

It is ordered, That the complaint issued herein be, and it hereby is, dismissed.

IN THE MATTER OF
AMERICAN DOLL & TOY CORP. ET AL.

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

Docket 8608. Complaint, Nov. 26, 1963—Decision, Sept. 11, 1964

Order dismissing complaint charging New York City toy distributors with misrepresenting the capabilities, operational effectiveness and number of units in a set of their "Dick Tracy 2-Way Wrist Radio" on television commercials.

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 American Doll & Toy Corp., a corporation, and Jacob Brock, Herbert Brock, Eva Brock and Max Brock, individually and as officers of said corporation, hereinafter 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 American Doll & Toy Corp. 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 5112 Second Avenue in the city of Brooklyn, State of New York.

Respondents Jacob Brock, Herbert Brock, Eva Brock and Max Brock 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 Jacob Brock and Eva Brock is 12 Beverly Road in the city of Great Neck, Long Island, State of New York; the address of respondent Herbert Brock is 30 Shorecliff Terrace in the city of Great Neck, Long Island, State of New York; and the address of respondent Max Brock is 565 West End Avenue in the city of New York, 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 a toy designated "Dick Tracy 2-Way Wrist Radio," to distributors and to retailers for resale 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 product, 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 product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with 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 "Dick Tracy 2-Way Wrist Radio," respondents have 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, and by means of advertisements appearing in newspapers and periodicals of general circulation and by means of other printed matter.

PAR. 6. Enlargements of individual frames extracted from said television commercials, illustrating typical representations with re-

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spect to the manner in which the said "Dick Tracy 2-Way Wrist Radio" is purported to perform, as alleged in Paragraph Seven below, are attached hereto, marked Exhibits "A" through "C", inclusive and incorporated herein by reference.*

PAR. 7. Among and typical of the statements and representations made and appearing in said advertisements as hereinabove set forth are the following:

There's excitement and adventure when you have the "Dick Tracy 2-Way Wrist Radio". Listen to ham radio stations, emergency distress calls * * *.

(The above is part of the audio portion of a sound-on-film television commercial. The video portion thereof shows three boys talking to one another with "Dick Tracy 2-Way Wrist Radios").

* * * listen to emergency distress calls, ham radio stations, ship-to-shore communications!

9 volt battery gives 30 hours transmission.

PAR. 8. Through the use of the aforesaid advertisements, and others containing statements and representations of the same import not specifically set forth herein, respondents have represented, directly and by implication:

1. That the "Dick Tracy 2-Way Wrist Radio" can receive amateur ("ham") radio signals, emergency distress calls and ship-to-shore communications.

2. That the "Dick Tracy 2-Way Wrist Radio," as packaged and sold to the purchasing public, is complete and ready for operation without additional components or accessories.

PAR. 9. In truth and in fact:

1. The "Dick Tracy 2-Way Wrist Radio" is designed and constructed to receive only "citizens band" broadcasts whereas amateur ("ham") radio transmissions, emergency distress calls and ship-to-shore communications are not normally transmitted over wave lengths within the "citizens band" and therefore will not be received by such a unit.

2. The "Dick Tracy 2-Way Wrist Radio" will not operate without a nine volt transistor-type energizer-battery which is not contained or included in the unit as packaged and sold to the purchasing public.

Therefore, the statements, representations and depictions referred to in Paragraphs Five and Seven are false, misleading and deceptive.

PAR. 10. In the further course and conduct of their business, respondents' advertising, including their television commercials, depicts the use of the "Dick Tracy 2-Way Wrist Radio" in pairs, thereby representing that the "Dick Tracy 2-Way Wrist Radio" is offered for sale and sold to the public as two radio units; whereas, in truth and in fact,

*Pictorial exhibits are omitted in printing.

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the "Dick Tracy 2-Way Wrist Radio" is offered for sale and sold only as one such radio unit.

PAR. 11. Respondents' toys and related products are designed primarily for children, and are bought either by or for the benefit of 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 performance and 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. 12. 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 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. 13. 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.

ORDER GRANTING MOTION TO DISMISS COMPLAINT

On August 28, 1964, the hearing examiner certified to the Commission a motion by complaint counsel to dismiss the complaint. Upon consideration of the examiner's certification and the motion by complaint counsel,

It is ordered, That the complaint issued herein be, and it hereby is, dismissed.

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IN THE MATTER OF

EMENEE INDUSTRIES, INC.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT*Docket 8609. Complaint, Nov. 27, 1963—Decision, Sept. 11, 1964*Order dismissing complaint charging Flushing, N.Y., toy distributors with mis-
representing their "Electronic Rifle Range" toy on television commercials.

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 Emenee Industries, 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, Emenee Industries, 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 41-06 DeLong Avenue, in the city of Flushing, State of New York.

PAR. 2. Respondent, Emenee Industries, 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 "Electronic Rifle Range", to distributors and to 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 "Electronic Rifle Range", 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

*Reported as amended by order of the Commission dated April 22, 1964, to eliminate allegations that respondent engaged in deceptive practices (1) by failing to disclose that certain of its toys are operated by dry cell batteries which are not included with the toys when purchased and (2) by fictitious pricing.