

NYC DEPARTMENT OF CONSUMER AFFAIRS

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Complainant,

-against-

MASQUERADE, LLC
a/k/a SMART TOYS
1362 Naamans Creek Road, 2nd Floor
Garnet Valley, PA 19060,

Respondent.

Consent Order

Violation # OL 5299000

1. Respondent acknowledges receipt of the above-captioned Notice of Hearing, OL 5299000, from the Department charging Respondent with violating the New York City Administrative Code (“the Code”) Section 20-700 et seq. (“Consumer Protection Law”) and Title 6 of the Rules of the City of New York (“the Rules”) Sections 5-09 et seq. (“Advertising and Promotion Law”) and 5-88 et seq. (“Sales and Discounts Law”). The Notice of Hearing charges Respondent with failing to disclose limitations on an advertisement as required by Section 20-700 of the Code and Sections 5-09 and 5-88 of the Rules in a New York City newspaper on December 21, 2010.
2. Masquerade, LLC aka Smart Toys, 1362 Naamans Creek Road, 2nd Floor, Garnet Valley, PA 19060 (“Respondent”) consents to an order (the “CO”) with the New York City Department of Consumer Affairs (the “Department”) in the above-captioned matter.
3. Meyer, Suozzi, English and Klein by Richard Guay, Esq., as Attorney for Respondent, represents and warrants that he is authorized to settle this action, and to enter into a final CO with the Department on behalf of Respondent.

Definitions

4. For the purposes of this CO, the following definitions apply:
 - a. “Advertisement” or “Advertisements” means all promotional materials, statements, visual descriptions, or other representations of any kind including, but not limited to, coupons, mailings, postcards, flyers, hand-outs, brochures, banners, billboards, magazines, circulars, pamphlets, catalogues, in-store and out-of-store displays and signs, websites, letters, handbills, newspaper print advertisements, television advertisements, radio advertisements and internet advertisements disseminated in print, orally, or electronically by or on behalf of Respondent to New York City consumers.
 - b. “Out of Store Advertisement” or “Out of Store Advertisements” means any oral or written statement, visual description, advertisement or other representation of any kind made outside the interior premises of the advertiser, including representations made in

newspapers, magazines, handbills, billboards, direct mailings, on radio and television and in store windows, storefronts and other similar places where representations can be perceived by the public not yet inside the premises of the merchant.

Required Conduct

5. Respondent shall comply fully with all relevant laws and rules relating to advertising in New York City including, but not limited to, the Advertising and Promotion Law, Sections 5-06 et seq. of the Rules, the Sales and Discounts Law, Sections 5-86 et seq. of the Rules, the Consumer Protection Law, Sections 20-700 et seq. of the Code; and the Consumer Protection Rules, Sections 5-01 et seq. of the Rules.
6. All advertisements published or caused to be published by Respondent shall clearly and conspicuously disclose any limitations on offers including but not limited to all material exclusions, reservations, limitations, modifications, or conditions. A disclosure made in print that is at least one-third as large as the largest print used in the advertisement or promotional literature shall satisfy this requirement.
7. All advertisements published or caused to be published by Respondent where an item advertised is sold from more than one location shall clearly and conspicuously disclose the locations that do not have certain items mentioned and locations which charge higher rates than those mentioned in the advertisement. A disclosure made in print that is at least one-third as large as the largest print used in the advertisement or promotional literature shall satisfy this requirement.
8. All out of store advertisements containing words or numbers indicating a savings, reduction, discount or sale price, must include limiting language which permits the consumer to identify the merchandise or services being offered at savings, reductions, discounts, or sale prices.

Compliance

9. Respondent shall produce copies of Respondent's advertisements within ten (10) days of the Department's request.
10. Respondent shall produce copies of any complaints Respondent receives regarding Respondent's advertisements within ten (10) days of the Department's request.

Miscellaneous

11. The Department agrees that by executing this CO, the Department waives the right to bring the charges set forth in the above-captioned Notice of Hearing against Respondent.
12. Respondent waives the right to a hearing on, or appeal of, the violations alleged in the above-captioned Notice of Hearing against Respondent under Section 20-104 of the Code or under Article 78 of the New York State Civil Practice Law and Rules, Sections 7801-7806.
13. This CO does not affect the right of individual consumers to bring a civil action for relief pursuant to Section 20-778 of the Code or other laws, including claims relating to the charges set forth in the above-captioned Notice of Hearing, or bar any criminal prosecution of

Respondent that may be brought pursuant to Section 20-777(a)(1) of the Code.

14. The acceptance of this CO by the Department shall not be deemed approval by the Department of any of Respondent's business practices, and Respondent shall make no representation to the contrary.

Fines and Penalties

15. Respondent shall provide to the Department the amount of **three-thousand five-hundred dollars (\$3,500.00)** via a bank check, certified check, or money order made payable to "New York City Department of Consumer Affairs". Respondent shall return this Consent Order signed along with the fine amount specified to: New York City Department of Consumer Affairs, 42 Broadway – 9th Floor, New York, NY 10004, Attn: Laura Musano, Research and Investigations Division.
16. If the Respondent's payment is late, the Department shall add a late fee of \$100.00 to the amount owed by the Respondent and the entire balance (including late fee) due under this settlement agreement shall be due immediately. Failure to submit payment for this settlement agreement may result in the suspension or revocation of the Respondent's license(s) with the Department.
17. Respondent acknowledges that in the event of any material breach of a provision of this CO by Respondent, the Department shall reinstate the above-captioned matter in the Administrative Tribunal and shall seek maximum penalties for each violation of the Consumer Protection Law and all applicable Rules.
18. This CO shall not constitute an admission regarding the existence or non-existence of any issue, fact, or violation of any Rule or Law.
19. This CO shall constitute the final disposition of the above-captioned matter only if this CO is fully executed and the Department receives the settlement amount by **May 18, 2012**.
20. This CO constitutes a final order of the Department.

Dated: May 7, 2012

RICHARD F. X. GUAY
For the Respondent (Print Name)

ATTORNEY FOR RESPONDENT
For the Respondent (Title)

Jul Guay 5.18.2012
For the Respondent (Signature) (Date)

[Redacted]
For the Department (Print Name)

Advertising Compliance Coordinator
For the Department (Title)

[Redacted] 5/29/2012
For the Department (Signature) (Date)

So Ordered:
Jonathan Mintz
Commissioner

Businesses licensed by the Department of Consumer Affairs (DCA) must comply with all relevant local, state and federal laws. Copies of New York City licensing and consumer protection laws are available in person at DCA's Licensing Center, located at 42 Broadway, 5th Floor, New York, NY, by calling 311, New York City's 24 hour Citizen Service Hotline, or by going online at www.nyc.gov/consumers.