

IN THE MATTER OF

FONE TELECOMMUNICATIONS, INC.

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

Docket C-3432. Complaint, June 14, 1993--Decision, June 14, 1993

This consent order prohibits, among other things, a New York marketer of "900" number information services from misrepresenting premium offers, requires a preamble statement 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. In addition, the consent order prohibits the respondent from misrepresenting the ease with which a premium is obtainable and requires the disclosure of all material terms and conditions for obtaining any premium offers.

Appearances

For the Commission: *Toby M. Levin and Carol A. Kando.*

For the respondent: *Joel R. Dichter, Seham, Klein & Zelman,*
New York, N. Y.

COMPLAINT

The Federal Trade Commission, having reason to believe that Fone Telecommunications, 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 Fone Telecommunications, Inc., is a New York corporation, with its principal office or place of business at 444 Madison Avenue, Suite 212, New York, New York.

PAR. 2. Respondent has advertised, offered for sale and 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 video game tips featuring animated or fictional characters (such as Santa Claus) along with recorded promotional messages. Advertisements designed to induce consumers to purchase these services have been broadcast on television across state lines.

PAR. 3. The acts and practices of respondent alleged in this complaint 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, including but not necessarily limited to the attached Exhibits A-E. These aforesaid advertisements contain the following statements:

A. "I want you to hear Santa's secret message and find out how you can get a real letter from Santa and a special Christmas present from Santa Claus to you." (Audio, Exhibit A)

B. "Sing along with Santa and find out how you can get a present from Santa Claus." (Audio, Exhibit B)

C. "Call Santa's phone at 1-900-909-4300 to sing along with Santa and find out how to get a special present from Santa Claus to you." (Audio, Exhibit C)

D. "I'm startin' a new club and I want you to join. It's called the Junior Vampires of America . . . You'll hear scary monster stories . . . You'll learn all about my monster friends, learn how to get a free vampire patch and a list of special vampire tricks and secrets . . . Learn how to scare your friends and even yourself. Join Grandpa's Junior Vampire's Club and I'll make you a Junior Vampire." (Audio, Exhibit D)

E. "We've got all the latest clues on the Power Phone. Call now and find out how to get a free super power patch." (Audio, Exhibit E)

PAR. 5. Through the use of the statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A-E, respondent has represented, directly or by implication, that children who complete a call to respondent's information service will readily and easily obtain the premium specified in the advertisement.

PAR. 6. In truth and in fact, 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 a call 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; and (3) send a self-addressed stamped envelope to the address given during the message. This ordering information is given in a rapid and difficult to follow manner during the course of the recorded message. Therefore, the representation set forth in paragraph five was, and is, false and misleading.

PAR. 7. In its advertising for its information services for children, respondent has represented 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. Respondent's failure to disclose these terms and conditions was, and is, a deceptive practice.

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. 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.

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EXHIBIT A

TAPE 2, #1

Number on screen

VIDEO

Little boy

Little girl

Little boy

Santa in his chair

AUDIO

I called Santa

Santa is that really you?

Hi Santa

Ho ho ho. Hello boys and girls.
Get your parents' permission and
write down the phone number so
you can call Santa's phone too.
It's 1-900-909-4300.
It's a long number because
it's a long way to the North Pole.
I want you to call to hear
Santa's secret message and
find out how you can get a real letter
from Santa and a special Christmas
present from Santa Claus to you.
So write down my number so you can
call Santa's Christmas phone. Ho ho ho

VOICEOVER

Call Santa's Christmas phone.

Dial 1-900-909-4300.

Two dollars the first minute,

.45 each additional.

Kids, ask Mom or Dad.

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EXHIBIT B

TAPE 2, #3

VIDEO

(Number on screen)

Santa in his chair,

surrounded by kids

singing into telephones, waving.

AUDIO

(kids and Santa singing)

What do we do when

Christmas is coming,

Gotta call Santa, gotta

call Santa, What do we do

when Christmas is coming,

Gotta call Santa's

Christmas phone.

VOICEOVER

Get your parents' permission to call

Santa's Christmas phone.

CALL 1-900-909-4300.

Sing along with Santa and
find out how you can get
a present from Santa Claus.

(Kids and Santa singing)

What do we do when

Christmas is coming,

Gotta call Santa, gotta

call Santa, What do we do

when Christmas is coming,

Gotta call Santa's

Christmas phone. (TWICE)

VOICEOVER

Two dollars the first minute,

a dollar each additional. Kids, ask

Mom or Dad.

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EXHIBIT C

TAPE 2, # 5

(Number on screen)

AUDIO

Santa in chair singing
with kids

VIDEO

(singing) It's Santa's Christmas party,
pick up the phone and call us,
Come join us all with Santa.
And will sing Christmas songs.
Call 1-900-909-4300.

Call Santa's phone, call Santa's phone and
we'll sing Christmas songs.

(TWICE)

VOICEOVER

Hey kids get your parents' permission and
call Santa's phone at 1-900-909-4300 to sing
along with Santa and find out how you can get
a special present from Santa Claus to you.
Two dollars first minute, a dollar each
additional. Kids, ask Mom or Dad.

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EXHIBIT D

TAPE 3

Hi ya kids it's me, your Grandpa. I gotta tell ya, I'm starting a new club and I want you to join. It's called the Junior Vampires of America. I mean you'll hear scary monster stories. But to call you gotta ask your parents' permission and call this phone number 1-900-909-4300. You'll hear all about my monster friends, learn how to get a free vampire patch and a list of special vampire tricks and secrets. So call 1-900-909-4300. Learn how to scare your friends and even yourself. Join Grandpa's Junior Vampire's Club and I'll make YOU a junior vampire.

VOICEOVER:

Hey kids, call 1-900-909-4300. That's 1-900-909-4300 to hear Grandpa's scary stories and join the Junior Vampire's Club. That two dollars the first minute and .45 each additional. Ask Mom or Dad first.

EXHIBIT E

VIDEO

various quick edit shots of kids playing video games, video game screens, "CALL NOW," "SECRET TIPS," "FREE POWER PATCH"

AUDIO

VOICEOVER

Power Phone's back. And now it's better than ever. Yes, now you can power up your score on all of your latest and greatest Nintendo games. Like, POW, Bases Loaded, and Teenage Mutant Ninja Turtles. PLUS discover the incredible secrets of Gameboy, Power Glove. Call 1-900-909-0300. Power up Blaster Master, Super Mario Brothers II, power your Gameboy scores on Tetra, ____ Waves, _____. It's the Power Phone for Nintendo players. Call 1-900-909-0300. For secret tips and clues and find out how you can get a free super power patch. Having fun with Gameboy? ready to take on the Power Glove? We've got all the latest clues on the Power Phone. Call now and find out how to get a free super power patch. 1-900-909-4300. We've got it covered on the Power Phone. Two dollars the first minute, .45 each additional. Ask Mom or Dad first. The power phone is an independent information source not affiliated with Nintendo. Nintendo and Nintendo products are registered trademarks of Nintendo America.

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 purpose 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, 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 Fone Telecommunications, 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 444 Madison Avenue, Suite 212, in the City of New York, State of 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

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 numbered exchange (e.g., "900") for which a fee is charged, consisting of recorded statements promoted or sold primarily to children.

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 respondents 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.

I.

It is ordered, That respondent Fone Telecommunications, Inc., a corporation, its successors and assigns, and its officers, and respondent's 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, the ease with which a premium is obtainable.

II.

It is further ordered, That respondent Fone Telecommunications, Inc., its successors and assigns, and its officers, and respondent's 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 as specified below 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.

III.

It is further ordered, That respondent, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, 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 to the base of the advertisement and shall be placed in close proximity to the 900 number. All lines of the disclosure taken together shall be the same size or larger than 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, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, 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, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, 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, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, 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, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from inducing children to call their 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 the unauthorized call 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 the 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 the 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 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 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 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, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, 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 corporate respondent including but not limited to dissolution, assignment or sale resulting in the emergence of a successor corporation or corporations, the creation or dissolution of subsidiaries or affiliates, the planned filing of a bankruptcy petition, any other corporate change that 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 respondent's operating divisions and any carrier(s) or other entities providing billing and/or collection service for their 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 the order.

Complaint

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IN THE MATTER OF

CENTER FOR IMPROVED COMMUNICATIONS, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3433. Complaint, June 15, 1993--Decision, June 15, 1993*

This consent order requires, among other things, the New York corporation and its officer to correct false and deceptive claims in Yellow Pages advertisements, prominently post corrected information about Medicare coverage in their offices or provide it to consumers prior to purchase, and prohibits them from misrepresenting the coverage provided by any medical insurance for any hearing-related device or service they offer in the future.

*Appearances*For the Commission: *Collot Guerard* and *Eileen Harrington*.For the respondents: *Pro se*.

COMPLAINT

The Federal Trade Commission, having reason to believe that Center for Improved Communications, a corporation, and Jack Brown, individually and as an officer of Center for Improved Communications, ("respondents"), have violated certain provisions of the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Center for Improved Communications is a New York corporation with its main office and principal place of business located at 9720 Flatlands Avenue, Brooklyn, New York. Another office is located at 1301 57th Street, Brooklyn, New York.

PAR. 2. Respondent Jack Brown is an audiologist who is an officer of Center for Improved Communications. He formulates,