

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
LUCKY PRODUCTS, INC., ET AL.

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

Docket C-608. Complaint, Oct. 16, 1963—Decision, Oct. 16, 1963

Consent order requiring distributors of toys and related products in Westbury, Long Island, N.Y., to cease misrepresenting their products in advertising in newspapers and magazines and other media by such practices as representing falsely that toy soldiers were 4 inches in length, that they and toy "Knights" were of more than one color and three-dimensional; that cannons and rifles emitted smoke and blasts of fire, etc.; that an 8 inch "Aircraft Carrier" was a foot long; and that "Famous Automobiles" were three-dimensional models of their full-size counterparts.

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 Lucky Products, Inc., a corporation, and Joseph Shore, Nat Lewis and Beverly F. Shore, individually and as officers of said corporation, hereinafter

Complaint

63 F.T.C.

referred to as respondents, have 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 Lucky Products, 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 3 Ovington Circle, in the city of Westbury, Long Island, State of New York.

Respondents Joseph Shore, Nat Lewis and Beverly F. Shore are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. The address of respondents Joseph Shore and Beverly F. Shore is the same as that of the corporate respondent; the address of respondent Nat Lewis is 155 Friends Lane, in the city of Westbury, Long Island, State of New York.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of toys and related products, including toys designated "204 Revolutionary War Soldiers", "104 Kings Knights", "Aircraft Carrier" and "147 Famous Automobiles", to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said toys and related products, when sold, to be shipped from their 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 maintain, and at all times mentioned herein have 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 their business, at all times mentioned herein, respondents have 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 their business and for the purpose of inducing the purchase in commerce of the said toys and related products, respondents have made certain statements, representations and pictorial presentations with respect thereto in advertisements inserted in newspapers and periodicals of general circulation and other advertising media.

1039

Complaint

PAR. 6. Among and typical of the statements and representations made and appearing in said advertisements disseminated as hereinabove set forth, are the following:

1. *204 Revolutionary War Soldiers*

2 COMPLETE ARMIES * * * every piece of pure molded plastic—each on its own base up to 4 inches long! Two complete armies—the British redcoats and the American bluecoats! Relive again the famous battles of the American Revolution! Form your own battle lines! Hours of fun for the whole family! (The above statement appears in a multicolored advertisement depicting British troops charging American troops. The British troops are dressed in red jackets with yellow vests, white crossed-straps, yellow hats and white leggings; the Union Jack is red and blue; the horses are white and golden. The American troops are dressed in blue jackets with brown and yellow trim, white crossed-straps, yellow epaulets on officers' uniforms, blue hats and white leggings; the Flag is red, white and blue. The rifles and cannons of both armies are shown emitting smoke and blasts of fire; the cannons are pictured as single units, "brassy" and "leaden" in appearance. The troops, cannons, etc., appear to be three-dimensional.)

2. *104 Kings Knights*

A GLORIOUS SET OF PLASTIC TOYS EVERY CHILD WILL BE PLEASED TO OWN! Comes in two separate armies * * * the BLACK KNIGHTS and the WHITE KNIGHTS! Form your own battle lines! Every fight a delight! Fun for everyone in the family! Comes in Treasure Chest box in which to store your toys away! You must be satisfied or your money refunded in full!

(The above statement appears in a multicolored advertisement depicting knights on horseback engaged in combat. The Knights are pictured as being multicolored and three-dimensional. The "Treasure Chest box" is pictured as being plain, unmarked and made of wood with metal reinforcements.)

3. *Aircraft Carrier*

Almost a foot long, this carrier catapults, floats in water, runs on dry land. Comes equipped with 5 catapulting jets that zoom off the runway with the flick of a finger! We also send you at no extra cost, a small supporting fleet of real plastic molded warships, as shown at the right * * *.

4. *147 Famous Automobiles*

COMES PACKED IN THIS SPECIAL GARAGE BOX IN WHICH TO STORE YOUR MODELS!

KIDS! Here's the greatest assortment of famous cars from Grandpa's days to today! Yes, a model car for each year from 1915 thru 1963! And there's 3 each of each model so that you can trade them and save them! EACH MODEL HAS THE NAME OF THE AUTOMOBILE AND YEAR ON IT—each on its own base, 49 different models, 147 pieces to the set. Made of pure plastic styrene. Fun for you and the whole family. Comes in a garage box for storage when not in use! Send \$2.49 money order or check with coupon.

Please send immediately full set of 147 auto models. I enclose \$2.49. If not satisfied I may return for full refund.

Complaint

63 F.T.C.

(The above statements appear in an advertisement which also includes pictures of nineteen automobiles shown in various positions so that they appear to be three-dimensional and equipped with tires, wheels, chrome, headlights, radiator trim, license plate frames and sundry other features.)

PAR. 7. Through the use of the aforesaid advertisements, and others containing statements, representations and pictorial presentations of the same import not specifically set forth herein, respondents have represented, directly and by implication:

1. That the toy soldiers, cannons, and other pieces in the "204 Revolutionary War Soldiers" are 4 inches in length; that the soldiers are of more than one color and are three-dimensional; that the cannons and rifles emit smoke and blasts of fire, and that the cannons are "brassy" and "leaden" in appearance and are individual units.

2. That the "104 Kings Knights" are multicolored and three-dimensional; that the box in which the toys come is unmarked and made of wood with metal reinforcements and is large enough to hold the set of knights and other toys.

3. That the "Aircraft Carrier" is approximately one foot long.

4. That the "147 Famous Automobiles" are three-dimensional models, *i.e.*, miniature replicas, of their full-size counterparts.

PAR. 8. In truth and in fact:

1. The toy soldiers, cannons, and other pieces in the "204 Revolutionary War Soldiers" are less than 4 inches in length, are not multicolored but of one solid color, either blue or red, and are not three-dimensional; the cannons and rifles do not emit smoke or blasts of fire and are not of a "brassy" or "leaden" appearance but are either blue or red, and the cannons are not individual pieces but are two cannons molded into one piece.

2. The pieces in the "104 Kings Knights" are not multicolored but only black or white and are not three-dimensional; the so-called "Treasure Chest" box in which the toys are packed is not made of wood with metal reinforcements but is a paperboard box with printing and labeling thereon and is large enough to hold only those toys comprising this set.

3. The "Aircraft Carrier" is not a foot long, nor approximately a foot long; it is, in fact, only 8 inches long.

4. The "147 Famous Automobiles" are not three-dimensional nor are they models of their full-size counterparts.

Therefore, the statements, representations and pictorial presentations referred to in Paragraphs 5 and 6 are false, misleading and deceptive.

PAR. 9. Respondents' toys and related products are designed primarily for children, and are bought either by or for the benefit of

1039

Decision and Order

children. Respondents' 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, respondents unfairly play 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 appearance, 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 in a manner 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 respondents 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 respondents, by reason of said erroneous and mistaken belief.

PAR. 11. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public of respondents' 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 respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents 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 respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents 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 respondents that the law has been violated as set forth

in such complaint, and waivers and provisions as required by the Commission's rules; and

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 Lucky Products, 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 3 Ovington Circle, in the city of Westbury, Long Island, State of New York.

Respondents Joseph Shore, Nat Lewis and Beverly F. Shore are officers of the corporate respondent. The address of respondents Joseph Shore and Beverly F. Shore is the same as that of the corporate respondent; the address of respondent Nat Lewis is 155 Friends Lane, in the city of Westbury, Long Island, State of New York.

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

ORDER

It is ordered, That respondents Lucky Products, Inc., a corporation, and its officers, and Joseph Shore, Nat Lewis and Beverly F. Shore, individually and as officers of said corporation, and respondents' 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. Misrepresenting, by use of any illustration or depiction, alone or accompanied by written statements, purporting to illustrate or depict any toy or related product, or misrepresenting in any other manner, directly or by implication, the color, size, shape, dimensions, composition, performance or any other physical characteristic of any toy or related product.

2. Using the word "model", either alone or in connection with another word or words, to designate, describe or refer to any toy or related product which is not in fact a miniature replica of that which it purports to represent.

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.

COLORFORMS ET AL.

Complaint

IN THE MATTER OF
COLORFORMS ET AL.

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

Docket C-609. Complaint, Oct. 16, 1963—Decision, Oct. 16, 1963.

Consent order requiring toy distributors in Norwood, N.J., to refrain from falsely in television commercials that both \$1.98 and \$0.98 "Miss Ballerina Dress-Up Kits" contained three Ballerina Dolls and three Ballerina Doll clothes, when the cheaper kit contained fewer clothes than the higher priced one.

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 Colorforms Corporation, and Harry Kislevitz and Patricia Kislevitz, as officers of said corporation, hereinafter respondents, have violated the provisions of said Act, and upon filing with the Commission that a proceeding by it in the matter would be in the public interest, hereby issues its complaint and charges in that respect as follows:

PARAGRAPH 1. Respondent Colorforms is a corporation existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located on Walnut Street in the city of Norwood, New Jersey.

Respondents Harry Kislevitz and Patricia Kislevitz are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including its advertising and practices hereinafter set forth. Their address is 1000 River Edge Road, in the city of River Edge, State of New Jersey.

PAR. 2. Respondents are now, and for some time have been, engaged in the advertising, offering for sale, distribution of toys and related products, including a "Miss Ballerina Dress-up Kit", to distributors and resale to the public.

PAR. 3. In the course and conduct of their business, respondents have now cause, and for some time last past have caused, the said "Miss Ballerina Dress-up Kit" to be shipped from their place of business in the State of New Jersey to purchasers thereof located in the United States and in the District of Columbia, and at all times mentioned herein have maintained and

Complaint

stantial course of trade in said product in commerce, as is defined in the Federal Trade Commission Act.

PAR. 4. In the conduct of their business, at all times herein, respondents have been in substantial competition with other corporations, firms and individuals in toys and related products.

PAR. 5. In the course and conduct of their business purpose of inducing the purchase in commerce of the "Ballerina Dress-up Kit", respondents have made certain representations and pictorial presentations with respect to means of commercials transmitted by television stations in various States of the United States and in the District of Columbia.

PAR. 6. Among and typical of the statements and representations made and appearing in said commercials as hereinabove set forth are the following:

You can have hours of fun. For here are three dainty little dolls with lots of ballerina clothes. * * *

For a dollar ninety-eight * * * or ninety-eight cents in a small package.

PAR. 7. Through the use of the aforesaid advertisements and others containing statements and representations of the type not specifically set forth herein, respondents have represented directly and by implication:

That both the \$1.98 and \$0.98 "Miss Ballerina Dress-up Kit" contain three Ballerina Dolls and that both such kits contain the same amount of Ballerina Doll clothes.

PAR. 8. In truth and in fact:

The "Miss Ballerina Dress-up Kit" that retails for \$1.98 contains but one doll and a smaller assortment of clothes than that which is in the kit retailing for \$0.98.

Therefore, the statements, representations and depictions set forth in Paragraphs 5 and 6 are false, misleading and deceptive.

PAR. 9. Respondents' toys and related products, including the "Miss Ballerina Dress-up Kit", are designed primarily to appeal to children and are bought either by or for the benefit of children. Respondents' false, misleading and deceptive advertising claims exploit a consumer group unqualified by age or experience to appreciate the possibility that the representations are exaggerated or untrue. Further, respondents unfairly exploit the affection of adults, especially parents and other relatives of children, by inducing the purchase of toys and related products through false, misleading and deceptive claims of the type set forth in Paragraphs 5 and 6, which claims appeal both to adults and to children who bring the toys to the attention of adults. As a result,

respondents' exaggerated and untrue representations, toys are purchased in the expectation that they will have characteristics or perform in a manner 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 respondents 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 respondents, by reason of said erroneous and mistaken beliefs.

PAR. 11. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' 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 respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents 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 respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents 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 respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

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 Colorforms is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located on Walnut Street, in the city of Norwood, State of New Jersey.

Order

63 F.T.C.

Respondents Harry Kislevitz and Patricia Kislevitz are officers of said corporation and their address is 183 Valley Road, in the city of River Edge, State of New Jersey.

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

ORDER

It is ordered, That respondents Colorforms, a corporation, and its officers, and Harry Kislevitz and Patricia Kislevitz, individually and as officers of said corporation, and respondents' 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:

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 characteristics thereof, or representing in any other manner, directly or by implication, that any toy or related product contains or includes any pieces, parts or components not in accordance with fact.

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.
