

Complaint

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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
LUXOR CARPETS, INC., ET AL.

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

Docket C-910. Complaint, June 25, 1965—Decision, June 25, 1965

Consent order requiring a Washington, D.C., concern engaged in selling and distributing carpeting exclusively through a referral selling plan to cease representing falsely that customers participating in their referral plan would receive enough referral commissions to obtain their carpeting at little or no cost, that respondents would be successful in selling carpeting to 50 percent of the persons referred to them by participants in the program, and to cease inducing participants to falsely represent to others that they had received carpeting at little or no cost.

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 Luxor Carpets, Inc., a corporation, and Henry Hillman, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Luxor Carpets, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business located at 3308 14th Street, NW., Washington, D.C.

Prior to November 4, 1963, the name of said Luxor Carpets, Inc., was Factory Outlet Carpets, Inc.

Respondent Henry Hillman is now and has been an officer of the corporate respondent and formulates, directs and controls and has formulated, directed and controlled the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth under each of the aforementioned names.

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

corporate or other device, do forthwith cease and desist from removing and mutilating, or causing or participating in the removal and mutilation of, the stamp, tag, label, or other identification required by the Textile Fiber Products Identification Act to be affixed to any textile fiber product, after such textile fiber product has been shipped in commerce and prior to the time such textile fiber product is sold and delivered to the ultimate consumer.

It is further ordered, That respondents Herzbergs, Inc., a corporation, and its officers, and David Goldman and Richard Goldman, individually and as officers of the said corporation and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from failing to keep and preserve the records required by the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder in substituting labels as permitted by Section 5(b) of the Textile Fiber Products Identification Act.

It is further ordered, That respondents Herzbergs, Inc., a corporation, and its officers, and David Goldman and Richard Goldman, individually and as officers of the said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or offering for sale, sale, transportation, distribution or delivery for shipment in commerce, of any wool product, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such wool products by failing to securely affix to, or place on each wool product a stamp, tag, label or means of identification showing in a clear and conspicuous manner each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered, That respondents Herzbergs, Inc., a corporation, and its officers, and David Goldman and Richard Goldman, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from mutilating and removing or participating in the mutilation and removal of any stamp, tag, label, or other means of identification affixed to any wool product subject to the provisions of the Wool Products Labeling Act of 1939 with intent to violate the provisions of said Act.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the

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2. Respondents are not successful in selling carpeting to 50% of all persons referred to them by participants in the program.

Therefore, the statements and representations referred to in Paragraph Six above were and are false, misleading and deceptive.

PAR. 8. Further, in the course and conduct of their referral program, in order to develop leads to further prospective purchasers, respondents induce, and have induced, participants to falsely represent to others that they have received the carpeting at little or no cost.

PAR. 9. The use by respondents 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 respondents' product by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of respondents as 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 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 hereof 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 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 set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

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

PAR. 4. 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 carpeting of the same general kind and nature as that sold by respondents.

PAR. 5. Respondents in the course and conduct of their business, in offering for sale, selling and distributing their merchandise have engaged in and are engaging in the sale of carpeting exclusively through a referral selling plan.

Said referral selling plan provides that corporate respondent will pay:

1. \$60 for each person referred who purchase carpeting.
2. \$40 for each sale to individuals who in turn have been referred by an individual previously referred by a customer.
3. \$25 for each person referred who does not purchase but meets certain qualifications.

In the event that the customer desires to participate in the plan and purchase carpeting from the respondents, he is presented with a contract, an application for a loan, a promissory note and a customer's commission agreement.

The purchase of carpeting from the corporate respondent and the execution of the proper instruments is a prerequisite to participation in respondents' referral plan.

PAR. 6. In the course and conduct of explaining their aforesaid referral plan, respondents and their salesmen have represented directly or indirectly to prospective purchasers:

1. That by their participation in respondents' program purchasers will receive enough commissions from referrals to obtain their carpeting at little or no cost.
2. That respondents would be successful in selling carpeting to 50% of the persons referred to them by participants in the plan.

PAR. 7. In truth and in fact:

1. Few, if any, participants in respondents' program receive enough referral commissions to obtain their carpeting at little or no cost.

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FEDERAL TRADE COMMISSION DECISIONS