

**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

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**In the Matter of**  
**GREY ADVERTISING, INC.,**  
**a corporation.**

\* **FILE NO. 952-3231**  
\*  
\* **AGREEMENT CONTAINING**  
\* **CONSENT ORDER TO CEASE**  
\* **AND DESIST**  
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The Federal Trade Commission having initiated an investigation of certain acts and practices of Grey Advertising, Inc., a corporation ("proposed respondent"), and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

**IT IS HEREBY AGREED** by and between Grey Advertising, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed 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 10017.
2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.
3. Proposed respondent waives:
  - (a) Any further procedural steps;
  - (b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and
  - (c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.
4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or

issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the attached draft complaint or that the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

## **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 twenty years from the date of its issuance, 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.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_.

GREY ADVERTISING, INC.,  
a corporation

By: \_\_\_\_\_

\_\_\_\_\_  
LEONARD ORKIN  
Kay Collyer & Boose  
Attorney for Proposed Respondent

\_\_\_\_\_  
ROSEMARY ROSSO  
Counsel for the Federal Trade  
Commission

\_\_\_\_\_  
MICHAEL OSTHEIMER  
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Commission

APPROVED:

\_\_\_\_\_  
C. LEE PEELER  
Associate Director  
Division of Advertising Practices

\_\_\_\_\_  
JOAN Z. BERNSTEIN  
Director  
Bureau of Consumer Protection

**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

))),

<b>In the Matter of</b>	*	
	*	
	*	<b>DOCKET NO.</b>
<b>GREY ADVERTISING, INC.,</b>	*	
<b>a corporation.</b>	*	
	*	

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**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 ONE:** 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 10017.

**PARAGRAPH TWO:** 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.

**PARAGRAPH THREE:** 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.

**PARAGRAPH FOUR:** 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."

**PARAGRAPH FIVE:** 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

AUDIO

Children playing with a Colorblaster.

Boy: It's a blast!

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.

Song: Something hip just blew into town spraying art with a blast of air. It's the Colorblaster.

Girl: Nothing like it anywhere!

Hand pumping toy four times.

Boy: It's a blast!

Song: PPPump, pump...

Several scenes of the Colorblaster spraying stencils and quickly creating multi-colored pictures.

Song: Spray. Blast away. Spray'n stencils. Hot designs. Spray cool colors. Pictures so fine.

Boy: Wild!

Girl pumping toy twice.  
Red spray filling screen.

Song: It's the Colorblaster.  
Spraying art with a blast of air.

(Exhibit A, television advertisement).

B.

VIDEO

AUDIO

Hand pumping toy four times. Super:  
**FEEL**

Announcer: Get the feel...

Super: **REAL**

Announcer: of the real...

Close-up of the Colorblaster

Announcer: 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.

Song: The super hot way to spray with a blast of air.

Boy: Wow!

Split-screen image of hand pumping toy four times.

Song: Pump, pump. Spray.



Song: Blast away. The real Colorblaster.

Several scenes of the Colorblaster spraying stencils and quickly creating multi-colored pictures.

Hand pumping toy three times.

Super: **FEEL**

Announcer: Get the feel...

Super: **REAL**

Announcer: Of the real...

The Colorblaster.

Announcer: Colorblaster.

(Exhibit B, television advertisement).

**PARAGRAPH SIX:** 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.

**PARAGRAPH SEVEN:** 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.

**PARAGRAPH EIGHT:** 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.

**PARAGRAPH NINE:** 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.

**PARAGRAPH TEN:** Respondent knew or should have known that the representations set forth in PARAGRAPHS SIX and EIGHT were, and are, false and misleading.

**PARAGRAPH ELEVEN:** 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.

Therefore, the Federal Trade Commission this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_, has issued this complaint against respondent.

By the Commission.

Donald S. Clark  
Secretary

SEAL:

[Exhibits A and B attached to paper copies, but not available in electronic format]

## **ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT**

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from Grey Advertising, Inc. ("Grey") in connection with its advertising of the Colorblaster Design Toy (the "Colorblaster"), manufactured by Hasbro, Inc. In a related matter, the Commission has also accepted, subject to final approval, and separately placed on the public record, an agreement to a proposed consent order from Grey involving claims made in advertising created by Grey for Dannon Pure Indulgence frozen yogurts.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

According to the complaint, the Colorblaster is a spray painting toy consisting 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. The enclosed instructions state: "Fully extend handle and pump it quickly 50 strokes. . . The more you pump, the more you spray."

The complaint alleges that television advertisements for the Colorblaster represented that the demonstrations of the toy were unaltered and the results shown accurately represent the performance of actual, unaltered toys under the depicted conditions. This representation is alleged to be false and misleading. According to the complaint, the Colorblaster 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 toy to provide the air pressure necessary to operate the paint sprayer, making it appear that children can operate the toy and complete multi-part stencils with a small amount of pumping and little effort.

The complaint also alleges that the advertisements for the Colorblaster misrepresented that children can operate the toy and complete multi-part stencils with a small amount of pumping and little effort.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent Grey from engaging in similar acts and practices in the future.

Part I.A. of the proposed order prohibits Grey from misrepresenting that a demonstration, experiment, or test depicted in an advertisement proves, demonstrates, or confirms any material quality, feature, or merit of any toy when it does not do so. Part I.A. enumerates examples of such misrepresentations, including:

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.

Part I.A does not preclude the use of fantasy segments or prototypes which use is otherwise not deceptive. Part I.A provides Grey with a defense to liability if it neither knew nor had reason to know that a demonstration, experiment or test did not prove, demonstrate or confirm a representation.

Part I.B prohibits Grey from misrepresenting any performance characteristic of the Colorblaster Design Toy or any other toy.

The proposed order also requires Grey to maintain certain materials relating to advertisements covered by the order, to distribute copies of the order to its operating divisions and certain company officials, to notify the Commission of any changes in corporate structure that might affect compliance with the order, and to file one or more reports detailing compliance with the order. The order also contains a provision stating that it will terminate after twenty (20) years absent the filing in federal court, by either the United States or the FTC, of a complaint against Grey alleging a violation of the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify any of their terms.