

Complaint

119 F.T.C.

IN THE MATTER OF

LOUIS BASS, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

*Docket C-3562. Complaint, March 13, 1995--Decision, March 13, 1995*

This consent order prohibits, among other things, a Wisconsin corporation, doing business as Crestwood Company, from making false or unsubstantiated performance claims about any communication aid it offers in the future, and from making representations concerning the efficacy of the communication devices in enabling individuals with disabilities to communicate through facilitated communication, unless the respondent possesses competent and reliable scientific evidence to substantiate the representation.

#### *Appearances*

For the Commission: *Jeffrey Klurfeld, Kerry O'Brien and Erika Wodinsky.*

For the respondent: *David Meany, Michael, Best & Friedrich,*  
Milwaukee, WI.

#### COMPLAINT

The Federal Trade Commission, having reason to believe that Louis Bass, Inc. (d/b/a Crestwood Company), a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Louis Bass, Inc. (d/b/a Crestwood Company), is a Wisconsin corporation, with its principal office or place of business at 6625 North Sidney Place, Glendale, Wisconsin.

PAR. 2. Respondent has advertised, offered for sale, sold, and distributed communication aids for individuals with disabilities, including the "Crestalk" and the "Canon Communicator." These products are "devices" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

PAR. 3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PAR. 4. Respondent has disseminated or has caused to be disseminated advertisements for the Crestalk and the Canon Communicator, including but not necessarily limited to the attached Exhibits A-C. These advertisements contain the following statements and depictions:

A. NEW ROAD TO COMMUNICATIONS

Mickey communicates with Crestalk™ one letter at a time...

Mickey, 18, who is autistic, is communicating with his teacher, Dave Mikulecky, by using the very latest technique called "Facilitated Communication."

Mickey needs only light support on his forearm to type out the words that help him express his thoughts and feelings.

He is using Crestwood's new electronic aid called, "CRESTALK,™" which can be used by many adults or children with communication difficulties.

{depicting the device's screen with the words "I LIKE DAVE DAVE FRIEND" appearing on it}

(Exhibit A)

B. Mickey communicates with Crestalk® one letter at a time...

Mickey, 18, who is autistic, is communicating with his teacher, Dave Mikulecky, by using the very latest technique called "Facilitated Communication."

Mickey needs only light support on his forearm to type out the words that help him express his thoughts and feelings.

He is using Crestwood's new electronic aid called, "CRESTALK,®" which can be used by many adults or children with various types of communication difficulties.

With the help of his facilitator, Dave Mikulecky, Mickey writes, "I LIKE DAVE DAVE FRIEND"

{depicting the device's screen with the words "I WANT A GRILLED CHEESE SANDWICH" appearing on it}

(Exhibit B)

C. Many autistic children are using Facilitated Communication with the Canon very successfully. (Exhibit C)

PAR. 5. Through the use of the statements and depictions contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A-C, respondent has represented, directly or by implication, that:

A. The Crestalk enables autistic individuals to communicate through facilitated communication.

B. The Canon Communicator enables autistic individuals to communicate through facilitated communication.

PAR. 6. In truth and in fact:

A. The Crestalk does not enable autistic individuals to communicate through facilitated communication.

B. The Canon Communicator does not enable autistic individuals to communicate through facilitated communication.

Therefore, the representations set forth in paragraph five were, and are, false and misleading.

PAR. 7. Through the use of the statements and depictions contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A-C, respondent has represented, directly or by implication, that at the time it made the representations set forth in paragraph five, respondent possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 8. In truth and in fact, at the time it made the representations set forth in paragraph five, respondent did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph seven was, and is, false and misleading.

PAR. 9. The acts or practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices and the making of false advertisements in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

Commissioner Azcuenaga recused.

# FOR CHILDREN AND ADULTS

## NEW ROAD TO COMMUNICATIONS

*Mickey communicates  
with Crestalk™  
one letter at a time...*

Mickey, 18, who is autistic, is communicating with his teacher, Dave Mikulecky, by using the very latest technique called "Facilitated Communication."

Mickey needs only light support on his forearm to type out the words that help him express his thoughts and feelings.

He is using Crestwood's new electronic aid called, "CRESTALK,™" which can be used by many adults or children with communication difficulties. See page 9.



Actual Size of Display

**1992-93 Catalog**  
**CRESTWOOD COMPANY**  
Phone: (414) 352-5678

### MORE NEW DYNAMIC AIDS

- ▶ Talking Laser Beam®    ▶ Big Orange Switch
- ▶ Sonic Frame-Mirror    ▶ 39 Adapted Toys
- ▶ Talking Pictures® Kit V — In Sign Language

EXHIBIT A

Complaint

119 F.T.C.

## EXHIBIT B

A New Exciting Portable Communication Aid — At An Incredibly Low Price

*Mickey communicates  
with Crestalk®  
one letter at a time . . .*

Mickey, 18, who is autistic, is communicating with his teacher, Dave Mikulecky, by using the very latest technique called "Facilitated Communication."

Mickey needs only light support on his forearm to type out the words that help him express his thoughts and feelings.

He is using Crestwood's new electronic aid called, "CRESTALK®" which can be used by many adults or children with various types of communication difficulties.



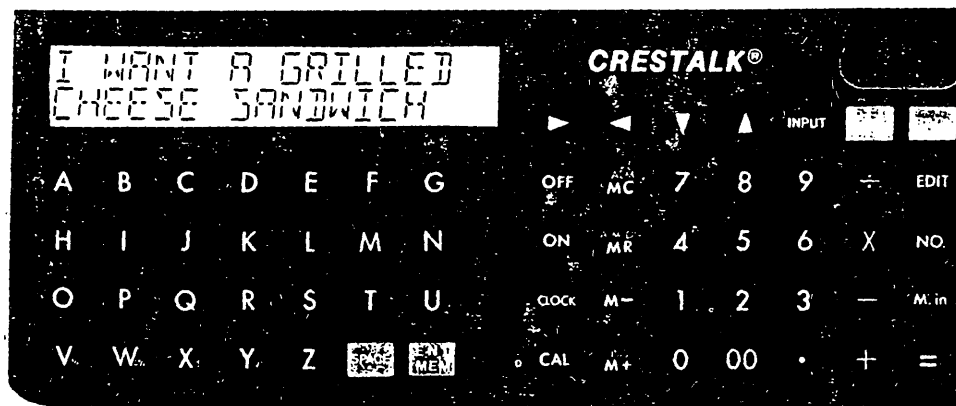
With the help of his facilitator, Dave Mikulecky, Mickey writes, "I LIKE DAVE DAVE FRIEND"

CRESTALK® is an efficient and economical communication device for children and adults who have difficulty expressing their needs orally and cannot be understood by others — a giant step forward towards greater independence. Extraordinary electronic aid is lightweight and portable to carry with you wherever you go. Easy to use, just press keys lightly to express thoughts, wants, needs, and feelings. Message prints 16 characters per line on 2 line display panel. Display continues scrolling for longer messages.

With 20K MEMORY you can also preprogram hundreds of sentences easily and then retrieve them on the spot quickly. Calculator function. High quality, compact. Batteries included. 1 year manufacturer's warranty. Spec sheet available.

3000 Crestalk® & Case With Handle ..... \$129.95

2119 New Book: Communication Unbound — Facilitated Communication, by Dr. Douglas Biklen, 1993. See #2119, p. 21 ..... \$17.95



ACTUAL SIZE - 3 1/2" x 8 1/4" x 1"

PORTABLE - Weight 9 ozs.

EXHIBIT B

## EXHIBIT C

## CRESTWOOD INTRODUCES TALK BACK™ III

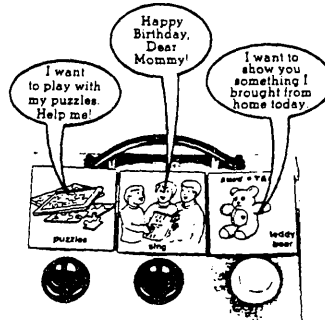
A new message center enables nonverbal and unintelligible children and adults to communicate with Real Speech!

**WIDE VARIETY OF USES:** Yes, no, I don't know; likes and dislikes, identifying information, favorite TV show; music games; food; clothing; messages; etc., etc.

**VERSATILE:** YOU CAN record up to three messages in any language. Use at school, home, hospital, nursing home, rehabilitation center, recreational area, etc. Patent pending

## FEATURES

- Press one button to record up to three messages for a total of 20 seconds. Will mix phrase length to provide individual messages of 5, 10, or 20 seconds.
- Easy to play back. Lightly press one of three buttons or one of three optional external switches (not supplied).
- Can reprogram instantly.
- Very high quality sound.
- Built-in shelf to hold 3 pictures.
- Learning time - seconds.
- Built-in microphone.
- Battery failure will not result in lost messages. Automatic control conserves battery life. 9 volt battery is included.
- Carrying handle. Lightweight - only 1½ lbs.
- 6 month warranty.



Lisa Sanders, Director of Speech Pathology and Audiology, of Central Virginia Training Center in Lynchburg, VA wrote: "Easy to program and use. I really like the voice quality! Very portable and easy to display or change pictures. This is really a great communication device for someone who is beginning to learn to communicate but can't use anything sophisticated."

Talk Back™III can be used together with Crestwood's (3 in 1) Momentary Control Center Switch or any other single momentary switch with 1/8" plug, for those requiring switch operation. See #3087, pg. 14.

3036 Talk Back™III ..... \$249.95  
3087 Momentary Control Center Switch ..... \$149.95

3037 MESSAGE CENTER PACKAGE — SAVE \$40.00  
Talk Back™III with  
Control Center Switch (3 in 1) ..... \$359.00

## 2 CANON TAPE COMMUNICATORS



Many autistic children are using Facilitated Communication with the Canon very successfully.

TWO NEW 1992 MODELS to help improve communication. Model CC-7P PAPER printout only and Model CC-7S SOUND and/or PAPER printout. Both have the following features: 1) Press the keys and print out MESSAGES ON TAPE 2) MESSAGE MEMORY. Each stores up to 7,000 characters and prints out frequently used phrases. Easy to use record and recall modes. 3) CALCULATOR FUNCTION 4) ENLARGED PRINT. Lower case and capitals, regular or double width. 5) Insert any momentary switch with 1/8" plug (p. 13) to row and column scan intersect. Enables person who can't press keys to print out message. (Switch not included) 6) Built-in rechargeable battery pack gives 6-7 hours of continuous use. Compact, 7" x 4 1/4" x 1 1/4". Weight 7P Model - 17.6 ozs., 7S Model - 18.5 ozs. ASK US FOR A SPEC SHEET

Only Model CC-7S has SOUND MEMORY. YOU can record up to 240 seconds total recording time, microphone provided. Playback done thru built-in speaker.

SET INCLUDES Canon Communicator, battery pack, charger, keyboard cover, saliva guard, soft case, neck strap, and 20 rolls of paper. OPTIONAL ACCESSORIES: wheelchair attachment, arm belt, extension bells. No return on any Canon or equipment.

This does not void 1 yr. Canon warranty of parts and labor.

3053 Canon CC-7P Print Only ..... DLVD PRICE \$850.00  
3054 Canon CC-7S Speech/Print ..... DLVD PRICE \$1,100.00  
3051 20 Rolls of Paper ..... \$19.50

EXHIBIT C

## DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the San Francisco Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of 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, or that the facts as alleged in such complaint, other than jurisdictional facts, are true 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 a 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 Louis Bass, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its office and principal place of business located in the City of Glendale, State of Wisconsin.

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

## DEFINITIONS

For the purposes of this order, the following definitions shall apply:

A. The term "*communication aid*" means any alphabet display chart, computer, typewriter or other device, which is created or marketed for use by persons with communication impairments, including the "Crestalk" and "Canon Communicator."

B. The term "*facilitated communication*" means any method or technique or process that entails an individual providing physical support to a person with a communication impairment, while that person types or points to a communication aid.

## I.

*It is ordered*, That respondent, Louis Bass, Inc. (d/b/a Crestwood Company), a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of any communication aid, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, that such product enables autistic individuals to communicate through facilitated communication.

## II.

*It is further ordered*, That respondent, Louis Bass, Inc. (d/b/a Crestwood Company), a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of any communication aid, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in

any manner, directly or by implication, that such product enables individuals with disabilities to communicate through facilitated communication, unless such representation is true and, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation. For purposes of this order, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

### III.

*It is further ordered,* That respondent, Louis Bass, Inc. (d/b/a Crestwood Company), a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of any communication aid, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, the performance or attributes of any such product, unless, at the time of making such representation, respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation.

### IV.

*It is further ordered,* That for five (5) years after the last date of dissemination of any representation covered by this order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in its possession or control that contradict, qualify, or call

into question such representation, or the basis relied upon for such representation, including complaints from consumers.

V.

*It is further ordered,* That respondent shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the respondent that may affect compliance obligations under this order such as dissolution, assignment, or sale resulting in the emergence of a successor corporation(s), the creation or dissolution of subsidiaries, or any other change in the corporation(s).

VI.

*It is further ordered,* That the corporate respondent shall, within sixty (60) days from the date of service of this order upon it, distribute a copy of this order to each of its officers, agents, representatives, licensees, independent contractors, and employees involved in the preparation and placement of advertisements or promotional materials, or is in communication with customers or prospective customers, or who has any responsibilities with respect to the subject matter of this order; and for a period of three (3) years, from the date of issuance of this order, distribute a copy of this order to all of respondent's future such officers, agents, representatives, licensees, independent contractors, and employees.

VII.

*It is further ordered,* That respondent shall, within sixty (60) days from the date of service of this order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Commissioner Azcuenaga recused.

Complaint

119 F.T.C.

IN THE MATTER OF

ABOVO, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3563. Complaint, March 22, 1995--Decision, March 22, 1995*

This consent order prohibits, among other things, a Massachusetts company and its president from making false or unsubstantiated performance claims about any communication aid they offer in the future, and from making representations concerning the efficacy of their communication devices in enabling individuals with disabilities to communicate through facilitated communication, unless the respondents possess competent and reliable scientific evidence to substantiate the representation.

*Appearances*

For the Commission: *Jeffrey Klurfeld* and *Kerry O'Brien*.

For the respondents: *Leland B. Seabury, Ely & King*, Springfield, MA.

## COMPLAINT

The Federal Trade Commission, having reason to believe that Abovo, Inc., a corporation, and Susan L. Lakso, individually and as an officer of said corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Abovo, Inc. is a Massachusetts corporation, with its principal office or place of business at Cabotville Industrial Park, 165 Front Street, 4th Floor, B Building, Chicopee, MA.

Respondent Susan L. Lakso is an officer of the corporate respondent. Individually or in concert with others, she formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint. Her principal office or place of business is the same as that of the corporate respondent.