

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.

PAR. 4. Respondent has disseminated or has caused to be disseminated advertisements and packages for the Battle Copter aircraft vehicle, including but not necessarily limited to the attached Exhibits A and B. These advertisements and packages 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 then 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.

B. The front and the back of the product packaging in Exhibit B depict a Battle Copter in mid-air. Copy on the packaging describes the toy with phrases such as:

1. “*zipcord activated flying/hovering action!;” and
2. “Cobra’s reached new heights in aerial terror! The Battle Copter’s aerodynamic design lets it fly in for fast, crushing, pinpoint attacks every time!”

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 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 flying and hovering effect, and battery-operated motors were installed into the Battle Copter toys in order 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 and packages referred to in paragraph four, including but not necessarily limited to the advertisement and package attached as Exhibits A and B 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. Respondent has disseminated or has caused to be disseminated packages for the Eco-Warriors action figures, including but not necessarily limited to the attached Exhibit C. These packages contain the following statements and depictions:

A. Exhibit C bears the following in red on a yellow background: “Color-change battle damage!”

B. Exhibit C contains two side-by-side photographic depictions of the Toxo-Viper figure. In the left-side depiction, the figure is shown with a dark green torso and boots and dark purple arms and legs. The right-side depiction shows the same figure, with a bright yellow patch covering the area from the top of the figure’s head through the torso and belt to the upper legs. Immediately below the depictions is the following statement:

“BEFORE . . . AND AFTER COLOR CHANGE BATTLE DAMAGE!”

PAR. 10. Through the use of statements and depictions contained on the packages referred to in paragraph nine, including but not necessarily limited to the package attached as Exhibit C, respondent has represented, directly or by implication, that the depiction of the Toxo-Viper figure bearing a large patch of bright yellow color extending from the top of the figure’s head, through the torso and belt and covering the upper legs is an unaltered depiction that accurately represents the color change that results when the Toxo-Viper figure is squirted with or dipped into water.

PAR. 11. In truth and in fact, the depiction of the Toxo-Viper figure bearing a large patch of bright yellow color extending from the top of the figure’s head, through the torso and belt and covering the upper legs is not an unaltered depiction and does not accurately represent the color change that results when the Toxo-Viper figure is squirted with or dipped into water. Among other things, the color change depicted was achieved by painting a photograph of the Toxo-Viper figure with yellow paint that is significantly different in color and extensiveness of coverage than the “battle damage” color change that occurs for the Toxo-Viper figure after it is squirted with or dipped into water. Therefore, the representation set forth in paragraph ten was, and is, false and misleading.

PAR. 12. 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

EXHIBIT A

C3447 B141476 *EXHIBIT A*

**RADIO
TV REPORTS**

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

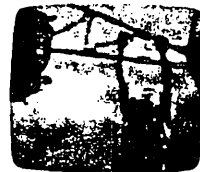
PRODUCT	C.I. JOE	91-01924
PROGRAM	THE JETSONS	2/18/91
		:30
WHD	(NEW YORK)	7:28AM



1 CHORUS: C.I. Joe.



2 [MUSIC] MAN: Need a lift Duke!



3 DUKE: Thanks.



4 Look, Cobra's got the plasmatox!



5 ANNCR: But here comes C.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 C.I. Joe Battle-Copters can work with any figure. CHORUS: C.I. Joe.



9 MAN SINGS: A real American hero. CHORUS: C.I. Joe.



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



11 DUKE: I hate when this happens!



12 CHORUS: Go Joe! [MUSIC OUT]

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

EXHIBIT B-1

C-3447 B14147c 2/78

BATTLE COPTER™
A COBRA™ COMMAND WEAPON

***COPTER WITH FIGURE REALLY FILES!**

SPINNING ROTOR BLADES

FIGURE CLIPS IN FOR SECURE FLIGHT

BATTLE COPTER PILOT

Cobra's reached new heights in aerial terror! The Battle Copter's aerodynamic, lightweight design lets it fly in for fast crushing, pinpoint attacks every time!

EASY-GRIP LAUNCHER

EASY-LOAD ZIPCORD

LIGHTWEIGHT BODY DESIGN

CONTAINS: BATTLE COPTER, "INTERROGATOR"™ FIGURE, LAUNCHER, ZIPCORD, WEAPONS, LABEL SHEET AND INSTRUCTIONS.

Colors may vary slightly from photograph.
Approximate size of Battle Copter is 10" L x 8" W x 5" H.

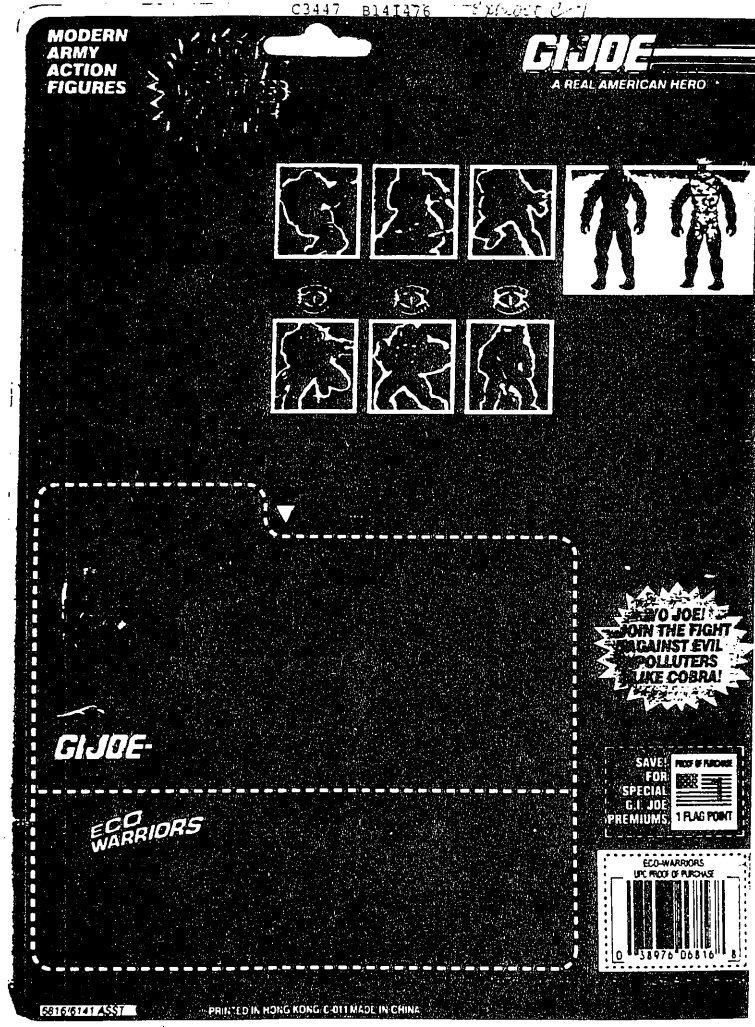
SAVE 2¢
FOR
5¢
PER
FIGURE
PRE-PAID
ZIPCODE
STAMP POINTS

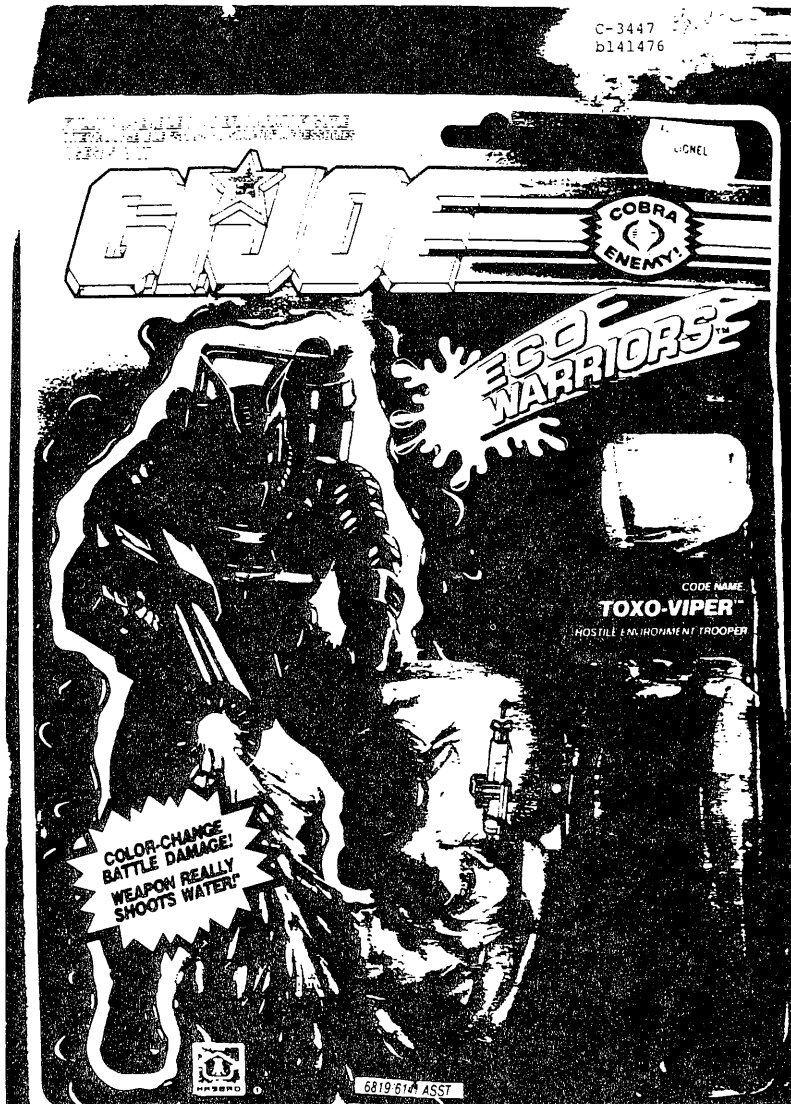
IMPORTANT: ENCLOSED ARE TOP-SECRET BLUE PRINTS OF AN ACTUAL "BATTLE COPTER." ADD THEM TO YOUR G.I. JOE COMMAND FILES!

Pull zipcord to send copter sky-high!



EXHIBIT C-1





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 Hasbro, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island with its office and principal place of business located at 1027 Newport Avenue, in the City of Pawtucket, State of Rhode Island;

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 Hasbro, 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 manufacturing, labeling, 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 or package depicting a demonstration, experiment or test, making any representation, directly or by implication, that the demonstration, picture, experiment or test depicted in the advertisement or package 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.

B. Misrepresenting, directly or by implication, any performance characteristic of any Eco-Warriors action figure toy, Battle Copter toy or any other toy.

II.

It is further ordered, That respondent Hasbro, 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, packaging 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 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:

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

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

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

D. Any toy as well as the packaging for any toy involved in such representation.

In addition, for three (3) years after the date of service of this order, respondent, or its successors and assigns, 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 Hasbro, Inc., shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in its corporate structures, including but not limited to, dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, the planned filing of a bankruptcy petition, or any other corporate change that may affect compliance obligations arising out of this order.

V.

It is further ordered, That respondent Hasbro, Inc., shall, within sixty (60) days after service upon it of this order, and at such other times as the Federal Trade 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

UNITED WEIGHT CONTROL CORP.

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

Docket C-3448. Complaint, July 2, 1993--Decision, July 2, 1993

This consent order prohibits, among other things, a New York-based marketer of very-low-calorie diet programs (rapid weight loss, modified fasting diets of 800 or fewer calories per day) from making false or unsubstantiated claims about health risks, tests, effectiveness compared to any other diet program, weight loss, or weight loss maintenance; and requires certain disclosures in conjunction with safety and weight loss maintenance claims.

Appearances

For the Commission: *Michael J. Bloom and Alice Au.*

For the respondent: *Nancy L. Buc, Weil, Gotshal & Manges,*
Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that United Weight Control Corp., a corporation (hereinafter "UWCC" or "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 United Weight Control Corp. is a Delaware corporation, with its corporate offices at 226 East 54 Street, New York, New York.

PAR. 2. Respondent is engaged, and has been engaged, in the sale and offering for sale of physician-supervised diet programs to the public in joint ventures with hospitals. During the weight loss phase, respondent puts some of its patients on a very-low-calorie

diet ("VLCD"). VLCDs are rapid weight-loss, modified fasting diets of 800 calories or less per day requiring medical supervision. The UWCC diet programs include "foods" or "drugs" within the meaning of Section 12 of the Federal Trade Commission Act, 15 U.S.C. 52.

PAR. 3. Respondent has created and placed advertisements in various periodicals that are in general circulation to the public to promote its diet programs to prospective patients. Respondent has disseminated or has caused to be disseminated advertisements for its diet programs, including, but not necessarily limited to, the exhibits entitled "YOU'VE WON A LOT OF BATTLES BUT YOU'VE NEVER WON THE WAR" and "MOST PEOPLE WHO LOSE WEIGHT GAIN IT BACK. BE THE PERSON WHO DOESN'T," attached hereto as Exhibits A-1 and A-8. Respondent further advertises its diet programs to the public by means of promotional articles which it provides to prospective patients. Respondent has disseminated or has caused to be disseminated promotional materials for its diet programs, including, but not necessarily limited to, the exhibit entitled, "IS PERMANENT WEIGHT LOSS JUST A DREAM TO YOU?," attached hereto as Exhibit B-1. Finally, respondent promotes its diet program to the public by means of orientation sessions for prospective patients.

PAR. 4. The acts and practices of respondent alleged in this complaint are, and have been, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

SAFETY CLAIMS

PAR. 5. Respondent's advertising contains the following statements:

(a) "The Permanence Program delivers medically-proven safe, healthy weight loss and long-term weight control." (Exhibit A-1)

(b) "This is the first individualized, completely safe, medically-monitored nutrition education, behavior modification and physical exercise regimen." (Exhibit A-1)

(c) "For medically-proven safe weight control, CALL: 1-800-765-7475 OR: 1-212-697-8922." (Exhibit A-1)

(d) "The Program is advanced, medically-proven safe and long-term effective." (Exhibit A-2)

(e) "Experts from America's premier University Medical Centers have joined to develop the first program that would safely and effectively address the nation's obesity problems." (Exhibit A-3)

(f) "During the rapid fat loss phase, you will consume the nutritionally complete UWCC formula diet, individually prescribed for you by the program physician to permit you to continue to lose weight of high quality while being assured of the utmost safety." (Exhibit B-1 p. 5)

PAR. 6. By and through the use of the statements set forth in paragraph five, and other statements not specifically set forth herein of similar import and meaning, respondent represents, and has represented, directly or by implication, that the UWCC diet programs are unqualifiedly free of health risks. Respondent has failed to disclose that physician supervision is required to minimize the potential risk to patients of the development of health complications on very-low-calorie diets. In light of respondent's representation that UWCC diet programs are unqualifiedly free of health risks, the disclosure as to the requirement for medical supervision is necessary. Therefore, in light of respondent's failure to disclose, said representation was and is misleading.

PAR. 7. By and through the use of the statements set forth in subparagraphs (a), (c), and (d) of paragraph five, and other statements not specifically set forth herein of similar import and meaning, respondent represents, and has represented directly or by implication, that competent and reliable scientific evidence have proven that UWCC diet programs are unqualifiedly free of health risks.

PAR. 8. In truth and in fact, competent and reliable scientific evidence have not proven that the UWCC diet programs are unqualifiedly free of health risks. Therefore, the representation set forth in paragraph seven was and is false and misleading.

MAINTENANCE CLAIMS

PAR. 9. Respondent's advertising contains the following statements:

