

IN THE MATTER OF
BENTON & BOWLES, INCORPORATED

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

Docket C-3044. Complaint, Oct. 10, 1980—Decision, Oct. 10, 1980

This consent order requires, among other things, a New York City advertising agency to cease depicting, in advertising, children eight years of age or younger operating non-motorized two- or three-wheeled vehicles in an unsafe or illegal manner. This includes representing children operating such vehicles in traffic thoroughfares without adult supervision, and performing stunts or similar acts which create an unreasonable risk of harm to person or property.

Appearances

For the Commission: *Susan Elliott.*

For the respondent: *Stuart Lee Friedel, Davis & Gilbert, 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 Commission, having reason to believe that Benton & Bowles, Incorporated, 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 Benton & Bowles, Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 909 Third Ave., New York, New York.

PAR. 2. Respondent has been retained by AMF, Incorporated as its advertising agency and is now and for all times relevant to this complaint has been engaged in the production and distribution of advertisements for a variety of bicycles, tricycles and other wheeled toys manufactured by AMF, Incorporated.

PAR. 3. Respondent has prepared and placed for publication and has disseminated advertising material, including, but not limited to, the advertising referred to herein, to promote the sale of bicycles and

tricycles, including, but not limited to, the "Evel Kniewel MX," the "Evel Kniewel Hot Seat," and the "Avenger."

PAR. 4. In the course and conduct of its aforesaid business, respondent has been, and is now, in substantial competition in or affecting commerce with other advertising agencies.

PAR. 5. In the course and conduct of its aforesaid business, respondent has disseminated, and caused the dissemination of certain television advertisements concerning said products in or affecting commerce which were 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 products in or affecting commerce.

PAR. 6. Typical and illustrative of the statements and representations in respondent's advertisements disseminated by means of television, but not all inclusive thereof, are the "Can't Wait" and "Avenger" advertisements. In "Can't Wait," two young boys are shown riding their respective vehicles, a bicycle and tricycle, down their parallel driveways, continuing a short distance into the adjoining street so as to greet each other, without slowing down or looking out for cars or other possible dangers to themselves or others. In "Avenger," one young boy is shown riding a bicycle on a one-way street, then turning onto a sidewalk and into a vacant dirt lot without slowing down or looking right or left, riding over rough and uneven ground in the dirt lot, and then turning into an alley without slowing down or looking right or left.

PAR. 7. A. The aforesaid advertisements have the tendency or capacity to influence young children to ride or operate a bicycle, tricycle or other similar wheeled toy in a street, road, alley or other traffic thoroughfare.

B. Furthermore, the aforesaid advertisements have the tendency or capacity to influence children to engage in the following behavior with respect to the use of bicycles, tricycles, or other similar wheeled toys:

1. Riding across rough and uneven ground on a bicycle, tricycle or other similar wheeled toy in a manner which creates an unreasonable risk of harm to person or property;
2. Riding or operating a bicycle, tricycle or other wheeled toy in a manner which is contrary to generally recognized standards of safety for the operation or use of a bicycle, tricycle or other similar wheeled toy.

Therefore, such advertisements have the tendency or capacity to induce behavior which involves an unreasonable risk of harm to person or property, and were and are therefore unfair or deceptive acts or practices.

PAR. 8. In the course and conduct of its aforesaid businesses, and at all times mentioned herein, respondent has been and is now in substantial competition, in or affecting commerce, with other corporations engaged in the advertising of bicycles, tricycles or other wheeled toys.

PAR. 9. The aforesaid acts or practices of respondent, as herein alleged as aforesaid, 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 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 respondent named in the caption hereof, and the named 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 the named respondent with violation of the Federal Trade Commission Act; and

The named respondent, Benton & Bowles, Incorporated, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, and admission by the named 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 admission by the named 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 named 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 sixty (60) days, now in further conformity with the procedure prescribed in Sec. 2.34 of its Rules,

the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. The named respondent, Benton & Bowles, Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with an office and place of business located at 909 Third Ave., New York, New York.

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

ORDER

For the purpose of this Order, the term "non-motorized two- or three-wheeled vehicle" shall include bicycles, tricycles, and other similar non-motorized two- or three-wheeled vehicles. The term "minibike" shall refer to motorized two-wheeled vehicles without gears and shall not include mopeds.

I.

It is ordered, That respondent Benton & Bowles, Incorporated, a corporation, hereinafter referred to as respondent, its 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 in or affecting commerce of any non-motorized two- or three-wheeled vehicle or minibike, cease and desist from, directly or by implication:

A. Representing, in any manner, any child who appears to be eight years old or younger operating any non-motorized two- or three-wheeled vehicle in any public street, road, alley or other traffic thoroughfare; *provided, however,* that this provision shall not apply to the depiction of any child who appears to be five to eight years old operating a non-motorized two- or three-wheeled vehicle in any public street, road, alley, or other traffic thoroughfare when such child is accompanied and closely supervised by a person who appears to be eighteen years old or older and who is operating a non-motorized two- or three-wheeled vehicle.

B. Representing, in any manner, any person(s) performing stunts, jumps, wheelies, or any other similar act while operating a non-motorized two- or three-wheeled vehicle when such act(s) create(s) an unreasonable risk of harm to person or property; *provided, however,* that this provision shall not apply to the depiction

of persons using motorcross bikes in an adult-supervised off-the-road setting and in which the participants are shown wearing helmets and where arms, legs, and feet are suitably covered.

C. Representing, in any manner, any person(s) operating or riding a non-motorized two- or three-wheeled vehicle in any public street, road, alley or other traffic thoroughfare:

1. without obeying all applicable official traffic control devices;
2. other than upon, astride or straddling a regular seat attached thereto;

3. with more persons on it, at any one time, than the vehicle is designed or safely equipped to carry, except that an adult rider may carry a child securely attached to its person in a back pack or sling;

4. while carrying any package, bundle, or article which obstructs vision or interferes with the proper control of the vehicle;

5. when such person attaches himself/herself or the vehicle to any other vehicle; *provided, however*, that this provision shall not apply to the depiction of a bicycle trailer or bicycle semitrailer attached to a bicycle if that trailer or semitrailer has been designed for such attachment and when the operation of such a bicycle with such an attachment does not create an unreasonable risk of harm to person or property;

6. unless such vehicle is equipped with reflectors in conformance with Section 1512.16 of the "Revised Safety Standards for Bicycles" (16 CFR 1512 (1978)) or any successor provision, rule or regulation issued by the Consumer Product Safety Commission and, in addition, a functioning headlamp whenever such person is operating or riding a non-motorized two- or three-wheeled vehicle at dawn, dusk or night;

7. while wearing loose clothing or long coats that can catch in pedals, chains or wheels;

8. against the flow of traffic;

9. unless such person exercises proper caution, such as by riding at a reasonable speed and at a reasonable distance from parked cars and the edge of the road, with respect to:

- a. car doors opening and cars pulling out into traffic; and,

- b. drain grates, soft shoulders and other road surface hazards;

10. in other than single file when travelling with other such vehicles; *provided, however*, that this provision shall not apply to the depiction of persons riding in other than single file when such behavior does not impede the normal and reasonable movement of

traffic and does not create an unreasonable risk of harm to person or property;

11. unless such person exercises proper caution before entering or crossing any public street, road, alley or other traffic thoroughfare from any non-traffic area by first stopping and looking right and left and yielding the right-of-way to all vehicles approaching on such public thoroughfare to the extent necessary to safely enter the flow of traffic;

12. unless such person exercises proper caution before entering or crossing any sidewalk or other pedestrian pathway by first looking right and left and yielding the right-of-way to all pedestrians approaching on such pedestrian pathway.

D. Representing, in any manner, any person operating a mini-bike in any public street, road, alley or other traffic thoroughfare, unless such operation is lawful under applicable vehicle codes.

II.

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

It is further ordered, That respondent 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 affect compliance obligations arising out of the Order.

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
BINNEY & SMITH INC.

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

Docket C-3045. Complaint, Oct. 16, 1980—Decision, Oct. 16, 1980

This consent order requires, among other things, a manufacturer of art materials, located in Easton, Pa., to cease fixing the prices of its products. The firm is required to establish interest-bearing escrow accounts for the purpose of making restitution to consumers for purchases of certain school art materials. Further, the firm is required to distribute consumer redress funds to any state institutions which purchased said products; the FTC, with the cooperation of the State Attorney General, will distribute the respective funds in lump-sum amounts to each of the states which satisfy the application requirements for receiving the money.

Appearances

For the Commission: *Susan L. Belman.*

For the respondent: *Bruce A. Hecker, Shea, Gould, Climenko & Casey, New York City.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondent has violated the Federal Trade Commission Act, and that a proceeding by it in respect thereof would be in the public interest, issues this complaint.

RESPONDENTS

1. Respondent Binney & Smith Inc. is a Delaware corporation, with its principal office located at 1100 Church Lane, Easton, Pennsylvania.

2. At all times relevant to this complaint, respondent has been engaged in the manufacture, offering for sale, sale, and distribution of chalks, crayons, watercolors, or tempera paints.

COMMERCE

3. Respondent maintains, and has maintained, a substantial course of business, including the acts and practices alleged in this complaint, in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, *as amended.*