

manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

It is further ordered, That the complaint be dismissed as to David Solis, Jr. and Leonard Brecher.

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
HARRY'S LINOLEUM COMPANY ET AL.

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

Docket 8275. Complaint, Jan. 13, 1961—Decision, Dec. 27, 1961

Consent order requiring five affiliated concerns, all with the same Cincinnati address, and operating retail stores in Ohio and Kentucky, to cease representing falsely in newspaper advertising that fictitiously high amounts were regular prices for their carpeting, counter topping, paint, and other merchandise; that certain carpeting was guaranteed unconditionally for lifetime or five years; that purchasers of one gallon of paint would receive a second gallon "free"; that certain nylon carpet was "indestructible"; and that they were the only sellers of that carpeting in their trade area.

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 Harry's Linoleum Company, a corporation, Harry's Corner Inc., an Ohio corporation, Buckeye Linoleum and Wallpaper Headquarters Inc., a corporation, Harry's Corner Inc., a Kentucky corporation, and Harco Distributing Corp., a corporation, and Harry Goldstein, 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. Respondents Harry's Linoleum Company, a corporation, Harry's Corner Inc., an Ohio Corporation, Buckeye Linoleum and Wallpaper Headquarters Inc., a corporation, Harco Distributing Corp., a corporation, are corporations organized, existing and doing business under and by virtue of the laws of the State of Ohio, with

their principal office and place of business at 2001 Vine Street, Cincinnati, Ohio.

Respondent Harry's Corner Inc., is a Kentucky corporation organized, existing and doing business under and by virtue of the laws of Kentucky with its principal office and place of business at 2001 Vine Street, Cincinnati, Ohio.

Individual respondent, Harry Goldstein, is an officer of all of the aforesaid corporations. 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. Corporate respondents, under the name of "Harry's Corner", are now, and for some time last past have been, engaged in the advertising, offering for sale, and sale at retail, among other things, of floor covering, paints, and counter topping, to the public.

Harry's Linoleum Company and Harry's Corner Inc., an Ohio corporation, operate retail stores at 2001 Vine Street, Cincinnati, Ohio; Buckeye Linoleum and Wallpaper Headquarters, Inc., operate a retail store at Hamilton, Ohio; Harry's Corner Inc., a Kentucky corporation operates a retail store at Newport, Kentucky; and Harco Distributing Corp. operates a retail store at Erlanger, Kentucky.

A central warehouse is maintained in Cincinnati, Ohio and shipments are made from said warehouse to the store location at Hamilton, Ohio and to the stores in Kentucky, sometimes in bulk and sometimes to supply specific articles of merchandise purchased at said stores but which is not in stock.

The advertising for the several stores is performed by respondent Harry Goldstein and is published usually in Cincinnati newspapers in a single advertisement listing the locations of all the stores.

In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said merchandise, when sold, to be shipped from their place of business in the States of Ohio and Kentucky to purchasers thereof located in States other than the States in which the shipments originated and maintain and at all times mentioned herein have maintained, a substantial course of trade in said merchandise, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business as aforesaid, respondents have made certain statements in advertisements published in newspapers of general circulation. Among and typical, but not all inclusive, of such statements so made are the following:

(1) Save \$8.00 off advertised price on Luxury Broadloom at Harry's Corner \$14.95 100% All Wool Wilton . . . on sale . . . only . . . \$6.88 sq. yd. Thousands of yards sold at \$14.95 sq. yd.

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Now Counter Top At Lowest Prices Ever Save 63%
 . . . 27" width Made to Sell for 79¢ running ft. 29¢ running ft.
 36" width Made to Sell for 89¢ running ft. 39¢ running ft.
 45" width Made to Sell for 98¢ running ft. 49¢ running ft.
 501, 10 yr. Guaranteed Dupont Nylon Carpet . . . Extra-Heavy \$10.95 Quality
 if perfect Smashed down to \$7.77 sq. yd. ½ price. . . .
 (2) Unconditional Carpet Lifetime Guarantee
 Guaranteed to give at least five years wear
 (3) 2 for 1 Paint Deal Buy One—Get One Free
 (4) No 1 in sales, no store sells more, survey proved
 (5) Indestructible: Only Harry has it . . . only DuPont makes it—501, 100%
 DuPont "501" Nylon

PAR. 4. Through the use of the aforesaid statements, and others similar thereto, not included herein, respondents represented, directly or by implication:

1. That the higher stated amounts described as "made to sell for" and others not described, were the prices at which the merchandise advertised had been usually and customarily sold at retail by the respondents in the recent regular course of business.
2. That the purchasers of the products advertised were afforded savings between the higher stated amounts and the lower advertised sales price.
3. That certain carpeting was guaranteed unconditionally for a lifetime or a period of years without any limitations other than those limitations indicated in the advertisement.
4. That the purchasers, by buying one gallon of paint at the sale price, would receive a second gallon of paint "Free".
5. That DuPont 501 Nylon Carpeting is indestructible.
6. That the respondents are the only sellers of DuPont 501 Nylon carpeting in the trade area where the representation was made.

PAR. 5. The aforesaid statements and representations were false, misleading and deceptive. In truth and in fact:

1. The higher stated amounts were not the prices at which the merchandise was usually and customarily sold at retail by the respondents in the recent course of business.
2. Purchasers of the advertised products were not afforded savings of the difference between the higher stated amounts and the advertised sales prices.
3. The carpeting advertised as guaranteed with an "unconditional Carpet Lifetime Guarantee" or "Guaranteed to give at least five years wear" was limited in respects other than the limitations set out in the advertisements which other limitations were not disclosed in the advertisements.

4. The purchaser of a gallon of paint did not receive a second gallon "free" but was actually paying the regular and customary price at which respondents sold two gallons of paint in the regular course of business.

5. DuPont "501" carpeting is not indestructible.

6. Respondents are not the only sellers of DuPont 501 Nylon carpeting in the trade area where the representation was made.

PAR. 6. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition in commerce with corporations, firms, and individuals in the sale of merchandise of the same general kind and nature as that sold by respondents.

PAR. 7. The use by respondents of the false, misleading and deceptive statements, representations and practices, as aforesaid, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and into the purchase of substantial amounts of respondents' merchandise by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has thereby been and is being done to competition in commerce.

PAR. 8. The aforesaid acts and practices, 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 and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Anthony J. Kennedy, Jr., for the Commission;

Mr. Harry M. Wasserman, Cincinnati, O., for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission on January 13, 1961, issued its complaint against the above-named respondents, charging them with having violated the Federal Trade Commission Act, by misrepresenting the floor coverings and other products they sell. Respondents appeared and entered into an agreement dated November 1, 1961, containing a consent order to cease and desist, disposing of all the issues in this proceeding without further hearings, which agreement has been duly approved by the Director of the Bureau of Deceptive Practices and the Chief of the Division of General Advertising of that Bureau. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his

consideration in accordance with § 3.25 of the Rules of Practice of the Commission.

Respondents, pursuant to the aforesaid agreement, have admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been made duly in accordance with such allegations. Said agreement further provides that respondents waive all further procedural steps before the hearing examiner and the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, that said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint, that said order to cease and desist shall have the same force and effect as if entered after a full hearing and may be altered, modified, or set aside in the manner provided for other orders, and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order, and it appearing that the order and agreement cover all of the allegations of the complaint and provide for appropriate disposition of this proceeding, the agreement is hereby accepted and ordered filed upon this decision and said agreement becoming part of the Commission's decision pursuant to § 3.21 and § 3.25 of the Rules of Practice, and the hearing examiner accordingly makes the following findings, for jurisdictional purposes, and issues the following order:

1. Respondents Harry's Linoleum Company, a corporation, Harry's Corner, Inc., an Ohio corporation, Buckeye Linoleum and Wallpaper Headquarters, Inc., a corporation, and Harco Distributing Corp., a corporation, are corporations organized, existing and doing business under and by virtue of the laws of the State of Ohio, with their principal office and place of business at 2001 Vine Street, Cincinnati, Ohio.
2. Respondents Harry's Corner, Inc., a Kentucky corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Kentucky, with its principal office and place of business at 2001 Vine Street, Cincinnati, Ohio.
3. Individual respondent, Harry Goldstein, is an officer of all of the aforesaid corporations. He formulates, directs and controls the acts and practices of the corporate respondents. His address is the same as that of the corporate respondents.

4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

It is ordered, That respondents Harry's Linoleum Company, a corporation, Harry's Corner Inc., an Ohio corporation, Buckeye Linoleum and Wallpaper Headquarters Inc., a corporation, Harry's Corner Inc., a Kentucky corporation and Harco Distributing Corp., a corporation, and their respective officers, and Harry Goldstein, individually and as an officer of the said corporations and respondents' agents, representatives and employees, directly or through any corporate device, in connection with the offering for sale, and sale and distribution of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication:

(a) that any amount is respondents' usual and customary retail price of merchandise unless such amount is the price at which the merchandise has been usually and customarily sold at retail by respondents in the recent regular course of business.

(b) that any saving is afforded in the purchase of merchandise from the respondents' retail price unless the price at which the merchandise is offered constitutes a reduction from the price at which said merchandise is usually and customarily sold at retail by the respondents in the recent regular course of business.

(c) that any merchandise, sold or offered for sale is guaranteed, unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

(d) that any merchandise is given away "free" with a purchase of other merchandise, or in any other manner, unless such is the fact.

(e) that carpeting made from DuPont 501 Nylon is indestructible.

(f) that respondents are the only sellers of DuPont 501 Nylon carpeting in a trade area where such a representation is made, unless such is the fact.

2. Using the words "made to sell for" or any other words or terms of similar import in connection with prices of merchandise unless such prices are those at which the merchandise has been sold by respondents in the recent regular course of business, or unless such prices are those at which the merchandise has usually and customarily been sold at retail in the trade area where the representations are made.

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3. Misrepresenting in any manner, the amount of savings available to purchasers of respondents' merchandise, or the amount by which the price of merchandise has been reduced either from the price at which it has been usually and customarily sold by respondents in the recent regular course of business, or from the price at which it has been usually and customarily sold at retail in the trade area where the representation is made.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, published May 6, 1955, as amended, the initial decision of the hearing examiner shall, on the 27th day of December 1961, become the decision of the Commission; and, accordingly:

It is ordered, That the above-named respondents 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 the order to cease and desist.