

Complaint

92 F.T.C.

IN THE MATTER OF
MEGO INTERNATIONAL, INC., ET AL.

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

Docket C-2924. Complaint, July 14, 1978 — Decision, July 14, 1978

This consent order, among other things, requires a New York City manufacturer of a "Cher" mannequin doll and other toy products to cease employing any representation that depicts children using electrical toys or appliances near water or other fluids, without adult supervision, or which may induce children to engage in behavior that creates risk of injury.

Appearances

For the Commission: *Robert C. Goldberg.*

For the respondents: *Howard Alterman, Spivack & Lasky, Chicago, Ill.*

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 Mego International, Inc., a corporation, and Mego Corporation, 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 Mego International, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 1 Madison Square Plaza, New York, New York.

PAR. 2. Respondent Mego Corporation is a corporation organized, existing and doing business under and by virtue of the place of business located at 1 Madison Square Plaza, New York, New York.

PAR. 3. Respondents are now, and for all times relevant to this complaint have been engaged in the production, distribution, and sale of a variety of toy products, including but not limited to, "Cher", a mannequin doll.

PAR. 4. Respondents have caused to be prepared and placed for publication and have caused the dissemination of advertising material, including, but not limited to, the advertising referred to herein, to promote the sale of Cher.

PAR. 5. In the course and conduct of their aforesaid businesses,

respondents cause and have caused Cher in its package to be transported from its place of business to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained, a substantial course of trade in said product in or affecting commerce.

PAR. 6. In the course and conduct of their aforesaid businesses, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the said product by various means in or affecting commerce including, but not limited to, television advertisements broadcast 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, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said product, and have disseminated, and caused the dissemination of, advertisements concerning said product by various means, including, but not limited to, the aforesaid media for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said product in or affecting commerce.

PAR. 7. Typical and illustrative of the statements and representations in respondents' advertisements disseminated by means of television, but not all inclusive thereof, is the "Cher Wash N Dry" advertisement. In this advertisement, as the female narrator states, "You can wash Cher's hair, and ask mom to blow dry it with you. Her hair will be soft and fluffy," a young girl, about six or seven years of age, sits next to a bathroom sink filled with water and washes the doll's hair in the sink. As she holds the doll in her right hand, a woman (presumably her mother) enters the scene and hands the girl an electrical pistol hairdryer which the girl takes with her left hand. The mother withdraws from the scene and the girl proceeds to dry the doll's hair.

PAR. 8. The aforesaid advertisement has the tendency or capacity to influence children to engage in the following behavior with respect to the use of electrical appliances and toys.

A. Using, participating in the use of, or present at the time of the use of a small electrical appliance in close proximity to a pool or body of water or other fluid.

B. Using, participating in the use of, or present at the time of the use of an electrical personal grooming appliance without the close and watchful supervision of an adult.

Therefore, such advertisement has the tendency or capacity to

induce behavior which is harmful or involves an unreasonable risk of harm, and was and is an unfair or deceptive act or practice.

PAR. 9. In the course and conduct of their aforesaid businesses, and at all times mentioned herein, respondents have been and are now, in substantial competition, in or affecting commerce, with other corporations engaged in the manufacture and sale of toy products.

PAR. 10. The aforesaid acts or practices of respondents, as herein alleged as aforesaid, 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 or affecting commerce and unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents 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 respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 admission by respondents 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 respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its Rules, now in further conformity with the procedures prescribed in Section 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Mego International, Inc. is a corporation, orga-

nized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1 Madison Square Plaza, New York, New York.

2. Respondent Mego Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, and with its office and principal place of business located at 1 Madison Square Plaza, New York, New York.

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

ORDER

1. The term "children" shall mean persons who appear to be or who are in fact twelve (12) years of age or younger.

2. The term "electrical appliance" shall mean all devices and machines which are run on electricity, but shall not include electrical toys. The term "small electrical appliance" shall mean those electrical appliances which are portable. The term "electrical toys" shall mean all toys and games which are run on electricity. These terms do not include devices, machines, toys or games which are operated only by batteries.

3. Terms in the singular shall include the plural and terms in the plural shall include the singular.

I

It is ordered. That respondents Mego International, Inc., a corporation, and Mego Corporation, a corporation, their successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution in or affecting commerce of any product, forthwith cease and desist from directly or indirectly:

A. Representing, through depictions, descriptions or in any other manner, children using, participating in the use of, or present at the time of the use of any electrical hairdryer or other electrical personal grooming appliance, including but not limited to, combs, curlers, brushes and shavers, without the close and watchful supervision of an adult.

B. Representing, through depictions, descriptions or in any other manner, children using, participating in the use of, or present at the time of the use of any electrical toy or small electrical appliance or

toy fascimile thereof in close proximity to any pool or body of water or any other fluid.

C. Representing, through depictions, descriptions, or in any other manner, children using, participating in the use of, or present at the time of use of, any electrical toy or electrical appliance when such representation has the tendency or capacity to influence children to engage in behavior which creates an unreasonable risk of injury to person or property.

It is further ordered, That respondents shall forthwith distribute a copy of this order to each of their operating divisions which engage or shall engage in the preparation or dissemination of advertising.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change 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 effect compliance obligations arising out of the order.

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.

Commissioner Pitofsky did not participate.

IN THE MATTER OF
WARNER-LAMBERT COMPANY

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

Docket 8891. Final Order, Dec. 9, 1975 — Modified Order, July 20, 1978

This modified order to cease and desist is issued pursuant to a decision and judgment of the U.S. Court of Appeals for the District of Columbia, 562 F. 2d 749 (1977). The words "(c)ontrary to prior advertising" have been deleted from the disclosure statement required in Part III of the original order to cease and desist issued December 9, 1975, 41 FR 2381, 86 F.T.C. 1398.

MODIFIED ORDER TO CEASE AND DESIST

Respondent, having filed in the United States Court of Appeals for the District of Columbia Circuit a petition for review of the Commission's cease and desist order issued herein on December 9, 1975; and the Court having rendered its decision and judgment on August 2, 1977, affirming and enforcing the Commission's order with modification of Part III; and the Supreme Court of the United States having denied on April 3, 1978, petitions for writs of certiorari filed by the parties:

Now, therefore, it is hereby ordered, That the aforesaid order to cease and desist be, and it hereby is, modified in accordance with the decision and judgment of the Court of Appeals to read as follows:

ORDER

I

It is ordered, That respondent Warner-Lambert Company, a corporation, its successors and assigns and respondent's officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, offering for sale, sale or distribution of Listerine or any other non-prescription drug product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any such product will cure colds or sore throats;
2. Representing, directly or by implication, that any such product will prevent colds or sore throats;
3. Representing, directly or by implication, that users of any such product will have fewer colds than non-users.