

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

IN THE MATTER OF

BISSELL, INC.

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

Docket 8086. Complaint, Aug. 24, 1960—Decision, Jan. 17, 1962

Order requiring a Grand Rapids, Mich., distributor of rug and upholstery cleaning devices and shampoos to jobbers and retailers to cease representing falsely in advertising in magazines and newspapers and by television that said devices and shampoo would give rugs professional-type cleaning at one-tenth the cost of professional cleaning, would dry clean rugs, and would clean merely by wiping the shampoo on a rug and letting it dry.

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 Bissell, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest,

Complaint

60 F.T.C.

hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Bissell, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at 2345 Walker Road, N.W., in the city of Grand Rapids, State of Michigan.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of rug and upholstery cleaning devices and rug and upholstery shampoos, to distributors and jobbers and to retailers for resale to the public.

PAR. 3. In the course and conduct of its business, respondent now causes, and for some time last past has caused, its said products, when sold, to be shipped from its place of business in the State of Michigan to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintains, and at all times herein mentioned has 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 its business, and for the purpose of inducing the sale of its products, respondent has made certain statements with respect to the cleaning abilities and qualities of its products, in advertisements in magazines of national circulation, on television and in newspapers, of which the following are typical:

* * * Bissell Shampoo Master cleans a 9 x 12 rug professionally * * * REMOVES EVERY KIND OF STAIN that professional cleaning can remove. * * *

* * * Bissell Shampoo Master Applicator and Liquid Rug Cleaner that will give rugs professional-type rug cleaning at one-tenth the cost. * * *

For BISSELL SHAMPOO MASTERS. The rug shampoos that dry clean.

NEW BISSELL RUG SHAMPOO—Guaranteed twice the cleaning power of other leading rug cleaners.

* * * With Bissell Rug Shampoo, there's no scrubbing or wiping up—and your rugs dry sparkling clean.

With the new Bissell Upholstery Master * * * No scrubbing. No mopping up! You just apply evenly and it dries clean. You get *twice* the cleaning power of other leading shampoos. * * *

BISSELL UPHOLSTERY SHAMPOO

Twice the cleaning power of other leading brands.

PAR. 5. Through the use of the aforesaid statements, respondent represented that its rug cleaning device, known as a "Shampoo Master", when used with its rug shampoo: (1) is as effective in cleaning rugs and carpets as professional rug or carpet cleaning; (2) will remove every kind of stain that professional cleaning can remove;

(3) will give rugs professional-type cleaning at one-tenth the cost of professional cleaning; (4) will dry clean rugs; (5) will clean a rug twice as clean as any other rug cleaner; and (6) will clean a rug merely by wiping on the shampoo and letting it dry. Respondent also represents that its upholstery shampoo when used with its upholstery cleaning device, known as an "Upholstery Master", will clean upholstery twice as clean as any other upholstery cleaner, and will clean upholstery merely by wiping on the shampoo and letting it dry.

PAR. 6. Said statements are false, misleading and deceptive. In truth and in fact said "Shampoo Master" and rug shampoo is not as effective in cleaning rugs and carpets as professional rug or carpet cleaning; will not remove every kind of stain professional cleaning can remove; will not give rugs professional-type cleaning at one-tenth the cost of professional cleaning; will not dry clean rugs; will not clean rugs twice as clean as any other rug cleaner; and will not clean a rug merely by wiping the shampoo on a rug and letting it dry. Also, said "Upholstery Master" when used with respondent's upholstery shampoo will not clean upholstery twice as clean as any other upholstery cleaner, and will not clean upholstery merely by wiping the shampoo on and letting it dry.

PAR. 7. In the course and conduct of its business, at all times mentioned herein, respondent has been 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 respondent.

PAR. 8. The use by respondent of the aforesaid false, misleading and deceptive statements, representations 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 respondent's products by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondent from its competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Frederick J. McManus supporting the complaint.

Mr. Gilbert H. Weil, of New York, N.Y., for respondent.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

STATEMENT OF PROCEEDINGS

The Federal Trade Commission issued its complaint against the above-named respondent on August 24, 1960, charging it with engaging in unfair and deceptive acts and practices and unfair methods of competition, in commerce, by misrepresenting the cleaning abilities and qualities of its rug and upholstery cleaning products. After being served with said complaint, respondent appeared by counsel and thereafter filed its answer in which it admitted, with certain exceptions, having made the various representations charged, but denied that such representations were false, misleading and deceptive.

Hearings on the charges were thereafter held before the undersigned hearing examiner in Washington, D.C., on various dates between June 7, 1961, and September 13, 1961. At said hearings, testimony and other evidence were offered in support of and in opposition to the allegations of the complaint, the same being duly recorded and filed in the office of the Commission. All parties were represented by counsel and were afforded full opportunity to be heard and to examine and cross-examine witnesses. At the close of all the evidence, and pursuant to leave granted by the undersigned, proposed findings of fact and conclusions of law and an order were filed by counsel supporting the complaint on November 6, 1961, and by respondent on October 30, 1961.

After having reviewed the entire record in this proceeding, and the proposed findings,¹ conclusions and order, the undersigned finds that this proceeding is in the interest of the public and, based on the entire record, and from his observation of the witnesses, makes the following:

FINDINGS OF FACT

I. The Business of Respondent, Interstate Commerce and Competition

1. Respondent Bissell, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at 2345 Walker Road, N.W., in the city of Grand Rapids, State of Michigan.

2. Respondent is now, and for some time last past, has been engaged in the advertising, offering for sale, sale and distribution of

¹ Proposed findings not herein adopted, either in the form proposed or in substance, are rejected as not supported by the record or as involving immaterial matters.

rug and upholstery cleaning devices and rug and upholstery shampoos, to distributors and jobbers and to retailers for resale to the public.

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

4. In the course and conduct of its business, at all times mentioned herein, respondent has been in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind and nature of those sold by respondent.

II. The Alleged Illegal Practices

The Issues

1. The allegations of misrepresentation revolve about statements made by respondent in advertisements appearing in magazines of national circulation, in newspapers and on television, concerning its rug cleaning and upholstery cleaning devices and shampoos. The complaint alleges that respondent has represented in such advertisements that its rug cleaning device or applicator, known as "Shampoo Master", when used with its liquid rug cleaner or shampoo, (a) is as effective in cleaning rugs and carpets as professional rug or carpet cleaning, (b) will remove every kind of stain that professional cleaning can remove, (c) will give rugs a professional-type rug cleaning at one-tenth the cost, (d) will dry clean rugs, (e) will clean rugs twice as clean as any other rug cleaner, and (f) will clean rugs merely by wiping on the shampoo and letting it dry. With respect to its upholstery cleaning device or applicator, known as "Upholstery Master", it is alleged that respondent has represented such product, when used with its upholstery shampoo, (a) will clean upholstery twice as clean as any other upholstery cleaner and (b) will clean upholstery merely by wiping on a shampoo and letting it dry.

2. Respondent does not deny making the statements attributed to it in the various advertisements referred to in the complaint. In several instances it denies that the statements made by it can be interpreted as constituting representations of the type alleged in the complaint. However, for the most part, its defense is that its products will perform as represented. This is particularly true of those repre-

sentations comparing its products with professional cleaning and with other shampoos.

3. The evidence relied upon by Commission counsel, as supporting the allegations of the complaint that respondent has misrepresented the cleaning ability and qualities of its rug cleaning device and shampoo consists of (a) the testimony of a chemist, employed as technical director of the National Institute of Rug Cleaning (a trade association of rug cleaners), concerning certain rug cleaning tests performed by him using respondent's products and other rug cleaning methods and products and (b) the testimony of two so-called professional rug cleaners concerning the methods used by them in cleaning rugs and carpets commercially. Insofar as respondent's upholstery cleaner is concerned, counsel supporting the complaint called a single witness, a commercial rug and upholstery cleaner, who testified with respect to a test performed by him using respondent's product and two other products. Respondent called no witnesses as part of its own case, but merely offered certain documentary evidence. Its position, essentially, is that the evidence offered by counsel supporting the complaint fails to establish that its products will not perform as represented. To a consideration of whether the allegations of the complaint have been sustained the examiner now turns.

Comparison With Professional Cleaning

4. The principal thrust of the evidence offered in support of the complaint relates to whether respondent's rug cleaning shampoo, when applied with its applicator, will perform as effectively as professional cleaning. There is no doubt as to the fact that respondent has made certain representations in this respect, of which the following are typical:

Bissell Shampoo Master cleans a 9 x 12 rug professionally * * * REMOVES EVERY KIND OF STAIN that professional cleaning can remove.

Bissell Shampoo Master Applicator and Liquid Rug Cleaner that will give rugs professional-type rug cleaning at one-tenth the cost.

5. It seems evident, and it is so found, that by so advertising its rug cleaning shampoo and applicator respondent has represented that such products are as effective in cleaning rugs and carpets as professional rug or carpet cleaning, that they will remove every kind of stain that professional cleaning can remove, and that they will give rugs professional-type cleaning at one-tenth the cost of professional cleaning. The only issue presented concerning such representations is whether the evidence offered in support of the complaint establishes that they are false, misleading and deceptive.

Initial Decision

6. In order to determine this issue, it is necessary to have some understanding as to what is meant by "professional" rug cleaning, since that is the standard with which respondent's products and method have been compared. Professional cleaning falls into two main categories, (a) in-plant cleaning, and (b) on-location cleaning. As the names imply, in-plant cleaning involves the cleaning of rugs and carpets in a special plant using fixed machinery and equipment set up for this purpose by a firm which is in the rug and carpet cleaning business. On-location cleaning involves the cleaning of rugs and carpets in the home using portable equipment which is taken into the home by the rug cleaner.

7. In in-plant cleaning the rug is first sent through a dusting machine which removes surface and sub-surface soils by a beating and vacuuming process. After pre-spotting, the rug is introduced into a rug cleaning machine where a detergent is applied by rows of reciprocating brushes, until it is thoroughly wet. It is then rinsed and sent to a drying room to dry. In the case of wall-to-wall carpeting and certain types of rugs, it is not practical to remove them to a cleaning plant, and the practice of cleaning them in the home developed.

8. In home or, "on-location" cleaning as it is called in the industry, the surface dirt is first removed by a vacuuming process. After pre-spotting, a detergent is applied by a mechanical rotary brush. Because of the danger of the back of the rug becoming wet, which may cause "brown stain", there is less wetting action applied than in the case of in-plant cleaning. After the detergent has been applied, some cleaners use what is known as a wet-dry vacuum to pick up the excess moisture, particularly in the case of detergents with a high foaming action. Others do not use a wet-dry vacuum. A pile brush or rubber rake may then be applied to erect the pile finish so that it will dry in proper shape. The rug is then allowed to dry naturally. It is vacuumed a day or two later to remove the dirt which has been loosened by the detergent. This is done either by the rug cleaner, using a commercial-type vacuum, or by the housewife, using a regular home vacuum.

9. There was some difference of opinion among the witnesses called in support of the complaint concerning the effectiveness of on-location cleaning, as compared with in-plant cleaning. According to the testimony of the technical director of the National Institute of Rug Cleaning (referred to herein as N.I.R.C.), and that of one of the professional cleaners, a higher degree of dirt removal is achieved in in-plant cleaning than in on-location cleaning. However, according

to the other professional cleaner called by counsel supporting the complaint, it is possible to achieve the same results in on-location cleaning as in rug cleaning in the plant, except in the case of heavily soiled rugs made of very closely woven yarns.

10. Whether or not in-plant cleaning is the ideal way to clean rugs or carpets, there is no question but that on-location cleaning is recognized and accepted by the industry and the public as professional cleaning. Many companies which operate cleaning plants also do on-location rug cleaning. Both of the so-called professional cleaners called to testify in support of the complaint are connected with companies which do both in-plant and on-location cleaning. At one time the N.I.R.C., which is a national trade association of professional rug cleaners, limited its membership to companies and individuals which operated rug cleaning plants, although some of them also did on-location cleaning as well. However, its membership is now open to on-location cleaners who do not operate any plant facilities. The Institute issues literature containing information and instructions regarding the approved professional methods for "on-location" rug cleaning for its members.

11. Respondent's method of rug cleaning is essentially the on-location method. It involves, first, the vacuuming of the rug before cleaning in order to remove surface dirt. Instead of a heavy commercial vacuum, the housewife uses her regular home-type machine. Respondent's rug shampoo is then mixed with water in a solution which is placed in the tank of respondent's applicator, called the "Shampoo Master", and is pushed across the rug by the housewife, who periodically releases the shampoo solution until the entire rug has been covered. After the rug has dried it is again vacuumed by the housewife.

12. The contention of counsel supporting the complaint, that respondent's Shampoo Master and Rug Shampoo are not as effective in cleaning rugs and carpets as professional rug cleaning, is based on the fact that the housewife does not have the skill of professional rug cleaners and that she does not have available the "heavy and specialized equipment" used by professional cleaners in on-location cleaning.² Counsel cites, in this connection, the testimony in the record concerning the methods and equipment used in professional on-location cleaning. However, there is nothing in the testimony cited to establish that such methods and equipment will necessarily result in, or do, in fact, result in a better cleaning job than can be achieved by respondent's method and products.

² Fifth proposed finding of counsel supporting complaint.

13. While it may be that the equipment used in applying respondent's shampoo is not as heavy or as specialized as that used in professional on-location cleaning, it essentially involves the same procedures. Instead of using a commercial-type vacuum as the initial step, to remove surface dirt, respondent's method involves the use of a home-type vacuum by the housewife. It may be that the commercial-type vacuum is larger and operates more rapidly than the home type, but there is nothing in the record to establish that it does a significantly better job in removing surface dirt,³ or to indicate that such differences as may exist materially affect the ultimate cleaning result achieved. Similarly, while the mechanical rotary brush used in applying the detergent is larger, heavier and operates more rapidly than respondent's Shampoo Master, there is nothing in the record to indicate that it is any more effective in applying the detergent to the rug or carpet. The purpose of applying the detergent is to loosen the more tenacious soil or dirt which has not been removed by the initial vacuuming, and to cause it to come to the surface where it can be removed by a later vacuuming after the rug has dried. There is nothing in the testimony cited by counsel supporting the complaint which establishes that better cleaning results are achieved by machine application than by manual-type application of a detergent.⁴ On the contrary, the record discloses that professional cleaners themselves use manual methods of application in corners and other areas where it is not practical to apply a mechanical rotary brush, and that they achieve satisfactory results, albeit the manual method takes longer and is not economically feasible for commercial purposes in cleaning large areas.

Additional professional equipment referred to by counsel supporting the complaint, as not being used in respondent's method, are (a) the wet-dry vacuum, (b) the pile brush and (c) the commercial vacuum for final pickup. However, there is no showing that any of these results in a materially better cleaning job than does respondent's method. The wet-dry vacuum is used by professional cleaners only with certain types of detergents, and was not even used by one of the Commission's witnesses in conducting a test in accordance with the so-called professional method. The pile brush is used by some profes-

³ The technical director of the N.I.R.C., while claiming that the commercial Hoover vacuum was more powerful than the home type, admitted that he had no information as to whether the former would pick up more dirt than the latter. (R. 213, 215).

⁴ The only testimony cited by counsel supporting the complaint which suggests that more effective detergent action is achieved by mechanical application is that of the technical director of the N.I.R.C. (R. 174). However, this testimony is based on tests conducted by him which, as will hereafter appear, are of dubious validity and are not even cited by counsel supporting the complaint.

sionals because of the matting action caused by the heavy rotary brush which is used in applying the detergent. This would be unnecessary in the case of respondent's lighter applicator. Finally, there is no showing that a commercial-type vacuuming is needed for the final soil removal after the rug has dried. Many professionals do not perform this operation themselves, but direct the housewife to do it with her own vacuum a day or two after the professional cleaning. In fact, the N.I.R.C.'s recommended method for professional on-location cleaning envisions that the final vacuuming will be performed by the housewife using her own equipment, rather than by the professional using his own equipment.

14. The only evidence in the record purporting to show a difference, quantitatively or qualitatively, in the results achieved by the so-called professional method of on-location cleaning, in comparison with those achieved by the use of respondent's products, involves a test conducted by the technical director of the N.I.R.C., Mr. Ned Hopper. This test (referred to herein as the Hopper test) was allegedly undertaken, at the request of the Commission, and purports to compare respondent's and other home-type rug cleaning products with professional-type cleaning. Although the test was offered in evidence by counsel supporting the complaint, and although a major portion of the record consists of Hopper's testimony concerning the test, counsel supporting the complaint makes no reference to the test as establishing his position that respondent's product is not as effective as professional-type rug cleaning.⁵ The test does purport to establish that home-type cleaners, including respondent's, "will not remove as much soil as professional on-location cleaning".⁶ The failure of counsel supporting the complaint to refer to the test, as supporting any finding that respondent's shampoo is not as effective as professional cleaning, suggests that counsel recognizes the lack of probative weight which should be assigned to the test. However, in the event it may later be urged that counsel's failure to refer to the test in support of the allegation of the complaint here under consideration was merely an oversight or, to the extent the Commission may regard the test as material on this issue, the examiner will hereinafter set forth his views concerning the probative weight which should be accorded to it.

15. The Hopper test, conducted under the auspices of the N.I.R.C., involved the soiling of clean, white samples of carpeting and the

⁵ Counsel does cite the test as supporting his position that respondent's product does not possess twice the cleaning power of other leading home rug cleaners, but makes no reference to the test as supporting the allegation with regard to its effectiveness in comparison with professional cleaning.

⁶ CX 2-B.

separate cleaning thereof by (a) respondent's cleaner, (b) three other "do-it-yourself" home cleaners, and (c) the so-called professional method. The results of each of the tests were measured by a photoelectric machine known as the Gardner Automatic Photometric Unit or, as it was sometimes referred to, the Gardner Reflectometer. This machine has a light source which shines through two mirrors and strikes the carpet at a 45° angle. The light is reflected back into a photometric unit which then magnifies it and causes the activation of a dial on which a reading is made. The machine does not actually measure the amount of dirt or absence of dirt in the carpet, but the degree of grayness thereof, i.e., the various gradations of color from white to black. The darker gray the carpet is, the lower the reading on the dial will be; conversely, the whiter the carpet is, the higher the reading on the dial.

In conducting the tests in question, the original samples, which were white in color and unsoiled, were placed under the reflectometer and a reading was taken. They were then soiled in a so-called soiling machine with dirt which had been taken from dusting machines used in professional rug cleaning plants, and a reading was taken on the reflectometer. The soiled samples, which were each 5½ x 6 inches in size, were then tacked down in groups of four on a board 4 x 6 feet in size, surrounded by clean, unsoiled carpeting. Each group of four samples was separately cleaned using a different one of the methods referred to above, and a reading was taken on the Gardner reflectometer after each cleaning. A computation was then made as to the percentage by which the cleaning process returned each group of samples to its original reflectance reading.

The basic assumption on which the Hopper tests rests is that there is a direct correlation between the gray reflectance reading and the presence or absence of dirt.⁷ It is thus assumed that the extent to which the samples were restored to their original reflectance reading reflects the per cent of cleaning achieved. On this basis, the samples cleaned with the so-called professional method purported to show the highest percentage of cleaning, viz, 68.2%. Those cleaned with respondent's product by a female employee of the N.I.R.C., who allegedly used little or no pressure in applying the Shampoo Master applicator, purported to show a percentage of cleaning achieved of 31.1%. However, when the process was repeated by Hopper himself on other samples, using more pressure on the applicator and more of respondent's solution, a percentage of 62.0% was achieved. The tests

⁷ As Hopper testified (R. 149): "The grayer a white piece of goods is, the more soil that it has on it."

using three other home rug cleaning products purported to show cleaning results of 5.0%, 23.0% and 52.7%, respectively.

16. It is respondent's position that the Hopper test fails to establish that its rug cleaning shampoo is not as effective as professional cleaning methods for three reasons: (a) because of the bias of Hopper and the N.I.R.C., by whom he is employed, the test "is not entitled to credibility", (b) even if accorded credibility, the test "did not measure the cleaning efficiency of either the Bissell or the so-called professional method", and (c) even if the test is accepted, it actually demonstrates that respondent's product will clean as effectively as the professional method. The basis and validity of each of these contentions is hereinafter discussed.

17. With respect to the matter of bias, it is undisputed that the N.I.R.C., as the trade association of professional rug cleaners, is "interested in promoting professional rug cleaning".⁸ Conversely, it is clear that the Institute looks with disfavor on the competition of home, do-it-yourself cleaning products. The concern with which it regards such competition may be gauged from the following comment made by Hopper to a member of the organization, in requesting him to make certain tests on home and professional upholstery cleaning products and methods: "It will be bad for us if you happen to give an opinion in favor of the [home] product".⁹ It was conceded by Hopper that the outcome of the test conducted by him could be influenced by the manner in which it was carried out, such as applying more brushing action and detergent in connection with the use of one method than another. In its proposed findings, respondent calls attention to various ways in which Hopper departed from the methods recommended by the Institute for professional on-location cleaning which, it is argued, was done in order to influence the outcome of the tests. The examiner finds it unnecessary to discuss these matters. It is sufficient to note that, under all the circumstances, a serious doubt is created in the mind of the examiner as to the objectivity of the manner in which the Hopper test was conducted. However, the probative weight which should be accorded to the test need not be determined on the basis of the objectivity or lack of objectivity of those who conducted it, since there are more fundamental grounds for finding that the test fails to support the allegations of the complaint.

18. Respondent's second contention, to the effect that the test did not measure the cleaning efficiency of any of the products or methods involved, is based on the fact that the reflectometer actually measured

⁸ R. 125.

⁹ R. 30.

the degree of grayness of the samples tested, rather than the amount of soil therein. As above noted, it was Hopper's position that there is a direct correlation between the two, in that the more dirt there is in the sample, the darker gray its color becomes and the lower the reflectance reading thereof; whereas the more dirt that is removed, the lighter the sample becomes and the higher the reflectance reading. Assuming, for purposes of this decision, that there is a significant correlation between the reflectance readings and the presence or absence of dirt in the samples being tested, it does not necessarily follow that, because certain of the samples had a higher reflectance reading after the use of the so-called professional method such method is more effective in cleaning.

The Gardner reflectometer only reads the color of the surface of the sample on which the head of the machine is placed. If, as a result of the action of the rotary brushes or other method of applying the detergent, the dirt is driven deeper into the pile or is transferred to other portions of the rug which are not read by the reflectometer, a true test of cleaning ability will not be achieved. The outcome of the test may also have been influenced by the fact that some detergents contain optical brighteners or bleaches. These make the carpet appear brighter, but are not indicative of the amount of dirt removed.

The extent to which these factors may have determined the outcome of the test at issue cannot be precisely determined. It is clear, however, that some or all of them played a part in influencing the results since some of the readings achieved are otherwise unexplainable. For example, on one group of samples tested by a home rug cleaning product other than respondent's, the test purported to show that the samples were returned to 52.7% of their original reflectance reading after having been cleaned. Yet, in following the manufacturer's directions, Hopper admittedly did nothing to remove the dirt from the samples. The manufacturer's directions provided for the application of the detergent with a bristle brush, but made no reference to subsequent vacuuming, possibly on the assumption that the housewife would do this anyway, without instructions. Hopper applied the detergent, but did not vacuum the samples after they had dried. Since the application of the detergent merely loosens the dirt and it is the subsequent vacuuming which removes it, it is clear that in this instance nothing was done to remove the dirt. Yet the samples showed a significantly higher reflectance reading than they did after being soiled. Hopper sought to explain the results as being due to the fact that the soil had merely "migrated down * * * to the middle of the tuft" where it would not be visible to the reflectometer, or to

the fact that it had been "transferred from these [soiled] swatches to the unsoiled area" surrounding them.¹⁰

It seems evident that the same factors which could have affected the reflectance reading of the samples cleaned with the competitive do-it-yourself product, were also present in the case of those cleaned by the professional method. In fact, the margin for error would appear to be even greater. Thus, instead of applying the detergent with a hand applicator, under the professional method it was applied by a power-driven rotary brush 16 inches in diameter, operating at a speed of approximately 175 revolutions per minute, and weighing approximately 50 pounds. The machine was used to clean four small swatches of carpet, each 5½ x 6 inches in size, which were surrounded by clean carpeting on a board 4 x 6 feet in size, the entire area being cleaned but only the soiled samples being read by the reflectometer. The soiled samples were thus less than one square foot in size in an area of 24 square feet. It seems evident that in the operation of the rotary brushes, under such circumstances, some "wicking" of the dirt from the soiled to the unsoiled carpeting was inevitable, a possibility which Hopper conceded in this instance,¹¹ as in the case of the home-type cleaner discussed above. Any reading taken of the soiled samples would, at best, indicate that a certain percentage of the dirt had been removed from the surface of those portions of the carpet tested, but would not establish the over-all ability of the cleaner to remove dirt from an entire carpet in the home.

19. Assuming, however, that the Hopper test is valid, to the extent of permitting a comparison between respondent's cleaner and the professional method, it fails to establish that respondent's cleaner will not clean as effectively as professional cleaning. The test disclosed that when respondent's product was applied "with force" it achieved a cleaning effectiveness of 62.0%, as compared with 68.2% for the samples cleaned by the so-called professional method. According to Hopper's testimony, a result of 65% of soil removal is considered satisfactory by professional cleaners for on-location cleaning and, further, there is no significant difference between a score of 62% and 68.2%, insofar as the amount of additional dirt removed is concerned. It may also be noted, in this connection, that in performing the so-called professional test Hopper used the allegedly more powerful commercial-type vacuum for the final dirt removing procedure, whereas ordinarily (and according to the N.I.R.C.'s own instructions) this is done by the housewife herself using a home-type vacuum.

¹⁰ R. 225.

¹¹ R. 289.

It is true that the test also purports to show a percentage of cleaning of 31.1% when respondent's product was applied not using "force". However, it is dubious whether this reflects a true test of the cleaning efficiency of respondent's product. Hopper did not himself apply the rug shampoo in the latter test, but it was done by a female employee who apparently applied it lightly without rubbing it into the carpet. Hopper was extremely vague as to the amount of detergent and amount of pressure used by the female employee, who was not herself called to testify. In his own test of respondent's product, he allegedly applied greater force and a greater amount of liquid. He was uncertain whether it was either or both of these which produced a result indicating a cleaning efficiency twice as great as that achieved by the female employee, or as to how much less force could have been used to achieve a substantially similar result.

The record fails to establish that a housewife, using a reasonable amount of pressure and a proper amount of solution, cannot achieve results equal to those achieved by Hopper in using respondent's cleaner. While Hopper claimed that a mechanical rotary brush would have greater mechanical power and thus result in greater cleaning action than would be achieved by a housewife lightly moving a hand applicator across a carpet, he conceded that the machine could deliver only a certain amount of pressure effectively without damaging the carpet. Although covering a wider area than respondent's applicator, a 16-inch rotary brush would normally exert a pressure of only one-third to one-fourth of a pound per square inch of carpet. A housewife, using respondent's applicator, could achieve the equivalent amount of pressure by exerting one pound of pressure per square inch on the applicator. There is nothing to indicate that this could not be done by the average housewife. There is likewise nothing in the record to indicate that respondent's shampoo is not as effective in loosening dirt as professional detergents. No chemical analysis was made of respondent's product or of the products used by professional cleaners, so as to disclose that respondent's product is incapable of cleaning a rug as effectively as professional-type detergents. The evidence also fails to establish that the loosened dirt cannot be removed effectively by home vacuuming, as recommended by respondent. This method, as above noted, is that recommended by the N.I.R.C. and by a number of professional cleaners. Thus, the record does not disclose any scientific reason why respondent's product, applied through respondent's applicator, will not clean rugs as effectively as professional methods. The test made by the N.I.R.C. fails to establish that it will not in fact do so.

20. Not only does the Hopper test fail to support the complaint, but it is at variance with an earlier test conducted by him, insofar as the test discussed above purports to establish an unfavorable comparison between respondent's product and professional methods. The earlier test, which was conducted by Hopper considerably prior to the motive of the present litigation, involved a so-called jury test. This consisted of the cleaning of rugs separately, by the use of respondent's product, by the use of the professional method and by the use of other do-it-yourself products. A jury of lay persons was asked to examine the rugs and to designate the order of cleanliness of each. The results of the tests disclose that five persons selected the rug cleaned by respondent's product as being the cleanest, while five members of the jury selected the rug cleaned by the professional method as being the cleanest. While no quantitative analysis of the dirt removal was made, the fact that half of the jurors selected the rug cleaned by respondent's method as being the cleanest, from a practical point of view, is a factor which cannot be ignored, particularly in view of the weaknesses in the later Hopper test.

21. Considering, (a) the presence of circumstances which raise serious doubts as to the objectivity of the National Institute of Rug Cleaning test using the Gardner reflectometer, (b) the existence of factors which militate against the scientific accuracy of the test as a proper indicator of cleaning efficiency, (c) the fact that the test, even if accepted as an adequate test of dirt removal, fails to establish that respondent's product is incapable of dirt removal to an extent substantially comparable to that of the professional method, and (d) the fact that a jury test conducted *ante litem motam* establishes that, on a practical visual basis, respondent's product was found to clean rugs better than rugs cleaned by the professional method, by at least as many persons as found the professional method to clean better, it is concluded and found that counsel supporting the complaint has failed to sustain the burden of proving the allegations of the complaint that respondent's rug cleaning shampoo will not clean rugs and carpets as effectively as the professional method. The mere fact that some of the equipment or techniques used in cleaning rugs professionally are not used in respondent's method does not, as counsel supporting the complaint contends, establish the allegations of the complaint in the absence of substantial reliable and probative evidence that such equipment or techniques will necessarily insure the more effective cleaning of rugs. Such evidence, as heretofore noted, is lacking in the record.

Removal of Stains

22. Counsel supporting complaint has offered no proposed findings with respect to the allegation of the complaint that the representation by respondent to the effect that its shampoo will remove every kind of stain that professional rug cleaning can remove, is false, misleading and deceptive. It is not clear whether counsel has abandoned this charge in the complaint. It may be that counsel is relying on the evidence offered in support of the broader charge, concerning the falsity of the representation that respondent's product is as effective as the professional method in rug cleaning, as also sustaining the charge with respect to the removal of stains. In any event, as above found, the broader charge has not been sustained. There is no other evidence in the record which separately establishes that respondent's product is not as effective in removing stains as professional rug cleaning methods. It is, accordingly, concluded and found that counsel supporting the complaint has failed to establish by reliable, probative and substantial evidence the allegation of the complaint that respondent has falsely represented that its rug shampoo and applicator will not remove every kind of stain professional cleaning can remove.

Cost of Cleaning

23. As above found, respondent has represented that rugs can be cleaned by its method at one-tenth the cost of professional-type cleaning. The issue raised is whether this representation is true. Respondent's rug shampoo is sold in three sizes, viz, a 22-ounce can selling for \$1.98, a 64-ounce container selling at \$3.98 and a gallon container selling for \$6.98. The advertisements in evidence involve principally the 22-ounce can. Some of them state that the can will clean a "9 x 18 rug area" or "one-and-a-half 9 x 12 rugs or 162 square feet of carpeting."¹² The cost of cleaning is also stated to be 1¼¢ a square foot.¹³

24. The evidence in the record as to the cost of professional rug cleaning involves the Washington, D.C., area, and indicates that the charge therefor ranges between 8¢ to 10¢ a square foot, depending on the amount of furniture in the room. Two of the cleaners had minimum charges of \$17.50 and \$15.00, respectively, and one had a minimum charge of \$9.72 for a 9 x 12 rug. On this basis, a professional cleaner would charge between \$12.96 and \$16.20 for a 9 x 18 rug, except for the cleaners whose minimum charges would be \$15.00 and \$17.50, respectively. Since \$1.98 is 10% of \$19.80, it is evident that the cost of respondent's 22-ounce can is more than one-tenth of the cost of cleaning an area 9 x 18, professionally.

¹² CX 23, 24, and 27.

¹³ CX 23 and 27.

25. Respondent seeks to justify its advertising claims on several grounds. First, it points out that the cost of cleaning a 9 x 12 rug with its rug cleaner is only \$1.32, on the basis that it requires only 14.7 ounces to do so. This, it notes, is less than 10% of the minimum charge of two of the three professional cleaners who testified in this proceeding. The trouble with this argument is that it assumes respondent's advertising claim with respect to comparative cost is limited to a 9 x 12 rug. Respondent's claim is not so limited. In one of the advertisements at issue it stated that the "regular" 22-ounce can "cleans a 9 x 18 rug area," and in another that it "will clean one-and-a-half 9 x 12 rugs, or 162 square feet of carpeting."¹⁴ In the latter advertisement respondent itself fixed the cost of cleaning with its product at "11¼ cents" a square foot. This figure is certainly more than 10% of the usual cost of cleaning a square foot of carpeting, viz, 8¢ to 10¢.

26. As additional justification for its advertising claims, respondent cites the fact that the cost per ounce of its shampoo in the larger containers is even cheaper than in the 22-ounce can. Thus, the cost per ounce of the shampoo in the 64-ounce container is 6¢, and in the gallon container is 5½¢, compared to 9¢ in the 22-ounce can. While this may be true, it is completely irrelevant, since the advertising claims made by respondent involve principally its 22-ounce can. It does refer in one of the advertisements to the fact that it has an "Economy Half Gallon for only \$3.98," but its comparison with the cost of professional cleaning is not limited to this size.¹⁵

27. In the foregoing discussion it has been assumed that the cost comparison made by respondent with professional cleaning includes only the cost of the shampoo itself and not the applicator. This is the frame of reference of the proposed findings of counsel supporting the complaint. However, when respondent's advertising material is viewed as a whole, it is clear that the comparison made is not so limited. The advertising material features the "Bissell Shampoo Master", which is the hand applicator sold by respondent for applying its shampoo. The offerings include the Shampoo Master and the shampoo as a "Kit" for the combined price of \$14.95, stating that the shampoo is being offered "free."¹⁶ The comparison made with the cost of professional cleaning suggests that the cost of *both* the applicator and the shampoo are only one-tenth that of professional cleaning. Thus, one of the advertisements specifically states that:

¹⁴ CX 24 and 27.

¹⁵ CX 24.

¹⁶ CX 24 and 27.

Bissell has now perfected a new Shampoo Master Applicator and Liquid Rug Cleaner that will give rugs professional type cleaning at *one-tenth the cost*—as easily as using a carpet sweeper.¹⁷

Another advertisement states that “this convenient new method [not merely the shampoo] costs only one-tenth as much as professional cleaning”.¹⁸ When the cost of the applicator is added to that of the shampoo, and until such time as the cost of the applicator has been amortized, it is clear that the combined cost is greatly in excess of one-tenth of the cost of professional cleaning.

28. Respondent contends, finally, that there is no likelihood of deception since even if its claims of one-tenth of the cost of professional cleaning are inaccurate, it does disclose that the cost is 1¼¢ a square foot, and that the customer is therefore advised what the actual cost is. While it may be that the customer is advised what the actual cost per square foot is, he is at the same time told that this does not exceed one-tenth the cost of professional cleaning. The latter representation, as above indicated, is not in accordance with the facts. Furthermore, in at least one advertisement the flat statement is made that respondent’s method costs only one-tenth as much as professional cleaning, with no indication of the per square foot cost.¹⁹

29. It is concluded and found that, whether respondent’s comparative cost claims are limited to its rug cleaning shampoo alone or the combined cost of the applicator and shampoo, its representations are false, misleading and deceptive since the cost thereof, separately or in combination, exceeds one-tenth the cost of professional cleaning.

Dry Cleaning of Rugs

30. The complaint alleges that respondent has falsely represented that its rug shampoo will “dry clean” rugs. Unlike the allegations of the complaint heretofore discussed, with respect to which respondent admits making the representation but denies the falsity thereof, in this instance respondent denies making any claim that its shampoo will dry clean rugs. It concedes that its cleaning method, which involves the use of a detergent in a solution of water, is not dry cleaning. The issue, therefore, is as to the interpretation to be given to respondent’s advertising.

31. The evidence discloses that respondent did advertise its rug shampoo as follows:

¹⁷ CX 27.

¹⁸ CX 24.

¹⁹ CX 24.

The rug shampoos that dry clean—truly a one-step cleaning method.²⁰

This statement is clearly subject to the interpretation that respondent has represented that its rug cleaner will “dry clean” rugs. However, respondent contends that such an interpretation was not intended. It claims that what it meant to say was that its rug shampoo “dries clean”, rather than that it will “dry clean” a rug. Thus it points out that in a number of television broadcasts the statement was made that its shampoo “dries clean”,²¹ and that rugs so cleaned “dry sparkling clean”.²² It claims that such statements were made in the context that it is not necessary to scrub or wipe the rug in cleaning it, but that by applying the shampoo with the applicator the rug will “dry clean”.

32. In the opinion of the examiner respondent's advertising is, at best, ambiguous and is subject to the interpretation that it will “dry clean” rugs, not merely that a rug so cleaned “dries clean”. It may be noted that in the advertisement where the statement at issue appears, respondent uses the plural of the word shampoo, referring to its product as: “The rug shampoos that dry clean”. While several models of the rug applicator are referred to in the advertisement, only one rug shampoo is mentioned. So far as appears from the record, respondent makes only a single-type shampoo for rug cleaning. Its choice of the plural appears, under the circumstances, to be a deliberate play on words calculated to associate its product with the dry cleaning method. In any event, since the language used by respondent is readily subject to the interpretation that its shampoo will “dry clean” rugs, it is immaterial whether it intended to convey this impression or not. The Federal Trade Commission Act is violated if the statements made have a tendency to deceive. Intent or bad faith are not necessary elements of the offense.²³ Furthermore, even the meaning which respondent allegedly intended to convey, viz, that a rug cleaned with its shampoo “dries clean”, is open to question as to accuracy since, as a minimum, further vacuuming is necessary to remove the dirt insofar as it has been loosened by the shampoo.²⁴

33. Respondent further contends that the advertisement at issue appeared only in a single publication, the Home Furnishing Daily,

²⁰ CX 26.

²¹ CX 14, 16 and 19.

²² CX 17.

²³ *Gimbel Bros. v. FTC*, 116 F. 2d 578, 579 (C.A. 2); *Koch v. FTC*, 206 F. 2d 311, 317 (C.A. 6).

²⁴ For further discussion of this point, see portion of this decision dealing with charge of “Cleaning Merely by Spreading”.

which it claims is a trade publication not addressed to the consuming public, and that there is therefore no likelihood of deception in the future. It is true that the only advertisement in evidence in which the challenged statement appears is in the Home Furnishing Daily of March 17, 1960. However, there is nothing in the record to disclose that this is the sole such advertisement inserted by respondent or that its circulation was limited to dealers. It was not incumbent upon counsel supporting the complaint to introduce any particular number of advertisements in evidence. Having introduced a sample of respondent's advertising into evidence, the burden shifted to respondent to show that the advertisement appeared only once in a paper not circulated to the public. Considering the record as a whole, including the ambiguity of the statements appearing in the other advertisements upon which respondent relies for support, the examiner is not convinced that there is no likelihood that the challenged advertisement or one resembling it will not again be inserted by respondent in the future. Even if it be assumed, *arguendo*, that the advertisement appeared only in a trade publication whose circulation was limited to dealers, this is no bar to a finding that the statement is calculated to mislead. Presumably, it was intended to encourage the purchase of respondent's product by dealers and to give them a basis for making advertising claims in the sale thereof. One who places an instrumentality for deception in the hands of another is equally as guilty as the person who makes the misrepresentation directly to the public.²⁵

34. It is concluded and found that respondent has represented that its rug shampoo will dry clean rugs and that such claim is false, misleading and deceptive since, admittedly, respondent's product does not dry clean rugs, but is a detergent which is applied in a solution of water.²⁶

Comparison With Other Rug Cleaners

35. The complaint alleges respondent has represented that its rug shampoo will clean rugs "twice as clean as any other rug cleaner". Respondent's actual advertising claim is not that its rug shampoo will clean twice as clean as *any other cleaner*, but twice as clean as *other leading shampoos*. Thus in one of the advertisements in evidence, it is stated that its shampoo is "guaranteed" to have "twice the cleaning

²⁵ *FTC v. Winsted Hosiery Co.*, 258 U.S. 483; *Irwin v. FTC*, 143 F. 2d 316, 325 (C.A. 8).

²⁶ Respondent suggests that the fact it reveals its shampoo must be diluted in water precludes any possibility of deception. This assumes that the public is aware of the technicalities of the dry cleaning method to such an extent that it will know that water is never used in so-called dry cleaning. Such assumption cannot be made. Furthermore, it overlooks the fact that the revelation was not made in the advertisement at issue. Where the first contact is deceptive the law is violated, even though the true facts are later made known. *Carter Products v. FTC*, 186 F. 2d 821, 824 (C.A. 7).

power of other leading shampoos", and in a television broadcast it stated that its shampoo "has twice the cleaning power of other leading brands".²⁷ Counsel supporting the complaint apparently concedes in his proposed findings that the comparison made by respondent is with other leading rug cleaners rather than with all other rug cleaners, but claims that such representation is, nevertheless, false, misleading and deceptive.

36. The contention of counsel supporting the complaint concerning the false and misleading nature of respondent's statements relative to the cleaning power of its shampoo, in comparison with other leading cleaners, is based entirely on the so-called Hopper report,²⁸ which has been previously discussed in connection with the allegations concerning the comparison made between respondent's shampoo and professional cleaning methods. As there indicated, the Hopper test purported to test not merely respondent's rug shampoo and the professional method of cleaning, but also three other home rug cleaners, viz, Easy Glamur, Glamorene (powder), and Glamorene Shampoo. Whether these are the other leading brands of rug cleaners does not appear from the record. In any event, the test purports to show that respondent's product is not twice as effective as all of the other cleaners tested.

37. For the reasons discussed above, no finding can be made as to whether respondent's product is or is not twice as effective as other leading rug cleaners, based on the Hopper test. The same infirmities which apply to the test, insofar as it purports to measure the cleaning ability of respondent's product and the professional method also apply to the testing of the other cleaners. As previously noted with respect to one of the other cleaners tested, viz, the Glamorene Shampoo, the test purports to show that the sample tested was restored to 52.7% of its original state, even though no steps had been taken to actually remove any of the soil from the sample after the application of the shampoo. In view of the unsatisfactory nature of the Hopper test and the absence of any other evidence, it must be concluded and found that counsel supporting the complaint has failed to sustain the burden of proving, by reliable, probative and substantial evidence, that the statement that respondent's product is twice as effective as other leading cleaners, is false, misleading and deceptive.

Cleaning Merely by Spreading

38. The complaint alleges respondent has represented that its rug shampoo, when applied with its applicator, "will clean a rug merely

²⁷ CX 24 and 15.

²⁸ Ninth Proposed Finding.

by wiping on the shampoo and letting it dry". Respondent's position as to whether it made such a representation is not entirely clear. It apparently contends that any statements made by it, in this connection, were merely intended to convey the impression that the shampoo could be applied easily by the housewife in a stand-up position, as distinguished from a hands and knees, scrubbing operation. As thus qualified, respondent contends that the representation is true.

39. The record discloses that respondent has made the following statements, in advertisements, concerning its rug shampoo and the method of application thereof:

Easy as using a carpet sweeper! This is all you do: Simply push the Bissell Shampoo Master Applicator over your rug or carpet. A trigger in the handle releases the liquid rug cleaner which sponges deep into the fiber of the rug, removing all soil and stains. When rug is clean, simply vacuum.²⁹

* * * * *

For the easiest, quickest rug cleaning you've ever known—use Bissell Rug Shampoo in one of these famous Bissell Shampoo Masters, and you shampoo your rugs *standing up*. With Bissell shampoo, there's no scrubbing or wiping up—and your rugs dry sparkling clean.³⁰

40. While respondent does, as it contends, emphasize in its advertising material the fact that its shampoo may be applied standing up and that it is unnecessary for the housewife to get down on her hands and knees and to scrub the solution into the rug, it goes beyond this in suggesting the lack of effort which is required in cleaning a rug. Viewing the advertisements as a whole, it is clear that respondent suggests to the housewife that little or no effort is required in cleaning and that all that is necessary is to guide the applicator over the rug, thereby causing the rug to become clean by merely releasing the shampoo.

41. The record establishes that a rug cannot be cleaned in the effortless manner suggested by respondent. The detergent does not automatically cause the rug to become clean merely by releasing it as the applicator is pushed over the carpet. It is necessary to apply a reasonable amount of pressure in order to cause the solution to penetrate into the carpet, so as to result in a loosening of the sub-surface soil. Furthermore, the rug does not dry sparkling clean. As a minimum, it is necessary to vacuum the carpet in order to remove the dirt which has been loosened by the shampoo. The extent to which the carpet has been cleaned will depend on the care and effort used in applying the detergent and in vacuuming the rug when it is dry.

²⁹ CX 27.

³⁰ CX 17.

42. It is concluded and found that (a) respondent's advertisements convey the impression that rugs can be cleaned merely by spreading on its shampoo with its applicator, using little or no effort, and (b) that statements made by it to this effect are false, misleading and deceptive in that rugs cannot be cleaned merely by spreading the shampoo on the rug and letting it dry but additional effort and steps are required.

Upholstery Shampoo

43. As previously noted, the complaint contains two allegations of misrepresentation concerning respondent's upholstery shampoo, first, that when applied with its applicator it will clean twice as clean as any other upholstery cleaner and, secondly, that it will clean upholstery merely by wiping on the shampoo and letting it dry. The record discloses that respondent has advertised that its upholstery shampoo has "twice the cleaning power of other leading shampoos", and that it requires: "No scrubbing. No mopping up! You just apply evenly and it dries clean."³¹ Respondent contends that its upholstery cleaner will perform as advertised.

44. The only evidence concerning the performance of respondent's upholstery cleaner involves the testimony of a professional rug and upholstery cleaner called by counsel supporting the complaint. The witness performed a practical test in the cleaning of a sofa using, (a) respondent's product, (b) a competing "do-it-yourself" product and (c) the normal method used by him in cleaning upholstery professionally. According to the witness' testimony, respondent's product did "a far better job than the competitive do-it-yourselfer", but not as good a job as the professional method.³² The test was performed by the witness at the request of Ned Hopper, technical director of the National Institute of Rug Cleaning, who, as previously noted, informed him that: "It will be bad for us if you happen to give an opinion in favor of the [Bissell] product."³³

45. Counsel supporting the complaint has proposed no findings with respect to the charges of the complaint involving respondent's upholstery shampoo, and has submitted no order prohibiting such practices. Presumably counsel has abandoned these charges. In any event, it is the opinion of the examiner that no findings in support of the complaint can be made on the basis of the testimony of the sole witness who testified with respect to respondent's upholstery shampoo in view of the dubious circumstances of the test conducted by him, and

³¹ CX 20.

³² R. 13.

³³ R. 30.

its incompleteness insofar as affording a basis for determining (a) whether respondent's product does or does not have twice the cleaning power of other leading home cleaners and (b) what steps, if any, are required in order to achieve effective cleaning of upholstery through the use of respondent's cleaner other than the wiping on thereof. It is concluded and found that counsel supporting the complaint has failed to sustain the burden of proving, by reliable, probative and substantial evidence, that respondent has made false, misleading and deceptive statements to the effect that respondent's upholstery shampoo will clean upholstery twice as clean as other leading shampoos, and that it will clean upholstery merely by wiping on the shampoo and letting it dry.

CONCLUSIONS

1. The use by respondent of the statements, representations and practices hereinabove found to be false, misleading and deceptive 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 respondent's products by reason of said erroneous and mistaken belief. As a consequence thereof, it may be inferred that substantial trade in commerce has been, and is being, unfairly diverted to respondent from its competitors and that substantial injury has been, and is being, done to competition in commerce.

2. The acts and practices of respondent, as thus found, were, and are, all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That Bissell, Inc., a corporation, and its officers, employees, agents and representatives, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of any rug cleaning device and any rug shampoo in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that such rug cleaning device and shampoo:

1. Will give professional-type cleaning at one-tenth the cost of professional cleaning.
2. Will clean a rug merely by spreading the shampoo on the rug and allowing it to dry.

Complaint

60 F.T.C.

3. Will dry clean rugs.

It is further ordered, That the complaint be, and the same hereby is, dismissed insofar as it alleges that respondent made false, misleading and deceptive statements other than those hereinabove found to be false, misleading and deceptive.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 4.19 of the Commission's Rules of Practice, effective July 21, 1961, the initial decision of the hearing examiner shall, on the 17th day of January 1962, become the decision of the Commission; and, accordingly:

It is ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a