

IN THE MATTER OF
TOWNE, SILVERSTEIN, ROTTER, INC.

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

Docket C-3325. Complaint, Feb. 27, 1991—Decision, Feb. 27, 1991

This consent order prohibits, among other things, a New York City based advertiser from making deceptive advertising claims for 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 Towne, Silverstein, Rotter, Inc., ("TSR") 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. TSR is a New York corporation with its principal office or place of business at 411 Lafayette Street, New York, New York.

PAR. 2. TSR is now, and for some time past has been the advertising agency of Lewis Galoob Toys, Inc. ("Galoob"). TSR has prepared and placed for publication, advertising material to promote the sale of Galoob toys, including Micro Machines (miniature vehicles), Micro Machines playsets (such as Transport Chopper, Aircraft Carrier and Air Cargo), 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, Xpan-

ders, and Bouncin' Kids are set forth in Exhibits A through E attached hereto.

PAR. 5. Through the use of the statements and depictions in Exhibit E and others in advertisements not specifically set forth herein, respondent represented, directly or by implication, that the Bouncin' Kids Ballerina Kid stands on one foot and twirls by herself without human assistance.

PAR. 6. In truth and in fact, the Bouncin' Kids Ballerina Kid does not stand on one foot and twirl by herself without human assistance. Therefore, the representations set forth in paragraph five were false and misleading.

PAR. 7. Through the use of the statements and depictions in Exhibit D and others in advertisements not specifically set forth herein, respondent represented, directly or by implication, that the Xpanders Chopper/Assault Base shoots a missile at a high rate of speed and that the missile travels a considerable distance.

PAR. 8. In truth and in fact, the Xpanders Chopper/Assault Base does not shoot a missile at a high rate of speed and the missile does not travel a considerable distance. Therefore, the representations set forth in paragraph seven were false and misleading.

PAR. 9. Through the use of the statements and depictions in Exhibits A, B, and C, and others in advertisements not specifically set forth herein, respondent represented, directly or by implication, that the Micro Machines playsets Transport Chopper, Aircraft Carrier, and Air Cargo as packaged and sold include some or all of the Micro Machines pictured in the advertisements.

PAR. 10. In truth and in fact, the Micro Machines playsets Transport Chopper, Aircraft Carrier, and Air Cargo are packaged and sold without any of the Micro Machines pictured in the advertisements or on the packages. Therefore, the representations set forth in paragraph nine were false and misleading.

PAR. 11. In its advertisements for the Xpanders Chopper/Assault Base, including but not limited to Exhibit D, respondent represented through depictions that the toy is fully assembled and ready for use, but failed to disclose that significant assembly is required prior to use. This fact would be material to consumers in their purchase decisions. Respondent's failure to disclose this fact, in light of the depictions in the advertisements and promotional materials, was a deceptive practice.

PAR. 12. Through the use of the statements and depictions in

Exhibits A and D and others in advertisements not specifically set forth herein, respondent represented, directly or by implication, that the rotors of the Micro Machines playset Transport Chopper and the Xpanders Chopper/Assault Base turn and move by themselves without human assistance.

PAR. 13. In truth and in fact, the rotors of the Micro Machines playset Transport Chopper and the Xpanders Chopper/Assault Base do not turn and move by themselves without human assistance. Therefore, the representations set forth in paragraph twelve were false and misleading.

PAR. 14. The dissemination by respondent of the aforesaid false and misleading representations as alleged in this complaint constituted unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

Commissioner Starek not participating.

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Complaint

EXHIBIT A

Exhibit A

**RADIO
TV REPORTS**

41 East 42nd Street New York, NY 10017 (212) 309-1400

PRODUCT:	GALOOB MICRO MACHINES TRANSPORT CHOPPER	90-03494
PROGRAM:	CHIP 'N DALES RESCUE RANGERS	3/23/90 15 SEC.
	WPXI-TV (NEW YORK)	4:55PM



1. (SFX-HELICOPTER) MAN: Micro Machine Man here. I'm so excited about the Micro Machines' Transport Chopper



2. that I'm going to land that chopper in the palm of my hand. Wow!



3. Like the simply amazing Micro Machines' Transport Chopper, with two totally terrific decks,



4. opening and closing doors, a fantastic pull down ramp, and real rotating motors.



5. Lands in your hand, chopper man! The Micro Machine Transport Chopper from Galoob.



6. Remember if it doesn't say Micro Machine, (SFX-HELICOPTER) it's not the real thing! (SFX OUT)

ALSO AVAILABLE IN COLOR VIDEO-TAPE CASSETTE

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Complaint

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EXHIBIT B

TSR

EXHIBIT B -

Towne, Silverstein, Rotter Inc., 101 Park Avenue, New York, N.Y. 10178, Tel. (212) 557-5570

Copy

client GALOOB
media TV
date 3/16/88

MICRO MACHINES
product AIRCRAFT CARRIER
size :15
job no. GAL-2039
XGLT-8405

AS PRODUCEDVIDEO

Long shot of J. Moschitta standing
in front of Aircraft Carrier.
SUPER: © 1988 Lewis Galoob Toys, Inc.

Aircraft Carrier becomes smaller and
is reduced to fit in his hand.

Shot of Aircraft Carrier w/airplanes
on it.
SUPER: Vehicles Sold Separately.

CU of Aircraft Carrier elevators
moving w/airplanes.

Shot of working hoist.

CU of Cargo arms.

Med. Shot of product showing moving
parts.
SUPER: Micro Machines
Galoob

CU of J. Moschitta.

AUDIO

The Micro Machine Man here...Aircraft
Carrier there! You can't have that..

but you can have this:
THE NEW MICRO MACHINE AIRCRAFT CARRIER
PLAYSET.
The dramatically detailed, terrifical
trimmed replica of the real thing,

that holds 25 Micro Machines.

With fabulous fantastic features:
Two totally terrific elevators...

real working hoist, runway

and two cargo arms.

THE NEW MICRO MACHINE AIRCRAFT CARRIER
PLAYSET. From Galoob.
Remember, if it doesn't say Micro
Machines,

it's not the real thing.

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Complaint

EXHIBIT C



Exhibit C

Towne, Silverstein, Rotter Inc., 101 Park Avenue, New York, N.Y. 10178, Tel. (212) 557-5570

Copy

client GALCOB

product MICRO MACHINES

media TV

size Cargo Plane Playset
:15

date 3/16/88

job no. GAL-2039

XGLT-8425

AS PRODUCEDVIDEOAUDIO

Moschitta:

J. Moschitta standing in front of
Cargo Plane.
SUPER: © 1988 Lewis Galoob Toys, Inc.

I'm just the Micro Machine Man, but
this isn't just a plane!

Cargo Plane becomes smaller and is
reduced to fit in his hand.

It's the new, perfectly precise,
stupendously styled

CU of J.M. holding product.

Micro Machine Cargo Plane Playset...
that holds 15 Micro Machines, with
amazingly mini military features:

CU of product opening w/car coming
out.
SUPER: Vehicles Sold Separately.

open and close nose...
Real working ramps, elevator and
cargo door.

CU of J.M. flying product in front
of camera.

Better get it before it takes off!

Med. Shot of product opening.
SUPER: Micro Machines
Galoob

The New Micro Machine Mini Cargo
Plane Playset. From Galoob.

CU of J. Moschitta

it's not the real thing!

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Complaint

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EXHIBIT D

Radio TV Reports

41 East 42nd Street, New York, N.Y. 10017
(212) 309-1400

PRODUCT: XPANDERS/GALOOB
PROGRAM: TEENAGE MUTANT NINJA
TURTLES
WPIX-TV

EXHIBIT D
89-12520
10/20/89 30 SEC.
(NEW YORK) 3:46PM
Exhibit D



1. (MUSIC/SFX) MEN SING:
Xpanders.



2. Expand at your command.



3. (SFX)



4. MAN: Company command? Time
to expand.



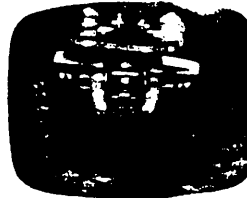
5. ANNCR: The PT Assault Boat.
(SFX) Expands to an air team
tactic force with torpedos,



6. sky fighters,



7. troops and guns.



8. (SFX-HELICOPTER) The
Chopper. Expands



9. into an assault base with
manpower, missile power,
land and air defense.



10. MAN: Ready to expand?



11. MEN SING: Xpanders.



12. ANNCR: Xpanders. Open
automatically to reveal your
hidden strike force. Sold
separately from Galoob.
(MUSIC & SFX OUT)

ALSO AVAILABLE IN COLOR VIDEO-TAPE CASSETTE

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Complaint

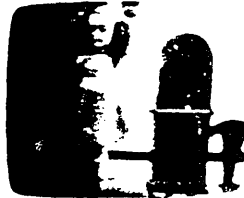
EXHIBIT E

Exhibit E

**RADIO
TV REPORTS**

41 East 42nd Street New York, NY 10017 (212) 309-1400

PRODUCT:	GALOOB BOUNCIN' KIDS	90-03951
PROGRAM:	GHOSTBUSTERS	4/4/90 30 SEC.
	WNYW-TV	(NEW YORK) 3:56PM



1. (MUSIC) GIRL SINGS: Can you pirouette so sweet



2. or swing up high right off your feet.



3. Bouncin' Kids can, Bouncin' Kids can.



4. So much fun to take a ride



5. and can you skate like this outside.



6. Bouncin' Kids can, Bouncin' Kids can.



7. ANNCR: Bouncin' Kids love taking their Bouncin' Ponies out for a ride.



8. They groom their hair, hook up their wagons, and hop on inside.



9. GIRLS: Giddy up, now!



10. GIRLS SING: Riding Ponies in the sun, can you imagine so much fun?



11. Bouncin' Kids can!



12. From Galoob. (MUSIC OUT)

ALSO AVAILABLE IN COLOR VIDEO-TAPE CASSETTE

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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 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 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 Commissions' 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, 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 Towne, Silverstein, Rotter, Inc. 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 411 Lafayette Street, New York, New York.

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 the required disclosures shall conform to the following requirements: (a) in television advertisements, a legible superscript in a manner to ensure clarity and prominence with a simultaneous voice-over recitation; except that any advertisement

which, in view of its content and placement, is directed to adults need not contain a simultaneous voice-over recitation; (b) in printed advertisements and promotional materials, a disclosure printed in a typeface and color that are clear and prominent; (c) in radio advertisements, a statement included in a manner to ensure clarity and prominence. Any disclosure required by this order shall be in language understandable to children unless, in view of its content and placement, the advertisement is directed to adults. For purposes of this order adults are defined as individuals age thirteen (13) and older.

I.

It is ordered, That respondent Towne, Silverstein, Rotter, 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 advertising of any toy in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from depicting or describing two or more non-identical toys that are not available for purchase together as a set, unless respondent clearly and prominently discloses that the toys must be purchased separately.

II.

It is further ordered, That respondent Towne, Silverstein, Rotter, 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 advertising of any toy manufactured or sold in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act by Lewis Galoob Toys, Inc., or its successors or assigns, that requires significant assembly prior to use, do forthwith cease and desist from depicting or otherwise representing such toy as fully assembled unless respondent has a reasonable basis to believe that there is a clear and prominent disclosure on the packaging that the toy must be assembled before it is ready for use.

III.

It is further ordered, That respondent Towne, Silverstein, Rotter, Inc., a corporation, 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 of any toy in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, directly or indirectly, that any such product moves by itself without human assistance or any other movement capability; *provided, however*, that nothing in this order shall be deemed to preclude the use of stop-action photography in television advertisements so long as the advertisement as a whole represents the toy in a non-deceptive manner, such as, but not limited to, by means of a clear and prominent depiction of hands-on play showing the method of operation of the toy.

IV.

It is further ordered, That respondent Towne, Silverstein, Rotter, Inc., and its successors and assigns, shall, for three (3) years after the date of the last dissemination of the representation to which they pertain, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating any representation covered by this order;

B. All film footage used in connection with any advertisement that contains any representation covered by this order; and

C. Any toy as well as the packaging for any toy involved in any representation covered by this order.

V.

It is further ordered, That respondent Towne, Silverstein, Rotter, Inc., shall distribute a copy of this order to each of its operating divisions, to each of its managerial employees, and to each of its officers, agents, representatives or employees engaged in the preparation or placement of advertising or other materials covered by this order and shall secure from each such person a signed statement acknowledging receipt of this order.

VI.

It is further ordered, That respondent Towne, Silverstein, Rotter,

Inc., shall notify the Commission at least thirty (30) days prior to any proposed change such as the 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.

VII.

It is further ordered, That respondent Towne, Silverstein, Rotter, Inc., shall, within sixty (60) days after service upon it of this order and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the requirements of this order.

Commissioner Starek not participating.

IN THE MATTER OF

RICHARD CREW

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3326. Complaint, Mar. 4, 1991—Decision, Mar. 4, 1991*

This consent order prohibits, among other things, the advertiser and distributor of the Diet Patch from making unsubstantiated efficacy claims for any product or service and from misrepresenting that a paid advertisement is an independent program. In addition, the order prohibits the respondent from disseminating or broadcasting "The Michael Reagan Show."

Appearances

For the Commission: *Tracy S. Thorleifson.*

For the respondent: *Pro se.*

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 Richard Crew, an individual, hereinafter sometimes 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 Richard Crew is an individual residing at 7968 Via Costa, Scottsdale, Arizona. Individually or in concert with others, he advertised, marketed and sold a weight-loss product, the "EuroTrym Diet Patch," primarily by means of a 30-minute television advertisement made to simulate a regular television talk show.

PAR. 2. Respondent engaged in the advertising, offering for sale, sale and distribution of a food, drug, device, or cosmetic, the EuroTrym Diet Patch, a product found in commerce. The EuroTrym Diet Patch comes within the classification of "drug," as that term is defined in Section 15(c) of the FTC Act, 15 U.S.C. 55(c).

PAR. 3. The acts and practices of respondent alleged in this