

Complaint

66 F.T.C.

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.

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 "Electronic Rifle Range", respondent has made certain statements, representations and pictorial presentations with respect thereto in advertisements disseminated by means of commercials transmitted by television stations located 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 advertisements concerning the said toy Electronic Rifle Range is the following:

*** just sight through the adjustable hairline sharp telescope-like sight ***.

(The above statement is part of the audio portion of a sound-on-film television commercial, the video portion of which shows a cross-hair sight on the toy rifle.)

PAR. 7. 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 toy rifle has an adjustable telescope-like sight with cross-hairs.

PAR. 8. In truth and in fact, the toy rifle has a hollow, cylindrical viewling piece without lens, glass or cross-hair sight; the so-called "telescope-like" sight consists of a piece of plastic with a hole that moves within a slot close to the eye.

PAR. 9. Respondent's toys and related products, including the "Electronic Rifle Range", 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 its toys and related products through false, misleading and deceptive claims of their appearance or performance, which claims appeal both to adults and to children who bring the toys to the attention of adults. As a consequence of respondent's 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 respondent of the aforesaid false, misleading and

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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.

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.

IN THE MATTER OF

EMESS SALES COMPANY, INC. ET AL