	1	BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO
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	3	In the Matter of the :
	4	Complaint of Colin : Russell, and Hear Ear :
	5	Hearing Aids, Inc., and : Hear Ear Hearing Aid :
	6	Center, Inc., :
	7	Complainants, :
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1	9	: Respondent. :
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	22	ARMSTRONG & OKEY, INC.
	23	185 South Fifth Street, Suite 101 Columbus, Ohio 43215-5201
	24	(614) 224-9481 - (800) 223-9481 Fax - (614) 224-5724
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PLAINTIFF'S

**EXHIBIT** 

SEC CASE TEAM







December 2, 2005

Hear Ear Hearing Aids Inc 3030 W Sylvenia Av Toledo OH 43613

#### Dear Colin Russell:

It is the goal of each SBC employee to provide telecommunications solutions that meet, and hopefully exceed, the needs of our customers. Occasionally our products or services do not live up to our customer's expectations for our usual quality standards. For that, we regret any inconvenience you may have experienced when the additional listing was not omitted as it should have been in the 04-05 directory advertising books as well as the 05-06 books. This has been an ongoing issue that has now been resolved. Mr Russell has went to all extremes to rectify this matter.

We are committed to constant product improvement and delivery of value that's second to none. We realize that you have choices in telecommunication providers and want to remain your primary source. That's why we are not only available to resolve service issues, but we can also help you make the right choice when selecting telecommunications services that meet the unique needs of your business.

If you have any questions or need information regarding the right telecommunication services for your business, please contact us at 888-257-4192 ext 33545. We are available Monday through Friday 8:30 sm through 4:30pm.

Sincerely,

Ethel L Jones

Ethel L Jones Business Comm. Specialist Business Communications Services Account: 419 472-6400





December 6, 2005

Hear Ear Hearing Aids Inc 3030 W Sylvania Av Toledo OH 43613

#### Dear Colin Russell:

It is the goal of each SBC employee to provide telecommunications solutions that meet, and hopefully exceed, the needs of our customers. Occasionally our products or services do not live up to our customer's expectations for our usual quality standards. For that, we regret any inconvenience you may have experienced when the additional listing, (419 473-1900) was not omitted as it should have been in 04-05 books as well as 05-06 books. This has been an ongoing issue that has been resolved. Mr. Russell has gone to all extremes to rectify this matter. The only number that should have been and is currently advertised is 419 472-6400.

We are committed to constant product improvement and delivery of value that's second to none. We realize that you have choices in telecommunication providers and want to remain your primary source. That's why we are not only available to resolve service issues, but we can also help you make the right choice when selecting telecommunications services that meet the unique needs of your business.

If you have any questions or need information regarding the right telecommunication services for your business, please contact us at 800-660-3000. We are available Monday through Friday 08 am through 06 pm.

Sincerely,

Ethel L Jones

Ethel L Jones
Business Comm. Specialist
Business Communications Services
Account: 419 472-6400

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COMPLAINANTS EX. 4

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#### IN THE COURT OF COMMON PLEAS, LUCAS COUNTY, OHIO

Kenwood Hearing Center, Inc. 3450 W. Central Avenue, Suite 134 Westgate Office Building Toledo, Ohio 43606 Case No. 010200501055

Judget ASSIGNED TO JUDGE SKOW

Plaintiff.

٧,

Colin Russell
Kenwood Hearing Aid Center, Inc.
3030 Sylvania Avenue
Toledo, Ohio 43613

and

Hear Ear Hearing Aids 3030 Sylvania Avenue Tolcdo, Ohio 43613,

Defendants.

COMPLAINT FOR TEMPORARY.
PRELIMINARY. AND PERMANENT
INJUNCTIVE RELIEF, COMPENSATORY
AND PUNITIVE DAMAGES.
ACCOUNTING, ATTORNEY FEES, AND
JURY DEMAND

Theodore M. Rowen (0014245) Anastasia K. Hanson (0072289) Spengler Nathanson P.L.L. 608 Madison Avenue, Snite 1000 Toledo, Ohio 43604-1169 (419)241-2201 Fax: (419)241-8599

Attorneys for Plaintiff

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Kenwood Hearing Center, Inc., hereinafter Plaintiff, hereby files its Complaint For Temporary, Preliminary, and Permanent Injunctive Relief, Damages, Accounting, Punitive Damages, Attomsy Fees, and Jury Demand and avers as follows:

1. Plaintiff is a corporation organized and existing under the laws of the State of Ohio with its principal place of business in Toledo, Ohio. Plaintiff became a corporation under the name

Kenwood Hearing Center, Inc. on February 10, 1993. ("Exhibit 1" attached hereto is a copy of the Certificate of Incorporation of the State Of Ohio, certifying the creation of Plaintiff). Plaintiff has been in existence for approximately twelve years, and during that period it has been professionally assessing the hearing needs of its various patients, many of whom have been referred by various physicians, and many of whom have become aware of its excellent reputation from the public domain. In addition thereto, Plaintiff, through its professional staff, evaluates and lits various hearing aids and other listening enhancing devices for the benefit of its patients whose hearing will improve with the use of those listening devices. All of Plaintiff's personnel who evaluate hearing and fit hearing sids are andiologists, have a Master's Degree from an accredited University, and are certified by the American Speech/Language Hearing Association, as well as are licensed by the State of Ohio Board Speech/Language Pathology and Audiology.

2. Kenwood Hearing Aid Center, Inc., hereinafter Defendant Trade Name Infringer Kenwood, is a corporation organized and existing under the laws of the State of Ohio, and it became a corporation on August 5, 2004. Defendant Trade Name Infringer Kenwood deliberately utilized the deceptively similar name of Kenwood Hearing. The sole purpose of Defendant Trade Name Infringer Kenwood in selecting its corporate name was to confuse the public and pass itself off as Kenwood Hearing Center, which over approximately twelve years has established an excellent reputation through hard work and professionalism for and developed a secondary meaning associated with its name of Kenwood Hearing Center. Its secondary meaning in the Toledo community among physicians and patients is of a professional and excellent place for audiological testing to be conducted and for the fitting of high quality hearing aids if warranted.

- 3. Hear Ear Hearing Aids, Inc., hereinafter Defendant Hear Ear, is a corporation organized and existing under the laws of the State of Ohio, and it became a corporation on September 15, 2004.
- 4. Collin Russell, hereinafter Defendant Individual Trade Name Infringer, is the statutory agent for both Defendant Trade Name Infringer Kenwood and Defendant Hear Ear and is being sued in this Complaint as an individual on the basis of the actions in which he has undertaken for himself as well as the other Defendants. All of the Defendants are collectively referred to a Infringing Defendants. Infringing Defendants have hearing aids fitted by hearing aid dealers as opposed to audiologists, with the latter being more highly educated and skilled than hearing aid dealers.
- 5. The credentials after the name of each audiologist employed by Plaintiff of M.A. or M.S. is indicative that each possesses a Masters Degree in the field of f audiology. The initials of CCC-A after the name of an audiologist is indicative that the audiologist has completed a clinical fellowship year under the supervision of an experienced audiologist and has passed a rigorous test to prove her/his competency. If there are letters behind a person's name of BC-IHS, that is indicative that the individual is a hearing aid dispenser or sales person, which can mean many things. To be allowed to sell hearing aids in Ohio, the only qualification is that the individual has a high school diploma and obtain a passing score on a standardized test, along with some minimal education.
- 6. Inflinging Defendants have violated Plaintiff's rights by having engaged in unfair and deceptive trade practices, trade name infringement, unfair competition, fraud, and confusion among the public, and that is why Plaintiff has filed its Complaint.

- 7. Plaintiff is owned by two audiologists who had been employed by a medical practice group of ear nose and throat physicians. The owners of Plaintiff left the employment of the medical practice group, and in February of 1993 they purchased the audiological and hearing aid business from the doctors and then created Plaintiff as the corporation which would continue the business. These two audiologists paid for the good will and reputation of Kenwood Hearing Center, which through the medical practice group had been doing business since January of 1996.
- 8. For nine years, Plaintiff has been located at 3450 West Central Avenue, Suite 134, Toledo, Ohio 43606, and Plaintiff has utilized its registered trade name of Kenwood Hearing Center from that address. Defendant Trade Name Infringer Kenwood and Defendant Individual Trade Name Infringer both established an office in the same Westgate Office Building at 3450 West Central, Snite 103, so as to deliberately confuse the public into believing that Kenwood Hearing Center was in fact Defendant Trade Name Infringer Kenwood and not Plaintiff.
- 9. Hath of Defendants established various phone numbers for Defendants. One is (419) 473-1900, which is listed in the SBC Yellow Pages of Toledo and Vicinity as "Kenwood Hearing Aids" ("Exhibit 2") and is answered with another name. Hear Ear Hearing-which has caused the potential patient to believe that he or she is talking with an employee of Plaintiff (Kenwood Hearing Center), when in reality, he or she is talking to an employee of Defendant Trade Name Inflinger Kenwood or Defendant Hear Ear. This has created confusion and constitutes an unlawful diversion of profits from Plaintiff.
- 10. Defendants unlawfully registered the name of Kenwood Hearing Aids with the State of Ohio on July 23, 2004, which was designed to be and is deceptively similar to Plaintiff's corporate

name and trade name of Kenwood Hearing Center. This was done by Defendant Individual Trade
Name Infringer then having a statutory address of 306 Milburn Court, Mishawaka, Indiana 46544.

- 11. By Infringing Defendants choosing the deceptive name of Kenwood Hearing sids, and causing it to be listed that way in SBC Yellow Pages of Toledo and Vicinity, and also by answering the phone with another name-Hear Ear Hearing-they have furthered the confusion, by creating a listing for "Kenwood Hearing Aids" immediately above Plaintiff's list of "Kenwood Hearing Center Inc.
- 12. In the furtherance of creating confusion, Infringing Defendants are seiling and advertising a hearing aid brand of "Kenwood Hearing Aids", which is a private label for a manufactured hearing aid, rather than a brand name hearing aid which is manufactured and sold nationally under the name of Kenwood Hearing Aids. This was done by Infringing Defendants as a deceptive device to unlawfully take business away from Plaintiff.

### First Count (Trade Name Infringement)

- 13. Plaintiff hereby incorporates the foregoing paragraphs, 1 through 12, 50 as to be accorded the same effect as if fully restated herein.
- 14. Plaintiff's trade and corporate name of Kenwood Hearing Center for approximately twelve years has indicated to the public that it is the origin of professional quality hearing service, evaluating of hearing needs, and if necessary the fitting of appropriate high quality hearing side.
- 15. Plaintiff has created a secondary meaning associated with its trade and corporate name of Kenwood Hearing Center through advertising and through the creation, operation, and

maintenance of a demand for the goods and services offered by Plaintiff. The name of Kenwood Hearing Center has great value based upon the professional actions and reputation obtained by Plaintiff through its employees and owners.

Infringing Defendant have unauthorizedly attempted to stilize the valuable trade and corporate name of Plaintiff by unlawfully infringing upon Plaintiff's rights. As a result thereof, Plaintiff demands that the unlawful action of infringing Defendants in using the name and/or trade name of Kanwood Hearing in advertising, in the phone book, over the telephone, through a private label hearing aid, or in any other capacity should immediately be stopped so as to prevent future damages to Plaintiff and to avoid future confusion. This should be accomplished through the issuance of a temporary and permanent injunction.

#### Second Count (Unfair Competition)

- 17. Plaintiff hereby incorporates the foregoing paragraphs, 1 through 16, so as to be accorded the same effect as if fully restated herein.
- 18. Infringing Defendants have engaged in unfair competition by the various acts which they have deliberately engaged, in a continuing effort to unfairly take away business from Plaintiff. Plaintiff has already incurred damages and is cutified to the issuance of a temporary and permanent injunction to prevent future damages. Infringing Defendants as competitors have engaged in unscrupulous actions which have been enumerated in this Complaint, in an attempt to get away with the appropriating of Plaintiff trade and corporate name.
- 19. Plaintiff has the right and intends to protect its valuable trade and corporate name from being obtained by Infringing Defendants.

### Third Count (Deceptive Trade Practices)

- 20. Plaintiff hereby incorporates the foregoing paragraphs, I through 19, so as to be accorded the sum effect as if fully restated herein.
- Infringing Defendants have engaged in deceptive trade practices by the various acts which they have deliberately engaged in, to deceptively take away business from Plaintiff. Plaintiff has already incurred damages and is entitled to the issuance of a temporary and permanent injunction to prevent future damages.

#### WHEREFORE, Plaintiff requests the following relief should be granted:

- 1. The issuance of a Temporary and Permanent Injunction against Defendant Trade
  Name Infringer Kenwood; Defendant Hear Ear; Defendant Individual Trade Name Infringer; any
  corporation or limited liability company in which Defendant Individual Trade Name Infringer is an
  employee, owner, and/or stantory agent; and against any individual, employee, agent, or any other
  company which is acting in active concert with any of the Infringing Defendants:
  - (a) From using the name, trade name, or service mark of Kenwood Hearing in advertising, in the phone book, over the telephone, through a private label hearing aid, or in any other capacity in any way in connection with the sale or repair of hearing aids;
  - (b) To require that the trade name and corporate name registered by Infringing Desendants which correctly utilizes the name Kenwood Hearing be cancelled with the office of the Secretary of State of Ohio; and
  - (c) To require the discontinuing of the phone number of 419-473-1900, which was listed by Infringing Defendants in SBC Yellow Pages as Kenwood Hearing Aids, and to require the calls to that phone number to be transferred to Kanwood Hearing Center's phone number, which is 419-534-3111, and for Infringing Defendants to pay the cost of said transfer, if any is incurred, for one year from the date of the issuance of a Temporary and/or Permanent Injunction.

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2. The furnishing of a complete accounting of all income received from the date of the first use of the name Kenwood by Infringing Defendants in the connection of the sale and/or servicing of hearing side, to be paid for by Inflinging Defendants;

1 Cot Paper

Compensatory and positive damages to be paid in an amount to be determined by a jury;

- 4. The awarding of reasonable attorney fees;
- 5. The cost of these proceedings should be taxed against Inflinging Defendants; and
- 6. Any fluther relief in law or equity to which Plaintiff is entitled.

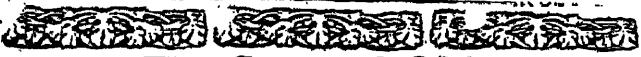
Respectfully submitted,

Theodore M. Rowen

Anastasia K. Hanson Spengler Nathanson P.L.L 608 Madison Avenue, Suite 1000 Toledo, Ohio 43604-1169 (419)241-2201

Fax: (419)241-8599

Attorneys for Plaintiff



### The State of Ohio

**Bob Taft** 

Secretary of State

538132

# & Certificate

hereby certified that the Secretary of State of Ohio has custody of the Records of Incorporation and Miscellaneous 150; that said records show the Illing and recording of: ARF

KENNOOD HEARING CENTER, INC.

United States of America State of Ohio Office of the Secretary of State



Recorded on Roll H534 at Frame 1830 . of the Records of Inscription and Missellapedia Fillings.

Witness my head and the seed of the Secretary of State at Columbus, Ohio, this 10TH day of FER

A.D. 19 93

Bob Taft
Secretary of State



of:

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#### IN THE COURT OF COMMON PLEAS

#### LUCAS COUNTY, OHIO

Kenwood Hearing Center, Inc.,

Case No. CI 0200501055

Plaimiff,

Honorable Jack Zouhary

٧.

**JUDGMENT** 

Colin Russell, et al.

\*

Defendants.

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This cause came to be heard for Final Pretrial Conference on January 12, 2006 at 11:00 a.m. before the Honorable Jack Zouhary. Present were Joyce Johnson and Diann Harrison, the owners of Kenwood Hearing Center, Inc., hereinafter Plaintiff, and Colin Russell as an individual defendant and on behalf of the other defendants, Kenwood Hearing Aid Center, Inc. and Hear Ear Hearing Aids, Inc., hereinafter collectively referred to as Defendants.

After a discussion by the lawyers and the parties of the various issues in the case and the merits of parties' respective positions, through the assistance of the Court, the parties reached an amicable resolution of the Complaint and Counterclaim. As a result thereof, it is hereby

ORDERED that Plaintiff as of January 12, 2006 should be and hereby is entitled to a Judgment joint and several against each of the Defendants in the amount of

Seventy-Two Thousand Two Hundred and Fifty Dollars (\$72,250.00), and it is

FURTHER ORDERED that payment shall be made by Defendants on

the first day of each month, commencing February 1, 2006 through November 1, 2006

each in the amount of Seven Thousand Two Hundred and Fifty Dollars (\$7,250.00); and

it is

FURTHER ORDERED that the fully executed Judgment shall be held

by counsel for Plaintiff and shall not be filed with the Court unless Defendants fail to

make timely payment as is required by the Judgment Order and/or by the Release And

Settlement Agreement; and it is

FURTHER ORDERED that if there is a default by Defendants in making

timely payment, then prior to counsel for Plaintiff being entitled to file and execute upon

the Judgment, Counsel for Plaintiff must first furnish written notice to counsel for

Defendants and afford Defendants a period of five working days to cure said default, and

notwithstanding the foregoing, Defendants shall only be afforded one opportunity to cure

its default in connection with said Judgment.

Theodore M. Rowen, Esq. (0014245)

Anastasia K. Hanson, Esq. (0072289)

608 Madison Avenue, Suite 1000

Telephone: (419) 241-2201

Fax: (419) 241-8599

Attorneys for Plaintiff

2

Raymond W. O'Neal, Sr., Esq.
11 West Monument Avenue, Suite 304
Dayton, Ohio 45402

Attorney for Defendants

Honorable Jack Zouhary

T-808 P.02/09 F-896

#### RELEASE AND SETTLEMENT AGREEMENT

THIS RELEASE AND SETTLEMENT AGREEMENT dated January \_\_\_, 2006, (hereinafter "Release And Settlement Agreement") made and entered by and between Kenwood Hearing Center, Inc., (hereinafter "Plaintiff"), and Colin Russell, Kenwood Hearing Aid Center, Inc. and Hear Ear Hearing Aids, Inc. (hereinafter "Defendants").

#### WITNESSETH:

WHEREAS, Plaintiff has alleged in a Complaint which it had filed in <u>Kenwood Hearing Center</u>. Inc. v. Colin Russell, et al., Case No. CI 2005 1055 (Common Pleas, Lucas) that Defendants had engaged in illegal common law trade name infringement, unfair competitor, and deceptive trade practices in the use of the name Kenwood Hearing Aids and have created confusion among the public and referring physicians;

WHEREAS, Defendants had filed a Counterclaim alleging that they had been defamed by Plaintiff and were well within their rights to have utilized the name Kenwood Hearing Aids in the manner in which they had used it;

WHEREAS, the case came to be heard for Final Pretrial Conference on January 12, 2006 at 11:00 a.m. before the Honorable Jack Zouhary. As a result of the settlement initiative which had been made by Judge Zouhary, the parties engaged in settlement discussion, and they were able to resolve all of their differences between them and have agreed to end this litigation;

NOW, THEREFORE, for valuable consideration the Parties hereby enter into this Release and Settlement Agreement, and it is agreed as follows:

- This Release And Settlement Agreement shall not in any way be construed as an admission by any party that the other has acted wrongfully in any manner or fashion whatsoever.
- 2. The total consideration for Plaintiff entering into this Release And Settlement Agreement is the following:
  - Defendants hereby agree to pay to Plaintiff the sum of Seventy-Two Thousand Two Hundred and Fifty Dollars (\$72,250.00) over a ten month period, on the first day of each month, with payment commencing on February 1, 2006 and continuing through November 1, 2006, and with payment being sent to counsel for Plaintiff, Theodore M. Rowen, Esq., at Spengler, Nathanson, 608 Madison Avenue, Suite 1000, Toledo Ohio 43604. Upon receiving each payment, Mr. Rowen will immediately forward a receipt for each payment to both counsel for Defendants, Raymond W. O'Neal Sr., at 11 West Monument Avenue, Suite 304, Dayton, Ohio 45402, and to Defendant Colin Russell at
  - (b) The payments due under this Release And Settlement Agreement shall be secured by a Judgment against each of the Defendants, a copy of which is attached hereto as "Exhibit 1" and which shall be held by counsel for Plaintiff and shall not be

- filed with the Court unless Defendants fail to make timely payment as is required by the Release And Settlement Agreement,
- (c) If Defendants default in making timely payment, then prior to counsel for Plaintiff being entitled to file and execute upon the Judgment, counsel for Plaintiff must first furnish written notice to counsel for Defendants and afford Defendant a period of five working days to care said default. It is further agreed that notwithstanding the foregoing. Defendants shall only be afforded one opportunity to cure its default prior to Plaintiff being able to file the Judgment. In other words, if there is a second default, it is not required that Plaintiff issue a notice to Defendants and/or afford them a cure period:
- (d) Defendants shall immediately contact SBC Yellow Pages and advise it to have the phone number which appears in the December 2005 Telephone Book, and to inform its Directory Assistance that upon any inquiry as to the phone number for Kenwood Hearing Aids, the individual should be given the phone number for Plaintiff, which is 419-534-3111, instead of the phone number currently appearing in the Yellow pages and listed with Directory Assistance, which is 419-472-2669:
- (e) Defendants shall immediately contact the Secretary of State of Ohio and inform the Secretary that the corporation known as Kenwood Hearing Aid Center, Inc. is no longer in existence, and that Defendants hereby revoke and forever abandon their trade name registration in the name of Kenwood Hearing Aids.
- 3. The total consideration for Defendant emering into this Release and Settlement Agreement is the following:
  - (a) Plaintiff agrees to cause the lawsuit which it had filed against Defendant to be dismissed with prejudice and with Defendants to bear the costs of the litigation, and the parties further agree to execute an Order identical to "Exhibit 2" which is attached hereto.
- 4. Based upon the consideration specified in paragraphs 2 and 3 of this Release, the Parties hereby have executed this mutual Release and Settlement Agreement, and in so doing, they had for themselves, their executors, administrators, heirs, employees, directors, officers, and assigns, agrees to fully, forever, unconditionally, and irrevocably release and discharge the other, from any and all claims, liabilities, and obligations, actions, causes of action, costs debts, and expenses (including claims for attorneys fees and costs) which it, he, and/or they know of, or should know of, arising from the actions in which Defendants have engaged in trade name infringement, unfair competition and deceptive trade practices, from the beginning of time through the date this Release and Settlement Agreement has been executed, including but not limited to the claims raised or which could have been raised in the Complaint and Counterclaim in Kenwood Hearing Center, Inc. v. Colin Russell et al., Case No. CI 2005 1055 (Common Pleas, Lucas County.)

- 5. This Release And Settlement Agreement is made and entered into in the State of Ohio, and shall in all respects be interpreted, enforced and governed by and under the laws of the United States and of the State of Ohio.
- 6. This Release and Settlement Agreement reflects the entire settlement agreement between and among the Parties. There are no other promises made by any party which the other is relying upon other than those promises stated in this Release And Settlement Agreement.
- 7. The Parties agree that each has read the terms and provisions of this Release And Settlement Agreement, and each is fully aware of its contents and effects, that each executes this Release and Settlement Agreement freely, knowingly, and voluntarily, and that the execution of this Release is not the result of fraud, mistake, or undue influence.

Colin Russell, Defendant
Dated:
Kenwood Hearing Aid Center, Inc., Defendant By: Colin Russell its President
Dated:
Hear Ear Hearing Aids, Inc., Defendant By: Colin Russell its President
Dated:
Kenwood Hearing Center, Inc. By: Joyce Johnson, its President
Dated:

4192418599 T-908 P.

#### IN THE COURT OF COMMON PLEAS

#### LUCAS COUNTY, OHIO

Kenwood Hearing Center, Inc., \* Case No. CI 0200501055

Plaintiff, \* Honorable Jack Zouhary

v. \* ORDER OF DISMISSAL

Colin Russell, et al.

Defendants.

\* \* \* \* \* \* \* \*

This cause came to be heard for Final Pretrial Conference on January 12, 2006 at 11:00 a.m. before the Honorable Jack Zouhary. Present were Joyce Johnson and Diann Harrison, the owners of Kenwood Hearing Center, Inc., hereinafter Plaintiff, and Colin Russell as an individual defendant and on behalf of the other defendants, Kenwood Hearing Aid Center, Inc. and Hear Ear Hearing Aids, Inc., hereinafter collectively referred to as Defendants.

After a discussion by the lawyers and parties of the various issues in the case and the merits of parties' respective positions, through the assistance of the Court, the parties reached an amicable resolution of the Complaint and Counterclaim. As a result thereof, its is hereby

ORDERED that the Complaint and Counterclaim, and each and every accompanying cause of action contained therein should be and hereby is dismissed with prejudice; and it is

FURTHER ORDERED that all costs in connection with the foregoing action should be and hereby shall be paid by Defendants.

Theodore M. Rowen, Esq. (0014245) Anastasia K. Hanson, Esq. (0072289) 608 Madison Avenue, Suite 1000 Telephone: (419) 241-2201 Fax: (419) 241-8599

Attorneys for Plaintiff

Raymond W. O'Neal, Sr., Esq. 11 West Monument Avenue, Suite 304 Dayton, Ohio 45402

Attorney for Defendants

Honorable Jack Zouhary

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COMPLAINANTS Ex. 8

FILED LUCAS COUNTY

2006 JAN 12 P 3:57

COMMON PLEAS COURT
IN THE COURT OF COMMON PLEASRREGAR TEDUNTY, OHIO

KENWOOD HEARING CENTER INC

Case No. G-4801-CI-200501055-000

Plaintiff,

\_

VS.

.

**COLIN RUSSELL** 

JUDGE JACK ZOUHARY

Defendant.

\*

JUDGMENT ENTRY OF DISMISSAL

Final settlement pretrial conference held with counsel and parties. Settlement agreement reached and read into the record. Therefore, this case is dismissed without prejudice, with the parties reserving the right to file a subsequent entry of dismissal within 30 days of the date of this order. Costs to defendant.

Date: January 12, 2006

JUDGE JACK ZOUHAR

cc:

THEODORE ROWEN RAYMOND O'NEAL

IN THE COURT OF COMMON PLEAS
OF LUCAS COUNTY, OHIO

KENWOOD HEARING CENTER, INC.,

Plaintiff,

ν.

Case No. CI05-1055 Judge Zouhary

COLIN RUSSELL and HEAR EAR HEARING AIDS,

Defendants.

Deposition of COLIN D. RUSSELL, a

Defendant herein, called by the Plaintiff as upon

Cross Examination pursuant to the Ohio Rules of

Civil Procedure, taken before Nicole D. Blaker,

Registered Professional Reporter, Notary Public in

and for the State of Ohio, at the offices of

Spengler Nathanson, 609 Madison Avenue, Suite 1000,

Toledo, Ohio, on Friday, September 30, 2005,

commencing at 10:18 a.m.



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405 Madison Avenue, Suite 900 — Toledo, OH 43604

PHONE 419-241-2070 TOLL FREE, 888-419-2070 FAX, 419-241-4718 WEB: www.seagatereporting.com

		Deposition of COLIN	<del></del>		
1.	_	6			8
1	A	Uh-huh, yes.	1	_	period of time I and my brother ran a gas station.
2	Q	For the record, would you state your full name,	2	Q	Okay. With pursuing battery reclamation, did you
3		please, and spell your last name?	3	_	do that on your own?
4	A	Colin D. Russell, R-u-s-s-e-l-i.	4	A	Yes.
5	Q	What's your home address, sir?	5	Q	And who did it with you, if anyone?
6	Α	306 Millburn Court, Mishawaka, Indiana, 46544.	6	Α	Myself.
7	Q	How long have you lived in that town in Indiana?	7	Q	And how long did that last?
8	Α	Since 1995.	8	Α	Oh, probably nine months to a year at most.
9	Q	And that address?	9	Q	Nine months to one year. And what did your
10	A	That address since 1997.	10		battery reclamation enterprise consist of?
11	Q	Okay, thank you. Have you ever been convicted of	11	Α	We just collected batteries and shipped them to
12		a felony?	12		the smelter for reclamation.
13	A	No, sir.	13	Q	And what did you do after you did that for nine
14	Q	And you've never been involved in litigation	14		months or a year?
15		before?	15	Α	I worked well, actually, I got into the hearing
16	A	Never have, sir.	16		aid business in 1991.
17	Q	Have you or any company or organization that	17	Q	What did you do in 1991 in terms of getting into
18		you've been affiliated with ever been accused of	18		the hearing aid business?
19		engaging in false advertising or unfair	19	A	I came to work for Beltone Hearing Aid Center, Bob
20		competition?	20		Timberman. I worked there for six months. I left
21	A	No, sir.	21		there, went to work for E.B. Brown Optical. I
22	Q	With whom are you employed?	22		worked for E.B. Brown approximately nine months.
23	A	Self.	23	Q	Okay. Give me a minute, please. You worked for
24	Q	What do you do in terms of your self-employment?	24		Beltone Hearing Aid Center where?
25	A	I am a hearing aid dispenser.	25	Α	In Toleda, Ohio.
		7	ļ		9
1	Q	How long have you been a hearing aid dispenser?	1	Q	Who was your boss?
2	Α	Since 1991.	2	A	Bob Timberman who is now deceased.
3	Q	What, if any, degrees do you hold?	3	Q	And what did you do for Beltone Hearing Aid
4	A	Bachelor of science in electronics technology with	4		Center?
5		a minor in microprocessing, graduated from Central	5	Α	I dispensed hearing aids.
6		Missouri State University in 1989.	6	Q	When you dispensed hearing aids for Beltone
7	Q	Thank you. Could you start with your full-time	7		Hearing Aid Center, were you aware of the existence
8		employment after graduating school, with whom were	8	_	of a company called Kenwood Hearing Center?
9		you employed?	9	Α	As a distant competitor, yes.
10	A	Full-time I started a short period of time I	10	Q	What do you mean distant competitor?
11		worked for Nooter Construction in St. Lewis.	11	A	Never knew them, just knew of the name.
12	Q	Could you spell that for me, please?	12	Q	By distant, they were located in the same city;
13	A	N-o-o-t-e-r.	13		were they not?
14	Q	And what did Nooter Construction do?	14	A	Uh-huh, yes.
15	A	They were a pipefitting company for they were a	15	Q	By distant you meant you never had any contact
16	_	contractor for the old refinery business.	16		with them?
17	Q	And how long did you work for Nooter Construction?	17	A	No.
18	A	I only worked for Nooter about three months.	18	Q	That's what you meant by distant?
19	Q	And what was your job?	19	A	Yes.
20	A	Safety department, I was safety clerk.	20	Q	Thank you. When you worked for Beltone Hearing
21	Q	Why did you leave the employment of Nooter	21		Aid Center, did you know how much of the Toledo
22		Construction, if you recall?	22		market Kenwood Hearing Center had?
23	Α	To pursue other things.	23	Α	Again, no.
24	Q	What did you next pursue?	24	Q	And why did you leave the employment of Beltone
25	A	I pursued battery reclamation, and for a short	25		Hearing Aid Center?

		Deposition of COLIN	, <i>U.</i> )	100	
.		14	.		16
1		MR. O'NEAL: Object only if it's	1		the period 1995 until 1999?
2		consistent with the if the question is	2		MR. O'NEAL: We object to the
3		consistent with the answer that he gave.	3		extensive line of questioning regarding
4	Q	Do you remember the question?	4		employment prior to the incident involving
5	A	Only in the fact that we are fellow colleagues.	5		this litigation.
6	Q	So you never said that you were affiliated with	6		MR. ROWEN: That's fine. You have a
7		Joyce Johnson or Kenwood?	7		right to object to anything you want to.
8		MR. O'NEAL: Object, asked and	8		Read back the question. Please give me an
9		answered.	9		answer.
[10	Q	Is that your testimony?	10		(Said question read.)
11	A	Only in the fact that we are fellow colleagues.	11	Α	No, sir.
12	Q	The question's capable of a yes or no answer, and	12	Q	Okay.
13		I ask you to do so.	13	A	Again, let me stress the point, since 1992 I have
14		MR. ROWEN: Read back the question,	14		worked for no one but Colin Russell.
15		ptease.	15	Q	Why did you cease being a dispenser for Beltone in
16		(Said question read.)	16		1999?
17	Q	Is that correct, yes or no?	17		MR. O'NEAL: Again, we object.
18	Α	No, only in the fact that we are fellow	18	Q	Go ahead.
19		colleagues.	19		MR. O'NEAL: If you don't want to
20	Q	So in conversation with the elderly, your	20		answer that question, you don't have to,
21		potential comments, on occasion you mentioned the	21		because we consider it unrelated to the
22		name Joyce Johnson or Kenwood Hearing Center?	22		present litigation. You can give an
23	Α	Only in the fact if they as fellow colleagues had	23		opinion by contacting the judge if
24		fit a senior citizen with a product, they may have	24		opposing counsel wishes to do that.
25		came into my office at some time or another for	25		MR. ROWEN: Are you instructing
1		15			17
1		service or for a second opinion, and again, that	1		are you instructing him not to answer the
2	_	constitutes fellow colleagues.	2		question?
3	Q	Why did you stop doing business as Quality Hearing	3		MR. O'NEAL: No, I'm telling him what
4		Aids?	4		his choices are. I'm advising him of his
5	A	I left in 1995 to become the Beltone dealer in	5		choices.
6	_	South Bend, Indiana.	6	_	MR. ROWEN: Okay.
7	Q	Were you self-employed as the Beltone dealer in	7	Q	Did you hear your counsel?
8		South Bend, Indiana?	8	A	Yes.
9	A	As before mentioned, I have worked for myself	9		MR. ROWEN: Read back the question.
10		since 1992, so at any given time I have worked for	10		(Said question read.)
11	_	myself to present day.	11		MR. O'NEAL: If you don't think
12	Q	So in 1995 when you were the Beltone dealer in	12		that's a reasonable question under the
13		South Bend, Indiana, you were an independent	13		circumstances as related to this case, you
14		contractor?	14		do not have to answer that question.
15	_	MR. O'NEAL: Object.	15	A	That has no relationship to this case. This whole
16	Q	Is that your testimony, by being in other	16		line of questioning of my history up to this point
17		words, you weren't employed by Beltone, correct?	17	_	has no relationship to this case.
18	A	No.	18	Q	Let me make this very clear to you,
19	Q	You were just a dealer for Beltone?	19		notwithstanding what your learned counsel has said
20	A	I was a Beltone dispenser.	20		to you. I'm going to ask you the questions. If
21	Q	Okay. Now, how long did you remain a Beltone	21		you're telling me you're not answering them, I'm
22		dispenser in South Bend, Indiana?	22		going to ask you if you do it under instruction of
	Α	Until 1999.	23		your counsel. If you say yes, I'll move on. If
23					
23 24 25	Q	Did you have any other employment other than being a dealer in South Bend, Indiana, for Beltone during	24 25		you tell me you're doing it an your own, I'm going

2 Did you ever rent space in the Kenwood – I'm sorry, did you ever rent space in the Kenwood – I'm sorry, did you ever rent space in the Westgate Sorry, did you ever rent space in the Westgate Sorry, did you ever rent space in the Westgate Sorry, did you ever rent space in the Westgate Sorry, did you ever rent space in the Westgate Sorry, did you ever rent space in the Westgate Sorry, did you ever rent space in the Westgate Sorry Sorry Sorry, did you ever rent space in the Westgate Sorry Sorry Sorry Sorry, did you ever rent space in the Westgate Sorry				Т-		
2 sorry, did you ever rent space in the Westgate 3 Office Building? 3 I chose Hear Ear as my ultimate name of choice. 4 A Yes, I did. I know her suite is 134. I do not remember the suite number that was inside the building. I can get that information for you. 7 Q When did you rent space in the Westgate Office 8 Building? 9 A If my memory serves me correct, Hearing Ald Service leased space in that building when we were 1 reopening in Toledo, I believe — when was that—1 2 2003 maybe, the first part of 2004 or the fall of '03. I'd have to go back and find out on the lease whenever the lease began. We operated there several months a year ferring to be same — when you serve in Toledo or referring to be same — when you serve in Toledo or referring to the same — when you serve in Toledo or does you been in Toledo or perforing to the same — when you serve in Toledo or had you been in Toledo operating under the name 21 Hearing Ald Service, Incorporated? 21 A No. I'm just referring to business in town and 2 being perse as a business entity. 22 A No. I'm just referring to business entity. 23 A Yes. 24 O Clay. So the phrase reopening would be after you 1 left previously to take up the Bettome dealership? 25 I A Uh-huh, yes, nearly ten years had went by, nine 2 years. 3 Q C Nay. Thank you very much. 4 A You're welcome. 5 O Now, did you have a written lease in Westgate? 6 A Yes. 7 Q And what was the term of the lease? 8 A T keas one-yeer leases. Do you need to know the amount of dollars per month? 9 A We leased that space for one year. We was good to our word. 10 Q wo were three for a year? 11 A We leased that space for one year. We was good to our becase and good to our word. 12 A not while that lease within the transition of over — you know, where it lapped over — I mean if you're going to begin a new 20 office, a naw lease begins, if there's an old lease ending, you have to honor that lease, one-year it has a provision within that incodes— it has a provision within that incodes— it has a provision within that incodes— it	4	^		1	Δ	<del>-</del> ·
3 Ciffoce Building? 4 A Yes, I did. I know her suite is 134. I do not remainbor the suite number that was inside the building. I can get that information for you. 5 Power and did you rent space in the Westgate? 6 Building? 7 Q When did you rent space in the Westgate? 8 Building? 9 A If my memory serves me correct, Hearling Ald 10 Service leased space in that building when we were reopening in Toledo, I believe — when was that— 11 2 2003 maybe, the first part of 7 He would have been the first part of 2004 or tite fell of '03. I'd have to go back and find out on the Issae whenever the lease began. We operated there several months as Hearling Ald Service, Ancorporated. 10 Q You used the phrase when reopening in Toledo. Are you referring to the same — when you say renegoring, the prior firm when you were in Toledo or had you been in Toledo operating under the name Hearing Ald Service, Incorporated? 12 A No. I'm just referring to businesse in town and being here as a business entity. 13 Q Yes. 14 A Uh-huh, yes, nearly ten years had went by, nine years. 15 Q Now, Jid you have a written lease in Westgate? 16 A Yos. 17 Q And what was the term of the lease? 18 A Yos. 19 A I'my over provinch. 29 Yes. 20 A Now, Gif you have a written lease in Westgate? 30 C Yes. 31 A Uh-huh, yes, nearly ten years had went by, nine year? 4 A Yos. 4 A Yos. 5 A Now, Gif you have a written lease in Westgate? 5 A Yes. 6 A Yos. 7 Q And what was the term of the lease? 8 A Yes. 9 A Yes Yes Yes. 9 A Well, of course. 16 A Own, Jim yes referring to businesses in town and being here as a business entity. 18 A There may have been a couple of months in the year? 19 A Well of course in the fell of year? 19 You Yes. 10 C Yes, Thank you very much. 10 A Yes. 11 A Uh-huh, yes, nearly ten years had went by, nine year? 12 A No, we finished out the year. 13 A Yes. 14 A We leased that space for one year. We was good to your A well and year you inderstand it because I loved the phra	Į.	G.	•	J .	^	·
4 A Yes, I did. I know her suite is 134. I do not remember the suite number that was inside the building. I can get that information for you.  7 Q When did you rent space in the Westgete Office Building?  9 A If my memory serves me correct, Hearing Ald Service leased space in that building when we were in ropening in Toledo, I believe — when was that — 2003 maybe, the first part of 7004 or the fall of '03. I'd have to go back and find out on the lease whenever the lease began. We operated there several months in the tease began. We operated there several months as the tease began. We operated there several months in the tease begins, the prior time when you were in Toledo or had you been in Toledo operating under the name Hearing Ald Service, Incorporated.  17 Q You used the phrase when reopening in Toledo. Are you referring to the same — when you say reopening, the prior time when you were in Toledo or had you been in Toledo operating under the name Hearing Ald Service, Incorporated to be piece as a business entity.  18 Q Okay. So the phrase reopening would be after you left previously to take up the Bettone dealership?  19 A If my memory serves me correct, Hearing Ald Services, Incorporated the seventh of the lease?  10 A Original of the server of the when you say reopening in Toledo operating under the name Hearing Ald Services, Incorporated to the your search of the lease?  10 C No, no, on Any out terminated that lease within the year?  11 A Uh-huh, yes, nearly ten years had went by, mine years.  12 Q Cokay. Thenk you very much.  13 Q So you were there for a year?  14 A We leased that space for one year. We was good to so univer.  15 Q And while that lease was in effect, were you not to sour leases and good to our word.  16 Q And while that lease was in effect, were you not to cover one year was a source of the phrasing of it. Would you read it back, please confice, a new lease begins, if there's an oid lease ending, you have to honor that leases, so — okay?  20 over. I mean, if you're going to begin a new				1		
remember the sulte number that was inside the building. I can get that information for you.  7 Q When did you reits space in the Westgate Office Building?  8 A If my memory serves me correct, Hearing Ald  10 Service leased space in that building when we were reopening in Toledo, I believe — when was that — 12 203 maybe, the first part of — It would have been the first part of 2004 or the fall of '03. I'd have to go back and find out on the lease whenever the lease began. We operated there several months as Hearing Ald Service, Incorporated.  10 Q You used the phrase when reopening in Toledo. Are you referring to the same — when you were in Toledo or had you been in Toledo operating under the name Hearing Ald Service, Incorporated?  10 You. Used the phrase when reopening in Toledo. Are you referring to the same — when you were in Toledo or had you been in Toledo operating under the name Hearing Ald Service, Incorporated?  10 Yes.  11 A Uh-huh, yee, nearly ten years had wrent by, nine year?  12 Q And what was the term of the lease?  13 Q Okay. So the phrase reopening would be after you left previously to take up the Bethone dalership?  14 A You're welcome.  15 Q Non, and you have a written lease in Westgate?  16 A Yes.  17 Q Non, and you terminated that lease within the amount of dollars per month?  18 A It was a one-year lease. Do you need to know the amount of dollars per month?  19 Q No, no. And you terminated that lease within the year?  10 Q No, we finished out the year.  11 C And while that lease so gins, if there's an old lease ending, you have to honor that lease, so — okay?  12 A No, we finished out the year.  13 Q And while that lease begins, if there's an old lease ending, you have to honor that lease, so — okay?  23 Q And again, this hearing Ald Services, inc. is that include — it has a provision within that it includes — it has a provision within that it includes — it has a provision within that it includes — it has a provision within that included — it has a provision within that included — it has a			-		0	•
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8 Q Is Hear Ear a corporation? 9 A If my memory serves me correct, Hearing Ald 9 Service leased space in that building when we were reopening in Toledo, I believe — when was that — 2003 maybe, the first part of — it would have been the first part of 2004 or the fall of '03. I'd have to go back and find out on the lease whenever the lease began. We operated three several months as Hearing Ald Service, Incorporated. 17 Q You used the phrase when reopening in Toledo. Are you referring to the same — when you say reopening, the prior time when you were in Toledo or had you been in Toledo operating under the name 20 Hearing Ald Service, Incorporated, Incorporated, It too was a corporation solely owned being here as a business entity. 22 A No. I'm just referring to business in town and being here as a business entity. 23 A Wes. 24 Q Clay. So the phrase reopening would be after you left previously to take up the Beltone dealership? 25 If A Uh-huh, yes, nearly ten years had went by, nine years. 26 Q And what was the term of the lease? 37 Q And what was the term of the lease? 38 A It was a one-year lease. Do you need to know the amount of dollars per month? 39 A Yes. 39 Q No, no. And you terminated that lease within the year? 39 A Well, or curse. 30 Clay. Thank you wery much. 31 A Well, of course. 31 A Uh-huh, yes, nearly ten years had went by, nine years. 32 Clay. Thank you had selected? 33 Clay. Thank you very much. 44 A You're welcome. 45 Q And what was the term of the lease? 46 A Yes. 47 Q And what was the term of the lease? 48 A It was a one-year lease. Do you need to know the amount of dollars per month? 49 A No, we finished out the year? 40 An one thank you who you terminated that lease within the year? 40 An one that you had selected to our lease and good to our word. 41 A Well-acade had you terminated that lease within the transition of over — you know, where it lapped office, a new lease begins, if there's an old lease transition of over — you know, where it lapped office, a new lease begins, if there's an old	1	_	<del>-</del> -			· · · · · · · · · · · · · · · · · · ·
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12 2003 maybe, the first part of — it would have been the first part of 2004 or the fall of '03. I'd have to go back and find out on the lease whenever the lease began. We operated there several months as Hearing Ald Sarvice, Incorporated.  16 as Hearing Ald Sarvice, Incorporated.  17 Q You used the princes when respening in Toledo are you referring to the same — when you say reopening, the prior time when you way reopening, the prior time when you way reopening, the prior time when you were the name Hearing Ald Service, Incorporated?  18 Hearing Ald Service, Incorporated?  19 You?  10 Q Nay. So the phrase reopening would be after you left previously to take up the Beltone dealership?  21 A Uh-hub, yes, nearly ten years had went by, nine years.  22 Q Clay. Thank you very much.  23 Q Ckay. Thank you very much.  24 A You're welcome.  25 Q Now, did you have a written lease in Westgete?  26 A Yes.  27 Q And what was the term of the lease?  28 A It was a one-year lease. Do you need to know the amount of dollars per month?  19 Q No, no. And you terminated that lease within the year?  29 A No. We finished out the year.  29 Q Thank you. Now, these various names that we've talked about, let's do them individually first.  29 Vess.  29 Q The name Hearing Ald Center was a name that you had selected?  29 Was anyone else involved in the selection process besides you?  29 A Ultimately, yes.  29 Was anyone else involved in the selection process besides you?  29 A Ultimately, yes.  29 Was anyone else involved in the selection process besides you?  4 A No. Agalin, it is me, myself, Collin Russell.  5 A Now, we finished out the year.  5 A It was a one-year lease. Do you need to know the amount of dollars per month?  10 Q No, no. And you terminated that lease within the year?  20 A Office, a new lease begins, if there's an old lease ending, you have to honor that lease, so - okay?  21 A Now, we finished out to hove the person of the person of the person that it includes - it has a provision within that the person that it includes	1		<u>-</u>			
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17 Q You used the phrase when reopening in Toledo. Are you referring to the same when you say reopening, the prior time when you were in Toledo or had you been in Toledo operating under the name Hearing Ald Service, Incorporated?  2 A No. I'm just referring to business in town and being here as a business entity.  2 Q Okay. So the phrase reopening would be after you left previously to take up the Beltone dealership?  2 Uh-huh, yes, nearly ten years had went by, nine years.  3 Q Okay. Thank you very much.  4 A You're welcome.  5 Q Now, did you have a written lease in Westgate?  6 A Yes.  7 Q And what was the term of the lease?  8 A It was a one-year lease. Do you need to know the amount of dollars per month?  1 A We leased that space for one year. We was good to our lease and good to our word.  16 Q And while that lease was in effect, were you not located on Sylvania Avenue?  18 Incorporated, it too was a carporation solely owned by you?  20 A Yes.  21 Q Thank you. Now, these various names that we've taiked about, let's do them individually first.  22 Q The name Hear Ear Hearing Ald Center was a name that you had selected?  23 A Yes.  24 Q The name Hear Ear Hearing Ald Center was a name that you had selected?  25 Was anyone else involved in the selection process besides you?  4 A You're welcome.  5 Q And what was the term of the lease?  8 A It was a one-year lease. Do you need to know the amount of dollars per month?  10 Q No, no. And you terminated that lease within the year?  11 Q So you were there for a year?  12 A No, we finished out the year.  13 Q So you were there for a year?  14 A We leased that space for one year. We was good to our lease and good to our word.  15 MR. ROWEN: Read back the question.  16 Q And while that lease was in effect, were you not located on Sylvania Avenue?  17 because I loved the phrasing of it. Would you read it back, please.  18 There may have been a couple of months in the transition of over you know, where it lapped over. I mean, if you're going to begin a new office, a	t		<del>-</del> •	i		-
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22 A No. 1'm just referring to business in town and being here as a business entity. 24 Q Okay. So the phrase reopening would be after you left previously to take up the Beltone dealership? 25 that you had selected? 26 Ultimately, yes. 27 Q Was anyone else involved in the selection process besides you? 28 A Yes. 3 Q Okay. Thank you very much. 4 A You're welcome. 5 Q Now, did you have a written lease in Westgate? 6 A Yes. 7 Q And what was the term of the lease? 8 A It was a one-year lease. Do you need to know the amount of dollars per month? 9 Q No, no. And you terminated that lease within the year? 11 Q No, we finished out the year. 12 A We leased that space for one year. We was good to our werd. 13 Q And while that lease was in effect, were you not located on Sylvania Avenue? 14 A There may have been a couple of months in the transition of over you know, where it lapped over. I mean, if you're going to begin a new office, a new lease begins, if there's an old lease ending, you have to honor that lease, so okay? 10 Q And again, this Hearing Aid Services, Inc. is that 11 Indicated a pool, let's do them individually first. 23 A Yes. 24 Q The name Hear Ear Hearing Aid Center was a name that you had selected? 25 that you had selected? 26 A Wes. 27 Q Was anyone else involved in the selection process besides you? 28 Q Was anyone else involved in the selection process besides you? 29 Q Was anyone else involved in the selection process in that it includes it has a provision with first that you have less in work and the name Hearing Aid Center which would be utilized too, correct? 3 A Yes. 3 Q Utimately, yes. 3 Utimately, yes. 4 A Utimately, yes. 5 Q Was anyone else involved in the selection process besides you? 5 Q Was anyone else involved in the selection process in that it includes it has a provision within that it includes it has a provision within that includes it has a provision within that	20		or had you been in Toledo operating under the name	20	A	Yes.
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located on Sylvania Avenue?  17 because I loved the phrasing of it. Would 18 A There may have been a couple of months in the 19 transition of over you know, where it lapped 20 over. I mean, if you're going to begin a new 21 office, a new lease begins, if there's an old lease 22 ending, you have to honor that lease, so okay? 23 Q And again, this Hearing Aid Services, Inc. is that 25 because I loved the phrasing of it. Would 26 you read it back, please. 27 (Said question read.) 28 MR. O'NEAL: Again, for the record, 29 we object to it for the purposes of the 29 phrasing hereof, the reason that it 20 includes it has a provision within that	15		- ,			MR. ROWEN: Read back the question.
18 A There may have been a couple of months in the 19 transition of over you know, where it lapped 20 over. I mean, if you're going to begin a new 21 office, a new lease begins, if there's an old lease 22 ending, you have to honor that lease, so okay? 23 Q And again, this Hearing Aid Services, Inc. is that 24 you read it back, please. 26 (Said question read.) 27 MR. O'NEAL: Again, for the record, we object to it for the purposes of the phrasing hereof, the reason that it includes it has a provision within that	16	Q	And while that lease was in effect, were you not			I want to make sure you understand it
transition of over you know, where it lapped over. I mean, if you're going to begin a new office, a new lease begins, if there's an old lease ending, you have to honor that lease, so okay?  And again, this Hearing Aid Services, Inc. is that  (Said question read.)  MR. O'NEAL: Again, for the record, we object to it for the purposes of the phrasing hereof, the reason that it includes it has a provision within that	17		located on Sylvania Avenue?	17		because I loved the phrasing of it. Would
20 over. I mean, if you're going to begin a new 21 office, a new lease begins, if there's an old lease 22 ending, you have to honor that lease, so okay? 23 Q And again, this Hearing Aid Services, Inc. is that 20 MR. O'NEAL: Again, for the record, 21 we object to it for the purposes of the 22 phrasing hereof, the reason that it 23 includes it has a provision within that	18	A	There may have been a couple of months in the	18		you read it back, please.
21 office, a new lease begins, if there's an old lease 22 ending, you have to honor that lease, so okay? 23 Q And again, this Hearing Aid Services, Inc. is that 21 we object to it for the purposes of the phrasing hereof, the reason that it includes it has a provision within that	19		transition of over you know, where it lapped	19		(Said question read.)
22 ending, you have to honor that lease, so okay? 23 Q And again, this Hearing Aid Services, Inc. is that 23 includes it has a provision within that	20		over. I mean, if you're going to begin a new	20		MR. O'NEAL: Again, for the record,
23 Q And again, this Hearing Aid Services, Inc. is that 23 includes it has a provision within that	21		office, a new lease begins, if there's an old lease	21		we object to it for the purposes of the
	22		ending, you have to honor that lease, so okay?	22		phrasing hereof, the reason that it
24 the same name or a synonymous name with Hear Ear 24 has not been shown on record, that has not	23	Q	And again, this Hearing Aid Services, Inc. is that	23		includes it has a provision within that
	24	•	the same name or a synonymous name with Hear Ear	24		has not been shown on record, that has not
25 Hearing Aid Center? 25 been shown on record by his testimony.	25		Hearing Aid Center?	25		been shown on record by his testimony.

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1.1	_	neighborhood that is referred to as Kenwood.	1	A	Prior to my opening and using the name of Kenwood
2	Q	Right. But you referred to in your testimony	2	Q	Yes, sir.
3		minutes ago to Kenwood, Ohio. Is that a mistake?	3	A	Sir, again, let's state the fact. When we opened,
4	A	That was a mistake, yes.	4		we were Hear Ear Hearing Aids in the Westgate
5	Q	So it should have been a portion of Toledo, Ohio,	5		Building. We never used the name Kenwood Hearing
6	_	around the Kenwood Shopping Center; is that fair?	6		Aids, Kenwood Hearing Aid Center, although we were
7	A	Correct, yeah.	7		granted the right by the State of Ohio, and yes,
8	Q	Okay. Now, you yourself never had any business or	8		you're going to pull out the phone book listing.
9		prior experience in connection with the Kenwood	9	_	(Plaintiff's Exhibit 1 marked.)
10		Shopping Center, did you?	10	Α	Can I finish
11	A	No.	11	Q	No.
12	Q	All right, thank you. When you selected the name	12	A	the answer?
13		Kenwood to be used in conjunction with one of your	13	Q	No, you weren't talking. There wasn't a question
14		companies, did you know of the existence of Joyce	14		before you. You're not here to engage in a
15		Johnson's business called Kenwood Hearing Center,	15		solitoquy. You're here to respond to my questions.
16		yes or no?	16	Α	You wanted me to respond to the question of
17	A	Yes.	17		reputation.
18	Q	Had you known when you selected the name Kenwood	18	Q	Excuse me, we're not on that. We're getting back
19		in connection with your two business corporations	19		to that. Take a look, please, at Plaintiff's
20		that Kenwood Hearing Center had been in business	20		Exhibit 1.
21		since February of 1993?	21		MR. ROWEN: I don't want you talking
22	A	I knew that they had been around several years.	22		to him.
23	Q	Did you know that they had at one time been	23		MR. O'NEAL: Note on the record that
24		located in the Kenwood Shopping Center?	24		I'm speaking with my client, please.
25	A	Yes	25		(Mr. O'Neal conferring with Mr. Russell.)
		31			33
1	Q	Through either one of the companies whose names	1		MR. ROWEN: I don't know how you do
2		you've utilized in Toledo since your reopening, to	2		things in Dayton, but here we don't talk
3		use your phrase, did you ever sell a private	3		to our client when a question's pending
4		hearing aid brand?	4		and a lawyer's trying to ask a question
5	A	No, sir.	5		where you can see where I'm going by an
6	Q	You never sold a hearing aid brand by the name of	6		exhibit, and I'm asking you to refrain
7		Kenwood hearing aids?	7		from that, and if you don't, I will call
8	A	No, sir.	8		the judge on that issue.
9	Q	Are you aware of whether there is any hearing aid	9		MR. O'NEAL: That's okay.
10		manufacturer who markets nationally or	10		MR. ROWEN: Have you marked
11		regionally	11		Plaintiff's Exhibit 1?
12	Α	No, sir, there isn't.	12		COURT REPORTER: Yes.
13	Q	let me finish, sir a brand of hearing aids	13	Q	Have you been handed Plaintiff's Exhibit 1?
14		called Kenwood hearing aids?	14	A	Yes, I did, but I have not finished the answer to
15	A	No, sir, there is not. I believe you already knew	15		the previous question.
16		that according to your correspondence to me, you	16	Q	I expect you to answer questions that are posed to
17		had done that research.	17		you. The question is do you have Plaintiff's
18	Q	In the time you had selected the name Kenwood in	18		Exhibit 1 in front of you, yes or no?
19	-	conjunction with either one of your two companies	19	Α	I have not finished the answer to the previous
20		since the reopening of your hearing aid business in	20		question, sir, of reputation. You're not allowing
21		Toledo, were you aware of the reputation that	21		me to finish the answer to the questions you're
22		Kenwood Hearing Ald I'm sorry, that Kenwood	22		asking.
23		Hearing Center had established prior to your	23	Q	Mr. Russell, we'll get to that. Take a look at
24		opening and using the name?	24	-	Plaintiff's Exhibit 1.
25		MR. O'NEAL: Object to that question.	1	Α	Yes.
	_	The O Marian Object to that question		-1	

4 Yes.  And coold you tell us what that reputation was in  your judgment?  And a Yes.  And a Yes.  And a Yes.  That they were fellow colleagues who provided  audiological services to the community.  And what about hearing aid fitting and dispensing?  A I am —  What was the reputation in connection with that,  sir, if you understand that that is part of their business.  Do you know whether they had a reputation for  a baing excellent in doing so?  A A rawswering that as a matter of opinion?  A A res.  A re			Deposition of COLII	V D. 1	1033	SELL, 09/30/05
2 A Yes. 3 Q And could you tell us what that reputation was in your judgment? 4 your judgment? 5 A That they were fellow colleagues who provided audiological services to the community. 7 Q And what about hearing aid fitting and dispensing? 8 A I am - 9 Q What was the reputation in connection with that, sir, if you understand? 10 A I meritable with that is part of their business. 11 A I understand that that is part of their business. 12 Q Do you know whether they had a reputation for being sectlent in foling so? 14 A Answering that as a matter of optnion? 15 Q Yes. 16 Q Yes. 17 Q And what is your opinion? 18 A My aphilon of Knewcod? 19 Q Yesh. 20 A Kenwood Hearing Center? 21 Q Yesh. 22 A They must be doing something right to be still in business today. 23 Q So you don't know whether they had a reputation for for hearing something right to be still in business today. 24 Q So you don't know whether they had a reputation for for hearing friend physiodans, do you? 25 For excellence among referring physiodans, do you? 26 Q And you don't know whether they had a reputation among the elderly as being fair and good in terms of the service that they were given? 29 Q And you don't know whether they had a reputation among the elderly as being fair and good in terms of the service that they were given? 29 A No, that could only be decided from within the railmen of an individual affice. 20 Thank you. 21 Q Row, who was - well, you were involved in selecting your first office in the kenwood Hearing - I'm sorry much. 22 A Mand why did you choose that office building in connection with all the other office space in Todo, Ohio? 23 Q And why did you choose that office building in connection with all the other office space in Todo, Ohio? 24 A Because the Westgate Building is a landmark building and they had a space available. 25 Garot that the Kenwood Hearing Center was there was not a face of face and the face of the service in the westgate office face face of the westgate office in the Kenwood in the face that the Kenwood Hearing			<del></del>			
3 Q And could you tell us what that reputation was in your judgment? 5 A That they were fellow colleagues who provided audiological services to the community. 7 Q And what about hearing aid fitting and dispensing? 8 A I am 9 Q What was the reputation in connection with that, sir, if you understand? 11 A I understand that that is part of their business. 12 Q Do you know whether they had a reputation for bising excellent in doing so? 13 A naswering that as a matter of opinion? 14 A Answering that as a matter of opinion? 15 Q Yes. 16 A Yes. 17 Q And what is your opinion? 18 A My opinion of Knewcod? 19 Q Yes. 19 Q Yes. 10 A Kenwood Hearing Center? 10 Q And what is you only know whether they had a reputation for excellence among referring physicians, do you? 11 A No. 12 Q And you don't know whether they had a reputation among the eiderly as being fair and good in terms of the service that they were given? 19 A No. No. No. R. R. OWEN: 10 A No. What could only be dedded from within the realms of an individual office. 10 Now, who was - well, you were involved in the service that they were given? 11 A No. R. R. R. Web. A little late and under the guilding; is that correct? 11 A Pescause the Westqate Office 11 building is that correct? 12 And why did you choose that office building in connection with all the other office space in in the Westqate office 12 Understand? 13 A No. ONEAL: We would object to both of those questions. 14 A No. No. R. R. ROWEN: A little late and under the guilding, is that correct? 15 A No. No. Now was well, you were involved in selecting your first office in the Kernwood in S	1		familiar with it?			- ,
4 That they were fellow colleagues who provided audiological services to the community. 5 A That they were fellow colleagues who provided audiological services to the community. 6 A Yes. 6 A Yes. 7 Q And what about hearing aid fitting and dispensing? 8 A I am — 9 Q What was the reputation in connection with that, of the provided in	2	Α	Yes.	2	A	Yeah, that's my honest testimony, yes, sir.
5 A That they were fellow colleagues who provided audiological services to the community. 7 Q And what about hearing aid fitting and dispensing? 8 A I arm -	3	Q	And could you tell us what that reputation was in	3	Q	Thank you. Is it true that you closed your office
audiological services to the community.  7 Q And what about hearing aid fitting and dispensing?  8 A I am 9 Q What was the reputation in connection with that, 10 sir you understand?  11 A I understand that that is part of their business. 12 Q Do you know whether they had a reputation for labeling so?  13 A Answering that as a matter of opinion?  14 A Answering that as a matter of opinion?  15 Q Yesh.  16 A Yes.  17 Q And what is your opinion?  18 A My opinion of Kenwood?  19 Q Yeah.  20 A Kenwood Hearing Center?  21 Q Yes.  22 A They must be doing something right to be still in business today.  23 business today.  24 Q So you don't know whether they had a reputation for excellence among referring physicians, do you?  25 D A Kenwood Hearing Center?  26 Q And you don't know whether they had a reputation for excellence among referring physicians, do you?  39 1 A No.  20 Q And you don't know whether they had a reputation among the elderly as being fair and good in terms of the service that they were given?  30 A No, that could only be decided from within the realms of an individual office.  31 MR. ROWEN: A little late and under the gun, but the objection is duly noted, thank you.  32 MR. ROWEN: A little late and under the gun, but the objection is duly noted, thank you were involved in selecting your first office in the Kenwood  31 Q Now, who was well, you were involved in selecting your first office in the Kenwood  32 And why did you choose that office space in Toledo, Ohlo?  33 A No.  34 C And why did you choose that office space in Toledo, Ohlo?  35 A No. that could nally be decided from within the realms of an individual office.  36 A No. that could nally be decided from within the realms of an individual office.  39 A No. that could nally be decided from within the realms of an individual office.  30 A No. that could nally be decided from within the realms of an individual office.  31 A No.  32 A ROWEN: A little late and under the gun, but the objection is duly noted, thank you.  39 A No. The AI 's All '	4		your judgment?	4		in the Westgate Office Building as a result of a
7 Q And what about hearing aid fitting and dispensing? 8 A I arm -	5	A	That they were fellow colleagues who provided	5		merger or consolidation?
8 A Xam— 9 Q What was the reputation in connection with that, 10 sir, you understand? 11 A X understand that that is part of their business. 12 Q Do you know whether they had a reputation for 12 and shared. Go ahead. 13 being excellent in doing so? 14 A Answering that as a matter of opinion? 15 Q Yes. 16 A Yes. 17 Q And what is your opinion? 18 A Wy opinion of Kenwood? 19 Q Yeah. 19 A Wy opinion of Kenwood? 19 Q Yeah. 20 A Kenwood Hearing Center? 21 Q Yes. 22 A They must be doing something right to be still in 19 business today. 23 Dusiness today. 24 Q So you don't know whether they had a reputation for excellence among referring physicians, do you? 25 A Moy don't know whether they had a reputation among the deferly as being fair and good in terms of the service that they were given? 26 A No, that could only be decided from within the realms of an individual office. 27 Q Thanky you were involved in selecting your first office in the Kenwood 28 MR. ROWEN: A little late and under the gun, but the objection is duly noted, thanky you were involved in selecting your first office in the Kenwood 29 Toledo, Ohio? 20 Q And why dily ou choose that office space in 19 Q And why dily ou choose that office space in 19 Q Now, who was - well, you were involved in 18 Q And why dily ou choose that office space in 19 Q Now, who was - well, you were involved in 18 Q And why dily ou choose that office space in 19 Q Now, who was - well, you were involved in 18 Q And why dily ou choose that office space in 19 Q Now, who was - well, you were involved in 18 Q And why dily ou choose that office space in 19 Q Now, who was - well, you were involved in 18 Q And why dily ou choose that office space in 19 Q Now, who was - well, you were involved in 18 Q Now i	6		audiological services to the community.	6	Α	Yes.
9 Q What was the reputation in connection with that, sir, if you understand? 11 A I understand that that is part of their business. 12 Q Do you know whether they had a reputation for being excellent in doing so? 13 A I myself. 14 A Answering that as a matter of opinion? 15 Q Yes. 16 A Yes. 17 Q And what is your opinion? 18 A Ny opinion of Kanwood? 19 Q Yesh. 19 Q Yesh. 20 A Kenwood Hearing Center? 21 Q Yes. 22 A They must be doing something right to be still in business today. 23 A They must be doing something right to be still in business today. 24 Q So you don't know whether they had a reputation for excellence among referring physicians, do you? 25 A No, that could only be decided from within the reason of the service that they were given? 26 A No, that could only be decided from within the reason of the service that they were given? 27 Q Thank you very much. 28 MR. O'NEAL: We would object to both of those questions. 29 A No, who was well, you were involved in seleng or in the Westgate Office building; is that correct? 20 A Now, who was well, you were involved in selenging; is that correct? 21 A Yes. 22 And why did you choose that office building in connection with all the other office space in Toledo, Ohio? 21 A Secause the Westgate Building is a landmark building and no froutage, had no signage. We wanted to find a better where we're at today and signed a three-year lease. 30 When you considered that the selection of anything. 31 Q And what was your motivation for doing so? 32 A The office space we were in in the Westgate of the Guilding in connection with all the other office space in 19 A No. 39 C Now, who was well, you were involved in selecting; is that correct? 30 C Now, who was well, you were involved in selecting your first office in the Kenwood 31 C Now, who was well, you were involved in selecting your first office in the Kenwood 31 C Now, who was well, you were involved in selecting your first office in the Kenwood 31 C Now whicher they had a space available. 32 C Now who well a	7	Q	And what about hearing aid fitting and dispensing?	7	Q	And who made the decision to have a merger or
sir, if you understand?  10	8	A	I am	8		consolidation in the fourth quarter of 2004?
11 A No. 12 A No, you don't know whether they had a reputation for business today. 13 A No, you don't know whether they had a reputation for yes. 14 A No, you don't know whether they had a reputation for yes. 15 A No, that could only be decided from within the radius of those questions. 16 A No, that could only be decided from within the radius of those questions. 17 A No, that could only be decided from within the radius of those questions. 18 A Mr. Answering that as a matter of opinion? 19 A Yes. 19 A Yes. 19 A Yes. 19 A Kenwood Hearing Center? 20 A Kenwood Hearing Center? 21 A They must be doing something right to be still in business today. 22 A They must be doing something right to be still in business today. 23 A No, that could not know whether they had a reputation for excellence among referring physicians, do you? 24 A No, that could only be decided from within the radius of those questions. 25 A No, that could only be decided from within the radius of those questions. 26 A That would only be decided from within the ferming — firm sorry — in the Westgate Office Building; is that correct? 26 A Mad why did you choose that office building in connection with all the other office space in 19 A No. 27 A Mecause the Westgate Building is a landmark building and they had a space available. 28 A Recovery that they were liny out one of those question is duly noted. 29 And why did you choose that office building in connection with all the other office space in 19 A No. 29 And why did you choose that office building in connection with all the other office space in 19 A No. 29 And why did you choose that office building in connection with all the other office space in 19 A No. 29 And why did you choose that office building in connection with all the other office space in 19 A No. 29 And why did you choose that office building in connection with all the other office space in 19 A No. 29 And why did you choose that office building in connection with all the other office space in 19 A No. 29 And you're telling us under	9	Q	What was the reputation in connection with that,	9	A	I mγself.
12 Q Do you know whether they had a reputation for being excellent in doing so? 14 A Answering that as a matter of opinion? 15 Q Yes. 16 A Yes. 17 Q And what is your opinion? 18 A My opinion of Kenwood? 19 Q Yeah. 19 Q Yeah. 20 A Kenwood Hearing Center? 21 Q Yes. 22 A They must be doing something right to be still in business today. 23 business today. 24 Q So you don't know whether they had a reputation for excellence among referring physicians, do you? 25 D A No. 26 Q And you don't know whether they had a reputation among the elderly as being fair and good in terms of the service that they were given? 26 A No, 10 And you don't know whether they had a reputation among the elderly as being fair and good in terms of the service that they were given? 27 Q Thank you very much. 28 MR. O'NEAL: We would object to both of those questions. 29 MR. ROWEN: A little late and under the gun, but the objection is duly noted, thank you. 20 Q And why did you choose that office building in connection with all the other office space in a medical facility. That's why we're where we're at today and signage. We wanted to find a better office space in a medical facility. That's why we're where we're at today and signage at three-year lease. 30 Q Wesh, thank you contacted SBC to cancel the telephone 31 Q Now, That haven was no relocation? 31 Q Now, That never was in operation at the Westpate Building, so there was no relocation? 32 Q Now just discontinued that number? 33 Q Just discontinued that number. 34 O Just discontinued that number? 35 A No, that could only be decided from within the realms of an individual office. 46 A That would have been part of the Sylvania Address, rain into the Sylvania 47 Q Thank you contacted SBC to cancel the telephone 48 Dulthing, so there was no relocation? 49 Dust discontinued that number? 40 A Down was no relocation? 50 A No, that could only be decided from within the realms of an individual office. 51 A That would have been part of the Sylvania Avenue, yes. 52 D Just discontinued that nu	10		sir, if you understand?	10	Q	And what was your motivation for doing so?
being excellent in doing so?  14 A Answering that as a matter of opinion?  15 Q Yes.  16 A Yes.  17 Q And what is your opinion?  18 A My opinion of Kenwood?  19 Q Yeah.  20 A Kenwood Hearing Center?  21 Q Yes.  22 A They must be doing something right to be still in business today.  23 Q So you don't know whether they had a reputation for excellence among referring physicians, do you?  24 A No.  2 Q And you don't know whether they had a reputation among the elderly as being fair and good in terms of the service that they were given?  3 A No, that could only be decided from within the realms of an individual office.  3 R, ROWEN: A little late and under the gun, but the objection is duly noted, thank you.  4 Yes.  3 Q Now, who was well, you were involved in selecting your first office in the Kenwood  4 Hearing I'm sorry in the Westgate Office  5 Building, is that correct?  4 A Yes.  15 A The office space in a medical facility. That's why we're where we're at today and signage. We wanted to find a better office space in a medical facility. That's why we're where we're at today and signage and three-year lease.  4 When you contacted SBC to cancel the telephone did you consider having the phone number transferred to your new location?  2 A They must be doing something right to be still in business today.  24 A Okay. That never was in operation at the Westgate Building, so there was no relocation of anything.  41 Q So you just discontinued that number?  4 A Ves.  4 Day that every much.  5 A No, that could only be decided from within the realms of an individual office.  7 Dank you very much.  8 Q And why ou were involved in selecting your first office in the Kenwood  10 MR. ROWEN: A little late and under the gun, but the objection is duly noted, thank you.  11 A Yes.  22 Day of your first office in the Kenwood  13 Q Now, who was well, you were involved in selecting your first office in the Kenwood Hearing Centre was the was not a facting and they had a space available.  24 A Heart Thank ould average to f	11	Α	I understand that that is part of their business.	11		MR. O'NEAL: Object, it's been asked
14 A Answering that as a matter of opinion? 15 Q Yes. 16 A Yes. 16 A Yes. 17 Q And what is your opinion? 18 A Ny opinion of Kenwood? 19 Q Yesh. 20 A Kenwood Hearing Center? 21 Q Yes. 22 A They must be doing something right to be still in business today. 23 A They must be doing something right to be still in business today. 24 Q So you don't know whether they had a reputation for excellence among referring physicians, do you? 25 for excellence among referring physicians, do you? 26 A No. 27 Q And you don't know whether they had a reputation among the elderly as being fair and good in terms of the service that they were given? 28 A No, that could only be decided from within the realms of an individual office. 29 Q And you don't know whether they had a reputation among the elderly as being fair and good in terms of the service that they were given? 29 A No, that could only be decided from within the realms of an individual office. 30 MR. ROWEN: A little late and under the gun, but the objection is duly noted, thank you. 31 Q Now, who was well, you were involved in selecting your first office in the Kenwood 32 Q And why did you choose that office building in connection with all the other office space in a medical facility. That's why were as to day and signed a three-year lease. 4 When you contacted SEC to cancel the telephone did you consider having the phone number transferred to your new location? 4 The 473-1900 listing 1 The 473-1900 listing	12	Q	Do you know whether they had a reputation for	12		and answered. Go ahead.
15 Q Yes. 16 A Yes. 17 Q And what is your opinion? 18 A My opinion of Kenwood? 19 Q Yesh. 20 A Kenwood Hearing Center? 21 Q Yes. 22 A They must be doing something right to be still in a susiness today. 24 Q So you don't know whether they had a reputation for excellence among referring physicians, do you? 25 for excellence among referring physicians, do you? 26 A No. 27 A No. 28 A No, that could only be decided from within the remains of an individual office. 29 G Thank you very much. 29 G Thank you very much. 30 MR. ROWEN: A little late and under the gun, but the objection is duly noted, thank you. 31 Q Now, who was well, you were involved in selecting your first office in the Kenwood that hearing I'm sorry in the Westgate Office Building; is that corract? 31 A Yes. 32 Q And why did you choose that office space in a medical facility. That's why we're where we're at today and signed a three-year lease. 32 When you consider having the phone number transferred to your new location? 33 C Right, that's the number we're talking about, sir. 34 A Okay. That never was in operation at the Westgate building, so there was no relocation of anything. 4 Okay. That never was in operation at the Westgate building, so there was no relocation of anything. 4 Okay. That never was in operation at the Westgate building, so there was no relocation of anything. 4 Okay. That never was in operation at the Westgate in the phone book on Kenwood actually ran on the Sylvania address, ran into the Sylvania and suffers. 4 A That would have been part of the Sylvania Avenue, yes. 5 A That would have been part of the Sylvania Avenue, yes. 6 Q Okay, thank you. 7 Q Did you have a lot of colleagues who were hearing dispensers in Fort Wayne, Indiana, in 2004? 8 MR. O'NEAL: I object, Call of the Amount of the series of th	13		being excellent in doing so?	13	Α	The office space we were in in the Westgate
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24 Q So you don't know whether they had a reputation for excellence among referring physicians, do you?  39  1 A No. 2 Q And you don't know whether they had a reputation among the elderly as being fair and good in terms of the service that they were given?  5 A No, that could only be decided from within the realms of an individual office.  7 Q Thank you very much.  8 MR. O'NEAL: We would object to both of those questions.  9 MR. ROWEN: A little late and under than you.  10 MR. ROWEN: A little late and under than you.  11 Q Now, who was well, you were involved in selecting your first office in the Kenwood thearing in the Westgate Office Building; is that correct?  10 A Yes.  11 Q Now why did you choose that office building in connection with all the other office space in Toledo, Ohio?  12 A Because the Westgate Building is a landmark building and they had a space available.  24 A Okay. That never was in operation at the Westgate Building, so there was no relocation of anything.  41  41  Q So you just discontinued that number?  And that phone number that was listed in the phone book on Kenwood attually ran on the Sylvania address, ran into the Sylvania realms of an individual office.  A That would have been part of the Sylvania Avenue, yes.  8 Q Okay, thank you.  9 Okay, thank you.  10 MR. C'NEAL: Clarification. Would you mind stating that phone number?  11 A 419-473-1900.  12 Q Did you have a lot of colleagues who were hearing dispensers in Fort Wayne, Indiana, in 2004?  13 Q And why did you choose that office building in connection with all the other office space in Toledo, Ohio?  14 A Because the Westgate Building is a landmark building and they had a space available.  25 A Just discontinued that number.  26 And that phone number?  27 A Just discontinued that number.  28 Q Okay, thank you.  9 Okay, thank you.  9 Okay, thank you.  10 Q Did you have a lot of colleagues who were hearing dispensers in Fort Wayne, Indiana, in 2004?  11 A 419-473-1900.  12 Q Did you know any hearing ald dispensers in Fort W	22	A	They must be doing something right to be still in	22	A	The 473-1900 listing
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10 MR. ROWEN: A little late and under 11 the gun, but the objection is duly noted, 12 thank you. 13 Q Now, who was well, you were involved in 14 selecting your first office in the Kenwood 15 Hearing I'm sorry in the Westgate Office 16 Building; is that correct? 17 A Yes. 18 Q And why did you choose that office building in 19 connection with all the other office space in 19 Toledo, Ohio? 20 Did you know any hearing aid dispensers in Fort 21 A Because the Westgate Building is a landmark 22 building and they had a space available. 23 Q And you're telling us under oath that the fact 24 that the Kenwood Hearing Center was there was not a 25 factor that you considered in choosing the Westgate  10 you mind stating that phone number?  41 A 419-473-1900.  11 A 419-473-1900.  12 Q Did you have a lot of colleagues who were hearing dispensers in Fort Wayne, Indiana, in 2004?  41 MR. O'NEAL: I object, 41 Characterization as to what colleagues is 41 being referred to. 42 MR. ROWEN: Read back the question. 43 (Said question read.) 44 No. 45 Did you know any hearing aid dispensers in Fort 46 Wayne 47 Wayne 48 Wayne 49 MR. O'NEAL: I 40 MR. ROWEN: Let me finish the 40 question, please. 40 MR. O'NEAL: Go ahead, Ted.		•			Q	•
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18 Q And why did you choose that office building in connection with all the other office space in Toledo, Ohio?  20 Toledo, Ohio?  21 A Because the Westgate Building is a landmark building and they had a space available.  22 building and they had a space available.  23 Q And you're telling us under oath that the fact that the Kenwood Hearing Center was there was not a factor that you considered in choosing the Westgate  18 (Said question read.)  19 A No.  20 Q Did you know any hearing aid dispensers in Fort  Wayne  21 MR. O'NEAL: I  23 Q And you're telling us under oath that the fact question, please.  24 question, please.  25 MR. O'NEAL: Go ahead, Ted.	1					_
19 connection with all the other office space in 20 Toledo, Ohio? 21 A Because the Westgate Building is a landmark 22 building and they had a space available. 23 Q And you're telling us under oath that the fact 24 that the Kenwood Hearing Center was there was not a 25 factor that you considered in choosing the Westgate  19 A No. 20 Q Did you know any hearing aid dispensers in Fort 21 Wayne 22 MR. O'NEAL: I 23 Q And you're telling us under oath that the fact 24 question, please. 25 MR. O'NEAL: Go ahead, Ted.	1					
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23 Q And you're telling us under oath that the fact 23 MR. ROWEN: Let me finish the 24 that the Kenwood Hearing Center was there was not a 24 question, please. 25 factor that you considered in choosing the Westgate 25 MR. O'NEAL: Go ahead, Ted.		A	-			
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25 factor that you considered in choosing the Westgate 25 MR. O'NEAL: Go ahead, Ted.		Q	· -	j		
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	25					

1 MR. O'NEAL: Okay.

2 BAILIFF: Let me get the judge on

3 the phone.

4 MR. ROWEN: That's fine.

5 BAILIFF: Is that okay, Ted?

6 MR. ROWEN: Sure. Thank you.

7 BAILIFF: Okay. Let me get the

8 judge.

9 MR. ROWEN: Thank you.

10 (Discussion held off the record.)

11 JUDGE ZOUHARY: Good morning, Ray and

12 Ted. How are you?

13 MR. ROWEN: Good morning, your

14 Honor.

15 MR. O'NEAL: Good morning.

16 JUDGE ZOUHARY: How can I help?

17 MR. ROWEN: I'm very sorry to bother

18 you.

19 JUDGE ZOUHARY: No bother.

20 MR. ROWEN: We're in the process of

21 taking the deposition of the individual

22 and 30(B)(5) of the corporation.

23 JUDGE ZOUHARY: Right.

24 MR. ROWEN: And during questioning

s while the question was being posed, I

47

- noted that Mr. O'Neal was attempting to
- 2 talk to the client and asked him not to do
- 3 that and told him we don't do that in
- 4 Toledo, Ohio, when questions are pending
- or being posed, and then I asked him a
- 6 question, the deponent, about a
- 7 conversation that he supposedly had with a
- 8 hearing aid dealer in Lima where he
- 9 bragged about how he was able to use the
- 10 name Kenwood in connection with his new
- 11 business here, and I saw that while the
- 12 question was pending or just been finished
- 13 that the deponent wanted to talk to
- 14 Mr. O'Neal, and I asked him not to do it
- 15 and asked him to stay on the record and
- 16 not talk while I attempted to contact you,
- 17 because with everything I know that's

18 inappropriate.

19

20

They left the room, they would not stop from having a conversation, and now

21 they're back in the room, and I'm calling

22 you and noting the problem, and my

23 understanding is that the deposition is

24 supposed to be conducted without

25 consultation while a question is pending.

1 Mr. O'Neal, your position?

2 MR. O'NEAL: Good morning, your

3 Honor.

4 JUDGE ZOUHARY: Good morning.

5 MR. O'NEAL: Again, we just simply

6 take opposition with the way Mr. Rowen is

48

7 explaining this circumstance to the Court.

8 I don't believe at either time there was

9 any conversation going on, and my client

10 did look at me and I did walk out of the

11 room with him, because he simply asked

12 prior to walking -- you said -- I asked

13 Mr. Rowen could we go off the record for a

14 second, which he objected.

He's been screaming at me, and he talks about unprofessionalism. This is

17 the first time I've ever attended a

18 deposition in which opposing counsel felt

19 he has a right to scream across the table

20 at the other counsel. I don't know

21 whether it's because it's in his office or

22 whatever his philosophy of the practice

23 is. I oppose just generally to his tone

24 of conduct.

25

Now, my experience is simply

49

1 professional courtesy among counsel if a

client is insisting, if the deponent isinsistent to momentarily speak with

5 insistent to momentality speak with

4 counsel about whatever, that upon request

5 to go off the record for a second that

6 that request be granted. This was not a

7 crucial question. The question was not

8 even relevant to the issues of the case

9 from my point of view, so for him to

consider it a crucial question and

11 absolutely shout across the table to me

12 was an affront to me. As a matter of

13 fact, it was embarrassing the way he was

14 conducting himself to me among -- before

15 his client and my client, because I'm not

16 used to that, but at any rate, he insisted

17 on calling your Honor, and we're here.

18 Now we're back in the courtroom -- back in

19 the deposition conference room. We were

20 only gone for about ten seconds.

21 MR. ROWEN: Your Honor, if I could.

22 JUDGE ZOUHARY: Sure.

23 MR. ROWEN: Number one, I haven't

24 been yelling at anyone. He's been

25 interrupting the questioning. I've asked

		Deposition of COL	<u> </u>	103	
		54			56
1		located in Toledo, Ohio, before today if you can	[ 1		objection?
2		recall?	2		MR. O'NEAL: Is your objection to the
3	A	Physically? Probably four weeks ago.	3		list that we asked for.
4	Q	Okay, thank you. The phone number that had been	4		MR. ROWEN: I'll file a formal
5		discontinued, do you know if there was caller ID on	5		request. Thank you.
6		it?	6	Q	Do you recall anyone who was employed in that
7	A	Yes, there was.	7		office during the time that phone number was in
8	Q	And do you maintain a list of the people who	8		effect reporting to you that someone had inquired
9		called you and utilized that number?	9		what type of hearing aids your company was selling?
10	Α	Yes, yes.	10	Α	Yes, yourself, I understand that you had called
11	Q	And you have that list?	11		and asked if we carried a Kenwood hearing aid.
12	A	They I'm sure we had the caller ID on it. I'm	12	Q	And what was the response? Will you tell me what
13		sure that they would have record of that.	13		the response was?
14	Q	Would you make that list available to me?	14	A	My response to that was no, we have abandoned that
15	Α	Yes, I would.	15		idea, we're going with Hear Ear, we are in the
16	Q	Okay. Thank you.	16		process it was still a new office, okay, he was
17	A	I can tell you exactly who called that list.	17		not aware that the Kenwood was probably even in the
18	Q	Who called that list?	18		phone book because it came out by mistake as I've
19	Α	Two from the Plaintiff and one from the	19		stated time and time again, it came out by mistake
20		Plaintiff's attorney.	20		in Exhibit 1, which was a mistake on our behalf,
21	Q	Plaintiff's attorney being me?	21		but I don't know the exact extent of the
22	A	Yes.	22		conversation, I was not there.
23	Q	And who called do you know which	23	Q	Who's he that you're referring to?
24	A	I don't know, there's several people who works	24	A	Brad Stanfield had made mention to me that a Rowen
25		there.	25		attorney's office or a Rowen had called.
		55	Ì		57
1	Q	So your recollection is that there was a record	1	Q	Okay. Now, when you said this was a mistake, you
2		that shows on December 13, 2004, and that's the	2		placed this listing, did you not, under the name
3		question, that the Plaintiff called twice? Let me	3		that appears in Plaintiff's Exhibit 1?
4		back it up. I withdraw the question. You said you	4	A	Yes.
5		believe the record shows the Plaintiff called that	5	Q	Okay. Thank you.
6		number twice?	6	A	By the authority given me by the State of Ohio.
7	A	I believe.	7	Q	Thank you.
8	Q	Do you know if the record shows that the Plaintiff	8	A	Later it was canceled.
9		called on December 13th?	9	Q	Thank you.
10	A	It would have been during that time frame, yes.	10	A	And no business was conducted under that number.
11	Q	That's fine. Did anyone report to you that	11	Q	And you know it was canceled after you had
12		someone called on December 13th and asked if Joyce	12		received a cease and desist letter from me?
13		Johnson was there?	13	A	As well as yes, I had responded to you and to your
14	A	No.	14		client.
15	Q	And so no one told you that had occurred?	15	Q	So my point is you canceled the listing after you
16	A	No.	16		got the cease and desist letter from me; is that
17	Q	So therefore you have no knowledge what the	17		correct?
18		conversation was if she called?	18	A	Yes, I was pretty much unaware of the listing.
19	A	No, no.	19	Q	Thank you. During the period of time that your
20	Q	Thank you very much.	20		business has reopened and when you were in the
21		MR. O'NEAL: Clarification, Ted, do	21		Westgate Office Building, are you aware of any
22		you still want the list?	22		actual confusion of mail being delivered to you
23		MR. ROWEN: Yes.	23		that was addressed to Kenwood Hearing Center or
24		MR. O'NEAL: We would object to that.	24		vice versa?
25		MR. ROWEN: And the basis of your	25	Α	No, there were a couple you know what, I would

		Deposition of COLIN	<del></del>		
}		62	1		64
1		than the word the phrase deceptive and unlawful	1		office; is that correct?
2		use?	2	A	Yes, when establishing Hearing Aid Service, I did,
3	A	Yes, in the last paragraph in the letters behind	3		γes.
4		the person's name, BCIHS, I'm curious as to	4	Q	And when's the first time in connection with the
5	Q	I'm sorry, I'm not where are you referring to?	5		reopening of these businesses did you contact the
6	A	In the last paragraph of Page 1.	6		State of Ohio Secretary of State's office to make
7	Q	Okay.	7		various inquiries, when's the first time, if you
8	A	What does BCIHS stand for? That's wrong.	8		can recall?
9	Q	Okay.	9	A	It would have had to have been a few months prior
10	Ā	It's BCHIS, not IHS. I don't know where that came	10		to the opening of Hearing Aid Service,
111		from.	11		Incorporated, at the Westgate Building.
12	Q	Anything else in this letter that you considered	12	Q	So we're talking about approximately what date,
13	•	to be erroneous?	13	· CC	•
1			14	Α	sir, or if you can give me a range?
14	A	To go on to say that through this phrase this	1		I don't know.
15		individual is a hearing aid dispenser salesperson	15	Q	Okay.
16		which can mean many things does not mean many	16	A	That I don't know.
17	_	things.	17	Q	All right.
18	Q	Where are you reading from, sir?	18	A	I don't keep record of that.
19	A	That same paragraph.	19	Q	No one else contacted the Secretary of State
20	Q	Last paragraph on Page 1 of Plaintiff's Exhibit 3?	20		except you?
21	A.	If the letters behind the person's name	21	A	Correct.
22		person's name are BCIHS, this means that an	22	Q	How many times did you contact the Secretary of
23		individual is a hearing aid dispenser or	23		State, if you can recall?
24		salesperson, which can mean many things. That's	24	A	Twice for sure.
25		wrong.	25	Q	Okay. And do you recall the time differential
		63			_
		55	1		65
1	Q	It doesn't mean many things?	1		between
1 2	Q A		1 2	A	
		It doesn't mean many things?	}	A Q	between
2	A	It doesn't mean many things?	2		between No.
2	A Q	It doesn't mean many things?  No.  What does it mean?	2	Q	No the first let me finish, please.
2 3 4	A Q	It doesn't mean many things?  No.  What does it mean?  It means board certified hearing — BCIHS means	2 3 4	Q	between No the first let me finish, please. Okay, I thought you were done, sir.
2 3 4 5	A Q A	It doesn't mean many things?  No.  What does it mean?  It means board certified hearing — BCIHS means nothing.	2 3 4 5	Q	No the first let me finish, please. Okay, I thought you were done, sir. MR. ROWEN: Can you read back the
2 3 4 5 6	A Q A	It doesn't mean many things?  No.  What does it mean?  It means board certified hearing — BCIHS means nothing.  I understand. BCHIS, the correct one means what?	2 3 4 5 6	Q	between No the first let me finish, please. Okay, I thought you were done, sir. MR. ROWEN: Can you read back the partial question?
2 3 4 5 6 7	A Q A	It doesn't mean many things?  No.  What does it mean?  It means board certified hearing — BCIHS means nothing.  I understand. BCHIS, the correct one means what?  BCHIS means board certified hearing instrument	2 3 4 5 6 7	Q	between No the first let me finish, please. Okay, I thought you were done, sir.  MR. ROWEN: Can you read back the partial question? (Said question read.)
2 3 4 5 6 7 8	A Q A Q A	It doesn't mean many things?  No.  What does it mean?  It means board certified hearing — BCIHS means nothing.  I understand. BCHIS, the correct one means what?  BCHIS means board certified hearing instrument specialist.	2 3 4 5 6 7 8	Q	between No the first let me finish, please. Okay, I thought you were done, sir.  MR. ROWEN: Can you read back the partial question? (Said question read.) the first contact and the second contact with
2 3 4 5 6 7 8 9	A Q A Q A	It doesn't mean many things?  No.  What does it mean?  It means board certified hearing — BCIHS means nothing.  I understand. BCHIS, the correct one means what?  BCHIS means board certified hearing instrument specialist.  Okay. Anything else that appears in Plaintiff's	2 3 4 5 6 7 8 9	Q	No the first let me finish, please. Okay, I thought you were done, sir.  MR. ROWEN: Can you read back the partial question? (Said question read.) the first contact and the second contact with the Secretary of State? Are you talking days,
2 3 4 5 6 7 8 9	A Q A Q A	It doesn't mean many things?  No.  What does it mean?  It means board certified hearing — BCIHS means nothing.  I understand. BCHIS, the correct one means what?  BCHIS means board certified hearing instrument specialist.  Okay. Anything else that appears in Plaintiff's Exhibit 3 that you take issue with as being	2 3 4 5 6 7 8 9	Q A Q	between No the first let me finish, please. Okay, I thought you were done, sir.  MR. ROWEN: Can you read back the partial question? (Said question read.) the first contact and the second contact with the Secretary of State? Are you talking days, weeks?
2 3 4 5 6 7 8 9 10	A Q A Q A Q	It doesn't mean many things?  No.  What does it mean?  It means board certified hearing — BCIHS means nothing.  I understand. BCHIS, the correct one means what?  BCHIS means board certified hearing instrument specialist.  Okay. Anything else that appears in Plaintiff's Exhibit 3 that you take issue with as being incorrect?	2 3 4 5 6 7 8 9 10	Q A Q A	No the first let me finish, please.  Okay, I thought you were done, sir.  MR. ROWEN: Can you read back the partial question?  (Said question read.) the first contact and the second contact with the Secretary of State? Are you talking days, weeks?  It would have been days maybe.
2 3 4 5 6 7 8 9 10 11 12	A Q A Q A Q	It doesn't mean many things?  No.  What does it mean?  It means board certified hearing — BCIHS means nothing.  I understand. BCHIS, the correct one means what?  BCHIS means board certified hearing instrument specialist.  Okay. Anything else that appears in Plaintiff's Exhibit 3 that you take issue with as being incorrect?  Also somewhat misleading in that same paragraph where it says and some other minimal education. We	2 3 4 5 6 7 8 9 10 11	Q A Q A	No the first let me finish, please. Okay, I thought you were done, sir.  MR. ROWEN: Can you read back the partial question? (Said question read.) the first contact and the second contact with the Secretary of State? Are you talking days, weeks? It would have been days maybe. Okay. What were you able to ascertain from the Secretary of State as a result of the first
2 3 4 5 6 7 8 9 10 11 12 13	A Q A Q A Q	No. What does it mean? It means board certified hearing — BCIHS means nothing. I understand. BCHIS, the correct one means what? BCHIS means board certified hearing instrument specialist. Okay. Anything else that appears in Plaintiff's Exhibit 3 that you take issue with as being incorrect? Also somewhat misleading in that same paragraph where it says and some other minimal education. We are required by the State of Ohio to carry	2 3 4 5 6 7 8 9 10 11 12 13	Q A Q	No the first let me finish, please.  Okay, I thought you were done, sir.  MR. ROWEN: Can you read back the partial question? (Said question read.) the first contact and the second contact with the Secretary of State? Are you talking days, weeks?  It would have been days maybe.  Okay. What were you able to ascertain from the Secretary of State as a result of the first conversation as to availability of names?
2 3 4 5 6 7 8 9 10 11 12 13 14	A Q A Q A Q	No. What does it mean? It means board certified hearing — BCIHS means nothing. I understand. BCHIS, the correct one means what? BCHIS means board certified hearing Instrument specialist. Okay. Anything else that appears in Plaintiff's Exhibit 3 that you take issue with as being incorrect? Also somewhat misleading in that same paragraph where it says and some other minimal education. We are required by the State of Ohio to carry continuing education as well as the Board of	2 3 4 5 6 7 8 9 10 11 12 13 14 15	Q A Q A	No the first let me finish, please. Okay, I thought you were done, sir.  MR. ROWEN: Can you read back the partial question? (Said question read.) the first contact and the second contact with the Secretary of State? Are you talking days, weeks? It would have been days maybe. Okay. What were you able to ascertain from the Secretary of State as a result of the first conversation as to availability of names? It would have been longer than days.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	A Q A Q A Q	No. What does it mean? It means board certified hearing — BCIHS means nothing. I understand. BCHIS, the correct one means what? BCHIS means board certified hearing instrument specialist. Okay. Anything else that appears in Plaintiff's Exhibit 3 that you take issue with as being incorrect? Also somewhat misleading in that same paragraph where it says and some other minimal education. We are required by the State of Ohio to carry continuing education as well as the Board of American Speech, Language, and Hearing — no, no —	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Q A Q A Q	No the first let me finish, please.  Okay, I thought you were done, sir.  MR. ROWEN: Can you read back the partial question? (Said question read.) the first contact and the second contact with the Secretary of State? Are you talking days, weeks?  It would have been days maybe.  Okay. What were you able to ascertain from the Secretary of State as a result of the first conversation as to availability of names?  It would have been longer than days.  How long?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	A Q A Q A Q	No. What does it mean? It means board certified hearing — BCIHS means nothing. I understand. BCHIS, the correct one means what? BCHIS means board certified hearing instrument specialist. Okay. Anything else that appears in Plaintiff's Exhibit 3 that you take issue with as being incorrect? Also somewhat misleading in that same paragraph where it says and some other minimal education. We are required by the State of Ohio to carry continuing education as well as the Board of American Speech, Language, and Hearing — no, no — as well as the Ohio Board of Speech, Language,	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	Q A Q A	No the first let me finish, please.  Okay, I thought you were done, sir.  MR. ROWEN: Can you read back the partial question? (Said question read.) the first contact and the second contact with the Secretary of State? Are you talking days, weeks?  It would have been days maybe.  Okay. What were you able to ascertain from the Secretary of State as a result of the first conversation as to availability of names?  It would have been longer than days.  How long?  Several months probably, at least three, four
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	AQA QA Q	No. What does it mean? It means board certified hearing — BCIHS means nothing. I understand. BCHIS, the correct one means what? BCHIS means board certified hearing Instrument specialist. Okay. Anything else that appears in Plaintiff's Exhibit 3 that you take issue with as being incorrect? Also somewhat misleading in that same paragraph where it says and some other minimal education. We are required by the State of Ohio to carry continuing education as well as the Board of American Speech, Language, and Hearing — no, no — as well as the Ohio Board of Speech, Language, Pathology, and Audiology requires their constituents to carry continuing education hours. Anything else that you take issue with as being inaccurate in connection with Plaintiff's Exhibit 3 other than what you've already told us so far?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Q A Q A Q A	No the first let me finish, please.  Okay, I thought you were done, sir.  MR. ROWEN: Can you read back the partial question? (Said question read.) the first contact and the second contact with the Secretary of State? Are you talking days, weeks?  It would have been days maybe.  Okay. What were you able to ascertain from the Secretary of State as a result of the first conversation as to availability of names?  It would have been longer than days. How long?  Several months probably, at least three, four months.  All right. What was the first what was your first reason for contacting the Secretary of State the first time before the three or so month period?  Seeing if the name Hearing Aid Service was
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	AQA QA Q A	No. What does it mean? It means board certified hearing — BCIHS means nothing. I understand. BCHIS, the correct one means what? BCHIS means board certified hearing instrument specialist. Okay. Anything else that appears in Plaintiff's Exhibit 3 that you take issue with as being incorrect? Also somewhat misleading in that same paragraph where it says and some other minimal education. We are required by the State of Ohio to carry continuing education as well as the Board of American Speech, Language, and Hearing — no, no—as well as the Ohio Board of Speech, Language, Pathology, and Audiology requires their constituents to carry continuing education hours. Anything else that you take issue with as being inaccurate in connection with Plaintiff's Exhibit 3 other than what you've already told us so far? No.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Q	No the first let me finish, please.  Okay, I thought you were done, sir.  MR. ROWEN: Can you read back the partial question? (Said question read.) the first contact and the second contact with the Secretary of State? Are you talking days, weeks?  It would have been days maybe.  Okay. What were you able to ascertain from the Secretary of State as a result of the first conversation as to availability of names?  It would have been longer than days. How long?  Several months probably, at least three, four months.  All right. What was the first what was your first reason for contacting the Secretary of State the first time before the three or so month period?  Seeing if the name Hearing Aid Service was available.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	AQA QA Q	No. What does it mean? It means board certified hearing — BCIHS means nothing. I understand. BCHIS, the correct one means what? BCHIS means board certified hearing Instrument specialist. Okay. Anything else that appears in Plaintiff's Exhibit 3 that you take issue with as being incorrect? Also somewhat misleading in that same paragraph where it says and some other minimal education. We are required by the State of Ohio to carry continuing education as well as the Board of American Speech, Language, and Hearing — no, no — as well as the Ohio Board of Speech, Language, Pathology, and Audiology requires their constituents to carry continuing education hours. Anything else that you take issue with as being inaccurate in connection with Plaintiff's Exhibit 3 other than what you've already told us so far?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Q	No the first let me finish, please.  Okay, I thought you were done, sir.  MR. ROWEN: Can you read back the partial question? (Said question read.) the first contact and the second contact with the Secretary of State? Are you talking days, weeks?  It would have been days maybe.  Okay. What were you able to ascertain from the Secretary of State as a result of the first conversation as to availability of names?  It would have been longer than days. How long?  Several months probably, at least three, four months.  All right. What was the first what was your first reason for contacting the Secretary of State the first time before the three or so month period?  Seeing if the name Hearing Aid Service was

CERTIFICATE 1 2 STATE OF OHIO ) 3 ) SS. COUNTY OF LUCAS ) I, Nicole D. Blaker, Registered Professional 4 Reporter and Notary Public in and for the State of 5 Ohio, duly commissioned and qualified, do hereby 6 certify that COLIN D. RUSSELL was by me first duly 7 8 sworn; that the testimony then given was by me reduced 9 to stenotype, afterwards transcribed upon a computer; 10 that the foregoing is a true and correct transcript of the testimony so given as aforesaid; that this 11 deposition was taken at the time and place in the 12 foregoing caption specified. 13 I do further certify that I am not a relative, 14 15 employee, or attorney of any of the parties or counsel 16 employed by the parties hereto or financially 17 interested in this action, nor am I or JUDGE ZOUHARY reporting firm with which I am affiliated under a 18 19 contract as defined in Civil Rule 29(D). 20 IN WITNESS WHEREOF, I have hereunto set my 21 hand and affixed my notarial seal of office at Toledo, 22 Ohio, this \_\_\_\_ day of October, 2005. 23 NICOLE D. BLAKER, RMR Notary Public in and for the 24 State of Ohio My Commission expires January 26, 2009.

#### IN THE COMMON PLEAS COURT OF LUCAS COUNTY OHIO

STATE OF OHIO	)	Case No. Cl-200501055
	) 33	
COUNTY OF MONTGOMERY	)	AFFIDAVIT OF COLIN RUSSELL

COLIN RUSSELL, Business Operator, Hear Ear Hearing Aids, Inc., Toledo, Ohio, an Ohio corporation, after being duly cautioned and sworn, states that he is the affiant herein.

Further, as defendant in Lucas County, Ohio Common Pleas Court Case Number CI05-1055, affiant states that he is aware that his counsel is processing necessary document for the resolution of this case and has request his affidavit. In this regard, affiant provides the below statements, incorporating as may be necessary and required respective exhibits attached hereto.

- 1. Affiant has operated a hearing aid business at the Westgate Office Building, 3450 West Central Avenue, Toledo, Ohio, since January 20, 2004. (See Attached copy of lease agreement, as Exhibit 1.)
- 2. Affiant's lease agreement mentioned at paragraph three (3) immediately above was executed using the business name Hearing Aid Service, Inc., by affiant's name as its business President. (See attached copy of Exhibit 1, at pages 2, 17, and 19
- 3. The trade name Kenwood Hearing Aids was authorized by the Ohio Secretary of State, J. Kenneth Blackwell, Certificate Number 1478796, Document Number 200420802245, as an acceptable trade name to be used in the state of Ohio on July 1, 2004, through the period July 23, 2004. (See attached copy of Certificate, as Exhibit 2.)
- 4. The corporate name Kenwood Hearing Aid Center, Inc. was authorized by the Ohio Secretary of State, J. Kenneth Blackwell, Certificate Number 148351, Domestic Articles of of Incorporation Document Number 200422202662, as a acceptable for operating a corporation in the State of Ohio on September 1, 2004. (See attached copy of Certificate, as Exhibit 3.)
- 5. Affiant never used in its business operation the name Kenwood Hearing Aids, either by the answer of its telephones or by advertisement.
- 6. Affiant placed ads of its hearing aids service in the local newspaper, The Toledo Blade, to be advertised in the name of Hearing Aid Service and Hear Ear, but never Kenwood Hearing Aids. (See copies of newspaper advertisement contracts, as Exhibit 4 and 5.)
- 7. Although in December 2004, affiant intended to place an ad for advertisement of the name of Kenwood Hearing Aids in the SBC telephone directory, but said request for advertisement was timely cancelled and requested to be withdrawn before the publication and distribution of the 2005 telephone directories. (See letter from SBC offering SBC's regrets for err incurred, as Exhibit 6.)

- Affiant states that the publication and use of the business name "Kenwood' in conjunction with the hearing aid business can after his cancellation is totally attributed to the err committed by the Ohio SBC by the publication after affiant's cancellation of the ad. (See Exhibit 7.)
- 9. Affiant acknowledges its receipt of plaintiff counsel's notices of cease and desist dated December 17, 2004 and December 23, 2004, relative to the use of the name "Kenwood" as related to the operation of hearing aid services, and affiant responded.
  - Affiant immediately responded to plaintiff proposing settlement prior to litigation. IO.

FURTHER, AFFIANT states that on no occasion since authorized by the Secretary of State of Ohio has obtained or involved his hearing aid businesses in any sales or other hearing aid business transaction for gain having used the business name Kenwood Hearing Aids,

FURTHER AFFIANT states that the plaintiff's only proof of claim to-date of "confusion" of use of name is based a mistaken postal delivery of two envelopes (two different deliveries over time) of mass mailed solicitations and materials originated from Capital One. (Capital One Bank is known to engage in mass marketing solicitation by way of mass mailing to the general public or individuals whose names and addresses may have appeared on a general public list, and in this case Kenwood Hearing Aids name appeared as an applicant for incorporation to the Ohio Secretary of State. Capital One's envelope of solicitation was delivered by postal mistake to plaintiff's address.) (See Exhibit 8)

FURTHER AFFIANT SAYETH NAUGHT

sworms to before me and subscribed in my presence by the said Colin Russell, on this . 2005.

l l'efficievits/ussell p

JENNIFER CHAIG-AKAUK NOTARY PUBLIC STATE OF INDIANA

**ALLEN COUNTY** 

MY COMMISSION EXP. APR. 16.2010

DATE: 07/27/2004

DOCUMENT ID 200420802248

DESCRIPTION
TRADE NAME/ORIGINAL FILING (RNO)

PENALTY .00

CERT

COPY

Receipt

This is not a bill. Please do not remit payment.

**COLIN D RUSSELL** 306 MILBURN CT MISHAWAKA, IN 48544

### STATE OF OHIO CERTIFICATE

Ohio Secretary of State, J. Kenneth Blackwell

1478796

It is hereby certified that the Secretary of State of Ohio has custody of the business records for

KENWOOD HEARING AIDS

and, that said business records show the filing and recording of:

Document(s)

TRADE NAME/ORIGINAL FILING

Date of First Use: Expiration Date:

07/01/2004 07/23/2009

Document No(s):

200420802246

COLIN RUSSELL 306 MILBURN CT. MISHAWAKA, IN 46544



United States of America State of Ohio Office of the Secretary of State

Witness my hand and the seal of the Secretary of State at Columbus, Ohio this 23rd day of July, A.D. 2004.

Quneth Ha

Ohio Secretary of State



#### Prescribed by J. Kenneth Blackwell

Ohio Secretary of State

Central Ohio: (614) 466-3910

Toll Free: 1-877-SOS-PILE (1-877-767-3453)

www.state.ch.us/scs e-mail: busserv@scs.state.ch.us Expedite this FORM: detect Ored

PO Box 1390
Columbus, OH 43216
PO Box 670
Columbus, OH 43216

#### NAME REGISTRATION

(For Domestic/Foreign Profit or Non-Profit) Filing Fee \$50.00

THE UNDERSIGNED HEREBY STATE (CHECK ONLY ONE (1) BOX)	ES THE FOLLOWING:			: ;
والمستملط المستمل المستم المستمل المستم المستمل المستمل المستمل المستم	2) Fictitious Name (169-NFO)	(3) Name Reserv (160-NRO) Original Renewal Registra		
Complete the Information in this section The exact name being registered or reported is		Hearing Ai	ds	
The Registrant is (Check Appropriate Box)				
Individual Limited Partnership: Reg. No. Ohio Corporation, Charter No. General Partnership Other  The name of the registrant designated: NOTE: Where the registrant is a partnership foralign corporation ficeward is Otio under as corporation must appear on this line.	b, the name of the partners		to holding	
The business address of the registrant  306 Milbary (Street)  Milshawa ka	CH.  OTE: P.O. Box Addresses  S+ Jo:  (County)	seph I	. N	46544 (Zp Code)

534

Page 1 of 2

Last Revised: May 2002

Complete the information in this sec	tion if box (1) or (2) is checked Cont	
Complete only if registrant is a gene NAME OF ALL GENERAL PARTN		SES (including zip code)
transact business in Ohlo; if a gener please note both the assumed name.  The nature of the business conducts  1 2 2 1 - 6 A  Complete the information in this sec.		an assumed name, lease be specific)
Luciansiand that I am not miscontan	od the reservation UNTIL I RECEIVE WRITTEN CONFIRI	MATION EDOM THE
SECRETARY OF STATE'S OFFICE	E STATING THAT THE NAME HAS BEEN REGISTERED	TO ME
The name reservation is v	valid for a period of 180 days.	
(First Choice)		
(Second Choice)		
(Third Choice)		
(Applicant)	(Print Name)	
(Address)		
(City, State and Zip Code)		•
REQUIRED  Must be authenticated (signed) by an authorized representative (See Instructions)	Authorized Representative  Authorized Representative	7 - \\ - 0 4  Date
534	Page 2 ol 2	Last Revised; May 2002

## BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

Colin Russell, Hear War Hearing Aids, Inc. and Hear Ear Hearing Aids Center, Inc.		
Complainant,	)	
<b>v.</b>	)	Case No. 07-1057-TP-CSS
АТ&Т ОНЮ	)	
Defendant.	)	

# PART ONE COMPLAINANT'S ANSWERS TO RESPONDANT'S INTERROGATORIES AND REPLY TO RESPONDANT'S REQUEST FOR PRODUCTION OF DOCUMENTS

Now comes Complainant, Colin Russell, who provides his Answers to Respondent's Interrogatories and Response To Requests for Production of Documents, as stated below:

See Attached, PART ONE, COMPLAINANT'S ANSWERS TO RESPONDANT'S INTERROGATORIES AND REPLY TO RESPONDANT'S REQUEST FOR PRODUCTION OF DOCUMENTS, As Attached Sheets Providing Written Responses To Interrogatories 1-11 (actual interrogatory responses seven pages in total) And Responses To Requests For Production Of Documents Questions 1-6 (Forty-two pages in total).

Respectfully submitted,

Raymond W. O'Neal, Sk.

Attorney for Complainant, Colin Russell 11 W. Monument Avenue, Suite 304

Dayton, Ohio 45402

(937) 222-7773

11/20/2007 15:00

9372227747

LAW OFFICE RAY ONEAL

PAGE 83

- (B) "Document" includes any written or recorded or graphic matter, however produced or reproduced, including but not limited to: correspondence, telegrams, e-mails or other written, typed or printed communications, contracts, agreements, notes in any form, memoranda, diaries, voice recording tapes, microfilms, microfiche, pictures, data processing cards or disks, computer tapes and other computer generated and stored information or data base, calendars, or any writings or graphic matter, including copies containing marginal notes or variations of any of the foregoing, now or proviously in your possession.
- (C) "You" or "yours" means Colin Russell, Hear Ear Hearing Aida, Inc., and Hear Ear Hearing Aid Center, Inc., your agents, or others acting on your behalf.
- (D) "Identify" when referring to a person or business organization means to state the name, business address, primary business telephone number and title, if applicable, of the person or business organization.
- (E) "Respondent" means AT&T Ohio, its officers, agents, employees or others acting on its behalf.

INTERROGATORY NO. 1: Please state the names and addresses of each person having personal knowledge of any of the facts or circumstances alleged in the Complaint filed by you with the Public Utilities Commission of Ohio on or about September 24, 2007.

ANSWER: Colin Russell 306 milburn cat mishawaka In. 41544

The Ohio Bell Telephone Company uses the name AT&T Ohio.

11/20/2007 15:00 9372227747

LAW OFFICE RAY ONEAL

PAGE 84

INTERROGATORY NO. 2: Please state the date in "early December 2004" when Mr. Russell placed the white pages listing referred to in paragraph 1 of Attachment A to your Complaint.

ANSWER: 8-30-04 original date of installation

INTERROGATORY NO. 1: Please state whether the listing referred to in linearogatory No. 1 was placed by telephone.

yes placed by telephone

INTERROGATORY NO. 4: Please state whether the Complainants were authorized to use the name "Kenwood Hearing Aids" in the listing referred to in the Complaint.

ANSWER: UTS (Authorized pursuant to Charter Recieved
FROM OHTO GERRETORY of State Corporations Divi
CERTIFICATE #1478796 This was a trade name
Costed July 1, 2004

**INTERROGATORY NO. 5:** Please state the "business reasons" for not acquiring

the listing referred to in the Complaint.

ANSWER: When setting up original main phone #419-472-6400 the 4th Line Listing was 419-472-1400 to the nomber in question. ALL this ware opened under Kenwood Hearing Aids on 8:30-04 (original date of installation) at a Later date I changed the name Listings to Hear Ear Hooring Aids. At at has the record of this change, this when the mistake occurred by not changing all 4 phone #3; to when the mistake occurred by not changing all 4 phone #3; to Hear Ear. The name was changed when I realized it may cause hear earlist with my competition kenwood Hearing existing.

11/20/2007 15:80 9372227747

LAW DFFICE RAY ONEAL

PAGE 85

#### INTERROGATORY NO. 6: Please state whether you have retained the

confirmation notices referred to in paragraph 3 of Attachment A to the Complaint.

ANSWER: Disconnect confirmation # C1653223842
1. on #419-473-1900 on 12-22-04 at 4130pm

2. PRIOR to this dute in September of OH I requested a name chan Atot changed all other phone Listings to Hear Ear Hearing hids but not 419-473.

REQUEST FOR PRODUCTION NO. 1: If the response to the previous

interrogatory is in the affirmative, please provide copies of those documents.

I only have the confirmation to they (4+ot) gave over the phone when I placed the order of theres.

REQUEST FOR PRODUCTION NO. 2: Please provide copies of the pages of

the telephone directories where the listings in question appear.

Exhibit 2 (see Attachment)

INTERROGATORY NO. 7: Do you have in your possession any logs, notes,

compilations or the like concerning the allegations set forth in the Complaint?

ANSWER: yes (see Attachment 7B)

REQUEST FOR PRODUCTION NO. 3: If the response to the previous

interrogatory is in the affirmative, please provide copies of those documents.

copies provided

11/28/2887 15:88

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LAN OFFICE RAY ONEAL

PAGE

INTERROGATORY NO. 8: Please describe the financial losses alleged to have

been incurred by the Complainants that were caused by the Respondent.

72,500 court settlement

10,000 " petrokney fee in Detense Against Kenwood Lase

50,000,00. Distribution of Letter atterwards adverse to

Swiff existing
Picase state whether the Complainants are related in

any way to the Kenwood Hearing Center, Inc., 3450 W. Central Avenue, Toledo, Ohio and, if so, the nature of that relationship.

ANSWER: Y\()

INTERROGATORY NO. 10: Please identify each individual who assisted in or participated in the preparation of the responses to this discovery.

ANSWER Clin Russell

INTERROGATORY NO. 11: Please identify each witness you will call at the hearing in this matter, and provide the address and telephone number for each such witness.

ANSWER: Colin Russell

Ethel Jones Ater
Brand Stanfield (employee)
Original sales persons who sold Yellow Page Ad. in Sept.
OH

Nov 20 2007 6:25PM Hear Ear, Inc

574-256-0244

P.6

11/20/2007 15:00 9372227747

LAW OFFICE RAY DNEAL

PAGE 87

REQUEST FOR PRODUCTION NO. 4: Please provide copies of all documents

you intend to introduce as exhibits at the hearing in this matter.

copies provided

REQUEST FOR PRODUCTION NO. 5: Please provide all documents related to

any dispute concerning the use of the name "Kenwood Hearing Aids."

copies provided

11/20/2007 15:00

9372227747

LAW OFFICE RAY ONEAL

PAGE 88

#### VERIFICATION

Hear Ear Hearing Aids, Inc. and Hear Ear Hearing Aid Center, Inc.

State of Ohio

Before me, a notary public qualified in said county and state, came

Interrogatories No. 1 - 11 before me this 20th day of November 2007.

Notary Public

My Commission expires:

RAVMOND VIL O'MEAN, SR., ANDROSE NE MOTO Notety Excite, State of Office My Colembianium has no completion dolar.

Secretary Colleges Co. St. Ct.

07-1057-TP-CSS



RECEIVED-DOCKETING DIV

Case Number

2007 SEP 24 PM 2: 15 Public Utilities Commission of Onio

Attn: Docketing

Colin Russell, and
Hear Ear Hearing Aids, Inc. Foamal Complain Form
Hear Ear Hearing Aid Center, Inc.

180 E. Broad St. Columbus, OH 43215

**Customer Name** 

3718 Lincoln Way East Customer Address Mishawaka, IN 46544

City

State Zip

**Against** 

AT&T Ohio c/o Atty. Caroline Gentry Suite 1600 One South Main Street Dayton. Oh 45402

**Utility Company Name** 

41947226697485 Account Number

MCCCOIII I TONINGI

3030 West Sylvania Ave.

Customer Service Address (if different from above)

Toledo, OH

43613-4147

City

State Zip

Please describe your complaint. (Attach additional sheets if necessary)

\*\*\*\* SEE DETAILS IN ATTACHMENT "A".

Herbert Creech, Esq., 0005198 200 Jamestown Circle - F Dayton, Oh 45458 1 937 434 6227

Signature

1-937-434-622

Telephone Number

The Public Utilities Commission of Chio
Ted Strickland, Governor • Alan R. Schriber, Chairman
Commissioners: Ronda Hartman Fergus, Judy A. Jones, Valerie A. Lemmie, Donald L. Mason
180 E. Broad Street, Columbus, Ohio 43215-3793 • An Equal Opportunity Employer and Service Provider
This is to certify that the images appearance are an

#### ATTACHMENT 'A'

In early December 2004, complainants, acting through the person of Colin Russell arranged with the defendant to place a listing in its white pages for an entity called 'Kenwood Hearing Aids'.

Later, complainants discovered business reasons for not acquiring such a listing and on December 22, 2004 requested of defendant that the entity above mentioned and any telephone number therefore not be listed in those white pages.

Defendant agreed to the request made in paragraph two and sent confirmation notices to the complainants.

Nonetheless, defendant published the name of the entity in paragraph two hereof and a telephone number therefore in its white pages for business throughout the years 2005-2007 which caused several forms of great financial loss to complainants.

Thus, complainants demand PUCO hold a hearing to establish the wrong done them by defendant and to award them three times the financial damages they prove to be caused them by defendant.

DATE: 08/10/2004 DOCUMENT ID 20042/2202662

DESCRIPTION DOMESTIC ARTICLES/FOR PROFIT (ARF)

FILING

EXPED

PENALTY .00

CERT

COPY

Receipt

This is not a bill. Please do not remit payment.

COLIN RUSSELL 306 MILBURN CT SOUTH BEND, IN 46544

### STATE OF OHIO

#### CERTIFICATE

Ohio Secretary of State, J. Kenneth Blackwell

1481351

It is hereby certified that the Secretary of State of Ohio has custody of the business records for

KENWOOD HEARING AID CENTER, INC.

and, that said business records show the filing and recording of:

Document(s)

DOMESTIC ARTICLES/FOR PROFIT

Document No(s):

200422202662



United States of America State of Ohio Office of the Secretary of State Witness my hand and the seal of the Secretary of State at Columbus, Ohio this 1st day of September, A.D. 2004.

Ohio Secretary of State

#### Prescribed by J. Kenneth Blackwell

Ohio Secretary of State
Central Ohio: (614) 466-3910
Toll Free: 1-877-SOS-FillE (1-877-767-3453)

www.state.oh.us/sos e-mail: busserv@sos.state.oh.us

Expedite t	his Form: (Select One)
Mail Form	to one of the Poscoving:
☐Yes	PO Box 1390 Columbus, OH 43216 ires an additional fee of \$109 ***
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#### **INITIAL ARTICLES OF INCORPORATION**

(For Domestic Profit or Non-Profit) Filing Fee \$125.00 AUG 0 5 2004

THE UNDERSIGNED HEREBY STATES THE FOLLOWING:

SECRETARY OF STATE

1) X A	rticles of Incorpo	oration (	2) 📗 🔺	Articles of Incorporation	(3)	Articles of Inc	orporation Professional
P	rofit			ion-Profit		(170-ARP)	
1	(11 <b>3-ARF</b> )			(114-ARN)	ľ	Profession _	
	ORC 1701			ORC 1702		ORC 1786	
Complete	the general info	ormation in	this sect	tion for the box check	id above.		
IRST:	Name of Corpo	oration	KENV	VOOD HEARING AID C	ENTER, I	NC	
ECOND:	Location	TOLEDO	· — —	_	LUCAS	_	
=		(City)				(County)	
ffective D	ate (Optional)		/2004	_ Date specified can be a			
		(mm/dd/y)	yy)	date is specified, the d	eus must t	A a case ou of	aner ine date of nang.
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Last Revised: May 2002

532

mple	ting the information	in this section is optional				
FTH:	The following are th	e names and addresses of the individuals w	ho are to serve as initial D	irectors.		
	COLIN RUSSELL			_		
	(Name) 306 MILBURN CT					
	(Street) NOTE: P.O. Box Addresses are NOT acceptable.					
	MISHAWAKA	<u> </u>	46544	<u>.</u>		
	(City)	(State)	(Zîp Code)			
	JACKIE RUSSELL	<u> </u>		_		
	(Name) 306 MilBURN CT			_		
	(Street)	NOTE: P.O. Box Addresses are H	OT acceptable.	_		
	MISHAWAKA	<u> </u>	46544	_		
	(City)	(State)	(Zip Code)			
				<del>-</del>		
	(Name)			_		
	(Street)	NOTE: P.O. Box Addresses are HO	)T acceptable.	<del>-</del>		
				_		
	(City)	(State)	(Zip Code)			
(SIGN	REQUIRED be authenticated ED) by an authorized sentative ee instructions)	Authorized Representative  COLIN RUSSELL  Print Name  Authorized Representative  JACKIE RUSSELL  Print Name	Date	08/02/2004 08/02/2004		
		Authorized Representative	Date			

Last Revised: May 2002

	ARING AID CENTER, INC n in this section if box (1) (2) or (3) is c	hecked.	
**************************************	17/12/ 5/10/10	***************************************	
ORIGII	NAL APPOINTMENT OF S	STATUTORY A	GENT
	least a majority of the incorporators of		
	g to be statutory agent upon whom any p		
statute to be served upon t	the corporation may be served. The comp	piete address of the age	ent is
COLIN RUSSELL	•		_
(Name)	_		,
	IG 3450 WEST CONTROL AVE STE 103		
(Street)	NOTE: P.O. Box Addresses are NOT a	ccepseore.	
TOLEDO	Ohio	43606	_
(City)		(Zip Code)	'
	( N )		
Must be authenticated by a authorized representative	"( ) when I had seen	İ	08/02/2004
addition to proper the same	Authorized Representative	······································	Date
	Q A) W		
	Jacken fursion	,	08/02/2004
	Authorized Representative		Date
	<del></del>		
		'	]
	Authorized Representative		Date
	ACCEPTANCE OF APP	OINTMENT	
The Undersigned, <u>COL</u>	IN RUSSELL		, named herein as the
Statutory agent for KEN	IWOOD HEARING AID CENTER, INC		
	accepts the appointment of statutory at	ent or said entity.	
	Signature:	SALL	
	(Statutory	Accept)	PARTIE

DATE: 09/22/2004 DOCUMENT ID 200428401128

DESCRIPTION DOMESTIC ARTICLES/FOR PROFIT FILING

EXPED

PENALTY .00 CERT

COPY

Receipt

This is not a bill. Please do not remit payment.

COLIN RUSSELL 306 MILBURN CT MISHAWAKA, IN 46544

# STATE OF OHIO CERTIFICATE

Ohio Secretary of State, J. Kenneth Blackwell

1489367

It is hereby certified that the Secretary of State of Ohio has custody of the business records for

HEAR EAR HEARING AIDS INC

and, that said business records show the filing and recording of:

Document(s)

DOMESTIC ARTICLES/FOR PROFIT

Document No(s):

200426401126



United States of America State of Ohio Office of the Secretary of State Witness my hand and the seal of the Secretary of State at Columbus, Ohio this 15th day of September,

A.D. 2004.

Ohio Secretary of State

#### Prescribed by J. Kenneth Blackwell

Ohio Secretary of State

Central Ohio: (614) 488-3910

Toll Free: 1-877-SOS-FILE (1-877-787-1452) PM 9- 1

www.state.oh.us/sos e-mail: busserv@sos.state.oh.us

Expedite t	his Form:	(Select One)
Mail Porm	to one of the	Pollowing:
	PO Box 13 Columbus,	OH 43216
*** Requ	ires an addin	ional fee of \$100 ***
XNo	PO 80x 67	0
	Cotumbus,	OH 43216

#### **INITIAL ARTICLES OF INCORPORATION**

(For Domestic Profit or Non-Profit) Filing Fee \$125.00

HE UNDERSIGNED HEREBY STATES	THE FOLLOWING:		\$-3 27#	
	į.			
CHECK ONLY ONE (1) BOX)		<u> </u>		
· <del></del> · · · ·	(2) Articles of Incorporation (		poration Professiona	
Profit	Non-Profit	(170-ARP)	<u> </u>	
(113-ARF) ORG 1701	(114-ARN) ORC 1702	Profession ORC 1785		
ONG 1701		ORC 1789	5	
Complete the general Information is	n this section for the box checked	above.		
FIRST: Name of Corporation	HEAR EAR HEARING AIDS IN	<b>.</b>		
SECOND: Location TOLEDO	<u></u>	UCAS		
(Çity)	-	(County)	····	
Effective Date (Optional) On 2004 Date specified can be no more than 90 days after date date is specified, the date must be a date on or after the				
Check here if additional prov	visions are ettached			
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Last Revisad: May 2002

TH:	The following are th	e names and addresses of th	e individuals wh	o are to serve as i	nitial Directors.		
	COLIN RUSSELL						
	(Name) 306 MILBURN CT				<del></del>		
	(Street)	NOTE: P.O. Box A	ddresses are NO	acceptable.			
	MISHAWAKA	<u>IN</u>		46544			
	(Olly)		(State)	(Zip Co	de)		
	JACKIE RUSSELL. (Name)						
	306 MILBURN CT (Street)	NOTE: P.O. Box A	ddresses are NO1	7 ancentable.	<del></del> _		
	MISHAWAKA	in		46544			
	(City)		(State)	(Zip Co	de)		
	(Name)						
	(Street) NOTE: P.O. Box Addresses are NOT acceptable.						
	(City)		(State)	(Zip Co	de)		
(SIGN	REQUIRED be authenticated 4E0) by an authorized esentative see instructions)	Authorized Representative  COLIN RUSSELL  Print Name  Authorized Representative	A Tussel		06/19/2004 Date  08/19/2004  Date		
		JACKIE RUSSELL Print Name  Authorized Representative			Date		

532

Last Revised: May 2002

HEAR EAR NEAR		
Complete the information	in this section if box (1) (2) or (3) is checked.	
	NAL APPOINTMENT OF STATUTORY AND 23 PM OF STATUTORY AND 23 PM OF STATUTORY OF THE PROPERTY OF	AGENT IG AIDS INC
	g to be statutory agent upon whom any process, notice or den	
statute to be served upon t	he corporation may be served. The complete address of the a	gent is
COLIN RUSSELL		•
(Name)		<del>-</del>
	G 3450 WEST CENTRAL AVE	_
(Street)	NOTE: P.C. Box Addresses are NOT acceptable.	
TOLEDO	, Ohio 43606	
(City)	(Zip Code)	
flust be authenticated by a nuthorized representative	Authorized Representative	Date
	Stackie Kussell	06/19/2004
	Authorized Representative	Date
	Authorized Representative	Date
	ACCEPTANCE OF APPOINTMENT	
he Undersigned. <u>COU</u>	N RUSȘELL	, named herein as the
	R EAR HEARING AIDS INC	
hereby acknowledges and	accepts the appointment of statutory agent for said entity.  Signature:	
	(Statutory Agent)	<del></del>

4192419599

658 P.11/33 F-680 ATET Ex. 8

#### TedRowen@SpenglerNathanson.com (419)252-6239

December 23, 2004

#### Certified Mail - Return Receipt Requested

Colin Russell Kenwood Hearing Aid Center, Inc. 3030 Sylvania Avenue Toledo, Ohio 43613

Re: Kenwood Hearing Aid Center and Cease and Desist Letter

Dear Mr. Russell:

I have been forwarded by Joyce Johnson, President of Kenwood Hearing Center, Inc., my client, the facsimile which you had forwarded to her yesterday. You are not to have any further direct contact with her or with anyone else affiliated with Kenwood Hearing Center, Inc. as I am representing it.

I also acknowledge your voice mail message which you left last evening on my telephone.

Assuming for purposes of this letter and further discussion in an attempt to anneably resolve this matter short of litigation, that you were truthful in your message when you indicated that you and your various companies have not made any money from the use of the name Kenwood, which you have unlawfully med to appropriate, the following are my client's demands for a prompt resolution of this matter:

(1) You will notify the telephone company that rather than discontinuing the phone number of 419-473-1900, which was listed in SBC Yellow Pages as Kenwood Hearing Aids, you will cause the calls to be transferred to Kenwood Hearing Center's phone number, which is 419-534-3111, and you

Colin Russell Kenwood Hearing Aid Center, Inc. December 23, 2004 Page 2

will pay the cost of said transfer, if any is incurred, for one year from the date an agreement is reached;

- (2) You will notify the Secretary of State that you on behalf of all your companies are ceasing business under the corporate name of Kenwood Hearing Aid Center, Inc., and you are withdrawing the trade name of Kenwood Hearing Aids; and
- (3) You agree on behalf of Kenwood Hearing Aids, Inc. and any other company with whom you are affiliated that you will not use the name Kenwood at all, including in a name, in advertising, and/or in connection with a private label hearing aid.

Please contact the undersigned in writing with your response. Otherwise you leave Kenwood with no other choice than to file suit.

Sincerely yours,

SPENGLER NATHANSON P.L.L.

Theodore M. Rowen

TMR/

cc:

Joyce Johnson

Stasia Hanson, Esq.

M./TMR/S-TMR/KenwoodHearing/1467/14B.hr.wpd

DEFENDANT'S EXH. B



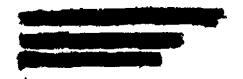
Kenwood Hearing Center, Inc.

3450 W. Central Avenue, Suite 134 · Toledo, OH 43606 960 W. Wooster Street, Suits 206 - Bowling Green, Oll 43402

(419) 534-3111 = (419) 534-3113 FAX Toll-fres: 1-877-534-3277

Pulton County Health Center \* Medical Office Bildg. 925 S. Shoop Ayen \* Wausson, OH 43567

January 5,2005



Dear MRS.

Kenwood Hearing Center has recently been alerted to a deceptive and unlawful use of our good name and reputation, which we have developed over the past (we)ve years. There is a hearing aid "dealer" in our area who has taken out a listing in the business pages of the SBC phane book as Kenwood Hearing Aids. PLEASE do not be misled or confused by this. Kenwood Hearing Center, Inc. has NO relationship with Colin Russell. Brad Stanfield, Clara Bolfa, "Kenwood Hearing Aids", Hear Ear Hearing Center, or A Hearing Aid Service, Inc.

Kenwood Hearing Center, Inc. is owned by audiologists Joyce Kinker-Johnson and Diann Harrison. In addition to the owners, there are two other audiologists on staff, Jane Rowen, and Jennifer Siegel. All audiologists on staff have a Master's Degree from an accredited University, are certified by the American Speech/Language-Hearing Association, and are licensed by the State of Ohio Board Speech-Language Pathology and Audiology. These credentials are the credentials you need to look for when choosing someone for your hearing health care needs.

The letters you see behind and audiologists name will be M.A. or M.S. which means they possess a Masters Degree in the field of Audiology. Following those initials you will see CCC-A, which indicates that they have completed a Clinical Fellowship Year under the supervision of an experienced audologist and have passed rigorous test to prove their competency.

If the letters behind a person's name are BC-IHS, this means that the individual is a hearing aid dispenser or sales person, which can mean many things. To be allowed to sell hearing aids in Ohio the only qualification is that you have a high school diploma and obtain a passing score on a standardized test and some other minimal education.

Joyce Kinker-Johnson, M.A. . Dissen M. Harrison, M.A. . Jane F. Rowen, M.A. . Janeifer G. Siegel, M.A.

Certified Audiologists, Fillows American Academy of Audiology E-Mail: kenwoodtearing@huckeye-express.com



If you would receive a call from anyone saying they are affiliated with Kenwood Hearing or simply "Kenwood", please contact us at 419-534-3111 to determine if the person calling actually works for Kenwood Hearing Center, Inc., or is employed by a person or entity which is engaging in unfair competition and is seeking to confuse the health care public.

We have worked for many years to establish and maintain a credible relationship with our clients, physicians, and the general public in our area, it is most unfortunate that one individual doing business under various corporate names can undermine our years of service to the community and create confusion in the public to those that seek our services. We are truly sorry for any inconvenience this may cause you.

Audiologist

Diann M. Harrison, M.A., CCC-A

Audiologist

,			
•			
	·		

#### IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

KENWOOD HEARING CENTER, INC.,	) )
PLAINTIFF,	) CASE NO. CI05-1055
<b>v.</b>	) THE HONORABLE ) JACK ZOUHARY
COLIN RUSSELL and HEARING EAR HEARING	) ) )
AIDS, DEFENDANTS.	) }

#### TRANSCRIPT OF PROCEEDINGS

Be it remembered, that in the hearing of the cause on January 12, 2006 before The Honorable Jack Zouhary in the Lucas County Court of Common Pleas, the following proceedings were had, to-wit:

#### APPEARANCES:

On behalf of the Plaintiff:

Theodore M. Rowen Anastasia K. Hanson

On behalf of the Defendants:

Raymond O'Neal

KENDRA L. LAKE, RPR LUCAS COUNTY COURT OF COMMON PLEAS

#### INDEX

#### PLAINTIFF'S EVIDENCE:

PAGE

NO TESTIMONY PRESENTED

#### DEFENDANT'S EVILENCE:

PACE

NO TESTIMONY PRESENTED

#### EXHIBITS

STATE'S:

Desc.

IDT:/OBJ/ ALMIT

NO EXHIBITS MARKED OR ADMITTED

DEFENDANT'S:

NO EXHIBITS MARKED OR ADMITTED

COURT'S:

NO EXHIBITS MARKED OR ADMITTED

02:26PM

02:27PM

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02:27PM

THE COURT:

We're here on civil

Case Number 05-1055, it's Kenwood Hearing Center versus Colin Russell and Hear Ear Hearing Aids. I'm here with both parties and Counsel, we just completed a final settlement pretrial. The parties have reached an agreement which I will attempt to read into the record, and allow Counsel to supplement as appropriate.

Plaintiff will receive from Defendant the sum of \$72,500, payable over 10 months. The first month being January or February, and extending until paid in full. The second part is that Defendants are going to revoke use of the name Kenwood, and I'll let the lawyers talk about how they want that accomplished. And the third part is that Defendants will take the necessary steps to disconnect from the phone book the number — or depending upon what Plaintiffs want, have that number run directly into Plaintiff's office.

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Those are the basic outlines of the settlement, and I'll let Counsel now supplement and ask any questions, make sure we're all on the same page before we leave today.

MR. ROWEN: Okay, number one, I thought there was going to be a judgment entry in that amount that we would agree not to execute upon, providing the payment schedule, as the Judge described, was met.

THE COURT: We did discuss that and there will be a judgment, but the judgment doesn't execute as long as the payments are made, and it would expire, by its terms, at the end of the time period, assuming the payments have all been made.

MR. O'NEAL:

Judgment on the

record, Your Honor?

MR. ROWEN:

Yes.

THE COURT:

Yes.

MR. O'NEAL:

We did not --

THE COURT:

We didn't talk about

that -- in fairness, we did not talk about, specifically, how that would happen. Or we could do

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-800- <b>6</b> 31-69	02:28PM
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	02:29PM
	02:29 <b>PM</b>

02:28PM

it on the flip side, and that is, the judgment would be entered when there's a default in the payments.

MR. O'NEAL: Okay, we like -- we didn't talk anything about the judgment itself, but our preference would be some notice of default and opportunity to cure within relatively reasonable and short period of time. And, secondly, that --

THE COURT: Let me stop you there:

I don't think we need that because the terms of the payment are clear.

MR. O'NEAL:

Okay.

THE COURT: Okay? So if there's not a payment made, you don't need notice, you know when you haven't made the payment.

MR. O'NEAL: But there may have been some reason why it was not received, Your Honor.

THE COURT: I accept that, that's true.

MR. O'NEAL: That's the reason why
I'm referring to some type of notice.

MR. ROWEN: Your Honor, we would be willing to agree to hold the -- that judgment

02:30PM

will not be entered until 10 days after the default, but we're not going to give notice of default. The payments will be the first of the month, I'm sure it's a very important matter that can be calendared.

MR. O'NEAL: Okay. The other thing, then, Ted, is that we would prefer that some receipt be provided as to each payment made in a timely manner.

MR. ROWEN: That's not a problem, the payment will be made payable to me, to Kenwood Hearing Center, at my address, and when I receive it, same day I will send out a receipt or statement that it was received, okay? And I'll send it to you.

MR. O'NEAL:

Okay.

MR. ROWEN:

All right, so we are

covered.

MR. O'NEAL:

Would you prefer to

receive the statement, Mr. Russell?

MR. RUSSELL:

Oh, I don't care.

MR. O'NEAL:

Okay, I'm looking at

the down time since you're talking about the ten-day turn around. It would be my preference that that

02:30PM

receipt be sent directly to you, sir. MR. RUSSELL: MR. O'NEAL: MR. ROWEN: comes to me, from whomever it is, the same day we'll send the receipt out. I don't mind sending a copy to you too, doesn't matter. MR. RUSSELL: MR. O'NEAL: THE COURT:

That way you'll know in 10 days if you haven't gotten a receipt back, there may be a problem.

Okay.

Okay.

I mean, if the check

That would be fine.

That's good.

MR. ROWEN: Okay, and I would like to make the burden being on your client to notify the Secretary of State of the revoking of the name, of giving up the rights to use the name Kenwood Hearing Aid Center, Inc., Kenwood Hearing Aids, Inc.

MS. JOHNSON: Or anything with Kenwood in the name.

MS. HANSON: There's a trade name and there's an entity.

MR. ROWEN: Why don't you tell them what to put on the record.

	02:30PM	MS. HANSON	N: You're going	to have						
,	02:30PM	to delist the trade name and cancel the existence of								
	02:30PM	the entity Kenwood Hearing Aid Center, Inc.								
	02:31PM	MR. O'NEA	L: Cancellation	of the						
	02:31PM	trade name, okay.								
	02:31PM	MR. ROWEN	: And what we	would like						
is for you to arrange immediately, or within										
	02:31PM three days, let's put it within three days, wit									
that the phone number that is either listed in book, or the one you may have changed it to,										
									02:31PM	automatically rings in for the balance of the
)	02:31PM	listing. So it's no	ot cancelled, it rings	into 419-						
	02:31PM									
	02:31PM	MR. O'NEAI	L: The number a	gain,						
	02:31PM	please?								
	02:31PM	THE COURT	<b>:</b> 419-534-3111	• •						
	02:31PM	MR. ROWEN:	: Which is the	phone						
	02:31PM	number of Kenwood Hearing Center.								
	02:31PM	THE COURT:	That should	just be a						
	02:31PM	phone call.								
	02:31PM	MR. O'NEAI	L: Yeah, forwar	d it to						
	02:31PM	that number.								
)	02:31PM	THE COURT:	No, I mean a	phone						

LASEH BOND FORM A PENGAD • 1-800-631-6989 • www.pengad.com

ì	02:31PM	call from	you	to SBC.	
,	02:31PM		MR.	O'NEAL:	Can you do that?
	02:31PM		MR.	RUSSELL:	Yeah, sure.
	02:31PM		THE	COURT:	Probably makes sense
	02:31PM	for you to	o ala	so confirm it to	them in writing or get
	02:31PM	something	in v	writing from the	m so there's no issue
	02:31PM	with that	-		
	02:31PM		MR.	O'NEAL:	Certified mail.
	02:31PM		MR.	ROWEN:	Your Honor, do you
	02:31PM	want us to	o pre	epare something 1	that covers from that
	02:32PM	standpoin	t?		
)	02:32PM		MS.	HANSON:	Let the record
	02:32PM	reflect,	Your	Honor, that number	per will be changed
	02:32PM	from 419-	472-2	2669.	
	02:32PM		MR.	O'NEAL:	Give again, please.
	02:32PM	(Whereupon	n, a	discussion was l	neld off the record.)
	02:32PM		MR.	RUSSELL:	I believe it's 2669, I
	02:32PM	believe.			
	02:32PM		MR.	ROWEN:	Right, I think that's
	02:32PM	correct.			
	02:32PM		MR.	RUSSELL:	But I don't know for
	02:32PM	sure.			
)	02:32PM		MR.	ROWEN:	The current number is

LASER BOND FORM A PENGAD - 1-800-631-6989 • www.pengad.com

02:32PM

419-472-2669.

MS. JOHNSON:

And do we need to also

add the 473-1900 number?

MR. ROWEN:

No.

MR. RUSSELL:

That's gone a long

time ago.

MR. O'NEAL:

So 419-472-2669 to

419-534-3111?

MS. HANSON:

That's correct.

MR. RUSSELL:

Now, if they have any

problem remoting that to you without your approval,

can I have them contact you?

MR. ROWEN:

Certainly.

MR. RUSSELL:

Or should --

MR. ROWEN:

No, have them contact

either Ms. Johnson or Ms. Harrison.

MR. RUSSELL:

Sure, okay.

THE COURT:

I'll leave it to

Counsel to prepare the appropriate paperwork that needs to be done.

MR. ROWEN:

Do you want mutual

releases and settlement agreements which will go in

effect --

02:34PM

02:34PM

02:34PM

MR. O'NEAL:

Right.

MR. ROWEN:

-- wiping everything

out, assuming the payments are made final? I would like to say this; I would really like to, for the record, on behalf of Defendants, thank you, Your Honor, for the excellent way you were able to achieve this resolution, which is far beyond managing a case.

THE COURT: Well, I can't accomplish anything without cooperation of the parties, so I appreciate it. Thank you for your time, working through the noon hour. I know that both sides may, as I had in my discussions with you, feel a little, let's say, not the happiest at the moment, but I think the good news is it will be behind you and you can move on and accomplish whatever other things you can do with your time and not with this lawsuit, so I wish you all the very best. Thank you.

MR. O'NEAL: Your Honor, my feelings are the same, and I'm sure with regard to Mr. Russell and thank him for coming over today. He was helpful, very helpful, in this matter. The

other thing, Your Honor, I'm not totally clear with regard to what the entry would cite in terms of the three points. Could we just, very summarily, agree on that again, Ted?

MR. ROWEN: Sure. The basic format would be that this cause came to be heard in final settlement pretrial.

MR. O'NEAL: I mean the points, per say, the three points.

THE COURT: Plaintiff is going to receive from Defendants the sum of \$72,500. First payment due February 1st of this year. If you -- I take it that the monthly payments will be \$7,250, times ten, takes you to 72-5.

MR. O'NEAL: Is that agreeable with you, Mr. Russell?

MR. RUSSELL: Yeah.

THE COURT: If my math is right, the last payment will be in November of this year. There will be a judgment entry prepared to that effect, but will not be filed unless there is a missed payment. And to make sure there's no miscommunication on the missed payment, the checks

02:36PM

02:35PM

are being sent to Kenwood in care of Ted Rowen, at which point, when the check is received by Ted's office, he will turn around and issue a receipt to both of you so that you know that the check has been received.

Second is, you're going to -- you, being Defendants, will contact the Secretary of State and will delist and cancel the trade names that you currently have or are doing business under, the Kenwood name, whatever that particular Kenwood entity is.

And the third point is, Defendants are going to contact SBC and change the phone number, which currently is 419-472-2669. That will ring into a new number, the number belonging to Plaintiff of 419-534-3111. And to the extent SBC requires approval from the Plaintiff for that, Defendant is free to contact them directly in order for that to take place ASAP.

MR. O'NEAL:

Okay.

THE COURT:

Is that your

understanding?

MR. O'NEAL:

That's my

 ${\it understanding.}$ 

THE COURT:

Is that your

understanding?

MR. ROWEN:

Yes, Your Honor.

THE COURT:

Thank you.

MR. O'NEAL:

Is Plaintiff required

to go ahead with the dismissal entry forthwith?

THE COURT:

Here's what I'm going

to do, I'm going to prepare today and file, case settled, dismissed, parties have 30 days to file their own dismissal papers, and I leave it to the lawyers to prepare whatever documents you want that encompass what it is we've discussed.

MR. ROWEN:

With your permission,

Mr. O'Neal, we'll prepare the judgment entry, prepare the draft of the mutual release and settlement agreement, and send to you for your approval.

MR. O'NEAL:

Okay, Mr. Creech, you

got any comment?

MR. CREECH:

(Indicating).

THE COURT:

Can I ask -- are you

done?

MR. O'NEAL: Yes.

23

### CERTIFICATE

I, KENDRA L. LAKE, THE UNDERSIGNED, DO CERTIFY
THAT THE ABOVE AND FOREGOING IS A TRUE, COMPLETE AND
ACCURATE TRANSCRIPT OF THE PROCEEDINGS HAD IN THE
HEARING OF THE ABOVE-ENTITLED CAUSE.

KENDRA L. LAKE, RPR

LUCAS COUNTY COURT OF COMMON PLEAS

## 

DATE: 01/25/2007

DOCUMENT ID 200702402172

DESCRIPTION
TRADE NAME/CANCELLATION (RNX)

CERT .00

7900 00.

Receipt This is not a bill. Please do not remit payment.

RAYMOND W. O'NEAL, SR. 11 W. MONUMENT AVE., STE. 304 DAYTON, OH 45402

# STATE OF OHIO CERTIFICATE

Ohio Secretary of State, Jennifer Brunner

1478796

It is hereby certified that the Secretary of State of Ohio has custody of the business records for

#### KENWOOD HEARING AIDS

and, that said business records show the filing and recording of:

Document(s)

TRADE NAME/CANCELLATION

Document No(s):

200702402172



United States of America State of Ohio Office of the Secretary of State

Witness my hand and the seal of the Secretary of State at Columbus, Ohio this 24th day of January, A.D. 2007.

Ohio Secretary of State

i,

1



#### Prescribed by:

The Ohio Secretary of State
Central Ohio: (614) 466-3910
Toll Fore: 1-877-SOS-FILE (1-877-767-3453)

Expedite this Form: (seec.com)

Mail Form to one of the Following:

PO Box 1390
Contrars, OH 43216
\*\*Regelate to middlessed for of \$100 \*\*\*

PO Box 788
Columbus, OH 43216

www.sos.state.oh.us e-mait. busserv@sos.state.oh.us

	(For Domestic	ISTRATION L or Foreign, Profit or A Filing Fee \$25.00	<del></del>	2001 JAN 24
THE UNDERSIGNED DESIRING	=	• • • • • • • • • • • • • • • • • •		
(CHECK ONLY ONE (1) BOX)	This filing does n	ot extend the registra	tion period	
(1) Assignment of Registered Registration No. (116-RNA)	Name	(2) Name Reserving Registration No. (185-NRT)		
(3) Change of Address only for Registration No. (176-RMS)	Registered Name	(4) Cancellation Registration No. (184-RNX)	•	
Fictitious Name		The Appropriate Box of Ownership	☐ Trademark	Service Mark
Name of Entity or Description of Mark	KENWOOD HEARING	G AIDS		
Name of Current Owner	COLIN RUSSELL			
Complete the information in this s	ection if box (3) is chec	ked.	<del></del>	
New Business Address	Not Applicable	<del></del>		
	(Street)	NOTE: P.O. Box Addresses	s are HOT acceptable.	-
	(Chy)	(County)	(State)	(Zip Code)
Complete the talarmetion in this s	ection if box (1) or (2) is	checked.		
Are you assigning this name?	Yee	□ <sub>№</sub>		
New Registrant's Name	Not Applicable			
& Address	(Name)			
	(Street)	NOTE: P.D. Box Add	esses are NOT acceptable.	
Registration No.	(Crity)	(County)	(State)	(Zip Code)
Complete the information in thi	s section if box (4) is	checked.	*****	
Are you canceling this name?	₹ Yes	No		

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Page 1 of 2

Last Revised: May 2002

hereby acknowledged, ASSIGNO in and to the above-listed mark at in connection with which said mar use and benefit, and for the use a	and for other Good and Yaluable Consideration, the receipt of which is R does hereby assign unto said ASSIGNEE the entire right, title and interest id registration granded therefrom, and in and to the goodwill of the business it is used, the same to be held and enjoyed by said ASSIGNEE for its own and benefit of its successors, assigns or other legal representatives, as fully ave been held and enjoyed by said ASSIGNOR, if this assignment had not
Till the annihill of the histings	associated with this mark is NOT ASSIGNED

REQUIRED

Must be authenticated (signed) by an authorized representative (See Instructions)

1 / 4	<b>.</b>	, ,		
1.7			13 T	
11/ X	V.	K. A.		
	A report	TITLE OF		
4.44.	ad Decree		_	

1-12-07

Date

524

Page 2 of 2

Last Revised; May 200

DATE: 01/25/2007 DOCUMENT ID 200702402170

DESCRIPTION DOMESTIC/DISSOLUTION (DIS) FILING 50.00 EXPED 100.00

PENALTY

CERT

COPY

Receipt

This is not a bill. Please do not remit payment.

RAYMOND W. O'NEAL, SR. 11 W. MONUMENT AVE., STE. 304 DAYTON, OH 45402

# STATE OF OHIO

#### CERTIFICATE

Ohio Secretary of State, Jennifer Brunner

1481351

It is hereby certified that the Secretary of State of Ohio has custody of the business records for

KENWOOD HEARING AID CENTER, INC.

and, that said business records show the filing and recording of:

Document(s)

DOMESTIC/DISSOLUTION

Document No(s):

200702402170



United States of America State of Ohio Office of the Secretary of State Witness my hand and the seal of the Secretary of State at Columbus, Ohio this 24th day of January, A.D. 2007.

Ohio Secretary of State



Prescribed by

The Ohio Secretary of State
Central Ohio: (614) 466-3910
Toll Free: 1-877-SOS-FILE (1-877-767-3453)

www.sos.state.oh.use-mail: busserv@sos.state.oh.us Expedite this Form: energicus

Maid Form to cine of the Following:

PO Box 1380

Columbus, OH 43216

PO Box 1028

PO Box 1028

Columbus, OH 43216

# CERTIFICATE OF DISSOLUTION BY SHAREHOLDERS, DIRECTORS, OR INCORPORATORS

(Domestic Profit) (Filing Fee \$50.00)

(1) Shareholders (150-0155)				· · · · ·
	(2) [] Din	ectors (137-DISD)	ு ப	corperators (138-015))
amplets the general information in				
KENWOOD HEA	ARING AID	Center . I	ıc.	
	(481351°	orporation)		<del></del>
	(Charter Number)			
COLIN RUSSELL		, who is	Incorpo	rator
(Hamil)		·	(Title)	
f the above garged Ching corporation (Cale)	on, articles of incorpo do hereby certify t	oration of which wer that:	e filed in the office of th	e secretary of
Sective Date (Optional)	Town Market and			ter date of filling. It a claim is
	(avniklily)yy <del>)</del>	spreided, the date i	<u>unel be a dide on or eller b</u>	he state of filling.
he place where its principal office i	in Ohio is or is to be	located is:		
Toledo	Ohi	o Turas		
(City, Township or Village)	, Ohi	(County)		
na a a a a a a a a a a a a a a a a a a				
he name and Ohio address of statu	ntory agent is:			
he name and Ohio address of statu Colin Russell	utory agent is:			
Colin Russell				<del></del>
Colin Russell (Name) 3030 Sylvania A	\venue			
(Plane) 3030 Sylvania A	Venue Note: P.O. Box Add	trasses gra NOT accep	<del></del> .	
Colin Russell (Name) 3030 Sylvania A	Venue Note: P.O. Box Add	fresses are NOT accep	udik. 43613	
(Plane) 3030 Sylvania A	Venue Note: P.O. Box Add	_		
Colin Russell  (Numb) 3030 Sylvania A (Stee) Toledo	NOTE: P.O. Box Add	, Ohio irs from the agent o	43613 (Zip Code) arrently appearing on 6	
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Colin Russell    Street   Toledo   Coly)  OTE: If the statutory agent fisted it	NOTE: P.O. Box Add MOTE: P.O. Box Add That changed or differ named agent must: ACCEPTA COLin	, Ohio ers from the agent c acknowledge and a	43613 (Zip Code) urrently appearing on the	
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Colin Russell    (Stanta)   3030 Sylvania A     (Street)   Toledo   (City)     OTE: If the statutory agent fisted in the secretary of state's office, the     The Undersigned   Statutory agent for the co	NOTE: P.O. Box Add  NOTE: P.O. Box Add  nas changed or differ named agent must:  ACCEPT/ COlin  proporation named he	rs from the agent of acknowledge and a RNCE OF APPOINT RUSS e 11	43613 (Zip Code) unrently appearing on the appointment	as statutory agent, named herein as the

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Page I of B

Last Revised: June 2004

Complete the information in this secti	on If bor (1) or (2) is checked.			
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Name	Street	Cit	y & State	Zip Code
		<u></u>		
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The names and complete street adds Note: P.O. Box Addresses are NOTes				
Name	Street	City	y & State	Zip Code
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Complete the information in this seed	on II hos (1) is chacked.	NONE		
The undersigned have been authoriz (Check one of the following)				
at a special meeting of the alteration class, whether entitled to vote or no them to exercise	iders of said corporation, notice of which ot, by the votes cast in person or by pro % of the voting power	ary, by the holders of record of		ling
<del>-</del>	is of section 1701.54 of the ORC by not purpose declaring that the corpo			
REQUIRED  Must be authenticated (signed)  by an authorized representative	Authorized Representative			Date
	Non-Act (Copiescine)			F1010

561

Pega 2 of 5

Last Revised: June 200

omplete the information in this sect	don # box (2) is checked.			
he undersigned have been authori ursuent to section 1701.88(D) (	zed to execute and file this certificate by a res ) (must insert proper paragrap		ard of Direct	tors adopted
Chack one of the following)				
at a meeting duly called	and held on			
in writing signed by all of elects to wind up its affair	the directors pursuant to section 1701.43 of this and dissolve	the ORC declaring	g that the co	orporation
REQUIRED fust be sufferisconed (signed)	<del></del>			
y an authorized representative			L	
	Authorized Representative			Date
ne names and complete street add	resses of the INCORPORATORS are:		<del></del>	
he names and complete street add Note: P.O. Box Addresses are NOT a	tresses of the INCORPORATORS are:	C	in a Cinia	Tin Code
	resses of the INCORPORATORS are:	Ci Toledo,	ity & State OFI	Zip Code 43613
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Page 3 of 5

Authorized Representative

Date

AFFIDA $_{ m tr}$ of dissolution releases from various governmental authorities	
KENWOOD REARING AID " CI	
(Exact Name of Corporation)	<del></del>
undersigned, being first duly swom, declares that on the date immental agencies was advised IN WRITING of the schedule advised IN WRITING of the acknowledgement by the corpora 1,95 of the ORC.	d date of filing of the Certificate of Dissolution and
AGENCY	DATE NOTIFIED
Ohio Department of Taxation Dissolution Section	12-26-06
Box 182362 Columbus, Ohio 43218-2382	
Ohio Job and Family Services	12-26-06
Status & Lieberty Section P.O. 182404 Columbus, Ohio 43218-2404	
The treasurer of any County named below:	e e e
Lucas County Treasurer	12-26-06
640 Jackson St., Ste. 500	12-20-00
Toledo, Ohio 43604	
Ohio Burney of Workers' Compensation	12-26-06
30 W. Spring Street Columbus, Ohio 43215	<del></del>
ole: This affidavit must be signed by one or more persons exec	cuting the certificate of dissolution or by an officer of
By: Colin Hughell	Tibe: Incorpor ator
Name: Colin Russell	
3030 Sylvania Avenue	
(Sire) MOYE: P.O. Bar A Toledo OF	Iddresses are NOT acceptable  43613
	State) (Zije Code)
orn before me and subscribed in my presence on	(Date)
LUCAS BEMILIER	2-8-
Elichart County My Commission Expires	(Alorany Puesici
August E. 2014 Commissio	on Expires August 8, 2014
(Notary Seal)	(Dafe)

Page 4 of 5

Lesi Florised: June 2004

Complete the information in this section if pax (1), (2)	or (3) is checked.
STATE OF OHIO	
County of Lucas :8\$	
Colin Russell	, being first duly sworn, deposes and says that she/he is
Incorporator	RENWOOD HEARING AID CENTER, INC.
(Tile) that this affidavit is made in compliance with section	1701 95
That said corporation has (Check one of the followin	(Section #)
🖪 A. has no personal property in any coun	nly in the State of Chio;
☐ B. personal property only in the following	g county(ies)
and that the net seeds of said corporation are suffici	ient to pay all personal property taxes accrued to date.
	Signature: Palm Kulled
	Colin Russell
·	
Sworn before me and subscribed in my presence on	01/12/2007 (Outs)
LUCAS DEMILLER	2-03
Bithart County My Commission Expires August 8, 2014	(Notary Public)
(Notary Seal)	Commission Expires <u>August 8, 2014</u> (Date)

561

Last Ravised: June 2004



# Monthly Statement Mar 5 - Apr 4, 2007

BBLAt-A-Gionce	
Previous Bill	24.21
Payment	.00
Adjustments	10.00
Past Due - Please Pay Immediately	34.21
Current Charges	34.56
Total Amount Due	\$68.77
Current Charges Due in Full By	Apr 24, 2007

Questions? Call:

Plans and Services

1-800-680-3000

Repair Service: 1-800-727-2273

Telecommunications Relay System: 1-800-750-0750

**Total of Current Charges** 

pisconnect 5-8-07 confirmation
confirmation
21653180630

#### News You Can Use - Summary

- PREVENT DISCONNECT
- •811 BEFORE YOU DIG
- PAYMENT & INQUIRIES
- RATE CHANGES
- FED EXCISE TAX
- REPAIR MADE EASY

See "News You Can Use" for additional information.

COLIN RUSSELL COLIN RUSSELL 3030 W SYLVANIA AVE STE 107 TOLEDO, OH 43613-4147

Page 1 of 2 Account Number 419 472-2669 748 5

Billing Date Apr 4, 2007

Web Site att.com

Invoice Number 419472266904





34.58

#### Detail of Payments and Adjustments

No. Dete Description	Adjustments	Pavments
1 4-05 Late Payment Charges	10.00	I afiliálica
Totals	10.00	.00
Plans and Services		
Premotions and Discounts		
lt <del>en</del>		
Na. Description		
1 Term Volume Disc. Plan Monthly minimum		
commitment not met		10.00
Monthly Service - Apr. 4 thru May. 3		
Remote Call Forwarding		20.45
Local Cells		
Remote Call Forwarding		
13 Call(s) were placed with your Measured	Line	
13 Call(a) billed at 5.08 each		1,84
Taxes		
Yaxee Federal at 3%	<del></del>	.94
	<del></del>	.94 2.13

#### News You Can Use

#### PREVENT DISCONNECT

Total Plans and Services

34.56

34.56

Thank you for being a valued customer. It is important to inform you that all charges must be paid each month to keep your account current and prevent collection activities. In addition, please be aware that we are required to inform you of certain charges that MUST be paid in order to prevent interruption of basic local service. These charges are already included in the Total Amount Due and are \$58.77.

#### 811 BEFORE YOU DIG

Know what's below. Every day, underground digging or excavation results in extensive consequences, from serious injury of death to environmental damage, coetly delays, and large-scale utility service interruptions. To reduce risks, the Federal Communications Commission (FCC) approved the use of 8-1-1 as the national abbreviated telephone number for commercial and residential consumers to use to provide notice of excavation activities. Remember, call 8-1-1 before you dig.

Local Services provided by ATST Minois, AT&T Indians, AT&T Michigan, AT&T Ohio or AT&T Wisconsin based upon the service address location.

U.S. Pat. D410,958 and D414,510

# JENNIFER BRUNNER

OHIO SECRETARY OF STATE

Home | About | Businesses | Voter Services | Candidates | Elections & Ballot Issues | Other Records | Better Lives | Voting Rights Institute | Med

BUSINESS FILMES ....



Agent/Contact Information

Total Row Count in Report - 11

						SOLAI NOW		oral now count in heboil - 11	
Charter Num	Agent / Contact Name	Agent Address	City	State	dız	Agent Effective Date	Agent Status	Business Name	Business Info
1489367	Colin Russell	Colin Russell 3450 West Central Avenue Toledo		Ohio	43606	Sep 15 2004	Active	43606 Sep 15 2004 Active HEAR EAR HEARING AIDS INC	Click for Details
1481351	Colin Russell	Colin Russell 3030 Sylvania Ave.	Toledo	Ohio	43613	Sep 01 2004	Active	43613 Sep 01 2004 Active KENWOOD HEARING AID CENTER, INC.	Click for Details
1478796	Colin Russell	Colin Russell 306 Milburn Ct.	Mishawaka	<u>nd</u>	46544	Jul 23 2004	Active	ana 46544 Jul 23 2004 Active KENWOOD HEARING AIDS	Click for Details
1197651	Colin Russell	Colin Russell 2525 N Reynolds Rd	Toledo	Ohio	43615	Nov 08 2000	Active	43615 Nov 08 2000 Active HEARING AID SERVICE	Click for Details
RN192109	Colin Russell	RN192109 Colin Russell 4434 Secor #1	Toledo	Ohio	43623	Sep 15 1994	Active	43623 Sep 15 1994 Active QUALITY HEARING SYSTEMS	Click for Details
RN192108	Colin Russell	RN192108 Colin Russell 4434 Secor #1	Toledo	Ohio	43623	Sep 15 1994	Active	43623 Sep 15 1994 Active QUALITY HEARING AID SYSTEMS	Click for Details
RN192107	Colin Russell	RN192107 Colin Russell 4434 Secor #1	Toledo	Ohio	43623	Sep 15 1994	Active	43623 Sep 15 1994 Active QUALITY HEARING AIDS	Click for Details
RN190174	Colin Russell	RN190174 Colin Russell 4434 Secor #2	Toledo	Ohio	43623	43623 Aug 19 1994 Active	Active	SONOTONE OF TOLEDO	Click for Details
RN190173	Colin Russell	RN190173 Colin Russell 4434 Secor #2	Toledo	Ohio	43623	Aug 19 1994	Active	43623 Aug 19 1994 Active QUALITY HEARING BY SONOTONE	Click for Details
RN190172	Colin Russell	RN190172 Colin Russell 4434 Secor #2	Toledo	Ohio	43623	Aug 19 1994	Active	43623 Aug 19 1994 Active QUALITY HEARING OF NORTHWEST OHIO CLICK for Details	Click for Details
RN190171	Colin Russell	RN190171 Colin Russell 4434 Secor #2	Toledo	Ohio	43623	Aug 19 1994	Active	43623 Aug 19 1994 Active QUALITY HEARING	Click for Details

nelp

Back to Menu

Ex. 14

ATET

ATET Ex. 15

## Hearing Aid Service

3718 Lincolnway East Mishawaka, IN 46544 574,256,0000 - Fax: 574,256,0244

Ray,

January 31, 2008

The following is the outline of what happened.

The original setup of phones was sometime the second week of August 2004. The original 1. phone numbers were:

419-472-6400

419-472-0604

419-472-0664

419-473-1900

All of these numbers were set up as Kenwood Hearing Aids during the first part of August 2004. I could not acquire information on the exact day I called.

To confirm this I called SBC (AT&T) on November 27, 2007. SBC employee India, ID# 7642. confirmed to me that original name on the order for the 4 lines was Kenwood Hearing Aids. The main billing number was 419-472-6400 and on confirmation date August 30, 2004 when the phones were turned on, the billing name was and still is Hear Ear Hearing Instruments. On August 25,2004, 5 days before the phones were to be turned on August 30, 2004 I called from my cell phone, 574-850-5039 and changed all the names from Kenwood Hearing Aids to Hear Ear Hearing Instruments. This was confirmed by Melissa, ID# MS1285, at SBC (AT&T), confirmation number N1653100345.

The omission or mistake as referenced by the letter from Ethel Jones at SBC occurred on August 25, 2004 when the name on 419-473-1900 was not changed to Hear Ear as it should have been. Thus, it came out in the 2004 white pages directory as Kenwood Hearing Aids.

To sum this all up, India, ID# 7642, confirmed original set up was Kenwood Hearing Alds.

- The second major mistake occurred on December 22, 2004 at 4:30pm, confirmation number 2. C1653223842. Order was for de-listing and a change of number to 419-473-2669 as this is our 4th line. The phone company failed to de-list the Kenwood Hearing Aid listing. So as a result it came out again in the white pages directory with the new phone number 419-473-2669 listed as Kenwood Hearing Aids. Again in reference to letter from Ethel Jones the second mistake of non-omission occurred in the 2005/2006 white page directory.
- I spoke with Donna Hill on December 13, 2004 and she referred me to Ethel Jones for support. 3. Ethel Jones worked with Donna Hill, phone number 312-364-7100 Executive Director of Appeals, in the forming of the SBC letter of admission.

Your hearing is our only priority!

#### HIEL EX. 16 CUSTOMER SERVICE RECORD ZBU SB 345 419 472-6400 090404 09/05/04 TOLD 1MH PRINTED BILLDT EXCH CS CUST TELNUM PAGE IBL ICODE &I UNIT TAX |GRP|QNTY | DESCRIPTION RATE TOTAL | FSCMXT I ZBU ISB | ZCPI |C | NOCN | 9321 ORDERS PROCESSED SINCE LAST BILLING FOR THIS ACCOUNT |SERVICE EFFECTIVE **PURCHASE** ORDER NUMBER DATE ORDER NUMBER 08/30/04 IN1653100345 |--MAIN LISTINGS | HEAR; EAR HEARING AIDS INC LN |3030 W SYLVANIA AV, TOLEDO | LOC |SUIT 107 | SIC | 15999 | DZIP |43613 I--ADDITIONAL LISTINGS (A) KENWOOD; HEARING AIDS l AL |/LA , TOLEDO/TN 419 473-1900 |--BILLING INFORMATION ICOLIN RUSSELL I BA1 |DBA HEAR EAR HEARING AIDS |3030 W SYLVANIA AV BA2 BA3 SUIT 107 I PO ITOLEDO OH 43613 EMA Q | ZGC |360950000 | (A) 6, 61490, 08-30-04 ΙB ISS NONE TAR 10048 ZCPI (C, V, COLIN RUSSELL, 08-25-04 |--SERVICE AND EQUIPMENT |(A)VT9/TA 12, 08-30-04/SED 08-25-04 SPP HTG [A 419 472-6400, 419 472-0604, |419 473-1900, 419 472-0664/HTY SC 1 |TGRFS /DES 866 472-6400 0.001 0.00| NNTNNN /ORD N1653100345/CD 08-30-04 1 | 1MH /PIC SAF/PCA BO, 08-30-04 0.001 0.00| TNTNNN /ZPIC SAF/LPCA BO, 08-30-04 /PKG C-PGOQD/ITC 9017/HTG A /CRD N1653100345/CD 08-30-04

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#### KELLY, JON (Legal)

From:

MCCLINTOCK, DEBBIE (ATTADV)

Sent:

Thursday, November 29, 2007 9:42 AM

To:

KELLY, JON (Legal); GENTILE-KLEIN, KATHLEEN M (ATTOHB)

Cc:

BARRY, MIKE (Legal); PAMPALONA, SHARON (Legal)

Subject:

RE: Toledo Directory Pages.pdf (Colin Russell)

Hi Jon,

Sure. The service order cut off date for the 12/05 issue was 9/22.

The service order cut off date for the 12/04 issue was 9/21.

#### Debbie

-----Original Message-----

From:

KELLY, JON (Legal)

Sent:

Thursday, November 29, 2007 9:37 AM

To:

MCCLINTOCK, DEBBIE (ATTADV); GENTILE-KLEIN, KATHLEEN M (ATTOHB)

Cc:

BARRY, MIKE (Legal); PAMPALONA, SHARON (Legal)

Subject:

RE: Toledo Directory Pages.pdf (Colin Russell)

Thanks, Debbie, can you pull up the service order cut off dates for the Dec 2004 and Dec 2005 Toledo WP directories too?

Jon F. Kelly General Attorney AT&T Services, Inc. 150 E. Gay Street, Rm. 4-A Columbus, Ohio 43215 Telephone: 614 223 7928 Fax: 614 223 5955 jk2961@att.com

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From:

MCCLINTOCK, DEBBIE (ATTADV)

Sent: To: Thursday, November 29, 2007 9:26 AM GENTILE-KLEIN, KATHLEEN M (ATTOHB)

Cc:

BARRY, MIKE (Legal); KELLY, JON (Legal); PAMPALONA, SHARON (Legal)

Subject:

RE: Toledo Directory Pages.pdf (Colin Russell)

Hi Kathy,

The service order cut off date for the Toledo-OH 12/06 issue was 9/22/06. Delivery started on 11/27/06.

The service order cut off date for the upcoming Toledo-OH 1/08 issue was 10/12/07. Delivery will start on 12/17/07.

Hope that helps.

Debbie

-----Original Message-----

From:

GENTILE-KLEIN, KATHLEEN M (ATTOHB)

Sent:

Thursday, November 29, 2007 9:13 AM

To: Cc:

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PAMPALONA, SHARON (Legal)

BARRY, MIKE (Legal); MCCLINTOCK, DEBBIE (ATTADV); KELLY, JON (Legal)

Subject:

RE: Toledo Directory Pages.pdf (Colin Russell)

Team,

One quick question for someone. When is the actual cut off date of any new or canceled Directory Listings for the Toledo, OH directory? Also, what date does the delivery start.

This information would be helpful in our meeting at the PUCO this morning.

Kathy

----Original Message----

From:

KELLY, JON (Legal)

Sent:

Thursday, November 29, 2007 8:20 AM

To:

PAMPALONA, SHARON (Legal)

Cc:

BARRY, MIKE (Legal); GENTILE-KLEIN, KATHLEEN M (ATTOHB); MCCLINTOCK, DEBBIE (ATTADV)

Subject:

RE: Toledo Directory Pages.pdf (Colin Russell)

Got it, many thanks for the prompt response.

Jon F. Kelly General Attorney AT&T Services, Inc. 150 E. Gay Street, Rm. 4-A Columbus, Ohio 43215 Telephone: 614 223 7928 Fax: 614 223 5955 jk2961@att.com

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From:

PAMPALONA, SHARON (Legal)

Sent:

Thursday, November 29, 2007 7:40 AM

To:

KELLY, JON (Legal)

Cc:

BARRY, MIKE (Legal); GENTILE-KLEIN, KATHLEEN M (ATTOHB); MCCLINTOCK, DEBBIE (ATTADV)

Subject:

Toledo Directory Pages.pdf (Colin Russell)

<< File: Toledo Directory Pages.pdf >>

Good morning Jon,

Attached are the two pages that Mike asked me to scan and e-mail to you.

Thanks and have a nice day.

Sharon

Sharon J. Pampalona Administrative Assistant AT&T Advertising & Publishing Legal & External Affairs 100 E. Big Beaver Road, Suite 1300 Troy, Michigan 48083

Phone No: (248) 524-7660 Fax No: (248) 524-7227

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Fax: (614) 223 - 5955

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Company: AT&T - Midwest

Phone: (248) 424-2467

Fax: (248) 424-1254

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