

of identification affixed to any wool product subject to the provisions of the Wool Products Labeling Act of 1939 with the intent to violate the provisions of the said Act.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
LOUIS MARX & CO., INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-191. Complaint, July 23, 1962—Decision, July 23, 1962

Consent order requiring a New York City toy distributor to cease misrepresenting the toys it sold by such practices as making statements and pictorial presentations on television commercials which represented falsely that its "Giant Blue & Grey Battle Set" included numerous trees and other scenery, components that produced smoke, and toy cannons that fired projectiles which exploded.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Louis Marx & Co., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Louis Marx & Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 200 Fifth Avenue, in the city of New York, State of New York.

PAR. 2. Respondent Louis Marx & Co., Inc., is now, and for some time last past has been engaged in the advertising, offering for sale, sale and distribution of toys and related products, including a toy designated "Giant Blue & Grey Battle Set", to distributors and retailers for resale to the public.

PAR. 3. In the course and conduct of its business, respondent now causes, and for some time last past has caused, its said toys and related

products, including its said "Giant Blue & Grey Battle Set", when sold, to be shipped from its place of business in the State of New York to purchasers thereof located in various other states of the United States and in the District of Columbia, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the conduct of its business, at all times mentioned herein, respondent has been in substantial competition, in commerce, with other corporations, firms and individuals in the sale of toys and related products.

PAR. 5. In the course and conduct of its business and for the purpose of inducing the purchase in commerce of the said "Giant Blue & Grey Battle Set" respondent made certain statements, representations and pictorial presentations with respect thereto by means of commercials transmitted by television stations located in various states of the United States and in the District of Columbia having sufficient power to carry such broadcasts across state lines.

PAR. 6. Through the use of the aforesaid advertisements, and others containing statements and representations of the same import not specifically set forth herein, respondent has represented, directly and by implication, that the said "Giant Blue & Grey Battle Set" includes numerous miniature trees and other pieces of scenery, components that smoke or produce smoke, and toy cannon that fire projectiles which explode.

PAR. 7. Enlargements of individual frames extracted from said television commercials, illustrating typical representations with respect to the component parts of the said "Giant Blue & Grey Battle Set" and of the manner in which the said toy purports to perform as alleged in paragraph 6 above, are attached hereto, marked exhibits "A", "B", "C" and "D" and incorporated herein by reference.

PAR. 8. The said statements, representations and depictions are false, misleading and deceptive. In truth and in fact, only three miniature trees are included with the said toy and numerous other pieces of scenery illustrated are not supplied with it, there are no components in the toy that smoke or produce smoke, and the said toy cannon do not fire projectiles that explode.

PAR. 9. Respondent's toys, including the "Giant Blue & Grey Battle Set," are designed primarily for children, and are bought either by or for the benefit of children. Respondent's false, misleading and deceptive advertising claims thus unfairly exploit a consumer group unqualified by age or experience to anticipate or appreciate the

possibility that the representations may be exaggerated or untrue. Further, respondent unfairly plays upon the affection of adults, especially parents and other close relatives, for children, by inducing the purchase of toys and related products through false, misleading and deceptive claims of their performance, which claims appeal both to adults and to children who bring the toys to the attention of adults. As a consequence of respondents' exaggerated and untrue representations, toys are purchased in the expectation that they will have characteristics or perform acts not substantiated by the facts. Consumers are thus misled to their disappointment and competing advertisers who do not engage in false, misleading or deceptive advertising are unfairly prejudiced.

PAR. 10. The use by respondent of the aforesaid false, misleading and deceptive representations has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that the said representations were, and are, true and into the purchase of substantial quantities of the products of respondent by reason of said erroneous and mistaken belief.

PAR. 11. The aforesaid acts and practices of respondent, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

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The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent, Louis Marx & Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 200 Fifth Avenue, in the city of New York, State of New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Louis Marx & Co., Inc., a corporation, and its officers, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of toys or related products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, by use of any illustration, depiction or demonstration, alone or accompanied by oral or written statements, purporting to illustrate, depict or demonstrate any toy or related product, or the performance thereof, or representing in any other manner, directly or by implication, that any toy or related product contains a component or performs in any manner not in accordance with fact.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

WESTERN FLAVOR SEAL COMPANY ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT