

any purchaser from respondent of such products bought for resale, unless such services or facilities are offered and otherwise made available on proportionally equal terms to all purchasers competing in the distribution or resale of such products.

It is further ordered, That respondent, Exquisite Form Brassiere, Inc., shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist.

By the Commission, Commissioners Anderson and Elman concurring in the result.

IN THE MATTER OF
IDEAL TOY CORPORATION

ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 8530. Complaint, Sept. 12, 1962—Decision, Jan. 20, 1964

Order requiring a distributor of toys in Hollis, N. Y., to cease representing falsely by means of television commercials that its toy "Robot Commando" would perform acts as directed by vocal commands, including moving forward, turning, firing a "missile" and firing a "rocket".

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 Ideal Toy Corporation, hereinafter 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 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 and place of business located at 184-10 Jamaica Avenue, Jamaica, Long Island, State of New York.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of toys and related products, including toys designated "Robot Commando" and "Thumbelina" doll, to distributors and retailers for resale to the public.

PAR. 3. In the course and conduct of its business, respondent now causes, and for some time last past has caused, its said toys and related products, including its said "Robot Commando" and "Thumbelina" doll, when sold, to be shipped from its place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the conduct of its business, at all times mentioned herein, respondent has been in substantial competition, in commerce, with other corporations, firms and individuals in the sale of toys and related products.

PAR. 5. In the course and conduct of its business and for the purpose of inducing the purchase in commerce of the said "Robot Commando" and "Thumbelina" doll respondent made certain statements, representations and pictorial presentations with respect thereto by means of commercials transmitted by television stations located in various States of the United States and in the District of Columbia having sufficient power to carry such broadcasts across State lines.

PAR. 6. Through the use of aforesaid advertisements, and others containing statements and representations of the same import not specifically set forth herein, respondent has represented, directly and by implication:*

1.(a) That "Robot Commando" will perform an act and a series of acts as directed by commands given vocally (See exhibits "A" and "B"). These acts include:

- (1) Moving forward;
- (2) Turning (See exhibits "C" and "D");
- (3) Firing a "missile" (See exhibit "E");
- (4) Firing a "rocket" (See exhibit "F"); and

(b) That "Robot Commando" as packaged and sold to the purchasing public is operable in the manner depicted in the television advertising, without additional components.

2. That "Thumbelina" doll moves from one side to the other (See exhibits "G" and "H"), and moves its arms apart while lying on its side (See exhibits "I" and "J").

PAR. 7. Enlargements of individual frames extracted from said television commercials, illustrating typical representations with re-

* Pictorial exhibits "A", "B", "C", "D", "E", "F", "G", "H", "I", and "J" are omitted in printing.

spect to the manner in which the said "Robot Commando" and "Thumbelina" doll purport to perform, as alleged in Paragraph 6 above, are attached hereto, marked exhibits "A" to "J", inclusive, and incorporated herein by reference.*

PAR. 8. In truth and in fact:

1. Each act performed by "Robot Commando" is governed by the manual setting of a control on the said toy. The toy will perform only that act for which the controlling device has been manually set. The initial action of the toy is commenced by blowing into a microphone. The sound of the voice, unless accompanied by the action of blowing into the microphone, will not commence the toy's action. Furthermore, the control must be manually changed after the performance of any one act before the toy will perform a different act and the sound of the voice itself, or as part of the action of blowing, will not cause the toy to change from one action to another.

"Robot Commando" is not, as depicted, a moving toy, and is not operable in the manner depicted in the television advertising, unless batteries, which are not included in the toy as packaged and sold to the purchasing public, are separately obtained and added thereto.

2. "Thumbelina" doll does not move from one side to the other and does not move its arms apart while lying on its side in the manner depicted.

Therefore, the statements, representations and depictions referred to in Paragraphs 5 and 6 are false, misleading and deceptive.

PAR. 9. Respondent's toys, including the "Robot Commando" and "Thumbelina" doll, are designed primarily for children, and are bought either by or for the benefit of children. Respondent's false, misleading and deceptive advertising claims thus unfairly exploit a consumer group unqualified by age or experience to anticipate or appreciate the possibility that the representations may be exaggerated or untrue. Further, respondent unfairly plays upon the affection of adults, especially parents and other close relatives, for children, by inducing the purchase of toys and related products through false, misleading and deceptive claims of their performance, which claims appeal both to adults and to children who bring the toys to the attention of adults. As a consequence of respondent's exaggerated and untrue representations, toys are purchased in the expectation that they will have characteristics or perform acts not substantiated by the facts. Consumers are thus misled to their disappointment and competing advertisers who do not engage in false, misleading or deceptive advertising are unfairly prejudiced.

* Pictorial exhibits "A" to "J" are omitted in printing.

PAR. 10. The use by respondent of the aforesaid false, misleading and deceptive representations has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that the said representations were, and are, true and into the purchase of substantial quantities of the products of respondent, by reason of said erroneous and mistaken belief.

PAR. 11. The aforesaid acts and practices of respondent, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

Mr. Berryman Davis and *Mr. Walter T. Evans* of Washington, D.C., for the Commission.

Regan, Goldfarb, Powell & Quinn of New York, N.Y., by *Mr. Sidney P. Howell, Jr.*, of counsel, for the respondent.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

JANUARY 20, 1964

The respondent, Ideal Toy Corporation, is engaged in the manufacture, sale and distribution of toys. It is charged under Section 5 of the Federal Trade Commission Act with having engaged in false, misleading and deceptive representations in its television advertising of two toys:—one, a somewhat complex apparatus having, generally, the appearance of a strangely grotesque mechanical man with moving arms and opening head or turret on a rolling and legless base, called Robot Commando; the other, a doll, Thumbelina, rather life-like in texture or appearance to the touch, and in design or form like a baby.

The alleged deceptive practices as far as Robot Commando is concerned are three, (1) that the respondent represented falsely that Robot Commando would perform certain acts to which reference will be made below when instructed so to do vocally, that is to say, merely by use of the voice, (2) that the advertising deceptively made it to appear that the toy was autonomous by showing it in operation and not disclosing that batteries were necessary to provide the power necessary for its operation, and (3) by failing to disclose that the batteries had to be purchased separately from and in addition to the purchase of the package in which the toy was contained.

As to the doll, it is charged that the television presentation advertising Thumbelina made it appear that it moves from one side

to the other and moves its arms apart while lying on its side, when, in fact, Thumbelina "does not move from one side to the other and does not move its arms apart while lying on its side in the manner depicted".

Robot Commando is controlled and operated from a device which resembles a microphone connected to the toy by a flexible insulated cable. It is intended that this device be held in the hand like a microphone. The following illustration of the device is from the literature accompanying the toy.*

In addition to this manual device, batteries must be installed in the toy itself. The first step necessary to initiate any movement is to push from right to left (or from "Off" to "On") the horizontal control bar which is within the device just under the instruction, "Push Control Bar". The mere pushing of this bar from "Off" to "On" is not sufficient to cause movement because an additional electrical contact must be made. This contact is made when a blast of breath is blown in the direction of and at a diaphragm located within the device behind the ornamental grillwork. Once this contact is made, the toy will operate and perform,—turning left, moving forward, turning right, firing missiles or firing a rocket,—each performance being effectuated by moving another control, this time the button, which, by turning on a vertical ratcheted track in a slot, moves up or down to any of the indicated positions,—"Turn Left", "Forward-Forward", "Turn Right", "Fire Missile", or "Fire Rocket".

It is necessary to blow only once. Once the final contact is made, no additional blowings are necessary, provided that the horizontal slide control bar is not pushed back to the right side, on "Off".

The toy is quite attractive and striking to the imagination, particularly to that of children and possibly adults as well. The commands, when activated as related, are obeyed and executed by Robot Commando in that it will move forward, it will move to the left, it will move to the right, and it will fire missiles and a rocket (provided, of course, that the person or child using it remembers to put the missiles and rocket into the receptacles designated for them). On the other hand, the voice command has nothing at all to do with these activities. This is only "window dressing" which serves to give the child a feeling of power or control or mastery. It is a sort of play-acting or fantasy, not uncommon to children or even some if not many adults.

Missiles resembling cannon balls are caused to be propelled through the air in a sort of upward course until their apogee is reached, from which they then descend toward the floor continuing on their

* Illustration of the device is omitted in printing.

course until they hit or happen to strike something which intercepts their movement. This propulsion is caused by the jerky turning and complete revolution of each of the arms of Robot Commando. The missiles or balls are inserted in the arms at the shoulders. At the tip of each of the arms there is an open-end box or receptacle into which the missiles or balls then fall. As the arms make their complete and jerky revolution, the centrifugal force of the turning ejects the balls or missiles at about the time that the turn-arounds point the arms upward.

The rocket (provided of course, that it has been set into the head or top portion of Robot Commando) is propelled upward until it reaches its apogee and then it, too, follows the curved course started and ultimately drops to the floor, unless it strikes an article which happens to get in or is placed in its way.

Respondent has advertised this toy extensively on television. The alleged deceptive representations are contained in an audio-video transcription which was run from about September 16, 1961 until about November 20, 1961, at which time there was a change. It is possible that this particular transcription could have been used by some television stations for a fringe period after November 20, 1961. The evidence is that complete replacement would have been accomplished everywhere by December 1961 (Tr. pp. 15, 16). The entire country was pretty well covered by this broadcasting on television. About 20 or 25 major cities were the subject of concentrated coverage and it was carried on or in connection with two network programs (Tr. p. 17).

The hearing examiner viewed and heard this transcription several times during the hearing. He is of the opinion, and therefore finds, that the television script and picture definitely gave the viewer the impression that only the child's voice command is necessary to cause the toy to perform the acts mentioned and that it was offered for sale as a complete operating unit because, not only did it not make clear the need for batteries, it failed to disclose that the toy would not operate without the batteries which had to be purchased separately. These findings are made because it cannot be said that a toy is controlled merely by the voice when the real control is first the sliding of a bar from right to left to make the connection with the battery power, then the activation of the power by a fairly strong blowing or gust of breath against a diaphragm, and finally the sliding up or down of the button to the various command positions on the manual device. And, even if the viewer has caught the announcer's casual reference to Robot Commando as being "battery-operated" and thus knows that battery power is necessary, it is rea-

