

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Nu-Phonics, Inc., Lucas, Inc., Ferndale Hearing Aid Center, Inc., Eastside Hearing Aid Center, Inc., Downriver Hearing Aid Center, Daniel F. Bifano, d/b/a Cadillac Hearing Aid & Optical Co., Murray Davis Peppard, d/b/a Dearborn Hearing Aid Center, Allan M. Kazel, d/b/a Metro Hearing Aid Center, and William T. Lafler, d/b/a Oakland County Hearing Aid Service., U.S. District Court, E.D. Michigan, 1979-1 Trade Cases ¶62,652, (Apr. 18, 1979)

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United States v. Nu-Phonics, Inc., Lucas, Inc., Ferndale Hearing Aid Center, Inc., Eastside Hearing Aid Center, Inc., Downriver Hearing Aid Center, Daniel F. Bifano, d/b/a Cadillac Hearing Aid & Optical Co., Murray Davis Peppard, d/b/a Dearborn Hearing Aid Center, Allan M. Kazel, d/b/a Metro Hearing Aid Center, and William T. Lafler, d/b/a Oakland County Hearing Aid Service.

1979-1 Trade Cases ¶62,652. U.S. District Court, E.D. Michigan, Southern Division, Civil No. 671378, Entered April 18, 1979, (Competitive impact statement and other matters filed with settlement: 43 *Federal Register* 61029).

Case No. 2532, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing: Exchange of Information: Restrictions on Advertising: Bona Fide Transactions: Hearing Aids: Consent Decree.—Hearing aid dealers were barred by a consent decree from fixing prices, giving price quotations over the telephone and advertising prices in connection with the sale or service of hearing aids. They were also enjoined from exchanging information with any other dealer in the Detroit area regarding future prices, markups, or discounts in the sale or service of hearing aids. However, the exchange of information prohibition would not apply to *bona fide* transactions between any defendant and other hearing aid dealer.

For plaintiff: John H. Shenefield, Asst. Atty. Gen., William E. Swope, Charles B. McAleer, and John A. Weedon, Attys., Dept. of Justice, David F. Hils, Susan B. Cyphert, and Dan Aaron Polster, Attys., Dept. of Justice, Cleveland, Ohio, Kenneth J. Haber, Asst. U. S. Atty. **For defendants:** William J. Weinstein, of Weinstein, Kroli & Gordon, P. C., Royal G. Targan and Clyde B. Pritchard, of Barris, Crehan, Golob & Pritchard, David R. Kratze, of David R. Kratze, P. C., William A. Sankbeil, of Kerr, Wattles and Russell, Alan R. Miller, of August, Thompson, Sherr & Miller, P. C., Richard Zipser, of Becker & Zipser, P. C.

Final Judgment

JOINER, D. J.: Plaintiff United States of America, having filed its Complaint herein on June 30, 1976 and plaintiff and defendants, by their respective attorneys, having consented to the making and entry of this Final Judgment without further trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting evidence or admission by any party with respect to any issue of fact or law herein;

Now, Therefore, before any other testimony or evidence has been taken herein and upon said consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter hereof and of the parties hereto. The Complaint states a claim against the defendants upon which relief may be granted under Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," (15 U. S. C. §1), commonly known as the Sherman Act, as amended.

II

[Definitions]

As used in this Final Judgment:

- (A) "person" means any individual, corporation, partnership, firm, association or other business or legal entity;
- (B) "hearing aid" means an electrical device which is usually worn by an individual and which assists the individual's ability to hear;
- (C) "hearing aid dealer" means a person who sells hearing aids to the public or to the State of Michigan;
- (D) "Detroit area" means the counties of Wayne Macomb, and Oakland in the State of Michigan.

III

[Applicability]

The provisions of this Final Judgment applicable to each of the defendants shall also apply to each of its officers, directors, partners, agents, employees, subsidiaries, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

[Price Fixing]

Each defendant is enjoined and restrained from entering into, adhering to, maintaining, furthering, or renewing any contract, agreement, understanding, plan, program or concert of action with any other hearing aid dealer in the Detroit area, directly or indirectly, to:

- (A) refrain from giving price quotations for hearing aids over the telephone;
- (B) refrain from advertising prices for hearing aids;
- (C) fix, determine, establish, maintain, stabilize, increase or adhere to prices, markups, discounts or other terms or conditions, for the sale or service of hearing aids.

V

[Exchange of Information]

Each defendant is enjoined and restrained from, directly or indirectly:

- (A) communicating to any other hearing aid dealer in the Detroit area information concerning:
 - (1) future prices, markups, or discounts at which, or terms or conditions upon which, any hearing aid or any service will be sold or offered for sale by said defendant;
 - (2) the fact that such defendant is considering making changes or revisions in the prices, markups, or discounts at which, or the terms or conditions upon which, such defendant sells or offers to sell any hearing aid or any service;
- (B) requesting from another hearing aid dealer in the Detroit area any information which said defendant could not communicate without violating subparagraph (A) of this Section V.

VI

[Business Transactions]

Nothing in Section V hereof shall prohibit the communication of applicable information, including prices and quotations, by a defendant to another hearing aid dealer in the course of, and solely related to, negotiating for, entering into, or carrying out a *bona fide* purchase or sales transaction between such defendant and such other hearing aid dealer.

VII

[Notice]

Each defendant is ordered and directed:

(A) within thirty (30) days after the date of entry of this Final Judgment, to furnish a copy thereof to each of its employees who has pricing responsibility in connection with the sale of hearing aids;

(B) after the date of entry of this Final Judgment, to furnish a copy of this Final Judgment to each new employee who has pricing responsibility in connection with the sale of hearing aids, within thirty (30) days after employment;

(C) to attach to each copy of this Final Judgment furnished pursuant to subsections (A) and (B) of this Section VII a statement, in substantially the form set forth in Appendix A attached hereto, advising each person of his obligations and defendants' obligations under this Final Judgment, and of the penalties which may be imposed upon him and/or upon the defendants for violation of this Final Judgment.

VIII

[inspections]

For the purpose of determining or securing compliance with this Final Judgment and subject to any legally recognized privilege, from time to time:

(A) duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to a defendant made to its principal office, be permitted:

(1) access during office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendant who may have counsel present, relating to any of the matters contained in this Final Judgment; and

(2) subject to the reasonable convenience of such defendant and without restraint on interference from it, to interview officers, directors, agents, partners or employees of such defendant, who may have counsel present, regarding any such matters;

(B) upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to a defendant's principal office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this final Judgment as may be requested.

No information or documents obtained by the means provided in this Section VIII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings in which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

If at any time information or documents are furnished by a defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents which is of a type described in Rule 26(c) (7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under the Federal Rules of Civil Procedure," then 10 days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which the defendant is not a party.

IX

[Retention of Jurisdiction]

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment or for the modification of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.

X

[Public Interest]

Entry of this Final Judgment is in the public interest.

Appendix A

The Final Judgment entered, 1978 in this case applies to each of the defendants named therein, to defendants' officers, directors, agents, employees and subsidiaries. It is the obligation of each defendant and of its officers, directors, partners, agents and employees to abide by the terms of the Final Judgment. Violation of any of the provisions of the said Final Judgment may subject each defendant and its officers, directors, partners, agents and employees to fines and/or imprisonment.