

Complaint

IN THE MATTER OF

NORMAN DIAMOND TRADING AS CARPETLAND U.S.A., ETC.

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

Docket C-1086. Complaint, July 15, 1966—Decision, July 15, 1966

Consent order requiring a Philadelphia retailer of carpeting to cease falsely advertising, deceptively guaranteeing, and misbranding his textile fiber products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Norman Diamond, an individual trading as Carpetland U.S.A. and House Beautiful and formerly a copartner with Martin Korsh trading as Carpetland U.S.A. and House Beautiful, hereinafter referred to as respondent, has violated the provisions of the said Acts and the Rules and Regulations promulgated under the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Norman Diamond is an individual trading as Carpetland U.S.A. and House Beautiful. He formerly traded under said trade names as a copartner with Martin Korsh, not named as a respondent in this proceeding.

Respondent Norman Diamond is a retailer of floor coverings. His office and principal place of business is located at 5204 Lancaster Avenue, Philadelphia 31, Pennsylvania. The office and principal place of business of the said former partnership also was located at that address. The acts and practices challenged hereinafter were engaged in by respondent Norman Diamond during the period when such business was operated as a partnership.

PAR. 2. Subsequent to the effective date of the Textile Fiber Products Identification Act on March 3, 1960, respondent has

been and is now engaged in the introduction, delivery for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and in the importation into the United States, of textile fiber products; and has sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products, which have been advertised or offered for sale in commerce; and has sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products; as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

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

Among such misbranded textile fiber products but not limited thereto, were floor coverings which were falsely and deceptively advertised in the Philadelphia Daily News and in the Sunday Bulletin Newspapers published in the city of Philadelphia, Commonwealth of Pennsylvania, and having a wide circulation in the said Commonwealth and various other States of the United States, in that respondent in disclosing the fiber content information as to floor coverings, containing exempted backings, fillings, or paddings, failed to set forth such fiber content information in such a manner as to indicate that it applied only to the face, pile, or outer surface of the floor coverings and not to the exempted backings, fillings, or paddings.

PAR. 4. Certain of said textile fiber products sold by means of samples, swatches or specimens, and unaccompanied by an invoice or other paper showing the information required to appear on the label, were further misbranded by respondent in that there was not on or affixed to said textile fiber products any stamp, tag, label or other means of identification showing the required information in violation of Section 4(b) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated under such Act.

PAR. 5. Certain of said textile fiber products were falsely and

deceptively advertised, in that respondent, in making disclosures or implication as to the fiber content of such textile fiber products in written advertisements, used to aid, promote and assist directly or indirectly in the sale or offering for sale of said products, failed to set forth the required information as to fiber content as specified by Section 4(c) of the Textile Fiber Products Identification Act and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

Among such textile fiber products, but not limited thereto, were floor coverings which were falsely and deceptively advertised in The Evening Bulletin and The Sunday Bulletin, newspapers published in the city of Philadelphia, Commonwealth of Pennsylvania, and having a wide circulation in said Commonwealth and various other nearby States of the United States, in that such advertisements contained representations and implications of fiber content by means of the use of such terms, among others but not limited thereto, as "Caprolan" and "Acrilan," without the true generic names of the fibers contained in such textile fiber products being set forth.

PAR. 6. Certain of said textile fiber products were falsely and deceptively advertised by respondent in violation of the Textile Fiber Products Identification Act in that they were not advertised in accordance with the Rules and Regulations promulgated thereunder.

Among such textile fiber products, but not limited thereto, were textile fiber products which were falsely and deceptively advertised in the following respect by means of advertisements placed by the respondent in The Philadelphia Sunday Bulletin and The Philadelphia Evening Bulletin, published in Philadelphia, Pennsylvania, in that:

(a) In disclosing the required fiber content information as to floor coverings containing exempted backings, fillings, or padding, such disclosure was not made in such a manner as to indicate that such required fiber content information related only to the face, pile, or outer surface of the floor coverings and not to the backing, filling, or padding, in violation of Rule 11 of the aforesaid Rules and Regulations.

(b) Fiber trademarks were used in advertising textile fiber products without a full disclosure of the fiber content information required by the said advertisement, in violation of Rule 41(a) of the aforesaid Rules and Regulations.

(c) Fiber trademarks were used in advertising textile fiber

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products, namely, floor coverings, containing only one fiber, and such fiber trademarks did not appear at least once in the required fiber content information in the said advertisement in immediate proximity and conjunction with the generic name of the fiber in plainly legible and conspicuous type or lettering at least once in the advertisement, in violation of Rule 41(c) of the aforesaid Rules and Regulations.

(d) All parts of the required information were not set forth in immediate conjunction with each other in legible and conspicuous type or lettering of equal size and prominence, in violation of Rule 42(a) of the aforesaid Rules and Regulations.

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

PAR. 8. In the course and conduct of his business, respondent now causes and for sometime last past has caused, his said products, when sold, to be shipped from the respondent's suppliers to purchasers thereof located in various States of the United States, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 9. In the course and conduct of his business respondent has caused his said textile products to be offered for sale in issues of The Sunday Bulletin, The Evening Bulletin and The Philadelphia Daily News, newspapers published in the city of Philadelphia, Commonwealth of Pennsylvania and distributed in interstate commerce and has maintained a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 10. Respondent in the course and conduct of his business, as aforesaid, has made the following guarantee statements in newspaper advertising of his textile products, namely, floor coverings:

10-Year Wear Guarantee

* * * * *

Guaranteed 10 Years For Wear

PAR. 11. Through the use of said statements and representations, as set forth above, and others similar thereto, but not spe-

cifically set out herein, respondent has represented, directly or indirectly, to the purchasing public that said floor coverings are unconditionally guaranteed for ten years.

PAR. 12. In truth and in fact said floor coverings are not unconditionally guaranteed for ten years and the nature and extent of the guarantee and the manner in which the guarantor will perform was not set forth in connection therewith. Moreover, the name and address of the guarantor was not set forth as required. Therefore, the statements and representations made by the respondent as hereinbefore stated were and are false, misleading and deceptive.

PAR. 13. In the course and conduct of his business, and for the purpose of inducing the purchase of his products, respondent and his salesmen and representatives, have made certain statements and representations with respect thereto in advertisements inserted in the aforementioned newspapers, and by other media, of which the following are typical and illustrative but not all inclusive:

1. The Sunday Bulletin-September 27, 1964 "Carpetland Shatters All Previous Caprolan Pile Broadloom Prices!!! etc."
2. The Evening Bulletin-September 8, 1964 "September Carpet Blast etc."

PAR. 14. By and through the use of the aforesaid statements and representations, and others of similar import and meaning but not specifically set out herein, and through oral statements made by his salesmen and representatives, respondent has represented, directly or by implication that he was making a bona fide offer to sell carpeting and/or floor covering at the prices specified in the advertising.

PAR. 15. In truth and in fact, respondent's offers were not bona fide offers to sell the said carpeting and/or floor covering, including installation, at the advertised prices but were made for the purpose of obtaining leads and information as to persons interested in the purchase of carpeting and/or floor covering. After obtaining leads through response to such advertisements, and calling upon such persons, the respondent, his salesmen and his representatives made no effort to sell the advertised carpeting or floor covering at the advertised price, but, instead, exhibited and disparaged such merchandise in such a manner as to discourage its purchase and attempted to, and frequently did, sell much higher priced carpets or floor coverings.

Therefore, the statements and representations as set forth in

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Paragraph Fourteen and Fifteen hereof were and are false, misleading and deceptive.

PAR. 16. In the conduct of his business, at all times mentioned herein, respondent has been in substantial competition, in commerce, with corporations, firms, and individuals in the sale of carpeting and/or floor covering of the same general kind and nature as those sold by respondent.

PAR. 17. 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.

PAR. 18. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and the respondent 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 respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreements for settlement purposes only and does not constitute an admission by respondent 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:

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1. Respondent Norman Diamond is an individual trading as Carpetland U.S.A. and House Beautiful with his office and principal place of business located at 5204 Lancaster Avenue, Philadelphia 31, Pennsylvania.

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

ORDER

It is ordered, That respondent Norman Diamond, individually and trading as Carpetland U.S.A. and House Beautiful, or under any other name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, manufacture for introduction, delivery for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or in the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce, or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

1. Failing to set forth that the required disclosure as to the fiber content of floor coverings relates only to the face, pile or outer surface of such products and not to exempted backing, filling or padding, when such is the case.

2. Failing to affix labels to such textile fiber products showing each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

B. Falsely and deceptively advertising textile fiber products by:

1. Making any representations by disclosure or by implication as to the fiber content of any textile fiber prod-

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

2. Failing to set forth, in disclosing the required fiber content information as to floor coverings containing exempted backing, fillings or paddings, that such disclosure relates only to the face, pile or outer surface of such textile fiber products and not to the exempted backing, fillings or paddings.

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

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

5. Failing to set forth all parts of the required information in advertisements of textile fiber products in immediate conjunction with each other in legible and conspicuous type or lettering of equal size and prominence.

It is further ordered, That respondent, Norman Diamond, individually and trading as Carpetland U.S.A. and House Beautiful, or under any other name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the sale, offering for sale or distribution of floor coverings, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Advertising or offering any such products for sale for the purpose of obtaining leads or prospects for the sale of different textile fiber products unless the advertised products are capable of adequately performing the functions for which they are offered and respondent maintains an adequate and readily available stock of said products.

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2. Using any advertising, sales plan or procedure involving the use of false, deceptive or misleading statements or representations which are designed to obtain leads or prospects for the sale of other textile fiber merchandise.

3. Representing directly or indirectly that any textile fiber products or services are offered for sale when such offer is not a bona fide offer to sell said textile fiber products or services.

4. Representing that any of respondent's products are guaranteed, unless the nature and extent of the guarantee, the name of the guarantor, the address of the guarantor and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

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