

Complaint

84 F.T.C.

## IN THE MATTER OF

## WILBANKS CARPET SPECIALISTS, INC., ET AL.

ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION AND TRUTH IN LENDING ACTS*Docket 8933. Complaint, June 28, 1973—Decision, Sept. 24, 1974*

Order requiring an Essex, Md., seller, distributor and installer of carpeting and floor coverings, among other things to cease misrepresenting itself as a manufacturer; using bait and switch tactics; disparaging merchandise; failing to maintain adequate records; misrepresenting offers as free when their cost is incorporated into the selling price; misrepresenting prices; and failing to inform consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the Truth in Lending Act.

*Appearances*

For the Commission: *Maureen L. McGill, Everette E. Thomas, Richard F. Kelly and Alice C. Kelleher.*

For the respondents: *Benjamin R. Civiletti and John Henry Lewin, Jr.*, Baltimore, Md., withdrew from participation on June 6, 1974.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Wilbanks Carpet Specialists, Inc., a corporation, trading as Mr. Carpet Centers and Design Carpets Consultants, and J.C.B. Distributors, Inc., a corporation, trading as Mr. Carpet Centers, and George Wilbanks and Lester L. Miller, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of said Acts, and the implementing regulation promulgated under the Truth in Lending Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Wilbanks Carpet Specialists, Inc., trading as Mr. Carpet Centers and Design Carpets Consultants, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 18 South Maryland Street, Essex, Md.

Respondent J.C.B. Distributors, Inc., trading as Mr. Carpet Centers, is a corporation organized, existing and doing business under and by

virtue of the laws of the State of Maryland, with its principal office and place of business located at 10508 Baltimore Boulevard, Beltsville, Md.

Respondents George Wilbanks and Lester L. Miller are individuals and are officers of said corporate respondents. The said individual respondents formulate, direct and control the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. The address of respondent George Wilbanks is the same as that of corporate respondent Wilbanks Carpet Specialists, Inc., and the address of respondent Lester L. Miller is the same as that of corporate respondent J.C.B. Distributors, Inc.

All of the aforementioned respondents cooperated and acted together in the carrying out of the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for sometime last past have been, engaged in the advertising, offering for sale, sale, distribution and installation of carpeting and floor coverings to the public.

COUNT I

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their said merchandise, when sold, to be shipped from their places of business located in the State of Maryland, to purchasers thereof located in various other States of the United States and the District of Columbia, and maintain and at all times mentioned herein have maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their carpeting and floor coverings, respondents have made, and are now making, numerous statements and representations by repeated advertisements inserted in newspapers of interstate circulation, and by oral statements and representations of their salesmen to prospective purchasers with respect to their products and services.

Typical and illustrative of said statements and representations, but not all-inclusive thereof, are the following:

CARPETING DIRECT FROM OUR FAMILY MILL

\* \* \* \* \*

WE SELL FOR LESS — WE MAKE IT OURSELVES

\* \* \* \* \*

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MR. CARPET SAYS: "YOU CAN NOW AFFORD" TO CARPET YOUR ENTIRE HOME—INCLUDING 5 AREAS—Living Room, Dining Room, Hall, Stairs and Landings \$139-100% NYLON PILE From Our Family's Factory To You! 270 Square Feet-WALL TO WALL-FREE PADDING AND LABOR!

Dupont 501 Nylon Carpet Up to 320 Sq. Ft. installed Wall to Wall at no additional cost. Free padding \$189-FREE! PORTABLE TELEVISION With the purchase of our deluxe carpeting

WASHINGTON'S GREATEST CARPET SALE!!

Mr. Carpet can save you money! We have our own mill and our own warehouse in order to lower our overhead. Thousands of yards in our warehouse. You lose money if you don't check with us before you buy carpeting!

INSTALLATION INCLUDED WALL-TO-WALL PADDING FREE

10 Year Guarantee

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set out herein, separately and in connection with the oral statements and representations of respondents' salesmen to customers and prospective customers, respondents have represented, and are now representing, directly or by implication, that:

1. Respondents are an integrated manufacturing and retailing business organization, and by virtue of such integration respondents are able to sell carpeting at lower prices than other competing retail carpet dealers.

2. Respondents are making a bona fide offer to sell the advertised carpeting and floor coverings at the price and on the terms and conditions stated in the advertisements.

3. By and through the use of the word "SALE," and other words of similar import and meaning not set out specifically herein, that said carpeting and floor coverings may be purchased at special or reduced prices, and purchasers are thereby afforded savings from respondents' regular selling prices.

4. By and through the use of the words "INSTALLATION INCLUDED WALL-TO-WALL PADDING FREE" and other words of similar import and meaning, not set out specifically herein, that all of the carpeting mentioned in such advertisements is installed with separate padding included at the advertised price.

5. Certain of respondents' products are unconditionally guaranteed for various periods of time, such as fifteen (15) years.

6. Purchasers of the said deluxe carpeting receive a "free" portable television.

PAR. 6. In truth and in fact:

1. Respondents are not an integrated manufacturing and retailing business organization. Respondents do not manufacture carpeting, but purchase it from sources which are generally available to their competitors.

2. Respondents' offers are not bona fide offers to sell said carpeting and floor coverings at the price and on the terms and conditions stated in the advertisements. To the contrary, said offers are made for the purpose of obtaining leads to persons interested in the purchase of carpeting. Members of the purchasing public who respond to said advertisements are called upon in their homes by respondents or their salesmen who make little or no effort to sell to the prospective customer the advertised carpeting. Instead, they exhibit what they represent to be the advertised carpeting which, because of its poor appearance and condition, is frequently rejected on sight by the prospective customer. Higher priced carpeting or floor coverings of superior quality and texture are thereupon exhibited, which by comparison disparages and demeans the advertised carpeting. By these and other tactics, purchase of the advertised carpeting is discouraged, and respondents, through their salesmen, attempt to sell and frequently do sell the higher priced carpeting.

3. Respondents' products are not being offered for sale at special or reduced prices. To the contrary, the price respondents regularly advertise and their so-called advertised "sale" price are identical and are used to mislead prospective customers into believing there is a saving from a bona fide regular selling price. In fact, seldom, if ever, are the advertised items sold, because the offer is designed to act as the inducement for the practices set forth in Paragraph Six, 2., hereof.

4. A substantial portion of the carpeting advertised by the respondents is not installed with separate padding which is included in the advertised price. To the contrary, a substantial portion of the advertised carpeting has rubberized backing which is bonded to the carpeting.

5. Respondents' carpeting and floor coverings are not unconditionally guaranteed for the period of time orally represented by the respondents' salesmen. To the contrary, such written guarantees as they have provided to their customers were subject to conditions and limitations not disclosed in respondents' representatives' oral representations, and

in a substantial number of instances customers did not receive a written guarantee.

6. Purchasers of respondents' deluxe carpeting do not receive a free portable television. To the contrary, the cost of the "free" gift is added to and regularly included in the selling price of the merchandise sold to the customer.

Therefore, the statements and representations as set forth in Paragraphs Four and Five, hereof, were and are false, misleading and deceptive.

PAR. 7. In the future course and conduct of their business, and in furtherance of a sales program for inducing the purchase of their carpeting and floor coverings, respondents and their salesmen or representatives have engaged in the following additional unfair, false, misleading and deceptive acts and practices:

In a substantial number of instances, through the use of the false, misleading and deceptive statements, representations and practices set forth in Paragraphs Four through Six, above, respondents or their representatives have been able to induce customers into signing a contract upon initial contact without giving the customer sufficient time to carefully consider the purchase and consequences thereof.

PAR. 8. In the further course and conduct of their aforesaid business, and in connection with the representations set forth in Paragraph Four above, respondents offer carpet with padding and installation included at a price based upon specified areas of coverage. In making such offer, respondents have failed to disclose the material fact that the prices stated for such specified areas of coverage are not applied at the same rate for additional quantities of carpet needed, but are priced substantially higher.

The aforesaid failure of the respondents to disclose said material facts to purchasers has the tendency and capacity to lead and induce a substantial number of such persons into the understanding and belief that the prices charged for quantities of carpet needed in excess of the specified areas of coverage will not be substantially higher than the rate indicated by the initial offer.

Therefore, respondents' failure to disclose such material facts was, and is, unfair, false, misleading and deceptive.

PAR. 9. In the further course and conduct of their business, and for the purpose of inducing the purchase of their products, respondents use the term "up to 270 sq. ft." to indicate the quantity of carpeting available at the advertised price.

PAR. 10. The unit of measurement usually and customarily employed in the retail advertising of carpet is square yards. Consumers are accustomed to comparing the price of carpet in terms of price per square yard, therefore respondents' use of the square foot unit of measurement confuses consumers who compare respondents' prices with competitors' prices advertised on a square yard basis.

Furthermore, respondents' use of square foot measurements exaggerates the size of quantity of carpeting being offered, and therefore has the capacity and tendency to mislead consumers into the mistaken belief they are being offered a greater quantity of carpet than is the fact.

Therefore, the acts and practices as set forth in Paragraph Nine hereof were and are unfair, false, misleading and deceptive.

PAR. 11. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition in commerce, with corporations, firms and individuals in the sale and distribution of rugs, carpeting and floor coverings and service of the same general kind and nature as those sold by respondents.

PAR. 12. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, acts and practices, and their failure to disclose material facts, as aforesaid, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and complete, and into the purchase of substantial quantities of respondents' products and services by reason of said erroneous and mistaken belief.

PAR. 13. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

#### COUNT II

Alleging violation of the Truth in Lending Act and the implementing regulation promulgated thereunder, and of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 14. In the ordinary course and conduct of their business, as aforesaid, respondents regularly extend consumer credit, as "consumer

credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 15. Subsequent to July 1, 1969, respondents, in the ordinary course of business as aforesaid, and in connection with their credit sales, as "credit sale" is defined in Regulation Z, have caused, and are causing, customers to execute binding retail installment contracts, hereinafter referred to as the "contract."

PAR. 16. By and through the use of the contract respondents:

(1) Failed in some instances to disclose the due dates or periods of payments scheduled to repay the indebtedness, as required by Section 226.8(b) (3) of Regulation Z.

(2) Failed in some instances to disclose the "annual percentage rate" accurately to the nearest quarter of one percent, computed in accordance with the provisions of Section 226.5 of Regulation Z, as required by Section 226.8(b) (2) of Regulation Z.

PAR. 17. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondents thereby violated the Federal Trade Commission Act.

INITIAL DECISION BY MILES J. BROWN,  
ADMINISTRATIVE LAW JUDGE  
APRIL 24, 1974

PRELIMINARY STATEMENT

The Federal Trade Commission issued its complaint in this matter on June 28, 1973, charging respondents with unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45), as well as with violations of the Truth in Lending Act (15 U.S.C. 1604, *et seq.*). By answer duly filed respondents denied summarily the substantive allegations of the complaint and denied violating the Federal Trade Commission Act or the Truth in Lending Act.

Adjudicative hearings were held in Wash., D.C. and Baltimore, Md., during Nov. 1973. The record in this proceeding was closed for the reception of evidence on Jan. 8, 1974. On Feb. 15, 1974, proposed findings and briefs were filed by counsel supporting the complaint and counsel for respondents, and a reply brief was filed by complaint counsel on Mar. 1, 1974. By letter dated Feb. 27, 1974, respondents' counsel advised the administrative law judge that respondents chose not to file a reply

brief. By order dated Mar. 15, 1974, the Commission extended until May 8, 1974, the time in which the initial decision should be filed.

Any motions appearing on the record not heretofore or herein specifically ruled upon either directly or by the necessary effect of the conclusions in this decision are hereby denied.

The proposed findings, conclusions and briefs submitted by counsel have been given careful consideration and to the extent not adopted by this decision in the form proposed or in substance are rejected as not supported by the evidence or as immaterial.<sup>1</sup>

Some of the abbreviations used in this decision are as follows:

CX - Commission's Exhibit

RX - Respondents' Exhibit

CSCPF - Proposed Findings and conclusions filed by Counsel Supporting the complaint

RPF - Proposed Findings and conclusions filed by Respondents' Counsel

TR - Transcript of the testimony

CSC Reply - Reply Brief of Counsel Supporting the complaint. Specialists - Wilbanks Carpet Specialists, Inc.

J.C.B. Dist. - J.C.B. Distributors, Inc.

At the outset it should be pointed out that respondents now admit that they have engaged in certain practices challenged by the Commission (RPF, Concl. 3, 4, 5, & 6). Respondents' main contentions at this posture of the case are that the two corporate respondents are entirely separate business entities, that they operated in two distinct trading areas, Specialists in Baltimore, and J.C.B. Dist. in Washington, D.C., and that Specialists, which is still engaged in business, should not be held liable or subjected to an order because of certain practices engaged in by J.C.B. Dist. which ceased operations in late 1972. They further contend that the terms of the proposed order, especially the so-called "consumer warning" disclosure, should not be issued against Specialists.

Having reviewed the record in this proceeding, and having considered the demeanor of the witnesses as they testified, together with the proposed findings, conclusions, and briefs submitted by the parties, I make the following findings as to the facts.

#### FINDINGS OF FACT

1. Respondent Wilbanks Carpet Specialists, Inc., ("Specialists") which trades as Mr. Carpet Centers, is a Maryland corporation with its

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<sup>1</sup>Counsel supporting the complaint have meticulously annotated their proposed findings to the record in this proceeding. Where noted, instead of repeating long string citations to exhibits, I have adopted counsel's citations along with the finding, being satisfied that the finding is fully supported by the record.



principal office and place of business located at 11 South Marlyn Street, Essex, Md. (Ans., Tr. 21-25).

2. Respondent J.C.B. Distributors, Inc., ("J.C.B. Dist.") is also a Maryland corporation, and also traded as Mr. Carpet Centers from March of 1970 until about Thanksgiving of 1972, during most of which period it had its principal place of business at 10508 Baltimore Boulevard, Beltsville, Md. (Ans., CX B(1); Tr. 27, 28, 154).

3. Respondent George Wilbanks is an individual and an officer of both corporate respondents, Specialists and J.C.B. Dist., and he alone formulates, directs and controls the acts and practices of Specialists (Tr. 23, 25, 129, 130).

4. Respondent Lester L. Miller is an individual and was an officer of both corporations. He was in charge of the day-to-day operations at J.C.B. Dist. He now resides in Laurel Springs, N.C., where he is engaged in the retail carpet business (Tr. 23, 28-29, 139).

5. Wilbanks and Miller entered the carpet business as partners in 1967 (Tr. 23). They were the sole owners of Specialists with Wilbanks owning 55 percent interest and Miller 45 percent interest (Tr. 23, 140). In March of 1970, Wilbanks and Miller went into business with J. C. Briggs in the Washington area and when Briggs terminated his association with J.C.B. Dist., Wilbanks and Miller became sole owners thereof in the same proportion as their interest in Specialists, *i.e.*, 55 percent-45 percent (Tr. 27-29, 140, 142).

6. Both corporations, as well as the individual respondents, were engaged in the advertising, offering for sale, sale, distribution and installation of carpeting and floor covering to the general public at retail (Tr. 25, 29) and they used the trade name Mr. Carpet Centers, advertising and selling under that name (see CX D 1-39, 41; RX 1-10).

7. Specialists purchased and warehoused almost all of the carpeting ultimately sold at retail by J.C.B. Dist. (Tr. 32-33, 51, 143, 148, 747). After J.C.B. Dist. took orders for this carpeting, it was transported from Specialists' Baltimore warehouse by the installers who were employees of Specialists to various purchasers located in Maryland, Northern Virginia and the District of Columbia (Tr. 31-34, 48, 143). Specialists charged J.C.B. Dist. for the installing services and for the carpeting used in these installations (Tr. 33, 78, 156; see CX C 1-25). In the later operation of J.C.B. Dist., Wilbanks attached an installation crew to J.C.B. Dist.'s payroll (Tr. 34, 149).

8. Although Miller was in charge of the day-to-day operation of J.C.B. Dist., Wilbanks often visited the J.C.B. Dist. store location and at certain times went over its books (Tr. 144, 230-231). The overall policy decisions

for J.C.B. Dist. were made jointly by Miller and Wilbanks (Tr. 29; CX B-1), and the basic format for all J.C.B. Dist. advertising was decided on jointly by Wilbanks and Miller (Tr. 27-29, 142).

9. Specialists places advertisements under the name Mr. Carpet Centers in the TV Guide sections of the Sunday editions of the Baltimore Sun and Baltimore News American and on television on Baltimore channels 2, 13, and 45. Transmissions of these Baltimore television stations may be received in the District of Columbia and Northern Virginia and the Sunday editions of both newspapers are circulated in states other than Maryland (Tr. 26, 555, 568, 608, 609-617).

10. J.C.B. Dist. advertised on a regular basis in newspapers, including the Washington Post, the Washington Star, and the Washington Daily News, all of which have substantial interstate circulation, the latter two papers now constituting the Washington Star News (Tr. 31, 38, 142, 603), and it ran a commercial on Washington television channel 20 for a short period of time in 1971 (see CX B-7; Tr. 63).

11. In the course and conduct of their businesses of advertising, offering for sale, sale and installation of carpeting, respondents have engaged in a substantial course of trade in commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act (15 U.S.C. 44) (Findings 7, 8, 9, 10, *supra*).

12. In the course and conduct of their businesses, respondents in their advertisements and by representations of their salesmen have made, among other statements, the following statements to prospective purchasers with respect to their products and services:

- (a) CARPETING "DIRECT FROM OUR FAMILY MILL" (CX D 27, 28, 31);
- (b) WE SELL FOR LESS - WE MAKE IT OURSELVES (CX D 4, 9, 10, 11, 21, 22, 23);
- (c) MR. CARPET SAYS: "YOU CAN NOW AFFORD" TO CARPET YOUR ENTIRE HOME - INCLUDING 5 AREAS - Living Room, Dining Room, Hall, Stairs and Landings \$139 100% NYLON PILE, From our Family's Factory To You! 270 Square Feet WALL TO WALL FREE PADDING AND LABOR! (CX D 8, 12);
- (d) Dupont 501 Nylon Carpet Up to 320 Sq. Ft. installed Wall to Wall at no additional cost. Free padding \$189 FREE! PORTABLE TELEVISION With the purchase of our deluxe carpeting (CX D 27, 28, 35);
- (e) WASHINGTON'S GREATEST CARPET SALE!! Mr. Carpet can save you money! We have our own mill and our own warehouse in order to lower our overhead. Thousands of yards in our warehouse. You lose money if you don't check with us before you buy carpeting! (CX D 5, 13, 14, 15);
- (f) INSTALLATION INCLUDED WALL-TO-WALL PADDING FREE (CX D 27, 28, 35);
- (g) 10 Year Guarantee (CX F 14, 19, 23(a), 197).

13. Through such statements as "Carpeting Direct from our Family Mill" or "We sell for less - We make it ourselves," coupled with a picture

of a factory and a figure carrying rolls of carpet, respondents represent to prospective consumers that they are a factory outlet of an integrated manufacturing and retailing business organization, and accordingly, were able to sell carpeting at lower prices than other competing retail carpet dealers (CX D 27, 28, 31; see also Tr. 401, 410-413, 432, 438, 461, 462, 488, 506-507).

14. Respondents did not manufacture carpeting but purchased it from sources which were generally available to their competitors. Only a small quantity of carpeting was purchased by respondents from Wilbanks' in-law relatives (Tr. 92-95, 149, 196-198, 212-214).

15. The representations set forth in Finding 13, *supra*, were untrue and had the tendency to mislead prospective consumers (RPF, Concl. 3).

16. Through such statements as "You can now afford to carpet your entire home - including 5 areas - Living Room, Dining Room, Hall, Stairs and Landings, \$139, 100% Nylon Pile, From Our Family's Factory to You! 270 Square Feet, Wall to Wall, Free Padding and Labor!" respondents represent that they are making a bona fide offer to sell the advertised carpeting and floor coverings at the price and on the terms and conditions stated in the advertisements (see CX D 8, 12).

17. The so-called "5 areas for \$139" advertisements<sup>2</sup> did not constitute a bona fide offer to sell the advertised carpeting. Such advertising was used primarily to obtain "customer leads" in order to sell to them more expensive carpeting (see RPF, Concl. 4).

18. Because of the poor appearance and condition of the samples of the advertised carpeting shown to the prospective customers, they immediately rejected any idea of purchasing it (See CX J 1-6; Tr. 337-338, 402, 418, 441, 451, 463, 477, 466, 484, 507, 517-518, 533, 557, 570, 589, 596, 619, 635, 650, 675).

19. Very few actual sales were made of the advertised carpeting at the price and on the terms set forth in the advertisements (Tr. 241, 289; see CX F 1-550B).

20. The salesman's commission on the sale of the advertised carpeting was very small (Tr. 75, 146-147).

21. Although respondents did have some carpeting in stock which they could sell at the advertised price, *i.e.*, \$139, at little or no profit, such carpeting was not specifically designated in advance as the advertised carpeting and salesmen merely used respondents' generic names such as "Candystripe" or "Adios" to designate a sale of such carpeting (see Tr. 46, 69-72, 137; see also CX K).

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<sup>2</sup>The areas and prices contained in this type of advertisement vary. Findings 17 through 28 refer also to all of the "areas for stated price" representations.

22. In addition to the very appearance of the samples of the advertised carpeting, respondents' salesmen disparaged this carpeting, saying, for example, that it was not good carpeting or that it would not last long (see Physical Exhibit CX J 1-6; Tr. 298, 457, 477, 484, 508, 518, 538, 557, 569, 619, 674).

23. In most instances, the salesman attempted to sell a different and more expensive carpet product than the advertised carpeting (*ibid.*).

24. Salesmen's commissions on the higher priced carpeting were substantially more than on the advertised carpeting, such commissions being based on the difference between the "par" price established by respondents and the amount of the sale. The sale price was established by the salesmen at the time that the sale was consummated at the customer's home, there being no established upper limit (Tr. 38-44, 159-160, 241-243, 288).

25. Although the offer of a "free" television set or vacuum cleaner was made in most advertisements (see CX D-43), an offer which appeared to be related to the advertised carpeting and which prompted many prospective consumers to call respondents initially, the "free" offer was limited to a "deluxe carpeting" determined at the discretion of the salesman, was not offered with the advertised carpeting, and, when given to the purchaser, the cost thereof was subtracted from the amount upon which the salesman's commission was computed (RPF, Concl. 6; Tr. 100, 150, 151, 156, 158-159, 246-249, 299-301; see Tr. 401, 456, 476, 479, 618, 634, 674; CX B-2; see also customer contracts, CSCPF p. 48).

26. Through the use of such advertising respondents were able to obtain leads to persons who were interested in purchasing carpeting, and, when calling upon said persons in their homes, attempted to and did sell more expensive carpeting than the advertised carpeting (Findings 16, 17, 18, 19, 20, 21, 22, 23, 24, 25; RPF, Concl. 4; Tr. 378-379, 434, 441-442, 458, 464-465, 477-478, 493-494).

27. Through the use of the word "SALE" and other words of similar import, respondents represented that the carpeting and floor covering offered in such advertisements could be purchased at reduced or special prices, affording consumers savings from respondents' regular selling price for such products (see CX D 30, 32, 33).

28. Examination of the advertisements themselves show, and Wilbanks testified, that the "sale" prices were the regular prices for which the advertised carpeting was offered for sale and such prices were not reduced or special prices and that the consumer would not receive a

saving from respondents' regular price for such products (RPF, Concl. 5; see Finding 21, *supra*; Tr. 96-100).

29. Through the use of such words as "Installation included, wall-to-wall padding free," respondents represented that all of the carpeting mentioned in said advertisements was to be installed with separate padding included at the advertised price (see CX D 27, 28, 35).

30. Certain of the advertised carpeting had a rubberized backing bonded to the carpeting and this carpeting was not installed with separate padding (Tr. 78, see Tr. 121-122, 134, see also Tr. 672).

31. Through the use of such words as "guaranteed for 10 years" or any other specifically mentioned period, either in their advertising or written on consumer contracts, respondents represented that the advertised carpeting or the carpeting actually sold was unconditionally guaranteed for the time period specified (CSCPF, p. 44).

32. Respondents' guarantee was not an unconditional guarantee, but was a limited "prorated wear" guarantee (CX B-12a; Tr. 104, 301, 302, 458, 477, 518, 539).

33. In the course and conduct of their business respondents, through various representations in their advertisements, as well as oral representations of their salesmen, induced consumers into signing customer contracts without giving the consumer sufficient time to consider carefully the purchase, and the terms or the consequences thereof (Tr. 378, 403, 418, 435, 493, 541, 571, 583, 589, 620).

34. In circumstances where respondents sold the advertised carpeting in quantities greater than the area of coverage contained in the advertisements, *i.e.* 270 square feet or 320 square feet, the additional carpeting was priced substantially higher than the rate for the advertised coverage, although no information to this effect is contained in the advertisement (Tr. 102-103, 153).

35. Although the unit of measurement usually and customarily employed in the retail sale of carpeting is square yards, respondents used square foot measurements to describe the coverage of their advertised carpeting, which tended to exaggerate the quantity of carpeting being offered (See Tr. 182-184, 252-253, 275-276, 401, 413, 420, 426, 437, 455, 475, 565, 575, 594-595).

36. In the course and conduct of their business, respondents have been, and now are, in substantial competition with corporations, firms and individuals in the sale and distribution of rugs, carpeting, and floor coverings, and service of the same general kind and nature as those sold by respondents (Tr. 123-124).

37. In the ordinary course and conduct of their business respondents regularly extend consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act (Ans. pp. 4, 5; CSCPF, 56).

38. Subsequent to July 1, 1969, respondents, in the ordinary course and conduct of their business, and in connection with their "credit sales" as defined in Regulation Z, have caused customers to execute binding retail installment contracts (Ans., p. 5; CSCPF, p. 56).

39. By and through the use of the retail installment contracts, respondents failed in some instances to disclose the due dates or periods of payments scheduled to repay the indebtedness, as required by Section 226.8(b)(3) of Regulation Z (see customer contracts, CSCPF, p. 57).

40. By and through the use of the retail installment contracts, respondents failed in some instances to disclose the "annual percentage rate" accurately to the nearest quarter of one percent, computed in accordance with the provision of Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z (see customer contracts, CSCPF, p. 57).

#### CONCLUSIONS OF LAW

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of respondents Specialists, Wilbanks, J.C.B. Dist. and Miller.

Said respondents have at all times relevant hereto engaged in interstate commerce within the intent and meaning of Sections 4 and 5 of the Federal Trade Commission Act. There is no doubt on this record that both Specialists and J.C.B. Dist. advertised in commerce. The newspapers in which such advertisements were placed have interstate circulation. The television stations over which such advertisements were transmitted, are interstate in range. In addition, during the period from early 1970 until Nov. 1972, J.C.B. Dist. and Specialists were engaged in a course of trade in commerce. Specialist purchased carpeting from suppliers located outside the State of Maryland and warehoused such carpeting in anticipation of sales to J.C.B. Dist. for shipment directly to customers located in the District of Columbia and Northern Virginia. *Standard Oil Co. v. Federal Trade Commission*, 340 U.S. 231 (1951); *Holland Furnace Co. v. Federal Trade Commission*, 269 F.2d 203 (7th Cir. 1959), *cert. denied*, 361 U.S. 932; *Guziak v. Federal Trade Commission*, 361 F.2d 700 (8th Cir. 1966). All acts and practices which were part of these transactions were methods of competition or acts and practices in commerce within the coverage of the Federal Trade Commission Act.

See *United States v. South-Eastern Underwriters Ass'n.*, 322 U.S. 533 (1944); *Holland Furnace Co. v. Federal Trade Commission*, *supra*.

2. Respondents Wilbanks and Specialists are responsible for their own actions as well as for the actions of J.C.B. Dist. Respondents contend that because Specialists and J.C.B. Dist. are separate corporations, operated separately in their own distinct geographic trading areas with different personnel, different stores, different banking arrangements etc. (see RPF 14), that the acts and practices of J.C.B. Dist. and its salesmen are not to be considered as the acts and practices of or the responsibility of Specialists (Tr. 129-130). Parsing the record, they contend that there is no direct evidence that Specialists engaged in the admittedly illegal conduct in which J.C.B. Dist. was engaged and that, accordingly, certain provisions of the proposed order should not be entered against Specialists. Wilbanks contends that he was not responsible for the day-to-day operation of J.C.B. Dist. or its salesmen's conduct, and that, accordingly, he is not responsible, individually, for the actions of J.C.B. Dist. or its salesmen.

Respondents' arguments must be rejected for at least three reasons.<sup>3</sup> First, as stated in Conclusion 1, *supra*, Specialists was directly involved in the chain of events that resulted in the "switched carpet" being delivered to the consumer. It directly benefited from whatever practices J.C.B. Dist. and its salesmen used to make the sale of said products, including the advertising and the salesmen's representations. Specialists is responsible, under the Federal Trade Commission Act, for any illegal conduct engaged in by J.C.B. Dist. *Star Office Supply Co.*, 77 F.T.C. 383, 445 (1970), *affirmed per curiam*, 2d Cir. No. 35066 (1972) (not reported); *Parke, Austin & Lipscomb, Inc. v. Federal Trade Commission*, 142 F.2d 437 (2d Cir. 1944), *cert. denied*, 323 U.S. 753. policy decisions relative to the advertising format used by J.C.B. Dist. as well as its finances. He is also liable for the acts and practices in which J.C.B. Dist. was found to be engaged. *Sunshine Art Studios, Inc. v. Federal Trade Commission*, 481 F.2d 1171 (1st Cir. 1973).

Second, the J.C.B. Dist. advertising and sales policies, including the method of compensating its salesmen, and the handling of carpeting, placed in the hands of said salesmen the instrumentality by which certain unfair and deceptive acts and practices were conducted. Specialists and Wilbanks were essential to the J.C.B. Dist. operation and are

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<sup>3</sup>The consumer testimony of the Baltimore witnesses, firmly established that Specialists' advertising, especially on television, included most, if not all, of the representations covered in this proceeding, and that Specialists' salesmen engaged in tactics designed to switch customers to a higher priced product. (See also CX D 29, 31, 32, 39; RX 1-12).

responsible for its acts and practices. Cf. *Federal Trade Commission v. Winsted Hosiery Co.*, 258 U.S. 483, 494 (1922); *C. Howard Hunt Pen Co. v. Federal Trade Commission*, 197 F.2d 273, 281 (3d Cir. 1952); *Regina Corp. v. Federal Trade Commission*, 322 F.2d 765 (3d Cir. 1963).

Third, the business operation of Specialists and J.C.B. Dist. are substantially the same. The advertising is similar, the Mr. Carpet Centers trade name was used by both (Tr. 69), and the method of selling appears to be similar (compare testimony of Washington area consumer witnesses with Baltimore area consumer witnesses). In the circumstances it is a fair inference that both corporations were guided by the same policies. Wilbanks and Miller, co-owners of both corporations, either were well aware or should have been aware of all the acts and practices challenged in this proceeding, and they are responsible for all of the acts and practices of both of the corporations. *Federal Trade Commission v. Standard Education Society*, 302 U.S. 112 (1937).

3. The said acts and practices of respondents challenged in the complaint and in which they were found to be engaged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

It is well established that it is an unfair trade practice to make statements in advertising which have the tendency and capacity to deceive the prospective customer. *Carter Products, Inc. v. Federal Trade Commission*, 323 F.2d 523 (5th Cir. 1963). The Commission may challenge and prevent true statements if, when considered in the context of all representations made, the advertisement has that tendency and capacity to mislead. *J. B. Williams Co. v. Federal Trade Commission*, 381 F.2d 884 (6th Cir. 1967). Furthermore, where the advertisements themselves sufficiently demonstrate their capacity to deceive, the Commission can find the requisite deception or capacity to deceive on a visual examination of the exhibits without evidence the public was actually deceived. *Double Eagle Lubricants, Inc. v. Federal Trade Commission*, 360 F.2d 268, 270 (10th Cir. 1965); *Mohr v. Federal Trade Commission*, 272 F.2d 401, 405 (9th Cir. 1959), *cert. denied*, 362 U.S. 920 (1960).

It is also an unfair trade practice to fail to reveal any relevant and material fact concerning the matters set forth in an advertisement where such information might be important to the prospective customer in his choice as to whether to purchase the product or service advertised. *Federal Trade Commission v. Colgate-Palmolive Co.*, 380 U.S.



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374 (1965); *Spiegel, Inc. v. Federal Trade Commission*, 7th Cir. No. 73-1233 (March 18, 1974).

It is no defense to a charge of engaging in unfair trade practices to assert that the customer was advised of the truth or of all material facts before making his choice to purchase. The initial contact, if deceptive, may be prohibited under the Federal Trade Commission Act. *Exposition Press, Inc. v. Federal Trade Commission*, 295 F.2d 869, 873 (2d Cir. 1961) *cert. denied*, 370 U.S. 917 (1962); *Carter Products, Inc. v. Federal Trade Commission*, 186 F.2d 821, 824 (7th Cir. 1951).

With respect to the specific practices challenged in the complaint in this proceeding, it is an unfair trade practice to falsely represent that one is a manufacturer. See *Goodman v. Federal Trade Commission*, 244 F.2d 584 (9th Cir. 1957); *Federal Trade Commission v. Royal Milling Co.*, 288 U.S. 212, 216 (1933).

It is an unfair trade practice to advertise a product in order to obtain contact with a prospective customer for the purpose of selling another product. *Tashof v. Federal Trade Commission*, 437 F.2d 707 (D.C. Cir. 1970); *Pati-Port Inc. v. Federal Trade Commission*, 313 F.2d 103 (3d Cir. 1963). Respondents contend that, although their "5 areas for \$139" advertisements were improper "bait" advertising, in advertisements where they also offered other products, no improper conduct was involved. I disagree. If any portion of an advertisement is "bait," it is no cure to also advertise another more expensive product at the same time. In any event the record shows that in many of the transactions, the carpeting actually sold to the consumer was not carpeting that was particularly advertised along with the so-called advertised special.

It is an unfair trade practice to misrepresent that a price is a "sale" price, if in fact it is the usual and customary price at which the product is sold. *Niresk Industries, Inc. v. Federal Trade Commission*, 278 F.2d 337 (7th Cir. 1960), *cert. denied*, 364 U.S. 883.

It is an unfair trade practice to offer an unconditional guarantee in an advertisement or on a customer contract when in fact there are undisclosed conditions on the terms of the actual guarantee. *Coro, Inc. v. Federal Trade Commission*, 338 F.2d 149 (1st Cir. 1964), *cert. denied*, 380 U.S. 954 (1965); *Benrus Watch Co. v. Federal Trade Commission*, 352 F.2d 313 (8th Cir. 1965), *cert. denied*, 384 U.S. 939 (1966).

It is an unfair trade practice to offer anything as "free," if the cost thereof is included in the cost of the merchandise. *Federal Trade Commission v. Mary Carter Paint Co.*, 382 U.S. 46 (1965); *Sunshine Art Studios, Inc. v. Federal Trade Commission*, *supra*.

It is an unfair trade practice to manipulate a prospective consumer by high pressure tactics. *Household Sewing Machine Co., Inc.*, 76 F.T.C. 207, 242-243 (1969); see also Trade Regulation Rule "Cooling-Off Period for Door-to-Door Sales" 16 C.F.R. Part 429 (Effective date: June 7, 1974).

Where the cost of additional carpeting is at a higher rate than the rate of the offered merchandise, it is unfair and deceptive not to state that fact in the advertisement. *Federal Trade Commission v. Colgate-Palmolive Co.*, *supra*.

Stating the area to be covered by the carpeting offered for sale in terms of "square feet," exaggerates the area to be covered, and such exaggeration has the tendency and capacity to deceive and is an unfair trade practice. See *Charles of the Ritz Dist. Corp. v. Federal Trade Commission*, 143 F.2d 676, 679-680 (2d Cir. 1944).

It is an unfair trade practice not to install separate padding as advertised, even where the product sold has a bonded latex backing, unless the customer expressly states that he does not want the extra padding. *Federal Trade Commission v. Algoma Lumber Co.*, 291 U.S. 67, 78 (1934); *National Trade Publications Service, Inc. v. Federal Trade Commission*, 300 F.2d 790, 792 (8th Cir. 1962).

4. Pursuant to Section 103(q) of the Truth in Lending Act (15 U.S.C.A. 1602(q)) respondents' failures to comply with the provisions of Regulation Z constitutes violations of that Act and, pursuant to Section 108(c) thereof, respondents violated the Federal Trade Commission Act. See *Zale Corp. v. Federal Trade Commission*, 473 F.2d 1317 (5th Cir. 1973).

#### THE REMEDY

The Commission is vested with broad discretion in determining the type of order necessary to ensure discontinuance of the unlawful practices found. *Federal Trade Commission v. Colgate-Palmolive Co.*, 380 U.S. 374, 392 (1965). The Commission's discretion is limited only by the requirement that the remedy be reasonably related to the unlawful practices found. *Jacob Siegel Co. v. Federal Trade Commission*, 327 U.S. 608, 613 (1946); *Nivesk Industries, Inc. v. Federal Trade Commission*, 278 F.2d 337, 343 (7th Cir. 1960), *cert. denied*, 364 U.S. 883. The Commission is not limited to prohibiting the illegal practices in the exact form in which they were found to have been employed in the past. *Federal Trade Commission v. Ruberoid Co.*, 343 U.S. 470, 473 (1952).

It is also well settled that the Commission may require affirmative statements in advertising where failure to make such statements leaves

false and misleading impressions. *Federal Trade Commission v. Colgate-Palmolive Co.*, *supra*.

Counsel supporting the complaint have proposed an order which, except for slight modifications, is substantially similar to the notice order which was attached to the complaint (see CSCPF pp. 62-73).

Respondents do not object to most of the provisions of the order. Consistent with their proposed findings and conclusions they claim, however, that issuance of Pars. 8(a), (b), (c), 10, 12, 14, 15, 17, 27, 28, 29, and 30 would not have any support in the record. The question at this posture of the case is whether these paragraphs of the order are reasonably related to practices in which respondents were found to be engaged, not whether the evidence demonstrates that they engaged in the specific practices.

Paragraphs 8(a), (b) and (c) cover representations concerning reduced or special prices. Each relates to a specific type of savings claim in terms of comparative pricing. These prohibitions and definitions are reasonably related to the practice of representing a product is on "sale" when in fact, it is being offered at its "regular" price.

Paragraphs 10, 29, and 30 cover specific statements and representations contained in respondents advertising that were found to have a tendency and capacity to deceive.

Paragraphs 12, 14, 15 and 17, relate to the use of the word "free" or any similar term. Although these particular prohibitions cover certain types of "free" goods offers different than respondents' representations concerning free goods, such as television sets or vacuum cleaners, or free installation or padding, these prohibitions do set forth certain guidelines for any future representation that something is "free." In my opinion these paragraphs are reasonably related to respondents' past practices.

Paragraphs 27 and 28 of the proposed order which relate to respondents' obligations in handling situations in which customers may cancel purchase contracts are part of the general provisions of the order stated in Paragraphs 19 through 26 and are proper. Paragraph 23, which respondents claim is meaningless, seems clear to me. It prohibits respondents from inserting any waiver of a customer's rights in the terms of a purchase contract.

Respondents claim that Paragraph 4 of the proposed order is too restrictive, in that it unnecessarily prohibits "honest advice by salesmen to consumers of the suitability of certain carpeting." This paragraph relates to an integral part of the "bait & switch" scheme. The record shows that an experienced salesman can use even "honest advice" to

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effect the switch (see Tr. 235-237, 241-242, 261-262, 434). The prohibition is proper in the context of this case.

Respondents also assert that certain record keeping requirements of the order, *viz.*, Pars. 6(b) and (c), would impose a hardship and undue burden because respondents are small businesses without any sophisticated method of bookkeeping available to them. In my opinion compliance with Par. 6(b) relating to records showing the volume of sales made of advertised products or services at the advertised price would not require much in the way of bookkeeping, merely the separate filing of copies of customer contracts relating to such transactions. With respect to establishing "net profit" on such sales, the other relevant information would be the purchase invoices showing the cost. Other costs, such as installation, padding and other general overhead expenses are apparently not difficult to determine (see Tr. 41-43, 75-79).

In any event the exact manner of compliance and the difficulties of bookkeeping would depend on the advertising itself. General observations at this point in the proceedings mean little. Suffice to say that the record in this case shows the difficulty in correlating advertised specials with any particular product in stock and this demonstrates the need for some documentation as required by Paragraph 6 in order to ensure against a repetition of the practices in which respondents were engaged (see Tr. 82-83, 145).

Although respondents apparently concede that the obligations imposed by Paragraphs 19, 20, 21, 22, 24 and 25, and perhaps even 23, seem appropriate, they contend that these requirements should be limited to sales made in customers' homes and should not relate to "in store" sales, or where a customer demands immediate installation or emergency services. Respondents' contentions appear to be consistent with the tenor of the Commission's Trade Regulation Rule on the "Cooling Off Period for Door-to-Door Sales" which is limited to in house sales (16 C.F.R. §429.1, *et seq.*).

The language of the paragraphs of the order appear to be directed primarily to situations where a contract is entered into for purchase of carpeting, or other merchandise, for later delivery, installation, and payment. The fact that this contract is executed "in store" or for cash, in my opinion, does not alter the fact that consumers are entitled to the same protection. The fact that the carpeting has been actually installed does not alter the need for the various provisions of the order to protect the customers' rights in case of cancellation. To hold otherwise would give respondents subjective control over their obligations to the consumer.

The record in this case, which demonstrates that respondents, in some instances, have been reluctant to act on customer complaints, or return deposits promptly, is ample support for including all transactions under the various terms of the order (Tr. 472, 501-505, 534, 590-594, 621-622, 646-647, 651, 677).

The "consumer warning" provision set forth in the notice order that accompanied the complaint has been amended by complaint counsel "to conform with the Commission's recent directive" concerning the language of such a warning in similar matters, although the administrative law judge has not been exposed to any such directive. The modified proposed warning, which would appear in all future advertisements disseminated by respondents, reads as follows:

The Federal Trade Commission has found that we engage in bait & switch advertising practices; that is, the salesman makes it difficult to buy the advertised product and he attempts to switch you to a higher priced item.

Respondents claim that any such notice in advertising "will have the probable effect of destroying its business at no public benefit." Alternatively, respondents propose four other possible disclosures which do not contain the term "bait and switch" (see RPF, Concl. 7, 8, 9).<sup>4</sup>

Complaint counsel, in support of their proposed order, argue that by its very nature the practice of "bait & switch" can be done so smoothly that few customers realize or for that matter are "likely to complain that they had been baited and switched" (CSC Reply, p. 8-10). In the circumstances, according to complaint counsel, "the consumer warning provision is the only method by which a consumer would be alerted to possible unfair practices which may be perpetrated on him in his own home" (CSC Reply, p. 10). Complaint counsel add that such a required disclosure "puts the consumer in a position where he can deal effectively with the salesman in his home. If he realizes he is being switched to a higher priced product which he had no intention of purchasing, he may choose to dismiss the salesman and shop another company \* \* \* Additionally, the provision serves as an incentive to the company as well as the salesman to abide by the terms of the order." (CSC Reply, p. 10).

I have no doubt that the Commission has the power to require affirmative disclosure of any material fact, which if known to the prospective consumer, might affect his choice of whether to do business with an advertiser. This was the Commission's rationale that was sus-

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<sup>4</sup> A. "Our advertising is subject to an order of the Federal Trade Commission;" B. "We must comply with an Order of the Federal Trade Commission respecting fair advertising;" C. "The Federal Trade Commission has required that this advertisement be truthful and fair;" or D. "We are required by the Federal Trade Commission to sell the products which we advertise." (RPF, Concl. 8).

tained by the Supreme Court in *Federal Trade Commission v. Colgate-Palmolive Co.*, *supra*. Certainly, the results of this proceeding, if an order becomes final, would be such a material fact.

And although I agree with complaint counsel's reasons for including a consumer warning in the order in this case, I have serious problems reconciling the "consumer warning" disclosure proposed with those supporting reasons. First the proposed warning presupposes that respondents will continue to engage in "bait & switch" practices and that any advertisement on which the disclosure appears is the "bait." It is not clear to me whether an advertisement which does not state any price for a generic product line, such as carpeting, is "bait." According to the Commission's Guides Against Bait Advertising, 16 C.F.C. Part 238, a price representation is not an essential element of the "bait." In any event, the proposed consumer warning also assumes that respondents are violating the terms of the order. Second, the warning may arm the prospective customer with knowledge about respondents, but certainly does not put the average consumer in a position where he can effectively deal with the salesman in his home.

In my opinion, the Commission ought not to use a warning which assumes in advance that respondents will continue unabated their past practices. This would be quite punitive. Further, the warning should give the prospective customer information on which he might initiate a complaint to the Federal Trade Commission concerning any noncompliance. I can think of no better deterrent to a respondent or protection for the consumer.

In this respect it should be pointed out that what the Commission *found* concerning respondents' practices during the administrative proceeding is not particularly material to postorder matters. According to the entire statutory scheme, the *order* is the thing. It is upon the specific terms of the order that respondents' future conduct must be measured, and upon which civil penalty proceedings are based. The subject matter of the order is of course a material fact.

I also think that use of the words "bait & switch" in the warning is punitive. It is interesting to note that such language does not appear in the complaint, and except for the proposed warning, does not appear elsewhere in the order. This term, although having a certain general legal connotation, covers a wide range of practices and because the consumers' understanding thereof may not be precise, it may tend to convey a wrong impression to them.

Accordingly, the following affirmative disclosure will be substituted

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for the warning proposed, it being my opinion that it is truthful, understandable, useful, remedial, and not punitive:

We are subject to the prohibitions of a Federal Trade Commission Order in Docket 8933, that requires us to sell the products which we advertise without attempting to sell you a different item or a higher priced item.

As I have already observed, counsel supporting the complaint's proposed warning would cover all of respondents' advertisements irrespective of whether a specific product is identified therein. In view of respondents' past conduct and because the question as to whether the warning requirement should be retained can be reviewed one year from the date that the order becomes final, I believe it appropriate to require it on all advertising.

It should be pointed out in conclusion that since J.C.B. Dist., ceased operations in late 1972, it appears that all of Specialists' sales activities have taken place inside the boundaries of the State of Maryland (Tr. 741-742). It further appears that the only "commerce" component of these transactions is the coincidental interstate circulation of newspaper advertisements or the interstate transmission of television commercials. For example, approximately 4 percent of the Sunday circulation of the Baltimore News American is interstate (Tr. 613-616).

Specialists argues that the Commission cannot regulate its intrastate business (RPF, Concl. 2). The preamble to the paragraphs of Part I of the order as well as that to the "consumer warning" provision are limited to activities "in connection with the advertising, offering for sale, sale, distribution or installation of carpeting and floor covering, or any other merchandise, in commerce." In my opinion, the order is clearly limited to interstate commerce matters in which respondents may engage in the future, and Specialists' argument is one for compliance and not a matter which affects the Commission's jurisdiction to enter an order based on past, although perhaps discontinued, interstate activities. See *Guziak v. Federal Trade Commission*, 361 F.2d 700 (8th Cir. 1966), *cert. denied*, 385 U.S. 1007.

#### ORDER

##### I

*It is ordered*, That respondents Wilbanks Carpet Specialists, Inc., a corporation, trading as Mr. Carpet Centers and Design Carpets Consultants, and J.C.B. Distributors, Inc., a corporation, trading as Mr. Carpet Centers or any other trade name or names, their successors and assigns and their officers, and George Wilbanks and Lester L. Miller, individ-

ually and as officers of said corporations, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, distribution or installation of carpeting and floor coverings, or any other article of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, orally or in writing, directly or by implication, that respondents are an integrated manufacturing and retailing business organization, or misrepresenting, in any manner, the nature, status, connections, or scope of respondents' business.

2. Using, in any manner, a sales plan, scheme, or device wherein false, misleading, or deceptive statements or representations are made in order to obtain leads or prospects for the sale of carpeting or other merchandise or services.

3. Making representations, orally or in writing, directly or by implication, purporting to offer merchandise for sale when the purpose of the representation is not to sell the offered merchandise but to obtain leads or prospects for the sale of other merchandise at higher prices.

4. Disparaging in any manner, or discouraging the purchase of any merchandise or services which are advertised or offered for sale.

5. Representing, orally or in writing, directly or by implication, that any merchandise or services are offered for sale when such offer is not a bona fide offer to sell such merchandise or services.

6. Failing to maintain and produce for inspection and copying for a period of three years following the date of publication of any advertisement, adequate records to document for the entire period during which each advertisement was run and for a period of six weeks after the termination of its publication in press or broadcast media:

- a. the cost of publishing each advertisement including the preparation and dissemination thereof;

- b. the volume of sales made of the advertised product or service at the advertised price; and

- c. a computation of the net profit from the sales of each advertised product or service at the advertised price.

7. Using the word "Sale," or any other word or words of similar import or meaning not set forth specifically herein unless the price of such merchandise being offered for sale constitutes a reduction,



in an amount not so insignificant as to be meaningless, from the actual bona fide price at which such merchandise was sold or offered for sale to the public on a regular basis by respondents for a reasonably substantial period of time in the recent regular course of their business.

8. (a) Representing, orally or in writing, directly or by implication, that by purchasing any of said merchandise, customers are afforded savings amounting to the difference between respondents' stated price and respondents' former price unless such merchandise has been sold or offered for sale in good faith at the former price by respondents for a reasonably substantial period of time in the recent, regular course of their business.

(b) Representing, orally or in writing, directly or by implication, that by purchasing any of said merchandise, customers are afforded savings amounting to the difference between respondents' stated price and a compared price for said merchandise in respondents' trade area unless a substantial number of the principal retail outlets in the trade area regularly sell said merchandise at the compared price or some higher price.

(c) Representing, orally or in writing, directly or by implication, that by purchasing any of said merchandise, customers are afforded savings amounting to the difference between respondents' stated price and a compared value price for comparable merchandise, unless substantial sales of merchandise of like grade and quality are being made in the trade area at the compared price or a higher price and unless respondents have in good faith conducted a market survey or obtained a similar representative sample of prices in their trade area which establishes the validity of said compared price and it is clearly and conspicuously disclosed that the comparison is with merchandise of like grade and quality.

9. Failing to maintain and produce for inspection or copying for a period of three (3) years following the date on which any savings claims, sales claims, or other similar representations are made, adequate records (a) which disclose the facts upon which any savings claims, sale claims and other similar representations as set forth in Paragraphs Five, Eight and Nine of this order are based, and (b) from which the validity of any savings claims, sale claims and similar representations can be determined.

10. Representing, orally or in writing, directly or by implication, that a stated price for carpeting or floor coverings includes the cost of a separate padding and the installation of such padding and carpeting thereof, unless in every instance where it is so represented the stated price for floor covering does, in fact, include the cost of such separate padding and installation thereof; or misrepresenting in any manner, the prices, terms, or conditions under which respondents supply separate padding and provide installation in connection with the sale of floor covering products.

11. Representing, orally or in writing, directly or by implication, that any product or service is guaranteed unless the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed; and respondents deliver to each purchaser, prior to the signing of the sales contract, a written guarantee clearly setting forth all of the terms, conditions and limitations of the guarantee fully equal to the representations, orally or in writing, directly or by implication, made to each such purchaser, and unless respondents promptly and fully perform all of their obligations and requirements under the terms of each such guarantee.

12. Representing, directly or indirectly, orally or in writing, that any price amount is respondents' regular price for any article of merchandise or service unless said amount is the price at which such merchandise or service has been sold or offered for sale by respondents for a reasonably substantial period of time in the recent, regular course of their business and not for the purpose of establishing fictitious higher prices upon which a deceptive comparison or a "free" or similar offer might be based.

13. Representing, directly or indirectly, orally or in writing, that a purchaser of respondents' merchandise or services will receive a "free" vacuum cleaner or kitchen carpeting or any other "free" merchandise, service, prize or award unless all conditions, obligations, or other prerequisites to the receipt and retention of such merchandise, services, gifts, prizes or awards are clearly and conspicuously disclosed at the outset in close conjunction with the word "free" wherever it first appears in each advertisement or offer.

14. Representing, directly or indirectly, orally or in writing, that any merchandise or service is furnished "free" or at no cost to the purchaser of advertised merchandise or services, when, in fact, the

cost of such merchandise or service is regularly included in the selling price of the advertised merchandise or service.

15. Representing, directly or indirectly, orally or in writing, that a "free" offer is being made in connection with the introduction of new merchandise or services offered for sale at a specified price unless the respondents expect, in good faith, to discontinue the offer after a limited time and commence selling such merchandise or service, separately, at the same price at which it was sold with a "free" offer.

16. Representing, directly or indirectly, orally or in writing, that merchandise or service is being offered "free" with the sale of merchandise or service which is usually sold at a price arrived at through bargaining, rather than at a regular price, or where there may be a regular price, but where other material factors such as quantity, quality, or size are arrived at through bargaining.

17. Representing, directly or indirectly, orally or in writing, that a "free" offer is available in a trade area for more than six (6) months in any twelve (12) month period. At least thirty (30) days shall elapse before another such "free" offer is made in the same trade area. No more than three such "free" offers shall be made in the same area in any twelve (12) month period. In such period, respondents' sale in that area of the product or service in the amount, size or quality promoted with the "free" offer shall not exceed 50 percent of the total volume of its sales of the product or service, in the same amount, size or quality, in the area.

18. Representing, directly or indirectly, orally or in writing, that a product or service is being offered as a "gift," "without charge," "bonus," or by other words or terms which tend to convey the impression to the consuming public that the article of merchandise or service is free, when the use of the term "free" in relation thereto is prohibited by the provisions of this order.

19. Contracting for any sale whether in the form of trade acceptance, conditional sales contract, promissory note, or otherwise which shall become binding on the buyer prior to midnight of the third day, excluding Sundays and legal holidays, after the date of execution.

20. Failing to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language, *e.g.*, Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the



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I HEREBY CANCEL THIS TRANSACTION.

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(Date)

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(Buyer's signature)

22. Failing, before furnishing copies of the "Notice of Cancellation" to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

23. Including in any sales contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this order including specifically his right to cancel the sale in accordance with the provisions of this order.

24. Failing to inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel.

25. Misrepresenting, directly or indirectly, orally or in writing, the buyer's right to cancel.

26. Failing or refusing to honor any valid notice of cancellation by a buyer and within 10 business days after the receipt of such notice, to (i) refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by the seller; (iii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

27. Negotiating, transferring, selling, or assigning any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased.

28. Failing, within 10 business days of receipt of the buyer's notice of cancellation, to notify him whether the seller intends to repossess or to abandon any shipped or delivered goods.

29. Advertising the price of carpet, either separately or with padding and installation included, for specified areas of coverage without disclosing in immediate conjunction and with equal prominence the square yard price for additional quantities of such carpet with padding and installation needed.

30. Advertising any carpeting or floor covering using a unit of measurement not usually and customarily employed in the retail

advertising of carpet or which tends to exaggerate the size or quantity of carpeting or floor covering being offered at the advertised price.

*Provided, however,* That nothing contained in this order shall relieve respondents of any additional obligations respecting contracts required by Federal law or the law of the state in which the contract is made. When such obligations are inconsistent, respondents can apply to the Commission for relief from this provision with respect to contracts executed in the state in which such different obligations are required. The Commission, upon showing, shall make such modifications as may be warranted in the premises.

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*It is further ordered,* That respondents Wilbanks Carpet Specialists, Inc., a corporation, trading as Mr. Carpet Centers and Design Carpets Consultants, and J.C.B. Distributors, Inc., a corporation, trading as Mr. Carpet Centers or under any other trade name or names, their successors and assigns, and their officers, and George Wilbanks and Lester L. Miller, individually and as officers of said corporations, and respondents' agents, representatives, and employees, directly or through any corporate, subsidiary, division or other device, in connection with any extension of consumer credit or advertisement to aid, promote, or assist directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. §226) of the Truth in Lending Act (Pub. L. 90-321, 15 U.S.C. 1601. *et seq.*), do forthwith cease and desist from:

1. Failing to disclose the due dates or periods of payments scheduled to repay the indebtedness, as required by Section 226.8(b) (3) of Regulation Z.
2. Failing to disclose the "annual percentage rate" accurately to the nearest quarter of one percent, computed in accordance with the provisions of Section 226.5 of Regulation Z, as required by Section 226.8(b) (2) of Regulation Z.
3. Failing in any consumer credit transaction or advertisement, to make all disclosures, determined in accordance with Sections 226.4 and 226.5 of Regulation Z, in the manner, form and amount required by Sections 226.6, 226.7, 226.8, 226.9 and 226.10 of Regulation Z.

*It is further ordered,* That each of respondents do forthwith cease and desist from disseminating, or causing the dissemination of, any advertisement of merchandise by means of newspapers, or other printed

media, television or radio, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, unless respondents clearly and conspicuously disclose in each advertisement the following notice set off from the text of the advertisement by a black border:

We are subject to the prohibitions of a Federal Trade Commission Order in Docket 8933, that requires us to sell the products which we advertise without attempting to sell you a different item or a higher priced item.

One year from the date this order becomes final or any time thereafter, respondents upon showing that they have discontinued the practices prohibited by this order and that the notice provision is no longer necessary to prevent the continuance of such practices may petition the Commission to waive compliance with this order provision.

*It is further ordered,* That respondents shall maintain for at least a one (1) year period, following the effective date of this order, copies of all advertisements, including newspaper, radio and television advertisement, direct mail and in-store solicitation literature, and any other such promotional material utilized for the purpose of obtaining leads for the sale of carpeting or floor coverings, or utilized in the advertising, promotion or sale of carpeting or floor coverings and other merchandise.

*It is further ordered,* That respondents, for a period of one (1) year from the effective date of this order, shall provide each advertising agency utilized by respondents and each newspaper publishing company, television or radio station or other advertising media which is utilized by the respondents to obtain leads for the sale of carpeting or floor coverings and other merchandise, with a copy of the Commission's news release setting forth the terms of this order.

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

*It is further ordered,* That respondents shall forthwith distribute a copy of this order to each of their operating divisions.

*It is further ordered,* That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the offering for sale, sale of any product, consummation of any extension of consumer credit or in any aspect of preparation, creation, or placing of advertising, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

*It is further ordered,* That the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affiliations with a new business or employment. Such notice shall include respondents' current business addresses and a statement as to the nature of the business or employment in which they are engaged as well as a description of their duties and responsibilities.

*It is further ordered,* That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

#### OPINION OF THE COMMISSION

BY NYE, *Commissioner*:

Counsel supporting the complaint appeal from that part of the order entered by the administrative law judge, denominated a "consumer warning" provision, which provides that respondents must include the following disclosure in all of their advertisements:

We are subject to the prohibitions of a Federal Trade Commission Order in Docket 8933, that requires us to sell the products which we advertise without attempting to sell you a different item or a higher priced item.

Counsel supporting the complaint argue for the text of the following provision, set forth in the amended notice order:

The Federal Trade Commission has found that we engage in bait & switch advertising practices; that is, the salesman makes it difficult to buy the advertised product and he attempts to switch you to a higher priced item.<sup>1</sup>

The record in this case, however, does not support the requirement that respondents set forth any form of "consumer warning" text in their advertising; therefore, no such provision should appear in the order. This determination is, of course, without prejudice to the Commission's right to reopen this proceeding to consider the imposition of a "consumer warning" requirement, or to seek imposition of such relief in a

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<sup>1</sup>The provision contained in the original notice order was as follows:

The Federal Trade Commission has found that we have engaged in bait & switch advertising solely designed to sell products other than those advertised.



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civil penalty action against respondents,<sup>2</sup> should their future conduct warrant either course of action.

In all other respects, the order of the administrative law judge is affirmed.

## FINAL ORDER

Counsel supporting the complaint having filed an appeal from the initial decision of the administrative law judge, and the matter having been heard upon complaint counsel's appeal brief and oral argument; and

The Commission having rendered its decision determining that the initial decision issued by the judge should be modified in accordance with the views expressed in the attached opinion, and, as so modified, adopted as the decision of the Commission:

*It is ordered*, That complaint counsel's appeal from the initial decision of the administrative law judge be, and it hereby is, denied.

*It is further ordered*, That the initial decision issued by the administrative law judge be modified by striking therefrom the following:

Those portions of the conclusions of law which concern "consumer warning" relief (at pp. 17-19 *sub nom.* "THE REMEDY") [pp. 529-532 herein]; and the second "FURTHER ORDERED" paragraph of the order to cease and desist issued by the judge (at pp. 36-37) [pp. 539-540 herein].

As so modified, the initial decision is hereby adopted.

## IN THE MATTER OF

## FREIGHT LIQUIDATORS, ET AL.

*Docket 8937. Interlocutory Order, Sept. 26, 1974*

Order denying motion by counsel for three respondents for continuance of oral argument before the Commission but without prejudice to the right of counsel to request a rescheduling of oral argument for reasons consistent with those set out in the denial order.

*Appearances*

For the Commission: *Everette E. Thomas, Richard F. Kelly, Alice C. Kelleher and Maureen L. McGill.*

For the respondents: *Jacob A. Stein, Stein, Mitchell & Mezines, Wash., D. C.*

<sup>2</sup>Section 5(1) of the Federal Trade Commission Act (15 U.S.C. Sec. 45(1) empowers district courts hearing civil penalty actions "to grant mandatory injunctions and such other and further equitable relief as they deem appropriate in the enforcement of \* \* \* final orders of the Commission."

## ORDER DENYING MOTION TO CONTINUE DATE OF ORAL ARGUMENT

By motion filed Sept. 16, 1974, Jacob A. Stein, counsel for respondents Herbert Millstein, Peter W. Galarneau and George Edward Ommeret, moves to continue oral argument in the above-captioned matter, now scheduled for Oct. 16, 1974, on the ground that he must appear in a trial in the U.S. District Court for the District of Columbia which is scheduled to begin on Oct. 1 and which, it is estimated, will last three to four months. He concludes that this trial will "probably" prevent him from appearing before the Commission until sometime after Jan. 30, 1975. Complaint counsel oppose this motion suggesting that oral argument be held before Oct. 1 or that oral argument be waived as to Mr. Stein's clients.

As a general rule, the Commission schedules oral argument at its convenience and it is the duty of counsel for all parties to be present. However, recognizing that lawyers are often faced with irreconcilable scheduling conflicts, the Commission will for good cause, consider postponing oral argument to allow an attorney to meet a commitment in another forum. By this standard, the instant motion must be denied. Aside from being excessive *per se*, its request for three and a half months is based on a mere *probable* conflict of commitments.

Further, there is no reason to believe that the United States District Court for the District of Columbia will not, on sufficient advance notice, arrange the trial schedule of the criminal trial to which reference is made, to permit Mr. Stein to prepare for and to appear before the Commission for oral argument on this matter.

We suggest that counsel make every effort to meet the October 16 date and, if that proves unworkable, to request, in cooperation with the Secretary of the Commission and counsel for the other parties, a rescheduling at the earliest possible date thereafter. Taking cognizance of the importance of the District Court matter, the Commission will be flexible in considering a request for a postponement of thirty (30) days or less. Accordingly,

*It is ordered*, That the aforesaid motion be, and it hereby is, denied without prejudice to the right of counsel to request a rescheduling of oral argument for reasons consistent with the foregoing.

## IN THE MATTER OF

GER-RO-MAR, INC., DOING BUSINESS AS SYMBRA'ETTE, ET AL.

*Docket 8872. Interlocutory Order, Oct. 1, 1974*

Order denying respondents' motion for reconsideration and modification of Commission order, or remand to the administrative law judge, or a stay of the order.

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*Appearances*

For the Commission: *Jerome M. Steiner, Jr.* and *Ralph E. Stone.*  
For the respondents: *Rosenberg & Wiseman*, San Jose, Calif.

## ORDER DENYING RESPONDENTS' MOTION FOR RECONSIDERATION

On July 23, 1974, the Commission issued its Decision and Order in this matter, sustaining Counts II, III, IV, and V of the complaint, and vacating Count I. Respondents were served with the Decision and Order on Aug. 21, 1974, and they have timely filed for reconsideration and certain other relief pursuant to Section 3.55 of the Commission's Rules of Practice.<sup>1</sup> Complaint counsel have answered opposing the motion.

The Commission has considered the arguments raised by respondents and finds that they do not warrant modification of its order, or a remand of this case to the administrative law judge, or a stay of its order, and respondents' requests will be denied.

Respondents basically seek reconsideration of certain order provisions entered by the Commission, and reconsideration of the Commission's conclusions concerning respondents' argument made at trial and on appeal that they should in some fashion be relieved of liability for their law violations because certain of their competitors may be engaged in the same or similar practices.

With respect to the order in this matter, the Commission in its deliberations on appeal devoted considerable attention to the matter of appropriate relief, and solicited supplemental briefs from both sides on the question, and we find no grounds stated in the motion to reconsider to warrant further modification of the order, or further hearings as to its propriety. See *Interstate Builders, Inc.*, 72 F.T.C. 1009,10 (1967). The Commission's order is similar in some respects to that proposed by the administrative law judge, but the Commission has added certain provisions, omitted others, and significantly modified some, as is its duty when, in reviewing the administrative law judge's recommendation, it concludes that a different disposition is appropriate. Paragraph 1, to which respondents object, was added by the Commission. It is fully justified by the facts of this case, and the abuse sought to be remedied, and respondents have not suggested in any way why it is not reasonably

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<sup>1</sup>This provides in pertinent part:

"Within twenty (20) days after completion of service of a Commission decision, any party may file with the Commission a petition for reconsideration of such decision, setting forth the relief desired and the grounds in support thereof. Any petition filed under this subsection must be confined to new questions raised by the decision or final order and upon which the petitioner had no opportunity to argue before the Commission."

related to the findings in this matter or the scope of the complaint. Paragraph 2 is merely a weaker version of the provision proposed by the administrative law judge. The administrative law judge's proposal would have prevented respondents from establishing, via participant recruitment, a three-tiered distributional system. In response to respondents' objections, and in the interests of balancing legitimate business interests with the need to eliminate the deceptiveness of respondents' sales program, the Commission modified the judge's order to permit recruitment through three levels, with the third level recruits prevented from recruiting for a period of one year in order to interrupt the chain mechanism and ensure that participants in respondents' program understand that their profits must be derived from their own efforts at retail sales. The necessity for some limitation on recruitment of this sort was fully argued originally, and the Commission does not find new grounds presented for reconsidering its order in this regard.

Finally, with regard to the order, respondents object to the use of the term "marketing area" rather than "community or geographic area" to describe the unit for which respondents must under specified circumstances provide potential distributors with information concerning the number of other distributors already operating. The purpose of Paragraph 7 of the order is to ensure that individuals who pay a valuable consideration for the opportunity to distribute respondents' products are given some idea in advance of the number of intrabrand competitors who will be trying to sell the same products in competition with them. That purpose can only be satisfied if the figures are provided for some relevant "marketing area." In modifying the phrase "community or geographic area" to market area for the purposes of Paragraph 7 only, the Commission was concerned that use of the former term might itself provide the potential for serious deception. To cite two examples: (1) in some states it may transpire that the bulk of respondents' distributors are situated in a few localities. Provision of statewide figures only to a prospect in one of those localities may suggest a picture of low overall density, when in fact the prospect will face stiff competition intrabrand in the area in which he or she will actually be selling. Or (2), provision of figures for a small community may suggest the absence of competition when in fact there may be many competitors outside the community but still within the marketing area.

Obviously, the definition of "marketing area" is not capable of absolute precision, nor does the Commission expect that this will be achieved. It is, however, necessary for respondents to make a serious, good faith effort to apprise potential recruits who must pay a consider-

ation beforehand of the amount of intrabrand competition they will face when they enter respondents' program, and we know of no other way to achieve this result than by the language employed in the order. As a matter of compliance, the Commission will, of course, allow respondents the latitude warranted by the necessarily less-than-absolutely exact order language. This is hardly an uncommon occurrence, and resolution is best left for the compliance process. (Cf. *The Regina Corporation v. Federal Trade Commission*, 322 F.2d 765, 769-70 (3d. Cir. 1963).

The other major argument raised in respondents' motion relates to the Commission's rejection of their "affirmative defense" of abuse of discretion, which they base on certain dicta in *Federal Trade Commission v. Universal-Rundle Corp.*, 387 U.S. 244(1967). It was stipulated at trial in this matter that competitors of respondents used a system of distribution similar to that utilized by respondents. The administrative law judge properly ruled that this stipulation did not absolve respondents of liability for their illegal acts and practices, including the illegality of their marketing system. In reviewing this determination, the Commission examined the evidentiary exhibits which respondents had introduced in support of their argument, and concluded that no evidence had been adduced which would suggest any abuse of discretion on the part of the Commission, and, therefore, the argument was similarly rejected on appeal. Respondents raise no new issues in their motion for reconsideration of this point that have not been fully litigated already. It is well recognized that the Commission is not obliged to proceed simultaneously against all law violators in a particular industry. See *Moog Industries, Inc. v. Federal Trade Commission*, 355 U.S. 411 (1958), *rehearing denied*, 356 U.S. 905 (1958). The Commission's resources are severely limited, and to impose a requirement of simultaneity upon it would render its statutory mission impossible of fulfillment. Additionally, the claim that the Commission has abused its discretion in bringing this complaint is at best an affirmative defense, that is, the burden is upon the law violator to exempt his unlawful conduct by proving it. As noted in our main opinion, respondents have not done that, and to require the Commission, as a condition of suing any given company, to hold hearings to determine that it has not abused its discretion, *i.e.*, to review in any single adjudication the conduct of every other member in an industry, would place an intolerable burden on this or any other law enforcement agency. Moreover, the Commission must reject respondents' apparent interpretation of the second sentence on page 25 of its Opinion in this matter, which respondents have cited in their motion for reconsideration. Insofar as the sentence is construed to

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imply that an agency abuses its discretion when it sues one law violator while neglecting simultaneously to detect and sue a violator whose practices are of equal scope and duration, the implication is erroneous, for it sets forth a standard for administrative action which is too constricting and which is not required by the dictates of *Moog Industries* and *Universal-Rundle*, *supra*.

The Commission does recognize that it must to the best of its ability, resources, and other statutory commitments, endeavor to eliminate serious violations of the sort engaged in by respondents that may be being engaged in by others. To this end, the Commission will treat the charges made by respondents in their motion to reconsider as a complaint from a member of the public, will refer this complaint to the staff for evaluation and appropriate action, and will welcome any additional specific information which respondents may provide. The Commission finds no reason, however, to warrant eliminating, or tolling the effective date of, order provisions designed to remedy what it has found to be a clear violation of law which threatens severe harm to members of the public.

Respondents' other argument, concerning the Commission's use of the word "substantial," raises no issue warranting reconsideration.

For the foregoing reasons, respondents' motion for reconsideration and related requests for relief must be denied. Therefore,

*It is ordered*, That respondents' Motion for Reconsideration be, and it hereby is, denied.

Commissioner Nye not participating.

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 IN THE MATTER OF

## STERLING DRUG, INC., ET AL.

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

*Docket 8899. Complaint, Sept. 21, 1972—Decision, Oct. 1, 1974*

Consent order requiring a New York City manufacturer of household disinfectants and its New York City advertising agency, among other things to cease making disease-prevention claims for its Lysol Brand products or any other house disinfectants.

*Appearances*

For the Commission: *Thomas J. Donegan, Jr., Carleton C. Eastlake, C. O. Cook and Ellis M. Ratner.*

For the respondents: *Rogers, Hoge & Hills, New York, N.Y., Steingarten, Wedeen & Weiss, New York, N.Y.*

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## 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, having reason to believe that Sterling Drug, Inc., a corporation, and S.S.C. & B., Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Sterling Drug, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its principal offices and place of business located at 90 Park Avenue, New York, N.Y.

PAR. 2. Respondent S.S.C. & B., Inc., also sometimes known as Sullivan, Stauffer, Colwell, and Bayles, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal offices and place of business located at 575 Lexington Avenue, New York, N.Y.

The aforesaid respondents cooperate and act together in carrying out the acts and practices herein set forth.

PAR. 3. Respondent Sterling Drug, Inc. is now, and for some time past has been, engaged in the manufacturing, advertising, sale, and distribution of household disinfectants, known and sold as Lysol Brand Disinfectants.

PAR. 4. Respondent S.S.C. & B., Inc. is now, and for some time last past, has prepared and placed for publication and has caused the dissemination of advertising material, including but not limited to the advertising referred to herein, to promote the sale of the said Lysol Brand Disinfectants.

PAR. 5. Respondent Sterling Drug, Inc. causes the said products, when sold, to be transported from its place of business in various States of the United States to purchasers located in various other States of the United States and in the District of Columbia. Respondent Sterling Drug, Inc., maintains, and at all times mentioned herein has maintained, a substantial course of trade in said product in commerce as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

PAR. 6. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Sterling Drug, Inc., has been, and now is, in substantial competition, in commerce, with corporations,

# LYSOL® Brand Spray Disinfectant

"Remember this"

STLS0093

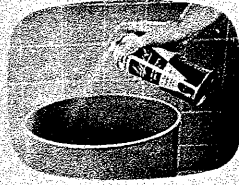
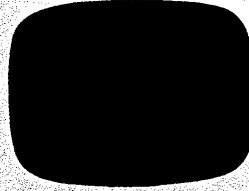
30 seconds



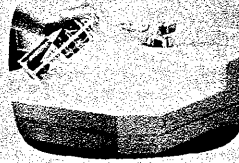
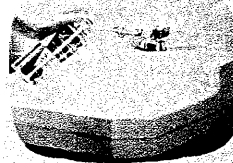
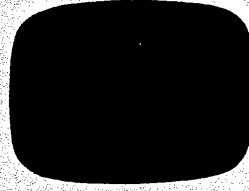
(SFX: Woman coughs)



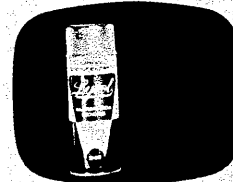
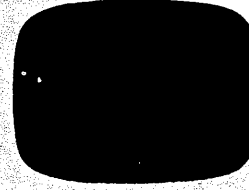
Anncr: Lysol Spray kills flu virus on environmental surfaces.



Anncr: Lysol Spray kills flu virus on environmental surfaces.



Anncr: Lysol Spray kills flu virus on environmental surfaces.



Anncr: In addition to everything else  
Dec. '70 - March '71  
Dec. '71 - March '72



Lysol Brand Spray Disinfectant can do, remember this...



Lysol Spray kills flu virus on environmental surfaces.



LYSOL<sup>®</sup> Brand Spray Disinfectant

"BREATHE EASIER"

30 Second

(Cold Weather Version)

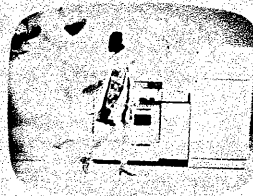
LS9-2-3C



(MUSIC THROUGHOUT)  
ANNCR. (V.O.) The makers of Lysol Spray have something



to help you breathe easier...



Lysol Spray. It seeks out odors... and eliminates them.



On surfaces — it kills germs that cause odors...



germs that can cause illness...



even flu virus.



Smells fresh... never lingers.



Give your home a good healthy spray — with Lysol Brand Spray Disinfectant.



SFX. GREAT SIGH OF RELIEF.

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firms, and individuals in the sale of products of the same general kind and nature as that sold by said respondent.

PAR. 7. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of Lysol Brand products, the respondents have made, and are now making, numerous statements and representations in advertisements and commercials with respect to said products.

Typical and illustrative of said statements and representations, but not all inclusive thereof, are the following story boards from television commercials: [See pp. 549-550 herein.]

Also typical and illustrative of said statements and representations, but not all inclusive thereof, are the following excerpts from radio commercials and newspaper and magazine advertisements:

A. You can help protect your home against flu virus by spraying Lysol on household surfaces—like bathroom sinks, tiles, telephones, garbage pails, even baby's crib. \* \* \* helps protect your family.

B. Use Lysol Brand Spray Disinfectant to help sanitize your home this winter illness season.

C. Lysol Spray cleans the air in the great indoors \* \* \* . Sprayed on surfaces, it kills germs that can cause illness.

D. Lysol Brand Disinfectant kills flu virus wherever you clean so it helps protect your family \* \* \* . Lysol kills flu virus that babies can pick up.

PAR. 8. Through the use of said advertisements, and others not specifically set out herein, respondents have represented and are now representing, directly or by implication, that one should use Lysol Brand Disinfectants to kill influenza virus and other germs and viruses on environmental surfaces and in the air, and that such use will be of significant medical benefit in reducing the incidence and preventing the spread of colds, influenza, and other upper respiratory diseases within the home.

PAR. 9. In truth and in fact, germs and viruses on environmental surfaces do not play a significant role in the transmission of colds, influenza, and other upper respiratory diseases; the use of Lysol Brand Spray Disinfectant does not eliminate significant numbers of airborne germs and viruses, which are the known cause of most colds, influenza, and other upper respiratory diseases; and the use of Lysol Brand Disinfectants will not be of significant medical benefit in reducing the incidence or preventing the spread of colds, influenza, and other upper respiratory diseases within the home.

Therefore, the statements and representations as set forth in Para-

graphs Seven and Eight above were and are false, misleading, and deceptive.

PAR. 10. The use by respondents of the aforesaid false, misleading, and deceptive statements and representations has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of said products by reason of said erroneous and mistaken belief.

PAR. 11. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors, and constituted and now constitute unfair and deceptive acts and practices and unfair methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act.

#### DECISION AND ORDER

The Commission having issued its complaint on Sept. 21, 1972, charging the consenting parties named in the caption hereof with violation of the Federal Trade Commission Act; and the consenting parties having been served with a copy of the complaint; and

The Commission having duly determined upon motion certified to the Commission that, in the circumstances presented, the public interest would be served by waiver of the provisions of Section 2.34(d) of its rules which provides that the consent order procedure shall not be available after issuance of complaint; and

The consenting parties and counsel for the Commission having executed an agreement containing a consent order, an admission by consenting parties of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by consenting parties that the law has been violated as set forth in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the aforesaid agreement and having determined that it provides an adequate basis for appropriate disposition of this proceeding, and having accepted same, and the agreement containing consent order having been placed on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 2.34 (b) of its rules, now in further conformity with the procedure prescribed in Section 2.34 (b) of its rules,

the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Sterling Drug Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal offices and place of business located at 90 Park Avenue, New York, N.Y.

SSC&B Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal offices and place of business located at 575 Lexington Avenue, New York, N.Y.

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

#### ORDER

##### I

*It is ordered*, That respondents Sterling Drug Inc., a corporation, and SSC&B, Inc., a corporation, their successors and assigns and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale or distribution of Lysol Brand Products or any household disinfectant product, shall forthwith cease and desist from representing, directly or by implication, that:

A. environmental surfaces play a significant role in the transmission of viruses or bacteria associated with influenza, colds, or streptococcal throat infection;

B. use of any household disinfectant product will be of medical benefit in reducing the incidence or preventing the spread of influenza, colds, or streptococcal throat infection;

C. use of any household disinfectant product kills airborne viruses or bacteria associated with influenza, colds, streptococcal throat infection, or other upper respiratory disease, *Provided* That nothing in this subparagraph shall be construed to otherwise restrain demonstrations of aerosol products as room deodorizers or air fresheners;

D. use of any household disinfectant product kills germs associated with disease[s], unless such representation expressly mentions the name[s] of the disease[s]; the representation is true; and respondent[s] making such representation has [have] competent and

reliable scientific evidence that such use reduces the incidence or prevents the spread of the named disease[s]; or

E. use of any household disinfectant product kills viruses or bacteria associated with influenza, colds, streptococcal infection, staphylococcal infection, or other upper respiratory diseases unless the advertisement is which such representation appears clearly and conspicuously discloses that there is no evidence that the product portrayed will protect the family against flu or strep throat, *Provided*, That nothing in this subparagraph shall be construed to apply to a representation that Lysol Brand Disinfectants kill bacteria which cause streptococcal or staphylococcal skin infections.

## II

*It is further ordered*, That nothing herein contained shall be construed to require any alteration of, or deletion from, the labeling of any of Sterling's household disinfectant products of legends, claims or information heretofore specifically accepted by the Environmental Protection Agency or its predecessor agency pursuant to the Federal Insecticide, Fungicide and Rodenticide Acts, as amended 7 U.S.C. Sec. 135, *et seq.*

## III

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

*It is further ordered*, That respondents forthwith distribute a copy of this order to each of its operating divisions or subsidiaries involved in the advertising, promotion, distribution or sale of Lysol Brand Disinfectants.

*It is further ordered*, That each respondent shall, within sixty (60) days and at the end of six (6) months after the effective date of this order, file with the Commission a report, in writing, signed by respondents, setting forth in detail the manner and form of its compliance with this order.

## Complaint

## IN THE MATTER OF

WILLIAM D. CAMPBELL, JR., ET AL., TRADING AS  
RHODE ISLAND CARPETSCONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION ACT

*Docket 8946. Complaint, Dec. 7, 1973—Decision, Oct. 1, 1974*

Consent order requiring a Mt. Rainier, Md., distributor and installer of carpeting and floor coverings, among other things to cease using bait and switch tactics; disparaging merchandise; misrepresenting sale prices; failing to maintain adequate records; misrepresenting the qualifications of its staff; failing to set forth contracts in the principal language used in sales presentations (*e.g.*, Spanish); and failing to inform customers of their right to a three-day cooling-off period during which they may cancel their contract with full refund rights. Further, respondent is required to place a notice in all future advertising that F.T.C. has found that they have engaged in bait and switch tactics.

*Appearances*

For the Commission: *Everette E. Thomas, Jerry W. Boykin and Thomas J. Keary.*

For the respondents: *Steny H. Hoyer, Hoyer & Fannon, District Heights, Md.*

## 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, having reason to believe that William D. Campbell, Jr. and Jack S. Owens, individually, trading and doing business as Rhode Island Carpets, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents William D. Campbell, Jr., and Jack S. Owens formulate, direct and control, and have cooperated and acted together in the performance of the acts and practices of the business which they have conducted and are conducting under the name Rhode Island Carpets including the acts and practices hereinafter set forth. Respondents' principal office and place of business is located at 3315 Rhode Island Avenue, Mt. Rainier, Md.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale, distribution and

installation of carpeting and floor coverings to the public.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their said merchandise, when sold, to be shipped from their place of business located in the State of Maryland, to purchasers thereof located in various other States of the United States and the District of Columbia, and maintain and at all times mentioned herein have maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their carpeting and floor coverings, the respondents have made, and are now making, numerous statements and representations by repeated advertisements inserted in newspapers of interstate circulation, by advertisements transmitted over television, and by oral statements and representations of their salesmen to prospective purchasers with respect to their products and services.

Typical and illustrative of said statements and representations, but not all-inclusive thereof, are the following:

CARPET SALE

FREE-SHOP AT HOME  
DECORATOR SERVICE

3 Rooms DUPONT 501 NYLON  
PILE installed wall-to-wall over  
separate waffle rubber padding  
UP TO 270 Sq. Ft. For \$189

FREE-HOOVER VACUUM  
CLEANER

EASY PAYMENTS TO FIT YOUR BUDGET

\* \* \* \* \*  
3 ROOMS OF  
BEAUTIFUL NYLON  
PILE CARPET \$119

\* \* \* \* \*  
FREE HOOVER VACUUM  
CLEANER with the purchase  
of our deluxe NYLON  
DUPONT 501 CARPETING (90  
Sq. Ft. Min.)

Carpet pad, and  
installation for up to 270  
Sq. ft.

\* \* \* \* \*  
Check our low, low discount  
prices on SHAG, PLUSHES,  
TIP SHEARS AND  
SCULPTUREDS!  
\* \* \* \* \*

\* \* \* FREE \* \* \* WATER BED with purchase of DUPONT 501  
Our Deluxe Nylon Pile Carpeting\* \* \*

\* \* \* EASY TERMS!

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set forth herein, separately and in connection with the oral statements and representations of respondents' salesmen to customers and prospective customers, the respondents have represented, and are now representing, directly or by implication, that:

1. Respondents are making a bona fide offer to sell the advertised carpeting and floor coverings at the price and on the terms and conditions stated in the advertisements.

2. By and through the use of the words, "SALE," "LOW, LOW DISCOUNT PRICES," and other words of similar import and meaning not set forth specifically herein, said respondents' carpeting and floor coverings may be purchased at special or reduced prices, and purchasers are thereby afforded savings from respondents' regular selling prices.

3. Purchasers of the said Dupont 501 Carpet receive a "free" vacuum cleaner or water bed.

4. By and through the use of the words "INCLUDING CARPET, PADDING, AND INSTALLATION" and other words of similar import and meaning not set forth specifically herein, all of the carpeting mentioned in such advertisements is installed with separate padding included at the advertised price.

5. By and through the use of the words "DECORATOR SERVICE," and other words of similar import and meaning not set forth specifically herein, respondents offer to the prospective customer the services of a trained and qualified interior decorator.

6. By and through the use of the words "EASY PAYMENTS" and "EASY TERMS," purchasers of respondents' products are granted easy credit terms, without regard to their financial status or ability to pay, by respondents or the financial institutions with which respondents deal.

PAR. 6. In truth and in fact:

1. Respondents' offers are not bona fide offers to sell carpeting and floor coverings at the price and on the terms and conditions stated in the advertisements. To the contrary, said offers are made for the purpose of obtaining leads to persons interested in the purchase of carpeting. Members of the purchasing public who respond to said advertisements are called upon in their homes by respondents or their salesmen, who make no effort to sell to the prospective customer the advertised carpeting. Instead, they exhibit what they represent to be the advertised carpeting which, because of its poor appearance and condition, is frequently rejected on sight by the prospective customer. Higher priced



carpeting or floor coverings of superior quality and texture are thereupon exhibited, which by comparison disparages and demeans the advertised carpeting. By these and other tactics, purchase of the advertised carpeting is discouraged, and respondents, through their salesmen, attempt to sell and frequently do sell the higher priced carpeting.

2. Respondents' products are not being offered for sale at special or reduced prices. To the contrary, the price respondents regularly advertise and their so-called advertised "sale" or "discount" price are identical and are used to mislead prospective customers into believing there is a saving from a bona fide regular selling price. In fact, seldom, if ever, are the advertised items sold, because the offer is designed to act as the inducement for the practices set forth in Paragraph Six 1 above.

3. Purchasers of respondents' Dupont 501 Carpet do not receive a free vacuum cleaner or free water bed. To the contrary, the cost of the "free" gift is added to and regularly included in the selling price of the merchandise sold to the customer.

4. A substantial portion of the carpeting advertised by the respondents is not installed with separate padding which is included in the advertised price. To the contrary, a substantial portion of the advertised carpeting has rubberized backing which is bonded to the carpeting.

5. Respondents do not employ or have available for their prospective customers a trained, qualified interior decorator. To the contrary, respondents and their regularly employed salesmen, who do not have any special training in the art of decorating, are utilized as "decorators."

6. Purchasers of respondents' products are not granted easy credit terms, without regard to their financial status or ability to pay, by respondents or the financial institutions with which respondents deal.

Therefore, the statements and representations as set forth in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. By and through the use of respondents' television advertisements containing the aforesaid statements and representations, and others of similar import and meaning but not expressly set forth herein, respondents offer three rooms of nylon pile carpeting (up to 270 sq. ft.) for \$129. An additional 10 percent reduction in price is offered to purchasers of such carpeting who telephone respondents within five minutes after the commercial is aired. As a further inducement, respondents' advertisements offer a "free" vacuum cleaner to purchasers of certain nylon pile carpeting. By the audio and visual manner in which the "free" gift is presented in immediate conjunction with the offer of the featured low price carpeting, respondents have represented, and are

now representing, directly or by implication, that purchasers of the low price carpeting are entitled to the "free" gift.

PAR. 8. In truth and in fact, the offer of the "free" gift does not apply to the purchase of the low price carpeting. To the contrary, the "free" gift applies only to the purchase of a much higher price carpeting to which the television advertisement makes only an inconspicuous and misleading reference.

Therefore, the acts and practices as set forth in Paragraph Seven hereof were and are false, misleading and deceptive.

PAR. 9. In the further course and conduct of their business, and in furtherance of a sales program for inducing the purchase of their carpeting and floor coverings, respondents and their salesmen or representatives have engaged in the following additional unfair, false, misleading and deceptive acts and practices:

In a substantial number of instances, through the use of the false, misleading and deceptive statements, representations and practices set forth in Paragraphs Four through Six, above, respondents or their representatives have been able to induce customers into signing a contract upon initial contact without giving the customer sufficient time to carefully consider the purchase and consequences thereof.

Therefore, the acts and practices as set forth in Paragraph Seven hereof were and are unfair and false, misleading and deceptive acts and practices.

PAR. 10. In the further course and conduct of their aforesaid business, and in connection with the representations set forth in Paragraph Four above, respondents offer carpet with padding and installation included at a price based upon specified areas of coverage. In making such offer, respondents have failed to disclose the material fact that the prices stated for such specified areas of coverage are not applied at the same rate for additional quantities of carpet needed, but are placed substantially higher.

The aforesaid failure of the respondents to disclose said material facts to purchasers has the tendency and capacity to lead and induce a substantial number of such persons into the understanding and belief that the prices charged for quantities of carpet needed in excess of the specified areas of coverage will not be substantially higher than the rate indicated by the initial offer.

Therefore, respondents' failure to disclose such material facts was, and is, unfair, false, misleading and deceptive.

PAR. 11. In the course and conduct of their business, and for the purpose of inducing the purchase of their products, respondents use the

term "up to 270 sq. ft." to indicate the quantity of carpeting available at the advertised price.

PAR. 12. The unit of measurement usually and customarily employed in the retail advertising of carpet is square yards. Consumers are accustomed to comparing the price of carpet in terms of price per square yard, therefore respondents' use of the square foot unit of measurement confuses consumers who compare respondents' prices with competitors' prices advertised on a square yard basis.

Furthermore, respondents use of square foot measurements exaggerates the size or quantity of carpeting being offered, and therefore has the capacity and tendency to mislead consumers into the mistaken belief they are being offered a greater quantity of carpet than is the fact.

Therefore, the acts and practices as set forth in Paragraph Eleven hereof were and are unfair, false, misleading and deceptive.

PAR. 13. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition in commerce, with corporations, firms and individuals in the sale and distribution of rugs, carpeting and floor coverings and services of the same general kind and nature as those sold by respondents.

PAR. 14. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, acts and practices has had and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and complete and into the purchase of substantial quantities of respondents' products and services by reason of said erroneous and mistaken belief.

PAR. 15. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

#### DECISION AND ORDER

The Federal Trade Commission having issued a complaint charging that the respondents named in the caption hereof have violated the provisions of the Federal Trade Commission Act; and

The Commission having duly determined upon motion submitted by complaint counsel and respondents that, in the circumstances presented, the public interest would be served by a withdrawal of the matter from

adjudication for the purpose of negotiating settlements by the entry of consent orders; and

The respondents and counsel for the Commission having executed agreements each containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreements are for settlement purposes only and do not constitute an admission by respondents that the law has been violated as alleged in the complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the agreements and having provisionally accepted same, and the agreements each containing a consent order having thereupon been placed on the public record for a period of sixty (60) days, now in further conformity with the procedures described in Section 2.34(b) of its rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Respondents William D. Campbell, Jr., and Jack S. Owens, are individuals, trading and doing business as Rhode Island Carpets with their office and place of business located at 3315 Rhode Island Ave., Mt. Rainier, Md.

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 William D. Campbell, Jr., and Jack S. Owens, individually, trading and doing business as Rhode Island Carpets or under any other names, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, distribution or installation of carpeting and floor coverings, or any other article of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using, in any manner, a sales plan, scheme, or device wherein false, misleading, or deceptive statements or representations are made in order to obtain leads or prospects for the sale of carpeting or other merchandise or services.

2. Making representations, directly or indirectly, orally or in writing, purporting to offer merchandise for sale when the purpose of the representation is not to sell the offered merchandise but to

obtain leads or prospects for the sale of other merchandise at higher prices.

3. Disparaging in any manner, or discouraging the purchase of any merchandise or services which are advertised or offered for sale.

4. Representing, directly or indirectly, orally or in writing, that any merchandise or services are offered for sale when such offer is not a bona fide offer to sell such merchandise or services.

5. Failing to maintain and produce for inspection and copying for a period of three years following the date of publication of any advertisement, adequate records to document for the entire period during which each advertisement was run and for a period of six weeks after the termination of its publication in press or broadcast media:

- a. The cost of publishing each advertisement including the preparation and dissemination thereof;
- b. The volume of sales made of the advertised product or service at the advertised price; and
- c. A computation of the net profit from the sales of each advertised product or service at the advertised price.

6. Using the words "Sale," "Low, Low Discount Prices," or any other word or words of similar import or meaning not set forth specifically herein, unless the price of such merchandise or service being offered for sale constitutes a reduction, in an amount not so insignificant as to be meaningless, from the actual bona fide price at which such merchandise or service was sold or offered for sale to the public on a regular basis by respondents for a reasonably substantial period of time in the recent, regular course of their business.

7. Representing, directly or indirectly, orally or in writing, that any price amount is respondents' regular price for any article of merchandise or service unless said amount is the price at which such merchandise or service has been sold or offered for sale by respondents for a reasonably substantial period of time in the recent, regular course of their business and not for the purpose of establishing fictitious higher prices upon which a deceptive comparison or a "free" or similar offer might be based.

8. Representing, directly or indirectly, orally or in writing, that a purchaser of respondents' merchandise or services will receive a "free" vacuum cleaner or any other "free" merchandise, service, prize or award unless all conditions, obligations, or other prerequi-

sites to the receipt and retention of such merchandise, services, gifts, prizes or awards are clearly and conspicuously disclosed at the outset in close conjunction with the word "free" wherever it first appears in each advertisement or offer.

9. Representing, directly or indirectly, orally or in writing, that any merchandise or service is furnished "free" or at no cost to the purchaser of advertised merchandise or services, when, in fact, the cost of such merchandise or service is regularly included in the selling price of the advertised merchandise or service.

10. Representing, directly or indirectly, orally or in writing, that a "free" offer is being made in connection with the introduction of new merchandise or services offered for sale at a specified price unless the respondents expect, in good faith, to discontinue the offer after a limited time and commence selling such merchandise or service, separately, at the same price at which it was sold with a "free" offer.

11. Representing, directly or indirectly, orally or in writing, that merchandise or service is being offered "free" with the sale of merchandise or service which is usually sold at a price arrived at through bargaining, rather than at a regular price, or where there may be a regular price, but where other material factors such as quantity, quality, or size are arrived at through bargaining.

12. Representing, directly or indirectly, orally or in writing, that a "free" offer is available in a trade area for more than six (6) months in any twelve (12) month period. At least thirty (30) days shall elapse before another such "free" offer is made in the same trade area. No more than three such "free" offers shall be made in the same area in any twelve (12) month period. In such period, respondent's sale in that area of the product or service in the amount, size or quality promoted with the "free" offer shall not exceed 50 percent of the total volume of its sales of the product or service, in the same amount, size or quality, in the area.

13. Representing, directly or indirectly, orally or in writing, that a product or service is being offered as a "gift," "without charge," "bonus," or by other words or terms which tend to convey the impression to the consuming public that the article of merchandise or service is free, when the use of the term "free" in relation thereto is prohibited by the provisions of this order.

14. Representing, directly or indirectly, orally or in writing, that a stated price for carpeting or floor coverings includes the cost of a separate padding and the installation of such padding and carpeting

thereof, unless in every instance where it is so represented the stated price for floor covering does, in fact, include the cost of such separate padding and installation thereof; or misrepresenting in any manner, the prices, terms, or conditions under which respondents supply separate padding and provide installation in connection with the sale of floor covering products.

15. Representing, directly or indirectly, orally or in writing, that respondents employ or have available for prospective customers a trained, qualified interior decorator; or misrepresenting in any manner, the training or qualifications of any of respondents' employees, agents, or representatives.

16. Representing, directly or by implication, orally or in writing, that purchasers of respondents' products are granted easy or assured credit terms by financial institutions with which respondents deal; or misrepresenting, in any manner, the amount, type, extent or any other facet of the credit terms respondents arrange or may arrange for their purchasers.

17. Contracting for any sale whether in the form of trade acceptance, conditional sales contract, promissory note, or otherwise which shall become binding on the buyer prior to midnight of the third day, excluding Sundays and legal holidays, after the date of execution.

18. Failing to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language, *e.g.*, Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in bold face type of a minimum size of 10 points, a statement in substantially the following form:

YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.

19. Failing to furnish each buyer, at the time he signs the sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION," which shall be attached to the contract or receipt and easily detachable, and which shall contain in ten point





entitled under this order including specifically his right to cancel the sale in accordance with the provisions of this order.

22. Failing to inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel.

23. Misrepresenting, directly or indirectly, orally or in writing, the buyer's right to cancel.

24. Failing or refusing to honor any valid notice of cancellation by a buyer and within 10 business days after the receipt of such notice, to (i) refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by the seller; (iii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

25. Negotiating, transferring, selling or assigning any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased.

26. Failing, within 10 business days of receipt of the buyer's notice of cancellation, to notify him whether the seller intends to repossess or to abandon any shipped or delivered goods.

27. Advertising the price of carpet, either separately or with padding and installation included, for specified areas of coverage without disclosing in immediate conjunction and with equal prominence the square yard price for additional quantities of such carpet with padding and installation needed.

28. Advertising any carpeting or floor covering using a unit of measurement not usually and customarily employed in the retail advertising of carpet or which tends to exaggerate the size or quantity of carpeting or floor covering being offered at the advertised price.

*Provided, however,* That nothing contained in this order shall relieve respondents of any additional obligations respecting contracts required by Federal law or the law of the state in which the contract is made. When such obligations are inconsistent, respondents can apply to the Commission for relief from this provision with respect to contracts executed in the state in which such different obligations are required. The Commission, upon showing, shall make such modifications as may be warranted in the premises.

*It is further ordered,* That the respondents forthwith cease and desist from dissemination, or causing the dissemination of, any advertisement of merchandise except advertising in connection with respondent Campbell's operation of a retail liquor store, by means of newspapers, or other printed media, television or radio, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, unless respondents clearly and conspicuously disclose in each advertisement the following notice set off from the text of the advertisement by a black border:

The Federal Trade Commission has found that we engage in bait and switch advertising; that is, the salesman makes it difficult to buy the advertised product and he attempts to switch you to a higher priced item.

One year from the date this order becomes final or any time thereafter, respondents upon showing that they have discontinued the practices prohibited by this order and that the notice provision is no longer necessary to prevent the continuance of such practices may petition the Commission to waive compliance with this order provision.

*It is further ordered,* That respondents shall maintain for at least a one (1) year period, following the effective date of this order, copies of all advertisements, including newspaper, radio and television advertisements, direct mail and in-store solicitation literature, and any other such promotional material utilized for the purpose of obtaining leads for the sale of carpeting or floor coverings, or utilized in the advertising, promotion or sale of carpeting or floor coverings and other merchandise.

*It is further ordered,* That respondents, for a period of one (1) year from the effective date of this order, shall provide each advertising agency utilized by respondents and each newspaper publishing company, television or radio station or other advertising media which is utilized by the respondents to obtain leads for the sale of carpeting or floor coverings and other merchandise, with a copy of the Commission's news release setting forth the terms of this order.

*It is further ordered,* That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the offering for sale, sale of any product, consummation of any extension of consumer credit or in any aspect of preparation, creation, or placing of advertising, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

*It is further ordered,* That the individual respondents, William D. Campbell, Jr., and Jack S. Owens promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment. Such notice shall include

respondents' current business addresses and a statement as to the nature of the business or employment in which they are engaged as well as a description of their duties and responsibilities.

*It is further ordered*, That the respondents herein shall within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

GREAT WESTERN UNITED CORPORATION, ET AL.

MODIFIED ORDER, IN REGARD TO ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION ACT

*Docket C-2306. Complaint, Oct. 20, 1972—Modifying order, Oct. 1, 1974*

Order modifying previous Commission order, 81 F.T.C. 661, as modified, 82 F.T.C. 1263 and 83 F.T.C. 1110, against a Denver, Colo., real estate developer, by altering and modifying Paragraphs IB1 and IB3 of the order relative to the required disclosure of certain statements in printed advertisements concerning real estate projects.

*Appearances*

For the Commission: *Perry W. Winston.*

For the respondents: *Richard S. Levenberg*, Denver, Colo.

ORDER MODIFYING FINAL ORDER

Pursuant to Section 3.72(b) (2) of the Commission's Rules of Practice, and after consideration of respondents' petition of Aug. 21, 1974 to reopen and modify paragraphs IB1 and IB3 of the Final Order to Cease and Desist dated Oct. 20, 1972, subsequently modified by Commission orders dated Apr. 25, 1973 and Dec. 14, 1973, and after further consideration of Commission counsel's response in support of such petition, *It is ordered*, That Paragraphs IB1 and IB3 be altered and modified to read as follows:

*IB1*

Failing to clearly and conspicuously disclose the following statement in all printed advertisements concerning California City:

Obtain the HUD Property Report from the developer and read it before signing anything. HUD neither approves the merits of the offering nor the value, if any, of the property.

## Complaint

IB3

Failing to clearly and conspicuously disclose the following statement in all printed advertisements concerning real estate projects other than California City, however limited to projects in existence at the time this order becomes effective and to any future projects (1) covered by the Interstate Land Sales Full Disclosure Act, and (2) where the property interest being offered is held in any form by respondents or any of their affiliates:

Obtain the HUD Property Report from the developer and read it before signing anything. HUD neither approves the merits of the offering nor the value, if any, of the property.

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 IN THE MATTER OF

PONDER &amp; BEST, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SECTIONS 2(a), (d) & (e) OF THE CLAYTON ACT

*Docket C-2552. Complaint, Oct. 1, 1974—Decision, Oct. 1, 1974*

Consent order requiring a Santa Monica, Calif., importer and distributor of photographic equipment and other products, among other things to cease discriminating in prices, promotional allowances and services or facilities between competing sellers and distributors of its goods.

*Appearances*

For the Commission: *Paul R. Roark.*

For the respondent: *George Caplan, Irell & Manella, Los Angeles, Calif.*

## COMPLAINT

The Federal Trade Commission, having reason to believe that Ponder & Best, Inc., hereinafter sometimes referred to as respondent, has violated and is now violating the provisions of Sections 2(a), 2(d), and 2(e) of the Clayton Act, as amended (U.S.C. Title 15, Section 13), and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Ponder & Best, Inc., is a corporation organized, existing and doing business under and by virtue of the laws

of the State of California, with its office and principal place of business located at 1630 Stewart Street, Santa Monica, Calif.

PAR. 2. Respondent is now and has been for many years engaged in the importation, sale and distribution of photographic equipment and other products to customers located throughout the United States. These customers offer such merchandise for resale to the public. Respondent's sales of its products are substantial.

PAR. 3. In the course and conduct of its business, respondent is now and has been at all times referred to herein engaged in commerce, as "commerce" is defined in the Clayton Act, as amended. Respondent ships its products or causes such products to be shipped from its place of business in Santa Monica, Calif. to purchasers located in other States of the United States.

PAR. 4. In the course and conduct of its business in commerce, respondent sells its products of like grade and quality to purchasers who are in substantial competition with each other in the resale and distribution of such products.

PAR. 5. In the course and conduct of its business in commerce, respondent has discriminated in price between different purchasers of its products of like grade and quality by selling said products to some purchasers at higher and less favorable prices than the prices charged competing purchasers for such products of like grade and quality.

For example, in the sale of photographic products of like grade and quality, respondent charged lower and more favorable prices to national chain and discount customers than were charged or offered to competing independent photographic dealers, who generally operate single retail outlets.

PAR. 6. The effect of such discriminations in price made by respondent in the sale of its products, as hereinbefore set forth, may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which the favored purchasers from respondent are engaged, or to injure, destroy or prevent competition with the favored purchasers from respondent who receive the discriminatory lower prices.

PAR. 7. In the course and conduct of its business in commerce as aforesaid, respondent has paid or authorized payment of money, goods or other things of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with the handling, sale or offering for sale of respondent's products, and respondent has not made

or offered to make such allowances or consideration available on proportionally equal terms to all of its other customers competing in the sale and distribution of its products.

For example, respondent has made available to some customers advertising allowances which were not made available to other competing customers on proportionally equal terms. Respondent has not had a unified promotional plan which was made available to all of its customers and has not granted proportionally equal promotional allowances to its customers competing in the sale and distribution of its photographic products.

PAR. 8. In the course and conduct of its business in commerce as aforesaid, respondent has discriminated in favor of some of its purchasers against other competing purchasers of its products bought for resale, by contracting to furnish or furnishing, or by contributing to the furnishing of, services and facilities connected with the handling, sale, or offering for sale of such products so purchased upon terms not accorded to all competing purchasers on proportionally equal terms.

For example, respondent has provided its national chain and discount customers certain merchandise turnover reports which are compiled at respondent's expense. These reports are of substantial value to these customers. These reports or proportionally equal services were not made available to competing photographic dealers.

PAR. 9. Respondent's acts and practices as alleged in Paragraphs Five and Six, Seven and Eight, above, are in violation of Sections 2(a), 2(d), and 2(e), respectively of the aforesaid Clayton Act, as amended.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Los Angeles Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of Sections 2(a), 2(d), and 2(e) of the Clayton Act, as amended (U.S.C. Title 15, Section 13); and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the 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, 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 Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Ponder & Best, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 1630 Stewart Street, Santa Monica, Calif.

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

*It is ordered.* That respondent Ponder & Best, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of photographic equipment and supplies, optical instruments and lenses, electronic equipment for automobile and home entertainment, and electronic calculating machines in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

1. Discriminating, directly or indirectly, in the price of such products of like grade and quality by selling to any purchaser at net prices higher than the net prices charged any other purchaser competing in the sale or distribution of such products with such unfavored purchaser;

2. Making or contracting to make to or for the benefit of any customer any payment of anything of value as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the handling, sale, or offering for sale of such products unless such payment or consideration is made available on proportionally equal terms to all other customers

competing in the sale or distribution of such products; and

3. Discriminating in favor of any purchaser against any other competing purchaser or purchasers of any product bought for resale, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the handling, sale, or offering for sale of such products so purchased upon terms not accorded to all competing purchasers on proportionally equal terms.

As used in this order "photographic equipment and supplies" shall include all photographic apparatus, equipment, parts, attachments, and accessories, such as still and motion picture cameras, projection and enlargement apparatus, photocopy and microfilm equipment, exposure meters, tripods, lens shades and filters, and other photographic equipment; sensitized film, paper, cloth, and photographic chemicals for use therewith; and developing machines, tanks and other equipment, photographic driers and mounting presses. As used in this order "optical instruments and lenses" shall include photographic, magnifying, projection and instrument lenses, lens mounts, binoculars, microscopes and other optical instruments, equipment and accessories. As used in this order "electronic equipment for automobile and home entertainment" shall include radios and televisions, phonographs and reel, cassette and cartridge tape recorders and players, loudspeakers, amplifiers, and other electronic entertainment equipment and accessories for use in the home, automobile or any other place. As used in this order "electronic calculating machines" shall include pocket and desk calculators, and accessories.

*It is further ordered,* That respondent shall forthwith distribute a copy of this order to each of its operating divisions.

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

*It is further ordered,* That the respondent herein shall within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.



Complaint

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IN THE MATTER OF

## K MART ENTERPRISES, INCORPORATED

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION ACT*Docket C-2553. Complaint, Oct. 1, 1974—Decision, Oct. 1, 1974*

Consent order requiring a Royal Oak, Mich., seller and distributor of automobile tires, among other things to cease misrepresenting the performance characteristics, construction, and structure of its tires. Further, respondent is required to maintain accurate records for Commission inspection.

*Appearances*For the Commission: *D. McCarthy Thornton.*For the respondent: *James C. Tuttle, Troy, Mich.*

## 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, having reason to believe that K mart Enterprises Incorporated, a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. K mart Enterprises Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at 3000 West Fourteen Mile Road, Royal Oak, Mich.

PAR. 2. Respondent is now, and for some time past has been, engaged in the business of advertising for sale, sale and distribution of automobile tires.

PAR. 3. In the course and conduct of its business, respondent advertises extensively in media of interstate circulation and broadcast. Respondent has maintained, and now maintains, a course and conduct of business in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business, and for the purpose of inducing the purchase of automobile tires, respondent has made certain statements and representations concerning tires in media of interstate circulation. Said statements include the following:

KM 100 \* \* \* Polyester construction for added strength.

PAR. 5. Through the use of said statements, disseminated as aforesaid, respondent has represented, directly and by implication, that at the time that respondent made the statements set forth in Paragraph Four, respondent had a reasonable basis from which to conclude that the polyester cord construction of the KM 100 tire provides added strength at operating speeds and temperatures as compared to tires of other cord constructions.

PAR. 6. In truth and in fact, at the time that respondent made the statements set forth in Paragraph Four, respondent had no reasonable basis from which to conclude that the polyester cord construction of the KM 100 tire provides added strength at operating speeds and temperatures as compared to tires of other cord constructions.

Therefore, the statements and representations set forth in Paragraphs Four and Five were, and are, deceptive or unfair acts or practices.

PAR. 7. Respondent has represented, through the use of the aforesaid advertisement and otherwise, directly and by implication, that the polyester cord construction of the KM 100 tire provides added strength at operating speeds and temperatures as compared to tires of other cord constructions.

At the time of said representations, respondent had no reasonable basis to support said representations pertaining to the strength of the KM 100 tire.

Therefore, the aforesaid acts and practices were, and are, deceptive or unfair.

PAR. 8. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent has been and now is in substantial competition in commerce with corporations, firms and individuals engaged in the sale and distribution of automobile tires of same general kind and nature as those sold by respondent.

PAR. 9. The use by respondent of the aforesaid unfair or deceptive statements, representations and practices has had the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said statements and representations were true and into the purchase of substantial quantities of respondent's automobile tires. As a result thereof substantial trade was unfairly diverted to respondent from its competitors.

PAR. 10. The aforesaid acts and practices of respondent as herein alleged, were all to the prejudice and injury of the public and of respondent's competitors and constituted unfair or deceptive acts or practices

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in commerce and unfair methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the 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, 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 Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent K mart Enterprises Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 3000 West Fourteen Mile Road, Royal Oak, Mich.
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

*It is ordered*, That respondent K mart Enterprises, Incorporated, its successors and assigns, officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution

in commerce as "commerce" is defined in the Federal Trade Commission Act, of the respective products hereinafter referred to, do forthwith cease and desist from:

1. making, directly or by implication, any statement or representation in any advertising or sales promotional material as to the performance characteristics, construction or structure of any automobile tire vended by respondent or by any division, subdivision or subsidiary of respondent, unless at the time of such statement or representation respondent has a reasonable basis for such statement or representation, which shall consist of competent scientific tests, or other similar objective material, and where such statement or representation includes a comparison to other products, directly or by implication, such statement or representation shall be supported by competent scientific tests showing not less than a ninety-five percent confidence level when subjected to an appropriate statistical analysis.

2. failing to maintain and produce accurate records which may be inspected by Commission staff members upon reasonable notice:

- (a) which consist of documentation in support of any statement or representation referred to in Paragraph one (1) *supra*, included in advertising or sales promotional material disseminated by respondent, insofar as the text of such statement or representation is prepared, or is authorized and approved, by any person, who is an officer or employee of respondent, or of any division, subdivision or subsidiary of respondent, or by any advertising agency engaged for such purpose by respondent or by any such division, subdivision or subsidiary; and

- (b) which provided the basis upon which respondent relied as of the time the claim was made; and

- (c) which shall be maintained by respondent for a period of three years from the date such advertising or sales promotional material is last disseminated by said respondent or any division, subdivision or subsidiary of said respondent.

*It is further ordered,* That respondent shall forthwith distribute a copy of this order to each of its operating divisions, subdivisions, and subsidiaries and to each of its officers, agents, representatives or employees who are engaged in the preparation or placement of advertisements.

*It is further ordered,* That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale, resulting in the emergence

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of a successor corporation, or any other changes in the corporation which may materially affect compliance obligations arising out of the order.

*It is further ordered*, That respondent shall, within sixty (60) days, and at the end of six (6) months after the effective date of the order served upon it, file with the Commission a report, in writing, signed by respondent, setting forth in detail the manner and form of its compliance with the order to cease and desist.

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IN THE MATTER OF

LEO KASAN

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION AND FUR PRODUCTS LABELING ACTS

*Docket C-2554. Complaint, Oct. 3, 1974—Decision, Oct. 3, 1974*

Consent order requiring a New York City importer and distributor of furs, among other things to cease falsely and deceptively invoicing his furs and fur products. Further, respondent must cease importing furs into this country without first filing a bond with the Secretary of the Treasury in a sum double the value of said furs and any duty thereon.

*Appearances*

For the Commission: *Jerry A. McDonald.*

For the respondent: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Leo Kasan, an individual trading as Leo Kasan, hereinafter referred to as respondent, has violated the provisions of said Acts and the rules and regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Leo Kasan is an individual trading as Leo Kasan, with his office and principal place of business located at 119 Payson Avenue, New York, N.Y.

Respondent is engaged in the importation and sale of furs.

PAR. 2. Respondent is now and for some time last past has been engaged in the sale and offering for sale in commerce, and in the importation into the United States, and in the transportation and distribution in commerce, of furs; and has imported for sale, sold, offered for sale, transported and distributed furs which have been shipped and received in commerce, as the terms "commerce" and "fur" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said furs were falsely and deceptively invoiced with respect to the names or designations of the animals that produced the said furs in violation of Section 5(b)(1) of the Fur Products Labeling Act.

Among such falsely and deceptively invoiced furs, but not limited thereto, were furs which were invoiced as "Mink" or "South Korean Mink" when in truth and in fact such furs were not produced by the designated animals. In accordance with Section 7 of the Fur Products Labeling Act and pursuant to the designations established thereunder by the Fur Products Name Guide, such furs were, in fact, produced by animals named in said guide as "Kolinskys" or "Chinese Weasels," and were required to be designated "Kolinsky" or "Chinese Weasel."

PAR. 4. Certain of said furs were falsely and deceptively invoiced in that respondent set forth on invoices pertaining to said furs the names of animals other than the name or names of the animals that produced the said furs in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 5. Respondent's furs described in Paragraphs Three and Four above were imported by the respondent into the United States and, as particularized in said paragraphs, were not identified in accordance with Section 5(b) of the Fur Products Labeling Act. The invoices of said imported furs required by the Tariff Act of 1930 failed to set forth the information required by Section 5(b) of the Fur Products Labeling Act in that said invoices contained the names of animals other than the animals that produced the furs as such names are set forth in the Fur Products Name Guide. The respondent did falsify the consignee's declaration provided for in said Tariff Act of 1930 insofar as it related to the item of information set forth above in violation of Section 6 of the Fur Products Labeling Act and Section 5 of the Federal Trade Commission Act.

PAR. 6. The aforesaid acts and practices of respondent, as herein alleged, are in violation of the Fur Products Labeling Act and the rules and regulations promulgated thereunder and constituted, and now con-

stitute, unfair methods of competition and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act and the Fur Products Labeling Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the 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, 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 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(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Leo Kasan is an individual trading as Leo Kasan with his office and principal place of business located at 119 Payson Avenue, New York, N.Y.

Respondent is engaged in the importation and sale of furs.

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

*It is ordered*, That respondent Leo Kasan, individually and trading as Leo Kasan or trading under any other name, his successors and assigns, and respondent's representatives, agents and employees, directly or

through any corporate or other device, in connection with the introduction, or importing for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment in commerce, of furs or fur products, as "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

Falsely or deceptively invoicing any fur or fur product by:

1. Failing to furnish an invoice, as the term "invoice" is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

2. Setting forth on an invoice pertaining to such fur or fur product any false or deceptive information with respect to the name or names of the animal or animals that produced the fur.

3. Setting forth on an invoice pertaining to such fur or fur product the name or names of any animal or animals other than the name of the animal that produced the fur as specified in the Fur Products Name Guide.

*It is further ordered,* That the respondent forthwith cease and desist from importing furs or fur products into the United States except upon filing bond with the Secretary of the Treasury in a sum double the value of said furs or fur products and any duty thereon, conditioned upon compliance with the provisions of Section 6 of the Fur Products Labeling Act.

*It is further ordered,* That respondent promptly notify the Commission of the discontinuance of his present business or employment and his affiliation with a new business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged, as well as a description of his duties and responsibilities.

*It is further ordered,* That respondent shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist contained herein.



Complaint

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IN THE MATTER OF

MIAMI MENSTOGS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION AND TEXTILE FIBER PRODUCTS  
IDENTIFICATION ACTS*Docket C-2555. Complaint, Oct. 3, 1974—Decision, Oct. 3, 1974*

Consent order requiring a Hialeah, Fla., manufacturer of men's sport shirts, among other things to cease misbranding its textile fiber products and failing to maintain required records.

*Appearances*For the Commission: *Truett M. Honeycutt.*For the respondents: *Pro se.*

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Miami Menstogs, Inc., a corporation, and Henry Young, individually and as an officer of Miami Menstogs, Inc., hereinafter referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Textile Fiber Products Identification Act, and it now appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Miami Menstogs, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida. The respondent corporation maintains its general offices and principal place of business at 890 West 84th St. Hialeah, Fla.

Respondent Henry Young is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent including those hereinafter referred to. His address is the same as that of the corporate respondent.

Respondents are engaged in the business of manufacturing men's sport shirts.

PAR. 2. Respondents are now and for some time last past have been, engaged in the introduction, delivery for introduction, sale, advertising,

and offering for sale in commerce, and in the transportation or causing to be transported in commerce, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported, and caused to be transported after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 3. Certain of said textile fiber products were misbranded by respondents within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and the rules and regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, invoiced, advertised or otherwise identified as to the name and amount of the constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, were men's sports shirts which contained substantially different amounts and types of fibers than as represented.

PAR. 4. Certain of said textile fiber products were misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form as prescribed by the rules and regulations promulgated under said Act.

Among such misbranded textile fiber products but not limited thereto, were textile fiber products, namely men's shirts with labels which failed:

1. To disclose the true generic names of the fibers present; and
2. To disclose the percentage of said fibers present, by weight.

PAR. 5. Certain of said textile fiber products were misbranded in violation of the Textile Fiber Products Identification Act in that they were not labeled in accordance with the rules and regulations promulgated thereunder in the following respects:

1. The required information as to fiber content was not set forth in such manner as to separately show the fiber content of each section of the textile fiber products containing two or more sections, in violation of rule 25(b) of the aforesaid rules and regulations.
2. The required information as to fiber content was abbreviated in violation of Rule 5(a) of the aforesaid rules and regulations.

PAR. 6. Respondents have failed to maintain and preserve proper records showing the fiber content of textile fiber products manufactured by them in violation of Section 6(a) of the Textile Fiber Products Identification Act and Rule 39 of the rules and regulations promulgated thereunder.

PAR. 7. The acts and practices of respondents as set forth above were, and are, in violation of the Textile Fiber Products Identification Act and the rules and regulations promulgated thereunder, and constituted, and now constitute unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

#### 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 complaint which the Atlanta Regional Office 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 and counsel for the Commission having thereafter executed an agreement containing a consent order, an 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, 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 complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional finding, and enters the following order:

1. Respondent Miami Menstogs is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 890 West 84th St. Hialeah, Fla.

Respondent Henry Young is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his principal office and place of business is located at the above stated address.

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

*It is ordered*, That respondents Miami Menstogs, Inc., a corporation, its successors and assigns, and Henry Young, individually and as an officer of said corporation and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

1. Falsely or deceptively stamping, tagging, labeling, invoicing or otherwise identifying such products as to the name or amount of the constituent fibers contained therein.

2. Failing to affix a stamp, tag, label or other means of identification to each such product showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

3. Failing to separately set forth the required information as to fiber content in such a manner as to show the fiber content of the separate sections of textile fiber products containing two or more sections which are of different fiber composition where such form of marking is necessary to avoid deception as required by Rule 25(b) of the rules and regulations promulgated under authority of the Textile Fiber Products Identification Act.

4. Setting forth information required under Section 4(a) of the Textile Fiber Products Identification Act and Rule 5(a) promulgated thereunder in abbreviated form on labels affixed to textile products.

B. Failing to maintain and preserve proper records of fiber content of textile fiber products manufactured by respondents as required by Section 6(a) of the Textile Fiber Products Identifica-

tion Act and Rule 39 of the rules and regulations promulgated thereunder.

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

*It is further ordered,* That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

*It is further ordered,* That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

*It is further ordered,* That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

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IN THE MATTER OF

SOL SPORTSWEAR, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION AND TEXTILE FIBER PRODUCTS  
IDENTIFICATION ACTS

*Docket C-2556. Complaint, Oct. 3, 1974—Decision, Oct. 3, 1974.*

Consent order requiring a Miami, Fla., manufacturer of textile fiber products, including wearing apparel in the form of men's and boy's shirts, among other things to cease misbranding its textile fiber products.

*Appearances*

For the Commission: *Charles Peterson.*

For the respondents: *Pro se.*

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Sol Sportswear, Inc., a corporation, and Salomon Brum, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of the said Acts and the rules and regulations promulgated under the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Sol Sportswear, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 752 N.W. 76th Avenue, Miami, Fla.

Respondent Salomon Brum is an individual and an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

Respondents are manufacturers of textile fiber products, including, but not limited to, wearing apparel in the form of men's and boy's shirts.

PAR. 2. Respondents are now, and for some time past have been, engaged in the introduction, delivery for introduction, manufacture for introduction, sale, advertising and offering for sale, in commerce, and in the transportation and causing to be transported in commerce, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported textile fiber products which have been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products either in their original state or contained in other textile fiber products, as the term "commerce" and "textile fiber products" are defined in the Textile Fiber Products Identification Act.

PAR. 3. Certain of said textile fiber products were misbranded by respondents within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and the rules and regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, invoiced or otherwise identified as to the name or amount of the constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products, namely men's and boy's shirts, which contained substantially different amounts and types of fibers than as represented.

PAR. 4. Certain of said textile fiber products were misbranded by respondents in that they were not stamped, tagged, labeled or otherwise identified as required under the provisions of Section 4(b) of the Textile Fiber Products Identification Act and in the manner and form prescribed by the rules and regulations promulgated under said Act.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products with labels which failed:

a. To disclose the true generic names of the fibers present in the order of predominance by weight;

b. To disclose the percentages of such fibers by weight.

PAR. 5. Certain of said textile fiber products were misbranded in violation of the Textile Fiber Products Identification Act in that they were not labeled in accordance with the rules and regulations promulgated thereunder in that fiber trademarks were placed on labels without the generic names of fibers appearing on such labels in immediate conjunction therewith in violation of Rule 17(a) of the aforesaid rules and regulations.

PAR. 6. Respondents have failed to maintain proper records showing the fiber content of the textile fiber products manufactured by them in violation of Section 6(a) of the Textile Fiber Products Identification Act and Rule 39 of the rules and regulations promulgated thereunder.

PAR. 7. The acts and practices of respondents as set forth above were, and are, in violation of the Textile Fiber Products Identification Act and the rules and regulations promulgated thereunder and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

#### 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 complaint which the Atlanta Regional Office 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 and counsel for the Commission having thereafter executed an agreement containing a consent order, an 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, 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 complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues the complaint, makes the following jurisdictional finding, and enters the following order:

1. Respondent Sol Sportswear, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 752 N.W. 76th Avenue, Miami, Fla.

Respondent Salomon Brum is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his principal office and place of business is located at the above-stated address.

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

*It is ordered,* That respondents Sol Sportswear, Inc., a corporation, its successors and assigns, and its officers, and Salomon Brum, 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 introduction, delivery for introduction, manufacture for introduction, sale, advertising or offering for sale in commerce, or the importation into the United States of any textile fiber products; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported of any textile fiber product whether in its original state or contained in any other textile fiber product, as the terms "commerce" and "textile fiber



product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

1. Misbranding textile fiber products by:
  - a. Falsely or deceptively stamping, tagging, labeling, invoicing, advertising or otherwise identifying such products as to the name or amount of the constituent fibers contained therein;
  - b. Failing to affix labels to such textile fiber products showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act;
  - c. Using a fiber trademark on labels affixed to textile fiber products without the generic name of the fiber in immediate conjunction therewith on the said label;
  - d. Failing to maintain and preserve proper records showing the fiber content of the textile fiber products manufactured by said respondents, as required by Section 6 of the Textile Fiber Products Identification Act and Rule 39 of the regulations promulgated thereunder.

*It is further ordered,* That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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

*It is further ordered,* That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

*It is further ordered,* That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF  
UNION CARBIDE CORPORATION

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

*Docket C-2557. Complaint, Oct. 4, 1974—Decision, Oct. 4, 1974*

Consent order requiring a New York City formulator and distributor of carbaryl insecticides, among other things to cease claiming that its agricultural insecticides are absolutely safe to use or absolutely safe to man or the environment. Further, respondent must place in all promotional material expressing or implying safety claims about agricultural insecticides, a statement reminding users that all pesticides are harmful if misused, and that they should only be used as directed.

*Appearances*

For the Commission: *Miriam A. Bender, Eric M. Rubin and Paul L. Chassy*

For the respondent: *Richard H. Gregory, Jr. New York, N.Y., James M. Johnstone and Bruce L. McDonald, Kirkland, Ellis & Rowe, Wash. D.C.*

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, having reason to believe that Union Carbide Corporation, a corporation, hereinafter referred to as respondent, has violated provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. For the purposes of this complaint and the order attached hereto, the following definitions of terms shall apply:

(1) "Pesticide" refers to (a) any substance or mixture of substances, intended for preventing, destroying, repelling or mitigating any pest, and (b) any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

(2) "Insecticide" refers to any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any insects which may be present in any environment whatsoever.

(3) "Carbaryl insecticide" refers to a synthetic organic insecticide belonging to the carbamate chemical class. Sevin and Sevimol are respondent's trade names for its carbaryl insecticide products.

(4) "Phosphate and chlorinated hydrocarbon insecticides" refers to those insecticides belonging to the organic phosphorus and chlorinated hydrocarbon chemical classes.

(5) "Beneficial insects" refers to any insect having a favorable effect on plant life or the environment, such as a pollinator or predator of harmful pests.

(6) "Drift" refers to the capacity of a liquid spray, or any other pesticide particle released into the atmosphere, to move on air currents.

PAR. 2. Respondent, Union Carbide Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at Union Carbide Building, 270 Park Avenue in the city of New York, State of New York.

PAR. 3. Respondent is now, and for some time last past has been engaged in the production, formulation, advertising, offering for sale, sale and distribution of carbaryl insecticides designated as "SEVIN" and "SEVIMOL" to formulators and distributors for resale to the public.

PAR. 4. In the course and conduct of its business as aforesaid, respondent now causes, and for some time last past has caused the said products, when sold, to be transported from its place of business in one State of the United States to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of its said business, and for the purpose of inducing the purchase of its carbaryl insecticides, respondent has made, and is now making, numerous statements and representations in advertisements inserted in broadcast and print media and in other promotional materials concerning the safety and efficacy of carbaryl insecticides.

PAR. 6. Typical and illustrative of the statements and representations in said advertising and promotional materials, disseminated as aforesaid, but not all inclusive thereof, are the following:

- (1) Developed at Union Carbide, Sevin carbaryl insecticide gets rid of bugs without harming anything else. Like birds, fish or people. (Sevin doesn't build up in living tissue.)
- (2) The absence of consumer complaints attests to the fact that SEVIN can be applied safely on a large scale.
- (3) SEVIN is safer to handle and less of a hazard to birds, mammals and fish than phosphate or chlorinated hydrocarbon insecticides.
- (4) Remember, SEVIN can be handled with safety and combines well with many aphicides. What's more you avoid drift and residue worries with SEVIN.

(5) \* \* \* SEVIN is safe enough to combat insect problems without creating problems of drift and residues in treated crops.

(6) You can use SEVIMOL near streams, ponds, and pastures without drift problems. And, because SEVIMOL can also be used on cotton, soybeans, corn and beans, you have less worry of drift to nearby fields.

(7) SEVIN is safer, easy to handle, and convenient to apply as a dust, spray or fog on birds \* \* \* as a spray in and on buildings \* \* \* and as a dust in litter and dust-bath boxes.

(8) \* \* \* It helps safen the spray mix when used under adverse growing conditions. SEVIMOL is economical and easy to mix \* \* \*

(9) Growers and custom applicators know how easy it is to use SEVIN insecticide. It is relatively low in toxicity to man, and thus safer to handle than many phosphates and chlorinated-hydrocarbon pesticides. In addition, SEVIN does not create residue or drift problems when used properly, nor does it persist in the environment.

(10) Safer-to-handle SEVIN helps you avoid contamination of neighboring fields and streams.

(11) Sprays—phosphates and others— \* \* \* [are] hard on many beneficial insects. Not to mention problems with drift and residues to nearby crops, populous areas and the environment in general. SEVIN carbaryl insecticide has a lot of the answers. SEVIN fights long and hard. But it fights *fair*. Unlike a lot of registered bollworm materials, dusts containing SEVIN and sulphur do not wipe out whole populations of beneficials at the risk of costly flare-ups of bollworms and other insects.

(12) As insecticide safety requirements continue to mount, SEVIN and SEVIMOL look better than ever. Here is what SEVIN and SEVIMOL can do for you:

\* \* \*

Handle and apply formulations that are safer than most others.

You can apply without special protective clothing or equipment.

Recommended dosages are rarely phytotoxic to plants, and are virtually non-toxic to warm-blooded animals.

Where drift and residue present a problem in side-by-side crop and animal production, these insecticides are safer to use and offer excellent broad range efficacy against major corn insects.

\* \* \*

Federal, state and local authorities welcome the use of these effective insecticides for use in protection of crops, shade trees, and forest, because they are virtually harmless to game birds, fish and wildlife.

(13) This season, pour it on!

\* \* \* \* \*

Control. Convenience. *Confidence*.

\* \* \* \* \*

In addition to the obvious benefits of a liquid formulation, SEVIMOL offers all the well-known advantages of SEVIN insecticide: broad-range *control*, relatively low toxicity to man, near-freedom from drift and residue problems, and rapid breakdown in the environment.

\* \* \* What does all this control and convenience add up to? *Confidence*. Confidence that you're using the most modern insecticide you can buy. So, this season, pour it on!

## Complaint

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(14) Photographs of aerial and ground spraying of voluminous amounts of Sevin and Sevimol in the vicinity of unprotected human beings.

(15) Depiction of "A Simple Experiment" to test Sevimol's sticking power which shows a man placing his bare hand on a piece of paper sprayed with Sevimol.

PAR. 7. Through the use of said advertisements and promotional materials and others similar thereto not specifically set out herein, disseminated as aforesaid, respondent has represented and is now representing, directly or by implication, that:

(1) Sevin and Sevimol carbaryl insecticides are safe, non-toxic, hazard-free products with respect to beneficial insects, human beings, and the environment.

(2) Sevin and Sevimol will not drift or cause problems associated with drift.

(3) Sevin and Sevimol should be applied generously and be handled with confidence, convenience and ease, without fear of causing harmful side effects.

(4) Sevin and Sevimol are relatively more safe in all respects to birds, mammals and fish than all phosphate and chlorinated hydrocarbon insecticide products on the market.

(5) Sevin and Sevimol are relatively more safe in all respects to beneficial insects, human beings and the environment than many or most other insecticide products on the market.

(6) Use of Sevin and Sevimol is recommended and endorsed by the Federal Government.

PAR. 8. In truth and in fact:

(1) Sevin and Sevimol are not safe, non-toxic hazard-free products with respect to beneficial insects, human beings and the environment as represented by respondent. Labeling affixed to Sevin and Sevimol products specifically warns users to keep them out of reach of children and animals; that they are harmful if inhaled, swallowed or allowed to come in prolonged contact with skin; that they contaminate food, feed, water supplies, streams and ponds; and that they are highly toxic to honeybees.

(2) Sevin and Sevimol drift and cause many problems associated with drift.

(3) Sevin and Sevimol should not be applied generously and handled with confidence, convenience and ease, without fear of causing harmful side effects. In addition to those warnings set forth above, labeling affixed to Sevin and Sevimol products further advises that these products should be used only in strict accordance with label directions and

cautions, and that empty containers should be disposed of with particular care.

(4) Sevin and Sevimol are not relatively more safe in all respects to birds, mammals and fish than all phosphate and chlorinated hydrocarbon insecticide products on the market.

(5) Sevin and Sevimol are not relatively more safe in all respects to beneficial insects, human beings and the environment than many or most other insecticide products on the market.

(6) It is the policy of the Federal Government to prohibit as false or misleading any statement directly or indirectly implying that a pesticide is recommended or endorsed by the Federal Government.

Therefore, the statements and representations as set forth in Paragraph Six hereof, were, and are, deceptive acts or practices.

PAR. 9. By advertising Sevin and Sevimol carbaryl insecticides in a manner which substantially varies from and disregards instructions for use and warnings in labeling, respondent negates the import and purposes and detracts from the effectiveness of such instructions and warnings.

Therefore, the advertisements, other promotional materials, acts or practices referred to in Paragraph Nine above are unfair or deceptive acts or practices.

PAR. 10. In the further course and conduct of its business as aforesaid, respondent has advertised Sevin and Sevimol without disclosing in said advertising that such products are hazardous to human health. Knowledge of the hazards associated with the use of such products would enable and encourage consumers to exercise the proper degree of care in using them. Thus, respondents have failed to disclose a material fact which, if known to consumers, would be likely to affect their consideration of whether or not to purchase, and how to properly use, such products.

Therefore, the aforesaid advertisements, other promotional materials, acts or practices and the aforesaid failure to disclose material facts are deceptive or unfair acts or practices.

PAR. 11. Respondent's advertising of absolute, qualified, or comparative safety claims regarding pesticides with precautionary labeling is in itself deceptive and has the capacity and tendency to mislead a substantial portion of pesticide users into the erroneous and mistaken belief that they are handling safe products.

Therefore, the aforesaid advertisements, are deceptive or unfair acts or practices.

PAR. 12. In the course and conduct of its business as aforesaid and at all times mentioned herein respondent has been in substantial competi-

tion, in commerce, with corporations, firms and individuals in the sale of insecticide products of the same general kind and nature.

PAR. 13. The use by respondents of the said deceptive or unfair acts or practices has had, and now has, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the said statements and representations were and are true and induce them into the purchase of substantial quantities of Sevin and Sevimol carbaryl insecticide by reason of said erroneous and mistaken belief.

PAR. 14. The aforesaid acts or practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors, and constituted and now constitute unfair or deceptive acts or practices and unfair methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act.

#### DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereto with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint to issue herein, 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, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its rules, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Union Carbide Corporation 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 located at 270 Park Avenue, in the city of New York, State of New York.

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 respondent, Union Carbide Corporation, a corporation, its successors and assigns and respondent's officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, or sale or distribution of any insecticide product with precautionary labeling which contains any active insecticidal ingredient(s) presently marketed by respondent or currently being field tested by respondent and which is intended for use by custom applicators and commercial growers to protect animals or food, forage, field or fiber crops by virtue of the capacity of its active ingredient(s) to kill insects (sometimes referred to hereinafter as "such products"), do forthwith cease and desist from:

A. Representing, directly or by implication, by print or broadcast advertising, or other promotional material, or by sales representatives' oral statements, that such products are absolutely or unqualifiedly safe, non-toxic or free of hazard for any use registered under the Federal Insecticide, Fungicide and Rodenticide Act, as amended (hereinafter FIFRA) or any other approved use based upon evidence filed in connection with registration under FIFRA.

B. Representing, directly or by implication, by print or broadcast advertising or by other promotional material that such products are qualifiedly safe, non-toxic or free of hazard for any use registered under FIFRA or any other approved use based upon evidence filed in connection with registration under FIFRA; *Provided however*, That factual statements about such products regarding any use registered under FIFRA, any other approved use based upon evidence filed under FIFRA, the level of hazard or toxicity to products or species treated in accordance with such use(s) or residues resulting from such use(s) shall not be prohibited if:

(1) respondent prominently and in close conjunction thereto, includes a statement (except in broadcast advertisements not more than 30 seconds in length) denoting the existence of any specific caution or category thereof, other than directions for use (*e.g.*, "Do not apply within 7 days of harvest"), which



appears on such product's labels, including but not limited to limitations on application due to regional or climatic variations; restrictions on subsequent use of treated crops, animals, or lands; and limitations due to consequent injury of specific species, *e.g.*, crop(s), animal(s), fish, bird(s), or beneficial insect(s); where such specific caution is relevant and material and without notice of which said factual statements would be untrue or misleading; and

(2) at the time of such representations, 1) such statements do not differ in substance from claims accepted in connection with registration under FIFRA, or 2) in the case of other statements not currently rejected as unsubstantiated in connection with registration under FIFRA, such other statements are substantiated by competent scientific tests or other objective materials which provide a reasonable basis for the representation(s) made, and the substantiation materials are either (i) available for public inspection or (ii) otherwise available to the FTC to determine compliance with this Order; and

(3) such factual statements do not use the word "safe," or any form thereof.

C. Representing, directly or by implication, by print or broadcast advertising or by other promotional material, that such products are relatively or comparatively safe, less toxic or freer of hazard, for any use registered under FIFRA, or any other approved use based upon evidence filed in connection with registration under FIFRA: *Provided however*, That comparative factual statements about such products regarding any use registered under FIFRA, any other approved use based upon evidence filed under FIFRA, the level of hazard or toxicity to products or species treated in accordance with such use(s) or residues resulting from such use(s) shall not be prohibited if:

(1) such factual statements compare the promoted insecticide with a specifically identifiable insecticide product, product form, or product group; and

(2) respondent prominently and in close conjunction thereto, includes a statement (except in broadcast advertisements not more than 30 seconds in length) denoting the existence of any specific caution or category thereof, other than directions for use (*e.g.*, "Do not apply within 7 days of harvest"), which appears on such product's labels, including but not limited to limitations on application due to regional or climatic variations; restrictions on subsequent use of treated crops, animals, or

lands; and limitations due to consequent injury of specific species, e.g., crop(s), animal(s), fish, bird(s), or beneficial insect(s); where such specific caution is relevant and material and without notice of which said factual statements would be untrue or misleading; and

(3) at the time of such representations, 1) such statements do not differ in substance from claims accepted in connection with registration under FIFRA, or 2) in the case of other statements not currently rejected as unsubstantiated in connection with registration under FIFRA, such other statements are substantiated by competent scientific tests or other objective materials which provide a reasonable basis for the representation(s) made, and the substantiation materials are either (i) available for public inspection or (ii) otherwise available to the FTC to determine compliance with this Order; and

(4) such factual statements do not use the word "safe," or any form thereof.

II. With respect to representations not covered by the provisions of Section I of this order, it is ordered that Union Carbide Corporation, a corporation, its successors and assigns and respondent's officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, or sale or distribution of such products, do forthwith cease and desist from:

A. Representing, directly or by implication, by print or broadcast advertising, by other promotional material, or by sales representatives' oral statements, that such products are absolutely safe, non-toxic or free of hazard to human beings, warm-blooded animals, birds, fish, beneficial insects, or the environment.

B. Representing, directly or by implication, by print or broadcast advertising or by other promotional material, that such products are qualifiedly safe, non-toxic or free of hazard to human beings, warm-blooded animals, birds, fish, beneficial insects, or the environment; *Provided however*, That factual statements which (i) describe physical, chemical, biological or toxicological characteristics of the promoted insecticide, or (ii) discuss the aforesaid characteristics and their effects on the environment, human beings, warmblooded animals, fish, birds, or beneficial insects shall not be prohibited if:

(1) the label(s) for such product(s) contains no relevant and required general or specific warning or caution regarding such characteristics or any effect caused by such characteristics;

*Provided*, nothing in this subsection shall prohibit:

(a) the dissemination of instructions for the proper use of such product(s); or

(b) factual statements which reproduce or discuss the substance of or reason(s) for any statement, warning or caution or direction for use found on the label of the promoted product(s) and are consistent with such statements, warnings, cautions, or directions for use; or

(c) factual statements regarding such characteristics or characteristics and their effects of insecticides in other than toxicity category I or toxicity category II; *Provided further*, That factual statements regarding the effects of any such characteristics, without an accompanying description of such characteristics, shall not be prohibited if: (i) the label(s) for such product(s) contains no relevant and required general or specific warning or caution regarding such characteristic(s) or effect(s) and (ii) the causal relationship between such characteristic(s) and the described effect(s) has not been substantiated by competent scientific tests or other objective materials known, or which through the exercise of reasonable diligence should be known, to respondent; and

(2) such factual statements are true and not misleading under normal circumstances and conditions under which the product could be expected to be used, *Provided further*, if circumstances and conditions of normal use exist in which said factual statements are untrue or misleading, respondent must describe, prominently and in close conjunction with said factual statements, specific circumstances and conditions for use in which said factual statements are true and not misleading; and

(3) at the time of such representations, 1) such statements do not differ in substance from claims accepted in connection with registration under FIFRA, or 2) in the case of other statements not currently rejected as unsubstantiated in connection with registration under FIFRA, such other statements are substantiated by competent scientific tests or other objective materials which provide a reasonable basis for the representation(s) made, and the substantiation materials are either (i) available for public inspection or (ii) otherwise available to the FTC to determine compliance with this Order; and

(4) respondent discloses, prominently and in close conjunction with any such factual statements concerning human safety

(except in broadcast advertisements not more than 30 seconds in length), any toxicological characteristics relating to human safety which are relevant and material and without the disclosure of which said factual statements would be untrue or misleading; and

(5) respondent discloses, prominently and in close conjunction with any other such factual statements (except in broadcast advertisements not more than 30 seconds in length), any hazardous collateral effects which are relevant and material and without the disclosure of which said factual statements would be untrue or misleading; and

(6) such factual statements do not use the word "safe," or any form thereof.

C. Representing, directly or by implication, by print or broadcast advertising or by other promotional material, that such products are relatively or comparatively more safe, less toxic or freer of hazard to human beings, warm-blooded animals, birds, fish, beneficial insects, or the environment than any other insecticide product(s); *Provided however*, That comparative factual statements which (i) describe physical, chemical, biological or toxicological characteristics of the promoted insecticide or (ii) in the case of insecticides in toxicity category I or toxicity category II, discuss the aforesaid characteristics and their effect on the environment, human beings, warm-blooded animals, fish, birds, or beneficial insects or (iii) in the case of insecticides in other than toxicity category I or toxicity category II, discuss the effect of such products on the environment, human beings, warm-blooded animals, fish, birds, or beneficial insects shall not be prohibited if:

(1) such factual statements compare the promoted insecticide with a specifically identifiable insecticide product, product form, or product group; and

(2) such factual statements are true and not misleading under normal circumstances and conditions under which the product could be expected to be used; *Provided further*, if circumstances and conditions of normal use exist in which said factual statements are untrue or misleading, respondent must describe, prominently and in close conjunction with said factual statements, specific circumstances and conditions of use in which said factual statements are true and not misleading; and

(3) at the time of such representations, 1) such statements do not differ in substance from claims accepted in connection with registration under FIFRA, or 2) in the case of other

statements not currently rejected as unsubstantiated in connection with registration under FIFRA, such other statements are substantiated by competent scientific tests or other objective materials which provide a reasonable basis for the representation(s) made, and the substantiation materials are either (i) available for public inspection or (ii) otherwise available to the FTC to determine compliance with this order; and

(4) respondent discloses, prominently and in close conjunction with any such factual statements concerning human safety (except in broadcast advertisements not more than 30 seconds in length), any toxicological characteristics relating to human safety in regard to which the promoted product is the more toxic and which are relevant and material and without the disclosure of which said factual statements would be untrue or misleading; and

(5) respondent discloses, prominently and in close conjunction with any other such factual statement (except in broadcast advertisements not more than 30 seconds in length), any hazardous collateral effects in regard to which the promoted product is the more hazardous and which are relevant and material and without the disclosure of which said factual statements would be untrue or misleading; and

(6) such factual statements do not use the word "safe," or any form thereof.

III. *It is further ordered*, That respondent, Union Carbide Corporation, a corporation, its successors and assigns and respondent's officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, or sale or distribution of such products do forthwith cease and desist from making any representations, directly or by implication, or omitting any representations, by print or broadcast advertising or by other promotional material, which contradict, are inconsistent with, or detract from the effectiveness of any warning, caution or direction for use required to be set forth on the label of such product. *Provided*, That if any representations, directly or by implication, made by respondent, or the omission of representations by respondent, are in accord with the provisions of Sections I, II and IV of this order, they shall be considered as being in compliance with this section of the order.

IV. *It is further ordered*, That respondent, Union Carbide Corporation, a corporation, its successors and assigns and respondent's officers, representatives, agents, and employees, directly or through any corpo-

ration, subsidiary, division or other device, in connection with the advertising, offering for sale, or sale or distribution of such products do forthwith cease and desist from disseminating or causing the dissemination of:

A. Any print advertising or print promotional material which contains claims covered by Sections I or II for any such product unless it clearly and conspicuously includes in such print advertisement or print promotional material the following statement:  
**STOP! ALL PESTICIDES CAN BE HARMFUL TO HEALTH AND THE ENVIRONMENT IF MISUSED. READ THE LABEL CAREFULLY AND USE ONLY AS DIRECTED.**

B. Any broadcast advertisement more than 30 seconds in length for any such product which contains claims covered by Sections I or II unless it clearly and conspicuously includes the following statement:

**ALL PESTICIDES CAN BE HARMFUL TO HEALTH AND THE ENVIRONMENT IF MISUSED. READ THE LABEL CAREFULLY AND USE ONLY AS DIRECTED.**

C. Any broadcast advertisement not more than 30 seconds in length for any such product which contains claims covered by Sections I or II unless it clearly and conspicuously includes the following statement:

**ALL PESTICIDES CAN BE HARMFUL. READ THE LABEL. USE AS DIRECTED.**

*Provided*, That in television advertisements not more than 10 seconds in length which contain no direct representations concerning product safety, the requirements of the term "clearly and conspicuously" shall in all cases be met by including the above statement in the video portion of the advertisement.

V. Nothing in this order shall be construed to apply to scientific articles published in recognized scientific or agricultural journals or government publications, or reprints thereof, or representations (other than print advertising or other promotional material) before public or governmental forums such as public hearings, scientific meetings, or to governmental agencies, agents, or employees responsible for the regulation or dissemination of information concerning insecticide products covered by this order.

VI. *It is further ordered*, That nothing in this order shall prohibit the dissemination of product labels (as defined by Section 2(p)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended), or reproductions thereof.

VII. For purposes of determining compliance with Sections I.B. (1), I.C.(2), II.B.(1) and III of this order, the term "label" shall include all written, printed or graphic matter on, or attached to, an insecticide product subject to this order. In the event general or specific warnings or cautions or directions for use required pursuant to registration under FIFRA do not appear on the label as defined in the preceding sentence, the term "label" shall also include the other "labeling" as defined by Section 2(p)(2) of FIFRA where said required general or specific warnings or cautions or directions for use do in fact appear. It is recognized that other matter, typically promotional material, will on occasion constitute "labeling" as defined by Section 2(p)(2) of FIFRA. Although such material may be subject to various Sections of this order, it shall not be deemed to be "label" as used in Sections I.B.(1), I.C.(2), II.B.(1) and III of this order.

VIII. *It is further ordered*, That for purposes of Section II.B. and Section II.C. of this order the terms "toxicity category I" and "toxicity category II" shall mean respectively the most toxic and next most toxic categories defined by Environmental Protection Agency Interpretation 18 of the regulations for the enforcement of FIFRA, 40 C.F.R. §162.116(b), in effect on April 1, 1973.

IX. *It is further ordered*, That this order shall become effective upon service, except that Sections I.B., I.C., II.B., II.C. and III of this order shall become effective at such time as and to the extent that a Trade Regulation Rule covering the advertising and promotion of products subject to this order, and containing terms at least as onerous as this order, becomes final and effective. *Provided*, That at all times subsequent to the date this order is served, claims which would be governed by Sections I.B., I.C., II.B., or II.C., if said sections were in effect, shall be deemed to be "claims covered by Sections I or II" for purposes of Section IV of this order.

X. *It is further ordered*, That should the Federal Trade Commission promulgate a Trade Regulation Rule or Industry Guide governing the advertising or promotion of products subject to this order, then any pertinent less comprehensive or less restrictive provisions of such rule or guide shall automatically replace any comparable provisions set forth herein which are effective on the date that such rule or guide becomes effective.

XI. *It is further ordered*, That the respondent forthwith distribute a copy of this order to each of its operating divisions engaged in the manufacture, sale, advertising, promotion or distribution of products subject to this order, and to all present and future employees of respon-

dent responsible for the advertising, promotion, distribution or sale of such products.

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

XIII. *It is further ordered*, That respondent corporation shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order, except that such report shall in the case of Sections I.B., I.C., II.B., II.C., and III be filed within sixty (60) days after their becoming effective against respondent corporation.

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IN THE MATTER OF

HERCULES, INCORPORATED

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

*Docket C-2558. Complaint, Oct. 4, 1974—Decision, Oct. 4, 1974*

Consent order requiring a Wilmington, Del., formulator and distributor of manufacturing grade insecticides, among other things to cease claiming that its agricultural insecticides are absolutely safe to use or absolutely safe to man or the environment. Further, respondent must place in all promotional material expressing or implying safety claims about agricultural insecticides, a statement reminding users that all pesticides are harmful if misused, and that they should only be used as directed.

*Appearances*

For the Commission: *Miriam A. Bender, Eric M. Rubin and Paul L. Chassy.*

For the respondent: *Charles S. Maddock, Wilmington, Del., and Burton Caine of Wolf, Block, Schorr & Solis-Cohen, Phila, Pa.*

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, having reason to believe that Hercules Incorporated, a corporation, hereinafter referred to as respondent, has violated provi-