

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.

PAR. 2. Respondents have manufactured, advertised, offered for sale, sold, and distributed the "Abovo Personal Communicating Device" ("Abovo PCD"), a communication aid for individuals with disabilities. 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 respondents 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. Respondents have disseminated or have caused to be disseminated advertisements for the Abovo PCD, including but not necessarily limited to the attached Exhibits A-F. These advertisements contain the following statements and depictions:

A. You're doing very well...let's finish...

{depicting Susan Lakso and John using the Abovo PCD in conjunction with the technique of facilitated communication}

Six months ago, John was thought to be mentally retarded. For over 30 years, his speech and motor skills didn't allow him to communicate meaningfully through speech, writing, or American sign language. Until six months ago, he had never been able to carry on purposeful dialog. It is hard to imagine how frustrating that was for John. In fact, he is intelligent, caring, and witty. But he had no way to let anyone else know. Over the past six months, John has been demonstrating his abilities to communicate by using an innovative technique, and a breakthrough product. The technique is facilitated communication. The product is the personal communicating device from Abovo.

{depicting the device with the words "SUSAN HEW RE YOU TODAY" appearing on its screen}

Together, they open up a world of communication possibilities for John and countless other individuals across America and around the world.

... This is a breakthrough product for persons who have not been able to communicate verbally. This product allows persons like John to have the opportunity to communicate their thoughts, their feelings, and their needs. It allows people for the first time, perhaps in their entire life, to be able to have full conversations with family members, teachers, and important people.

For individuals like John with disabilities that restrict speech and motor skills, acquiring this ability is nothing short of revolutionary.... You'll also be able to understand how this innovative product line, the first ever, designed specifically for facilitated communication, can make a phenomenal difference in the lives of persons like John who are non-verbal. . . .

Providing a voice for persons who are non-verbal has been a team effort driven by a shared desire -- the desire to bring to market a product line that raises the potential for facilitated communication to a level never before achieved....

Although the individuals who use Abovo products are a diverse group, they share a need and desire to communicate and express themselves. Our products are being used by persons with motor disabilities resulting from such conditions as apraxia,

and motor speech disorders, autism, mental retardation, RETT syndrome, stroke, tracheotomy, laryngeal cancer, traumatic brain injury, Alzheimer's disease, Parkinson's disease, multiple sclerosis, muscular dystrophy, and cerebral palsy.... The ability to meaningfully communicate changes the lives of persons with restricted speech or motor skills....

Thank you for sharing Abovo's interest in giving persons who are non-speaking the ability to communicate.

(Exhibit A: promotional video)

B. Communication Breakthrough For Non-Speaking Persons...

The Abovo™ Personal Communicating Device (PCD™) may be used for facilitated communication or unassisted typing. A proven aid for people who have been labeled as having autism, mental retardation, RETT Syndrome and other speaking disabilities. (Exhibit B: print ad)

C. "Just because a person can't speak doesn't mean he has nothing to say."

Personal Communicating Device™ For Non-Speaking Persons...

The Abovo™ Personal Communicating Device (PCD™) may be used for facilitated communication or unassisted typing. A proven aid for people who have been labeled as having autism, mental retardation, RETT Syndrome and other speaking disabilities. (Exhibit C: print ad)

D. Breakthrough Typing Device for Non-Speaking Persons...PCD

The Abovo™ Personal Communicating Device (PCD) was designed especially for personal communication through typing. This advanced portable device allows Facilitated Communication for people who have autism, mental retardation, RETT Syndrome and other speaking disabilities. (Exhibit D: print ad)

E. Personal Communicating Device...PCD™

Breakthrough in Facilitated Communication and unassisted typing.

The Abovo PCD™ was designed especially for personal communication through typing. The portable PCD™ allows Facilitated Communication for people who have been labeled as having autism, mental retardation, RETT Syndrome and other speaking disabilities. (Exhibit E: print ad)

F. Breakthrough Typing Device for Persons with Speaking Disabilities.

The Abovo™ Personal Communicating Device (PCD) was designed especially for personal communication through typing. This advanced portable device allows Facilitated Communication for people who have been labeled as having autism, mental retardation, RETT Syndrome and other speaking disabilities. (Exhibit F: print ad)

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-F, respondents have represented, directly or by implication, that the Abovo PCD enables autistic and mentally retarded individuals to communicate through facilitated communication.

PAR. 6. In truth and in fact, the Abovo PCD does not enable autistic and mentally retarded individuals to communicate through

facilitated communication. Therefore, the representation set forth in paragraph five was, and is, 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-F, respondents have represented, directly or by implication, that the Abovo PCD enables individuals who are disabled as a result of apraxia, motor speech disorders, RETT Syndrome, stroke, tracheotomy, laryngeal cancer, traumatic brain injury, Alzheimer's disease, Parkinson's disease, multiple sclerosis, muscular dystrophy, and/or cerebral palsy to communicate through facilitated communication.

PAR. 8. 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-F, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraph five and seven, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 9. In truth and in fact, at the time they made the representations set forth in paragraph five and seven, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph eight was, and is, false and misleading.

PAR. 10. The acts or practices of respondents 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.

EXHIBIT A

ABOVO, INC. PROMOTIONAL DOCUMENTARY
"LISTEN TO WHAT I TYPE"

You're doing very well ... let's finish...

{depicts Susan Lakso facilitating with John}

Six months ago, John was thought to be mentally retarded. For over 30 years, his speech and motor skills didn't allow him to communicate meaningfully through speech, writing, or American sign language. Until six months ago, he had never been able to carry on purposeful dialog. It is hard to imagine how frustrating that was for John. In fact, he is intelligent, caring, and witty. But he had no way to let anyone else know. Over the past six months, John has been demonstrating his abilities to communicate by using an innovative technique, and a Breakthrough product. The technique is facilitated communication. The product is the personal communicating device from Abovo.

{"SUSAN HEW RE YOU TODAY" appears on the device's screen}

Together, they open up a world of communication possibilities for John and countless other individuals across America and around the world.

Hello, my name is Susan Lakso. I'm the founder of the Abovo Project, and the President of Abovo, the makers of the Personal Communicating Device you just saw John using. This is a breakthrough product for persons who have not been able to communicate verbally. This product allows persons like John to have the opportunity to communicate their thoughts, their feelings, and their needs. It allows people for the first time, perhaps in their entire life, to be able to have full conversations with family members, teachers, and important people.

For individuals like John with disabilities that restrict speech and motor skills, acquiring this ability is nothing short of revolutionary. The film you are about to see describes a breakthrough product, the new Abovo Personal Communicating device. John and so many others are using this product to make the most of facilitated communication. In the next few minutes, we'll show you the Abovo product line, describe important features and benefits, and introduce you to the people who turn the Abovo project into reality. You'll also be able to understand how this innovative product line, the first ever, designed specifically for facilitated communication, can make a phenomenal difference in the lives of persons like John who are non-verbal.

Whether using the facilitator, or for independent typing, the Abovo product line was designed with one goal in mind: to help people communicate.

The Abovo personal communicating device, or PCD, is a portable electronic tool designed for single finger communication by persons who wish to communicate through typing. The Abovo PCD is the main component in the first and only line of products designed specifically as electronic tools for facilitated communication. While other companies have promoted their existing products, everything from label-makers to salesman's appointment calendars, for use with facilitated communication, only Abovo products were conceived for this purpose. Developed in conjunction with leading specialists in facilitated communication, microelectronics and human factors design, the Abovo PCD simplifies the motor skill involved in typing.

Let's take a look at some of the special features and benefits you'll find in the Abovo product line.

In Latin, Abovo means, "From the ground up." The Abovo PCD was conceived and developed from the ground up as a tool for facilitated communication. This approach offers the user substantial benefits.

Using the Abovo PCD is simple and intuitive. It is ergonomically designed to minimize the motor skill necessary for typing. Forty-one large keys are recessed in size to accept a finger. The keys' tactile feel and single impression action prevent unintended multiple entries.

The Abovo PCD's light weight and small size helps it fit in a coat pocket, purse, or briefcase. Dimensions are only 3-1/2" x 8-1/2" x 2". By comparison, the smallest notebook computers are many times larger and heavier. The PCD attaches conveniently to the user's chair arm, tray, or table top. You can use it just about anywhere. It's rechargeable. Nicad batteries are built-in and last about eight to ten hours between charges. An on-screen message tells you when it's time to charge, and if you want, you can even continue using your PCD while it's charging.

The Abovo PCD is easy to read, whether you are typing, facilitating, or observing. The super twist liquid crystal display is clearly visible from all angles. An optional remote display receives an infrared signal from PCD, allowing others to read the typist's words from any convenient line of sight location. An optional distribution unit creates a network of up to eight remote displays for use around a board room, classroom, or family dinner table.

The Abovo PCD has an 8,000 character memory built-in. It can store the equivalent of five pages of typewritten text. The data in memory is retained even when the user turns the power off, and the memory can be downloaded to a personal computer. This is especially useful for writers or researchers working with facilitated communication.

The Abovo PCD P model includes a built-in printer that prints directly to a thermal tape. The typist may print directly from the keyboard, one character at a time, print everything in the 40 character display, or print the complete 8K memory buffer.

A four function calculator is built-in, giving the typist complete arithmetic capabilities directly from the keyboard. This is particularly useful for classroom work, homework assignments, and conducting money transactions.

The Abovo product line includes a range of standard and optional accessories that enable you to customize your system to your needs. The typing stand cradles the PCD. It's made of extremely durable closed cell foam, with a non-skid surface that won't slide on a tabletop. The typing stand can also be firmly attached to the typist's chair arm or tray. The stand snugly accommodates the PCD and on the opposite side a remote display unit for visible communication with others. The typing stand also does double duty as a shipping cushion, reducing the amount of packaging. The remote display unit gives users the ability to Communicate with others, up to 20 feet away. This enables everyone who wants to see the PCD's display to do so without leaving to crowd in behind the typist. The remote display unit has an infrared sensor that receives a signal from the PCD showing exactly what appears on the PCD's display.

The distribution unit is ideal when the typist wishes to Communicate with many people at once. This unit receives the infrared message from the PCD, and

distributes it by wire to as many as eight remote display units. This is ideal for use in a classroom, board room, or around the family dinner table. The unit is conveniently powered by the PCD charger, and plugs into a standard 110V AC outlet.

The PC wedge opens the Abovo typist to the world of computerized Communications. The PC wedge is an interface device that downloads the memory of the PCD to Apple or IBM-compatible personal computers. It uses the industry-standard ASCII Character format, which is accessible to popular software Packages. With access to a computer, Abovo users can take advantage of modem-based services, including the Abovo bulletin board.

Providing a voice for persons who are non-verbal has been a team effort driven by a shared desire -- the desire to bring to market its product line that raises the potential for facilitated communication to a level never before achieved. One member of the Abovo product development team described his work as a high-tech mission for humanity. The team's work is not stopped with the introduction of the Abovo product line just described. New ideas are constantly under development, and work is underway on complimentary technologies.

Today the Abovo project continues to focus on creating communication tools to give a voice to non-verbal individuals who wish to communicate through typing.

Although the individuals who use Abovo products are a diverse group, they share a need and desire to communicate and express themselves. Our products are being used by persons with motor disabilities resulting from such conditions as apraxia, and motor speech disorders, autism, mental retardation, RETT syndrome, stroke, tracheotomy, laryngeal cancer, traumatic brain injury, Alzheimer's disease, Parkinson's disease, multiple sclerosis, muscular dystrophy, and cerebral palsy. Individuals with disorders affecting speech use the Abovo PCD for unassisted typing. A person who is hearing impaired, for example, can use the PCD to communicate with another individual who doesn't interpret signing. For every user, the Abovo PCD allows for communication that inspires confidence, independence, and dignity.

As a speech language pathologist, too, I'm always interested in the person as a person, and when dealing with adults, you would like them to be able to access equipment or technology that continues to allow them to function as an adult, and feel like an adult. And when we look at the equipment that's aesthetically appealing, and I think helps the individual to feel more like a viable adult, and not that he or she is using some type of equipment that is demeaning. So, in general, I see multiple use for this equipment, and am personally having some excellent experiences on an individual basis and in classroom settings with this equipment.

One of the major advantages I see with this equipment for classroom use is that we have the remote unit that allows the teacher to read immediately what the student is transmitting. And it allows for more face-to-face kind of communication which is more normal. I also see this equipment as almost a necessity in hospital rehabilitation settings that might have a population of newly laryngectomized, newly tracheotomized patients, or patients that are on a ventilator that don't have access to oral communication. This would then allow them a chance to express their thoughts, feelings, concerns, and have their information read in a more adult manner.

Mom suffered a stroke about two years ago, and it's been tough communicating with her. A lot of times, because she's voice impaired, and also because of the aphasia she suffered. It's been playing 20 questions. Really couldn't know exactly what she wanted until maybe two, three, four minutes, and sometimes she gets so frustrated she'd just stop. The nice thing about the typing is that it's easy to communicate, and it is amazing how much is actually retained that we just haven't been able to see. We hope that this will help us in terms of making things better for my mom, and for her enjoyment.

The ability to meaningfully communicate changes the lives of persons with restricted speech or motor skills. Abovo is proud that our products can have so profound an impact on these individuals and their families, friends and teachers. Facilitated communication is a powerful tool, and the personal Communicating device from Abovo maximizes its potential, from the mistake-proof keyboard, to the remote displays, to the computer interface. No other product gives the user more options, more flexibility, and more independence than the Abovo PCD. It's easy to learn more about the personal communicating device.

You can call Abovo, area code 413 594-5279. You can fax Abovo, area code 413 594-8175, or you can write to Abovo at the Cabotville Industrial Park, 165 Front Street, PO Box 89, Chikopee, Massachusetts.

Thank you for sharing Abovo's interest in giving persons who are nonspeaking the ability to communicate.

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EXHIBIT B

Communication Indicator of Child Obesity

More than one in four children nationally—a figure that could be reduced—were reported last month by the American Academy of Pediatrics. The report, published in the journal *Pediatrics*, said that children with communication problems have a higher risk of obesity. The study, led by Dr. Laurence M. Glidden, a professor of pediatrics at the University of California-San Diego, found that children with communication problems had a higher risk of obesity than children without such problems.

continued. "severe communication problems are always a symptom of a child's communication problem. Our ongoing research is trying to understand the relationship between communication and obesity."



feeding needed to eat. When parents mislead, which are so common, said John Gray, MD, PhD, a national authority on obesity, cited a recent study that found significantly overweight patients who lost 10-20 percent of their body weight and kept it off during a three-year follow-up period reduced their risk factors for hypertension, Type II diabetes, heart disease, cardiovascular disease, gastrointestinal tract and sleeping disorders and a variety of dyslipidemias.

"The most critical pounds lost are the first and beyond a certain point taking off more pounds wasn't necessarily better from a health perspective," Dr. Blackburn said. "The key is to lose fat while increasing the percentage of lean tissue. It's essential to modify life-long eating habits, not just go on a crash diet."

Ideally, at least 75 percent of weight loss should be body fat. He endorsed the U.S. government report, *Healthy People 2000*, that identifies

far outshines adult obesity treatment outcomes.

Involving the parents in treatment should not be construed as "blaming the parents for a child's obesity," said Ms. Mellin. "Often, only one child in a family is obese. That child may be particularly vulnerable to obesity because of genetics or temperament. The success of these programs demonstrates that there is an opportunity to build on the strength of the family unit as part of child obesity treatment."

For effective, long-term weight loss, a program must emphasize small, sustainable modifications in diet, exercise and communication. Parents should be involved from the start, receiving instruction on how limits are met as well as developing a healthier family lifestyle.

Ms. Mellin said child-onset obesity has been associated with higher rates of morbidity and mortality. There also are psychological consequences of being an overweight child, she noted.

In addition, overweight children have a 70 percent chance of being obese adults, which puts them at higher risk for many diseases.

Among adults who are morbidly obese (150 to 200 percent overweight), "moderate weight loss can mean a 20 to 75 percent reduction in risk factors for several chronic diseases, a leading researcher reported in another session at the ADA meeting."

George Blackburn, MD, PhD, a national authority on obesity, cited a recent study that found significantly overweight patients who lost 10-20 percent of their body weight and kept it off during a three-year follow-up period reduced their risk factors for hypertension, Type II diabetes, heart disease, cardiovascular disease, gastrointestinal tract and sleeping disorders and a variety of dyslipidemias.

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Communication Breakthrough For Non-Speaking Persons...



The Above™ Personal Communicator Device (PCO™) may be used for facilitated communication or unassisted typing. A proven aid for people who have been labeled as having autism, mental retardation, RETT Syndrome and other speaking disabilities. Victims of TBI, Stroke, Parkinson's disease, Alzheimer's disease, CP, laryngeal cancer and other conditions affecting speech may also benefit from the PCO™. Available options include: a remote display unit for communicating up to 20 feet away; printer version; alpha or qwerty keyboard and capability to download/interface with Apple® and IBM® compatible computers. Call, fax or write for further information.

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P.O. Box 89, Dept. A11 Chicopee, MA USA 01014-0089
413-594-5279 • fax: 413-594-8175

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BiteSticks

The Professional Tool For Oral-Motor/Articulation Therapy

CLEAN • DISPOSABLE • AFFORDABLE

Clinically effective when used in therapy for:

Jaw Stabilization

Oral-Tactile Sensitivity Problems

Differential Tongue Movement

Treatment Of Persistent Articulation Errors

(i.e., S · R · L · SH)

To find out more about BiteSticks™, and to order your Introductory Kit, which includes two packages of BiteSticks™ and an instructional video, write for our free info.

Spec
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EXHIBIT B

*"Just because a person can't speak
doesn't mean he has nothing to say."*

Personal Communicating Device™ For Non-Speaking Persons...



The Abovo™ Personal Communicating Device (PCD™) may be used for facilitated communication or unassisted typing. A proven aid for people who have been labeled as having autism, mental retardation, RETT Syndrome and other speaking disabilities. Victims of TBI, Stroke, Parkinsons disease, Alzheimers disease, CP, laryngeal cancer and other conditions affecting speech may also benefit from the PCD™. Available options include: remote display units for communicating up to 20 feet away; printer version; alpha or qwerty keyboard and capability to download/interface with Apple® and IBM® compatible computers. Call, fax or write for further information.

- Design for single finger typing
- Recessed, easy-to-strike keys
- Easy to read, 40-character display
- Portable, easy to use and carry
- Bold Alpha or Qwerty keyboard
- Non-Repeatable Keystrokes

*Call 413-594-5279 to order the Abovo™ video, "Listen to what I Type", an informative introduction to the PCD™ product line.

See us at TASH Booth 415

A · B · O · V · O™

Technologies For Communicating

P.O. Box 89, Dept. T, Chicopee, MA USA 01014-0089 413-594-5279 fax: 413-594-8175

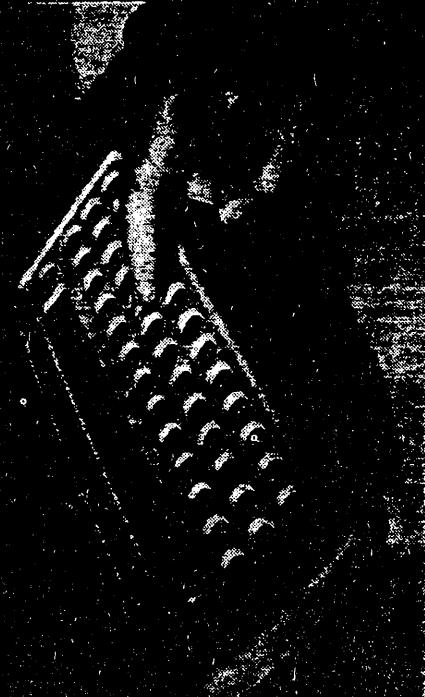
EXHIBIT C

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EXHIBIT D

Breakthrough Typing Device for Non-Speaking Persons...PCD



The Abovo™ Personal Communicating Device (PCD) was designed especially for personal communication through typing. This advanced portable device allows Facilitated Communication for people who have autism, mental retardation, RETT Syndrome and other speaking disabilities. People with TBI, Aphasia, Parkinsons disease, Alzheimers' disease, Cerebral Palsy, laryngeal cancer and other disorders affecting speech may also benefit from the Abovo™ PCD through unassisted typing. Available options include a remote display unit for communicating up to 20 feet away and a PC downloading device for writers. Please call, fax or write for further information.

Providing Technology For Facilitated Communication.

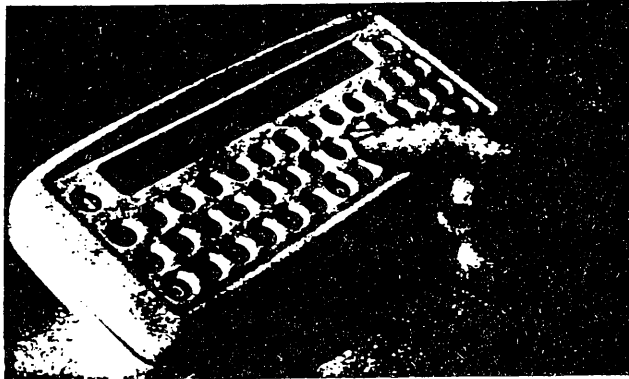
A · B · Q · V · O™

96 Rhinebeck Avenue, Springfield, MA 01129 413-594-5279 fax: 413-594-5809

EXHIBIT D

Personal Communicating Device...PCD™

Breakthrough In Facilitated Communication and unassisted typing.



The Abovo PCD™ was designed especially for personal communication through typing. The portable PCD™ allows Facilitated Communication for people who have been labeled as having autism, mental retardation, RETT Syndrome and other speaking disabilities. Individuals with TBI, CP, laryngeal cancer and other disorders affecting speech may use the PCD™ for unassisted typing. Features include:

- Design for single finger typing
- Recessed, easy-to-strike keys
- Easy to read, 40-character display
- Portable, easy to use and carry
- Bold graphic tactile keyboard
- 8K character memory

Options include: Remote display units for group or classroom communications; printer version; downloading capability to Apple® and IBM®/compatible computers. Call, write or fax for more information on the Abovo PCD™.

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Technologies For Communicating.

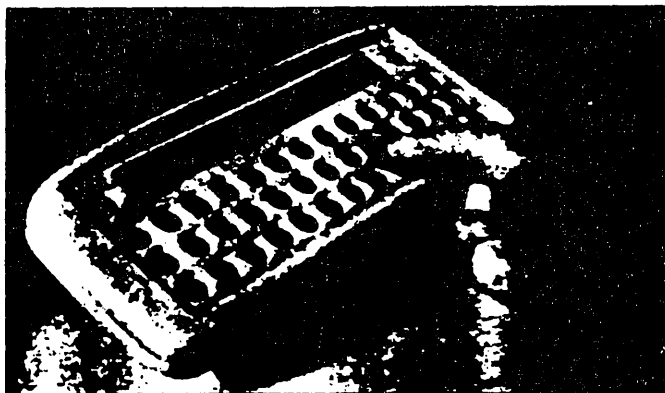
96 Rhinebeck Ave., Dept. CP, Springfield, MA 01129 413-594-5279 fax: 413-594-5809

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EXHIBIT F

Breakthrough Typing Device for Persons with Speaking Disabilities.



The Abovo™ Personal Communicating Device (PCD) was designed especially for personal communication through typing. This advanced portable device allows Facilitated Communication for people who have been labeled as having autism, mental retardation, RETT Syndrome and other speaking disabilities. Victims of TBI, stroke, Parkinsons disease, Alzheimers disease, CP, laryngeal cancer and other disorders affecting speech may also benefit from the Abovo PCD through unassisted typing. Available options include a remote display unit for communicating up to 20 feet away and a PC downloading device for writers. Please call, fax or write for further information.

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96 Rhinebeck Avenue, Springfield, MA 01129
413-594-5279 fax 413-594-5809

EXHIBIT F

DECISION AND ORDER

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

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 respondents 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 respondents have 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 Abovo, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located in the City of Chicopee, State of Massachusetts.

Respondent Susan Lakso is an officer of said corporation. She formulates, directs and controls the policies, acts and practices of said corporation and her principal office and place of business is located at the above stated address.

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

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 "Abovo Personal Communicating Device."

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 respondents, Abovo, Inc., a corporation, its successors and assigns, and its officers, and Susan L. Lakso, individually and as an officer and director of said corporation, and respondents' 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 and/or mentally retarded individuals to communicate through facilitated communication.

II.

It is further ordered, That respondents, Abovo, Inc., a corporation, its successors and assigns, and its officers, and Susan L. Lakso, individually and as an officer and director of said corporation, and respondents' 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, respondents possess and rely 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 respondents, Abovo, Inc., a corporation, its successors and assigns, and its officers, and Susan L. Lakso, individually and as an officer and director of said corporation, and respondents' 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, respondents possess and rely 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, respondents, or their 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 their 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 respondents shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate 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 individual respondent shall, for a period of five (5) years after the date of service of this order upon her, promptly notify the Commission, in writing, of her discontinuance of her present business or employment and of her affiliation with a new business or employment. For each such new affiliation, the notice shall include the name and address of the new business or employment, a statement of the nature of the new business or employment, and a description of respondent's duties and responsibilities in connection with the new business or employment.

VII.

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.

VIII.

It is further ordered, That respondents shall, within sixty (60) days from the date of service of this order upon them, 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 they have complied with this order.

Commissioner Azcuenaga recused.

Complaint

119 F.T.C.

IN THE MATTER OF

WRIGHT MEDICAL TECHNOLOGY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3564. Complaint, March 23, 1995--Decision, March 23, 1995

This consent order requires, among other things, a Tennessee-based research and development corporation to transfer to the Mayo Foundation, the licensor of the implant technology to Orthomet, Inc., a complete copy of all assets relating to Orthomet's business of researching and developing orthopaedic implants for use in human hands, and also requires Wright Medical Technology to obtain Commission approval before acquiring any interest in any firm that has received, or has applied for, Food and Drug Administration approval to market orthopaedic hand implants in the United States.

Appearances

For the Commission: *Richard B. Dagen* and *Benjamin H. Tahyar*.

For the respondents: *Linda R. Blumkin, Fried, Frank, Harris, Shriver & Jacobson*, New York, N.Y. *Edward R. Mandell, Parker, Chapin, Flattau & Klimpl*, New York, N.Y.

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondents, Wright Medical Technology, Inc., a corporation subject to the jurisdiction of the Commission, Kidd, Kamm Equity Partners, L.P. ("KKEP"), a limited partnership subject to the jurisdiction of the Commission, KKEP's general partner, Kidd, Kamm Investments, L.P. ("KKI"), a limited partnership subject to the jurisdiction of the Commission, and KKI's general partner, Kidd, Kamm Investments, Inc. ("KKI, Inc."), a corporation subject to the jurisdiction of the Commission, have agreed to acquire all of the outstanding shares of common and convertible preferred stock issued by Orthomet, Inc., a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45; and it appearing to the