER

HEARING AID CENTER

- MOST
- ACCURATE
- CLEAN
- BOLD
- CLEAR
- SERVICE
- INTEGRITY
- COMPASSION

WeHear, Union & U.S. Government Plans Accepted

1000 E. 17th St. Suite 100, Long Beach, CA 90801
 433-6701

Call 433-6701

SALLY B. CARPENTER
 CERTIFIED
 HEARING INSTRUMENT
 SPECIALIST

1400 E. 17th St. Suite 100, Long Beach, CA 90801
 433-6701

Audiology Hearing Aid Specialists

Most Advanced Hearing Aids Available

- AUTOMATICALLY ELIMINATES BACKGROUND NOISE
- FREE HEARING TEST (IN YOUR HOME OR OUR OFFICE)
- FREE ANALYSIS OF ANY HEARING AID
- BATTERIES - REPAIRS - ACCESSORIES

M. JOE HUGHES 987-0884

4115 E. 7th St. Suite 100, Long Beach

The Center For Better Hearing Inc.

HEARING AIDS

- STARKEY, SIEMENS AND MOST MAJOR BRANDS
- REASONABLE PRICES
- FREE HEARING TESTS
- INDUSTRIAL CUSTOM EAR PLUGS & CUSTOM SWIM PLUGS
- 30 DAY MONEY BACK GUARANTEE
- BATTERIES & ACCESSORIES

495-7829
 1-800-369-7401

107 E. 8th St. L.B.

IF YOU FEEL FORTUNATE YOUR CHILD JUST SMOKES MARIJUANA, THEN YOU SHOULD KNOW MORE ABOUT MARIJUANA.

Call 1-800-662-HELP
 National Institute on Drug Abuse Paid Line
 PARTNERSHIP FOR A DRUG-FREE AMERICA

EXHIBIT A

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, her attorney, 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 Sallye B. Carpentier is a resident of California doing business as Brown-Potter Hearing Aid Center, a sole proprietorship. Respondent's office and principal place of business is located at 3740 E. 7th Street, Long Beach, California.

Respondent Sallye B. Carpentier is a hearing aid dealer who is, and has been, selling hearing aids and offering hearing tests to the public. Respondent is the owner of Brown-Potter Hearing Aid Center and she formulates, directs and controls the policies, acts, and practices of said Brown-Potter Hearing Aid Center.

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

ORDER

I.

It is ordered, That respondent Sallye B. Carpentier, individually and d/b/a Brown-Potter Hearing Aid Center, 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 Sallye B. Carpenter, individually and d/b/a Brown-Potter Hearing Aid Center, 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 representation in paragraph seven of the complaint. The letter shall state that any statements representing, directly or by implication, that U.S. Government Plans 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. Respondent shall include a copy of this order with the letter.

III.

It is further ordered, That respondent Sallye B. Carpentier, individually and d/b/a Brown-Potter Hearing Aid Center, 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.

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.

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 representation in paragraph seven of the complaint.

IV.

It is further ordered, That respondent, Sallye B. Carpentier, individually and d/b/a Brown-Potter Hearing Aid Center, 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 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 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 respondent's new business address and a statement of the nature of such business or employment and a description of 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.

IN THE MATTER OF

HEARING CARE ASSOCIATES-ARCADIA, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3439. Complaint, June 15, 1993--Decision, June 15, 1993*

This consent order requires, among other things, the California firms and their officer to correct false and deceptive claims in Yellow Pages advertisements, and to 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 Hearing Care Associates-Arcadia, Hearing Care Associates-Glendora, Hearing Care Associates-Los Angeles, Hearing Care Associates-Panorama City, corporations, and Hearing Care Associates-Alhambra, a partnership, and Gregory Frazer, individually and as an officer in said corporations and a partner in said partnership, ("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 Hearing Care Associates-Arcadia is a California corporation with its offices and principal place of business located at 612 West Duarte Road, Arcadia, California.