

## IN THE MATTER OF

## T&amp;N PLC

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF  
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE  
FEDERAL TRADE COMMISSION ACT

*Docket C-3312. Consent Order, Nov. 8, 1990--Modifying Order, April 23, 1996*

This order reopens a 1990 consent order -- that permitted the Manchester, England, corporation to acquire J.P. Industries, Inc., and required the respondent, for ten years, to obtain Commission approval before acquiring any engine bearing assets in the United States -- and this order modifies the consent order by terminating the provision requiring T&N to obtain prior Commission approval.

## ORDER REOPENING AND MODIFYING ORDER

On January 4, 1996, T&N plc ("T&N" or "respondent"), the respondent named in the consent order issued by the Commission on November 8, 1990, in Docket No. C-3312 ("order"), filed its Request to Vacate Prior Approval Provision ("Request") in this matter.<sup>1</sup> T&N asks that the Commission reopen and modify the order pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice and Procedure, 16 CFR 2.51, and consistent with the Statement of Federal Trade Commission Policy Concerning Prior Approval And Prior Notice Provisions, issued on June 21, 1995 ("Prior Approval Policy Statement" or "Statement").<sup>2</sup> Paragraph XI of the order requires T&N to seek prior Commission approval to acquire certain entities engaged in the design, manufacture or sale in or to the United States of engine bearings. T&N requests that the Commission reopen and modify the order to vacate the prior approval provision of paragraph XI of the order, or, in the alternative, to substitute a prior notice provision for the prior approval provision of paragraph XI.<sup>3</sup> The thirty-day public comment period on T&N's Request expired on February 26, 1996. No comments were received.

---

<sup>1</sup> T&N is a United Kingdom corporation that manufactures and sells automotive components, including thinwall engine bearings for sale in the United States aftermarket.

<sup>2</sup> 60 Fed. Reg. 39745-47 (Aug. 3, 1995); 4 Trade Reg. Rep. (CCH) ¶ 13,241.

<sup>3</sup> Request at 1.

The Commission, in its Prior Approval Policy Statement, "concluded that a general policy of requiring prior approval is no longer needed," citing the availability of the premerger notification and waiting period requirements of Section 7A of the Clayton Act, commonly referred to as the Hart-Scott-Rodino ("HSR") Act, 15 U.S.C. 18a, to protect the public interest in effective merger law enforcement. Prior Approval Policy Statement at 2. The Commission announced that it will "henceforth rely on the HSR process as its principal means of learning about and reviewing mergers by companies as to which the Commission had previously found a reason to believe that the companies had engaged or attempted to engage in an illegal merger." As a general matter, "Commission orders in such cases will not include prior approval or prior notification requirements." *Id.*

The Commission stated that it will continue to fashion remedies as needed in the public interest, including ordering narrow prior approval or prior notification requirements in certain limited circumstances. The Commission said in its Prior Approval Policy Statement that "a narrow prior approval provision may be used where there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for the provision, attempt the same or approximately the same merger." The Commission also said that "a narrow prior notification provision may be used where there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for an order, engage in an otherwise unreportable anticompetitive merger." *Id.* at 3. As explained in the Prior Approval Policy Statement, the need for a prior notification requirement will depend on circumstances such as the structural characteristics of the relevant markets, the size and other characteristics of the market participants, and other relevant factors.

The Commission also announced, in its Prior Approval Policy Statement, its intention "to initiate a process for reviewing the retention or modification of these existing requirements" and invited respondents subject to such requirements "to submit a request to reopen the order." *Id.* at 4. The Commission determined that, "when a petition is filed to reopen and modify an order pursuant to . . . [the Prior Approval Policy Statement], the Commission will apply a rebuttable presumption that the public interest requires reopening of

the order and modification of the prior approval requirement consistent with the policy announced" in the Statement. *Id.*

The presumption is that setting aside the prior approval requirement in this order is in the public interest. Nothing to overcome the presumption has been presented, and nothing in the record suggests that the respondent would engage in the same acquisition as alleged in the complaint. Accordingly, the Commission has determined to reopen the proceedings and modify the order to set aside the prior approval requirement.

The record in this case shows a credible risk that respondent could engage in future anticompetitive acquisitions that would not be reportable under the HSR Act. The complaint in this matter ("complaint") alleged that T&N's acquisition of J. P. Industries Inc. ("JPI") would substantially lessen competition within the United States in the manufacture and sale of thinwall engine bearings and trimetal heavywall engine bearings in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. The relevant geographic market is United States.

The complaint alleged that a substantial lessening of competition would result from the elimination of actual competition in the relevant markets; the enhancement of the likelihood of collusion or interdependent coordination between or among firms in the relevant markets; the elimination of potential competition in the relevant markets; and the elimination of JPI as a substantial independent competitive force.

There has been no showing that the competitive conditions that gave rise to the complaint and the order no longer exist. Moreover, the size of relevant transactions indicates that future acquisitions that would currently be covered by the provisions of paragraph XI of the order might not be subject to the premerger notification and waiting period requirements of the HSR Act.<sup>4</sup> Accordingly, pursuant to the Prior Approval Policy Statement, the Commission has determined to modify paragraph XI of the order to substitute a prior notification requirement for the prior approval requirement.

Accordingly, *It is ordered*, That this matter be, and it hereby is, reopened; and

---

<sup>4</sup> The divestitures made pursuant to the order were for prices well below the HSR filing thresholds.

*It is further ordered,* That paragraph XI of the order be, and it hereby is, modified, as of the effective date of this order, to read as follows:

XI.

*It is further ordered,* That, for a period of ten (10) years from the date on which this order becomes final, T&N shall not, directly or indirectly, acquire any stock, share capital, assets or equity interest in any concern, corporate or non-corporate, engaged in the design, manufacture or sale in or to the United States of any engine bearings without Prior Notification to the Commission, if such concern:

A. Is incorporated in one of the United States or organized under the laws of the United States or has its principal offices within the United States; or

B. At the time of the acquisition designs or manufactures plain engine bearings in the United States; or

C. Had net sales of thinwall plain engine bearings in or to the United States of one and one-half (1.5) million dollars or more in any of the three (3) calendar years preceding the date of the acquisition, or had net sales of tri-metal heavywall engine bearings in or to the United States of three hundred thousand (300,000) dollars or more in any of the three (3) calendar years preceding the date of the acquisition.

Provided, however, that nothing in this paragraph shall prohibit T&N from acquiring used machinery or equipment associated with or related to the manufacture of plain engine bearings from an entity that continues, to substantially the same extent as before the acquisition, in the business of manufacturing such bearings and selling them in or to the United States; and provided, further, that nothing in this paragraph shall prohibit T&N from purchasing from any such entity any plain engine bearings for resale in the United States in the ordinary course of business.

On the anniversary of the date on which this order becomes final, and on every anniversary thereafter for the following nine (9) years, T&N shall file with the Commission a verified written report of its compliance with this paragraph.

"Prior Notification to the Commission" required by this paragraph shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended (hereinafter referred to as "the Notification Form"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of respondent and not of any other party to the transaction. Respondent shall provide the Notification Form to the Commission at least thirty (30) days prior to consummating any such transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information, respondent shall not consummate the transaction until twenty (20) days after substantially complying with such request for additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. Notwithstanding, prior notification shall not be required by this paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a.

Complaint

121 F.T.C.

IN THE MATTER OF

## ILLINOIS TOOL WORKS INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE  
FEDERAL TRADE COMMISSION ACT

*Docket C-3651. Complaint, April 23, 1996--Decision, April 23, 1996*

This consent order requires Illinois Tool Works, among other things, to divest all of Hobart Brothers' assets and businesses relating to industrial power sources and industrial engine drives to Prestolite Electric Inc. or another Commission-approved acquirer.

*Appearances*

For the Commission: *Ann B. Malester, Christine Perez, Steven K. Bernstein and William Baer.*

For the respondent: *James Wooten and Stewart Hudnut*, in-house counsel, Glenview, IL.

## COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent, Illinois Tool Works Inc., a corporation subject to the jurisdiction of the Commission, has agreed to acquire all of the capital stock of Hobart Brothers Company ("Hobart"), a corporation subject to the jurisdiction of the Commission, in violation of Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. 45, and that such an acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18 and Section 5 of the FTC Act, as amended, 15 U.S.C. 45; and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

## I. RESPONDENT

1. Respondent Illinois Tool Works Inc. ("ITW") is a corporation organized and existing under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at

3600 West Lake Avenue, Glenview, Illinois. Respondent ITW is engaged in, among other things, the research, development, manufacture and sale of industrial power sources and industrial engine drives.

2. For purposes of this proceeding, respondent is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

## II. ACQUIRED COMPANY

3. Hobart is a corporation organized and existing under and by virtue of the laws of Ohio, with its principal office and place of business located at 600 West Main Street, Troy, Ohio. Hobart is engaged in, among other things, the research, development, manufacture and sale of industrial power sources and industrial engine drives.

4. Hobart is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

## III. THE ACQUISITION

5. On or about May 2, 1995, ITW agreed to acquire all of the issued and outstanding capital stock of Hobart, by means of a statutory merger between Hobart and ITW Acquisition Corp., a Delaware corporation which is a wholly-owned subsidiary of ITW. The transaction is valued at approximately \$225 million.

## IV. THE RELEVANT MARKETS

6. For purposes of this complaint, the relevant lines of commerce in which to analyze the effects of the acquisition are:

a. The research, development, manufacture and sale of industrial power sources, which are static arc welding power sources rated at 250 amperes and above; and

b. The research, development, manufacture and sale of industrial engine drives, which are rotating arc welding power sources rated at 250 amperes and above.

7. For purposes of this complaint, the United States is the relevant geographic area in which to analyze the effects of the acquisition in all the relevant lines of commerce.

8. The relevant markets set forth in paragraphs six and seven are highly concentrated whether measured by Herfindahl-Hirschmann Indices ("HHI") or by two-firm and four-firm concentration ratios.

9. Entry into the relevant markets set forth in paragraphs six and seven would not occur in a timely manner to deter or counteract the adverse competitive effects described in paragraph eleven because of, among other things, the difficulty of establishing a distribution and service network and gaining brand name recognition and customer acceptance in the markets.

10. ITW and Hobart are actual significant competitors in the relevant markets set forth in paragraphs six and seven.

#### V. EFFECTS OF THE ACQUISITION

11. The effects of the acquisition may be substantially to lessen competition and to tend to create a monopoly in the relevant markets set forth above in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, in the following ways, among others:

a. By enhancing the likelihood of collusion or coordinated interaction between or among the remaining firms in the relevant markets;

b. By eliminating direct actual competition between ITW and Hobart in the relevant markets;

c. By increasing the likelihood that consumers in the United States would be forced to pay higher prices for industrial power sources and industrial engine drives; and

d. By increasing the likelihood that quality and technological innovation in the industrial power source and industrial engine drive markets would be reduced.



## . VI. VIOLATIONS CHARGED

12. The acquisition agreement described in paragraph five constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

13. The acquisition described in paragraph five, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

## DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the proposed acquisition by respondent of all of the assets and businesses of Hobart Brothers Company ("Hobart"), and the respondent having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and

Respondent, its attorneys, 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 such complaint, other than jurisdictional facts, are true 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 said Acts, and that a 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 described 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 Illinois Tool Works Inc. ("ITW") is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 3600 West Lake Avenue, Glenview, Illinois.

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, as used in this order, the following definitions shall apply:

A. "*Respondent*" or "*ITW*" means Illinois Tool Works Inc., its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups and affiliates controlled by Illinois Tool Works Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "*Hobart*" means Hobart Brothers Company, an Ohio corporation, with its principal office and place of business located at 600 West Main Street, Troy, Ohio, its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups and affiliates controlled by Hobart Brothers Company, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "*Commission*" means the Federal Trade Commission.

D. "*Acquisition*" means the acquisition by respondent of all of the issued and outstanding Hobart capital stock, by means of a statutory merger between Hobart and ITW Acquisition Corp., a Delaware corporation which is a wholly-owned subsidiary of ITW.

E. "*Industrial power sources*" means static arc welding power sources rated at 250 amperes or higher, including, but not limited to, any such power sources using inverter technology.

F. "*Industrial engine drives*" means rotating arc welding power sources rated at 250 amperes or higher.

G. "*Battery chargers*" means devices used to charge industrial batteries.

H. "*Aircraft ground power units*" means power conversion devices that provide power to aircraft that are on the ground.

I. "*Assets and Businesses*" means all assets, businesses and goodwill, tangible and intangible, including, without limitation, the following:

1. All machinery, fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property;

2. All customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, management information systems, software, software licenses, inventions, copyrights, trademarks, trade names (excluding the Hobart trade name), trade secrets, intellectual property, patents, technology, know-how, specifications, designs, drawings, processes and quality control data;

3. The exclusive right to use the Hobart trade name in connection with the research, development, manufacture and sale of industrial power sources and industrial engine drives.

4. Inventory;

5. Rights, titles and interests in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

6. All rights under warranties and guarantees, express or implied;

7. All books, records, and files; and

8. All items of prepaid expense.

J. "*Hobart Industrial Welding Equipment Business*" means of all of the Assets and Businesses used in the research, development, manufacture and sale by Hobart of:

1. Industrial power sources;

2. Industrial engine drives;

3. Battery chargers; and

4. Aircraft ground power units.

K. "*Hobart Power Conversion Operations*" means all of the Assets and Businesses used in the research, development, manufacture and sale by Hobart of:

1. Static arc welding power sources;
2. Rotating arc welding power sources;
3. Battery chargers; and
4. Aircraft ground power units.

L. "*Prestolite*" means Prestolite Electric Incorporated, a Delaware corporation, with its principal office and place of business located at 2100 Commonwealth Blvd., Ann Arbor, Michigan.

M. "*Marketability, viability and competitiveness*" of the Hobart Industrial Welding Equipment assets means that the assets when used in conjunction with the assets of the acquirer are capable of operating a business which is substantially similar to the Hobart Industrial Welding Equipment Business at the time of the acquisition, with substantially similar sales levels and product lines.

## II.

*It is further ordered, That:*

A. ITW shall divest, absolutely and in good faith, the Hobart Industrial Welding Equipment Business. The Hobart Industrial Welding Equipment Business shall be divested either:

1. Within one (1) month of the date this order becomes final, to Prestolite, pursuant to the January 17, 1996, Asset Purchase Agreement between Hobart and Prestolite as modified by the January 24, 1996, undertaking, as Confidential Appendix I. If divested to Prestolite, the Hobart Industrial Welding Equipment Business shall exclude Aircraft Ground Power Units; or

2. Within twelve (12) months of the date this order becomes final, to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. In the event that the acquirer does not choose to acquire the battery charger or ground power unit assets and businesses, because the acquirer does not need such assets in order to engage in the industrial

power source and industrial engine drive businesses, respondent shall not be required to divest such assets.

B. The purpose of the divestiture is to ensure the continuation of the Hobart Industrial Welding Equipment Business as an ongoing, viable operation, engaged in the research, development, manufacture and sale of industrial power sources and industrial engine drives, and to remedy the lessening of competition resulting from the proposed acquisition as alleged in the Commission's complaint.

C. Until the Hobart Industrial Welding Equipment Business has been divested, ITW shall:

1. Maintain the marketability, viability, and competitiveness of the Hobart Industrial Welding Equipment Business, and shall not cause or permit the destruction, removal, wasting, deterioration, or impairment of any assets or business it may have to divest, except in the ordinary course of business and except for ordinary wear and tear, and it shall not sell, transfer, encumber or otherwise impair the marketability, viability or competitiveness of the Hobart Industrial Welding Equipment Business; and

2. Expend funds for research and development, quality control, manufacturing and marketing of each of the Hobart Industrial Welding Equipment Business products at a level not lower than that budgeted for the 1995 fiscal year, and shall increase such spending as is deemed reasonably necessary in light of competitive conditions.

D. Upon reasonable notice from the acquirer to respondent, respondent shall provide, at no cost, such assistance to the acquirer as is reasonably necessary to enable the acquirer to design and manufacture industrial power sources and industrial engine drives in substantially the same manner and quality employed or achieved by Hobart prior to the Acquisition. Such assistance shall include reasonable consultation with knowledgeable employees of respondent and training at the acquirer's facility for a period of time sufficient to satisfy the acquirer's management that its personnel are appropriately trained in the design and manufacture of industrial power sources and industrial engine drives. Respondent shall convey all know-how necessary to design and manufacture industrial power sources and industrial engine drives in substantially the same manner and quality employed or achieved by Hobart prior to the Acquisition. However,

respondent shall not be required to continue providing such assistance for more than nine (9) months.

### III.

*It is further ordered, That:*

A. If ITW has not divested, absolutely and in good faith and with the Commission's prior approval, the Hobart Industrial Welding Equipment Business within twelve (12) months of the date this order becomes final, the Commission may appoint a trustee to divest the Hobart Industrial Welding Equipment Business. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(1) of the Federal Trade Commission Act, 15 U.S.C. 45(1), or any other statute enforced by the Commission, ITW shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph III. shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(1) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by ITW to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to paragraph III.A. of this order, ITW shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of ITW, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in mergers and divestitures. If ITW has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to ITW of the identity of any proposed trustee, ITW shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Hobart Industrial Welding Equipment Business.

3. Within ten (10) days after appointment of the trustee, ITW shall execute a trust agreement that, subject to the prior approval of

the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in paragraph III.B.3. to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Hobart Industrial Welding Equipment Business, or to any other relevant information, as the trustee may request. ITW shall develop such financial or other information as the trustee may request and shall cooperate with the trustee. ITW shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by ITW shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to ITW's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to the acquirer as set out in paragraph II. of this order; provided, however, if the trustee receives *bona fide* offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity selected by the ITW from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of ITW, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of ITW, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities.

The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of ITW, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Hobart Industrial Welding Equipment Business.

8. ITW shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph III.A. of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee may also divest such additional ancillary assets and businesses of the Hobart Power Conversion Operations and effect such arrangements as are necessary to assure the marketability, viability and competitiveness of the Hobart Industrial Welding Equipment Business.

12. The trustee shall have no obligation or authority to operate or maintain the Hobart Industrial Welding Equipment Business.

13. The trustee shall report in writing to ITW and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

#### IV.

*It is further ordered,* That consistent with ITW's obligation to maintain the marketability, viability and competitiveness of the



Hobart Industrial Welding Equipment Business, ITW may engage in any business other than the Hobart Industrial Welding Equipment Business, including without limitation, the welding equipment business it is currently operating through its wholly-owned subsidiary, Miller Electric Mfg. Co.

V.

*It is further ordered,* That within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until ITW has fully complied with paragraphs II. and III. of this order, ITW shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with paragraphs II. and III. of this order. ITW shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with paragraphs II. and III. including a description of all substantive contacts or negotiations for the divestiture required by this order, including the identity of all parties contacted. ITW shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestiture.

VI.

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

VII.

*It is further ordered,* That, for the purpose of determining or securing compliance with this order, ITW shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of ITW, relating to any matters contained in this order; and

B. Upon five (5) days' notice to ITW, and without restraint of interference from ITW, to interview officers, directors, or employees of ITW, who may have counsel present, regarding any such matters.

IN THE MATTER OF

HUGHES DANBURY OPTICAL SYSTEMS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE  
FEDERAL TRADE COMMISSION ACT

*Docket C-3652. Complaint, April 30, 1996--Decision, April 30, 1996*

This consent order prohibits, among other things, the respondents from enforcing the exclusivity provisions contained in a teaming agreement -- between Hughes Danbury Optical Systems, Inc. and Xinetics, Inc. -- thereby ensuring that the Boeing Corp. team has a source for deformable mirrors other than Itek Optical Systems, once Itek is acquired by Hughes. The order also prohibits the respondents from accessing proprietary information from Itek regarding the Boeing team's airborne laser technical design or the cost of its adaptive optics system.

*Appearances*

For the Commission: *Ann B. Malester, John Scribner and William J. Baer.*

For the respondents: *Bill Slowey and Steven Cernak*, in-house counsel, Detroit, MI.

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 ("Commission"), having reason to believe that Hughes Danbury Optical Systems, Inc. ("HDOS"), Hughes Electronics Corporation, and General Motors Corporation, hereinafter sometimes referred to collectively as respondents, all corporations subject to the jurisdiction of the Commission, have agreed to purchase the business and selected assets of the Itek Optical Systems Division of Litton Systems, Inc., a wholly-owned subsidiary of Litton Industries, Inc., a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended ("FTC Act"), 15 U.S.C. 45; and it appearing to the Commission that a proceeding in respect thereof

would be in the public interest, hereby issues its complaint, stating its charges as follows:

#### I. DEFINITIONS

1. "*Airborne Laser System*" means a system that will utilize a 747 aircraft, equipped with a high energy laser projector, to fly at high altitudes near the forward edge of a battle area to locate and destroy incoming short-range missiles.

2. "*Boeing-Lockheed Martin Team*" means the team including The Boeing Company, Lockheed Martin Corporation and Itek Optical Systems, a division of Litton Systems, Inc., among others, that currently holds a Phase I concept design contract for the Phillips Laboratory Airborne Laser Program.

3. "*HDOS/Xinetics Letter of Intent*" means the Letter of Intent entered into on September 21, 1995, between HDOS and Xinetics in which HDOS expresses its intention to use Xinetics as a supplier of any Deformable Mirror which may be required for the Phillips Laboratory Airborne Laser Program.

4. "*Phillips Laboratory Airborne Laser Program*" is a United States Air Force Advanced Technology Demonstration Program to develop and then demonstrate the necessary technologies to acquire, track, and destroy theater ballistic missiles during the boost phase of flight.

5. "*Respondents*" means Hughes Danbury Optical Systems, Inc., Hughes Electronics Corporation, and General Motors Corporation.

6. "*Rockwell-Hughes Team*" means the team including Rockwell International Corporation, Hughes Electronics Corporation, Hughes Danbury Optical Systems, Inc., and Xinetics Incorporated, among others, that currently holds a Phase I concept design contract for the Phillips Laboratory Airborne Laser Program.

7. "*Xinetics*" means Xinetics Incorporated, a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 410 Great Road #A6, Littleton, Massachusetts.

## II. RESPONDENTS

8. Respondent Hughes Danbury Optical Systems, Inc. ("HDOS"), is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 100 Wooster Road, Danbury, Connecticut.

9. Respondent Hughes Electronics Corporation ("Hughes") is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 7200 Hughes Terrace, Los Angeles, California.

10. Respondent General Motors Corporation ("GM") is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office located at 3044 W. Grand Blvd., Detroit, Michigan.

11. For purposes of this proceeding, respondents are, and at all times relevant herein have been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and are corporations whose businesses are in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

## III. ACQUIRED COMPANY

12. Itek Optical Systems ("Itek") is a division of Litton Systems, Inc., a wholly-owned subsidiary of Litton Industries, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 10 Maguire Blvd. Lexington, Massachusetts.

13. For purposes of this proceeding, Itek is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

## IV. THE ACQUISITION

14. On or about September 26, 1995, HDOS entered into a letter of intent to purchase the business and selected assets of Itek ("the Acquisition").

## V. THE RELEVANT MARKET

15. For purposes of this complaint, the relevant line of commerce in which to analyze the effects of the Acquisition is the research, development, manufacture and sale of an Airborne Laser System for use in the Phillips Laboratory Airborne Laser Program.

16. For purposes of this complaint, the United States is the relevant geographic area in which to analyze the effects of the Acquisition in the relevant line of commerce.

17. The relevant market set forth in paragraphs fifteen and sixteen is highly concentrated as measured by the Herfindahl-Hirschmann Index ("HHI") or the two-firm and four-firm concentration ratios ("concentration ratios"), as there are only two teams competing in this market.

18. Entry into the research, development, manufacture and sale of an Airborne Laser System for the Phillips Laboratory Airborne Laser Program would not occur in a timely manner to deter anticompetitive effects because the bids for that program are due in July 1996.

19. Because Itek is exclusively teamed with Lockheed Martin on the Boeing-Lockheed Martin Team and HDOS is exclusively teamed with Rockwell on the Rockwell-Hughes Team for the Phillips Laboratory Airborne Laser Program, HDOS and Itek are actual competitors in the relevant market set forth in paragraphs fifteen and sixteen.

## VI. EFFECTS OF THE ACQUISITION

20. The effects of the Acquisition, if consummated, may be substantially to lessen competition or to tend to create a monopoly in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, in the following ways, among others:

a. Actual, direct and substantial competition between the Boeing-Lockheed Martin Team and the Rockwell-Hughes Team in the research, development, manufacture and sale of an Airborne Laser System for use in the Phillips Laboratory Airborne Laser Program will be reduced;

b. Respondents may disadvantage the Boeing-Lockheed Martin Team competing for the Phillips Laboratory Airborne Laser Program in a manner that raises the costs of that competing team; and

c. Respondents may gain access to competitively sensitive non-public information concerning the Boeing-Lockheed Martin Team for the Phillips Laboratory Airborne Laser Program competition, whereby:

(1) Actual competition between the Boeing-Lockheed Martin Team and the Rockwell-Hughes Team for the Phillips Laboratory Airborne Laser Program will be reduced; and

(2) Advancements in Airborne Laser System research, development, innovation and quality for the Phillips Laboratory Airborne Laser Program will be reduced.

#### VII. VIOLATIONS CHARGED

21. The acquisition agreement described in paragraph fourteen constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

22. The acquisition described in paragraph fourteen, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the proposed acquisition by respondents of the assets and businesses of the Itek Optical Systems Division of Litton Systems, Incorporated ("Itek"), and the respondents having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18,

and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents 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 respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true 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 respondents have violated the said Acts, and that a 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 described 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 Hughes Danbury Optical Systems, Incorporated ("HDOS"), is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 100 Wooster Road, Danbury, Connecticut.

2. Respondent Hughes Electronics Corporation ("Hughes") is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 7200 Hughes Terrace, Los Angeles, California.

3. Respondent General Motors Corporation ("GM") is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 3044 W. Grand Blvd., Detroit, Michigan.

4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.



ORDER

I.

*It is ordered*, That, as used in this order, the following definitions shall apply:

A. "*HDOS*" means Hughes Danbury Optical Systems, Inc., its officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by HDOS, and the respective officers, employees, agents, and representatives, successors and assigns of each.

B. "*Hughes*" means Hughes Electronics Corporation, its officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Hughes, and the respective officers, employees, agents, and representatives, successors and assigns of each.

C. "*GM*" means General Motors Corporation, its officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by GM, and the respective officers, employees, agents, and representatives, successors and assigns of each.

D. "*Itek*" means Itek Optical Systems Division of Litton Systems, Incorporated, its officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Itek, and the respective officers, employees, agents, and representatives, successors and assigns of each.

E. "*Respondents*" means HDOS, Hughes and GM.

F. "*Commission*" means the Federal Trade Commission.

G. "*Xinetics*" means Xinetics Incorporated, a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 410 Great Road #A6, Littleton, Massachusetts.

H. "*Person*" means any natural person, corporate entity, partnership, association, joint venture, government entity, trust or other business or legal entity.

I. "*HDOS/Xinetics Letter of Intent*" means the Letter of Intent entered into on September 21, 1995, between HDOS and Xinetics in which HDOS expresses its intention to use Xinetics as a supplier of any Deformable Mirror which may be required for the Phillips Laboratory Airborne Laser Program.

J. "*Phillips Laboratory Airborne Laser Program*" is a United States Air Force Advanced Technology Demonstration program to develop and then demonstrate the necessary technologies to acquire, track, and destroy theater ballistic missiles during the boost phase of flight.

K. "*Non-Public ABL Information*" means any information not in the public domain received or developed by Itek in its capacity as a subcontractor to Lockheed Martin Corporation for the Phillips Laboratory Airborne Laser Program. Non-Public ABL Information shall not include: (i) information which subsequently falls within the public domain through no violation of this order by respondents, or (ii) information which subsequently becomes known to respondents not in breach of a confidential disclosure agreement.

## II.

*It is further ordered,* That respondents shall not enforce or attempt to enforce any provision contained in the HDOS/Xinetics Letter of Intent, or take any other action, that would inhibit Xinetics from teaming or otherwise contracting with any other person for the purpose of bidding on, designing, developing, manufacturing, or supplying any part of the Phillips Laboratory Airborne Laser Program.

## III.

*It is further ordered,* That:

A. Respondents shall not receive, gain access to or in any manner obtain any Non-Public ABL Information without the express written permission of Lockheed Martin Corporation.

B. Upon request from Lockheed Martin Corporation, respondents shall provide to Lockheed Martin Corporation any Non-Public ABL Information in a timely fashion not to exceed seven (7) days from the

receipt of such request. Respondents may require payment for their own direct costs in providing such information.

#### IV.

*It is further ordered,* That respondents shall comply with all terms of the Interim Agreement, attached to this order and made a part hereof as Appendix I.

#### V.

*It is further ordered,* That within sixty (60) days of the date this order becomes final and every sixty days thereafter for the first year after this order becomes final, and at such other times as the Commission may require, respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they have complied and are complying with this order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with paragraph II and paragraph III of the order. Respondents shall include in their compliance reports copies of all written communications, all internal memoranda, and all reports and recommendations concerning compliance with the provisions in paragraph II and paragraph III of the order.

#### VI.

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

#### VII.

*It is further ordered,* That, for the purpose of determining or securing compliance with this order, respondents shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of any respondent relating to any matters contained in this order; and

B. Upon five (5) days' notice to any respondent and without restraint or interference from it, to interview officers, directors, or employees of that respondent, who may have counsel present, regarding such matters.

#### APPENDIX I

#### INTERIM AGREEMENT

This Interim Agreement is by and between Hughes Danbury Optical Systems, Incorporated ("HDOS"), Hughes Electronics Corporation ("Hughes"), and General Motors Corporation ("GM"), three corporations organized and existing under the laws of the State of Delaware (collectively referred to as "proposed respondents"), and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively, the "Parties").

#### PREMISES

*Whereas*, HDOS has proposed to acquire the Itek Optical systems Division of Litton Systems, Incorporated ("Itek"); and

*Whereas*, the Commission is now investigating the proposed acquisition to determine if it would violate any of the statutes the Commission enforces; and

*Whereas*, if the Commission accepts the Agreement Containing Consent Order ("Consent Agreement"), the Commission will place it on the public record for a period of at least sixty (60) days and subsequently may either withdraw such acceptance or issue and serve its complaint and decision in disposition of the proceeding pursuant to the provisions of Section 2.34 of the Commission's Rules; and

*Whereas*, the Commission is concerned that if an understanding is not reached, preserving competition during the period prior to the final acceptance of the Consent Agreement by the Commission (after

the 60-day public notice period), there may be interim competitive harm and divestiture or other relief resulting from a proceeding challenging the legality of the proposed acquisition might not be possible, or might be less than an effective remedy; and

*Whereas*, proposed respondents entering into this Interim Agreement shall in no way be construed as an admission by proposed respondents that the proposed acquisition constitutes a violation of any statute; and

*Whereas*, proposed respondents understand that no act or transaction contemplated by this Interim Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Interim Agreement.

*Now, therefore*, the Parties agree, upon the understanding that the Commission has not yet determined whether the proposed acquisition will be challenged, and in consideration of the Commission's agreement that, at the time it accepts the Consent Agreement for public comment, it will grant early termination of the Hart-Scott-Rodino waiting period, as follows:

1. Proposed respondents agree to execute and be bound by the terms of the order contained in the Consent Agreement, as if it were final, from the date the Consent Agreement is accepted for public comment by the Commission.

2. Proposed respondents agree to deliver within three (3) days of the date the Consent Agreement is accepted for public comment by the Commission, a copy of the Consent Agreement and a copy of this Interim Agreement to the United States Department of Defense, The Boeing Company, Lockheed Martin Corporation and Xinetics Incorporated.

3. Proposed respondents agree to submit within thirty (30) days of the date the Consent Agreement is signed by the proposed respondents, an initial report, pursuant to Section 2.33 of the Commission's Rules, signed by the proposed respondents setting forth in detail the manner in which the proposed respondents will comply with paragraph II and paragraph III of the Consent Agreement.

4. Proposed respondents agree that, from the date the Consent Agreement is accepted for public comment by the Commission until

the first of the dates listed in subparagraphs 4.a and 4.b, they will comply with the provisions of this Interim Agreement:

a. Ten (10) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's Rules;

b. The date the Commission issues its complaint and decision and order.

5. Proposed respondents waive all rights to contest the validity of this Interim Agreement.

6. For the purpose of determining or securing compliance with this Interim Agreement, proposed respondents shall permit any duly authorized representative of the Commission:

a. Access during office hours and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of any proposed respondent relating to any matters contained in this Interim Agreement; and

b. Upon five (5) days' notice to any proposed respondent and without restraint or interference from it, to interview officers, directors, or employees of that proposed respondent, who may have counsel present, regarding any such matters.

7. This Interim Agreement shall not be binding until accepted by the Commission.

## IN THE MATTER OF

AZRAK-HAMWAY INTERNATIONAL, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*. Docket C-3653. Complaint, May 2, 1996--Decision, May 2, 1996*

This consent order prohibits, among other things, the New York-based manufacturers and distributors of toys from using deceptive demonstrations and certain other misrepresentations. In addition, the consent order requires the respondents to offer full refunds to consumers who bought Steel Tec toy vehicles, and to notify television stations that ran the challenged advertisements of the Commission action, and of the availability of guidelines for screening children's advertising.

*Appearances*

For the Commission: *Toby M. Levin* and *Dean Forbes*.

For the respondents: *Aaron Locker, Locker, Greenberg & Brainin*, New York, N.Y.

## COMPLAINT

The Federal Trade Commission, having reason to believe that Azrak-Hamway International, Inc., a corporation, and Marvin Azrak and Ezra Hamway, individually and as officers of said corporation ("respondents"), have 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 Azrak-Hamway International, Inc. is a New York corporation, with its principal office or place of business at 1107 Broadway, New York, New York.

Respondent Marvin Azrak is the Senior Executive Vice President, and an owner and director of Azrak-Hamway International, Inc. Individually or in concert with others, he formulates, directs, and controls the acts and practices of Azrak-Hamway International, Inc., including the acts and practices alleged in this complaint. His

principal office or place of business is the same as that of Azrak-Hamway International, Inc.

Respondent Ezra Hamway is the President, and an owner and director of Azrak-Hamway International, Inc. Individually or in concert with others, he formulates, directs, and controls the acts and practices of Azrak-Hamway International, Inc., including the acts and practices alleged in this complaint. His principal office or place of business is the same as that of Azrak-Hamway International, Inc.

PAR. 2. Respondents have manufactured, advertised, labeled, promoted, offered for sale, sold, and distributed toys, including the Steel Tec Steel Construction System line of toys ("Steel Tec toys"), through Azrak-Hamway International, Inc.'s Remco Toys Division, to consumers.

PAR. 3. The acts and practices of respondents 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. Respondents have disseminated or have caused to be disseminated advertisements and packages for Steel Tec toys, including but not necessarily limited to the attached Exhibits A-G. These advertisements and packages contain the following statements and depictions:

A. [Exhibit A, Television Advertisement]

[Audio] "Born out of steel and forging the way, the Steel Tec Construction System. Get a grip on the Power Wrench, feel the magnetic force. Because no matter how high, no matter how fast, no matter how powerful, or no matter how monstrous your imagination might be, Steel Tec is the beginning of creation."

This television advertisement contains depictions of the Steel Tec motorized helicopter, "Formula 1" race car, and "Off Road Super Sport" vehicle operating on their own power without human assistance, including the following scenes:

1. One sequence depicts an assembled Steel Tec motorized helicopter hovering, with propellers and rear rotors spinning, then ascending. The audio portion simulates the sound of a helicopter in flight, including the sound of propellers spinning.

2. Another sequence depicts an assembled Steel Tec Formula 1 race car driving at a rapid pace on a grated surface.

3. Another sequence depicts a rear wheel of an assembled Steel Tec Off Road Super Sport vehicle spinning and peeling out from a pile of dirt or sand. The ad then cuts to a scene of the Steel Tec Off Road Super Sport vehicle driving and bounding over a dirt or sand covered surface.



**B. [Exhibit B, Television Advertisement]**

[Audio] "Born out of steel and forging the way, the Steel Tec Construction System. Get a grip on the Power Wrench, feel the magnetic force.... Steel Tec powerful. Steel Tec cool as chrome. With Harley-Davidson. Steel Tec, the beginning of creation."

This television advertisement contains depictions of the Steel Tec "Sand Buggy" vehicle and "Harley-Davidson® Electra Glide" motorcycle operating on their own power without human assistance, including the following scenes:

1. One sequence depicts a rear wheel of an assembled Steel Tec Sand Buggy vehicle spinning and peeling out from a pile of dirt or sand. The ad then cuts to a scene of the Steel Tec Sand Buggy vehicle driving over a dirt or sand covered surface and leaving a cloud of dust behind.

2. Another sequence depicts the rear wheel of an assembled Steel Tec Harley-Davidson® Electra Glide motorcycle spinning and peeling out from a pile of dirt or sand. The audio portion simulates the sound of a motorcycle revving up. The ad then cuts to a scene showing the Steel Tec Harley-Davidson® Electra Glide motorcycle driving on two wheels on a dirt or sand covered surface. The audio portion of the ad simulates the sound of a motorcycle being driven.

**C. [Exhibit C, Television Advertisement]**

[Audio] "Now for a limited time, Steel Tec's Value Packed Power Command Workshop. Complete with a Steel Tec Power Wrench, storage case and all the tools and parts you need to get your dreams off the ground."

This television advertisement contains depictions of the Steel Tec "Hypersonic Fighter" plane operating on its own power without human assistance, including the following scene:

1. One sequence depicts an assembled Steel Tec Hypersonic Fighter plane flying across the television screen. The audio portion simulates the sound of a jet plane in flight.

2. A small print video-only disclosure states, "Product Does Not Fly Without Assistance."

**D. [Exhibit D, Television Advertisement]**

[Audio] "Born out of steel and forging the way, the Steel Tec Construction System. Get a grip on the Power Wrench, feel the magnetic force. Because no matter how fast, no matter how powerful, no matter how massive, or no matter how high your imagination might be, Steel Tec is the beginning of creation."

This television advertisement contains depictions of the Steel Tec "Off Road Super Sport," "Dozer," "Dump Truck," and motorized helicopter operating on their own power without human assistance, including the following scenes:

1. One sequence depicts a rear wheel of an assembled Steel Tec Off Road Super Sport vehicle spinning and peeling out from a pile of dirt or sand. The ad then cuts to a scene of the Steel Tec Off Road Super Sport vehicle driving and bounding over a dirt or sand covered surface.

2. Another sequence depicts an assembled Steel Tec Dozer vehicle driving forward and pushing a pile of dirt or sand on a dirt or sand covered surface.

3. Another sequence depicts an assembled Steel Tec Dump Truck vehicle driving in reverse and then stopping, and its dump body raising, tilting back, and dumping a full load of miniature canisters.

4. Another sequence depicts an assembled Steel Tec motorized helicopter hovering, with propellers and rear rotors spinning, then ascending. The audio portion simulates the sound of a helicopter in flight, including the sound of propellers spinning.

E. Exhibit E, a product package, depicts, *inter alia*, nine models, including the Steel Tec motorized helicopter, Formula 1 race car, Off Road Super Sport vehicle, and Sand Buggy vehicle. The nine models appear side-by-side in two rows in a large photograph, which makes up more than two-thirds of the front panel of the package. Copy on the package states:

1. "ROAD & AIR VEHICLES PLUS WALKING ROBOT" [appears on 5 of 6 panels];

2. "BATTERY POWERED MOTOR INCLUDED" [appears on 5 of 6 panels];  
and,

3. "Requires 2 AA Alkaline Batteries (Not Included)" [appears on front panel].

F. Exhibit F, a product package, depicts, *inter alia*, three Harley-Davidson® motorcycles, including the Electra Glide. Copy on the package states:

1. "BATTERY POWERED MOTOR INCLUDED" [appears on 5 of 6 panels];

2. "BATTERY POWERED MOTOR INCLUDED" [appears on front panel directly above circle containing a photograph of a motor, a battery holder, and batteries];

3. "Requires 2 AA Alkaline Batteries (Not Included)" [appears on front panel];  
and,

4. "THE HARLEY-DAVIDSON® MOTORCYCLES IN THIS SET OPERATE ON 2-AA ALKALINE BATTERIES (NOT INCLUDED)" [appears on back panel].

G. Exhibit G, a product package, depicts, *inter alia*, nine models, including the Steel Tec Dozer and Dump Truck vehicles. Copy on the package states:

1. "HEAVY MACHINERY PLUS WALKING DINOSAUR" [appears on 5 of 6 panels];

2. "BATTERY POWERED MOTOR INCLUDED" [appears on 5 of 6 panels];

3. "Requires 2 AA Alkaline Batteries (Not Included)" [appears on front panel];  
and,

4. "THE STEEL TEC™ VEHICLES IN THIS SET OPERATE ON 2-AA ALKALINE BATTERIES (NOT INCLUDED)" [appears on back panel].

PAR. 5. Through the use of the statements and depictions contained in the advertisements and on the packages referred to in paragraph four, including but not necessarily limited to the advertisements and packages attached as Exhibits A-G, respondents have represented, directly or by implication, that the demonstrations in the television advertisements of the Steel Tec:

A. Motorized helicopter hovering, with propellers and rear rotors spinning, then ascending;

B. Formula 1 race car driving at a rapid pace on a grated surface;

C. Off Road Super Sport vehicle peeling out from a pile of dirt or sand and then driving and bounding over a dirt or sand covered surface;

D. Sand Buggy vehicle peeling out from a pile of dirt or sand and then driving over a dirt or sand covered surface, leaving a cloud of dust behind;

E. Harley-Davidson® Electra Glide motorcycle peeling out from a pile of dirt or sand, and driving on two wheels on a dirt or sand covered surface;

F. Hypersonic Fighter plane flying;

G. Dozer vehicle driving forward and pushing a pile of dirt or sand on a dirt or sand covered surface; and,

H. Dump Truck vehicle driving in reverse and then stopping, and its dump body raising, tilting back, and dumping a full load of miniature canisters

were unaltered and the results shown accurately represent the performance of the actual, unaltered Steel Tec motorized helicopter, Formula 1 race car, Off Road Super Sport vehicle, Sand Buggy vehicle, Harley-Davidson® Electra Glide motorcycle, Hypersonic Fighter plane, Dozer vehicle, and Dump Truck vehicle toys under the depicted conditions.

PAR. 6. In truth and in fact, the demonstrations in the television advertisements of the Steel Tec:

A. Motorized helicopter hovering, with propellers and rear rotors spinning, then ascending;

B. Formula 1 race car driving at a rapid pace on a grated surface;

C. Off Road Super Sport vehicle peeling out from a pile of dirt or sand and then driving and bounding over a dirt or sand covered surface;

D. Sand Buggy vehicle peeling out from a pile of dirt or sand and then driving over a dirt or sand covered surface, leaving a cloud of dust behind;

E. Harley-Davidson® Electra Glide motorcycle peeling out from a pile of dirt or sand, and driving on two wheels on a dirt or sand covered surface;

F. Hypersonic Fighter plane flying;

G. Dozer vehicle driving forward and pushing a pile of dirt or sand on a dirt or sand covered surface; and,

H. Dump Truck vehicle driving in reverse and then stopping, and its dump body raising, tilting back, and dumping a full load of miniature canisters

were not unaltered and the results shown did not accurately represent the performance of actual, unaltered Steel Tec motorized helicopter, Formula 1 race car, Off Road Super Sport vehicle, Sand Buggy vehicle, Harley-Davidson® Electra Glide motorcycle, Hypersonic Fighter plane, Dozer vehicle, and Dump Truck vehicle toys under the depicted conditions. Among other things, the Steel Tec:

1. Motorized helicopter was suspended in the air from monofilament wire and was moved by humans off camera to create the effects of hovering and ascending, and the propellers and rear rotors were spun manually by humans off camera to create the effect of motorized spinning;

2. Formula 1 race car was pulled and guided in a straight line by a monofilament wire held by humans off camera to create the effect of driving at a rapid pace on a grated surface;

3. Off Road Super Sport vehicle was pulled and guided by a monofilament wire held by humans off camera to create the effects of peeling out from a pile of dirt or sand, and driving and bounding over a dirt or sand covered surface;

4. Sand Buggy vehicle was pulled and guided by a monofilament wire operated by humans off camera to create the effects of peeling out from a pile of dirt or sand and driving over a dirt or sand covered surface;

5. Harley-Davidson® Electra Glide motorcycle was moved along the dirt or sand covered surface by humans off camera using a black tube connected to the side of the vehicle and recessed out of view from the camera to create the effects of peeling out and driving on a dirt or sand covered surface;

6. Hypersonic Fighter plane was moved along a horizontally suspended monofilament wire by humans off camera to create the effect of flying;

7. Dozer vehicle was pulled and guided by a monofilament wire held by humans off camera to create the effects of pushing a pile of dirt or sand and driving over a dirt or sand covered surface; and,

8. Dump Truck vehicle was pulled and guided by a monofilament wire held by humans off camera to create the effects of driving in reverse and stopping, and the dump body was pulled upward by a monofilament wire held by humans off camera to create the effect of dumping a load of miniature canisters.

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 on the packages referred to in paragraph four, including but not necessarily limited to the advertisements and packages attached as Exhibits A-G, respondents have represented, directly or by implication, that the Steel Tec:

A. Motorized helicopter can hover and ascend, and its propellers and rotors can spin in a sustained manner without human assistance;

B. Formula 1 race car can drive at a rapid pace in a sustained and directed manner without human assistance;

C. Off Road Super Sport vehicle can peel out from a pile of dirt or sand and drive and bound over a dirt or sand covered surface in a sustained and directed manner without human assistance;

D. Sand Buggy vehicle can peel out from a pile of dirt or sand and drive on a dirt or sand covered surface in a sustained and directed manner without human assistance;

E. Harley-Davidson® Electra Glide motorcycle can peel out from a pile of dirt or sand and drive on a dirt or sand covered surface in a sustained and directed manner without human assistance;

F. Hypersonic Fighter plane can fly in a sustained and directed manner without human assistance;

G. Dozer vehicle can push dirt or sand and drive on a dirt or sand covered surface in a sustained and directed manner without human assistance; and,

H. Dump Truck vehicle can drive in reverse, stop, raise the dump body, tilt it back, and then dump its load without human assistance.

PAR. 8. In truth and in fact, the Steel Tec:

A. Motorized helicopter cannot hover and ascend, and its propellers and rotors cannot spin in a sustained manner without human assistance;

B. Formula 1 race car cannot drive at a rapid pace in a sustained and directed manner without human assistance;

C. Off Road Super Sport vehicle cannot peel out from a pile of dirt or sand and drive and bound over a dirt or sand covered surface in a sustained and directed manner without human assistance;

D. Sand Buggy vehicle cannot peel out from a pile of dirt or sand and drive on a dirt or sand covered surface in a sustained and directed manner without human assistance;

E. Harley-Davidson® Electra Glide motorcycle cannot peel out from a pile of dirt or sand and drive on a dirt or sand covered surface in a sustained and directed manner without human assistance;

F. Hypersonic Fighter plane cannot fly in a sustained and directed manner without human assistance;

G. Dozer vehicle cannot push dirt or sand and drive on a dirt or sand covered surface in a sustained and directed manner without human assistance; and,

H. Dump Truck vehicle cannot drive in reverse, stop, raise the dump body, tilt it back, and then dump its load without human assistance.

Therefore, the representations set forth in paragraph seven were, and are, false and misleading.

PAR. 9. Through the use of the statements and depictions contained in the advertisements and on the packages referred to in paragraph four, including but not necessarily limited to the advertisements and packages attached as Exhibits A-G, respondents have represented, directly or by implication, that the Steel Tec Off Road Super Sport vehicle, Sand Buggy vehicle, Harley-Davidson®

Electra Glide motorcycle, Dozer vehicle, and Dump Truck vehicle can be used on dirt, sand, and similar surfaces.

PAR. 10. In truth and in fact, the Steel Tec Off Road Super Sport vehicle, Sand Buggy vehicle, Harley-Davidson® Electra Glide motorcycle, Dozer vehicle, and Dump Truck vehicle cannot be used on dirt, sand, and similar surfaces. The "Helpful Hints Manual" accompanying these products states, "OPERATE YOUR VEHICLE ON A SMOOTH, DRY SURFACE ONLY. NEVER OPERATE YOUR VEHICLE ON GRASS, DIRT, SAND, CARPET OR WATER AS THIS MAY RESULT IN DAMAGE TO YOUR VEHICLE." Therefore, the representation set forth in paragraph nine was, and is, false and misleading.

PAR. 11. Respondents have disseminated or have caused to be disseminated packages for Steel Tec toys, including but not necessarily limited to the attached Exhibits E-G. These packages contain the following statements and depictions:

A. Exhibit E depicts, *inter alia*, nine models, including the Steel Tec motorized helicopter, Formula 1 race car, Off Road Super Sport vehicle, and Sand Buggy vehicle. The nine models appear side-by-side in two rows in a large photograph, which makes up more than two-thirds of the front panel of the package. Copy on the package states:

1. "ROAD & AIR VEHICLES PLUS WALKING ROBOT" [appears on 5 of 6 panels];
2. "BUILD 9 OR MORE MODELS INDIVIDUALLY WITH THIS SET" [appears on 5 of 6 panels];
3. "348 PARTS" [appears in large red letters inside of a yellow hexagon with a red border on 5 of 6 panels]; and,
4. "ANY ONE OF THE STYLES SHOWN CAN BE BUILT ONE AT A TIME" [appears on back panel, above photographs of 9 individual packages of toys and 5 packages of sets of toys].

B. Exhibit F depicts, *inter alia*, three Harley-Davidson® motorcycles, including the Electra Glide. The three models appear side-by-side in a large photograph, which makes up more than two-thirds of the front panel of the package. Copy on the package states:

1. "BUILD 3 OR MORE MOTORCYCLES INDIVIDUALLY WITH THIS SET" [appears on 5 of 6 panels; photograph of 3 motorcycles side-by-side appears on 3 of 6 panels];
2. "545 PARTS" [appears in large red block letters inside of a yellow hexagon with a red border on 5 of 6 panels]; and,

3. "THE HARLEY-DAVIDSON® MOTORCYCLES IN THIS SET OPERATE ON 2-AA ALKALINE BATTERIES (NOT INCLUDED)" [appears on back panel].

C. Exhibit G depicts, *inter alia*, nine models, including the Steel Tec Dozer and Dump Truck vehicles. The nine models appear side-by-side in a large photograph, which makes up more than two-thirds of the front panel of the package. Copy on the package states:

1. "HEAVY MACHINERY PLUS WALKING DINOSAUR" [appears on 5 of 6 panels];
2. "BUILD 9 OR MORE MODELS INDIVIDUALLY WITH THIS SET" [appears on 5 of 6 panels];
3. "390 PARTS" [appears in large red block letters inside of a yellow hexagon with a red border on 5 of 6 panels]; and,
4. "THE STEEL TEC™ VEHICLES IN THIS SET OPERATE ON 2-AA ALKALINE BATTERIES (NOT INCLUDED)" [appears on back panel].

PAR. 12. Through the use of the statements and depictions contained on the packages of the Steel Tec toys referred to in paragraph eleven, including but not necessarily limited to the packages attached as Exhibits E-G, respondents have represented, directly or by implication, that each package contains the number of parts required to build the number of vehicles depicted on the package at the same time.

PAR. 13. In truth and in fact, the packages do not contain the number of parts required to build the number of vehicles depicted on the package at the same time. Each package contains enough parts to build a single vehicle at one time. Therefore, the representation set forth in paragraph twelve was, and is, false and misleading.

PAR. 14. The acts and practices of respondents 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.



507

Complaint

EXHIBIT A

TV

ADVERTISER	STEEL TEC CONSTRUCTION SYSTEMS	EXHIBIT A	74-10514-00
TIME	"BORN OUT OF STEEL"		
PROGRAM	FULL HOUSE	11/24/94	30
STATION	WPIX (NEW YORK)		6 25PM
	REVISION OF COMMERCIAL 94-11819		



(MUSIC) ANNCR: Born out of steel



and forging the way



the, Steel Tec Construction System.



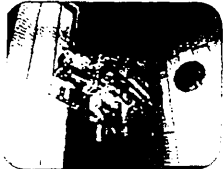
Get a grip on the Power Wrench.



feel the magnetic force.



(MUSIC)



Because no matter how high, (SFX: IN & OUT) no matter how fast.



(SFX: IN & OUT) no matter how powerful.



or no matter how



monstrous your imagination might be.



(MUSIC)



Steel Tec is the beginning of creation. (MUSIC OUT)

ALSO AVAILABLE IN COLOR VIDEO-TAPE CASSETTES  
 While Steel Tec figures endeavor to ensure the accuracy of material provided by U.S. sources, it is not responsible for errors in or omissions from this material. This TV program may be used for its own advertising purposes only. It may not be retransmitted, used in public demonstrations or exhibited.

Complaint

121 F.T.C.

EXHIBIT B



PRODUCT	STEEL TEC CONSTRUCTION SYSTEM	EXHIBIT B	
TYPE	TELEVISION SPOT		
PROGRAM	FULL-HOUSE	11/24/94	11
STATION	WPIX	NEW YORK	12:30P
	REV. 5/20/94 (COMMERCIAL #4815833)		



(MUSIC) (SFX: IN & OUT)



ANNCR: Born out of steel



and forging the way, the Steel Tec Construction System.



Get a grip on the Power Wrench.



feel the magnetic force.



Let your imagination soar with the U.S.S. Enterprise.



from Star Trek The Next Generation.



Steel Tec powerful.



(MUSIC)



Steel Tec cool as chrome. (SFX: IN) With Harley Davidson.



Steel Tec.



the beginning of creation. (MUSIC OUT) (SFX: IN & OUT)

**ALSO AVAILABLE IN COLOR VIDEO-TAPE CASSETTE**  
 While this TV spots contain no claims of material supplied by it, it cannot be responsible for accuracy or omission.  
 Material supplied by Trade TV Express may be used for the said publicity purposes only. It may not be reproduced, sold or publicly transmitted in any manner.

507

Complaint

EXHIBIT C

TV

PRODUCT	STEEL TEC'S VALUE PACKED POWER COMMAND WORKSHOP		
TITLE	VALUE PACKED POWER COMMAND WORKSHOP		
PROGRAM	FULL HOUSE	02/09/95	15
STATION	WPH	(NEW YORK)	5:27PM



(MUSIC)



ANNCR: Now for a limited time.



Steel Tec's Value Packed Power Command Workshop.



(MUSIC)



Complete with a Steel Tec power wrench, storage case



and all the tools and parts you need to get your dreams off the ground. (MUSIC OUT)

**ALSO AVAILABLE IN COLOR VIDEO-TAPE CASSETTE**  
 While Radio TV reports endeavor to secure the accuracy of material reported to it, it cannot be responsible for errors or omissions.  
 Material supplied for Radio TV reports may be used for its own reference purposes only. It may not be reproduced, sold or publicly disseminated or exhibited.

## EXHIBIT D

## [Television Advertisement]

[Announcer]: "Born out of steel and forging the way, the Steel Tec Construction System. Get a grip on the Power Wrench, feel the magnetic force. Because no matter how fast, no matter how powerful, no matter how massive, or no matter how high your imagination might be, Steel Tec is the beginning of creation."

This television advertisement contains depictions of the Steel Tec "Off Road Super Sport," "Dozer," "Dump Truck," and motorized helicopter operating on their own power without human assistance, including the following scenes:

1. One sequence depicts a rear wheel of an assembled Steel Tec Off Road Super Sport vehicle spinning and peeling out from a pile of dirt or sand. The ad then cuts to a scene of the Steel Tec Off Road Super Sport vehicle driving and bounding over a dirt or sand covered surface.
2. Another sequence depicts an assembled Steel Tec Dozer vehicle driving forward and pushing a pile of dirt or sand on a dirt or sand covered surface.
3. Another sequence depicts an assembled Steel Tec Dump Truck vehicle driving in reverse and then stopping, and its dump body raising, tilting back, and dumping a full load of miniature canisters.
4. Another sequence depicts an assembled Steel Tec motorized helicopter hovering, with propellers and rear rotors spinning, then ascending. The audio portion simulates the sound of a helicopter in flight, including the sound of propellers spinning.

507

Complaint

EXHIBIT E

EXHIBIT E

**TEC**  
CONSTRUCTION SYSTEM

PLUS WALKING ROBOT

BATTERY POWERED MOTOR INCLUDED

BUILD 9 OR MORE VEHICLES INDIVIDUALLY WITH THIS SET

**STEELTEC**  
THE STEEL CONSTRUCTION SYSTEM  
ROAD & AIR VEHICLES

AGES 8 & UP

Requires 2 AA Alkaline Batteries (Not Included)  
Item # 7022

4 TOOLS INCLUDED

348 PARTS

348 PARTS

348 PARTS

348 PARTS

Complaint

121 F.T.C.

EXHIBIT E

EXHIBIT E, p.2

# STEEL

THE STEEL CONSTRUCTION SYSTEM

## ROAD & AIR VEHICLES

STEEL TEC  
THE STEEL CONSTRUCTION SYSTEM  
ROAD & AIR VEHICLES

AGIS 8

BUILD 9 OR MORE VEHICLES INDIVIDUALLY WITH THIS SET

REMCO

348 PARTS

BUILD 9 OR MORE MODELS INDIVIDUALLY WITH THIS SET

INDIVIDUAL PART COLORS MAY VARY

# STEEL TEC

THE STEEL CONSTRUCTION SYSTEM

ROAD & AIR VEHICLES

507

Complaint

EXHIBIT F

EXHIBIT F

**STEELTEC**  
CONSTRUCTION SYSTEM

**545 PARTS**

**REMCO**

**CAFE RACER** BATTERY POWERED MOTOR INCLUDED

BUILD 3 OR MORE MOTORCYCLES INDIVIDUALLY WITH THIS SET

**STEELTEC**

**HARLEY-DAVIDSON**

**545 PARTS**

**REMCO**

Requires 2 AA Alkaline Batteries (Not Included).

Item # 7091

**REMCO**

**545 PARTS**

**REMCO**

AGES 9 & UP

4 TOOLS INCLUDED

3 OR MORE MOTORCYCLES INDIVIDUALLY WITH THIS SET

Complaint

EXHIBIT F

EXHIBIT F, p.2

**HARLEY-DAVIDSON**

**STEEL TEC**  
THE STEEL CONSTRUCTION SYSTEM

**WWII CYCLE** **ELECTRA GLIDE**

**BUILD 3 OR MORE MOTORCYCLES INDIVIDUALLY WITH THIS SET**

**BATTERY POWERED MOTOR INCLUDED**

**SPRING SUSPENSION**

**545 PARTS**

**REINCO**

**AGES 9 UP**

**LICENSE HARLEY-DAVIDSON**

**STEEL TEC**  
THE STEEL CONSTRUCTION SYSTEM

**HARLEY-DAVIDSON**

**WAL-GRE • HUGO • RAY • GUY-LAR**



507

Complaint

EXHIBIT G

EXHIBIT G

**TEC**

CONSTRUCTION SYSTEM

3007

REMCO

390 PARTS

Item # 7022

PLUS WALKING DINOSAUR

BATTERY POWERED MOTOR INCLUDED

BUILD 9 OR MORE MODELS INDIVIDUALLY WITH THIS SET

**STEELTEC**

THE STEEL CONSTRUCTION SYSTEM

HEAVY MACHINERY

REMCO

390 PARTS

Requires 2 AA Alkaline Batteries (Not Included).

Item # 7023

REMCO

390 PARTS

AGES 8 & UP

REMCO

390 PARTS

BUILD 9 OR MORE MODELS INDIVIDUALLY WITH THIS SET

REMCO

390 PARTS

EXHIBIT G

EXHIBIT G, p.2

# STEEL

THE STEEL CONSTRUCTION SYSTEM

## HEAVY MACHINERY



AGES 8 & UP

STEEL TEC  
THE STEEL CONSTRUCTION SYSTEM  
HEAVY MACHINERY

BUILD 9 OR MORE MODELS INDIVIDUALLY WITH THIS SET

REMMCO

390 PARTS  
Item #7023

BUILD 9 OR MORE MODELS INDIVIDUALLY WITH THIS SET

INDIVIDUAL PART COLORS MAY VARY

# STEEL TEC

THE STEEL CONSTRUCTION SYSTEM

HEAVY MACHINERY

4 TO

## DECISION AND ORDER

The Federal Trade Commission, having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of the 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 respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, and admission by the respondents 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 respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, 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 respondents have violated the said Act, and that a 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 described 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 Azrak-Hamway International, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 1107 Broadway, New York, New York.

Respondents Marvin Azrak and Ezra Hamway are owners and officers of said corporation. They formulate, direct, and control the policies, acts and practices of said corporation and their address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

## ORDER

## I.

*It is ordered*, That respondents, Azrak-Hamway International, Inc., a corporation, its successors and assigns, and its officers, and Marvin Azrak and Ezra Hamway, individually and as officers of said corporation, and respondents' 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 toy.

C. Misrepresenting the number of toys contained in, or that can be constructed with the parts contained in, the package.

## II.

*It is further ordered,* That for three (3) years after the last date of dissemination of any representation covered by this order, respondent Azrak-Hamway International, Inc., or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

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

B. Any and all videotapes, 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 respondent 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.

## III.

*It is further ordered,* That respondent Azrak-Hamway International, Inc., or its successors and assigns, shall offer refunds to purchasers of any Steel Tec toy(s) in accordance with the provisions of this Part.

A. Within fifteen (15) days from the date of service of this order, respondents shall compile a mailing list containing the name and last known address of each purchaser in respondents' possession or control. This list shall include all purchasers who have contacted respondents, either in writing or by telephone, regarding a Steel Tec toy. Within sixty (60) days from the date of service of this order, respondents shall provide Commission staff with a computer print-out copy of the mailing list, as well as provide the list in computer

readable form, in standard MS-DOS diskettes or IBM-mainframe compatible tape.

B. Within sixty (60) days from the date of service of this order, respondents shall send via first-class mail, postage prepaid, a Notice of Refund Offer in the form set forth in Appendix B to this order, to all purchasers listed on the mailing list required by subpart A of this Part.

C. Respondents shall also send via first-class mail, postage prepaid, a Notice of Refund Offer, in the form set forth in Appendix B to this order, to all purchasers who contact respondents or the Commission in any manner within one hundred twenty (120) days from the date of service of this order. Each mailing shall be made within fifteen (15) business days after respondents receive the purchaser's name and address.

D. No information other than that contained in Appendix B shall be included in or added to the Notice of Refund Offer, nor shall any other material be transmitted therewith. The envelope containing the Notice of Refund Offer shall be in the form set forth in Appendix C to this order. For each mailing returned by the U.S. Postal Service as undeliverable for which respondents thereafter obtain a corrected address, respondents shall, within fifteen (15) business days after receiving the corrected address, send a Notice of Refund Offer to the corrected address.

E. Respondents shall send a refund check to each purchaser who returns the completed application form appended to the Notice of Refund Offer to respondents or who otherwise requests a refund in writing, and who returns the toy(s), or a substantial portion of the toy(s), to respondents within one hundred eighty days (180) from the date of service of this order. The amount of the refund shall equal the sum of the price for the toy(s) as set forth in Appendix A to this order and the actual cost of postage for returning the toy(s). Respondents shall send refund checks by first-class mail, postage prepaid within fifteen (15) business days after respondents receive the returned toy(s) from the purchaser. The envelope containing the refund check shall be in the form set forth in Appendix D to this order.

F. Respondents shall notify any purchaser who applies for a refund but fails to return the Steel Tec toy or to otherwise apply properly of any error in the purchaser's refund application, and shall provide a reasonable opportunity for the purchaser to rectify any such error.

G. Within two hundred forty (240) days from the date of service of this order, respondents shall furnish to Commission staff the following:

1. In computer readable form (standard MS-Dos diskettes or IBM-mainframe compatible tape) and in computer print-out form, a list of the names and addresses of all consumers who were sent refund checks pursuant to Part III of this order, and for each name included on the list, the amount, check number and mailing date of every refund check sent;
2. In computer readable form (standard MS-Dos diskettes or IBM-mainframe compatible tape) and in computer print-out form, a list of the names and addresses of all consumers who contacted respondents or were referred to respondents by the Commission in accordance with sub part C of this Part,
3. Copies of all correspondence and other communications to, from, or concerning all consumers who requested a refund but were refused, and the reason(s) for denying the refund;
4. All Notices of Refund Offer returned to respondents as undeliverable; and
5. All other documents and records evidencing efforts made and actions taken by respondents to identify, locate, contact and provide refunds to consumers requesting a refund.

For purposes of this Part, "purchaser" shall mean any person who has purchased a Steel Tec toy and who has not previously received a full refund of the purchase price. "Steel Tec toy(s)" shall mean any of the toys identified in Appendix A to this order. "Substantial portion" of the toy shall mean a majority of the parts, including the battery pack, if such is part of the toy.

#### IV.

*It is further ordered,* That respondent Azrak-Hamway International, Inc., or its successors and assigns, shall within sixty (60) days after the date of service of this order send by certified mail, return receipt requested, to the station president or manager of each television station that aired any advertisement that was the subject of the complaint issued in this matter, as identified in Appendix F to this order, a copy of the letter set forth in Appendix E to this order.

## V.

*It is further ordered,* That respondent Azrak-Hamway International, Inc., or its successors and assigns, shall within thirty (30) days after service of this order, provide a copy of this order to its current principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this order.

## VI.

*It is further ordered,* That respondents Marvin Azrak and Ezra Hamway shall for a period of ten (10) years from the date of entry of this order, notify the Commission within thirty (30) days of the discontinuance of their present business or employment and of their affiliation with any new business or employment. Each such notice of affiliation with any new business or employment shall include the respondent's new business address and telephone number, current home address, and a statement describing the nature of the business or employment and his duties and responsibilities.

## VII.

*It is further ordered,* That respondent Azrak-Hamway International, Inc. shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in its corporate structure, 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.

## VIII.

This order will terminate on May 2, 2016, or twenty (20) 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.

#### IX.

*It is further ordered,* That respondents shall, within sixty (60) days after service 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 they have complied with this order.

Decision and Order

121 F.T.C.

## APPENDIX A

## STEEL TEC TOYS SUBJECT TO THE REFUND OFFER

<u>Toy or Toy Set</u>	<u>Refund Amount</u>
Helicopter (not battery operated)	
Helicopter (packaged individually)(System 203/item #7009)	\$8.99
Starter Set Copters (System 151/item #7085)	\$14.99
Street and Flying Vehicles (System 203/item #7000)	\$8.99
Helicopter (battery operated)	
Road & Air Vehicles Plus Walking Robot Set (System 305/item #7022)	\$39.99
Construction & Road Vehicles Set (System 202/item #7010)	\$19.99
Road & Air Vehicles Set (System 307/item #7020)	\$29.99
Road, Rail and Air Vehicles Set (System 302/item #7024)	\$34.99
Formula 1 Race Car	
Road & Air Vehicles Set (System 307/item #7020)	\$29.99
Road & Air Vehicles Plus Walking Robot Set (System 305/item #7022)	\$39.99
Off Road Super Sport	
Road & Air Vehicles Set (System 307/item #7020)	\$29.99
Construction Vehicles Set (System 306/item #7021)	\$29.99
Road & Air Vehicles Plus Walking Robot Set (System 305/item #7022)	\$39.99
Sand Buggy	
Road & Air Vehicles Set (System 307/item #7020)	\$29.99
Road & Air Vehicles Plus Walking Robot Set (System 305/item #7022)	\$39.99
Road, Rail and Air Vehicles Set (System 302/item #7024)	\$34.99
Excavating and Land Vehicles Set (System 303/item #7025)	\$24.99
Dump Truck (not battery operated)	
Street and Flying Vehicles (System 203/item #7000)	\$8.99
Construction and Road Vehicles (System 202/item #7010)	\$19.99
Dump Truck (battery operated)	
Heavy Machinery/Construction Vehicles Plus Walking Dinosaur Set (System 304/item #7023)	\$39.99

507

Decision and Order

## STEEL TEC TOYS SUBJECT TO THE REFUND OFFER (P.2)

<u>Toy or Toy Set</u>	<u>Refund Amount</u>
Dozer (bulldozer)	
Construction Vehicles Set (System 306/item #7021)	\$29.99
Road & Air Vehicles Plus Walking Robot Set (System 305/item #7022)	\$39.99
Heavy Machinery/Construction Vehicles Plus Walking Dinosaur Set (System 304/item #7023)	\$39.99
Excavating and Land Vehicles Set (System 303/item # 7025)	\$24.99
Harley-Davidson® Motorcycles Set (not battery operated) (System 201 /item #7090)	\$34.99
Harley-Davidson® Motorcycles Set (battery operated) (System 301/item #7091)	\$44.99
Hypersonic Jet Fighter	
Power Command Center/Value Pack: including Fighter Jet, Power Wrench and Storage Case (item #7031)	\$19.99
Power Command Center/Value Pack: including Fighter Jet and Power Wrench but without Storage Case (item #7031A)	\$12.49
Power Command Center/Value Pack: including Fighter Jet and Storage Case but without Power Wrench (item #7031B)	\$12.49
Power Command Center/Value Pack: without Power Wrench and Storage Case [returning Fighter Jet only] (item #7031C)	\$4.99
Starter Set Airplanes Assortment (System 151/item #7085)	\$14.99

## APPENDIX B

## NOTICE OF REFUND OFFER

Dear Remco Toys Customer:

**YOU MAY BE ENTITLED TO A CASH REFUND.** We understand that you may have bought one or more Steel Tec Toys. We recently settled a dispute with the Federal Trade Commission about allegedly deceptive advertising for Steel Tec Toys. The FTC alleges that certain Steel Tec ads showed the toy vehicles flying, driving or moving in ways that they cannot actually do. Although we don't believe that our ads were deceptive, we have agreed to give a full refund to all eligible purchasers who return the toy and ask for their money back.

To get a refund, here's what you need to do:

- 1) Check the attached list to make sure that the toy you bought is included in this refund offer.
- 2) Return the toy(s), assembled or unassembled, including the battery pack, if it is part of the toy. The original packaging is not required.
- 3) Fill out the attached form. Then send the form and the toy back to us by first-class mail. To be eligible for a refund, you must send us the toy by [DATE CERTAIN 180 DAYS AFTER DATE OF SERVICE OF THE ORDER].
- 4) For every eligible toy you return, we'll send you a check for the price of the toy as stated on the attached list and the return postage. We'll send you a refund check within 15 business days of receiving the toy.

If you believe that you were not deceived by the alleged deceptive advertising and you are satisfied with your Steel Tec toy, you are not required to return the toy for a refund.

To get your refund, please make sure to write your correct address on the attached form. If you have any questions, please call 1-800-243-2961.

President  
Remco Toys

\_\_\_\_ DETACH AND RETURN THIS FORM WITH THE TOY \_\_\_\_

NAME \_\_\_\_\_  
STREET ADDRESS \_\_\_\_\_  
CITY/STATE/ZIP \_\_\_\_\_  
NAME OF STEEL TEC TOY OR TOY SET \_\_\_\_\_

Return this form and the toy by first-class mail to:

Steel Tec Toy Refund  
Remco Toys  
36 W. 25th Street  
New York, New York 10016

DEADLINE: (DATE CERTAIN 180 DAYS AFTER  
DATE OF SERVICE OF THE ORDER)

FOR OFFICE USE ONLY

DATE RECEIVED \_\_\_\_\_  
TOY RECEIVED \_\_\_\_\_  
POSTAGE PAID \_\_\_\_\_  
RECEIVER \_\_\_\_\_  
REFUND \$ \_\_\_\_\_  
APPROVED BY \_\_\_\_\_  
CHECK DATE \_\_\_\_\_  
CHECK # \_\_\_\_\_  
CHECK \$ \_\_\_\_\_  
MAILING DATE \_\_\_\_\_

## STEEL TEC TOYS SUBJECT TO THE REFUND OFFER

<u>Toy or Toy Set</u>	<u>Refund Amount</u>
Helicopter (not battery operated)	
Helicopter (packaged individually)(System 203/item #7009)	\$8.99
Starter Set Copters (System 151/item #7085)	\$14.99
Street and Flying Vehicles (System 203/item #7000)	\$8.99
Helicopter (battery operated)	
Road & Air Vehicles Plus Walking Robot Set (System 305/item #7022)	\$39.99
Construction & Road Vehicles Set (System 202/item #7010)	\$19.99
Road & Air Vehicles Set (System 307/item #7020)	\$29.99
Road, Rail and Air Vehicles Set (System 302/item #7024)	\$34.99
Formula 1 Race Car	
Road & Air Vehicles Set (System 307/item #7020)	\$29.99
Road & Air Vehicles Plus Walking Robot Set (System 305/item #7022)	\$39.99
Off Road Super Sport	
Road & Air Vehicles Set (System 307/item #7020)	\$29.99
Construction Vehicles Set (System 306/item #7021)	\$29.99
Road & Air Vehicles Plus Walking Robot Set (System 305/item #7022)	\$39.99
Sand Buggy	
Road & Air Vehicles Set (System 307/item #7020)	\$29.99
Road & Air Vehicles Plus Walking Robot Set (System 305/item #7022)	\$39.99
Road, Rail and Air Vehicles Set (System 302/item #7024)	\$34.99
Excavating and Land Vehicles Set (System 303/item # 7025)	\$24.99

## STEEL TEC TOYS SUBJECT TO THE REFUND OFFER (P.2)

<u>Toy or Toy Set</u>	<u>Refund Amount</u>
Dump Truck (not battery operated)	
Street and Flying Vehicles (System 203/item #7000)	\$8.99
Construction and Road Vehicles (System 202/item #7010)	\$19.99
Dump Truck (battery operated)	
Heavy Machinery/Construction Vehicles Plus Walking Dinosaur Set (System 304/item #7023)	\$39.99
Dozer (bulldozer)	
Construction Vehicles Set (System 306/item #7021)	\$29.99
Road & Air Vehicles Plus Walking Robot Set (System 305/item #7022)	\$39.99
Heavy Machinery/Construction Vehicles Plus Walking Dinosaur Set (System 304/item #7023)	\$39.99
Excavating and Land Vehicles Set (System 303/item # 7025)	\$24.99
Harley-Davidson® Motorcycles Set (not battery operated) (System 201/item #7090)	\$34.99
Harley-Davidson® Motorcycles Set (battery operated) (System 301/item #7091)	\$44.99
Hypersonic Jet Fighter	
Power Command Center/Value Pack: including Fighter Jet, Power Wrench and Storage Case (item #7031)	\$19.99
Power Command Center/Value Pack: including Fighter Jet and Power Wrench but without Storage Case (item #7031A)	\$12.49
Power Command Center/Value Pack: including Fighter Jet and Storage Case but without Power Wrench (item #7031B)	\$12.49
Power Command Center/Value Pack: without Power Wrench and Storage Case [returning Fighter Jet only] (item #7031C)	\$4.99
Starter Set Airplanes Assortment (System 151/item #7085)	\$14.99

Decision and Order

121 F.T.C.

## APPENDIX C

## REFUND NOTICE LETTER ENVELOPE

FORWARDING AND RETURN POSTAGE GUARANTEED

Remco Toys  
36 W. 25th Street  
New York, New York 10016

Window Envelope

[The following statement is to appear in a box, on the left hand side of the envelope  
in red, in extra large, bold type face]

**ATTENTION: IMPORTANT  
REFUND INFORMATION  
INSIDE**

## APPENDIX D

## REFUND CHECK ENVELOPE

FORWARDING AND RETURN POSTAGE GUARANTEED

Remco Toys  
36 W. 25th Street  
New York, New York 10016

Window Envelope

(indicates a check is enclosed)



507

Decision and Order

## APPENDIX E

(Azrak-Hamway stationery)

Dear Station President/Manager:

This letter notifies you that Azrak-Hamway International, Inc. ("Azzrak-Hamway") has entered into a consent agreement with the Federal Trade Commission ("FTC") regarding certain advertising for its Remco Toys Steel Tec toy line. We have agreed as part of the settlement to send you this letter. It will advise you of how you may obtain information recognized by many organizations as useful in reviewing children's advertising to avoid misleading the public.

The FTC complaint in this matter alleges that advertisements for the Steel Tec toys included false demonstrations and representations of the performance of the depicted toys. More specifically, the FTC alleges that the ads depicted Steel Tec vehicles driving, flying, or otherwise moving in ways they cannot do in actual use. Azrak-Hamway does not admit to the alleged violations. The FTC action does not allege any liability on the part of the television stations that broadcast our ads.

Under Section 5 of the Federal Trade Commission Act (15 U.S.C. 45), advertisers are prohibited from disseminating false or deceptive advertising. As you may be aware, the advertising industry has undertaken various self-regulatory efforts to assist companies to comply with the law and to promote other industry goals. The Children's Advertising Review Unit ("CARU") was established in 1974 by the advertising industry to promote responsible children's advertising and to respond to public concerns. CARU reviews and evaluates child-directed advertising in all media. It is not affiliated with the Federal Trade Commission, but is part of the Council of Better Business Bureaus.

CARU has issued Guidelines on Children's Advertising that many industry members use to screen child-directed advertising. The Guidelines address many issues relating to advertising to children, some of which include deceptive advertising. For additional information regarding the CARU Guidelines, or a copy of the Guidelines, you may write to Elizabeth Lascoux, Esq., Director of CARU, at 845 Third Avenue, New York, N.Y. 10022, or call her at (212) 705-0111.

If you need further information regarding deceptive advertising under the Federal Trade Commission Act, you may write to Dean C. Forbes, Esq., Division of Advertising Practices, Federal Trade Commission, 6th and Pennsylvania Ave., N.W., Washington, D.C. 20580, or call him at (202) 326-2831.

Sincerely,

---

[Azzrak-Hamway representative to be identified]

## APPENDIX F

## LIST OF TELEVISION STATIONS TO RECEIVE LETTER

<u>Station</u>	<u>Channel</u>	<u>Location</u>
KABB-TV	29	San Antonio, TX
KCAL-TV	09	Los Angeles, CA
KCPQ-TV	13	Seattle-Tacoma, WA
KDAF-TV	33	Dallas-Ft. Worth, TX
KDEB-TV	27	Springfield, MO
KDNL-TV	30	St. Louis, MO
KHTV-TV	39	Houston, TX
KITN-TV	29	Minneapolis-St. Paul, MN
KLGT-TV	23	Minneapolis-St. Paul, MN
KMSP-TV	09	Minneapolis-St. Paul, MN
KNXV-TV	15	Phoenix-Flagstaff, AZ
KOKH-TV	25	Oklahoma City, OK
KPDX-TV	49	Portland, OR
KPLR-TV	11	St. Louis, MO
KPHO-TV	05	Phoenix-Flagstaff, AZ
KPRC-TV	02	Houston, TX
KPRL-TV	11	St. Louis, MO
KSHB-TV	41	Kansas City, MO
KSMO-TV	62	Kansas City, MO
KSTU-TV	20	Salt Lake City, UT
KSTW-TV	11	Seattle-Tacoma, WA
KTLA-TV	05	Los Angeles, CA
KTTV-TV	11	Los Angeles, CA
KTVD-TV	20	Denver, CO
KTVT-TV	11	Dallas-Ft. Worth, TX
KTXH-TV	20	Houston, TX
KWGN-TV	02	Denver, CO
WBFS-TV	33	Miami-Ft. Lauderdale, FL
WCCB-TV	18	Charlotte, NC
WCNC-TV	36	Charlotte, NC
WFLD-TV	32	Chicago, IL
WFXI-TV	08	Greenville, New Bern-Washington, NC
WFXT-TV	25	Boston, MA
WGBS-TV	57	Philadelphia, PA
WGN-TV	09	Chicago, IL
WGNX-TV	46	Atlanta, GA
WGRZ-TV	02	Buffalo, NY
WHNS-TV	21	Greenville-Asheville-Spartanburg, NC

## LIST OF TELEVISION STATIONS TO RECEIVE LETTER (P.2)

<u>Station</u>	<u>Channel</u>	<u>Location</u>
WIVB-TV	04	Buffalo, NY
WJZY-TV	03	Charlotte, NC
WKBD-TV	50	Detroit, MI
WKCF-TV	18	Orlando-Daytona, FL
WKFT-TV	40	Raleigh-Durham, NC
WKRN-TV	02	Nashville, TN
WLBZ-TV	02	Bangor, ME
WLFL-TV	22	Raleigh-Durham, NC
WLVI-TV	56	Boston, MA
WNUV-TV	54	Baltimore, MD
WOFL-TV	35	Orlando-Daytona, FL
WOIO-TV	19	Cleveland-Akron, OH
WPGH-TV	53	Pittsburgh, PA
WPHL-TV	17	Philadelphia, PA
WPIX-TV	11	New York, NY
WPTT-TV	22	Pittsburgh, PA
WPWR-TV	60	Chicago, IL
WSBK-TV	38	Boston, MA
WSTR-TV	64	Cincinnati, OH
WSYT-TV	68	Syracuse, NY
WTBS-TV	17	Atlanta, GA
WTEN-TV	10	Albany-Schenectedy, NY
WTIC-TV	61	Hartford-New Haven, CT
WTOG-TV	44	Tampa-St. Petersburg, FL
WTTG-TV	05	Washington, DC
WTTV-TV	04	Indianapolis, IN
WTVZ-TV	33	Norfolk-Portsmouth, VA
WTXF-TV	29	Philadelphia, PA
WUAB-TV	43	Cleveland-Akron, OH
WXIX-TV	19	Cincinnati, OH
WXMI-TV	17	Grand Rapids-Kalamazoo, MI
WXON-TV	62	Detroit, MI
WYFF-TV	04	Greenville-Asheville-Spartanburg, NC
WZTV-TV	17	Nashville, TN

Complaint

121 F.T.C.

IN THE MATTER OF

STARWOOD ADVERTISING, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3654. Complaint, May 2, 1996--Decision, May 2, 1996*

This consent order prohibits, among other things, a Colorado-based advertising agency and its officer from using deceptive demonstrations and certain other misrepresentations in future advertising campaigns.

*Appearances*

For the Commission: *Toby M. Levin* and *Dean Forbes*.

For the respondents: *Aaron Locker, Locker, Greenberg & Brainin*, New York, N.Y.

## COMPLAINT

The Federal Trade Commission, having reason to believe that Starwood Advertising, Inc., a corporation, and Les Towne, individually and as an officer of said corporation ("respondents"), have 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 Starwood Advertising, Inc., is a Colorado corporation, with its principal office or place of business at 600 North Starwood Drive, Aspen, Colorado.

Respondent Les Towne is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint. His principal office or place of business is the same as that of the corporate respondent.

PAR. 2. Respondent Starwood Advertising, Inc. is now, and has been at all times relevant to this complaint, an advertising agency of Azrak-Hamway International, Inc. Respondents have prepared and disseminated advertisements to promote the sale of the Steel Tec Steel Construction System line of toys ("Steel Tec toys").

PAR. 3. The acts and practices of respondents 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. Respondents have prepared and disseminated or have caused to be disseminated advertisements for Steel Tec toys, including but not necessarily limited to the attached Exhibits A-D. These advertisements contain the following statements and depictions:

A. [Exhibit A, Television Advertisement]

[Audio] "Born out of steel and forging the way, the Steel Tec Construction System. Get a grip on the Power Wrench, feel the magnetic force. Because no matter how high, no matter how fast, no matter how powerful, or no matter how monstrous your imagination might be, Steel Tec is the beginning of creation."

This television advertisement contains depictions of the Steel Tec motorized helicopter, "Formula 1" race car, and "Off Road Super Sport" vehicle operating on their own power without human assistance, including the following scenes:

1. One sequence depicts an assembled Steel Tec motorized helicopter hovering, with propellers and rear rotors spinning, then ascending. The audio portion simulates the sound of a helicopter in flight, including the sound of propellers spinning.
2. Another sequence depicts an assembled Steel Tec Formula 1 race car driving at a rapid pace on a grated surface.
3. Another sequence depicts a rear wheel of an assembled Steel Tec Off Road Super Sport vehicle spinning and peeling out from a pile of dirt or sand. The ad then cuts to a scene of the Steel Tec Off Road Super Sport vehicle driving and bounding over a dirt or sand covered surface.

B. [Exhibit B, Television Advertisement]

[Audio] "Born out of steel and forging the way, the Steel Tec Construction System. Get a grip on the Power Wrench, feel the magnetic force. . . . Steel Tec powerful. Steel Tec cool as chrome. With Harley-Davidson. Steel Tec, the beginning of creation."

This television advertisement contains depictions of the Steel Tec "Sand Buggy" vehicle, and "Harley-Davidson® Electra Glide" motorcycle operating on their own power without human assistance, including the following scenes:

1. One sequence depicts a rear wheel of an assembled Steel Tec Sand Buggy vehicle spinning and peeling out from a pile of dirt or sand. The ad then cuts to a scene of the Steel Tec Sand Buggy vehicle driving over a dirt or sand covered surface and leaving a cloud of dust behind.
2. Another sequence depicts the rear wheel of an assembled Steel Tec Harley-Davidson® Electra Glide motorcycle spinning and peeling out from a pile of dirt or sand. The audio portion simulates the sound of a motorcycle revving up. The ad then cuts to a scene showing the Steel Tec Harley-Davidson® Electra Glide

motorcycle driving on two wheels on a dirt or sand covered surface. The audio portion of the ad simulates the sound of a motorcycle being driven.

C. [Exhibit C, Television Advertisement]

[Audio] "Now for a limited time, Steel Tec's Value Packed Power Command Workshop. Complete with a Steel Tec Power Wrench, storage case and all the tools and parts you need to get your dreams off the ground."

This television advertisement contains depictions of the Steel Tec "Hypersonic Fighter" plane operating on its own power without human assistance, including the following scene:

1. One sequence depicts an assembled Steel Tec Hypersonic Fighter plane flying across the television screen. The audio portion simulates the sound of a jet plane in flight.

2. A small print video-only disclosure states, "Product Does Not Fly Without Assistance."

D. [Exhibit D, Television Advertisement]

[Audio] "Born out of steel and forging the way, the Steel Tec Construction System. Get a grip on the Power Wrench, feel the magnetic force. Because no matter how fast, no matter how powerful, no matter how massive, or no matter how high your imagination might be, Steel Tec is the beginning of creation."

This television advertisement contains depictions of the Steel Tec "Off road Super Sport," "Dozer," "Dump Truck," and motorized helicopter operating on their own power without human assistance, including the following scenes:

1. One sequence depicts a rear wheel of an assembled Steel Tec Off Road Super Sport vehicle spinning and peeling out from a pile of dirt or sand. The ad then cuts to a scene of the Steel Tec Off Road Super Sport vehicle driving and bounding over a dirt or sand covered surface.

2. Another sequence depicts an assembled Steel Tec Dozer vehicle driving forward and pushing a pile of dirt or sand on a dirt or sand covered surface.

3. Another sequence depicts an assembled Steel Tec Dump Truck vehicle driving in reverse and then stopping, and its dump body raising, tilting back, and dumping a full load of miniature canisters.

4. Another sequence depicts an assembled Steel Tec motorized helicopter hovering, with propellers and rear rotors spinning, then ascending. The audio portion simulates the sound of a helicopter in flight, including the sound of propellers spinning.

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 advertisements attached as Exhibits A-D, respondents have represented, directly or by implication, that the demonstrations in the television advertisements of the Steel Tec:

A. Motorized helicopter hovering, with propellers and rear rotors spinning, then ascending;

B. Formula 1 race car driving at a rapid pace on a grated surface;

C. Off Road Super Sport vehicle peeling out from a pile of dirt or sand and then driving and bounding over a dirt or sand covered surface;

D. Sand Buggy vehicle peeling out from a pile of dirt or sand and then driving over a dirt or sand covered surface, leaving a cloud of dust behind;

E. Harley-Davidson® Electra Glide motorcycle peeling out from a pile of dirt or sand, and driving on two wheels on a dirt or sand covered surface;

F. Hypersonic Fighter plane flying;

G. Dozer vehicle driving forward and pushing a pile of dirt or sand on a dirt or sand covered surface; and,

H. Dump Truck vehicle driving in reverse and then stopping, and its dump body raising, tilting back, and dumping a full load of miniature canisters

were unaltered and the results shown accurately represent the performance of the actual, unaltered Steel Tec motorized helicopter, Formula 1 race car, Off Road Super Sport vehicle, Sand Buggy vehicle, Harley-Davidson® Electra Glide motorcycle, Hypersonic Fighter plane, Dozer vehicle, and Dump Truck vehicle toys under the depicted conditions.

PAR. 6. In truth and in fact, the demonstrations in the television advertisements of the Steel Tec:

A. Motorized helicopter hovering, with propellers and rear rotors spinning, then ascending;

B. Formula 1 race car driving at a rapid pace on a grated surface;

C. Off Road Super Sport vehicle peeling out from a pile or sand and then driving and bounding over a dirt or sand covered surface;

D. Sand Buggy vehicle peeling out form a pile of dirt or sand and then driving over a dirt or sand covered surface, leaving a cloud of dust behind;

E. Harley-Davidson® Electra Glide motorcycle peeling out from a pile of dirt or sand, and driving on two wheels on a dirt or sand covered surface;

F. Hypersonic Fighter plane flying;

G. Dozer vehicle driving forward and pushing a pile of dirt or sand on a dirt or sand covered surface; and,

H. Dump Truck vehicle driving in reverse and then stopping, and its dump body raising, tilting back, and dumping a full load of miniature canisters

were not unaltered and the results shown did not accurately represent the performance of actual, unaltered Steel Tec motorized helicopter, Formula 1 race car, Off Road Super Sport vehicle, Sand Buggy vehicle, Harley-Davidson® Electra Glide motorcycle, Hypersonic Fighter plane, Dozer vehicle, and Dump Truck vehicle toys under the depicted conditions. Among other things, the Steel Tec:

1. Motorized helicopter was suspended in the air from monofilament wire and was moved by humans off camera to create the effects of hovering and ascending, and the propellers and rear rotors were spun manually by humans off camera to create the effect of motorized spinning;

2. Formula 1 race car was pulled and guided in a straight line by a monofilament wire held by humans off camera to create the effect of driving at a rapid pace on a grated surface;

3. Off Road Super Sport vehicle was pulled and guided by a monofilament wire held by humans off camera to create the effects of peeling out from a pile of dirt or sand, and driving and bounding over a dirt or sand covered surface;

4. Sand Buggy vehicle was pulled and guided by a monofilament wire operated by humans off camera to create the effects of peeling out from a pile of dirt or sand and driving over a dirt or sand covered surface;

5. Harley-Davidson® Electra Glide motorcycle was moved along the dirt or sand covered surface by humans off camera using a black tube connected to the side of the vehicle and recessed out of view from the camera to create the effects of peeling out and driving on a dirt or sand covered surface;

6. Hypersonic Fighter plane was moved along a horizontally suspended monofilament wire by humans off camera to create the effect of flying;

7. Dozer vehicle was pulled and guided by a monofilament wire held by humans off camera to create the effects of pushing a pile of dirt or sand and driving over a dirt or sand covered surface; and,



8. Dump Truck vehicle was pulled and guided by a monofilament wire held by humans off camera to create the effects of driving in reverse and stopping, and the dump body was pulled upward by a monofilament wire held by humans off camera to create the effect of dumping a load of miniature canisters.

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 referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A-D, respondents have represented, directly or by implication, that the Steel Tec:

A. Motorized helicopter can hover and ascend, and its propellers and rotors can spin in a sustained manner without human assistance;

B. Formula 1 race car can drive at a rapid pace in a sustained and directed manner without human assistance;

C. Off Road Super Sport vehicle can peel out from a pile of dirt or sand and drive and bound over a dirt or sand covered surface in a sustained and directed manner without human assistance;

D. Sand Buggy vehicle can peel out from a pile of dirt or sand and drive on a dirt or sand covered surface in a sustained and directed manner without human assistance;

E. Harley-Davidson® Electra Glide motorcycle can peel out from a pile of dirt or sand and drive on a dirt or sand covered surface in a sustained and directed manner without human assistance;

F. Hypersonic Fighter plane can fly in a sustained and directed manner without human assistance;

G. Dozer vehicle can push dirt or sand and drive on a dirt or sand covered surface in a sustained and directed manner without human assistance; and,

H. Dump Truck vehicle can drive in reverse, stop, raise the dump body, tilt it back, and then dump its load without human assistance.

PAR. 8. In truth and in fact, the Steel Tec:

A. Motorized helicopter cannot hover and ascend, and its propellers and rotors cannot spin in a sustained manner without human assistance;

B. Formula 1 race car cannot drive at a rapid pace in a sustained and directed manner without human assistance;

C. Off Road Super Sport vehicle cannot peel out from a pile of dirt or sand and drive and bound over a dirt or sand covered surface in a sustained and directed manner without human assistance;

D. Sand Buggy vehicle cannot peel out from a pile of dirt or sand and drive on a dirt or sand covered surface in a sustained and directed manner without human assistance;

E. Harley-Davidson® Electra Glide motorcycle cannot peel out from a pile of dirt or sand and drive on a dirt or sand covered surface in a sustained and directed manner without human assistance;

F. Hypersonic fighter plane cannot fly in a sustained and directed manner without human assistance;

G. Dozer vehicle cannot push dirt or sand and drive on a dirt or sand covered surface in a sustained and directed manner without human assistance; and,

H. Dump Truck vehicle cannot drive in reverse, stop, raise the dump body, tilt it back, and then dump its load without human assistance.

Therefore, the representations set forth in paragraph seven were, and are, false and misleading.

PAR. 9. Through the use of the statements and depictions contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A-D, respondents have represented, directly or by implication, that the Steel Tec Off Road Super Sport vehicle, Sand Buggy vehicle, Harley-Davidson® Electra Glide motorcycle, Dozer vehicle, and Dump Truck vehicle can be used on dirt, sand, and similar surfaces.

PAR. 10. In truth and in fact, the Steel Tec Off Road Super Sport vehicle, Sand Buggy vehicle, Harley-Davidson® Electra Glide motorcycle, Dozer vehicle, and Dump Truck vehicle cannot be used on dirt, sand, and similar surfaces. The "Helpful Hints Manual" accompanying these products states, "OPERATE YOUR VEHICLE ON A SMOOTH, DRY SURFACE ONLY. NEVER OPERATE YOUR VEHICLE ON GRASS, DIRT, SAND, CARPET OR WATER AS THIS MAY RESULT IN DAMAGE TO YOUR VEHICLE." Therefore, the representation set forth in paragraph nine was, and is, false and misleading.

PAR. 11. Respondents knew or should have known that the representations set forth in paragraphs five, seven, and nine were, and are, false and misleading.

PAR. 12. The acts and practices of respondents 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

121 F.T.C.

EXHIBIT A

TV

PRODUCT	STEEL TEC CONSTRUCTION TOYS	EXHIBIT A	78-16314 M.
TITLE	"BORN OUT OF STEEL"		
PROGRAM	FULL HOUSE	11/24/94	.30
STATION	WPIX (NEW YORK)		6:25PM
	REVISION OF COMMERCIAL 94-11819		



(MUSIC) ANNCR: Born out of steel



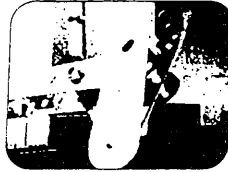
and forging the way



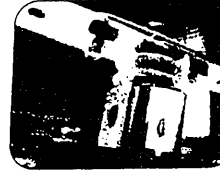
the, Steel Tec Construction System.



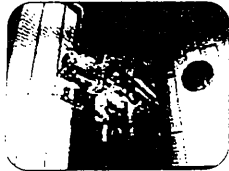
Get a grip on the Power Wrench.



feel the magnetic force.



(MUSIC)



Because no matter how high, (SFX: IN & OUT) no matter how fast,



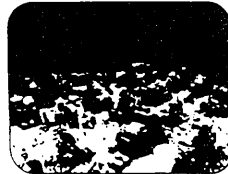
(SFX: IN & OUT) no matter how powerful,



or no matter how



monstrous your imagination might be.



(MUSIC)



Steel Tec is the beginning of creation. (MUSIC OUT)

**ALSO AVAILABLE IN COLOR VIDEO-TAPE CASSETTE**  
 While Radio TV Express undertakes to ensure the accuracy of material supplied by it, it cannot be responsible for errors or omissions.  
 Payment should be made by check or money order to the publisher's address with TV sets for the purchase of a public demonstration or related.

544

Complaint

EXHIBIT B



PRODUCT: STEEL TEC CONSTRUCTION SYSTEMS EXHIBIT B  
 TITLE: "BORN OUT OF STEEL"  
 PROGRAM: FULL HOUSE 11/24/94 30  
 STATION: WPIX (NEW YORK) 6:25PM  
 REVISION OF COMMERCIAL 94-15833



(MUSIC) (SFX: IN & OUT)



ANNCR: Born out of steel



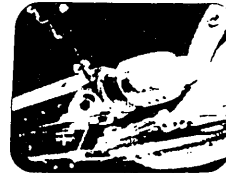
and forging the way, the Steel Tec Construction System.



Get a grip on the Power Wrench.



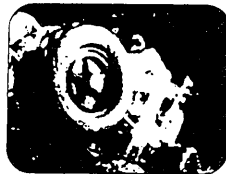
feel the magnetic force.



Let your imagination soar with the U.S.S. Enterprise.



from Star Trek The Next Generation.



Steel Tec powerful.



(MUSIC)



Steel Tec cool as chrome. (SFX: IN) With Harley Davidson.



Steel Tec.



the beginning of creation. (MUSIC OUT) (SFX: IN & OUT)

ALSO AVAILABLE IN COLOR VIDEO-TAPE CASSETTE  
 While Radio TV Experts endeavor to ensure the accuracy of material supplied by L.L. Carter, we cannot be responsible for errors or omissions.  
 Material marked by Radio TV Experts may be used for file and reference purposes only. It may not be reproduced, sold or publicly disseminated or exhibited.

Complaint

121 F.T.C.

EXHIBIT C

TV

TRANSACTION	12551	02/09/95	15
TITLE	VALUE PACKED POWER COMMAND WORKSHOP		
PROGRAM	FULL HOUSE	02/09/95	15
STATION	WPIX	(NEW YORK)	6:27PM



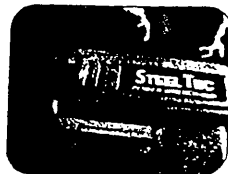
(MUSIC)



ANNCR: Now for a limited time.



Steel Tec's Value Packed Power Command Workshop.



(MUSIC)



Complete with a Steel Tec power wrench, storage case



and all the tools and parts you need to get your dreams off the ground. (MUSIC OUT)

**ALSO AVAILABLE IN COLOR VIDEO-TAPE CASSETTE**  
 While Radio TV Express endeavors to ensure the accuracy of material supplied by its clients, it is not responsible for inaccuracies or omissions.  
 Material supplied by Radio TV Express may be used for the most relevant purposes only. It may not be reproduced, sold or publicly disseminated or exhibited.

## EXHIBIT D

[Television Advertisement]

[Announcer]: "Born out of steel and forging the way, the Steel Tec Construction System. Get a grip on the Power Wrench, feel the magnetic force. Because no matter how fast, no matter how powerful, no matter how massive, or no matter how high your imagination might be, Steel Tec is the beginning of creation."

This television advertisement contains depictions of the Steel Tec "Off Road Super Sport," "Dozer," "Dump Truck," and motorized helicopter operating on their own power without human assistance, including the following scenes:

1. One sequence depicts a rear wheel of an assembled Steel Tec Off Road Super Sport vehicle spinning and peeling out from a pile of dirt or sand. The ad then cuts to a scene of the Steel Tec Off Road Super Sport vehicle driving and bounding over a dirt or sand covered surface.
2. Another sequence depicts an assembled Steel Tec Dozer vehicle driving forward and pushing a pile of dirt or sand on a dirt or sand covered surface.
3. Another sequence depicts an assembled Steel Tec Dump Truck vehicle driving in reverse and then stopping, and its dump body raising, tilting back, and dumping a full load of miniature canisters.
4. Another sequence depicts an assembled Steel Tec motorized helicopter hovering, with propellers and rear rotors spinning, then ascending. The audio portion simulates the sound of a helicopter in flight, including the sound of propellers spinning.

## DECISION AND ORDER

The Federal Trade Commission, having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of the 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 respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, and admission by the respondents 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 respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, 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 respondents have violated the said Act, and that a 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 described in Section 2.34 of the Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Starwood Advertising, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Colorado, with its office and principal place of business at 600 North Starwood Drive, Aspen, Colorado.

Respondent Les Towne is an officer of said corporation. He formulates, directs, and controls the policies, acts and practices of said corporation and his address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.



## ORDER

## I.

*It is ordered,* That respondents, Starwood Advertising, Inc., a corporation, its successors and assigns, and its officers, and Les Towne, individually and as an officer of said corporation, and respondents' 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 or package depicting a demonstration, 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.

Provided further, however, that it shall be a defense hereunder that respondents neither knew nor had reason to know that the demonstration, experiment or test did not prove, demonstrate or confirm the representation.

B. Misrepresenting, directly or by implication, any performance characteristic of any toy.

## II.

*It is further ordered,* That for three (3) years after the last date of dissemination of any representation covered by this order, respondent Starwood Advertising, Inc., or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

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

B. Any and all videotapes, 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 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 an advertisement; and

D. Any toy involved in such representation.

## III.

*It is further ordered,* That respondent Starwood Advertising, Inc. shall, within thirty (30) days after its service, 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, or other materials covered by this order and shall secure from each such person a signed statement acknowledging receipt of this order.

## IV.

*It is further ordered,* That respondent Les Towne shall, for a period of ten (10) years from the date of entry of this order, notify the Commission within thirty (30) days of the discontinuance of his present business or employment and of his affiliation with any new

business or employment. Each such notice of affiliation with any new business or employment shall include the respondent's new business address and telephone number, current home address, and a statement describing the nature of the business or employment and his duties and responsibilities.

V.

*It is further ordered,* That respondent Starwood Advertising, Inc. shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in its corporate structure, 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.

VI.

This order will terminate on May 2, 2016, or twenty (20) 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.

VII.

*It is further ordered,* That respondents shall, within sixty (60) days after service 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 they have complied with this order.