IN THE MATTER OF

CARPETS "R" US, INC., ET AL.

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

Docket 8947. Complaint, Dec. 7, 1973—Final Order, Feb. 26, 1976

Order requiring a Lanham, Md., distributor and installer of carpeting and floor coverings, among other things to cease using bait and switch tactics; misrepresenting free goods and services; misrepresenting exaggerated prices as regular and customary; misrepresenting the amount of carpeting offered for sale, *i.e.*, square feet vs. square yards; failing to disclose to customers their right to a three-day cooling-off period during which they may cancel their sales contract with full refund of monies paid; and misbranding and falsely invoicing their textile fiber products in violation of the Textile Fiber Products Identification Act.

Appearances

For the Commission: *Everette E. Thomas*, *Alice C. Kelleher*, and *Allen R. Caskie*.

For the respondents: *Ephraim Jacobs*, *Foley, Lardner, Hollabaugh & Jacobs*, Washington, D.C.

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 Carpets "R" Us, Inc., a corporation, and Paul W. Ferrone and Homer Bandy, individually and as officers of said corporation, 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 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 Carpets "R" Us, Inc., 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 9035 Lanham Severn Rd., Lanham, Maryland.

Respondents Paul W. Ferrone and Homer Bandy are individuals and officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts

and practices hereinafter set forth. Their business address is the same as that of the corporate respondent.

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

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.

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, 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:

SPECTACULAR
DUPONT 501
$159 up to 270 sq. ft.
continuous nylon
CARPET SALE
FREE
PADDING & LABOR
3 ROOMS — WALL-TO-WALL
- Living Room
- Dining Room
- Hall & Steps

Also Available: Acrilon (sic),
Polyester, Tip Sheers, Shags, etc. * * *

* * * * * * *

3 Rooms
DUPONT 501
$189 * * *

* * * * * * *

* * * - No Extras
- No Free Gifts
Just Down to Earth
Low Prices * * *

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, 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," and other words of similar import and meaning not set out 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 "free" padding and installation labor.

PAR. 6. In truth and in fact:

1. 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 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" 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. hereof.

3. Purchasers of respondents' Dupont 501 Carpet do not receive free padding and installation labor. To the contrary, the cost of the padding and labor 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 further course and conduct of their business, and in the 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 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. 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 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 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 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 services 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 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 Textile Fiber Products Identification Act

and the implementing rules and regulations 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. 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 including carpeting and floor covering 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. 15. Certain of said textile fiber products were falsely and deceptively advertised in that respondents in making disclosures or implications as to the fiber content of such textile fiber products in written advertisements used to aid, promote, and to assist, directly or indirectly, in the sale or offering for sale of said products, failed to set forth the required information as to fiber content as specified by Section 4(c) of the Textile Fiber Products Identification Act, and in the manner and form prescribed by the rules and regulations promulgated under said Act.

PAR. 16. Among such textile fiber products, but not limited thereto, was carpeting which was falsely and deceptively advertised in *The Washington Daily News* and *The Evening Star*, newspapers published in the District of Columbia, and having a wide circulation in the District of Columbia and various other States of the United States, in that said carpeting was described by such fiber connoting terms among which, but not limited thereto, was "Acrilon" (sic), and the true generic name of the fiber contained in such carpeting was not set forth.

PAR. 17. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents have falsely and deceptively advertised textile fiber products in violation of the Textile Fiber Products Identification Act in that said textile fiber products were not advertised in accordance with the rules and regulations promulgated thereunder in the following respects:

1. In disclosing the fiber content information as to floor coverings containing exempted backings, fillings, or paddings, such disclosure was not made in such a manner as to indicate that such fiber content information related only to the face, pile or outer surface of the floor

covering and not to the backing, filling or padding, in violation of Rule 11 of the aforesaid rules and regulations.

2. A fiber trademark was used in advertising textile fiber products, without a full disclosure of the fiber content information required by said Act, and the regulations promulgated thereunder, in at least one instance in said advertisement, in violation of Rule 41(a) of the aforesaid rules and regulations.

3. A fiber trademark was used in advertising textile fiber products, containing only one fiber and such fiber trademark did not appear, at least once in the said advertisement, in immediate proximity and conjunction with the generic name of the fiber, in plainly legible and conspicuous type, in violation of Rule 41(c) of the aforesaid rules and regulations.

PAR. 18. 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, in commerce, and unfair methods of competition, in commerce, under the Federal Trade Commission Act.

INITIAL DECISION BY ERNEST G. BARNES, ADMINISTRATIVE LAW JUDGE

JANUARY 15, 1975

PRELIMINARY STATEMENT

[1] The Federal Trade Commission issued its complaint in this proceeding on December 7, 1973, charging respondents Carpets "R" Us, Inc., a corporation, and Paul W. Ferrone and Homer Bandy, individually and as officers of said corporation, with violation of Section 5 of the Federal Trade Commission Act, and of the Textile Fiber Products Identification Act and the implementing rules and regulations promulgated thereunder. The complaint issued in this proceeding has two parts. Count I thereof alleges the violation by respondents of Section 5 of the Federal Trade Commission Act. Count II thereof alleges [2] the violation by respondents of the Textile Fiber Products Identification Act and the implementing rules and regulations promulgated thereunder.

Respondents filed an answer to the complaint on February 12, 1974, admitting in part and denying in part the allegations of the complaint. Thereafter, prehearing conferences were held on February 28, 1974 and on April 26, 1974. Respondents' motions to dismiss the complaint as to respondent Paul W. Ferrone and to dismiss Paragraphs Seven and

Eight of the complaint were denied by order of the administrative law judge on May 24, 1974. Adjudicative hearings were held in Washington, D.C., on July 8, 1974 through July 12, 1974, and on July 29, 1974. The record was closed for the reception of evidence on August 12, 1974. Thereafter, proposed findings were filed by the parties on September 11, 1974, and replies thereto on September 26, 1974.

On October 30, 1974, the undersigned filed a request for extension of time until January 15, 1975 within which to file his initial decision in this proceeding. On November 1, 1974, the Commission issued its order extending the time to and including January 15, 1975 in which to file the initial decision in this matter.

This proceeding is before the undersigned upon the complaint, answers, testimony and other evidence, proposed findings of fact and conclusions and briefs filed by complaint counsel and by counsel for respondents. These submissions by the parties 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 record or as immaterial. Any motions not heretofore or herein specifically ruled upon, either directly or by the necessary effect of the conclusions in this decision, are hereby denied. The findings of fact made herein are based on a review of the entire record and upon a consideration of the demeanor of the witnesses who gave testimony in this proceeding.

For the convenience of the Commission and the parties, the findings of fact made hereinafter include references to the principal supporting evidentiary items in the record. Such references are intended to serve as convenient guides to the testimony and exhibits supporting the findings of fact, but do not necessarily represent complete summaries of the evidence considered in arriving at such findings.

[3] References to the record are set forth in parentheses, and certain abbreviations, as hereinafter set forth, are used:

CCPF — Proposed Findings of Fact, Conclusions of Law and Order submitted by complaint counsel, followed by the Proposed Finding being referenced.

RPF — Proposed Findings of Fact, Conclusions of Law and Order submitted by respondents, followed by the Proposed Finding being referenced.

CCRB — Reply Brief submitted by complaint counsel, followed by page or pages being referenced.

RRB — Reply Brief submitted by respondents, followed by page or pages being referenced.

CX — Commission's Exhibit, followed by number of exhibit being referenced.

RX — Respondents' Exhibit, followed by number of exhibit being referenced.

Tr. — Official transcript of the formal hearings, followed by the page number being referenced and preceded by the name of the witness whose testimony is being referenced.

FINDINGS OF FACT

1. Respondent Carpets "R" Us, Inc. 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 9035 Lanham Severn Rd., Lanham, Maryland (respondents' Answer, Par. One; CX 1-4; Bandy, Tr. 7-12).

[4] 2. Respondent Homer Bandy is an individual and an officer of corporate respondent Carpets "R" Us, Inc. Mr. Bandy, together with respondent Paul Ferrone, during the period in which Mr. Ferrone was associated with the corporation, formulated, directed, and controlled the acts and practices of corporate respondent Carpets "R" Us, Inc. Mr. Bandy currently owns all the stock of the corporation, is its President, and oversees the entire operation of the corporation, including the training of sales personnel. His address is 324 Windy Way, Glen Burnie, Maryland (respondents' Answer, Par. One; Bandy, Tr. 7, 9, 15, 27, 45; CX 1-4).

3. Respondent Paul Ferrone is an individual and a former officer of corporate respondent Carpets "R" Us, Inc. His address is 3733 McTavish Ave., Baltimore, Maryland. Mr. Ferrone, together with respondent Homer Bandy, formulated, directed and controlled the acts and practices of corporate respondent Carpets "R" Us, Inc. from February 1972 to September 1973 (respondents' Answer to Request for Admissions, Nos. 1-18). Mr. Ferrone, with respondent Homer Bandy and Claude Goldsmith, formed the corporation, Carpets "R" Us, Inc., in February 1972, each owning one-third of the stock (Bandy, Tr. 10; Ferrone, Tr. 92). Shortly after incorporation, respondents Paul Ferrone and Homer Bandy became sole owners of Carpets "R" Us, Inc. by purchasing Mr. Goldsmith's interest. Thereafter they were jointly responsible for the operation of the company throughout the entire period Mr. Ferrone was associated with Carpets "R" Us, Inc. Both respondents were members of the board of directors. Respondent Paul Ferrone was President of the corporation from the date of its incorporation in February 1972 until he sold his interest to respondent Homer Bandy in September 1973 (Ferrone, Tr. 82, 84, 93, 94; CX 1).

4. Prior to association with corporate respondent Carpets "R" Us, Inc. in early 1972, respondent Paul Ferrone was employed by several carpet companies (Tr. 89). After leaving Carpets "R" Us, Inc. in

September 1973, Mr. Ferrone, in December 1973, commenced employment with a carpet company located in Laurel, Maryland, which operates several carpet stores. At the time of hearings in this matter, Mr. Ferrone had been made manager of this company. His duties, *inter alia*, include supervising and training salesmen. Mr. Ferrone's present employer is primarily engaged in the sale of carpets in stores, as opposed to in-home sales of carpet (Ferrone, Tr. 80-81, 89-90, 95).

[5] 5. 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 (respondents' Answer, Par. Two). Their sales volume has been substantial, amounting to approximately $200,000 in the calendar year 1973 (Bandy, Tr. 24). At all relevant times mentioned herein, respondents have been engaged in commerce as "commerce" is defined in the Federal Trade Commission Act. Respondents have sold and shipped carpet from their places of business located in the State of Maryland to purchasers located in Maryland, Virginia, and the District of Columbia (respondents' Answer, Par. Three). Respondents are also engaged "in commerce" by virtue of their advertising in newspapers which circulate in interstate commerce, and on television stations whose broadcast range is in interstate commerce (respondents' Answer to Request for Admissions, Nos. 5, 14-18, 23-25; Bandy, Tr. 27-30).

6. During the period from February 1972 (date of incorporation of respondent corporation; Bandy, Tr. 9) to July 14, 1972 (date of the investigational hearing in this proceeding; Bandy, Tr. 18), respondents advertised heavily in newspapers and over television for the purpose of promoting the sale of their carpeting and floor covering. There are four exhibits in the record which respondents admit are typical and illustrative of their advertising during the relevant time period (respondents' Answer to Request for Admissions, Nos. 11-18; CX 461-463, 300).

7. CX 461 is a newspaper advertisement that ran on Feb. 14, 1972 in *The Washington Daily News* (respondents' Answer to Request for Admissions, No. 12). It read as follows:

A VERY SPECIAL SALE! WALL-TO-WALL CARPET $139.00.

LIVING ROOM — DINING ROOM — HALL & STEPS.

FREE!	up to 270
PADDING!	sq. ft. of
LABOR!	continuous Nylon
	NO EXTRAS
	Terms Available
	NO FREE GIFTS
	Just down to earth prices

[6] 8. Cx 462 is a newspaper advertisement that ran in *The Washington Daily News* on March 8, 9, 13, 15, 16, 20, 22, 23, 24, April 3, 6, 10, 11, 13, 26, 28, June 19, 20, 26, 27, 1972 (respondents' Answer to Request for Admissions, No. 14). It read as follows:

3 ROOMS

DU PONT
501
N

$189

WALL-TO-WALL	FREE
LIVING ROOM	PADDING &
DINING ROOM	LABOR
HALL & STEPS	NO EXTRA'S
	NO FREE GIFTS
Also Available: Acrilon,	Just Down To Earth
Polyester, Tip sheers,	Low Prices
Shags, etc.	Terms Available!

9. CX 463 ran in *The Washington Daily News* on May 1, 3, 4, 5, 8, 10, 12, 15, 17, 18, 19, 23, 24, 1972 (respondents' Answer to Request for Admissions, No. 16). It read:

SPECTACULAR DU PONT 501 N $159 Up to 270 Sq. Ft. Continuous Nylon.

FREE PADDING & LABOR

CARPET SALE
3 ROOMS — WALL-TO-WALL

LIVING ROOM	NO EXTRAS
DINING ROOM	
HALL & STEPS	NO FREE GIFTS
Also Available: Acrilon,	Just Down To Earth
Polyester, Tip sheers,	Low Prices
Shags, etc.	Terms Available!

[7] 10. CX 300 is the text of a television commercial that ran from June 5, 1972 to September 1, 1972 (CX 104(d)). It read:

IT'S IN PROGRESS *NOW* * * * EXTRA SAVINGS ARE YOURS *TODAY* * * * DURING THIS SENSATIONAL CASH SAVING CARPET CARNIVAL AT CARPETS 'R' US

THINK OF IT * * * FOR JUST $189.00 YOU CAN CARPET THREE FULL ROOMS WALL TO WALL * * * IN RUGGED RESILIENT RICHLY BEAUTIFUL DUPONT 501 NYLON * * * NOT JUST NYLON * * * BUT DUPONT 501 NYLON * * * COMPLETELY INSTALLED * * * FREE OF CHARGE * * * OVER QUALITY FOAM RUBBER PADDING [Overlay reads "Up to 270 Sq. Ft." at this point]

* * * * * * *

PLUSHES * * * TIP SHEERS * * * ACRILANS * * * POLYESTERS * * * WOOLS * * * IN ALL COLORS AND PATTERNS * * *

11. By and through the use of the above-quoted statements and representations (Findings 7-10, *supra*), respondents represented that they were making a bona fide offer to sell the advertised carpeting and floor coverings at the price and on the terms and conditions stated in their advertisements. Consumers were in fact attracted by respondents' advertisements for what appeared to be low-priced, good quality carpeting (Byrd, Tr. 127; Thomas, Tr. 183; Barnes, Tr. 197; Banks, Tr. 216; Copeland, Tr. 230; Neff, Tr. 247; Black, Tr. 271; Satar, Tr. 285; Fuimaono, Tr. 298; Johnson, Tr. 306).

12. In truth and in fact, respondents' advertisements did not constitute bona fide offers to sell the advertised carpeting, but were used primarily to obtain "customer leads" in order to sell such persons more expensive carpeting (Findings 13-15, *infra*).

13. Consumers who responded to respondents' advertisements were called upon in their homes by respondents or their salesmen. The salesmen would exhibit what was represented to be the advertised carpeting. This carpet was of such poor quality and unattractive appearance that it was self-disparaging, and prospective customers almost uniformly rejected it on sight (Gilbert, Tr. 129; Morrill, Tr. 144; [8] Ortiz, Tr. 163; Thomas, Tr. 184; Barnes, Tr. 200, 215; Banks, Tr. 218; Copeland, Tr. 233; Neff, Tr. 248, 257; Krebs, Tr. 263; Black, Tr. 273; Satar, Tr. 286; Fuimaono, Tr. 299; Washington, Tr. 322).

14. Not only was the appearance of the advertised carpet poor, but in some instances respondents' salesmen openly disparaged it and compared it unfavorably with other, more expensive types of carpeting. For example, consumer witness Ortiz testified as follows (Tr. 163):

Q. Did he show you a sample of the advertised carpet?

A. Then he downgraded it immediately. He said, "This is not anything you would

want. This is something for people who tend to stay in apartments maybe six months to a year at the most." (*See also*, Miller, Tr. 105, 113; Gilbert, Tr. 116; Carpenter, Tr. 129, 130; Thomas, Tr. 184, 195; Barnes, Tr. 201; Krebs, Tr. 263; Black, Tr. 273, 274; Johnson, Tr. 309, 318; Washington, Tr. 324.)

The salesman would then exhibit higher-priced carpeting or floor covering of superior quality which by comparison further demeaned and disparaged the advertised carpeting.

15. Respondents made very few actual sales of the advertised carpeting at the price and on the terms set forth in the advertisements. During the relevant period from February, 1972 to July 14, 1972, respondents entered into one hundred and seventy-three (173) contracts for the sale of floor coverings (CX 105-278). Of these, three contracts were for the sale of padding without carpeting (CX 214, 230, 236). Of the remaining contracts, only sixteen (16) were for the sale of carpeting identified by respondent Homer Bandy as being the "advertised" carpeting (Bandy, Tr. 70-73; CX 124, 126, 127, 129, 131, 132, 134, 137, 139, 144, 147, 179, 254, 275, 251, 252), and of those only two contracts were at a price equal to or less than the advertised price of $189.00 (CX 126, 252).

16. The representations set forth in Findings 7-10, *supra*, were false, misleading and deceptive (Findings 12-15, [9] *supra*), and had the tendency and capacity to deceive members of the consuming public.

17. For each price at which respondents have advertised their carpeting, *i.e.*, $139, $159 and $189, they have also directly represented, through use of the word "sale" — or implied — through use of such phrases as "A VERY SPECIAL SALE," "SPECTACULAR * * * CARPET SALE," AND "EXTRA SAVINGS ARE YOURS TODAY * * * DURING THIS SENSATIONAL CASH SAVING CARPET CARNIVAL * * *" — that such prices constituted a temporary reduction from their regularly established selling price, thereby affording customers substantial savings from respondents' regular selling price (Findings 7-10, *supra*). In truth and in fact, respondents never established a "regular" selling price for their advertised carpet and therefore none of the prices at which that carpet was advertised was a "reduced," or "sale," price (Findings 18-19, *infra*).

18. The first advertisement that appeared after the incorporation of Carpets "R" Us, Inc. was CX 461, featuring "A VERY SPECIAL SALE" of carpet at $139 (Finding 7, *supra*). Obviously no "regular" price had been established at the time this advertisement appeared, and no claim was made in the advertisement that this was an "introductory" price to be favorably compared with a later "regular" price.

19. As found above, during the relevant period from February 1972 to July 14, 1972, only two sales of carpet were made at a price equal to

or less than the advertised price of $189.00 (Finding 15, *supra*), which respondents contend is the "regular" selling price of such carpet. Such sales were not sufficient to establish a "regular" selling price for respondents' advertised carpet. CX 300, the T.V. commercial, states that the price of $189 represents "* * * EXTRA SAVINGS ARE YOURS TODAY * * * DURING THIS SENSATIONAL CASH SAVING CARPET CARNIVAL * * *" In fact, respondents did not regularly sell the advertised carpeting, but used it to obtain "customer leads" in order to sell such persons more expensive carpeting (Finding 12, *supra*). Therefore, respondents' representations set forth in Finding 17, *supra*, were false, misleading and had the tendency and capacity to deceive members of the consuming public.

20. Respondents' advertisements (Findings 7-10, *supra*) uniformly represent that padding and installation are "free" to purchasers of their advertised carpet. As found above [10] (Findings 18-19, *supra*), respondents have never established a regular selling price for their advertised carpet. By always offering "free" padding and installation, respondents have also failed to establish a regular selling price which excludes padding and installation, and against which a "free" offer could be measured. Moreover, the cost of padding and installation was included by respondents in calculating the sale price of the advertised carpet. Respondent Homer Bandy testified concerning the "par" system used by Carpets "R" Us, Inc. He stated that the cost of padding and installation is included in each "par" figure — the minimum price at which a carpet must be sold in order for the salesman to receive his commission (Bandy, Tr. 19-21).

21. Purchasers of respondents' advertised carpeting do not in fact receive free padding and installation labor; rather, the cost of padding and labor is added to and included in the selling price of each carpet (Finding 20, *supra*). Respondents' representations are therefore unfair, misleading and deceptive, and have the tendency and capacity to deceive the consuming public.

22. During the period February 1972 to July 14, 1972, respondents advertised carpeting in terms of square feet only (CX 461, 462, 463, 300; Findings 7-10, *supra*).

23. Respondents, themselves, were billed for carpet installation in terms of square yards (CX 5-103), and respondents' customer contracts often indicated the amount of carpet sold in terms of both square feet and square yards (see, for example, CX 109, 111, 112, 113, 115, 116, 117(a), 117(b), 118, 125, 126, 127, 134, 135, 136, 137, 141, 142, 146, 149, 151, 154, 155, 156, 158, 159, 160, 161, 162, 163, 165, 166, 167, 168, 170, 171, 177, 181, 199, 207, 251).

24. Albert Wahnon was called by complaint counsel as an expert

witness on the retail advertising of floor coverings. He is the editor of *Floor Covering Weekly*, a leading publication in the trade, which reviews advertisements in the retail carpet industry and offers guidance to carpet retailers in the merchandising, promotion, and display of carpets and floor coverings. Mr. Wahnon is well qualified to testify concerning advertising practices in the retail carpet trade. He testified that between 90 and 95 percent of carpet retailers use square yards as the [11] unit of measurement in their advertisements; that the square yard is "almost a standard" in the industry (Wahnon, Tr. 358-359). He further stated that his publication has taken the position that the use of "square feet" in a carpet advertisement is deceptive, misleading and deliberately harmful to the consumer (Wahnon, Tr. 360-361).

25. There is substantial evidence in the record in the form of consumer testimony that members of the public were in fact misled by respondents' advertisements which utilized square feet; they received from them the impression that they were being offered a greater quantity of carpet than was the fact, and that the amount offered at the "special" price would fill their needs (three rooms), when in fact they required far more carpeting. These consumers received these mistaken impressions even though they were able to figure in square feet (Miller, Tr. 103; Byrd, Tr. 128; CX 146; Morrill, Tr. 142, 156; CX 215; Mrs. Robert L. Barnes, Tr. 198, 199; CX 205; Johnson, Tr. 306).

26. The unit of measurement usually and customarily employed in the retail advertising of carpets is the square yard, and therefore consumers are accustomed to compare prices of carpeting in terms of price per square yard. Respondents' use of "square feet" in their advertisements tends to exaggerate the amount of carpet being offered and thus has the tendency and capacity to mislead and deceive consumers into believing they are getting more carpeting for their money than is a fact (Findings 24-25, *supra*). This deception is heightened by other representations in the advertisements that the carpeting is sufficient for three rooms wall-to-wall — living room, dining room, and hall and steps.

27. Respondents advertised their featured carpet at, variously, $139, $159, or $189 for up to 270 square feet, that is, at a range of $4.63 to $6.30 per square yard. The advertisements did not disclose the material fact that additional quantities of this advertised carpet, above 270 square feet, would cost the customer $9 per square yard (CX 461, 462, 463, 300; Bandy, Tr. 73). Respondents' failure to disclose such material fact has the tendency and capacity to deceive consumers into believing that prices charged for quantities of carpeting in excess of

the featured area will be at a rate identical to, or substantially identical to, that indicated for the featured area.

[12] 28. Through the use of the false, misleading and deceptive statements, representations, and practices found above (Findings 6-27, *supra*), respondents and their salesmen have been able to induce customers into signing contracts upon initial contact, without giving them time to consider carefully the purchase and the consequences thereof. All but one of the consumer witnesses who testified in these proceedings signed a contract on the initial visit of respondents' salesmen. Some of the high pressure techniques employed by respondents' salesmen are illustrated by the following testimony:

Q. Did you contract to purchase the carpet on the first — that night when the salesman was there, or did you buy it later?

A. No, that night. As far as I remember, we didn't have time to think about it because he said that the amount he gave us for the carpet wouldn't, you know, last the next day. We had to sign right then. [Byrd, Tr. 132.]

* * * * * * *

A. * * * I told him I was looking for a pattern, and he told me that he had half a roll, or so much left on a roll, that he would sell that to me at a bargain price, but I had to take it right away because they may get calls and sell it to someone else.

* * * * * * *

Q. * * * At the price that he offered this special roll of carpet to you, did you have any time to decide on whether or not to purchase it?

A. No. We didn't have time because he stated, you know, we take it then because if he goes to another customer, it wouldn't be there because he couldn't guarantee me it would be there tomorrow. [Barnes, Tr. 201.]

* * * * * * *

[13] Q. Did the salesman indicate to you that there would be any limitation on the time this offer would be available for this gold carpeting?

A. Yes; that was something else. At the time I told him, I says, "I will call you back in a couple of days." I wanted to get some other prices some other place. And he said, well, he would have to know then if I was interested because in a couple days the carpeting might be that much less that they have on hand and I would have to pay the full amount for it. So I said, "Okay, then, go ahead and measure it. * * *" [Krebs, Tr. 263-264.]

29. In their advertising, respondents used the term "Acrilon"[1] to describe certain carpeting they were offering without stating the true generic name of the fiber content of such carpeting. In addition, where respondents advertised the fiber content of their carpeting, they did not disclose that such information related only to the face, pile or outer

[1] In CX 300, respondents refer to "Acrilans."

surface of the floor covering, or padding (CX 462, 463, 300; Findings 7-10, *supra;* respondents' Answer, Pars. 15-16).

30. By means of such advertisements, respondents have falsely and deceptively advertised textile fiber products in violation of the Textile Fiber Products Identification Act (15 U.S.C. §70) in that such textile fiber products were not advertised in accordance with the rules and regulations promulgated thereunder in the following respects:

1. In disclosing the fiber content information as to floor coverings containing exempted backings, fillings, or paddings, such disclosure was not made in such a manner as to indicate that such fiber content information related only to the face, pile or outer [14] surface of the floor covering and not to the backing, filling or padding, in violation of Rule 11 of the aforesaid rules and regulations.

2. A fiber trademark was used in advertising textile fiber products, without a full disclosure of the fiber content information required by said Act, and the regulations promulgated thereunder, in at least one instance in said advertisement, in violation of Rule 41(a) of the aforesaid rules and regulations.

3. A fiber trademark was used in advertising textile fiber products, containing only one fiber and such fiber trademark did not appear, at least once in the said advertisement, in immediate proximity and conjunction with the generic name of the fiber, in plainly legible and conspicuous type, in violation of Rule 41(c) of the aforesaid rules and regulations. (respondents' Answer, Par. 17; CX 461, 462, 463.)

CONCLUSIONS

INDIVIDUAL LIABILITY OF RESPONDENT PAUL W. FERRONE

It is argued that the order, if any is to be issued in this case, should not be applicable to respondent Paul W. Ferrone, individually. The contention is that since Mr. Ferrone sold out his half interest in the corporation to Mr. Bandy in September 1973, has no present association with Carpets "R" Us, Inc., and is now employed by a largely in-store retail carpet business, any order entered against him "would serve no useful purpose, and would be in the nature of a punitive action" (RPF, p. 43).

This argument has little merit. It is admitted that, while he was associated with Carpets "R" Us, Inc., Mr. Ferrone shared with respondent Homer Bandy the complete control over all aspects of the company's operation. It is settled that the Federal Trade Commission has the authority to name, individually, officers, directors, and sole stockholders of corporate respondents when they have participated in or controlled the challenged acts and practices, to prevent erosion of its

orders. *Federal Trade Commission* v. *Standard Education Society, et al.*, 302 U.S. 112 (1937); *Rayex Corporation* v. *Federal Trade Commission*, 317 F.2d 290 (2d Cir. 1963); *Standard Distributors, Inc., et al.* v. *Federal Trade* [15] *Commission*, 211 F.2d 7 (2d Cir. 1954). This authority extends to naming individuals who, prior to, but not at the time of the order, directed and controlled the challenged acts and practices, if such an order is necessary to close off any wide "loophole" through which the order might be evaded. *Benrus Watch Co.* v. *Federal Trade Commission*, 352 F.2d 313 (8th Cir. 1965); *Coran Bros. Corp.*, 72 F.T.C. 1 (1967); *Consumer Sales Corp.* v. *Federal Trade Commission*, 198 F.2d 404 (2d Cir. 1952). Failure to name Mr. Ferrone would result in such a loophole, and public interest requires that the Commission take the precautionary measure of including him in its order. Proof that he intends to evade the order is not necessary, *Coran Bros., supra;* the opportunity to evade is the loophole that must be closed. This opportunity is present since Mr. Ferrone has been engaged in the retail carpet business for several years, and is presently very much involved in the retail carpet business where his duties include the training of salesmen, the receiving of inventory, and the general supervision of a store. That his current employment involves a business retailing carpeting largely "in store" is of no consequence. "Bait and switch" tactics can be used just as easily in the store as in the customer's home.

THE UNFAIR AND DECEPTIVE ACTS AND PRACTICES

"Bait and Switch"

"Bait and switch" sales tactics have long been held to violate Section 5 of the Federal Trade Commission Act. The use of deceptive advertising to obtain leads to customers for the purpose of selling them other, higher priced goods is deceptive and unfair and has been repeatedly condemned by the Commission. *Tashof* v. *Federal Trade Commission*, 437 F.2d 707 (D.C. Cir. 1970); *Consumers Products of America, Inc.* v. *Federal Trade Commission*, 400 F.2d 930 (3rd Cir. 1968), *cert. denied*, 393 U.S. 1088 (1969); *Guides Against Bait Advertising*, 16 C.F.R. §238 (1974). The "bait" here is poor quality carpet, advertised in such a way as to make it appear to be a tremendous bargain. Exhibition of this carpet was generally sufficient to switch the prospective customer to higher priced carpeting (Finding 13, *supra; see also, Guides Against Bait Advertising*, 16 C.F.R. §238.3(e)). It is not essential to show evidence of actual disparagement of the advertised product to find "bait and switch," though [16] respondents' salesmen did in fact resort to disparagement when necessary (Finding 14, *supra*). The Commission may infer that

customers were "switched" from the advertised product by evidence of bait advertising and minimal sales of the advertised product. *Tashof* v. *Federal Trade Commission*, *supra*, at 709-710; *see also*, *National Lead Co.* v. *Federal Trade Commission*, 227 F.2d 825, 832 (7th Cir. 1955), *rev'd on other grounds*, 352 U.S. 419 (1957). It is highly inconceivable that respondents would have engaged in substantial newspaper and television advertising for the few sales of featured carpeting that were made. There were obviously other business incentives involved.

Although the consumer testimony in these proceedings did not make it clear which of respondents' advertisements provided the "bait" for which customers, it is obvious that customers obtained respondents' telephone number from *some* advertisement, and the testimony showed that they were attracted by prices and descriptions of carpet similar to those in respondents' advertisements in the record. Moreover, sales of the advertised carpet were, in fact, minimal (Finding 15, *supra*). These facts, in combination with the poor appearance of the product and disparagement by respondents' salesmen, provide ample evidence of a "bait and switch" sales scheme.

Respondents make a strong argument that they did not refuse to show, demonstrate or sell the advertised carpeting (RPF, pp. 3-14), and the record does establish that some witnesses decided to buy carpeting on the basis of comparing the more expensive goods to the advertised goods (RPF, p. 6). The undisputed fact remains, however, that the appearance of the advertised carpeting was sufficient in and of itself to "switch" the prospective customer to the more expensive carpeting. An integral part of respondents' business operation, therefore, consisted of "baiting" consumers by means of advertising inexpensive items and subsequently inducing customers, through demonstration of the advertised inexpensive items in comparison with the more expensive carpeting, to purchase the more expensive and profitable items. Thus, respondents' purpose was accomplished, although perhaps not as egregious as in other "bait and switch" schemes where flagrant disparagement [17] and refusals to sell the advertised items have been exposed.[2]

USE OF "SALE"

Respondents' use of the word "sale" and words of similar import in their advertisements is unfair, misleading, and deceptive in the same way that the advertisement of a "sale" price in connection with a

[2] Respondents also argue (RPF, p. 18) that, during the period February through July 1972, salesmen were compensated on a straight salary basis; thus, the method of compensation being used did not discourage sales of the advertised carpeting. This argument ignores the fact that during this period most sales were made by Mr. Bandy and Mr. Ferrone who were the owners of the corporate respondent, and thus shared in the profits realized from sales of the more expensive goods (Bandy, Tr. 14).

fictitious "regular" price has been found to be unfair. *Giant Food, Inc.* v. *Federal Trade Commission*, 332 F.2d 977 (D.C. Cir. 1963). In each case, because there is no actual, established regular price, there can be no "sale" price, and therefore no "savings" to the consumer; representations to the contrary are grossly unfair. See also the Commission's *Guides Against Deceptive Pricing*, 16 C.F.R. §233.1(e)(1974).

Respondents argue that $189 was the regular price of the advertised carpeting during the February — July 1972 period, and that the word "sale" was not used in the $189 advertisements (RPF, pp. 19-22). Without conceding that $189 was a bona fide regular selling price, it is observed that the T.V. commercial used during the relevant period represented that at the $189 price "EXTRA SAVINGS" could be realized during what was stated to be a "* * * SENSATIONAL CASH SAVING CARPET CARNIVAL" (CX 300).

"FREE" PADDING AND INSTALLATION

To represent that merchandise or services are offered "free" in connection with the sale of other merchandise or services, there must have been an established regular price on which to base the "free" offer. *Federal Trade Commission* v. [18] *Mary Carter Paint Co., et al.*, 382 U.S. 46 (1965). It is plainly deceptive to represent that padding and installation are "free" if their cost, unknown to the purchaser, is included in the price of the advertised merchandise as was done here (Finding 20, *supra*). *Sunshine Art Studios, Inc.* v. *Federal Trade Commission*, 481 F.2d 1171 (1st Cir. 1973); *Mary Carter Paint Co., et al., supra;* see also *Guide Concerning Use of the Word "Free" and Similar Representations*, 16 C.F.R. §251 (1974).

USE OF "SQUARE FEET"

Respondents' practices of advertising carpet in terms of square feet only, and of failing to disclose in their ads the higher rates charged for quantities of carpeting beyond the advertised amounts, are unfair and have the tendency and capacity to deceive the public. The deceptiveness of these representations was enhanced by respondents' reference in the advertisements to three rooms of wall to wall carpeting in conjunction with the use of square feet. It is of no matter that customers were informed of the true facts concerning respondents' offers before they made their purchases. The harm was done on initial contact, in that these practices served to enhance the "bait" quality of respondents' advertisements. *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).

Actual deception of the public is not necessary to a finding of violation, a tendency and capacity to deceive being sufficient. *Feil* v. *Federal Trade Commission*, 285 F.2d 879 (9th Cir. 1960); *Montgomery Ward & Co.* v. *Federal Trade Commission*, 379 F.2d 666 (7th Cir. 1967). The Federal Trade Commission Act was not intended to protect "sophisticates," *Giant Food, Inc.* v. *Federal Trade Commission, supra*, but the unthinking and credulous who do not stop to analyze but are governed by general impressions. *Helbros Watch Company, Inc.* v. *Federal Trade Commission*, 310 F.2d 868 (D.C. Cir. 1962), *cert. denied*, 372 U.S. 976 (1963). It is therefore concluded that, in the context of *all* representations made, the use of square feet has the tendency and capacity to deceive the consumer. *J. B. Williams Co.* v. *Federal Trade Commission*, 381 F.2d 884 (6th Cir. 1967). [**19**]

OTHER PRACTICES

It is an unfair trade practice to manipulate a prospective customer by high pressure tactics which preclude a careful consideration of the entire transaction, free from the influence of deceptive sales technique. There is substantial evidence in this record that respondents used such tactics on occasion to induce customers to sign a purchase contract on the initial contact (Finding 28, *supra*). *Household Sewing Machine Co., Inc.*, 76 F.T.C. 207, 242-243 (1969); *Federal Trade Commission* v. *National Lead Co.*, 352 U.S. 173 (1944); see Trade Regulation Rule, *Cooling Off Period for Door-to-Door Sales*, 16 C.F.R. §429 (1974).

THE REMEDY

The Commission is vested with broad discretion in determining the type of order necessary to insure the discontinuance of the unlawful practice found. *Federal Trade Commission* v. *Colgate-Palmolive Co.*, 380 U.S. 374 (1965). The Commission's discretion is limited only by the requirement that the remedy be reasonably related to the unlawful practices. *Jacob Siegel Co.* v. *Federal Trade Commission*, 327 U.S. 608, 613 (1946); *Federal Trade Commission* v. *Ruberoid Co.*, 343 U.S. 470 (1952). It is settled that the Commission, as part of its remedial powers, has the authority to require respondents to take affirmative action, or make affirmative statements in advertising. *Federal Trade Commission* v. *Colgate-Palmolive, supra; American Cyanamid Co.* v. *Federal Trade Commission*, 401 F.2d 574 (6th Cir. 1968), *cert. denied*, 394 U.S. 920 (1969). An order going so far as to require disclosures and disclaimers that detracted greatly from the image of the advertiser was

upheld in *LaSalle Extension University*, 78 F.T.C. 1272 (1971), *aff'd.* No. 71-1648, 7th Cir., Oct. 23, 1973 (unreported).

In the "Notice Order"* attached to the complaint, and in their proposed order, complaint counsel have included a provision requiring respondents to disclose clearly and conspicuously, by means of a black-bordered notice in all their advertisements, the fact that they have been found to "engage in bait and switch advertising."

Granted the wide leeway given the Commission in framing orders, nevertheless the undersigned will not adopt in this [20] case complaint counsel's proposal for a black-bordered "consumer warning" provision in respondents' future advertising (CPF, pp. 47, 51-52). In two recent cases, *Wilbanks Carpet Specialists*, Dkt. No. 8933 [84 F.T.C. 510], and *Tri-State Carpets, Inc.*, Dkt. No. 8945 [84 F.T.C. 1078], the Commission has struck similar warning provisions from orders issued in the initial decisions. The facts in those two cases are very similar to those in the case at hand. Therefore the undersigned sees no reason for incorporating the proposed warning provision in the order to be entered in this case.

The remaining provisions of the order entered herewith are reasonably related to the violations of law which the record discloses, and are necessary to correct such violations and to prevent evasion of the order.

CONCLUSIONS OF LAW

1. The Federal Trade Commission has had, and now has, jurisdiction over respondents, and the acts and practices charged in the complaint and involved herein took place in commerce, as "commerce" is defined in the Federal Trade Commission Act.

2. Respondents have engaged in false, misleading and deceptive advertising, and used unfair and deceptive acts and practices in the offering for sale, sale and distribution of carpeting and floor coverings.

3. The aforesaid acts and practices of respondents were to the prejudice and injury of the public and of respondents' competitors and constituted deceptive acts or practices and unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act.

4. In the course and conduct of their business, respondents have failed to comply with the Textile Fiber Products Identification Act and the rules and regulations promulgated thereunder and, pursuant to Section 7(a) and (b) of the Textile Fiber Products Identification Act, such failure constitutes a violation of the Federal Trade Commission Act. [21]

* Not reproduced herein.

ORDER

I

It is ordered, That respondents Carpets "R" Us, Inc., a corporation, its successors and assigns, and its officers, and Paul W. Ferrone and Homer Bandy, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution 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 or services for sale when the purpose [22] of the representation is not to sell the offered merchandise or services but to obtain leads or prospects for the sale of other merchandise or services 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 (3) 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 (6) 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

[23] (c) a computation of the net profit from the sales of each advertised product or service at the advertised price.

6. 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 price for additional quantities of such carpet with padding and installation needed.

7. Using the word "Sale," "Savings" 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.

8. Representing, directly or indirectly, orally or in writing, that any 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 [24] 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.

9. 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.

10. 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.

[25] 11. 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.

12. 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, price or value claims and other similar [26] representations as set forth in Paragraphs 7, 8, 9, 10 and 11 of this order are based, and (b) from which the validity of any such representations can be determined.

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

14. 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.

15. 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 [27] three (3) such "free" offers shall be made in the same area in any twelve (12) month period. In such period, respondents' sales in that area of the product or service in the amount, size or quality promoted with the "free" offer shall not exceed fifty percent (50%) of the total volume of its sales of the product or service, in the same amount, size or quality, in the area.

16. Advertising any carpeting or floor covering using as the unit of measurement square feet, unless the unit of measurement square yards is also employed in immediate conjunction therewith and with equal prominence, or using any term or terms, such as "three rooms," which tend to exaggerate the size or quantity of carpeting being offered at the advertised price.

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.

[28] 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

boldface type of a minimum size of ten 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 boldface type the following information and statements in the **[29]** same language, *e.g.*, Spanish, as that used in the contract:

NOTICE OF CANCELLATION

[*enter date of transaction*]

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO [*Name of seller*], AT**[30]** [*address of seller's place of business*], NOT LATER THAN MIDNIGHT OF [*date*].

I HEREBY CANCEL THIS TRANSACTION.

[*Date*]

[*Buyer's signature*]

20. 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.

21. 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.

22. Failing to inform each buyer orally, at the time he signs the contract or purchases the goods or [31] 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 ten (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 ten (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.

[32] *Provided, however,* That nothing contained in Part I of 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 with the provisions of this order, the Commission, upon proper showing, shall make such modifications as may be warranted in the premises.

II

It is further ordered, That respondents Carpets "R" Us, Inc., a corporation, its successors and assigns, and its officers, and Paul W. Ferrone and Homer Bandy, individually and as officers of said corporation, and respondents' agents, representatives, and employees,

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directly or through any corporation, subsidiary, division or other device, in connection with the introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, of any textile fiber product which has been advertised or offered for sale, in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, [33] 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 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. Falsely and deceptively advertising textile products by:

1. Making any representations, by disclosure or by implication, as to fiber content of any textile fiber product in any written advertisement which is used to aid, promote or assist, directly or indirectly, in the sale, or offering for sale, of such textile fiber product unless the same information required to be shown on the stamp, tag, label or other means of identification under Sections 4(b)(1) and (2) of the Textile Fiber Products Identification Act is contained in the said advertisement, [34] except that the percentages of the fibers present in the textile fiber product need not be stated.

2. Failing to set forth in advertising the fiber content of floor covering containing exempted backings, fillings or paddings, that such disclosure relates only to the face, pile or outer surface of such textile fiber products and not to the exempted backings, fillings or paddings.

3. Using a fiber trademark in advertising textile fiber products without a full disclosure of the required fiber content information in at least one instance in said advertisements.

4. Using a fiber trademark in advertising textile fiber products containing only one fiber without such fiber trademark appearing at least once in the advertisement, in immediate proximity and conjunction with the generic name of the fiber, in plainly legible and conspicuous type. [35]

III

It is further ordered, That respondents shall maintain, for at least a one (1) year period, 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, and make such materials available to the Commission staff for inspection and copying upon reasonable notice.

It is further ordered, That respondents shall provide each advertising agency utilized by respondents to obtain leads for the sale of carpeting or floor coverings, or to advertise, promote, or sell carpeting or floor coverings and other merchandise, with a copy of this 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 all present and future personnel of respondents engaged in the offering for sale, sale of any product, consummation of any extension of consumer credit [36] 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 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 this order.

It is further ordered, That the individual respondents, Paul W. Ferrone and Homer Bandy, 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:*

[1] The complaint in this matter was issued on December 7, 1973. It charged respondents Carpets "R" Us, Inc., Paul W. Ferrone, and Homer Bandy, individually and as officers of Carpets "R" Us, with a

variety of unfair and deceptive acts and practices in violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. §45) and with violation of the Textile Fiber Products Identification Act and the implementing rules and regulations promulgated thereunder. Hearings were held before Administrative Law Judge Ernest G. Barnes and an initial decision was rendered on January 15, 1975. Judge Barnes found that respondents had engaged in illegal "bait-[2]and-switch" tactics; had used the word "free" and words such as "sale" in misleading and deceptive ways; had engaged in unfair high-pressure tactics, and had advertised carpet in terms of "square feet" only, which was unfair and had the tendency and capacity to deceive the public.

Respondents have appealed from the initial decision on several procedural and substantive grounds, and ask that the case be dismissed. In the alternative, respondents propose substantial modifications of the order entered by the administrative law judge. Oral argument was waived.

The decision of Judge Barnes is, except as noted herein, affirmed. Except as qualified or changed by this opinion, we adopt his findings and conclusions and his order.

Respondents and counsel supporting the complaint have conveniently organized the issues in their appeal briefs:

I. ALLEGED FAILURE OF THE COMMISSION STAFF TO ADHERE TO PROCEDURAL REQUIREMENTS.

Respondents allege that they were prejudiced by two violations of the Commission's Rules of Practice. They claim they were deprived of an opportunity to negotiate a settlement before issuance of a complaint because they did not receive formal notification from the Bureau of Consumer Protection before the complaint was issued. They also claim their opportunity to negotiate was prejudiced because the complaint issued contained two paragraphs that were not present in the complaint as originally proposed.

[3] On May 24, 1974, the administrative law judge issued an order denying respondents' motion to dismiss those two paragraphs from the complaint. In his order, Judge Barnes discussed both of the alleged errors and correctly concluded that respondents had suffered no substantial prejudice. We adopt his conclusions and his analysis. In addition, with regard to the first claimed error — that notification from the Bureau of Consumer Protection was not received — we note that

respondents received actual notification by means of a phone call from the Regional Office.[1] Respondents deny the adequacy of this notice because it was not transmitted directly from the Bureau. Their conclusion is based on an erroneous interpretation of the rule in question. That rule stated:

> * * * [I]f at any time it appears to the operating Bureau in which the matter is then pending that the execution of a satisfactory agreement is unlikely, such Bureau, after notification to the proposed respondents of its intention to do so, shall submit the matter to the Commission, * * *. Procedures and Rules of Practice, Section 2.34(c) (now superseded).

The rule only specifies "such Bureau, after *notification* to the proposed respondents" (emphasis added), *not* "after *notifying* the proposed respondents," as it would read if the intent was that only notification directly from the operating Bureau would suffice. Therefore, there has not only been no prejudice to respondents, but no violation of the rule has been shown. [4]

II. RESPONDENTS USE OF "BAIT-AND-SWITCH" TACTICS.

Respondents claim there is not "reliable, probative and substantial evidence" to support Judge Barnes' findings of the use of "bait-and-switch" tactics. Respondents have urged that we consider "all the evidence," and not just that most favorable to one side. We have considered all the evidence, and think the initial decision's finding of "bait-and-switch" tactics was clearly correct.[2]

Although, as Judge Barnes correctly ruled,[3] proof of actual written or verbal disparagement is not essential to a finding of "bait and switch,"[4] the record in fact contains several clear examples of disparagement by salesmen.[5] [5] Such disparagement by salesmen is not surprising because the salesmen directly benefited from sales of the more profitable merchandise — as complaint counsel correctly point out, two

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[1] Order Denying Respondents' Motion to Dismiss Paragraphs Seven and Eight of the Complaint at 1-2.

[2] While one must consider all the evidence, and not only that favorable to complaint counsel, one is not required to ignore all but the one or two statements favorable to respondents. While saying that we should consider "all the evidence," respondents suggest several *parts* of the evidence for our attention. For instance, as proof that there was no disparagement of the advertised carpet, respondents offer the testimony of Mrs. Satar: When asked whether the salesman made any remarks about the advertised carpeting, she said: "No. I don't think so * * *." Respondents' Appeal Brief at 12. They omit the sentence that follows: "I really have forgotten now. It has been over two years." (Tr. 287) They also cite Mrs. Copeland's statement that "the salesman didn't say too much about the advertised carpet." Respondents' Appeal Brief at 12. They carefully omit the first part of her answer to the question of what statements were made about the advertised carpet: "Oh, well, he did mention that he had a better grade, you know, grade of carpet, and I believe he went out to the car to get it, but he didn't say too much about the advertised carpet." (Tr. 233)

[3] Initial decision p. 15.

[4] *Tashof* v. *F.T.C.*, 437 F.2d 707, 709-10 (D.C. Cir. 1970).

[5] *E.g.*, Tr. 105, 113, 163, 184-95, 201.

of the three salesmen during the period in question were officers and owners of Carpets "R" Us.[6] Both disparagement by salesmen and a sales plan that discourages sales of the advertised product are indicia of bait-and-switch tactics.[7] Further evidence is found in the minimal sales of the advertised carpeting.[8]

Respondents make much of the fact that two parties said the carpet shown them looked like the sample displayed in their television advertisements.[9] On the other hand, three witnesses said the carpet did not look like the advertised sample.[10] But, as even (unquoted) testimony of the three [6] witnesses quoted by respondents regarding the advertised sample makes clear, the question is not simply whether the offered carpet happened to look like the advertised one looked on television. The question is whether the advertising presentation created a false impression.[11] Respondents' own examples are evidence that customers had been given the false impression that good quality carpeting was available at bargain prices.[12] It is the falsity of the total impression, not merely the similarity of surface appearances, [7] that is

[6] Tr. 14 (Bandy).

[7] *See* Guides Against Bait Advertising, 16 C.F.R. §238 (1975).

[8] *Tashof* v. *Federal Trade Commission*, 437 F.2d 707 (D.C. Cir. 1970). During the relevant period, only 16 of the 170 contracts entered into for carpeting were for the sale carpeting (and only two of those were at or below the sale price). (I.D. p. 8) Respondents claim this gives a misleading impression because some of the 170 sales were for less than wall-to-wall carpeting. But advertising wall-to-wall carpeting "bargains" in order to obtain leads to exploit for the sale of standard size carpets does not insulate a merchant's conduct from challenge. The type of merchandise is still basically the same. *See* Guides Against Bait Advertising, 16 C.F.R. §238.0 (1975).

[9] Respondents' Appeal Brief at 14-15.

[10] Tr. 233, 263, 322.

[11] Guides Against Bait Advertising, 16 C.F.R. §238.2 (1975).

[12] When Mrs. Gilbert, for instance, was asked whether the carpet shown her looked like the carpet on television, she said it did. But when asked what it looked like (two questions earlier), she'd said "It was real thin" (Tr. 115), and she purchased the more expensive carpeting instead. Now, it is not clear why she phoned Carpets "R" Us, but presumably it was *not* to get carpeting that was "real thin."

The other two witnesses cited by respondents are even better examples of the problem. Mr. Fuimaono was asked what the carpet looked like, and he said it looked "the same that I saw on television." But he continued: "Then, both my wife and I were present at the time. We touched the material. * * *" ["And what did you think of the texture and the quality of the carpeting?"] "The first appearance to both of us, and especially me, I think right away I don't want it that quality." [Question] "It was kind of very light and it is not heavy enough for the kind of place that I want to be carpeted." (Tr. 299) In other words, even though it "looked like" the advertised carpet, upon feeling it they found it was not adequate to their needs — and, presumably, not what they had expected.

Finally, respondents cite Mrs. Norman Byrd's testimony that she and her husband had planned to take the advertised carpet. Respondents' Appeal Brief at 15. But what Mrs. Byrd actually said was that they had decided they couldn't afford anything more than the advertised price, and were therefore planning to buy the advertised carpet. How did the carpet appear? "Well, it wasn't much, you know. But, then he told us about the other carpet and compared it." ["Did you think that the advertised carpet was adequate? Were you planning on buying that carpet or did you not plan on buying it after seeing it?"] "We *had* planned on buying it, yes." (Emphasis added). ["What did the salesman do at that point?"] "Well, he said that it would only last for a couple of years. Then he showed us the other carpet. We compared the two." [Question] "Yes, there was no comparison." Respondents apparently read the above exchange as saying that Mrs. Byrd and her husband carefully examined the advertised carpet, decided to buy it, and then realized that even though they could afford nothing more they would spend a great deal more anyway. We read the above exchange as saying that they had decided to spend no more than the advertised carpet cost but were "switched" by being shown the cheap carpet, having it compared with a more expensive carpet, and being told the cheap one would not last long.

determinative. That one is switched only after closely examining or perhaps handling the bait makes the switching no more acceptable.[13]

Finally, there is evidence of bait-and-switch tactics that is not emphasized in the briefs or in the initial decision. The "bait" in this case was (what appeared to be) good quality carpeting complete with free installation and a free pad. Yet even among those customers too poor to afford anything better than the advertised carpeting, almost no one was willing to accept the advertised "free" pad. Respondents [8] say this was a "separate strong rubber pad."[14] But they admit that a "heavier, more expensive padding, 'King Midas' " was available and, "if customers decided on the heavier padding, they were charged accordingly."[15] They quote Mrs. Miller: "I did not like the padding that they had with the advertised carpet," and so, instead of spending $189 and getting "free" padding, she spent $219.[16] Mrs. Miller was not alone. Using respondents' list of sales of the advertised carpet,[17] of the 17 sales only *one* customer ordered a plain "rubber" pad.[18] One can only infer that even the customers with the lowest standards and the least to spend found the "free" pad so self-disparaging or so disparaged that they would not take it. This, by itself, is "bait and switch." The bait is carpeting with a free pad; the customer is then switched from the "free" pad that attracted him in the first place to an (obviously) much more expensive pad. [9]

III. RESPONDENTS' USE OF THE WORDS "SALE," "SAVINGS TODAY," AND WORDS OF SIMILAR IMPORT.

Respondents suggest that "The word (sic) 'savings' and 'sale' are not synonymous and have entirely different connotations." They argue that since the word "sale" was reserved for prices below $189, and only the word "savings" was used with that price, the word "sale" was properly used.[19] The flaw in this line of reasoning is that respondents in their television advertisement did not just say "Save at Carpets 'R' Us." They said:

IT'S IN PROGRESS *NOW* * * * EXTRA SAVINGS ARE YOURS *TODAY* * * * DURING THIS SENSATIONAL CASH SAVING CARPET CARNIVAL * * *

[13] Respondents profess to be "amazed" at Judge Barnes' finding that the advertised carpet was self-disparaging. We are not. One can easily conclude that carpet is self-disparaging without having seen it. This is not, after all, a pornography case. Numerous witnesses testified to the obvious undesirability of the carpet, and neither respondents' amazement nor the fact that a few customers could afford nothing better is proof that his conclusion was erroneous.

[14] Respondents' Appeal Brief at 15.

[15] *Id.* at 9.

[16] *Id.* at 10.

[17] *Id.* at 14.

[18] Twelve customers purchased "King Midas," one purchased a "Mark 4" pad, one used his own, one ordered a "foam rubber" pad, and there is no notation on one order. (CX 117, 126, 127, 129, 132, 134, 147, 149, 144, 145, 147, 251, 252, 124, 131, 275, 254.)

[19] Respondents' Appeal Brief at 20.

Now, what is the purpose and hoped for effect of a sale? Is not the essence of a sale that the merchant has temporarily significantly departed from prior and expected future pricing patterns? A sale "suggests to the consumer the advisability of taking *immediate* advantage of the unusual prices being offered * * *."[20] In short, the *definition* in the consumer's mind of the word "sale" is "savings today," and that is precisely the message respondents conveyed. That they falsely and misleadingly used the definition instead of the word is immaterial either in terms of the harm done or the [10] legal wrong.[21]

IV. THE FINDING OF INDUCEMENT WITHOUT ADEQUATE TIME TO CONSIDER THE PURCHASE AND THE CONSEQUENCES THEREOF.

This finding is clearly supported by the evidence. Once again, even the witnesses cited by respondents offer evidence against them.[22] Respondents suggest that these [11] and similar transgressions are excused because some of the customers retained a right of cancellation.[23] Even if each customer knew he had an enforceable right to cancel his order, initial pressure of the kind found here would not be excused. The power of inertia is a fact in both physics and human affairs. An unexercised right of cancellation does not excuse the harm caused by unfair sales pressures.[24]

V. RESPONDENT FERRONE

The Commission has decided not to exercise its discretion and

[20] Hollywood Carpets, Inc., *et al.*, Dkt. 8983 (Sept. 22, 1975), *Slip Op.*, p. 3 [86 F.T.C. 784 at 816].

[21] There is one aspect of the initial decision that might be misinterpreted. Finding 18 suggests that a merchant can never open business with a sale because, by definition, on the first day of business there can be no "regular" established price from which a reduction can be made. That is not the case. A merchant may open business with a sale if he expects, in good faith, to establish a bona fide regular (higher) price when the temporary period of the opening sale is ended. *Cf.* Guide Concerning Use of the Word "Free" and Similar Representations, 16 C.F.R. §251.1(f) (1975). This has little effect on respondents now that they have established their businesses, but the order should provide that if respondents go into a new line of business they would be allowed to open with a sale.

[22] While Mrs. Copeland, for instance, did say that the salesman didn't "twist her arm," she also said "but he kind of stayed on me, you know, until we signed the contract." (Tr. 244-5) One of the more egregious cases is that of Mr. Washington, whom respondents cite as saying he wanted "quick service" because he had some house guests coming. (Respondents' Appeal Brief at 24; Tr. 325) Mr. Washington also said that after he had picked out a desirable carpet from the expensive collection the salesman "said it was a good selection because he had just finished carpeting his daughter's house with this particular carpet and that he just had enough to carpet downstairs from the living room, dining room and the hallway." (Tr. 324)

That sort of sales pitch was not unusual. For instance, Mrs. Byrd said: "[W]e didn't have time to think about it because he said that the amount he gave us for the carpet wouldn't, you know, last the next day. We had to sign right then." (Tr. 132) When Elizabeth Morrill had picked out an expensive carpet but, when told the price, had said "I just couldn't pay that much," the salesman said, "Well, I think I have a partial bolt of this very carpeting in the warehouse, and it will be the right amount to cover the area that you have here." (Tr. 146) Witness Barnes was told that the advertised carpet wouldn't go with her furniture "anyway, and we have this, so much left, and I will sell it to you at a price. If you don't buy it today, I wouldn't guarantee to you that it would be there tomorrow. Somebody else might buy it." (Tr. 215).

[23] Respondents' Appeal Brief at 22-4.

[24] *Cf. Exposition Press, Inc. v. F.T.C.*, 295 F.2d 869 (2d Cir. 1961), *cert. denied*, 370 U.S. 917 (1962).

dismiss the complaint against respondent Ferrone. His allegedly poor health has not kept him from being gainfully employed in the carpet business and there is no reason to think it would keep him from repeating the violations we have found him and "Carpets 'R' Us" liable for. Nor are we moved by his claim that his following our order will work [12] financial hardship. That the amount of "hardship" is great is doubtful; that he has committed violations requiring a check against reoccurrence is not.[25]

VI. DISCUSSION OF THE PROPOSED ORDER

Respondents suggest several reasons why the order in this case should be less comprehensive than in other bait-and-switch cases we have considered. Respondents argue, for instance, that they did not originate bait-and-switch advertising.[26] But if the Commission only issued remedial and preventive orders against the original sinners, there would be few orders indeed.[27] Nor is the argument that respondents have no intention to sell products other than carpets and floor coverings a persuasive reason to limit the order's applicability to those products.[28] If respondents never sell any other products, a broader order will be of no additional burden; if respondents do sell other products, it is important that they be prevented from using the easily transferable technique of bait and switch. Finally, respondents argue that no finding has been made that consumers were misled or deceived by the illegal use of the term "continuous [13] nylon."[29] The Textile Fiber Products Identification Act is phrased neither in terms of intent nor in terms of result, however, but rather is an absolute bar to certain misuses of textile identifications.

In short, we are not persuaded that the order in this case should be substantially less comprehensive than in other bait-and-switch cases we have considered. Regardless of how honorable respondents' intentions may have been, when clear violations of the Federal Trade Commission Act have occurred the Commission would be remiss in its duties if it did not reduce the temptation offered by similar illegal business methods by to some extent fencing respondents in. The courts have recognized the importance of this role of the Commission, and we have been

[25] In keeping with the Commission's recent practice, however, we have limited the reporting requirements to ten years. *See* pp. 13-14 *infra*.

[26] Respondents' Appeal Brief at 30.

[27] *Cf.* Genesis 3.

[28] Respondents' Appeal Brief at 29.

[29] *Id.* at 30.

granted a wide discretion to choose a remedy that will cope with the unlawful practices found.[30] The remedy chosen in this case is necessary to do so.

There is one reduction in the severity of the administrative law judge's order that we do deem appropriate. This concerns the reporting requirements of the order. While we do not necessarily believe the ALJ's provision would make the obtaining of future employment more difficult, as suggested by respondents,[31] we do think it unreasonably burdensome [14] that only death can release respondents from the requirement of reporting employment changes to the Federal Trade Commission. Surely a period lasting a decade provides sufficient supervision.

An appropriate order is appended.

FINAL ORDER

This matter having been considered by the Commission upon appeal of respondents from the initial decision, and the Commission, for the reasons stated in the accompanying opinion, having granted the appeal in part:

It is ordered, That the following portions of the initial decision of the administrative law judge be, and they hereby are, adopted as the Findings of Fact and Conclusions of Law of the Commission: pp. 3-9 (except for finding 18, p. 9); pp. 9-17 (except for the second full sentence on p. 17); pp. 17-20 (except for the last full paragraph on p. 19 and the carryover paragraph, pp. 19-20).

Other findings of fact and conclusions of law of the Commission are contained in the accompanying opinion.

It is further ordered, That the following order to cease and desist be, and it hereby is entered:

ORDER

I

It is ordered, That respondents Carpets "R" Us, Inc., a corporation, its successors and assigns, and its officers, and Paul W. Ferrone and Homer Bandy, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of carpeting and floor coverings, or any other article of merchandise, in

[30] *Fedders* v. *F.T.C.*, Civil No. 75-4051 (2d Cir., filed 1/21/76).

[31] Respondents' Appeal Brief at 32.

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 or services for sale when the purpose of the representation is not to sell the offered merchandise or services but to obtain leads or prospects for the sale of other merchandise or services 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 (3) 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 (6) 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. 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 price for additional quantities of such carpet under the same conditions.

7. Using the words "Sale," "Savings Now," "Clearance," 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 or, if the merchandise or service is being newly introduced, from the actual bona fide price respondents in good faith plan to establish when the temporary period of the opening sale is ended.

8. Representing, directly or indirectly, orally or in writing, that any 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.

9. Representing, orally or in writing, directly or by implication, that, by purchasing any of said merchandise or services, customers are afforded savings amounting to the difference between respondents' stated price and respondents' former price unless such merchandise or services 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.

10. 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.

11. 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.

12. 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, price or value claims and other similar representations as set forth in Paragraphs 7, 8, 9, 10, and 11 of this order are based, and (b) from which the validity of any such representations can be determined.

13. 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.

14. 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, although there may be a regular price, but other material factors such as quantity, quality, or size are arrived at through bargaining.

15. 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 (3) such "free" offers shall be made in the same area in any twelve (12) month period. In such period, respondents' sales in that area of the product or service in the amount, size, or quality promoted with the "free" offer shall not exceed fifty percent (50%) of the total volume of its sales in that area of the product or service in the same amount, size, or quality.

16. Advertising any carpeting or floor covering using as the unit of measurement square feet, unless the unit of measurement square yards is also employed in immediate conjunction therewith and with equal prominence, or using any spatially descriptive term or terms, such as "three rooms," if those terms tend to exaggerate the size or quantity of carpeting being offered at the advertised price.

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 boldface type of a minimum size of ten 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 boldface type the following information and statements in the same language, *e.g.*, Spanish, as that used in the contract:

NOTICE OF CANCELLATION

[*enter date of transaction*]

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY, IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO [*Name of seller*] AT [*address of seller's place of business*], NOT LATER THAN MIDNIGHT OF [*DATE*].

I HEREBY CANCEL THIS TRANSACTION.

[*Date*]

[*Buyer's signature*]

20. 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.

21. 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.

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 ten (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 ten (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.

Provided, however, That nothing contained in Part I of 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 with the provisions of this order, the Commission, upon proper showing, shall make such modifications as may be warranted.

II

It is further ordered, That respondents Carpets "R" Us, Inc., a corporation, its successors and assigns, and its officers, and Paul W. Ferrone and Homer Bandy, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation or

causing to be transported, of any textile fiber product which has been advertised or offered for sale, in commerce; 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 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. Falsely and deceptively advertising textile products by:

1. Making any representations, by disclosure or by implication, as to fiber content of any textile fiber product in any written advertisement which is used to aid, promote or assist, directly or indirectly, in the sale, or offering for sale, of such textile fiber product unless the same information required to be shown on the stamp, tag, label or other means of identification under Sections 4(b)(1) and (2) of the Textile Fiber Products Identification Act is contained in the said advertisement, except that the percentages of the fibers present in the textile fiber product need not be stated.

2. Failing to set forth, in advertising the fiber content of floor covering containing exempted backings, fillings or paddings, that such disclosure relates only to the face, pile or outer surface of such textile fiber products and not to the exempted backings, fillings or paddings.

3. Using a fiber trademark in advertising textile fiber products without a full disclosure of the required fiber content information in at least one instance in said advertisements.

4. Using a fiber trademark in advertising textile fiber products containing only one fiber without such fiber trademark appearing at least once in the advertisement, in immediate proximity and conjunction with the generic name of the fiber, in plainly legible and conspicuous type.

III

It is further ordered, That respondents shall maintain, for at least a one (1) year period, 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, and make such materials available to

the Commission staff for inspection and copying upon reasonable notice.

It is further ordered, That respondents shall provide each advertising agency utilized by respondents to obtain leads for the sale of carpeting or floor coverings, or to advertise, promote, or sell carpeting or floor coverings and other merchandise, with a copy of this order.

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

It is further ordered, That respondents deliver a copy of this order to all present and future personnel of respondents engaged in the sale or offering for sale of any product, in the consummation of any extension of consumer credit, or in any aspect of the 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 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 this order.

It is further ordered, That, for ten years following the effective date of this order, each individual respondent named herein promptly notify the Commission of every discontinuance of the respondent's business or employment and of every affiliation with a new business or employment. Each such notice shall include the respondents' new business address and a statement as to the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with that business or employment.

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IN THE MATTERS OF

NATIONAL HOUSEWARES, INC., ET AL.—Docket 8733

EMDEKO INTERNATIONAL, INC., ET AL.—Docket 8973

Order, Feb. 26, 1976

Respondents' motion for an order that complaint counsel furnish them copies of three memoranda prepared by members of Commission's staff remanded to administrative law judge for decision and determination whether an immediate appeal would be appropriate.

Appearances

For the Commission: *Ralph E. Stone, Gerald E. Wright* and *John M. Porter.*

For the respondents: *Edwin S. Rockefeller* and *Alan M. Frey, Bierbower & Rockefeller*, Washington, D.C.

ORDER REMANDING MOTION TO ADMINISTRATIVE LAW JUDGE

Respondents have moved for an order that complaint counsel furnish them copies of three memoranda prepared by members of the Commission's staff. The administrative law judge had previously denied respondents' application for discovery of these documents on the grounds that they were not relevant to any of the issues in these cases and they were privileged. Respondents now claim that the question of the discoverability of the documents has been resolved because they were included in a file respondents were permitted to inspect.

The administrative law judge has certified the motion to the Commission on the ground that "only the Commission has the authority to direct complaint counsel to disregard [his] order * * *." Certification of Respondents' Motion for Appropriate Relief, February 3, 1976, p. 2. However, the original application for the staff memoranda was clearly within the law judge's authority to decide, as is the instant motion. See Rules of Practice Section 3.36. Interlocutory review of a law judge's denial of such motions is available only upon a determination by the judge "in writing with justification in support thereof, that the ruling involves a controlling question of law or policy as to which there is substantial ground for difference of opinion and that an immediate appeal from the ruling may materially advance the ultimate termination of the litigation or subsequent review will be an inadequate remedy." Rules of Practice, Section 3.23(b). The law judge should, therefore, decide the instant motion and then determine whether an

immediate appeal would be appropriate under Rule 3.23(b). See *J.J. Newberry Co.*, 80 F.T.C. 1037 (1972). Accordingly,

It is ordered, That the aforesaid motion be, and it hereby is, remanded to the administrative law judge.

IN THE MATTER OF

PUBCO CORPORATION, ET AL.

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

Docket C-2799. Complaint, Feb. 27, 1976—Decision, Feb. 27, 1976

Consent order requiring a Washington, D.C., publishing firm and its Cornwells Heights, Pa., subsidiary which sells and distributes encyclopedia and books, among other things to cease misrepresenting that delinquent accounts will be reported to credit bureaus; misrepresenting expenses incurred during the debt collection process must be borne by the alleged debtor; misrepresenting collection notices sent to debtors by respondent are from an independent collection agency; and using other deceptive means to collect delinquent accounts from purchasers of their products.

Appearances

For the Commission: *Robert G. Day.*

For the respondents: *Helen Lee Sheehan, Feldman & Sheehan,* Washington, 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 Pubco Corporation, a corporation, and The Publishers Agency, Inc., a corporation, also trading and doing business as Consolidated Collection Agency, hereinafter sometimes 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 Pubco Corporation 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 1250 Connecticut Ave., N.W., Washington, D.C. Respondent Pubco Corporation dominates and controls the acts and practices of its wholly-owned subsidiary, The Publishers Agency, Inc. Respondent Pubco Corporation was formerly named Publishers Company, Inc.

Respondent The Publishers Agency, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania with its principal office and place of business located at 3399 Forrest Rd., Cornwells Heights, Pennsylvania.

Respondent The Publishers Agency, Inc., also trades and does business as Consolidated Collection Agency.

The aforementioned respondents cooperate and act together to bring about the acts and practices hereinafter set forth.

PAR. 2. Respondent Pubco Corporation is now, and for some time last past has been, engaged in the publishing and printing business through various subsidiary corporations.

Respondent The Publishers Agency, Inc. is now, and for some time last past has been, engaged in the offering for sale, sale and distribution of encyclopedia and books to the general public and in the collection of accounts resulting from the sale of such encyclopedia and books.

PAR. 3. In the course and conduct of their aforesaid business, respondents now cause, and for some time last past have caused, their products, when sold, to be shipped from their place of business in the Commonwealth of Pennsylvania, and from other locations in various other States of the United States, to purchasers thereof located in various other States of the United States and in various foreign countries.

In the course and conduct of their aforesaid business, respondents now cause, and for some time last past have caused, debt collection letters to be mailed, through the facilities of the United States Postal Service, from their place of business located in the Commonwealth of Pennsylvania to alleged debtors located throughout the United States and in various foreign countries. The causing of such letters to be mailed to such persons is an integral part of respondents' sales methods.

Accordingly, respondents have maintained, and now maintain, a substantial 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 their aforesaid business, and in furtherance of a program for inducing the payment of alleged delinquent accounts by purchasers of their encyclopedia and books, respondents have made, and are now making, numerous statements and representations in printed forms and letters and other printed material which respondents mail, or cause to be mailed, to alleged delinquent debtors.

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

1. Statements and representations on forms and letters with the letterhead "The Publishers Agency, Inc.":

We must report all delinquent accounts with Credit Bureaus throughout the country.

Unless we hear from you in Ten Days time, suit will be instituted for the above amount.

We will have no alternative but to request the authorities to take action to collect your account.

Our Vice President — has advised us to place your account with a local collection agency. We are reluctant to initiate this action subjecting you to their methods of collection. You will be responsible for all of the additional expenses incurred during this process.

2. Statements and representations on forms and letters with the letterhead "Consolidated Collection Agency":

We have been retained by The Publishers Agency, Inc., who made a formal creditors complaint listing you in default in payment on your account.

Representatives in all the judicial districts of the United States and Canada.

Credit Reports — Special Investigations — Skips Located — Member of Credit Bureaus and Credit Associations throughout the United States.

Failure to hear from you in ten days will result in our forwarding this claim to our attorney with instructions to institute legal action.

3. Statement and representation on form without a letterhead:

Notice of Draft for Suit

4. Statements and representations on forms and letters with the letterhead "Law Office Harry Wolov;"

Law Office Harry Wolov Forrest Road, Expressway 95 Industrial Center Cornwells Heights, Pennsylvania 19020

I represent The Publishers Agency, Inc. of this city in the matter of $ ———, constituting the balance due and owing my client for merchandise sold and delivered to you in accordance with a contract which you executed.

Please be advised therefore, that unless I receive your check or money order within 10 days, I shall be obligated to institute proceedings for the recovery of said monies.

I shall have no alternative except to cause legal proceedings to be instituted against you to protect the legal interests of my client.

I shall without further notice to you, forward this matter to my corresponding attorney in your community with instructions that legal proceedings be instituted against you forthwith.

I was urged by my client to institute legal proceedings against you for the recovery of the full balance due.

If this matter were referred to an attorney in your community, it would be accompanied with specific instructions to institute legal action against you.

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, respondents have represented, and are now representing, directly or by implication, that:

1. All delinquent accounts are reported to credit bureaus throughout the United States.

2. Legal action will be instituted against all debtors who fail to reply within 10 days to a collection notice, which threatens such action.

3. The respondents will request government officials to collect delinquent accounts prior to the alleged debt being reduced to a judgment.

4. The debtor will have to pay a collection agency's cost of collecting the debt.

5. Consolidated Collection Agency is an independent collection agency retained by respondents to collect respondents' delinquent accounts.

6. Consolidated Collection Agency has collection representatives in all the judicial districts of the United States and Canada.

7. Consolidated Collection Agency is engaged in the business of conducting investigations, locating skips and providing credit reports.

8. Failure of a debtor to reply to a collection notice from Consolidated Collection Agency will result in a legal action being filed by an attorney.

9. The form bearing the title "Notice of Draft for Suit" is a notice issued by a court of law.

10. The account has been referred to an attorney, that the letter or form was sent by an attorney, that files have been transmitted to an attorney, or that an attorney is actively involved in collecting or reviewing that account in preparation for institution of a legal action.

11. Failure of a debtor to pay the alleged debt in response to a collection letter from "Law Office Harry Wolov" will result in the account being forwarded to an attorney in the debtor's community with specific instructions to institute a legal action.

PAR. 6. In truth and in fact:

1. All delinquent accounts are not reported to credit bureaus throughout the United States.

2. Legal action will not be instituted against all debtors who fail to reply, within 10 days, to a collection notice, which threatens such action.

3. The respondents will not request government officials to collect delinquent accounts prior to the alleged debt being reduced to a judgment.

4. The debtor does not normally have to pay a collection agency's expenses in collecting an alleged debt. Such expenses are normally paid by the collection agency, from the commission it receives from the respondents.

5. Consolidated Collection Agency is not an independent collection agency retained by respondents to collect respondents' delinquent accounts. Consolidated Collection Agency is a fictitious name used by The Publishers Agency, Inc., in the collection of its own accounts.

6. Consolidated Collection Agency does not have collection representatives in all the judicial districts of the United States and Canada.

7. Consolidated Collection Agency is not engaged in the business of conducting investigations, locating skips and providing credit reports. The sole business of Consolidated Collection Agency is the collection of accounts for The Publishers Agency, Inc.

8. Failure of a debtor to reply to a collection notice from Consolidated Collection Agency will not result in a legal action being filed by an attorney.

9. The form bearing the title "Notice of Draft for Suit" is not a notice issued by a court of law. Such form is a collection notice used by The Publishers Agency, Inc.

10. No referral of the alleged delinquent account to an attorney has been made, no letter has been sent by an attorney, no files have been transmitted to an attorney and no attorney is actively involved, at this stage of the collection activity.

11. Failure of a debtor to pay the alleged debt in response to a collection letter carrying the letterhead "Law Office Harry Wolov" will not result in an account being forwarded to an attorney in the debtor's community with specific instructions to institute legal action.

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

PAR. 7. The use by the respondents of the aforesaid false, misleading and deceptive statements and representations has had, and now has, the capacity and tendency to mislead alleged debtors into the payment of the alleged debts by reason of their erroneous and mistaken belief that said statements and representations were, and are, true.

PAR. 8. 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 engaged in the sale of products and services of the same general kind and nature as these sold by the respondents.

PAR. 9. The aforesaid acts and practices of the 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 Commission having heretofore determined to issue its complaint charging the respondents 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 respondents 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 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 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 considered the comments filed thereafter pursuant to Section 2.34 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 Pubco Corporation 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 1250 Connecticut Ave., N.W., Washington, D.C. Respondent Pubco Corporation dominates and controls the acts and practices of its wholly-owned subsidiary, The Publishers Agency, Inc.

Respondent The Publishers Agency, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania with its principal office and place of business located at 3399 Forrest Rd., Cornwells Heights, Pennsylvania. Respondent The Publishers Agency, Inc., also trades and does business as Consolidated Collection Agency.

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 Pubco Corporation, a corporation, and The Publishers Agency, Inc., a corporation, trading and doing business as Consolidated Collection Agency, or under any other name or names, and 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 collection of, or attempting to collect, or assisting in the collection of, or inducing, or attempting to induce, the payment of, accounts, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission

Act, as amended, shall forthwith cease and desist from representing, orally or in writing, directly or by implication, that:

1. Delinquent accounts are reported to credit bureaus, unless such representation is true.

2. Government officials will be requested to collect a delinquent account, prior to the account being reduced to a judgment.

3. Any expense of collection, other than those costs customarily levied against losing defendents by courts of law, will be borne by the alleged debtor.

4. Collection notices sent to debtors by respondents are sent by a collection agency independent of respondents.

5. Respondents have a collection representative in any locality where they do not have such a representative.

6. Respondents are engaged in any business in which they are not engaged.

7. Collection notices sent to debtors by respondents are legal notices issued by a court of law, or otherwise misrepresenting the legal effect of any collection notice.

8. A delinquent account will be referred to an attorney, upon the debtor's failure to satisfactorily reply to a collection notice, unless such action will result from such failure, at that stage of the collection process.

9. An account has been referred to an attorney or that an attorney is actively involved in collecting or reviewing an account, unless, and until, such representation is true.

10. Files have been moved, transferred or reviewed, or directions issued, or other action requested, authorized or directed, to, or by, an attorney, unless, and until, such representation is true.

11. Communications to an alleged debtor are from an attorney when, in fact, no attorney is actively involved in reviewing the case or when such attorney does not offer to, and does not, in fact, subsequently deal directly with any communication to him, or her, from the alleged debtor.

12. Legal action *will* be taken against a delinquent debtor unless payment is made on a delinquent account; *provided, however*, that it shall be a defense in any enforcement proceeding brought hereunder for respondents to establish that they do, in fact, take such legal action when payment is not made in *all* cases in which the representation is made and the delinquent debtor remains subject to service of process at a known, good address.

13. Legal action *may* be taken against a delinquent debtor unless payment is made on a delinquent account; *provided, however*, that it shall be a defense in any enforcement proceeding brought for

respondents to establish that they do in fact take such legal action against a *majority* of debtors to whom the representation is made who do not make payment on such delinquent accounts; *and provided further*, that it shall not be a violation of this subsection for respondents to represent that they may refer the account of a delinquent debtor to an attorney to determine what action is appropriate, if, in fact, they can establish that they do in fact refer the accounts of delinquent debtors to an independent attorney for evaluation of what action is appropriate in a majority of cases in which such representation is made and payment is not made on an account.

14. Legal action has been taken and suit filed against a delinquent debtor; *provided, however*, that it shall be a defense in any enforcement proceeding brought hereunder for respondents to establish that prior to making the representation respondents had, in fact, taken legal action and filed suit against the delinquent debtor.

It is further ordered, That respondents Pubco Corporation, a corporation, and The Publishers Agency, Inc., a corporation, trading and doing business as Consolidated Collection Agency, or under any other name or names, and 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 collection of, or attempting to collect, or assisting in the collection of, or inducing, or attempting to induce, the payment of, accounts, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, shall forthwith cease and desist from using the word "collection," or any other word or words of similar import and meaning but not specifically set forth herein, in any corporate or trade name, in any manner which would indicate, or suggest, that respondents' retail accounts have been turned over to a collection agency independent of respondents or that respondents are engaged in the business of collecting delinquent accounts for others, unless such representation is true.

It is further ordered, That respondents shall forthwith deliver a copy of this order to each of their agents, representatives and employees engaged in the collecting of retail accounts resulting from the sale of books or encyclopedias and shall secure from each such person a signed statement acknowledging receipt of a copy of this order, which such signed statements shall be retained by respondents for the duration of employment of each such person.

It is further ordered, That respondents shall forthwith deliver a copy of this order to each of their operating divisions engaged in the collecting of retail accounts resulting from the sale of books or encyclopedias.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in a corporate respondent which may affect compliance obligations arising out of this order, such as dissolution, assignment or sale resulting in the emergence of a successor corporation or the creation or dissolution of subsidiaries engaged in the collecting of retail accounts resulting from the sale of books or encyclopedias; but the provisions hereof shall not prevent any such corporate respondent from assigning or selling its accounts in bulk to collection agencies or finance companies not affiliated with corporate respondents without such prior notice.

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

VITAMIN EDUCATION INSTITUTE, ET AL.

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

Docket 8979. Complaint, July 3, 1974—Decision, Mar. 1, 1976

Consent order requiring three Tarzana, Calif., affiliates engaged in selling and distributing vitamin supplements and a dietary regimen to use with those supplements, among other things to cease using deceptive weight loss claims; using words implying professional or institutional connections as part of the corporate or trade name; and to discontinue representing the *Research Report* as a bona fide medical or scientific research report.

Appearances

For the Commission: *David G. Cameron* and *Blanche R. Deight.*

For the respondents: *Lawrence R. Gordon, Gordon, Weinberg & Gordon,* Los Angeles, Calif.

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 Vitamin Education Institute, a corporation, and Certified Research Foundation, a corporation trading and doing business under its own name and as Natural Vitamin Research Council, and Marketing Group One, a corporation, and Herbert B. Pastor, individually and as an officer of the said corporations, 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 Vitamin Education Institute is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 10203 Riverside Dr., North Hollywood, California.

Respondent Certified Research Foundation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, trading and doing business under its own name and as Natural Vitamin Research Council, with its principal office and place

* Reported as amended by administrative law judge's Order Amending Complaint issued Nov. 15, 1974.

of business located at 10203 Riverside Dr., North Hollywood, California.

Respondent Marketing Group One is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 10203 Riverside Dr., North Hollywood, California.

Respondent Herbert B. Pastor is an individual and is an officer of the corporate respondents. He formulates, directs, and controls the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondents.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of dietary vitamin supplements and literature setting forth a diet regimen for weight loss to be followed in conjunction with the use of the said vitamin supplements. The said vitamin supplements come within the classification of food or drugs, as "food" and "drug" are defined in the Federal Trade Commission Act.

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

PAR. 4. In the course and conduct of their aforesaid businesses, respondents have disseminated and now disseminate, and have caused and now cause the dissemination of, certain advertisements concerning the said products by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements inserted in newspapers of general interstate circulation, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of the said products; and have disseminated and now disseminate, and have caused and now cause the dissemination of, certain advertisements concerning the said products by various means, including the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of the said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

Pounds and inches begin to disappear with your first hearty breakfast of eggs, ham, juice, toast and coffee!

Documented weight-losses of 12 pounds, 19 pounds, 28 pounds, and many other fantastic reports have now been Institute Certified.

Thousands and thousands of men and women in the U.S. and Canada are enjoying similar success.

The concentrated power of your "MEGA-VITAMIN" Diet will enable you to eat steaks, chicken, hamburgers (including the buns), plus delicious desserts. Yes, EVEN BREAD and BAKED POTATOES.

In fact, you would have to eat 2! [sic: 2 1/2] entire grapefruits every day, skin included, to get the same weight-loss effect as these super-concentrated Mega-Vitamins.

A newly developed SUPER PROTEIN TABLET, CREATED ESPECIALLY FOR THIS DIET, contains a whopping 570 milligrams of solid natural protein. Each tiny milligram zeros-in on fatty tissues to break down and burn-off many, many times its equivalent weight.

These natural products assimilate into your body faster * * * working on your body while the more common synthetic, chemically manufactured products would still be lying fallow, waiting for your body to accept the foreign object.

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, respondents have represented, and are now representing, directly or by implication:

1. That a breakfast of eggs, ham, juice, toast and coffee is a typical breakfast prescribed as a part of the "MEGA-VITAMIN" Diet regimen.

2. That weight losses as a result of using the "MEGA-VITAMIN" Diet have been documented or independently verified other than by the unsupported assertions of persons claiming to have experienced such weight losses.

3. That respondents are in possession of documentation or independent verification of weight losses as a result of using the "MEGA-VITAMIN" Diet on the part of two thousand or more persons in the United States and Canada.

4. That steaks, hamburgers, and baked potatoes are typical foods prescribed in the "MEGA-VITAMIN" Diet menus.

5. That Mega-Vitamins are responsible, in whole or in part, for weight loss.

6. That the Mega-Vitamin Super Protein Tablet is responsible, in whole or in part, for any breaking down and burning off of fatty tissue resulting from the use of the "MEGA-VITAMIN" Diet.

7. That so-called "natural" ingredients, such as those allegedly used in Mega-Vitamins, are assimilated into the body more quickly than so-called "synthetic" ingredients.

PAR. 6. In truth and in fact:

1. A breakfast of eggs, ham, juice, toast, and coffee is not a typical breakfast prescribed as a part of the "MEGA-VITAMIN" Diet regimen;

meat and toast appear in only one out of the seven suggested breakfast menus per week.

2. Weight losses as a result of using the "MEGA-VITAMIN" Diet have not been documented or independently verified other than by the unsupported assertions of persons claiming to have experienced such weight losses.

3. Respondents are not in possession of documentation or independent verification of weight losses as a result of using the "MEGA-VITAMIN" Diet on the part of two thousand or more persons in the United States and Canada.

4. Steaks, hamburgers, and baked potatoes are not typical foods prescribed in the "MEGA-VITAMIN" Diet regimen; a week of "MEGA-VITAMIN" Diet menus includes only one grilled hamburger patty on one bun, one four-ounce broiled steak, and one small baked potato.

5. Mega-Vitamins are not responsible, in whole or in part, for weight loss; the diet regimen of restricted caloric intake is responsible for any weight loss experience through the use of the "MEGA-VITAMIN" Diet.

6. The Mega-Vitamin Super Protein Tablet is not responsible, in whole or in part, for any breaking down and burning off of fatty tissue resulting from the use of the "MEGA-VITAMIN" Diet; such breaking down and burning off, if any, results from the body's reliance on such tissue for its caloric needs in lieu of excessive caloric intake.

7. So-called "natural" ingredients, such as those allegedly used in the Mega-Vitamins, are not assimilated into the body more quickly than so-called "synthetic" ingredients.

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

PAR. 7. In the course and conduct of their aforesaid businesses, and for the purpose of inducing the acceptance for publication of advertising of their said products, respondents have distributed a booklet entitled *The "Mega-Vitamin" Diet Regimen Research Report*, designating Certified Research Foundation as its source, and which contains numerous statements and representations.

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

> At this time, it is the opinion of this agency [Certified Research Foundation] that, based upon the documentation contained herein, The "MEGA-VITAMIN" Diet Regimen (hereinafter referred to as The Diet) is completely safe, harmless and 100% effective, as claimed.
>
> Apparently, the formulators of The Diet were aware that any practical reducing diet is, first of all, as comfortable as possible.
>
> These certified laboratory reports are available from this research agency.

PAR. 8. 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, respondents have represented, and are now representing, directly or by implication:

1. That Certified Research Foundation is a research agency independent of the creators or distributors of the "MEGA-VITAMIN" Diet.

2. That the booklet entitled *The "Mega-Vitamin" Diet Regimen Research Report* is a bona fide medical or scientific research report.

PAR. 9. In truth and in fact:

1. Certified Research Foundation is not a research agency, nor is it independent of the creators or distributors of the "MEGA-VITAMIN" Diet; it is under the same ownership, direction, and control.

2. The booklet entitled *The "Mega-Vitamin" Diet Regimen Research Report* is not a bona fide medical or scientific research report, but was written entirely by the individual respondent Herbert B. Pastor, who has no medical or scientific qualifications to evaluate the said diet regimen.

Therefore, the statements as set forth in Paragraphs Seven and Eight hereof were and are false, misleading and deceptive.

PAR. 10. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and are now, in substantial competition, in commerce, with corporations, firms, and individuals, in the sale of products of the same general kind and nature as those sold by respondents.

PAR. 11. The use by respondents of 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 into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 12. 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 or deceptive acts or practices in commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having issued its complaint on July 3, 1974, charging respondents with violation of Sections 5 and 12 of the Federal Trade Commission Act, and the respondents having been served with a copy

of that complaint, and the administrative law judge having issued his order on November 15, 1974, amending the said complaint in accordance with Sections 3.15(a)(1) and 3.22 of the Commission's Rules, and the respondents having been served with a copy of that order; and

The Commission having duly determined upon a joint motion of counsel supporting the complaint and respondents' counsel that in the circumstances presented, the public interest would be served by withdrawal of the matter from adjudication pursuant to Section 3.25(c) of the Commission's Rules; and

The respondents and counsel supporting the complaint having executed an agreement 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 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, as amended, 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, now in further conformity with the procedure prescribed in Section 3.25(d) of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Respondent Vitamin Education Institute is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 18340 Ventura Blvd., Tarzana, California.

Respondent Certified Research Foundation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, trading and doing business under its own name and as Natural Vitamin Research Council, with its principal office and place of business located at 18340 Ventura Blvd., Tarzana, California.

Respondent Marketing Group One is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 18340 Ventura Blvd., Tarzana, California.

Respondent Herbert B. Pastor is an individual and is an officer of the corporate respondents. He formulates, directs, and controls the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondents.

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 Vitamin Education Institute, a corporation, and Certified Research Foundation, a corporation trading and doing business under its own name, or as Natural Vitamin Research Council, or under any other name or names, and Marketing Group One, a corporation, and Herbert B. Pastor, individually and as an officer of the said corporations, their successors and assigns, and respondents' 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 vitamin supplements or any other products, do forthwith cease and desist from:

1. Disseminating, or causing to be disseminated, by means of the United States mails or by any means in or having an effect upon commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, any advertisement which represents, directly or by implication, that:

(a) Specified food items are typical of a meal or meals included in a weight reduction diet regimen, or are typical of the regimen as a whole, where such is not the case, or otherwise misrepresents any fact concerning such a regimen.

(b) Respondents are in possession of documentation or independent verification of specified weight losses or other therapeutic or beneficial effects purporting to be the result of following a weight-loss diet regimen or other use of any product, without:

(i) in the case where such documentation or independent verification consists only of the unsupported assertions of persons claiming to have experienced such weight losses or other effects, *both* clearly and conspicuously disclosing that such is the case *and* having signed, written communications embodying each such assertion from each such person, and

(ii) having substantiation for such documentation or independent verification obtained through an unbiased scientific study by an organization independent to the respondents, retaining said substantiation and making said substantiation available to the Commission's staff for inspection and copying upon request.

(c) Any particular number of persons have obtained a specified result from the use of any such product, when respondents do not have written documentation of the experiences of each such person.

(d) The use of vitamin supplements, whether alone or in conjunction

with the use of any product, diet regimen, exercise plan, or any other means to achieve weight loss, can result in weight loss, or otherwise misrepresents the results of using vitamin supplements.

(e) The use of protein tablets is responsible, in whole or in part, for any breaking down and burning off of fatty tissue resulting from the use of a weight-loss diet regimen, or otherwise misrepresents the results of using protein tablets.

(f) "Natural" ingredients contained in any such product are assimilated more quickly into the body than "synthetic" ingredients, or that "natural" ingredients are in any way superior to "synthetic" ingredients.

2. Disseminating or causing to be disseminated, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of any vitamin supplement or other food, drugs, devices, or cosmetics in or having an effect upon commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, any advertisement which contains any of the representations prohibited in Paragraph 1 hereof.

It is further ordered, That respondents Vitamin Education Institute, a corporation, and Certified Research Foundation, a corporation trading and doing business under its own name, or as Natural Vitamin Research Council, or under any other name or names, and Marketing Group One, a corporation, and Herbert B. Pastor, individually and as an officer of the said corporations, their successors and assigns, and respondents' 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 vitamin supplements or any other products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. (a) Using the words "education," "institute," "research," "foundation," "council," or any other word or words of similar import or meaning in or as part of respondents' corporate or trade name or names; or representing, orally or in writing, directly or indirectly, that they are an educational, research, nonprofit, or eleemosynary organization; or misrepresenting in any manner the actual nature and scope of their business operations or their trade or business status.

(b) Failing to disclose clearly and conspicuously the nature and extent of any relationships existing between any two or more of the individual and corporate respondents or their successors or assigns, whenever they are referred to in any advertisement, publication, or the like.

2. Representing, directly or indirectly, that the booklet entitled *The*

"Mega-Vitamin" Diet Regimen Research Report is a bona fide medical or scientific research report, or misrepresenting in any manner the nature of any publication produced by the respondents.

3. Publishing, participating in, or causing the publication of a book, booklet, pamphlet, leaflet, or the like, without clearly and conspicuously disclosing in the publication and on its dust jacket or on its cover if there by no dust jacket, or by its title, that it is published by, or in cooperation or association with, a supplier or suppliers of, or a corporation having the same or substantially similar ownership to a supplier or suppliers of, a commercial product or service mentioned or referred to in the publication, where such is the case, and the identity of such product or service.

4. Misrepresenting by any means or in any manner the quality, merits, or result of use of, respondents' product or products, or advertising, offering for sale, selling or distributing the said product or products with the effect, purpose or intent to deceive, to mislead, or to make any false or unsubstantiated claims concerning the quality, merits, or result of use of, the said product or products.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and/or 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 respondents notify the Commission at least thirty (30) days prior to any proposed change in respondent's business or in the corporate respondents, such as dissolution, assignment or sale, resulting in the emergence of a successor business, corporation, or otherwise, the creation or dissolution of subsidiaries, or any other change which may affect compliance obligations arising out of this order.

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

STEWART FROST, INC., ET AL.

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

Docket 9021. Complaint, Mar. 1, 1976—Decision, Mar. 1, 1976*

Consent order requiring a New York City seller and distributor of a weight and body-reducing kit, among other things to cease misrepresenting that any product or services for the treatment of obesity which utilizes a body wrapping device will result in any loss of weight or permanent reduction in any part of the body or that such products may be used by all persons without danger of any resulting physical harm or injury. Further, respondents are required to place a cautionary statement regarding the use of such products in all advertising and promotional material and on all packaging.

Appearances

For the Commission: *David I. Paul* and *Harriet G. Mulhern.*

For the respondents: *Sheldon S. Lustingman, Bass & Ullman,* New York City.

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 Stewart Frost, Inc., a New York corporation, Stuart Frost, Inc., a New Jersey corporation, and Alvin Meyer and Elaine Nelson, individually and as officers of said corporations, and Trim-A-Way Figure Contouring, Ltd., a corporation and Sam Bernard, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated Sections 5 and 12 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 Stewart Frost, Inc., a New York 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 551 Fifth Ave., New York, N.Y.

Respondent Stuart Frost, Inc., a New Jersey corporation, is a corporation organized, existing and doing business under and by virtue

* Reported as modified.

of the laws of the State of New Jersey, with its principal office and place of business located at 485-511 Main St., Fort Lee, New Jersey.

Respondents Alvin Meyer and Elaine Nelson are individuals and officers of the corporate respondents. They formulate, direct and control the policies, acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. Their business address is c/o Merlite Industries, Inc., 114 Fifth Ave., New York, New York.

PAR. 2. Respondent Trim-A-Way Figure Contouring, Ltd. is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business located at 658 Central Ave., Scarsdale, New York.

Respondent Sam Bernard is an individual and an officer of Trim-A-Way Figure Contouring, Ltd. He formulates, directs and controls the policies, acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of said corporation.

PAR. 3. Respondents Stewart Frost, Inc., a New York corporation, Stuart Frost, Inc., a New Jersey corporation, and Alvin Meyer and Elaine Nelson are now, and for some time last past have been engaged in the advertising, offering for sale, sale and distribution to the public of Slim-Quik, a weight and body reducing kit, consisting of gauze pads, a special solution and an elastic bandage, which purports to reduce body and weight measurements. Slim-Quik is a "device" as this term is defined in Section 12 of the Federal Trade Commission Act. Directions for using this device call for the pads to be soaked in the solution and placed on portions of the body by tightly wrapping them with the elastic bandage.

PAR. 4. Trim-A-Way Figure Contouring, Ltd. and Sam Bernard have granted to Stewart Frost, Inc., a New York corporation, Stuart Frost, Inc., a New Jersey corporation, and Alvin Meyer and Elaine Nelson a license to manufacture and market the solution and test results previously utilized by respondents Trim-A-Way Figure Contouring, Ltd. and Sam Bernard. Respondents Trim-A-Way Figure Contouring, Ltd. and Sam Bernard receive a royalty payment for each bottle of solution sold by said corporations and Alvin Meyer and Elaine Nelson and have made available to said respondents under such license all advertisements and test reports previously used by respondents Trim-A-Way Figure Contouring, Ltd. and Sam Bernard.

COUNT I

Alleging violation of Sections 5 and 12 of the Federal Trade

Commission Act, the allegations of Paragraphs One and Three are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 5. In the course and conduct of their business, respondents have disseminated and caused to be disseminated certain advertisements and promotional material concerning the Slim-Quik device, including but not limited to those provided by respondents Trim-A-Way Figure Contouring, Ltd. and Sam Bernard by various means to individuals in various States of the United States, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act. These advertisements and promotional materials have been disseminated for the purpose of inducing, and with the likelihood of inducing, directly or indirectly, the purchase of Slim-Quik. At all times mentioned herein respondents maintain and have maintained a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. Typical and illustrative of the statements in said advertisements and promotional materials, but not all inclusive thereof, are the following:

* * *you can now lose inch after inch after inch from your stomach and waist, thighs, buttocks or arms* * *.

* * * * * * *

* * *with the sure knowledge that it's absolutely safe, that you can honestly expect astonishing results* * *"

* * * * * * *

And men, if you use this wrap on your stomach and waist, you can expect to temporarily take off up to 4 inches in all* * *.

* * * * * * *

* * *I temporarily lost 7 1/2 inches from my waist, hips and thighs all together* * *.

* * * * * * *

In addition, some of the above statements are accompanied by depictions and representations on television purporting to represent "before" and "after" illustrations of the beneficial reducing results which can be achieved by using the Slim-Quik device.

PAR. 7. By and through the use of said statements and others of similar import and meaning, but not expressly set out herein, respondents have represented, and are now representing, directly or by implication, that:

1. Slim-Quik will reduce the size of portions of the body without the necessity of dieting or exercise.

2. The changes in body configuration depicted in the "before" and "after" illustrations used in respondents' television presentation will be achieved by all persons using respondents' Slim-Quik device.

3. Respondents' Slim-Quik device is absolutely safe for use by all persons.

PAR. 8. In truth and in fact:

1. Slim-Quik will not reduce the size of portions of the body without the necessity of dieting or exercise.

2. The changes in body configuration depicted in the "before" and "after" illustrations used in respondents' television presentation will not be achieved by all persons using respondents' Slim-Quik device. To the contrary, in order to achieve any weight loss or change in body configuration of significant duration most persons must follow a program of diet and exercise. This is a material fact which, if disclosed to a prospective purchaser, would be likely to affect his or her decision whether or not to purchase such device.

3. Respondents' Slim-Quik device is not absolutely safe for all persons but, to the contrary, may cause injury to individuals with diabetes, varicose veins, phlebitis, or other circulatory problems. This is a material fact which, if disclosed to a prospective purchaser, would be likely to affect his or her decision whether or not to purchase such device.

PAR. 9. Respondents' advertisements and promotional materials have the tendency and capacity to mislead the public into believing obese people can use the Slim-Quik device and method and expect to rid themselves of dangerous and unsightly fat tissue.

In truth and in fact, in order to achieve any weight loss or change in body configuration most persons must follow a program of diet and exercise.

PAR. 10. Respondents' advertisements and promotional materials have the tendency and capacity to exploit people who are obese and who are vulnerable to the influence of advertisements and promotional materials which extend the hope of easily ridding themselves of fatty tissue without a regulated diet and a program of exercise.

As a consequence of respondents' false and misleading acts and practices, obese persons may be, and are induced to forego proper medical treatment, thereby worsening or exposing themselves to the problems which commonly accompany obesity including, but not limited to, diabetes, circulatory problems and heart disease.

PAR. 11. Therefore, the advertisements and other statements and respondents' failure to disclose material facts referred to in Paragraphs Five, Nine and Ten, and set forth in Paragraphs Six and Seven, were and are false, misleading and deceptive in material respects and

constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act.

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

PAR. 13. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and are now in substantial competition in or affecting commerce with corporations, firms and individuals who sell products of the same kind and nature as those sold by respondents.

PAR. 14. The aforesaid alleged acts and practices of respondents Stewart Frost, Inc., a New York corporation and Stuart Frost, Inc., a New Jersey corporation, and Alvin Meyer and Elaine Nelson, 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 and unfair and deceptive acts and practices in or affecting commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act.

COUNT II

Alleging violation of Sections 5 and 12 of the Federal Trade Commission Act, the allegations of Paragraphs Two and Four hereof are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 15. In the course and conduct of their business as aforesaid, respondents, as licensors, now cause and for some time last past have caused their weight and body reducing products and method, product test results, promotional and advertising materials, testimonials and efficacy claims to be made available for use pursuant to the license agreements with Stewart Frost, Inc., a New York corporation, Stuart Frost, Inc., a New Jersey corporation, Alvin Meyer and Elaine Nelson; and furthermore have retained the right to approve and disapprove any and all advertising claims used by the licensee.

PAR. 16. By granting a license to Stewart Frost, Inc., a New York corporation, Stuart Frost, Inc., a New Jersey corporation, Alvin Meyer and Elaine Nelson and by engaging in the acts and practices as described in the foregoing Paragraph Fifteen, respondents Trim-A-Way Figure Contouring, Ltd. and Sam Bernard have placed in the hands of the other corporate and individual respondents named herein,

the means and instrumentalities by which they may disseminate or cause to be disseminated certain advertisements and promotional materials for the purpose of inducing, and with the likelihood of inducing, directly or indirectly, the purchase of Slim-Quik, which may mislead members of the consuming public.

PAR. 17. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents Trim-A-Way Figure Contouring, Ltd. and Sam Bernard have been, and are now, in substantial competition in or affecting commerce with corporations, firms and individuals who sell weight and body reducing products and devices of the same general kind and nature as those sold by respondents.

PAR. 18. The aforesaid alleged acts and practices of respondents 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 and unfair and deceptive acts and practices in commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having issued its modified complaint on March 1, 1976 charging respondents named in the caption hereof with violation of the Federal Trade Commission Act, and respondents having been served with a copy of that complaint; and

The Commission having withdrawn the matter from adjudication for the purpose of negotiating a settlement by entry of a consent order; and

Respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all jurisdictional facts set forth in the complaint, a statement that the signing of the agreement by respondents is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and 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 thereupon placed such agreement on the public record for a period of sixty (60) days, in further conformity with the procedure prescribed in its Rules, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered;

1. Respondent Stewart Frost, Inc., a New York 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 551 Fifth Ave., New York, New York.

2. Respondent Stuart Frost, Inc., a New Jersey corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 485-511 Main St., Fort Lee, New Jersey.

3. Respondents Alvin Meyer and Elaine Nelson are officers of Stewart Frost, Inc., a New York corporation and Stuart Frost, Inc. a New Jersey corporation. They formulate, direct and control the policies, acts and practices of said corporations, and their address is c/o Merlite Industries, Inc., 114 Fifth Ave., New York, New York.

4. Respondent Trim-A-Way Figure Contouring, Ltd. is a corporation organized, existing and doing business under and by virtue of laws of the State of New York, with its office and principal place of business located at 658 Central Ave., Scarsdale, New York.

5. Respondent Sam Bernard is an officer of Trim-A-Way Figure Contouring, Ltd. He formulates, directs and controls the policies, acts and practices of said corporation, and his address is the same as that of said corporation.

6. 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 Stewart Frost, Inc., a New York corporation, and Stuart Frost, Inc., a New Jersey corporation, their successors and assigns, and Alvin Meyer and Elaine Nelson, individually and as officers of said corporations, and said respondents' officers, agents, representatives and employees directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale and distribution of any products or services for the treatment of obesity which utilize a body wrapping device, procedure or method, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, orally, visually or in writing, directly or indirectly, that:

a) Use of said products or services will result in any loss of weight or permanent reduction in size in any part of the body.

b) Use of said products or services in the treatment of obesity is safe

and may be used by all persons without danger of physical harm or injury therefrom.

2. Using visual illustrations, representations or depictions, such as "before" and "after" pictures, in television commercials and any other advertising or promotional materials, which misrepresent the efficacy of said body reducing products, services, devices, procedures or methods.

3. Advertising, offering for sale, selling or distributing any products or services for the treatment of obesity which utilize a body wrapping device, procedure or method unless the advertising and promotional material contain the following caution in a clear and conspicuous manner:

(a) "*CAUTION* If you suffer from circulation problems, varicose veins, phlebitis, or diabetes, consult your physician before using."

(b) In advertisements in newspapers or other periodicals, said "Caution" shall be printed in at least 11 point type.

(c) In advertisements placed on television broadcasts, the word "Caution" and the statement: "Caution: If you suffer from circulatory problems, varicose veins, phlebitis, or diabetes, consult your physician before using" shall be clearly and conspicuously placed on the television screen for a period of time not less than eight (8) seconds duration.

(d) Respondents shall include clearly and conspicuously on each bottle or container, with nothing to the contrary or in mitigation thereof, the "Caution" set forth in Paragraph 3(a) hereinabove. *Provided, however*, That the word "CAUTION" shall be printed in 18 point boldface type and the remaining language shall be printed in not less than 11 point type.

II

It is ordered, That Trim-A-Way Figure Contouring, Ltd., a corporation, its successors and assigns, and Sam Bernard, individually and as an officer of said corporation, and respondents' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, or through its franchisees or licensees, in connection with the licensing, franchising, advertising, offering for sale, sale or distribution of any products or services for the treatment of obesity which utilize a body wrapping device, procedure or method, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

4. Granting a license or franchise to any prospective licensee or franchisee for the manufacture, advertising, use, offering for sale, sale or distribution of any products or services for the treatment of obesity

which utilize a body wrapping device, procedure or method, without delivering to each such prospective licensee or franchisee a copy of the order herein and receiving from such prospective licensee or franchisee a signed acknowledgement of receipt and agreement to adhere to the requirements of Paragraphs 1, 2 and 3 of Part I of this order as a condition of the granting of the license or franchise.

5. Furnishing, disseminating or making available to any licensee or franchisee, any advertisements and promotional literature or materials which are or may be utilized by such licensee or franchisee in connection with the offering for sale, sale, distribution and promotion of any products or services for the treatment of obesity which utilize a body wrapping device, procedure or method, which violates Paragraphs 1, 2 or 3 of Part I of this order.

III

It is further ordered, That:

1. All respondents set forth under Part I and Part II of this order shall maintain for a five (5) year period complete and detailed records of the names and addresses of all purchasers, franchisees or licensees of any products or services for the treatment of obesity which utilize a body wrapping device, procedure or method and said respondents shall also keep copies of all franchising and licensing agreements. Such records shall be made available for examination and copying by a duly authorized representative of the Federal Trade Commission, upon reasonable notice, during normal business hours.

2. No provision of this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondents from complying with agreements, orders or directives of any kind obtained by any other agency or act as a defense to actions instituted by municipal or State regulatory agencies. No provision of this order shall be construed to imply that any past or future conduct of respondents complies with the rules and regulations of, or the statutes administered by the Federal Trade Commission.

3. Respondents shall deliver a copy of this order to cease and desist to all personnel or agents of respondents responsible for the preparation, creation, production or publication of the advertising of all products and services covered by this order.

4. Respondents shall deliver, by certified or registered mail, return receipt requested, a copy of this cease and desist order to all persons, franchisees or licensees now engaged, or who become engaged in the advertising, offering for sale, sale, use or distribution, of any of respondents' products or services for the treatment of obesity which utilize a body wrapping device, procedure or method.

5. Respondents shall deliver a copy of this order to all present and future employees engaged in the sale of respondents' products or services and shall secure from each such person a signed statement acknowledging receipt of a copy of this order.

6. Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment or sale, resulting in the emergence of a successor corporation or corporations, the creation or dissolution of subsidiaries, a change in the corporate name or address or any other change in the corporations which may affect compliance obligations arising out of this order.

7. Each individual respondent named herein shall promptly notify the Commission of the discontinuance of his or her present business or employment and/or his or her affiliation with a new business or employment. Such notice shall include such respondents' current business address and a statement as to the nature of the business or employment in which he or she is engaged, as well as a description of his or her duties and responsibilities.

8. Respondents shall within sixty (60) days after service upon them of this order, file with the Federal Trade 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

ENCYCLOPAEDIA BRITANNICA, INC., ET AL.

Docket 8908. Order, Mar. 2, 1976

Denial of respondents' motion to reopen the record and proceedings to afford them opportunity to conduct discovery upon and defend against non-record secret facts, information and/or evidence.

ORDER DENYING MOTION TO REOPEN RECORD AND PROCEEDINGS

Respondents have moved that we reopen the record and proceedings in the above-styled matter to afford Britannica the opportunity "to conduct discovery upon and defend against the non-record secret facts, information and/or evidence that are being considered by this Commission in reaching its decision" in this appeal.

The motion arises out of a Freedom of Information Act request filed by respondents. In midst of the adjudicative proceedings, respondents filed with the Secretary of the Commission a Freedom of Information Act request for the Analytical Program Guide for the Direct Selling Industry and other related documents. The Secretary released part of the materials requested, and the respondents appealed to the Commission the Secretary's denial of further access to the documents. The Commission reviewed the matter, as it was required to do under the applicable provisions of the Commission's Rules of Practice[1] which were promulgated pursuant to the Freedom of Information Act.[2] The Commission also filed, pursuant to the order of the U.S. District Court (N.D. Ill.), a "Revised Index and Justification for Withholding Documents." The Revised Index characterizes some of the documents as "pre-decisional communications," a term utilized by the Supreme Court to describe non-evidentiary documents which were exempt because they were "deliberations comprising part of a process by which governmental decisions and policies are formulated." *NLRB* v. *Sears, Roebuck* [*Co.*, 421 U.S. 132, 158 (1975). Citing the Commission's Freedom of Information Act review and its use of the descriptions "pre-decisional communications" in the Revised Index, the respondents contend that the Commission has utilized the documents in the decision-making process in this adjudicative matter.

This motion is plainly without merit. The Commission has based its determinations and order in this matter solely upon the record compiled in Dkt. No. 8908. Accordingly,

[1] Section 4.11(a)(2).

[2] 5 U.S.C. §552(c)(6)(A)(ii).

It is ordered, That respondents' motion to reopen the record and proceedings in the above-styled matter be, and it hereby is, denied.

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IN THE MATTER OF

ENCYCLOPAEDIA BRITANNICA, INC., ET AL.

Docket 8908. Order, Mar. 2, 1976

Denial of respondents' motion to postpone decision.

ORDER DENYING MOTION TO POSTPONE ISSUANCE OF FINAL DECISION AND ORDER

Respondents have moved to postpone the decision in the appeal of the above-styled matter. The motion arises out of a Freedom of Information Act request for a copy of the Analytical Program Guide for the Direct Selling Industry and other related documents. The Commission denied in part respondents' request and respondents have sought judicial review of the Commission's determination in the Federal courts. The reason set forth for respondents' motion to postpone is to afford respondents "an adequate opportunity to examine and comment upon, or take other appropriate steps with respect to, hitherto undisclosed matter which may have been considered by the Commission or the Administrative Law Judge in the course of this proceeding."

As the Commission has pointed out in denying respondents' Motion to Reopen the Record and Proceedings, the decision and order in this matter* have been based solely upon the record evidence in Dkt. 8908. Thus there is no "undisclosed matter" utilized in the Commission's determinations in this matter. Accordingly,

It is ordered, That respondents' Motion to Postpone Decision be, and it hereby is, denied.

* Reported in this Volume.

IN THE MATTER OF

PEACOCK BUICK, INC., ET AL.

Docket 8976. Order, Mar. 2, 1976

Denial of respondents' motion for reconsideration of opinion and final order forbidding the misrepresentation of the necessity of credit insurance and requiring disclosure that such insurance is not required.

Appearances

For the Commission: *Jerry W. Boykin, Michael E.K. Mpras, Michael Dershowitz* and *Frank H. Addonizio.*

For the respondents: *Stein, Mitchell & Mezines*, Washington, D.C.

ORDER DENYING PETITION FOR RECONSIDERATION

The Commission issued its opinion and final order in this matter on December 19, 1975 [86 F.T.C. 1532], and respondents were served with both on January 16, 1976. By motion dated February 2, 1976, respondents have petitioned for reconsideration of Paragraphs I(6) and I(7) of the order, pursuant to Section 3.55 of the Commission's Rules of Practice. Complaint counsel oppose the motion as inappropriate for reconsideration and defective on its merits.

This case involved practices in the sale of new and used cars. The Commission held that respondents had committed several violations of Section 5 of the Federal Trade Commission Act (15 U.S.C. §45), among which was that respondents, through sales agents, misrepresented to certain customers that it would be necessary for those customers to purchase credit life insurance in order to secure automobile financing from area lending institutions. In fact the lending institutions in question did not require such insurance as a precondition for extension of a loan. Order Paragraphs I(6) and I(7) were designed to remedy the violation by forbidding respondents from misrepresenting the necessity of credit insurance [Par. I(6)] and by requiring respondents to disclose affirmatively, orally and in writing, that such insurance is not required [Par. I(7)].

In their motion for reconsideration, respondents argue that the practice which the Commission's order condemns is immunized from Commission review by the McCarran-Ferguson Act (15 U.S.C. §1011, *et seq.*). This issue was briefed cursorily by respondents in the main proceeding, and dismissed by the Commission in summary fashion. Respondents in their motion for reconsideration cite certain Federal court cases reported subsequent to the time of oral argument and decision, which in their view warrant a different disposition. We agree

with complaint counsel that the cases cited by respondents do no more than articulate points that might as readily have been raised earlier in the proceeding. Nonetheless, we have reviewed these cases and considered the substance of respondents' motion which, for reasons indicated below, must be denied.

The McCarran-Ferguson Act provides in part that

> No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance, *Provided*, That after June 30, 1948 * * * the Federal Trade Commission Act, as amended, shall be applicable to the business of insurance to the extent that such business is not regulated by State law. (15 U.S.C. §1012.)

A threshold question is whether an automobile dealer's practice of telling customers that they must buy credit insurance in order to obtain financing constitutes the "business of insurance" as used within the statute. As the Supreme Court has recognized, the legislative history of the McCarran-Ferguson Act provides little guidance as to the meaning of the "business of insurance." The Act was passed in response to the Court's decision in *United States* v. *South-Eastern Underwriters Assn.*, 322 U.S. 533 (1944), which raised the possibility of massive Federal antitrust intrusion into what had theretofore been considered a State regulatory function, primarily involving insurance ratemaking. Congressional debate centered largely on the relationship between insurance ratemaking and antitrust laws, and upon State taxation of insurance companies. See *SEC* v. *National Securities, Inc.*, 393 U.S. 450, 458-59 (1968). In attempting its own definition, the Court said:

> The relationship between insurer and insured, the type of policy which could be issued, its reliability, interpretation, and enforcement—these were the core of the "business of insurance." Undoubtedly, other activities of insurance companies relate so closely to their status as reliable insurers that they too must be placed in the same class. But whatever the exact scope of the statutory term, it is clear where the focus was—it was on the relationship between the insurance company and the policyholder. Statutes aimed at protecting or regulating this relationship, directly or indirectly, are laws regulating the "business of insurance." (393 U.S. 459)

While the District Court cited by respondents may be correct in asserting that the insurer-insured relationship "is not the all-inclusive boundary of [the McCarran-Ferguson] Act" [*Proctor* v. *State Farm Mutual Automobile Insurance Company* (No. 249-722, D.D.C. Jan. 21, 1976)], we must also bear in mind the admonition that:

> *National Securities* indicates that the MFA is to be narrowly construed in the face of valid federal regulatory interests; *accommodation* of federal and state regulatory interests is to be sought." [*SEC* v. *Republic National Life Insurance Co.*, 378 F. Supp. 430, 436 (D.C.N.Y. 1974), emphasis added.]

Any analysis of a transaction to determine whether it constitutes the "business of insurance" cannot end with the simple determination that an insurance policy is somehow involved, however tangentially. The transaction as a whole must be carefully evaluated to ascertain the nature and significance of the interests which come into play. It is perhaps no accident that the cases cited by respondent, and others on this subject, have sought to define the "business of insurance" in terms of certain activities of *insurance companies* or *insurers*, *e.g.*, *SEC* v. *National Securities, Inc.*, *supra.*; *Dexter* v. *Equitable Life Assurance Society of the United States*, 527 F.2d 233 (2d Cir. 1975); *Addrisi* v. *Equitable Life Assurance Society of the United States*, 503 F.2d 725 (9th Cir. 1974), *cert. denied*, 420 U.S. 929 (1975). The transactions of a company whose principal purpose is to sell insurance are, after all, those most likely to involve primarily the interests which Congress intended be left to State regulation. Where, as here, we deal with a company which is not an insurance company at all, whose business touches on insurance in only a small way, the utmost care must be exercised to ensure that predominantly non-insurance aspects of the business are not immunized from Federal supervision by the mere presence of an aleatory contract.

Scrutiny of the transaction challenged here makes clear that what is essentially involved is the *arrangement of credit* by an automobile vendor. The Federal interest in ensuring that the business of financing be undertaken honestly is embodied not merely in the Federal Trade Commission Act's proscription of "unfair or deceptive" acts or practices, but as well in the explicit requirements of the Truth in Lending Act (15 U.S.C. §1601, *et seq.*) and its implementing Regulation Z (12 C.F.R. §226).

As respondents themselves pointed out in their appeal brief before the Commission, Congress and the Federal Reserve Board have spoken explicitly with respect to the duties of a vendor offering insurance incident to the extension of credit. Regulation Z requires that a creditor who offers credit life insurance must include it when itemizing the finance charge, and for purposes of computing the annual percentage rate of the loan, unless such insurance is not required by the creditor for the extension of credit, and the consumer has made a written election to accept such insurance, following written disclosure that it is optional [12 C.F.R. §226.4(a)(5)]. In the instant case it appears that respondents obtained signed statements from consumers indicating their willingness to accept credit insurance, and those statements included a disclosure that such insurance was optional. Testimony of consumers indicated, however, and the Commission so found, that oral representations by salesmen were sometimes used to mislead borrow-

ers into believing that credit life insurance was required, thereby destroying the effect of the written disclosure.

Respondents' misrepresentations did not deal with the terms of an insurance policy, nor bear in any way upon the relationship between an insurer and its insured. The misrepresentations did, however, sorely mislead consumers as to the conditions under which they would be granted credit and the amount they would have to pay to obtain it. We think that any reading of the McCarran-Ferguson Act which would harmonize the Congressional goal of Federal non-interference with the "business of insurance" with the goal of Federal prevention of deceptive credit practices must lead to the conclusion that the precise practice involved here is not, within the statutory contemplation, the "business of insurance." If the "business of insurance" intrudes upon the business of financing, we think it does so only at the point at which the borrower or his lender may seek to deal with the *insurer* regarding particular details of the policy being purchased. To hold otherwise, we believe, would do little to effectuate the Congressional desire to leave regulation of the business of insurance to the States, but do much to thwart the clear Federal interest in preventing deception in the sale of automobiles in or affecting commerce and in credit financing generally. We do not believe, as respondents would have it, that the McCarran-Ferguson Act was intended to encroach so fundamentally on areas of Federal concern other than insurance, nor do we find in any of the cases cited by respondents warrant for concluding otherwise.[1]

For the foregoing reasons we believe that the opinion of the Commission is correct in concluding that entry of order Paragraphs I(6) and I(7) is not barred by the McCarran-Ferguson Act, and accordingly,

It is ordered, That respondents' motion for reconsideration be, and it hereby is, denied.

[1] Respondents also argue that the practice involved here is subject to regulation by the Commonwealth of Virginia. The Virginia insurance code cited by respondents prohibits in general terms false representations "with respect to the business of insurance." VA Code §38.1-52(2); see also §38.1-51. Whether this constitutes the type of regulation necessary to immunize a practice from Commission scrutiny need not be resolved, inasmuch as we have concluded that for purposes of the McCarran-Ferguson Act the practice at issue here is not the business of insurance.

IN THE MATTER OF

J & J FURNITURE CORP., ET AL.

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

Docket C-2800. Complaint, Mar. 8, 1976—Decision, Mar. 8, 1976

Consent order requiring a New York City seller and distributor of furniture and home appliances, among other things where sales presentations have been made in whole or in part in Spanish, to cease failing to furnish buyers with Spanish language translations of contracts, agreements or other documents used in connection with retail credit sales. Further, respondents are required to prominently display in-store notices of customers' right to receive all necessary documents in both Spanish and English.

Appearances

For the Commission: *Sandra L. Bird.*
For the respondents: *Wallman & Liebman*, New York City.

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 J & J Furniture Corp., a corporation, and Luis R. Jerez, individually and as an officer of said corporation, have violated Section 5 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 J & J Furniture Corp. 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 179 East 116th St., New York, New York.

Respondent Luis R. Jerez is an officer of said corporate respondent. He formulates, directs and controls the policies, acts and practices of the corporate respondent, including those hereinafter set forth. His business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution to the public of furniture and home appliances.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents have engaged in and are now engaged in commerce, or their practices affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended. Respondents purchase for

resale furniture and home appliances from suppliers located in various States of the United States. Respondents cause these products, when purchased by them, to be transported from the place of manufacture or purchase to their business establishment located in New York.

In addition, respondents have disseminated and have caused to be disseminated advertisements concerning said products in newspapers and radio broadcasts of interstate circulation. Said advertisements have been disseminated for the purpose of inducing the purchase of respondents' merchandise.

PAR. 4. In the course and conduct of their business as aforesaid, and for the purpose of inducing consumers who only speak, read, write or understand Spanish, or consumers whose predominant language is Spanish to purchase their products, respondents have disseminated and have caused to be disseminated, in commerce, advertisements in the Spanish language and, in a substantial number of instances, have caused their sales personnel to conduct oral sales presentations to such consumers in the Spanish language.

PAR. 5. In the further course and conduct of their business as aforesaid, and for the purpose of facilitating the purchase of their merchandise, respondents regularly extend credit or arrange for credit to be extended to retail purchasers.

In connection with said credit transactions, respondents utilize contracts, documents, notices, forms or other legal instruments which are printed only in the English language.

PAR. 6. In the further course and conduct of their business as aforesaid, respondents fail to provide customers who only speak, read, write or understand Spanish, or whose predominant language is Spanish, with a complete and accurate translation in Spanish of the documents normally executed and provided to customers in connection with credit sales, or which are required by law to be provided to customers in connection with such sales at the time of the transaction.

PAR. 7. Respondents' failure to provide customers who only speak, read, write or understand Spanish, or whose predominant language is Spanish, with a full and complete translation in Spanish of all the documents described in Paragraph Six hereof, deprives a substantial number of Spanish-speaking consumers, many of whom have been induced to deal with respondents as a result of respondents' advertisements or sales presentations in Spanish, of the opportunity to receive full and adequate disclosure of the terms and conditions of any agreements they have entered into, of their rights and obligations under such agreements, and of other written information or notices normally provided to consumers at the time of the transaction.

Therefore, the acts and practices of respondents, as set forth in

Paragraphs Five and Six hereof, were and are unfair, misleading and deceptive.

PAR. 8. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been and are now, in substantial competition in commerce, with corporations, firms and individuals in the sale of furniture, home appliances and other products of the same general kind and nature as those sold by respondents.

PAR. 9. The aforesaid acts and practices of the 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 or affecting commerce and unfair and deceptive acts and practices in or affecting 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 respondents named in the caption hereof, and the respondents 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 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, and having duly considered the comments filed thereafter pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent J & J Furniture Corp. 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 179 East 116th St., New York, New York.

Respondent Luis R. Jerez is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation and his business address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents J & J Furniture Corp., a corporation, its successors and assigns and its officers, and Luis R. Jerez, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, and distribution of furniture, home appliances or of any other products and services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist, in connection with credit sales in which the sales presentation has been conducted in whole or in part in Spanish, from:

1. Failing to furnish consumers executing any contracts, agreements or other documents in connection with such sales, a complete and accurate translation in Spanish of each such writing, prior to the execution of the same.

2. Failing to furnish consumers with complete and accurate translations in Spanish of any other documents, notices or disclosures normally provided to consumers in connection with respondents' credit sales at the time of the transaction.

Provided, however, That nothing in this order shall be understood to apply to sales receipts or other documents which serve merely as a memorandum of sale and do not, in themselves, contain covenants, disclaimers or other provisions defining the rights and responsibilities of the parties.

Further provided, That respondents must comply with subparagraphs 1 and 2 of this order by providing consumers either with:

a. bilingual documents containing all the provisions and disclosures in both English and Spanish, or

b. separate documents containing complete and accurate translations in Spanish of each English language document, and which shall contain in a clear and conspicuous manner in the Spanish language, the following heading in boldface 10 point type:

READ THIS FIRST

THIS IS A TRANSLATION OF THE DOCUMENT OR DOCUMENTS YOU HAVE RECEIVED OR ARE ABOUT TO SIGN.

It is further ordered, That respondents prominently display, in at least two different locations on their premises, one of them being the location where customers usually execute consumer credit instruments or other legally binding documents, the following notice in Spanish:

NOTICE TO SPANISH SPEAKING CUSTOMERS

IF YOU ARE A SPANISH-SPEAKING CUSTOMER AND THE SALES PRESENTATION WAS MADE, IN WHOLE OR IN PART IN SPANISH, YOU ARE ENTITLED TO RECEIVE A SPANISH TRANSLATION OF THE CREDIT CONTRACT AND OF THE OTHER DOCUMENTS RELATED TO THE FINANCING OF YOUR PURCHASE BEFORE YOU SIGN ANYTHING. DO NOT SIGN ANY DOCUMENTS UNTIL YOU HAVE RECEIVED AND READ THE SPANISH TRANSLATIONS.

It is further ordered, With respect to each account in which translations in Spanish are provided, as required herein, that respondents shall maintain in their files, for a period of two years, statements signed by respondents' customers acknowledging receipt of such translations.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all operating divisions and to all present and future personnel of respondents engaged in making sales presentations and in the consummation of any consumer credit transactions.

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 this order.

It is further ordered, That the individual respondent named herein promptly notify the Commission upon the discontinuance of his present business 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 no provision of this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondents from complying with agreements, orders or directives of any kind obtained by any other agency, or act as a defense to actions instituted by municipal or State regulatory agencies. No provision of this order shall be construed to imply that any past or

future conduct of respondents complies with the rules and regulations of, or the statutes administered by the Federal Trade Commission.

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

DABY'S FURNITURE CORP., ET AL.

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

Docket C-2801. Complaint, Mar. 8, 1976—Decision, Mar. 8, 1976

Consent order requiring a New York City seller and distributor of furniture and home appliances, among other things where sales presentations have been made in whole or in part in Spanish, to cease failing to furnish buyers with Spanish language translations of contracts, agreements or other documents used in connection with retail credit sales. Further, respondents are required to prominently display in-store notices of customers' right to receive all necessary documents in both Spanish and English.

Appearances

For the Commission: *Sandra L. Bird.*
For the respondents: *Pro se.*

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 Daby's Furniture Corp., a corporation, and Felix Ortiz, individually and as an officer of said corporation, have violated Section 5 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 Daby's Furniture Corp. 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 560 West 207th St., New York, New York.

Respondent Felix Ortiz is an individual and an officer of said corporate respondent. He formulates, directs and controls the policies, acts and practices of the corporate respondent, including those hereinafter set forth. His business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution to the public of furniture and home appliances.

PAR. 3. In the course and conduct of their business as aforesaid, respondents have engaged in and are now engaged in commerce or their practices affect commerce, as "commerce" is defined in the

Federal Trade Commission Act, as amended. Respondents purchase for resale furniture and home appliances from suppliers located in various States of the United States. Respondents cause these products, when purchased by them, to be transported from the place of manufacture or purchase to their business establishment located in New York.

In addition, respondents have disseminated and have caused to be disseminated advertisements concerning said products in newspapers and radio broadcasts of interstate circulation. Said advertisements have been disseminated for the purpose of inducing the purchase of respondents' merchandise.

PAR. 4. In the course and conduct of their business as aforesaid, and for the purpose of inducing consumers who only speak, read, write or understand Spanish or whose predominant language is Spanish to purchase their products, respondents have disseminated and have caused to be disseminated, in commerce, advertisements in the Spanish language and have caused, in a substantial number of instances, their sales personnel to conduct oral sales presentations to such consumers in the Spanish language.

PAR. 5. In the further course and conduct of their business as aforesaid, and for the purpose of facilitating the purchase of their merchandise, respondents regularly extend credit or arrange for credit to be extended to retail purchasers.

PAR. 6. In the further course and conduct of their business as aforesaid, respondents fail to provide customers who only speak, read, write or understand Spanish, or whose predominant language is Spanish, with a complete and accurate translation in Spanish of the retail installment contract prior to the execution of the same.

PAR. 7. Respondents' failure to provide customers who only speak, read, write or understand Spanish or whose predominant language is Spanish, with a full and complete translation in Spanish of the retail installment contract, prior to the execution of the same, deprives a substantial number of Spanish-speaking consumers, many of whom have been induced to deal with respondents as a result of respondents' advertisements or sales presentations in Spanish, of the opportunity to receive full and adequate disclosure of the terms and conditions of the agreement they are about to enter into and of their rights and obligations thereunder.

Therefore, the acts and practices of respondents, as set forth in Paragraph Six hereof, were and are unfair, misleading and deceptive.

PAR. 8. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been and are now in substantial competition, in commerce, with corporations, firms and

individuals in the sale of furniture, home appliances and other products of the same general kind and nature as those sold by respondents.

PAR. 9. The aforesaid acts and practices of the 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 or affecting commerce and unfair and deceptive acts and practices in or affecting 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 respondents named in the caption hereof, and the respondents 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 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, and having duly considered the comments filed thereafter pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Daby's Furniture Corp. 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 560 West 207th St., New York, New York.

Respondent Felix Ortiz 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 Daby's Furniture Corp., a corporation, its successors and assigns and its officers, and Felix Ortiz, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, and distribution of furniture, home appliances or of any other products and services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist, in connection with credit sales in which the sales presentation has been conducted in whole or in part in Spanish, from:

1. Failing to furnish consumers executing any contracts, agreements or other documents in connection with such sales, a complete and accurate translation in Spanish of each such writing, prior to the execution of the same.

2. Failing to furnish consumers with complete and accurate translations in Spanish of any other documents, notices or disclosures normally provided to consumers in connection with respondents' credit sales at the time of the transaction.

Provided, however, That nothing in this order shall be understood to apply to sales receipts or other documents which serve merely as a memorandum of sale and do not, in themselves, contain convenants, disclaimers or other provisions defining the rights and responsibilities of the parties.

Further provided, That respondents must comply with subparagraphs 1 and 2 of this order by providing consumers either with:

a. bilingual documents containing all the provisions and disclosures in both English and Spanish, or

b. separate documents containing complete and accurate translations in Spanish of each English language document.

It is further ordered, That respondents prominently display, in at least two different locations on their premises, one of them being the location where customers usually execute consumer credit instruments or other legally binding documents, the following notice, in Spanish:

NOTICE TO SPANISH SPEAKING CUSTOMERS

IF YOU ARE A SPANISH-SPEAKING CUSTOMER AND THE SALES PRESENTATION WAS MADE, IN WHOLE OR IN PART IN SPANISH, YOU ARE

ENTITLED TO RECEIVE A SPANISH TRANSLATION OF THE CREDIT CONTRACT AND OF THE OTHER DOCUMENTS RELATED TO THE FINANCING OF YOUR PURCHASE BEFORE YOU SIGN ANYTHING. DO NOT SIGN ANY DOCUMENTS UNTIL YOU HAVE RECEIVED AND READ THE SPANISH TRANSLATIONS.

It is further ordered, With respect to each account in which translations in Spanish are provided, as required herein, that respondents shall maintain in their files, for a period of two years, statements signed by respondents' customers acknowledging receipt of such translations.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all operating divisions and to all present and future personnel of respondents engaged in making sales presentations and in the consummation of any consumer credit transactions.

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 this order.

It is further ordered, That the individual respondent named herein promptly notify the Commission upon the discontinuance of his present business 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 no provision of this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondents from complying with agreements, orders or directives of any kind obtained by any other agency, or act as a defense to actions instituted by municipal or State regulatory agencies. No provision of this order shall be construed to imply that any past or future conduct of respondents complies with the rules and regulations of, or the statutes administered by the Federal Trade Commission.

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.

216-969 O-LT - 77 - 26

IN THE MATTER OF

BUSCH'S JEWELRY CO., INC., ET AL.

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

Docket C-2802. Complaint, Mar. 8, 1976—Decision, Mar. 8, 1976

Consent order requiring a New York City seller and distributor of jewelry and home appliances, among other things where sales presentations have been made in whole or in part in Spanish, to cease failing to furnish buyers with Spanish language translations of contracts, agreements or other documents used in connection with retail credit sales. Further, respondents are required to prominently display in-store notices of customers' right to receive all necessary documents in both Spanish and English.

Appearances

For the Commission: *Sandra L. Bird.*
For the respondents: *Milton L. Lavine*, Forest Hills, N.Y.

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 Busch's Jewelry Co., Inc., a corporation, Busch's Kredit Jewelry Co., Inc., a corporation, Busch's, Inc., a corporation and Busch Stores, Inc., a corporation, have violated Section 5 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 Busch's Jewelry Co., Inc., 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 35 West 14th St., New York, New York.

Respondent Busch's Kredit Jewelry Co., Inc., 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 35 West 14th St., New York, New York.

Respondent Busch's, Inc. 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 35 West 14th St., New York, New York.

Respondent Busch Stores, Inc. 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 35 West 14th St., New York, New York.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution to the public of articles of jewelry and home appliances.

PAR. 3. In the course and conduct of their business, respondents have engaged in and are now engaged in commerce or their practices affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended. Respondents purchase for resale jewelry and home appliances from suppliers located in various States of the United States. Respondents cause these products, when purchased by them, to be transported from the place of manufacture or purchase to their business establishments located in New York.

In addition, respondents have disseminated and have caused to be disseminated advertisements concerning said products in newspapers and radio broadcasts of interstate circulation. Said advertisements have been disseminated for the purpose of inducing the purchase of respondents' merchandise.

PAR. 4. In the course and conduct of their business as aforesaid, and for the purpose of inducing consumers who only speak, read, write or understand Spanish or whose predominant language is Spanish to purchase their products, respondents have disseminated and have caused to be disseminated, in commerce, advertisements in the Spanish language and have caused, in a substantial number of instances, their sales personnel to conduct oral sales presentations to such consumers in the Spanish language.

PAR. 5. In the further course and conduct of their business as aforesaid, and for the purpose of facilitating the purchase of their merchandise, respondents regularly extend credit or arrange for credit to be extended to retail purchasers.

In connection with said credit transactions, respondents utilize contracts, documents, notices, forms or other instruments which are printed only in the English language.

PAR. 6. In the further course and conduct of their business as aforesaid, respondents fail to provide customers who can only speak, read, write or understand Spanish or whose predominant language is Spanish, with a complete and accurate translation in Spanish of the documents executed by customers in connection with credit sales, or which are required by law to be provided to customers in connection with such sales at the time of the transaction.

PAR. 7. Respondents' failure to provide customers who only speak, read, write or understand Spanish or whose predominant language is Spanish, with a full and complete translation in Spanish of all the

documents described in Paragraph Six hereof, has had, and now has, the capacity and tendency to deprive a substantial number of Spanish-speaking consumers, many of whom have been induced to deal with respondents as a result of respondents' advertisements or sales presentations in Spanish, of the opportunity to receive full and adequate disclosure of the terms and conditions of any agreements they have entered into, of their rights and obligations under such agreements, and of other written information or notices required by law to be provided at the time of the transaction.

Therefore, the acts and practices of respondents, as set forth in Paragraphs Five and Six hereof, were and are unfair, misleading and deceptive.

PAR. 8. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been and are now, in substantial competition, in commerce, with corporations, firms and individuals in the sale of jewelry, home appliances and other products of the same general kind and nature as those sold by respondents.

PAR. 9. The aforesaid acts and practices of the 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 or affecting commerce and unfair and deceptive acts and practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended.

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 New York 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, and having duly considered the comments filed thereafter pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Busch's Jewelry Co., Inc. 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 35 West 14th St., New York, New York.

Respondent Busch's Kredit Jewelry Co., Inc. 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 35 West 14th St., New York, New York.

Respondent Busch's, Inc. 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 35 West 14th St., New York, New York.

Respondent Busch Stores, Inc., 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 35 West 14th St., New York, 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

It is ordered, That respondents Busch's Jewelry Co., Inc., Busch's Kredit Jewelry Co., Inc., Busch's, Inc., Busch Stores, Inc., corporations, their successors and assigns and their officers, respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, and distribution of articles of jewelry, home appliances or of any other products and services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist, in connection with credit sales in which the sales presentation has been conducted in whole or in part in Spanish, from:

1. Failing to furnish consumers executing any contracts, agreements or other documents in connection with such sales, a complete and accurate translation in Spanish of such writing, prior to the execution of the same.

2. Failing to furnish consumers with complete and accurate translations in Spanish of any other documents, notices or disclosures normally provided at the time of the transaction to consumers in connection with, and as part of, such sales.

Provided, however, That nothing in this order shall be understood to apply to sales receipts or other documents which serve merely as a memorandum of sale and do not, in themselves, contain covenants, disclaimers or other provisions defining the rights and responsibilities of the parties.

Further provided, That respondents must comply with subparagraphs 1 and 2 of this order by providing consumers either with:

a. bilingual documents containing all the provisions and disclosures in both English and Spanish, or

b. separate documents containing complete and accurate translations in Spanish of each English language document, and which shall contain in a clear and conspicuous manner in the Spanish language, the following heading in boldface 10 point type:

READ THIS FIRST

THIS IS A TRANSLATION OF THE DOCUMENT YOU ARE ABOUT TO SIGN OR RECEIVE.

It is further ordered, That respondents prominently display, in at least two different locations on their premises, one of them being the location where customers usually execute consumer credit instruments or other legally binding documents, the following notice, in Spanish:

NOTICE TO SPANISH SPEAKING CUSTOMERS

IF YOU ARE A SPANISH-SPEAKING CUSTOMER AND THE SALES PRESENTATION WAS MADE, IN WHOLE OR IN PART IN SPANISH, YOU ARE ENTITLED TO RECEIVE A SPANISH TRANSLATION OF THE CREDIT CONTRACT. DO NOT SIGN ANY DOCUMENT UNTIL YOU HAVE RECEIVED AND READ THE SPANISH TRANSLATION.

It is further ordered, With respect to each account in which translations in Spanish are provided, as required herein, that respondents shall maintain in their files, for a period of two years, statements signed by respondents' customers acknowledging receipt of such translations.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all operating divisions and distribute a memorandum explaining the requirements of this order to all present and future personnel of respondents engaged in making sales presentations and in the consummation of any consumer credit transactions.

It is further ordered, That respondents notify the Commission at

least thirty (30) days prior to any proposed change in the respondents 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 no provision of this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondents from complying with agreements, orders or directives of any kind obtained by any other agency, or act as a defense to actions instituted by municipal or State regulatory agencies. No provision of this order shall be construed to imply that any past or future conduct of respondents complies with the rules and regulations of, or the statutes administered by the Federal Trade Commission.

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.