

IN THE MATTER OF

GRIFFIN BACAL, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3446. Complaint, July 2, 1993--Decision, July 2, 1993*

This consent order prohibits, among other things, a New York advertising agency from misrepresenting any performance characteristic of any toy it promotes. In addition, in any demonstrations or tests used in the advertising for the toys, the respondent is prohibited from knowingly misrepresenting that the demonstration or test proves or confirms any material feature of the toy.

Appearances

For the Commission: *Rosemary Rosso* and *Toby M. Levin*.

For the respondent: *Peter Kadzik, Dickstein, Shapiro & Morin*,
Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that Griffin Bacal, Inc. ("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 New York corporation, with its principal office and place of business at 130 Fifth Avenue, New York, New York.

PAR. 2. Respondent, at all times relevant to this complaint, was an advertising agency of Hasbro, Inc., and prepared and disseminated advertisements to promote the sale of Battle Copter toy aircraft vehicles.

PAR. 3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act.

PAR. 4. Respondent has disseminated or has caused to be disseminated advertisements for the Battle Copter aircraft vehicle, including but not necessarily limited to the attached Exhibit A. These advertisements contain the following statements and depictions:

A. Exhibit A, a television advertisement, contains depictions of children launching and playing with toy Battle Copters and scenes of Battle Copters hovering and flying in the air, including the following scenes:

1. One sequence depicts two Battle Copters hovering together, approaching the viewer. The ad cuts to a scene showing a boy launching a Battle Copter vertically up and out of view. The final scene in this sequence shows what appears to be the just-launched Battle Copter traveling toward the viewer. In this scene, the audio portion of the ad states that Battle Copters “really fly high.”

2. A second sequence depicts a boy launching a Battle Copter up and out of view. The sequence then cuts to a scene depicting two Battle Copters entering the screen from opposite sides of the frame and flying across the screen to the center where they collide.

3. A third sequence shows a boy launching a Battle Copter into the air. The segment then cuts to a fantasy scene showing two actors engaged in battle while they hover in life-sized helicopters, until one helicopter is hit and explodes. The sequence then returns to a non-fantasy scene showing two Battle Copters approaching each other and colliding in mid-air in the center of the screen.

PAR. 5. Through the use of the statements and depictions contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisement attached as Exhibit A, respondent has represented, directly or by implication, that the demonstrations in the television advertisements of the Battle Copter

toys hovering and flying in the air were unaltered and that the results shown accurately represent the performance of actual, unaltered Battle Copter toys under the depicted conditions.

PAR. 6. In truth and in fact, the demonstrations in the television advertisements of the Battle Copter toys hovering and flying in the air were not unaltered and the results shown did not accurately represent the performance of actual, unaltered Battle Copter toys under the depicted conditions. Among other things, the Battle Copter toys depicted in the advertisements were suspended from monofilament wire attached to poles, which were moved by humans to create the hovering and flying effect, and battery-operated motors were installed to make their rotors spin around while they were being held in place or moved along on the monofilament wire attached to poles. Therefore, the representations set forth in paragraph five were, and are, false and misleading.

PAR. 7. Through the use of the statements and depictions contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisement attached as Exhibit A, respondent has represented, directly or by implication, that the Battle Copter toys can hover and can fly in a sustained and directed manner.

PAR. 8. In truth and in fact, Battle Copter toys cannot hover and are not able to fly in a sustained and directed manner. Therefore, the representation set forth in paragraph seven was, and is, false and misleading.

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.

Complaint

116 F.T.C.

EXHIBIT A

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

PRODUCT: G.I. JOE
PROGRAM: THE JETSONS 2:18 PM
WDR NEW YORK 7:28 AM

1 CHORUS: G.I. Joe.

2 MUSIC MAN: Need a lift Duke!

3 DUKE: Thanks.

4 Look, Cobra's got the plasmaton!

5 ANNCR: But here comes G.I. Joe Battle-Copters. Zip-rip copters that really fly high.

6 DUKE: Perfect for dropping in unexpected. ANNCR: Watch out Duke!

7 Cobra's got Battle-Copters too!

8 ANNCR: Cobra and G.I. Joe Battle-Copters can work with any figure. CHORUS: G.I. Joe.

9 MAN SIMCS: A real American hero. CHORUS: G.I. Joe.

10 ANNCR: G.I. Joe and Cobra Battle-Copter sold separately with figure.

11 DUKE: I hate when this happens!

12 CHORUS: Go Joe! (MUSIC OUT)

Exhibit A

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 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, or that the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true, 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 Griffin Bacal, 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 130 Fifth Avenue, 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

I.

It is ordered, That respondent Griffin Bacal 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, offering for sale, sale or distribution of any toy, in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. In connection with any advertisement depicting a demonstration, experiment or test, making any representation, directly or by implication, that the demonstration, picture, experiment or test depicted in the advertisement proves, demonstrates or confirms any material quality, feature or merit of any toy when such demonstration, picture, experiment or test does not prove, demonstrate or confirm the representation for any reason, including but not limited to:

1. The undisclosed use or substitution of a material mock-up or prop;
2. The undisclosed material alteration in a material characteristic of the advertised toy or any other material prop or device depicted in the advertisement; or
3. The undisclosed use of a visual perspective or camera, film, audio or video technique;

that, in the context of the advertisement as a whole, materially misrepresents a material characteristic of the advertised toy or any other material aspect of the demonstration or depiction.

Provided, however, that notwithstanding the foregoing, nothing in this order shall be deemed to otherwise preclude the use of fantasy segments or prototypes which use otherwise is not deceptive.

Provided further, however, that it shall be a defense hereunder that the respondent neither knew nor had reason to know that the

demonstration, experiment or test did not prove, demonstrate or confirm the representation.

B. Misrepresenting, directly or by implication, any performance characteristic of any Battle Copter toy or any other toy.

II.

It is further ordered, That respondent Griffin Bacal, Inc. shall distribute a copy of this order to each of its operating divisions and to each officer, agent and personnel responsible for the preparation, review 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.

III.

It is further ordered, That for three (3) years after the date of the last dissemination of any representation covered by this order, respondent, its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying the following records:

A. Any and all videotapes, in complete and unedited form, and any and all still photographs taken during the production of any advertisement depicting a demonstration, experiment, or test; and

B. Any and all affidavits or certifications submitted by an employee, agent or representative of respondent to a television network or to any other individual or entity, other than counsel for respondent, which affidavit or certification affirms the accuracy or integrity of a demonstration or demonstration techniques contained in an advertisement.

In addition, respondent, its successors and assigns, for three (3) years after the date of service of this order, shall maintain and, within thirty (30) days of any written request, make available to the

Federal Trade Commission for inspection and copying all signed statements obtained pursuant to section II, above.

IV.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporation which may affect compliance obligations arising out of this order, including but not limited to any change in corporate name or address, dissolution, assignment or sale resulting in the emergence of a successor corporation, and the creation or dissolution of subsidiaries.

V.

It is further ordered, That respondent shall, within sixty (60) days after service of this order, and at such other time 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.

IN THE MATTER OF

HASBRO, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3447. Complaint, July 2, 1993--Decision, July 2, 1993*

This consent order prohibits, among other things, a Rhode Island-based toy corporation from misrepresenting any performance characteristic of any toy it manufactures or promotes. In addition, in any demonstrations or tests used in the packaging or advertising for the toys, the respondent is prohibited from falsely representing that the demonstration or test proves or confirms any material feature of the toy.

Appearances

For the Commission: *Rosemary Rosso and Toby M. Levin.*

For the respondent: *Michael N. Sohn, Arnold & Porter, Wash-
ington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Hasbro, 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 Rhode Island corporation with its principal office or place of business at 1027 Newport Avenue, Pawtucket, Rhode Island.

PAR. 2. Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed toys and games, including the Battle Copter aircraft vehicle and Eco-Warriors action figures.

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.