

IN THE MATTER OF

RITE AID CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket 9227. Complaint*, Apr. 19, 1989—Decision, Feb. 8, 1991*

This consent order prohibits, among other things, the pharmacy chain from entering into any agreement with other pharmacy firms to withdraw from or refuse to enter into any third-party payer prescription drug participation agreement. For ten years, the chain is also prohibited from communicating to another pharmacy firm the decision or intention to enter or to refuse to enter into such a participation agreement, and for eight years, from advising any pharmacy firm on whether to enter into any participation agreement.

Appearances

For the Commission: *Karen G. Bokat and Michael D. McNeely.*

For the respondent: *William C. Pelster, Skadden, Arps, Slate, Meagher & Flom, New York, N.Y.*

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondent Rite Aid Corporation with a violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondent having been served with a copy of that complaint, together with a notice of the contemplated relief; 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 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The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

* Complaint previously published at 114 FTC 171 (1991).

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of (60) days, now in further conformity with the procedure prescribed in Section 3.25(f) of its rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Rite Aid Corporation 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 Railroad Avenue and Trindle Road, Shiremanstown, Pennsylvania.

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

I.

For purposes of the order, the following definitions shall apply:

A. "*Rite Aid*" means Rite Aid Corporation, its directors, officers, agents, employees, divisions, subsidiaries, successors and assigns;

B. "*Third-party payer*" means any person or entity that provides a program or plan pursuant to which such a person or entity agrees to pay for prescriptions dispensed by pharmacies to individuals described in such plan or program as eligible for such coverage ("Covered Persons"), and includes, but is not limited to, health insurance companies; prepaid hospital, medical, or other health service plans, such as Blue Cross and Blue Shield plans; health maintenance organizations; preferred provider organizations; prescription service administrative organizations; and health benefit programs for government employees, retirees or dependents;

C. "*Participation agreement*" means any existing or proposed agreement, oral or written, in which a third-party payer agrees to reimburse a pharmacy for the dispensing of prescription drugs to Covered Persons, and the pharmacy agrees to accept such payment from the third-party payer for such prescriptions dispensed during the term of the agreement;

D. "*Pharmacy firm*" means any partnership, sole proprietorship or

corporation, including all of its subsidiaries, affiliates, divisions and joint ventures, that owns, controls or operates one or more pharmacies, including the directors, officers, employees, and agents of such partnership, sole proprietorship or corporation as well as the directors, officers, employees, and agents of such partnership's, sole proprietorship's or corporation's subsidiaries, affiliates, divisions and joint ventures, but excludes any partnership, sole proprietorship or corporation, including all of its subsidiaries, affiliates, divisions and joint ventures, which own, are owned by, control or are under common control with Rite Aid. The words "subsidiary", "affiliate", and "joint venture" refer to any firm in which there is partial (10% or more) or total ownership or control between corporations.

II.

It is ordered, That Rite Aid, directly, indirectly, or through any corporate or other device, in or in connection with its activities in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, shall forthwith cease and desist from:

A. Agreeing or combining, attempting to agree or combine, or taking any action in furtherance of any agreement or combination, advocating an agreement, or organizing or cooperating with any Pharmacy Firm(s) to (1) boycott, refuse to enter into, withdraw from, or not participate in, any Participation Agreement or (2) threaten to boycott, threaten to refuse to enter into, threaten to withdraw from, or threaten not to participate in, any participation agreement;

B. For a period of ten (10) years after the date this order becomes final, stating or communicating in any way to any pharmacy firm the intention or decision of Rite Aid with respect to entering into, refusing to enter into, threatening to refuse to enter into, participating in, threatening to withdraw from, or withdrawing from any existing or proposed participation agreement into which Rite Aid and the other pharmacy firm have entered, could enter or are considering entering;

C. For a period of eight (8) years after the date this order becomes final, advising any pharmacy firm with respect to entering into, refusing to enter into, participating in, or withdrawing from any existing or proposed participation agreement into which Rite Aid and the other pharmacy firm have entered, could enter or are considering entering.

Provided that nothing in this order shall prevent Rite Aid from:

(1) Exercising rights permitted under the First Amendment to the United States Constitution to petition any federal or state government executive agency or legislative body concerning legislation, rules or procedures, or to participate in any federal or state administrative or judicial proceeding;

(2) Subcontracting, preparing joint bids, or otherwise jointly undertaking with pharmacy firms to provide prescription drug services under a participation agreement if requested to do so in writing by the third-party payer;

(3) Communicating to the public truthful, nondeceptive statements concerning any existing or proposed participation agreement.

III.

It is further ordered, That Rite Aid:

A. Provide a copy of this order within thirty (30) days after the date this order becomes final to each officer, director, employee pharmacist who is employed in New York state, and each employee whose responsibilities include recommending or deciding whether to enter into any participation agreement, and each employee who regularly attends meetings on Rite Aid's behalf that include representatives of other pharmacies; and

B. For a period of five (5) years after the date this order becomes final, provide each new director and each employee who enters a position described in paragraph A a copy of the order within ten (10) days of the date the employee or director assumes the new position.

IV.

It is further ordered, That Rite Aid:

A. File a verified, written report with the Commission within ninety (90) days after the date this order becomes final, and annually thereafter for five (5) years on the anniversary of the date this order becomes final, and at such other times as the Commission may, by written notice to Rite Aid, require, setting forth in detail the manner and form in which it has complied and is complying with this order;

B. For a period of five (5) years after the date this order becomes final, maintain and make available to Commission staff for inspection and copying upon reasonable notice all documents generated by Rite Aid or that come into Rite Aid's possession, custody, or control

regardless of source, that embody, discuss or refer to the decision or upon which Rite Aid relies in deciding whether to enter into any participation agreement in which Rite Aid participates, has participated, or has considered participating; and

C. Notify the Commission at least thirty (30) days prior to any proposed change in Rite Aid such as, assignment or sale resulting in the emergence of a successor corporation or association, change of name, change of address, dissolution, the creation, sale or dissolution of a subsidiary, or any other change that may affect compliance with this order.

Commissioner Azcuenaga dissenting and Commissioner Starek not participating.

IN THE MATTER OF
LEWIS GALOOB TOYS, INC.

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

Docket C-3324. Complaint, Feb. 27, 1991—Decision, Feb. 27, 1991

This consent order prohibits, among other things, a San Francisco, Ca., based toy company ("Galoob") from making deceptive advertising claims for toys. In addition, Galoob is prohibited from making misrepresentations, as to whether its toys must be purchased separately or the toys' assembly requirements, in the labelling, packaging, sale or distribution, as well as the advertising, of its toys.

Appearances

For the Commission: *Janet M. Evans* and *Joel C. Winston*.

For the respondent: *Felix Kent, Hall, Dickler, Lawler, Kent & Friedman*, New York, N.Y.

COMPLAINT

The Federal Trade Commission, having reason to believe that Lewis Galoob Toys, Inc., ("Galoob"), hereinafter sometimes referred to as "respondent" has violated 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. Galoob is a Delaware corporation with its principal office or place of business at 500 Forbes Boulevard, San Francisco, California.

PAR. 2. Galoob has advertised, offered for sale, sold, and distributed toys, including Micro Machines (miniature vehicles), Micro Machines playsets (such as Aircraft Carrier, Air Cargo, and Transport Chopper), Xpanders (such as the Xpanders Chopper/Assault Base), and Bouncin' Kids (dolls that move).

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

PAR. 4. Typical, but not necessarily all inclusive, of respondent's advertisements for Micro Machines, Micro Machines playsets, Xpanders, and Bouncin' Kids are set forth in Exhibits A through E attached