

IN THE MATTER OF
AUDIO COMMUNICATIONS INCORPORATED

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

Docket C-3338. Complaint, July 24, 1991—Decision, July 24, 1991

This consent order prohibits, among other things, a Nevada corporation, that markets “900” number information services to children, from making misrepresentations regarding free gifts or the number of calls required to receive a premium; requires a clear statement, or preamble, at the beginning of each children’s message giving the child a chance to hang up without charge; and requires the company to provide a means for parents to prevent, or not be charged for, unauthorized calls by their children.

Appearances

For the Commission: *Toby M. Levin and Joel Winston.*

For the respondent: *James M. Johnstone, Wiley, Rein & Fielding,*
Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that Audio Communications Incorporated, a corporation, 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 Audio Communications Incorporated is a Nevada corporation with its office and principal place of business located at 3140 Polaris Avenue, Suite 27, Las Vegas, Nevada.

PAR. 2. Respondent has advertised, offered for sale and has sold information services to consumers, including children. Accessed by the telephone through a “900” number exchange, respondent’s information services for children have consisted of recorded stories or games featuring animated or fictional characters (such as Santa Claus and the Easter Bunny) along with recorded promotional messages. Advertisements designed to induce consumers to purchase these services have been broadcast on television across state lines.

PAR. 3. As alleged in this complaint, the acts and practices of the respondent have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PAR. 4. Respondent has disseminated, or has caused to be disseminated, advertisements and telephone messages for various information services for children. Typical of respondent's advertisements, but not necessarily all-inclusive thereof, are the advertisements attached hereto as Exhibits A and B. Specifically, the aforesaid advertisements contain the following statements or depictions:

1. "Call me now to get a free Easter Bunny gift, and help my favorite charity."
(Audio, Complaint Exhibit A)
2. "There's a new story everyday, and I'll tell you how to get a free Christmas gift."
(Audio, Complaint Exhibit B)

PAR. 5. Through the use of the statements and depictions contained in the attached advertisements, and in others not specifically set forth herein, respondent has represented, directly or by implication, that:

1. Children who complete a call to respondent's information service will readily and easily obtain the premium specified in the advertisement; and
2. Callers will receive the premium specified in the advertisement by making a single call to respondent's information service.

PAR. 6. In truth and in fact:

1. Children who complete a call to respondent's information service will not readily and easily obtain the premium specified in the advertisement because the child must: (1) complete one or more calls to the information service; (2) record an address, given during the course of the recorded message announcement, to which a request must be sent to obtain the item; (3) obtain a copy of the telephone bill which contains the call(s) to the information service; (4) enclose a stamped self-addressed envelope; and (5) send a copy of the bill to the respondent at the proper address. This ordering information is given in a rapid and difficult to follow manner during the course of the recorded message.

2. In many cases callers will not receive the premium specified in the advertisement by making a single call to respondent's information service.

Therefore, the representations set forth in paragraph five were, and are, false and misleading.

PAR. 7. In its advertising for its information services for children, respondent has represented, directly or by implication, that children could easily obtain a premium by making a call to the information service. These advertisements failed to disclose that there are material terms and conditions for obtaining the premium, including but not limited to, the need for a writing implement to transcribe the ordering information. These terms and conditions would be material to the caller in deciding whether to purchase the service. In addition, although the terms and conditions were included in the recorded message, the message did not provide sufficient notice or time for the caller to obtain a writing implement and transcribe the necessary information. These practices were, and are, deceptive practices.

PAR. 8. In the course of advertising, promoting, and selling its information services for children, respondent has induced children to call its story service and thereby incur charges, without providing any reasonable means for persons responsible for payment of these charges to exercise control over the transaction. This practice has caused such persons to pay these charges. The admonition in respondent's advertisements that children should seek parental permission before calling did not provide reasonable means for persons responsible for payment of these charges to exercise control over the transaction. Respondent's conduct as set forth above has caused substantial injury to consumers that is not outweighed by any countervailing benefits to consumers or competition and is not reasonably avoidable by consumers. This conduct was, and is, an unfair act or practice.

PAR. 9. The acts and practices of the respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

Commissioner Yao not participating.

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EXHIBIT A



VIDEO MONITORING
SERVICES
OF AMERICA, INC.
330 WEST 42ND STREET
NEW YORK, NEW YORK 10036
(212) 736-2010
A BURELLETS AFFILIATE

PRODUCT: EASTER BUNNY TALES PHONE LINE
LENGTH: :30
MARKET: NEW YORK
DATE: 03/23/89
PROGRAM: DUCK TALES
CODE #: 0389-3222
STATION: WNYW
TIME: 4:53 PM

Exhibit A

(BKG MUSIC)
EASTER BUNNY: Hey, kids! I'm the
Easter Bunny!



Get a pencil!



and write down my secret phone
number!



Then call me for great stories
filled with fun, magic, and
monsters!



Ready? 1-900-909-2000.



Got that? Good!



Call me now to get a free
Easter Bunny gift, and help
my favorite charity. *



It's \$2.00 first minute, 45 cents
each minute more.



so ask your parents' permission
before calling me.



to hear hopping good Easter Bunny
tales.



Oh, I'm waiting to hear from you!



'Bye!

* Video Superscript: Three calls for surprise toy
Five calls for super T-shirt

NEW YORK • LOS ANGELES • CHICAGO • PHILADELPHIA • SAN FRANCISCO • BOSTON • DALLAS • WASHINGTON • HOUSTON • MIAMI • DENVER • HARTFORD • SAN DIEGO

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Any publication, re-broadcast or public display for profit is forbidden.

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EXHIBIT B

Radio TV Reports

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

PRODUCT SANTA CLAUS PHONE LINE 1-900-909-4141
PROGRAM BEVERLY HILLS TEENS 12/13/88 30 SEC.
ANCR-TV (NEW YORK) TUESDAY

Exhibit B



1. (MUSIC) SANTA: The elves have been telling me about the good boys and girls



2. who have been calling my special telephone number.



3. To hear terrific Christmas stories,



4. about the adventures of Wilbur the Reindeer.



5. There's a new story everyday, and I'll tell you how to get a free Christmas gift.



6. So call now.



7. ANCR: Call 1-900-909-4141.



8. Each call is \$2 for the first minute,



9. and 45c for each extra minute.



10. Be sure that your parent's give you permission.



11. SANTA: Wilbur the Reindeer,



12. it's a Christmas adventure (MUSIC OUT)

ALSO AVAILABLE IN COLOR VIDEO-TAPE CASSETTE

While Radio TV Reports, Inc. endeavors to assure the accuracy of material supplied by it, it cannot be responsible for mistakes or omissions. Material contained herein may be used for file and reference purposes only. It may not be reproduced, sold or publicly demonstrated or exhibited.

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 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 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.

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 Audio Communications, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada, with its office and principal place of business located at 3140 Polaris Avenue, Suite 27, of the City of Las Vegas, State of Nevada;

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

DEFINITIONS

For purposes of this order, the term "*children*" or "*child*" shall mean a person of age twelve or under.

For purposes of this order, the term "*information service for children*" shall mean a telephone message accessed through a number exchange (e.g., "900") for which a fee is charged, consisting of recorded statements promoted or sold primarily to children in any of the following ways: (a) in advertisements appearing in publications primarily directed to children including, but not limited to, children's magazines and comic books; (b) in advertisements during or adjacent to television or radio programs primarily directed to children including, but not limited to, children's animated programs, children's game shows, and children's after-school specials; (c) in advertisements appearing on product packaging primarily directed to children including, but not limited to, children's cereals, toys and beverages; or (d) in any advertisement, regardless of when or where it appears, that is primarily directed to children in light of its subject matter, visual content, language, characters, tone, message, or the like.

For purposes of this order, the term "*premium*" shall mean any item respondent offers to send to those who call its information service for children.

For purposes of this order, the term "*information service message*" shall mean any live or recorded story, program or other communication transmitted to callers of respondent's information service for children.

For purposes of this order, the term "*video advertisement*" shall mean any advertisement intended for dissemination on television broadcast, cablecast, home video, or theatrical release.

This order shall not apply to respondent's service bureau functions with regard to information service messages for children that are limited to either or both of the following:

- (1) distribution or dissemination of any information service for children; or
- (2) creation or production of the non-promotional story content of such information service messages.

I.

It is ordered, That respondent Audio Communications Incorporated, 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, promotion, offering for sale, sale or transmission of any information

service for children in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, directly or by implication:

- A. The number of calls required to receive a premium; and
- B. The ease with which a premium is obtainable.

II.

It is further ordered, That Audio Communications Incorporated, 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, promotion, offering for sale, sale or transmission of any information service for children in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to disclose, clearly and prominently, whenever an offer of any premium is made, all the material terms, conditions and obligations upon which receipt and retention of the premium is contingent. Such terms, conditions, and obligations shall include, but not be limited to, the number of calls necessary to receive the premium, if more than one, and the need to have a writing implement and paper available to record the necessary information given during the information service message.

The disclosure shall be made in a manner understandable to children, and shall be made in the same medium in which the offer of the premium is made and, in addition, in any information service message. The material terms, conditions and obligations to be disclosed in media other than the information service message shall include the number of calls necessary to receive the premium, if greater than one, and the need to have a writing implement and paper available to record the necessary information, and any other information material to (1) the decision to attempt to obtain the premium, or (2) the ability to take advantage of the premium offer by calling the information service. The name and address to which the premium request must be sent need not be disclosed in any medium other than the information service message.

In a video advertisement, the premium disclosure shall be displayed as a legible superscript with a simultaneous voice-over recitation of the disclosure in a manner designed to ensure clarity and prominence.

In a print advertisement, the premium disclosure shall be printed in

a typeface and color that are clear and prominent. In multipage documents, the premium disclosure shall appear on the cover or first page.

In a radio advertisement, the premium disclosure shall be included in a manner designed to ensure clarity and prominence.

In an information service message, the premium disclosure shall be included in a manner designed to ensure clarity and prominence with sufficient time for the child to record all information needed to obtain the premium upon the first hearing of the message, including, but not limited to, the address where a request must be sent.

III.

It is further ordered, That respondent do forthwith cease and desist from disseminating or causing to be disseminated any advertisement in any medium for an information service for children that does not include the following statement:

"KIDS, YOU MUST ASK YOUR MOM OR DAD AND GET THEIR PERMISSION BEFORE YOU CALL. THIS CALL COSTS MONEY."

The above-required disclosure shall be presented in a manner designed to ensure clarity and prominence, as follows:

A. In any video advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. The disclosure shall appear immediately following the first video presentation of the "900" telephone number, but in any event shall begin within the first fifteen (15) seconds of the advertisement. The audio portion shall be presented in a slow and deliberate manner. Each line of the video portion shall be at least as large as one-half of the size of the largest presentation of the "900" number that appears on the screen during the advertisement, shall be of a color or shade that readily contrasts with the background, and shall appear on the screen for the duration of the audio disclosure.

B. In any print advertisement, the disclosure shall be parallel with the base of the advertisement and shall be placed in close proximity to the 900 number. All lines of the disclosure when taken together shall be at least as large as one-half the size of the largest presentation of the 900 number, but in any event the type size of each line of the disclosure shall be no less than 12 point, bold-face type.

C. In any radio advertisement, the disclosure shall be presented in a

slow and deliberate manner and shall appear immediately following the first presentation of the "900" telephone number, but in any event it shall begin within the first fifteen (15) seconds of the advertisement.

Nothing contrary to, inconsistent with, or in mitigation of the above-required statement shall be used in any advertisement in any medium.

IV.

It is further ordered, That respondent do forthwith cease and desist from disseminating or causing to be disseminated any advertisement in any medium for any information service for children that does not include a disclosure of the cost of a call to the information service. This disclosure shall be presented in a manner designed to ensure clarity and prominence. In any video advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement.

V.

It is further ordered, That respondent do forthwith cease and desist from disseminating or causing to be disseminated any information service message for children that does not include, at the beginning of the message, an introductory preamble that states in a slow, deliberate and clear manner the following:

"THIS TELEPHONE CALL COSTS MONEY. IF YOU DO NOT HAVE YOUR MOM OR DAD'S PERMISSION, HANG UP NOW AND THERE WILL BE NO CHARGE FOR THIS CALL."

VI.

It is further ordered, That respondent do forthwith cease and desist from billing or causing to be billed, or collecting any funds or causing any funds to be collected, for any call to any information service for children terminated within no less than five (5) seconds of the end of the introductory preamble, as required by paragraph V of this order.

VII.

It is further ordered, That respondent do forthwith cease and desist

from inducing children to call its information service for children and thereby incur charges, without providing any reasonable means for the person responsible for payment of such charges to exercise control over the transaction. For purposes of this paragraph, if the respondent does not provide, prior to placement of any call by a child, a reasonable means for the person responsible for payment to avoid unauthorized calls, the provision of a reasonable means to exercise control over the transaction shall be the use of the respondent's best efforts to ensure that one-time refunds or credits are provided upon request for unauthorized calls made by children, as specified below. Best efforts shall include at least the following:

A. Contracting with the appropriate interstate common carrier or local exchange carrier to:

(1) Identify in all telephone bills containing charges for calls to respondent's information service for children each telephone call to such service by the characters "CHILD CALL;"

(2) Place in all telephone bills containing charges for calls to respondent's information service for children, clearly and prominently in close proximity to the itemization of those charges, a toll-free or local telephone number specified to be used for consumer inquiries concerning charges on the telephone bill; *provided*, that a general billing inquiry telephone number for customer inquiries concerning charges on the telephone bill shall satisfy this requirement;

(3) Refer all customers who call the toll-free number inquiring about the charges for respondent's information service for children to their local exchange carrier for information regarding the availability of blocking in their jurisdiction; and

(4) Provide a one-time prompt and full credit or refund at the customer's request for all such calls, whether such request is made to the toll-free or local telephone number specified herein or in any other manner; *provided*, that respondent must contract with the carrier to provide a second prompt and full credit or refund to any customer who requests the first credit or refund during a period of the billing cycle where unauthorized calls have been made, but do not yet appear on the customer's bill, and subsequently requests a second credit or refund for any additional unauthorized calls made before the date of the first request for a credit or refund;

provided, that if the interstate common carrier utilized by respondent employs local exchange carriers to provide billing inquiry services,

respondent shall be in compliance with subparagraphs A(3) and (4) of this paragraph if its contract with the interstate common carrier provides that the interstate common carrier notify each local exchange carrier of the interstate common carrier's policies to:

(i) Provide the customer with information regarding the availability of blocking of 900 number calls; and

(ii) Provide upon request one-time refunds or credits for unauthorized calls by children, as provided in subparagraph A(4) of this paragraph.

B. In the event that respondent receives any information that the interstate common carrier has failed to fulfill its obligations under the contract required by subparagraph A of this paragraph, immediately notifying the interstate common carrier:

(1) Of the existence of the alleged failure(s);

(2) Of the interstate common carrier's responsibility to fulfill its obligations under the contract;

(3) Of the need to investigate and correct all past failures; and

(4) That if a pattern or practice of failures continues, respondent will terminate the use of said interstate common carrier for any information service for children; and

C. Terminating the use of said interstate common carrier for any information service for children, in the event that the interstate common carrier does not correct all past failures of which it is aware or continues to fail to fulfill its obligations under said contract.

D. Compliance with the requirements set forth in subparagraphs A - C of this paragraph is deemed to be satisfactory compliance with this paragraph.

Provided, that for purposes of this paragraph, the mere inclusion of any audio or video disclosure relating to parental authorization in advertisements or information service messages is expressly deemed not to be a reasonable means, prior to placement of any call by a child, for the person responsible for payment to avoid unauthorized calls.

VIII.

It is further ordered, That for three (3) years from the date of service of this order, respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying: (1) all advertisements for information services for children

and all corresponding information service messages; (2) a record of all credit or refund requests made for charges billed for respondent's information services for children; (3) all documents relating to compliance with paragraph VII of this order; and (4) all consumer complaints and dispositions thereof relating to respondent's information services for children.

IX.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as dissolution, assignment or sale resulting in the emergence of a successor corporation or corporations, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

X.

It is further ordered, That respondent shall forthwith distribute a copy of this order to each of its operating divisions and any carrier(s) or other entities providing billing and/or collection service for its information services for children.

XI.

It is further ordered, That respondent shall, within sixty (60) days after service 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 this order.

Commissioner Yao not participating.

IN THE MATTER OF

HAROLD HONICKMAN, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket 9233. Complaint, Nov. 2, 1989—Decision, July 25, 1991*

This consent order requires, among other things, a major Pepsi bottler for the New York metropolitan area and his beverage corporation, for a ten year period, to seek prior Commission approval before making certain soft drink acquisitions in the New York metropolitan area; or else hold the newly acquired assets separate and apart from ongoing bottling operations. However, the addendum to the agreement would allow Mr. Honickman to distribute and sell the products of Seven-Up Brooklyn to another bottler for a limited time period.

Appearances

For the Commission: *Constance M. Salemi* and *Ronald B. Rowe*.

For the respondents: *Andrew L. Sandler, Skadden, Arps, Slate, Meagher & Flom*, Washington, D.C. and *Peter E. Greene, Skadden, Arps, Slate, Meagher & Flom*, 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 ("Commission"), having reason to believe that the respondent, Harold Honickman, individually or by or through the Long Island Acquisition Company, a partnership, or its partners, the Brooklyn Beverage Acquisition Corporation, a corporation, MGGR Corporation, a corporation, Taunton Corporation, a corporation, LTF Brooklyn, Inc., a corporation; Melville Beverage Partners Limited Partnership, a limited partnership; and the Berriman Cozine Corporation, a corporation; subject to the jurisdiction of the Commission, has acquired the assets of the Seven-Up Brooklyn Bottling Company, Inc., from the Seven-Up Brooklyn Bottling Company, Inc., and that said acquisition may be in violation of the provisions of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45; and that said acquisition