

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

Docket 8924. Complaint, Apr. 13, 1973—Decision, Apr. 24, 1974

Consent order requiring a Commack, N.Y., manufacturer of toy, gift and hobby products, among other things to cease packaging its products in oversized containers creating appearance or impression that contents contained therein are of a greater size or quantity than is the fact.

Appearances

For the Commission: *Herbert S. Forsmith.*

For the respondent: *Bruce Aldecker, of Shea, Gould, Climenko & Kramer, New York, N.Y.*

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

⁷ The administrative law judge is responsible for the conduct of adjudicative proceedings, and his rulings on procedural matters are subject to interlocutory review only in accordance with the requirements of Section 3.23 of the Commission's Rules of Practice and Procedure.

Commission, having reason to believe that Edu-Cards Corporation, 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 Edu-Cards 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 60 Austin Boulevard, Commack, N.Y.

PAR. 2. Respondent now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of toy, gift and hobby products to jobbers 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, said products, 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 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. Among the products which are offered for sale and sold by the respondent are a number of toy, gift and hobby products. Through the use of certain methods of packaging, respondent has represented, and has placed in the hands of others the means and instrumentalities through which they might represent, directly or indirectly, that certain of the above products, as depicted or otherwise described on the exteriors of packages, corresponded, in their lengths and widths, or their lengths, widths and thicknesses, with the boxes in which they were contained, and that others of such products were offered in quantities reasonably related to the size of the containers in which they were presented for sale.

PAR. 5. In truth and in fact, such products often have not corresponded with their container or package dimensions and are often not offered in quantities reasonably related to the size of the containers or packages in which they are presented for sale. Purchasers of such a product are thereby given the mistaken impression that they are receiving a larger product or a product of greater volume than is actually the fact.

Therefore, the methods of packaging referred to in Paragraph Four hereof were and are unfair and false, misleading and deceptive.

PAR. 6. In the conduct of its business, at all times mentioned herein, respondent has been in substantial competition, in commerce, with

corporations, firms and individuals in the sale of products of the same general kind and nature as the products sold by the respondent.

PAR. 7. The use by respondent of the aforesaid unfair, false, misleading and deceptive methods of packaging has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that the quantum or amount of the product being sold was and is greater than the true such quantum or amount, and into the purchase of substantial quantities of respondent's product by reason of said erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of the 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 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 issued its complaint on Apr. 13, 1973, charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act, and the respondent having been served with a copy of that complaint, together with a proposed form of order; and

The Commission having duly determined upon motion submitted by the respondent that, in the circumstances presented, the public interest would be served by a withdrawal of the matter from adjudication for the purpose of negotiating a settlement by the entry of a consent 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, 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 alleged in the complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having been placed 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 hereby makes the following jurisdictional findings, and enters the following order:

1. Respondent Edu-Cards Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 60 Austin Boulevard, Commack, N.Y.

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 Edu-Cards Corporation, a corporation, and its officers, agents, representatives, employees, successors and assigns, directly or through any corporation, subsidiary, division or other device, in connection with the offering for sale, sale or distribution of toy, gift and hobby merchandise and any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Packaging said products in oversized boxes or other containers so as to create the appearance or impression that the width or thickness or other dimensions or quantity of products contained in a box or container is appreciably greater than is the fact; but nothing in this order shall be construed as forbidding respondent to use oversized containers if respondent justifies the use of such containers as necessary for the efficient packaging of the products contained therein and establishes that respondent has made all reasonable efforts to prevent any misleading appearance or impression from being created by such containers;

2. Providing wholesalers, retailers or other distributors of said products with any means or instrumentality with which to deceive the purchasing public in the manner described in Paragraph (1) above.

It is further ordered, That respondent or its successors or assigns 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 respondent which may affect compliance obligations arising out of this order.

It is further ordered, That the respondent distribute a copy of this order to all divisions and subsidiaries of said corporation and all firms and individuals involved in the formulation or implementation of respondent's business policies, and all firms and individuals engaged in the advertising, marketing, or sale of respondent's products.

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

Docket C-2513. Complaint, Apr. 24, 1974—Decision, Apr. 24, 1974

Consent order requiring an Erie, Pa., manufacturer and seller of printing and fine paper products, among other things to cease maintaining or enforcing contracts which limit dealer's or distributor's freedom to carry, list or sell competing products; discourage selling at other than suggested prices; and limit the resale of respondent's products to firms of their choice.

Appearances

For the Commission: *Ronald J. Dolan.*

For the respondent: *Bergson, Borkland, Margolis & Adler, Wash., D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Hammermill Paper Company, a corporation subject to the jurisdiction of the Commission, has violated the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint and states its charges as follows:

PARAGRAPH 1. Respondent, Hammermill Paper Company, is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal office in Erie, Pa.

PAR. 2. Respondent has been and is now, a manufacturer and nationwide seller of printing and fine paper and other paper products. For purpose of this complaint, the term "printing and fine paper" includes coated and uncoated book papers, coated and uncoated printing papers, offset papers, text and cover papers, sulphite bond papers, rag or cotton content papers, mimeograph and duplicator papers, onionskin, ledger paper and bristols.

PAR. 3. In 1970, respondent had net sales in excess of \$352 million and total assets of approximately \$353.8 million.

PAR. 4. Respondent sells more than seventy (70) percent of its products to wholesale distributors who resell these products to printers and other users of such products.

PAR. 5. At all times relevant herein, respondent has sold its products to wholesale distributors located throughout the United States and,