

mission a second report in writing setting forth in detail the manner and form in which it has complied with the provisions of this order applicable to print advertising and to packages and labels and to advertising on packages and labels.

IN THE MATTER OF

DANCER-FITZGERALD-SAMPLE, INC.

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

Docket C-2074. Complaint, Nov. 1, 1971—Decision, Nov. 1, 1971

Consent order requiring a New York City advertising agency representing an Elizabeth, N.J., toy manufacturer to cease using in any broadcast advertisement involving its customers' toy products or in print or package advertising, addressed to children, any distortion of the toys performances, using fanciful or misleading brand names, or making other deceptive exaggerations concerning the performance of the toys.

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 Topper Corporation, a corporation, and Dancer-Fitzgerald-Sample, Inc., a 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 Topper Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 107 Trumbull Street, Elizabeth, New Jersey.

Respondent Dancer-Fitzgerald-Sample, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 347 Madison Avenue, New York, New York.

The aforementioned respondents cooperate and act together in carrying out the acts and practices herein set forth.

PAR. 2. Respondent Topper Corporation is now and has been en-

gaged in the manufacture, packaging, advertising, offering for sale, sale and distribution of toys and related products, including toys designated Johnny Lightning, to the public and to distributors and retailers for resale to the public.

Respondent Dancer-Fitzgerald-Sample, Inc. is now and has been an advertising agency retained by respondent Topper Corporation; it has prepared and now prepares and places advertising, including but not limited to the advertising referred to herein, for the purpose of promoting the sale of respondent Topper Corporation's products.

PAR. 3. In the course and conduct of its business, respondent Topper Corporation has caused and continues to cause its toys and related products to be packaged, sold, shipped and distributed from its place of business in the State of New Jersey or from the state of manufacture to purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their aforesaid businesses, and at all times mentioned herein, respondents are now and have been in substantial competition in commerce with corporations, firms and individuals in the sale and distribution of their respective products or services.

PAR. 5. In the course and conduct of their businesses, and for the purpose of inducing the purchase of the said Johnny Lightning toy, respondents have prepared, utilized and caused to be broadcast, advertisements of said Johnny Lightning toy 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. By and through the use of the aforesaid advertisements, respondents have represented, directly and by implication that:

1. All Johnny Lightning cars have doors and hoods that open and close.

2. A Johnny Lightning set as packaged and sold contains all parts or accessories shown or depicted in such advertisements.

PAR. 7. In truth and in fact:

1. All Johnny Lightning cars do not have doors and hoods that open and close.

2. A Johnny Lightning set as packaged and sold does not contain all parts or accessories shown or depicted in such advertisements. Certain of such parts or accessories are obtainable only by way of separate purchase.

Therefore, the advertisements referred to in Paragraphs Five and Six, were and are deceptive.

PAR. 8. The aforesaid advertisements purport to accurately and truthfully depict or describe the appearance or performance of the Johnny Lightning toy. However, by and through the use of a manner of presentation including, but not limited to, special camera, filming, or sound techniques, said advertisements exaggerate or falsely represent said appearance or performance.

Therefore, said advertisements were and are unfair or deceptive.

PAR. 9. By and through the use of a manner of presentation including but not limited to special camera, filming or sound techniques, the aforesaid advertisements convey a sense of involvement or participation in the use of the Johnny Lightning toy which falsely represents the actual use of the toy.

Therefore, said advertisements were and are unfair or deceptive.

PAR. 10. Respondents' aforesaid advertising was and is addressed primarily to children. In that advertising, respondents have utilized statements of endorsement as to the worth, value or desirability of the Johnny Lightning toy by persons well known to the public as racing car drivers. Said statements were offered on the basis of and in connection with the experience and renown of said persons as racing car drivers. The nature of that experience and renown, however, extends to actual auto racing. It has not provided said persons with a special competence or expertise on which to base a judgment of the worth, value or desirability to children of the Johnny Lightning toy, or with special competence or expertise in the formation of judgments on which children should be induced to rely.

Therefore, the use of such advertisements was and is unfair or deceptive.

PAR. 11. Respondent Topper Corporation has caused to be printed on the Johnny Lightning package the statement "Cars go 1500 Miles per hour (in scale)." The use of scale measurements in describing velocity misrepresents the performance of the toy.

Therefore, said statements were and are unfair or deceptive.

PAR. 12. Respondent Topper Corporation sells and distributes several varieties of toy racing car and track sets under the brand name Johnny Lightning. Said sets are not identical in their dimensions and methods of operation, and in certain cases contain parts which are incompatible in their function and use with parts of other of said sets. Respondents in their aforesaid advertising fail to disclose such incompatibility. The aforesaid advertisements have the tendency and capacity to mislead prospective purchasers or consumers who may reasonably expect parts of said Johnny Lightning sets to be compatible.

Therefore, said practices were and are unfair or deceptive.

PAR. 13. Respondent Topper Corporation's toys, including the Johnny Lightning toy, are designed primarily for children, and are bought either by or for the benefit of children. Respondents' deceptive or unfair advertising thus unfairly exploits 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 deceptive or unfair claims of their performance, which claims appeal both to adults and to children who bring the toys to the attention of the 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 deceptive or unfair advertising are unfairly prejudiced.

PAR. 14. The use by respondents of the aforesaid deceptive advertising 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 Topper Corporation by reason of said erroneous and mistaken belief.

PAR. 15. 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 Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption herein, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission have thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admis-

sion by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission thereby issues its complaint, makes the following jurisdictional findings, and enters the following order.

1. Respondent Dancer-Fitzgerald-Sample, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 347 Madison Avenue, New York, 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 Dancer-Fitzgerald-Sample, Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising of any toy in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Portraying or describing in a broadcast advertisement addressed to children the performance, operation or use of such products by or through the use of:

(a) Any film or camera techniques which result in any visual perspective or such product which purports to be but is not one which a child can experience in the ordinary use of such product, when the effect of such visual perspective in the context of the advertisement as a whole is to misrepresent the product's performance, operation or use to the age group or age groups of children to whom the advertisement is addressed, taking into consideration the level of knowledge, sophistication, maturity, and experience of such age group or age groups;

(b) Any sequence of different visual perspectives which purports to depict perspectives which a child can experience but which changes faster than a child can change his visual perspectives in the ordinary use of such product, when the

effect of such sequence in the context of the advertisement as a whole is to misrepresent the product's performance, operation or use to the age group or age groups of children to whom the advertisement is addressed, taking into consideration the level of knowledge, sophistication, maturity, and experience of such age group or age groups;

(c) Any visual perspective which purports to depict the actual performance of a particular function of the product and which differs substantially from the length of time required to perform that function, when the effect of such visual perspective in the context of the advertisement as a whole is to misrepresent the product's performance, operation or use to the age group or age groups of children to whom the advertisement is addressed, taking into consideration the level of knowledge, sophistication, maturity, and experience of such age group or age groups;

(d) Camera over-cranking or under-cranking to depict a performance characteristic of such product which does not exist or cannot be perceived under ordinary conditions of the product's use, unless the fact of the use of such technique is established, if the effect of the failure to establish the use of such technique in the context of the advertisement as a whole is to misrepresent the product's performance, operation or use to the age group or age groups of children to whom the advertisement is addressed, taking into consideration the level of knowledge, sophistication, maturity, and experience of such age group or age groups.

2. Portraying or describing the appearance of such a product through the use of a star filter lens to photograph the product, when the effect of the use of such device in the context of the advertisement as a whole is to misrepresent the product's appearance.

3. Representing that the hood or doors of any Johnny Lightning car open or close unless such is the fact.

4. Using in broadcast advertising of such products, addressed to children, any endorsements or other similar statements as to the worth, value or desirability to children of any such product, by any living person, persons, group or organization when such endorsements are offered on the basis of or in connection with any experience, special competence or expertise which the public may reasonably be expected to associate with such person, persons, group or organization unless the person, persons, group or organization making the statement has acquired a degree or type of

experience, special competence, or expertise which qualifies him or it to form the judgments expressed.

Provided, That this paragraph shall not prohibit the use of a product name or likeness which includes the name or likeness of any person, persons, group or organization, or things, or the advertisement of any such product in any manner not prohibited by this order.

5. Portraying or describing in any broadcast advertisement two or more of such products which are sold or distributed under the fanciful brand name Johnny Lightning or other similar fanciful brand name, used on more than one such product, if such products must be purchased separately, unless such advertisement establishes which of the products advertised therein must be purchased separately.

6. Commencing the production and causing the exhibition or distribution, within any twelve (12) month period following the date on which this order becomes final of two (2) or more broadcast advertisements in the same medium for toys advertised, distributed or sold under the fanciful brand name Johnny Lightning or other similar fanciful Topper Corporation brand name if the toys therein advertised in said twelve (12) month period would reasonably be expected by purchasers to be, but are not, compatible in use and function with one another under ordinary conditions of use, unless the later of such two (2) or more advertisements in said twelve (12) month period establishes that the toy or toys advertised under the same fanciful Topper Corporation brand name advertised therein are either (a) not intended for use with all of the other toys or categories of toys advertised under the same fanciful Topper Corporation brand name in the earlier advertisement or advertisements in said twelve (12) month period or (b) intended for use with less than all of the other toys or categories of toys advertised under the same fanciful Topper Corporation brand name in the earlier advertisement or advertisements in said twelve (12) month period.

It is further ordered, That the provisions of Paragraphs One (1), Four (4), Five (5), and Six (6) of this order shall not become final and effective against respondent Dancer-Fitzgerald-Sample, Inc., unless and until an order containing similarly restrictive provisions as to the respondent becomes final and effective against Carson-Roberts, Inc. [See p. 674 herein]

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It is further ordered, That the respondent corporation notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That the respondent corporation 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 the provisions of this order.

IN THE MATTER OF

READER'S DIGEST ASSOCIATION, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE