



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**JOHN L. HILL,  
ATTORNEY GENERAL**

August 21, 1974

The Honorable John F. Boff,  
Executive Director,  
Texas Board of Examiners in the Fitting  
& Dispensing of Hearing Aids  
1212 Guadalupe, Room 105  
Austin, Texas 78701

Opinion No. H- 375

Re: Whether name of city  
with words "Hearing Aid  
Center" or similar words  
is misleading advertising  
under Article 4566-1.10,(10),  
V. T. C. S.

Dear Mr. Boff:

Citing Article 4566-1.10 (10), V. T. C. S., and Rule 10 of the Federal Trade Commission's Trade Practice Rules for the Hearing Aid Industry, you have asked:

Does the name of the commercial establishments,  
"Austin Hearing Aid Center," or "San Antonio  
Hearing Aid Service" comply with said Rule and  
Article?

Article 4566-1.10 is a part of the law adopted in 1969 to regulate the hearing aid industry (Acts 1969, 61st Leg., Ch. 366, p. 1122). The Act calls for the creation of the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids (Article 4566-1.02) and charges it with the duty of enforcing the Act (Article 4566-1.04) including its licensing provisions. Article 4566-1.10, V. T. C. S., lists the grounds upon which the Board may refuse to license an applicant or revoke the license of a licensee. One such reason is found in subparagraph (10):

(10) The licensee knowingly used or caused or promoted the use of any advertising matter, promotional literature, guarantees, warranty, disseminated or published with

misleading, deceiving or false information. It is the intention of the Legislature that the provisions of this Subsection (10) and the following Subsection (11) be interpreted insofar as possible to coincide with the orders and rules of the Federal Trade Commission on such subjects.

Rule 10 of the Federal Trade Commission Trade Practice Rules for the Hearing Aid Industry was promulgated July 20, 1965 and is quoted as follows:

It is an unfair trade practice for an industry member to represent directly or by implication, that a commercial hearing aid establishment is a governmental or public one, or is a nonprofit medical, educational, or research institution, though the use of terms having a medical, professional, or scientific connotation, such as, "Hearing Center," "Hearing Institute," "Hearing Bureau," "Hearing Clinic," "State's Speech and Hearing Center," or similar representations.

Nothing in this rule is understood to preclude an industry member from representing if such be the fact, that he owns, operates, or controls a "Hearing Aid Center," or from using other words or expressions which clearly and nondeceptively identify the member's establishment as a commercial hearing aid enterprise.

Article 4566-1.11, V. T. C. S., establishes the procedure for revocation or suspension of a license. It calls for charges to be filed under oath. Applicants or licensees are entitled to be present and to be represented by counsel. They may cross-examine witnesses and call witnesses of their own.

(e) The Board shall determine the charges upon their merits. The Board shall enter an order in the permanent records of the Board setting forth the

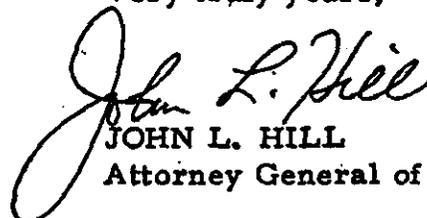
findings of fact and law of the Board and its action thereon. A copy of such order of the Board shall be mailed to such applicant or licensee to his last known address by certified mail.

We cannot say that as a matter of law, the use of the name of a city in the name of a business dispensing hearing aids is misleading or deceiving. Whether it is will depend upon the facts of a particular case. The Board is charged with the responsibility of making that decision after notice and an opportunity to be heard.

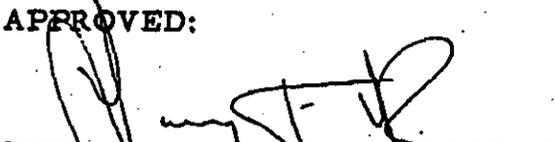
SUMMARY

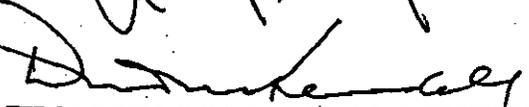
Article 4566-1.10 gives the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids power to determine, after notice and hearing, whether the use of a city name with the words "Hearing Aid Center" is deceptive or misleading as a matter of fact.

Very truly yours,

  
JOHN L. HILL  
Attorney General of Texas

APPROVED:

  
LARRY F. YORK, First Assistant

  
DAVID M. KENDALL, Chairman  
Opinion Committee

lg