

IN THE MATTER OF
COLECO INDUSTRIES, INC.

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

Docket C-3252. Complaint, May 18, 1989—Decision, May 18, 1989

This consent order prohibits, among other things, a West Hartford, Ct. corporation from claiming that any computer-related product is or will be available for sale, or has or will have any capability, unless the product actually is available or has that capability, or the company has a reasonable basis for saying it will be available or will have that capability.

Appearances

For the Commission: *Don M. Blumenthal.*

For the respondent: *Cathelene Tierney, in-house attorney, Avon, Ct.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Coleco Industries, Inc., a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

Paragraph 1. Respondent is a Connecticut corporation, with its office and principal place of business located at 999 Quaker Lane South, West Hartford, Connecticut.

Par. 2. Respondent has manufactured, advertised, offered for sale, sold and distributed children's computers, including, but not necessarily limited to, My Talking Computer, and program modules and other products for use with such computers to the public.

Par. 3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce.

Par. 4. Respondent has disseminated and caused the dissemination of advertisements and promotional materials for its product, My Talking Computer, published in magazines and broadcasted on television across state lines and disseminated in product brochures,

Complaint

111 F.T.C.

product packages and other sales literature directly to consumers or to distributors for display or distribution to consumers. Typical of respondent's advertisements and promotional material, but not necessarily all inclusive thereof, are the attached Exhibits A through C. The aforesaid advertisements and promotional material contain the following statements:

(1) Cleverly disguised as fun! Expansion modules sold separately. (Exhibit A, television advertisement.)

(2) It comes with 22 learning activities and includes a *full function* talking calculator. It's even expandable.

* * * * *

More advanced programs for older children are available too. (Exhibit B, print advertisement.)

(3) My Talking Computer Learn-For-Fun Expansion Modules
Build a Complete Learning System!

MODULE 1

Telling Time With Hands-that-Speak
Clock Overlay

This colorful, 3-dimensional overlay programs MY
TALKING COMPUTER to teach your child how to tell
time with fun, hands-on activities!

MODULE 2

Fun with Numbers

A delightful activity book programs MY TALKING
COMPUTER with a variety of new numbers-learning
challenges.

MODULE 3

Sesame Street Talking Cents

with My Talking Cash Register Overlay

The module comes with a 3-dimensional, plastic overlay
program that simulates a cash register keyboard
and teaches money counting with a variety of fun
activities. Also included colorful activity booklet.

MODULE 4

Sesame Street Spells F U N!

The ever-popular Sesame Street gang gets together for
more of their educational antics! Module comes with a
colorful activity book containing hours of new, MY
TALKING COMPUTER spelling fun!

(Exhibit C, point-of-purchase package display.)

Par. 5. Through the use of the statements referred to in paragraph four, and others in promotional material not specifically set forth herein, respondent has represented, directly or by implication, that

four expansion modules for use with My Talking Computer, including specifically the modules identified in Exhibit C as Module 3 and Module 4, were available for purchase at the time the statements were published or displayed, and that persons purchasing My Talking Computer would be able to expand the capability of the computer immediately through the purchase of the advertised expansion modules including specifically Modules 3 and 4.

Par. 6. In truth and in fact, the expansion modules for use with My Talking Computer, identified in Exhibit C as Modules 3 and 4, were not available for purchase at the time the statements were published or displayed, and persons purchasing My Talking Computer would not be able to expand the capability of the computer immediately through the purchase of Modules 3 and 4. Respondent had abandoned plans to produce Module 3, and respondent did not produce or offer for sale Module 4 until more than one-and-a-half years after the statements first appeared. Therefore the representations set forth in paragraph five were, and are, false and misleading.

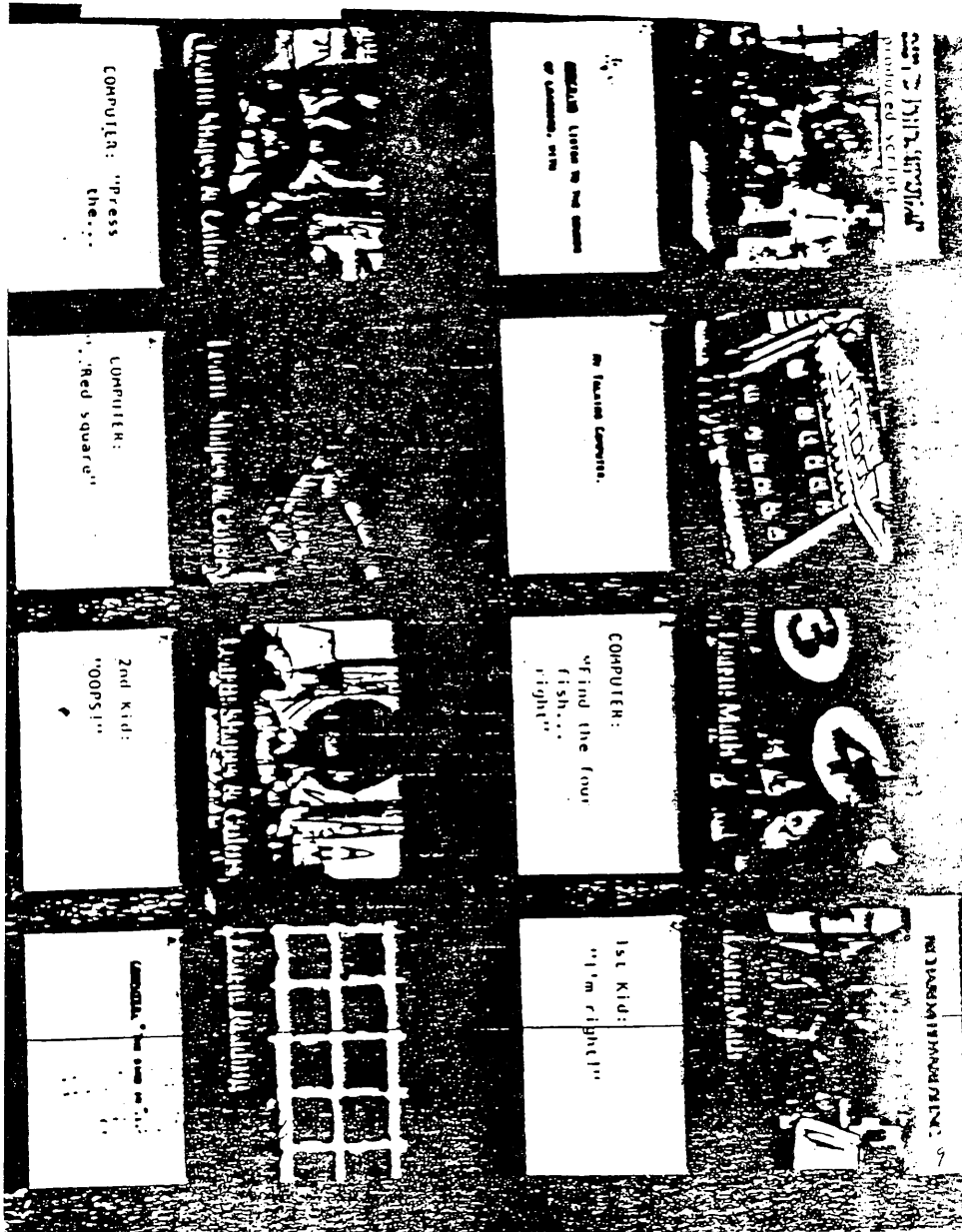
Par. 7. The acts and practices of respondent as alleged in this Complaint, and the placement in the hands of others of the means and instrumentalities by and through which others may have used said acts and practices, constitute unfair and deceptive acts or practices in or affecting commerce and the dissemination of false advertisements in violation of Section 5(a) of the Federal Trade Commission Act.

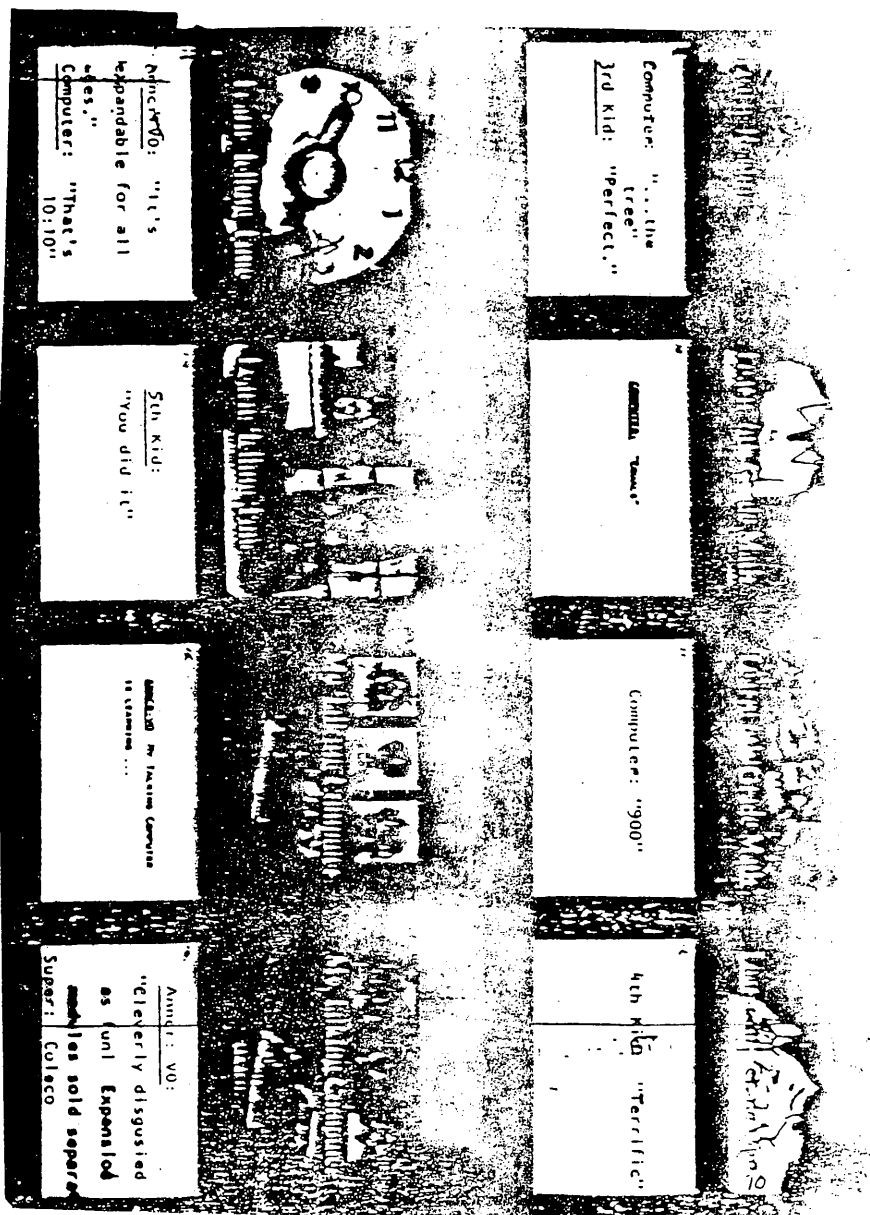
Complaint

111 F.T.C.

EXHIBIT A

PAGE 1 of 2 Pages.





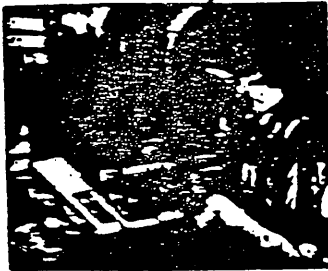
Complaint

111 F.T.C.

EXHIBIT B

THIS IS LEARNING.

(cleverly disguised
as fun)



With an astoundingly clear voice and unlimited patience, the My Talking Computer™ learning system gently guides your child through all the basic skills: colors, shapes, math, spelling and reading. And it does all this with colorful picture book "keyboards" that will enthrall and delight.

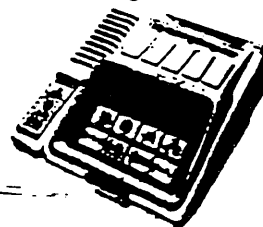
It comes with 24 learning activities and includes a full function talking calculator. It's even expandable.

The "clock" program has moveable hands for learning to tell time (analog and digital).*

More advanced programs for older children are available too.

Kids love My Talking Computer™ learning system for the fun. You'll love it for the learning.

My Talking Computer™



COLECO
Play and Learn

**My Talking Computer™
Learn-For-Fun™ Expansion Modules
Build a Complete Learning System!**

MODULE 1

Telling Time™ with Hands That Speak™
Clock Overlay

This colorful, 3-dimensional overlay programs MY TALKING COMPUTER™ to teach your child how to tell time with fun, hands-on activities!

MODULE 2

Fun™ with Numbers

A delightful activity book programs MY TALKING COMPUTER™ with a variety of new numbers-learning challenges.

MODULE 3

Sesame Street™ Talking Cents™
with My Talking Cash Register™ Overlay

The module comes with a 3-dimensional, plastic overlay program that simulates a cash register keyboard and teaches money counting with a variety of fun activities. Also included: colorful activity booklet.

MODULE 4

Sesame Street™ Spells FUN!

The ever-popular Sesame Street™ gang gets together for more of their educational antics! Module comes with a colorful activity book containing hours of new, MY TALKING COMPUTER™ spelling fun!

Expansion modules sold separately.

Sesame Street, © 1988 Children's Television Workshop. Sesame Street and the Sesame Street sign are trademarks and service marks of Children's Television Workshop.

20477A

puter™

system

Additional modules (^{sold} separately)
make **MY TALKING COMPUTER™**
an expandable fun center that
grows with your child!

Learn-for-Fun™
Expansion Module 1

- Telling Time™ with
Hands-that-Speak™ Clock Overlay

Learn-for-Fun™
Expansion Module 2

- Fun with Numbers

Learn-for-Fun™
Expansion Module 3

- Sesame Street® Talking Cents™
with My Talking Cash Register™

Learn-for-Fun™
Expansion Module 4

- Sesame Street® Spells F U N!™

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 respondent having been furnished thereafter with a copy of a draft 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 attorney, 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 considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that a 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 by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Coleco Industries, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal place of business located at 999 Quaker Lane South, West Hartford, Connecticut.
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.

O R D E R

I.

It is ordered, That respondent Coleco Industries, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale, or distribution of My Talking Computer, or any other computer or computer-related product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

(a) That any such product is available for sale to the public or has any capability, unless, at the time such representation is made, such product is then available for sale to the public in reasonable quantities or has said capability.

(b) That any such product will be available for sale to the public or will have any capability, unless, at the time of such representation, respondent possesses and relies upon a reasonable basis for said representation.

II.

It is further ordered, That respondent, its successors and assigns shall maintain for a period of three (3) years, and upon request make available to the Commission for inspection and copying accurate records of all materials relied upon by respondent in disseminating any representation covered by this order.

III.

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

IV.

It is further ordered, That respondent shall distribute a copy of this order to each of its operating divisions and to each officer and other personnel responsible for the preparation or review of advertising material. In addition, respondent shall distribute to each distributor, retail outlet and wholesale outlet to which it has sold or delivered My Talking Computer, and to each consumer about whom Coleco has records who has inquired about the availability of Modules 3 and 4 for My Talking Computer, a copy of Attachment A to this order, a letter outlining the availability of said modules.

V.

It is further ordered, That respondent shall, within sixty (60) days after service of this order, file with the Commission a report, in writing, setting forth in detail the manner in which it has complied with this order.

ATTACHMENT A

NOTICE TO WHOLESALERS, DISTRIBUTORS, RETAILERS,
AND PURCHASERS OF MY TALKING COMPUTER

Dear Wholesaler, Distributor, Retailer, or Consumer:

Coleco Industries, Inc., ("Coleco") is the manufacturer of an electronic learning product known as **MY TALKING COMPUTER** (Item No. 8200).

As the result of an agreement between Coleco and the Federal Trade Commission, arising out of consumer inquiries relating to certain accessories for **MY TALKING COMPUTER** known as Module 3 (Sesame Street Talking Cents with **MY TALKING CASH REGISTER**) and Module 4 (Sesame Street Spells **FUN!**), Coleco hereby provides you with the following information:

- Module 3 will not be available for purchase.
- While Module 4 was manufactured in limited quantities, it no longer is in production and supplies have been exhausted. It will not be available for purchase.

Coleco Industries, Inc.

Set Aside Order

111 F.T.C.

IN THE MATTER OF

GOODYEAR TIRE & RUBBER CO., ET AL.

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6486. Consent Order, March 9, 1961—Set Aside Order, June 2, 1989*

The Federal Trade Commission has set aside a 1961 consent order as to Atlantic Refining Co. ("Arco"), (58 FTC 309), thus removing all requirements and prohibitions because Arco has shown that significant changes of law make it unlikely that the practices prohibited by the order would be found unlawful were the original case brought today.

ORDER REOPENING AND SETTING ASIDE
FINAL ORDER ISSUED ON MARCH 9, 1961

On February 3, 1989, the Atlantic Richfield Company ("Arco") filed a request to reopen and set aside the Final Order that was entered in this proceeding on March 9, 1961, or in the alternative to modify the order. The request was filed pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b) and section 2.51 of the Federal Trade Commission Procedures and Rules of Practice, 16 CFR 2.51.

Arco seeks to have set aside or modified the order issued in Docket No. 6486 which prohibits the Atlantic Refining Company ("Atlantic") from entering into certain kinds of contracts with the Goodyear Tire and Rubber Company ("Goodyear") and other of its suppliers. Arco was formed as a result of the merger of Atlantic with other oil companies. Arco is the successor to Atlantic and bound by the terms of the order in Docket No. 6486.

Arco asserts that, since the adjudication of this order, there have been changes of fact and of law that warrant reopening the order and setting it aside, in whole or in part, and that the public interest requires termination or modification of the order. Arco's central contention is that it ought to be allowed to negotiate with suppliers of tires, batteries and other automotive accessories ("TBA") concerning the terms of sale of those items to Arco franchisees that sell Arco petroleum products. Arco asserts that it could negotiate for its franchisees cooperative advertising and other promotional activities that are sponsored by TBA manufacturers. Obtaining such promotion-