

COPY

STATE OF MAINE  
LINCOLN, ss.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. CV-2000- 008

STATE OF MAINE, )  
 )  
 Plaintiff )  
 )  
 v. )  
 )  
 JAMES P. MORRELL, )  
 EARCRAFT LIMITED LIABILITY COMPANY, )  
 a Maine limited liability company with a )  
 registered office in Brunswick, Maine, )  
 )  
 Defendants )

COMPLAINT

I. INTRODUCTION

1. The State brings this action pursuant to 32 M.R.S.A. §§ 1658-A & 1660-E (1999), against Defendants James P. Morrell and EarCraft Limited Liability Company, seeking to permanently enjoin the Defendants from engaging in the unlicensed advertisement, dealing in and sale of hearing aids.

II. PARTIES

2. Plaintiff, State of Maine, is a sovereign state and brings this action by and through the Attorney General pursuant to 32 M.R.S.A. § 1660-E (1999).

3. Defendant Earcraft Limited Liability Company (hereafter referred to as "Earcraft") is a limited liability company, registered under the laws of the State of Maine, with a place of business in Brunswick, Maine.

4. Defendant James P. Morrell (hereafter referred to as "Morrell") is the owner of Defendant Earcraft and resides in the Town of Brunswick, Maine.

### III. JURISDICTION

5. The Superior Court has jurisdiction over this action pursuant to 32 M.R.S.A. § 1660-E (1999) and 4 M.R.S.A. § 105 (1989).

### IV. VENUE

6. The conduct that gave rise to this action occurred in Lincoln County, Maine. Venue is therefore properly located in Lincoln County, pursuant to 14 M.R.S.A. § 501.

### V. STATUTORY BACKGROUND

7. Chapter 23-A, Title 32 of the Maine Revised Statutes (32 M.R.S.A. §§ 1658-1660-F (1999) governs hearing aid dealers and fitters doing business in the State of Maine.

8. 32 M.R.S.A. § 1658-A(1) (1999) states that no person may advertise, sell, or engage in the practice of fitting and dealing in hearing aids, or profess to do so, unless that person holds a valid license issued by the State Board of Hearing Aid Dealers and Fitters (hereinafter, the Board).

9. 32 M.R.S.A. § 1658-A(2) (1999) states that no corporation or other business entity may engage in the business of selling or offering for sale hearing aids unless it holds a valid license issued by the Board. The statute also requires the business entity to certify that it employs only hearing aid dealers duly licensed by the Board.

10. 32 M.R.S.A. § 1658-A(3) (1999) states that no person or corporation engaged in the business of selling hearing aids in the State of Maine may knowingly employ any person who has neither a license nor a trainee permit in the direct sale of hearing aids or hearing aid equipment. The statute also states that a business entity engaged in the business of selling hearing aids may not knowingly permit any of its employees to violate any of the provisions of Chapter 23-A.

11. Pursuant to 32 M.R.S.A. § 1660-E (1999), any person who violates Chapter 23-A is guilty of a Class E crime, and the State may bring an action in Superior Court to enjoin such violations.

#### VI. FACTS

12. From November of 1999 to the present, Defendants Morrell and Earcraft have been engaged in the business of advertising for sale, selling and dealing in hearing aids in Maine.

13. Defendants Morrell and Earcraft contracted with the Boothbay Register, a newspaper based in Boothbay Harbor, to run an advertisement for the sale of hearing aids in the Boothbay Register, the Wiscasset Newspaper and the Lincoln County News on November 11, 1999. A copy of the advertisement is attached hereto marked as State's Exhibit A.

14. Neither Defendant Morrell nor Defendant Earcraft holds a valid license or trainee permit from the Board to advertise, deal in or sell hearing aids.

#### VII. CAUSES OF ACTION

##### COUNT I:

Unlicensed Advertising, Dealing in and Sale of Hearing Aids by a Person  
32 M.R.S.A. §§ 1658-A(1) & 1660-E (1999)

15. The preceding paragraphs 1 through 14 are incorporated herein by reference.

16. Defendant Morrell engaged in the practice of advertising, dealing in and sale of hearing aids at a time when he did not hold a valid license to do so issued by the Board of Hearing Aid Dealers and Fitters, all in violation of 32 M.R.S.A. § 1658-A(1) (1999).

##### COUNT II:

Unlicensed Sale and Offering for Sale of Hearing Aids by a Business Organization  
32 M.R.S.A. §§ 1658-A(1) & 1660-E (1999)

17. The preceding paragraphs 1 through 16 are incorporated herein by reference.

18. Defendant Earcraft, a business entity, engaged in the business of offering for sale and selling hearing aids at a time when it did not hold a valid license to do so issued by the Board of Hearing Aid Dealers and Fitters, all in violation of 32 M.R.S.A. § 1658-A(2) (1999).

COUNT III:

Unlicensed Sale and Offering for Sale of Hearing Aids by a Business Organization  
32 M.R.S.A. §§ 1658-A(3) & 1660-E (1999)

19. The preceding paragraphs 1 through 18 are incorporated herein by reference.

20. Defendant Morrell and Defendant Earcraft, while engaged in the business of selling hearing aids in the State of Maine, knowingly employed a person who had neither a license nor a trainee permit in the direct sale of hearing aids or hearing aid equipment, and knowingly permitted its employee to violate the provisions of 32 M.R.S.A. § 1658-A by engaging in the unlicensed advertising, dealing in and sale of hearing aids, all in violation of 32 M.R.S.A. §§ 1658-A(3).

VII. RELIEF REQUESTED

The Plaintiff State of Maine requests the following relief:

1. Declare the conduct of Defendant Morrell and Defendant Earcraft, L.L.C., to be unlawful and in violation of the provisions of Chapter 23-A, Title 32 of the Maine Revised Statutes.
2. Issue preliminary and permanent injunctions prohibiting Defendant Morrell and Defendant Earcraft (together with their agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction) from advertising, selling, offering for sale, fitting and dealing in hearing aids, or professing to do so, without a valid license issued by the Board of Hearing Aid Dealers and Fitters.
3. Grant such other relief as the Court may deem proper.

Respectfully submitted,

ANDREW KETTERER  
ATTORNEY GENERAL

Dated: March 27, 2000



Carlos Diaz  
Assistant Attorney General  
Maine Bar Registration No. 8015

Department of the Attorney General  
6 State House Station  
Augusta, Maine 04333  
(207) 626-8846

Attorneys for the State of Maine

# WHY MEN DON'T LISTEN

A staggering number are just plain hard of hearing. The EarCraft 185 offers an affordable solution for men and women with mild to moderate hearing loss. Our unique, replaceable micro-tip lets sound through and keeps moisture and wax out, helping you avoid costly cleaning and repair.

The EarCraft 185 is self-fitting - with two micro-tip sizes - so it's ready to wear. Best of all the EarCraft 185 is only \$299, because it's sold to you directly from the manufacturer. If you're not thrilled with your new "gift of hearing," simply return it within the 30-day trial period for a full refund.

For more information call 207-798-4848. To order your EarCraft 185 today, fill out the form below and start tuning in to life.

*The patented and FDA registered EARCRAFT 185 comes with a one year replacement warranty for manufacturers defects.*

## EarCraft The Gift Of Hearing

Earcraft, P.O. Box 633, Brunswick, ME 04011

RETAIL ORDER FORM

FAX 207-725-7135

Ordered by:  Mr.  Mrs.  Ms. \_\_\_\_\_

Address: (#, Street, Apt #) \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Daytime Phone Number: \_\_\_\_\_

Sold by: \_\_\_\_\_ Date: \_\_\_/\_\_\_/\_\_\_

Description	Qty Ordered	Unit Price	Total
EarCraft 185 (includes battery and two tips)	_____	_____	_____
Sales Tax/ME Residence only - 5.5%			_____
Shipping & Handling (non refundable)			\$9.95
<b>TOTAL</b>			_____

Payment Options: (please check one)  Credit Card  Check  Money Order  
I wish to purchase the above listed products. All orders must include shipping/handling charges and sales tax if applicable. I authorize EarCraft, L.L.C. to charge my credit card:

MasterCard  Visa  American Express  Discover

Card #

\_\_\_\_\_

Exp. Date

\_\_\_\_\_

**IMPORTANT: All purchasers MUST sign the Waiver to Medical Attention below:**

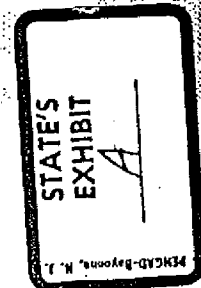
**WAIVER TO MEDICAL EVALUATION**

I have been advised by EarCraft, L.L.C. that the Food and Drug Administration and the State of Maine have determined that my best interest would be served if I had a medical examination by a licensed physician, preferably a physician who specializes in diseases of the ear before purchasing a hearing aid, or a test to determine hearing aid fit, prior to using established procedure and instructions in fitting of hearing aids. I am 17 years old or older and voluntarily sign, I also agree to pay for the hearing aid and/or service or to turn it within the allowed 60 days.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

*price subject to change without prior notice*



RECEIVED

STATE OF MAINE  
LINCOLN, ss.

JAN 12 2000

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. CV-00-008

~~ME DAG-Forrester~~

STATE OF MAINE,

Plaintiff,

v.

JAMES P. MORRELL,  
EARCRAFT LIMITED LIABILITY CO.,

Defendants.

STIPULATION OF DISMISSAL  
[M.R.Civ.P. Rule 41(a)(1)(ii)]

NOW COMES the Plaintiff, the State of Maine and the Defendants, James P. Morrell and Earcraft L.L.C., by and through undersigned counsel, and hereby stipulate to the dismissal of the Plaintiff's claims against Defendant James P. Morrell, pursuant to M.R.Civ.P. Rule 41(a)(1)(ii), said dismissal being with prejudice and without costs.

Respectfully submitted,

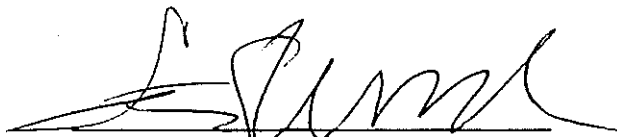
Dated: January 4, 2001



Carlos Diaz, Esq.  
Department of Attorney General  
Maine Bar Registration No. 8015

Attorney for the Plaintiff

Dated: January 9, 2001



Stephen G. Morrell, Esq.  
Eaton, Peabody, Bradford & Veague, PA  
Maine Bar Registration No. 792

Attorney for the Defendants

STATE OF MAINE  
LINCOLN, ss.

CIVIL ACTION  
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CONSENT DECREE AND ORDER

The Plaintiff, the State of Maine, having filed its Complaint on or about March 27, 2000, and the Plaintiff and the Defendant, Earcraft Limited Liability Company, having consented to the entry of this Consent Decree without trial or adjudication of any issue of fact or law herein, and without this Decree constituting any admission by Earcraft Limited Liability Company with respect to such issues, it is hereby ORDERED and DECREED as follows:

I. JURISDICTION

This Court has personal jurisdiction over the Plaintiff and the Defendant and subject matter jurisdiction to enter this order. The Complaint states a claim for relief under 32 M.R.S.A. §§ 1658-A and 1660-E (1999).

II. INJUNCTION

The Defendant, Earcraft Limited Liability Company (together with the Defendant's agents, servants, employees, attorneys and those persons in active concert or participation with the Defendant who receive actual notice of this injunction), is enjoined from engaging in the practice of selling, fitting or dealing in hearing aids in the State of Maine, or displaying a sign or advertising or professing to be engaged in the practice of selling, fitting, or dealing in hearing aids in the State of Maine, without holding a valid license to do so issued by the Maine Board of



Hearing Aid Dealers and Fitters. Notwithstanding the generality of the foregoing, this order shall not prohibit those practices permitted under 32 M.R.S.A. § 1658-E, and shall not prohibit the Defendant's sales to customers residing outside the State of Maine or the Defendant's advertising by means of the Internet to potential customers residing outside the State of Maine.

III. RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling the parties to this Consent Decree to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of the Consent Decree and for the enforcement of compliance herewith, including through actions for civil or criminal contempt.

Dated: 12/11/2000



Carlos Diaz, Esq.  
Department of the Attorney General  
Maine Bar Registration No. 8015  
Attorney for the State of Maine

Dated: 12/14/2000

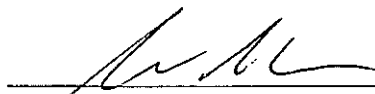


Stephen G. Morrell, Esq.  
Eaton, Peabody, Bradford & Veague, P.A.  
Maine Bar Registration No. 792  
Attorney for Earcraft Limited Liability Co.

ORDER

It is hereby ORDERED and DECREED as set forth above.

Dated: 12/20/00



Justice /s/ Michael N. Westcott  
Maine Superior Court