

FEDERAL TRADE COMMISSION DECISIONS

Findings, Opinions and Orders

IN THE MATTER OF

TOMY CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3080. Complaint, Jan. 6, 1982—Decision, Jan. 6, 1982

This consent order requires a Carson, California corporation, among other things, to cease, in connection with the advertising, distribution and sale of any doll house, accessory, or other toy product, misrepresenting that any collection of products is a set, unless all the products depicted are available for purchase as a set. The firm is prohibited from misrepresenting the availability of any product; describing two or more toys in any advertisement which cannot be purchased as a set, unless accompanied by a disclosure that such products are sold separately; and failing to distribute a copy of the order to all operating divisions, including any entity engaged in the preparation of respondent's advertising.

Appearances

For the Commission: *Judith P. Wilkenfeld* and *Elaine D. Kolish*.

For the respondent: *Aaron Locker* and *Frederick Locker*, New York City.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act any by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Tomy 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 is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 901 E. 233rd St., Carson, California.

PAR. 2. Respondent is now, and has been engaged in the manufacture, packaging, advertising, offering for sale, sale and distribution of toys and related products, including a dollhouse, furniture and accessories, to the public and to distributors and retailers for sale to the public.

PAR. 3. In the course and conduct of its business, respondent now causes, and continues to cause its toy products to be packaged, sold, shipped and distributed from its place of business in the State of California or from the state of manufacture to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained, a substantial course of trade in said products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, respondent has been and is now, in substantial competition in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, with corporations, firms and individuals engaged in the sale and distribution of their respective toy products.

PAR. 5. In the course and conduct of its said business, respondent has disseminated, and caused the dissemination of certain television advertisements concerning said products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which were broadcast by television studios 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. The respondent manufactures and assembles a dollhouse, doll family, furniture and accessories under the label "Smaller Home and Garden Deluxe Set." The Smaller Home and Garden Deluxe Set was advertised nationally. These advertisements implied that the Deluxe Set would be readily available for purchase by consumers at retail stores. In truth and in fact, the Smaller Home and Garden Deluxe Set was not available for purchase in a substantial number of retail stores.

PAR. 7. Typical and illustrative of the respondent's television advertisements for the Smaller Home and Garden Deluxe Set are the statements quoted below. In these advertisements, the exterior of an architecturally modern doll house is shown. The interior of the dollhouse is also shown, room by room. All the rooms shown are furnished. In one representative ad, as the various rooms are displayed, an announcer states:

In the Smaller Home and Garden Deluxe Set, there's a living room that has a toy stereo with tiny make-believe headphones and records, and a cozy bedroom with a roll top desk that rolls. There's also a gourmet kitchen. It's for little decorators with big ideas.

As the exterior of the dollhouse is shown a second announcer concludes the ad, by stating, "Smaller Home and Garden Deluxe Set. All this plus other pieces. You have to put it together. By Tomy."

PAR. 8. Through the use of such advertisements disseminated in various parts of the United States, respondent has represented directly and by implication:

- 1) That the Smaller Home and Garden Deluxe Set is readily available for purchase by consumers as an actual set which contains the dollhouse and all the furniture and accessories depicted and referenced in the advertisements;

- 2) That the Smaller Home and Garden dollhouse and furniture and accessories are sold together as depicted and referenced in said advertisements.

PAR. 9. In truth and in fact:

- 1) The Smaller Home and Garden Deluxe Set is not readily available for purchase by consumers;

- 2) The Smaller Home and Garden dollhouse as packaged and sold does not contain any of the furniture or accessories depicted or referenced in said advertisements.

Therefore, the advertisements referred to herein are unfair and deceptive.

PAR. 10. The use by respondent of the aforesaid false, misleading and deceptive statements, representations, acts and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the mistaken belief that said statements and representations were, and are, true and complete, and into the purchase of substantial quantities of respondent's products 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 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 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, its attorneys, and counsel for the Commission having 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 admission 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 consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comment filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Tomy Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 901 E. 233rd St., in the City of Carson, State of California.

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

For purposes of this Order, each of the terms listed below is defined as follows:

1. The term *set* shall mean any collection of products that is available for purchase as a unit by consumers or that may

reasonably be inferred to be available for purchase as a unit by consumers.

2. With regard to television advertising, the term *clearly and conspicuously disclosed* shall mean a disclosure which complies with the following requirements: (a) the disclosure shall be presented simultaneously in both the audio and video portions of the television advertisement; (b) the video portion of the disclosure shall contain letters of sufficient size so that it can be easily seen and read on all television sets, regardless of picture tube size; (c) the video portion of the disclosure shall contain letters of a color or shade that readily contrast with the background, and the background shall consist of only one color or shade; (d) no other sounds, including music, shall occur during the audio portion of the disclosure; (e) the video portion of the disclosure shall appear on the screen for a sufficient duration to enable it to be completely read by the viewer; and (f) the audio and video portions of the disclosure shall immediately follow the specific sales representations to which they relate and shall occur each time the representation is presented during the advertisement; in cases where a disclosure is required, but is not linked to a specific representation, it shall appear in immediate conjunction with the major sales theme of the advertisement. In wording the disclosure the audience to whom the disclosure is directed shall be considered in order to assure that viewers (such as children) can understand the full meaning of the disclosure.

I.

It is ordered, That respondent Tomy Corporation, 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 advertising, offering for sale, sale or distribution of any dollhouse, furniture, accessories or other toy products in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or by implication:

A) Representing, in any manner, that any collection of products is a set, if any product in the collection is not included in a set available for purchase by consumers;

B) Depicting or describing in any advertisement, or other printed material disseminated to consumers, two or more non-identical products which are not available for purchase by consumers as a set, unless respondent clearly and conspicuously discloses that the products must be purchased separately;

C) Representing, in any manner, that a product or set is generally or widely available for purchase by consumers in any market area, if the product or set is not substantially available in that market area; *provided, however*, in those instances in which the product or set is not substantially available in that market area, respondent shall be permitted to advertise that the product is available on a limited basis, if the advertisement clearly and conspicuously discloses that the product or set is only available on a limited basis.

II.

It is further ordered, That respondent shall maintain written records and retain:

A) All materials that were relied upon or utilized in making any representation in advertisements, sales materials, promotional materials or post-purchase materials concerning the availability of any dollhouse, furniture and accessories or other toy product;

B) All material relating to the distribution of advertisements, sales materials, promotional materials or post-purchase materials for the above named products;

C) All material relating to the distribution of the above named products.

Such records and materials shall be retained by respondent for a period of at least three years from the date such advertising, sales materials, promotional materials, or post-purchase materials are last disseminated. Such records may be inspected by staff of the Commission upon reasonable notice.

III.

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

IV.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the 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 this Order.

V.

It is further ordered, That respondent 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.

Complaint

99 F.T.C.

IN THE MATTER OF

KELLOGG COMPANY, ET AL.

DISMISSAL ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket 8883. Complaint, April 26, 1972—Dismissal Order, Jan. 15, 1982*

This order vacates in its entirety, the September 1, 1981 Initial Decision and dismisses with prejudice the Commission's April 26, 1972 complaint which charged three cereal manufacturers with engaging in practices having the effect of maintaining a highly concentrated noncompetitive market structure in the production and sale of ready-to-eat cereals.

Appearances

For the Commission: *Anthony Low Joseph, David M. Malone, Lawrence B. Berman, Claudia R. Higgins, Louis R. Monacell, Alan J. Friedman and Dennis F. Johnson.*

For the respondents: *Frederick P. Furth, Thomas R. Fahrner, Bruce J. Wecker, Charles P. Wolff, Michael P. Lehmann and George F. Bishop, Furth, Fahrner, Bluemle & Mason, San Francisco, Calif. and Scott R. Campbell, Battle Creek, Mich., in-house counsel, for respondent Kellogg Company. David C. Murchinson, Edward F. Howrey, Ralph J. Savarese, John R. Fornaciari, Margaret M. Zwisler and Frank P. Spinella, Howrey & Simon, Washington, D.C. and Clifford L. Whitehill, Robert J. Fulgency and John F. Finn, Minneapolis, Minn., in-house counsel, for respondent General Mills. Robert MacCrate, James E. Akers, Jeffrey I. Zuckerman, Richard J. Rawson and David Lesser, Sullivan & Cromwell, Washington, D.C., John F. Kavin, Clifford & Warnke, Washington, D.C. and Robert Y. Fox, Peter J. Deluca and Bruce L. Bozeman, White Plains, N.Y., in-house counsel, for respondent General Foods Corporation. Charles Orlove and Joseph M. Jacobs, Jacobs, Burns, Sugarman & Orlove, Chicago, Ill., for intervenor American Federation of Grain Millers, AFL/CIO.*

COMPLAINT

The Federal Trade Commission has reason to believe that the party respondents named in the caption hereof, and hereinafter more particularly designated and described, have violated and are now violating the provisions of Section 5 of the Federal Trade Commission Act (Title 15, U.S.C. 45). Accordingly, the Commission