

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, advertising created by Grey for Dannon Pure Indulgence frozen yogurt falsely represented that the frozen yogurt was low in fat, low in calories, and lower in fat than ice cream when certain flavors of the yogurt were not. The complaint further alleges that Grey knew or should have known that these claims were false and misleading. A separate consent order with The Dannon Company, Inc. resolving allegations about the same advertisement was issued by the Commission on March 18, 1996. Docket No. C-3643.

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 of the proposed order prohibits Grey from misrepresenting the existence or amount of fat, saturated fat, cholesterol or calories in any frozen yogurt, frozen sorbet or ice cream product (excluding all other food or confection products in which ice cream is an ingredient comprising less than fifty percent of the total weight of the involved product). Part I also requires that any representation covered by that Part that conveys a nutrient content claim defined for labeling by any regulation of the Food and Drug Administration ("FDA") must comply with the qualifying amount set forth in that regulation.

Part II of the proposed order provides that representations that would be specifically permitted in food labeling, under regulations issued by the FDA pursuant to the Nutrition Labeling and Education Act of 1990, are not prohibited by the order.

The proposed order also requires Grey to maintain materials relied upon to substantiate the claims 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.

Benjamin I. Berman,

*Acting Secretary.*

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**[File No. 952-3231]**

**Grey Advertising, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the New York City-based advertising agency from using deceptive demonstrations or otherwise misrepresenting the performance of a toy. The consent agreement settles allegations stemming from Grey's role in a commercial for Hasbro, Inc.'s "Colorblaster" paint sprayer toy. The Commission had alleged that the commercial represented that children can operate the toy with very little effort when, in fact, Hasbro used a motorized air compressor during filming to provide the pressure necessary to operate the toy with ease and to achieve the results shown in the commercial.

**DATES:** Comments must be received on or before October 18, 1996.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:** Elaine Kolish, Federal Trade Commission, 6th and Pennsylvania Avenue, NW, S-4302, Washington, DC 20850. (202) 326-3042.

Justin Dingfelder, Federal Trade Commission, 6th and Pennsylvania Avenue, NW, S-4302, Washington, DC 20850. (202) 326-3017.

Rosemary Rosso, Federal Trade Commission, 6th and Pennsylvania Avenue, NW, S-4002, Washington, DC 20850. (202) 326-2174.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's

Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

**Agreement Containing Consent Order to Cease and Desist**

The Federal Trade Commission having initiated an investigation of certain acts and practices of Grey Advertising, Inc., a corporation ("proposed respondent"), and it now appears 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.
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 draft complaint or that the facts as alleged in the 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 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 characteristics 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.

### 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 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 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.

Benjamin I. Berman,  
*Acting Secretary.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Release of Draft Findings of the Fernald Dosimetry Reconstruction Project: Meeting

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

*Name:* Release of Draft Findings of the Fernald Dosimetry Reconstruction Project.

*Times and Date:*

4:30 p.m.—5:30 p.m., August 22, 1996.

7:30 p.m.—8:30 p.m., August 22, 1996.

*Place:* The Plantation, 9660 Dry Fork Road, Harrison, Ohio 45020, telephone 513/367-5610.

*Status:* Open to the public for observation, limited only by the space available. The meeting room accommodates approximately 300 people.

#### Matters to be Discussed

The Centers for Disease Control and Prevention (CDC), National Center for Environmental Health (NCEH), and its contractor, the Radiological Assessments Corporation, will release the draft findings of the Fernald Dosimetry Reconstruction Project. The draft final report provides dose and risk estimates for radiation releases in the area surrounding the Department of Energy's Fernald uranium production facility (formerly the Feed Materials Production Center [FMPC]) during operations from 1951-1988. This meeting will be held in two sessions as indicated.

Agenda items may change as priorities dictate.

#### Contact Person for More Information

Steven A. Adams, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, Mailstop F-35, Atlanta, Georgia 30341-3724, telephone 770/448-7040, FAX 770/488-7044.