

IN THE MATTER OF

GREY ADVERTISING, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3690. Complaint, Oct. 30, 1996--Decision, Oct. 30, 1996*

This consent order prohibits, among other things, the New York-based advertising agency, that handled the Hasbo, Inc., paint-sprayer toy account, from using deceptive demonstrations or otherwise misrepresenting the performance of any toy.

Appearances

For the Commission: *Rosemary Rosso* and *Michael Ostheimer*.

For the respondent: *Leonard Orkin, Kay, Collyer & Boose*, New York, N.Y.

COMPLAINT

The Federal Trade Commission, having reason to believe that Grey Advertising, 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 Grey Advertising, Inc. is a New York corporation, with its principal office or place of business at 777 Third 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 Colorblaster Design Toys, spray painting toys.

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. The Colorblaster Design Toy consists of a plastic drawing tray with an oblong plastic air tank underneath. An attached handle is used to pump up pressure inside the air tank. Special color pens are inserted into a sprayer connected to a hose attached to the air tank. Several sets of stencils, four color pens and blank paper are included with the toy. The enclosed instructions state: "Fully extend

handle and pump it quickly 50 strokes. . . The more you pump, the more you spray."

PAR. 5. Respondent has disseminated or has caused to be disseminated advertisements for the Colorblaster Design Toy ("Colorblaster"), including but not necessarily limited to the attached Exhibits A and B. These advertisements contain the following statements and depictions:

A.

VIDEO

Children playing with a Colorblaster.
Tight shot of hand spraying stencil and removing it to reveal a picture of a car followed by a scene of children using the Colorblaster.
Hand pumping toy four times.
Several scenes of the Colorblaster spraying stencils and quickly creating multi-colored pictures.
Girl pumping toy twice.
Red spray filling screen.
(Exhibit A, television advertisement).

AUDIO

Boy: It's a blast!
Song: Something hip just blew into town spraying art with a blast of air. It's the Colorblaster.
Girl: Nothing like it anywhere!
Boy: It's a blast!
Song: PPPump, pump...
Song: Spray. Blast away. Spray'n stencils. Hot designs. Spray cool colors. Pictures so fine.
Boy: Wild!
Song: It's the Colorblaster.
Spraying art with a blast of air.

B.

VIDEO

Hand pumping toy four times.
Super: FEEL
Super: REAL
Close-up of the Colorblaster
Tight shot of hand spraying car stencil and removing stencil to reveal multi-colored picture of car followed by shot of boy free spraying the car picture.
Split-screen image of hand pumping toy four times.
Several scenes of the Colorblaster spraying stencils and quickly creating multi-colored pictures.
Hand pumping toy three times. —
Super: FEEL
Super: REAL
The Colorblaster.
(Exhibit B, television advertisement).

AUDIO

Announcer: Get the feel...
Announcer: of the real...
Announcer: Colorblaster.
Song: The super hot way to spray with a blast of air.
Boy: Wow!
Song: Pump, pump. Spray.
Song: Blast away. The real Colorblaster.

Announcer: Get the feel...
Announcer: Of the real...
Announcer: Colorblaster.

PAR. 6. Through the use of the statements and depictions contained in the advertisements referred to in paragraph five,

including but not necessarily limited to the advertisements attached as Exhibits A and B, respondent has represented, directly or by implication, that the demonstrations in the television advertisements of the operation of the Colorblaster Design Toy were unaltered and that the results shown accurately represent the performance of actual, unaltered Colorblaster Design Toys under the depicted conditions.

PAR. 7. In truth and in fact, the demonstrations in the television advertisements of the operation of the Colorblaster Design Toy were not unaltered and the results shown do not accurately represent the performance of actual, unaltered Colorblaster Design Toys under the depicted conditions. Among other things, the Colorblaster Design Toy depicted in the advertisements was not manually pumped to provide the air pressure necessary to operate the paint sprayer. Instead, a motorized air compressor was attached to the Colorblaster Design Toy to provide the air pressure necessary to operate the paint sprayer, making it appear that children can operate the Colorblaster Design Toy and complete multi-part stencils with a small amount of pumping and little effort. Therefore, the representations set forth in paragraph six were, and are, false and misleading.

PAR. 8. Through the use of the statements and depictions contained in the advertisements referred to in paragraph five, including but not necessarily limited to the advertisements attached as Exhibits A and B, respondent has represented, directly or by implication, that children can operate the Colorblaster Design Toy and complete multi-part stencils with a small amount of pumping and little effort.

PAR. 9. In truth and in fact, children cannot operate the Colorblaster Design Toy and complete multi-part stencils with a small amount of pumping and little effort. To operate the Colorblaster Design Toy and complete multi-part stencils, children must engage in substantial pumping and significant manual effort. Therefore, the representation set forth in paragraph eight was, and is, false and misleading.

PAR. 10. Respondent knew or should have known that the representations set forth in paragraphs six and eight were, and are, false and misleading.

PAR. 11. 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

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EXHIBIT A

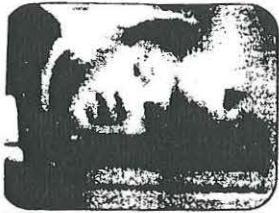
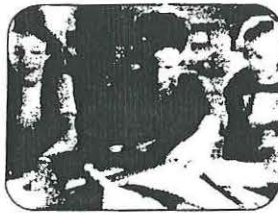
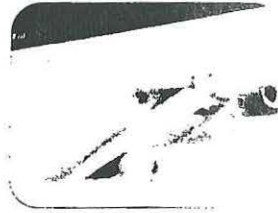
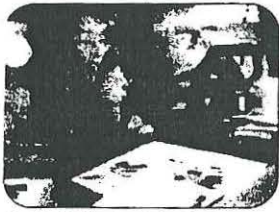
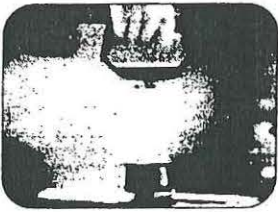
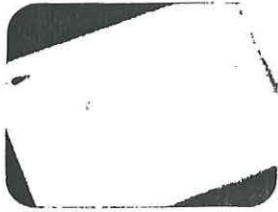
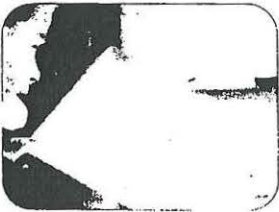
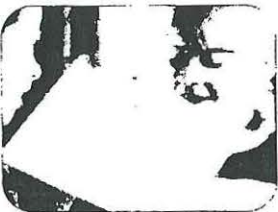
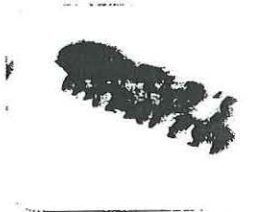
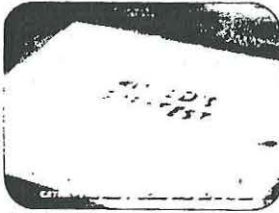
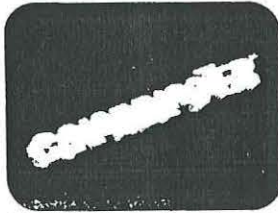
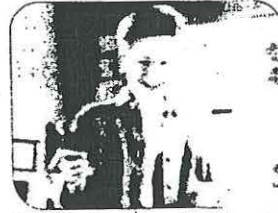
		PRODUCT: KENNER COLORBLASTER TITLE: "SOMETHING HIP" PROGRAM: MUPPET BABIES STATION: WNYW	91-10136 9-15-91 30 (NEW YORK) 2:54PM
 BOY: It's a blast!	 MAN SINGS: Something hip just blew into town, spraying	 art with a blast of air.	
 CHORUS: It's the Colorblaster! GIRL: Nothing like it anywhere! BOY'S VOICE: It's a blast!	 MAN: Pump, pump spray, blast away.	 MAN SINGS: Spray 'n stencils hot designs, spray cool colors, pictures so fine!	
 BOY: Wild!	 CHORUS: It's the Colorblaster!	 MAN SINGS: Spraying art with a blast of air.	
 ANNCR: Extra pens and stencils sold separately.	 BOY'S VOICE: Colorblaster!	 BOY: Yo, it's a blast. (MUSIC)	

Exhibit A

ALSO AVAILABLE IN COLOR VIDEO-TAPE CASSETTE

While Radio TV Factsheet endeavor to ensure the accuracy of material provided by it it cannot be responsible for mistakes or omissions.

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Complaint

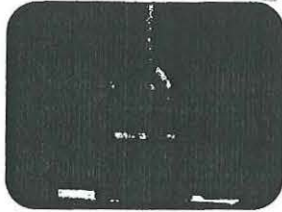
EXHIBIT B

RTV

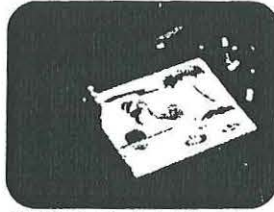
PRODUCT KENNER COLOR BLASTER
 TITLE:
 PROGRAM STATION BREAK
 STATION WPIX

09 17 93
 (NEW YORK)

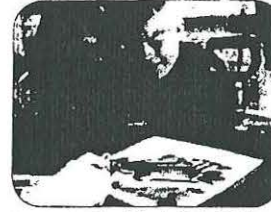
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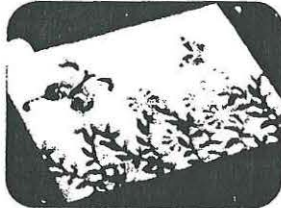
(MUSIC)



ANNCR: Get the feel of the real
 Color Blaster! CHORUS: The super
 hot way



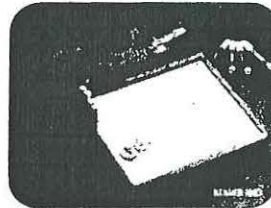
to spray with a blast of air. BOY:
 Wow! MEN SING: Pump pump,
 spray.



blast away.



EXTRA PENS AND STENCILS SOLD SEPARATELY
 CHORUS: The real Color Blaster.
 ANNCR: Extra pens and hot new
 stencils sold separately.



Get the feel of the real Color
 Blaster. (MUSIC OUT)

Exhibit B

ALSO AVAILABLE IN COLOR VIDEO-TAPE CASSETTE

While Radio TV Reports endeavors to ensure the accuracy of material supplied by it, it cannot be responsible for omissions or inaccuracies.

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 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 the respondent of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of the 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 Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the 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 Grey Advertising, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office or place of business at 777 Third Avenue, 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

I.

It is ordered, That respondent Grey Advertising, 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, promotion, 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, experiment, or test depicted in the advertisement proves, demonstrates, or confirms any material quality, feature, or merit of any toy when such demonstration, 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 respondent neither knew nor had reason to know that the demonstration, experiment or test did not prove, demonstrate or confirm the representation.

B. Misrepresenting, in any manner, directly or by implication, any performance characteristic of any Colorblaster Design Toy or any other toy.

II.

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

III.

It is further ordered, That respondent shall, within thirty (30) days after service of this order, distribute a copy of this order to each of its operating divisions and to each of its officers, agents, representatives, or employees engaged in the preparation or placement of advertisements or other materials covered by this order.

IV.

It is further ordered, That for five (5) years after the last date of dissemination of any representation covered by this order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

1. All materials that were relied upon in disseminating such representation;

2. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers, and complaints or inquiries from governmental organizations; and

3. Any and all affidavits or certificates 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 a toy advertisement.

V.

This order will terminate on October 30, 2016, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

VI.

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.

Complaint

122 F.T.C.

IN THE MATTER OF

GREY ADVERTISING, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3691. Complaint, Oct. 30, 1996--Decision, Oct. 30, 1996

This consent order prohibits, among other things, the New York-based advertising agency, that handled The Dannon Company's Pure Indulgence frozen yogurt account, from misrepresenting the fat, saturated fat, cholesterol, or calories in any frozen yogurt, frozen sorbet, and most ice cream products.

Appearances

For the Commission: *Rosemary Rosso* and *Michael Ostheimer*.

For the respondent: *Leonard Orkin, Kay, Collyer & Boose*, New York, N.Y.

COMPLAINT

The Federal Trade Commission, having reason to believe that Grey Advertising, 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 Grey Advertising, Inc. is a New York corporation, with its principal office or place of business at 777 Third Avenue, New York, New York.

PAR. 2. Respondent, at all times relevant to this complaint, was an advertising agency of The Dannon Company, Inc., and prepared and disseminated advertisements to promote the sale of Dannon Pure Indulgence frozen yogurt, a "food" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

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 for Dannon Pure Indulgence frozen yogurt ("DPI"), including but not necessarily limited to the attached