

Complaint

IN THE MATTER OF

LINCOLN RUG & CARPET MART, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION ACT*Docket 8688. Complaint, May 31, 1966—Decision, Dec. 1, 1966*

Order requiring a Morton Grove, Ill., retailer of domestic grade carpeting to cease misrepresenting its business status and the grade, quality, availability and source of its products.

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 Lincoln Rug & Carpet Mart, Inc., a corporation, and Dorothy Gordon and Joseph Gordon, individually and as officers 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 Lincoln Rug & Carpet Mart, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 6231 West Dempster, Morton Grove, Illinois.

Respondents Dorothy Gordon and Joseph Gordon are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their business address is the same as that of the corporate respondent.

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

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped and transported from their place of business in the State of Illinois to purchasers thereof located in various other States of the United States, and maintain,

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and at all times hereinafter mentioned have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, as aforesaid, respondents employ salesmen and representatives who call upon prospective purchasers and solicit the purchase of their products. In the course of such solicitation, said salesmen or representatives have made many statements and representations, directly or by implication, to prospective purchasers of their products.

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

(1) That respondents are commercial carpeting specialists or wholesalers.

(2) That the carpeting which is offered to the prospective customer is heavy duty, high quality carpeting used in commercial installations.

(3) That respondents' principal business is selling to commercial establishments, such as hotels, motels, theatres, restaurants, office buildings and hospitals.

(4) That the carpeting being offered for sale are remnants left over from installations in commercial establishments.

(5) That the carpeting offered for sale is not available in retail stores.

(6) That the carpeting being offered for sale is offered to individual consumers only for a limited time each year.

(7) That as commercial wholesale carpeters, respondents are able to offer and are in fact offering remnants of heavy duty, high quality carpeting used in commercial installations to consumers at prices substantially less than the price of such commercial carpeting which is represented as selling at prices from \$20 per square yard up with consequent savings to the consumer.

PAR. 5. In truth and in fact:

(1) Respondents are not commercial carpeting specialists or wholesalers, but are retailers of domestic grade carpeting.

(2) The carpeting which respondents sell is not heavy duty, high quality commercial carpeting, but is carpeting which is usually and customarily sold for domestic use in the home.

(3) Respondents' principal business is not selling carpeting to commercial establishments, such as hotels, motels, theatres, restaurants, office buildings and hospitals, but selling to all consumers.

(4) The carpetings offered to the prospective customer are not remnants from commercial installations, but are from respondents' regular stock of carpetings.

(5) The carpeting sold by respondents is available in retail stores.

(6) Respondents sell to individual consumers at any and all times during each year.

(7) Respondents do not offer to the consumers remnants of heavy duty, high quality commercial carpeting at prices substantially less than the price of such commercial carpeting with consequent savings to the consumer.

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

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

PAR. 7. 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 products by reason of said erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

Mr. J. Leon Williams supporting complaint.

Blank, Rudenko, Klaus & Rome, by *Mr. Daniel J. McCauley, Jr.*, Philadelphia, Pa.

Gordon & Reicin, by *Mr. George N. Gordon*, Chicago, Ill., for respondents.

INITIAL DECISION BY WILLIAM K. JACKSON, HEARING EXAMINER
OCTOBER 6, 1966

This proceeding was commenced by the issuance of a complaint on May 31, 1966, charging the corporate respondent and the two

named individual respondents, individually and as officers of said corporation, with unfair and deceptive acts and practices and unfair methods of competition in commerce, in violation of Section 5 of the Federal Trade Commission Act by misrepresenting the corporate respondent's trade or business status, and the grade, quality, availability, and sources of its products. Specifically, the complaint alleges that the corporate respondent is not a commercial carpeting specialist or wholesaler, as represented by its salesmen to prospective customers, but is a retailer of domestic grade carpeting. The complaint also alleges that prospective customers are misinformed that the carpeting offered to them is heavy duty, high quality commercial carpeting, is not available in retail stores, and is offered to individual consumers only for a limited time each year.

After being served with the said complaint, both the corporate and individual respondents appeared by counsel and on July 6, 1966, filed their joint answer admitting a number of the specific allegations in the complaint, denying others, and neither admitting nor denying the remainder. The complaint and answer thereto placed in issue substantial questions of law and fact.

A prehearing conference was held in this matter on June 7, 1966, at Washington, D.C. to discuss the dates and places of hearings, the exchange of lists of witnesses and documents, and the simplification and clarification of the issues.

Pursuant to the order of the Commission dated June 14, 1966, granting leave to hold hearing in more than one place, the hearing examiner, by order dated July 13, 1966, scheduled hearings in this matter for September 19, 1966, at Racine, Wisconsin, and September 22, 1966, at Chicago, Illinois.

On July 21, 1966, the hearing examiner issued a prehearing order reciting the results of the prehearing conference. By letter dated July 28, 1966, complaint counsel, in compliance with the hearing examiner's prehearing order, made full disclosure to respondents of the names and addresses of his witnesses and of his documentary evidence. Thereafter on August 3, 1966, the hearing examiner signed 31 subpoenas directing witnesses to appear in support of the complaint.

Immediately prior to the commencement of the hearings at Racine, Wisconsin, respondents' counsel orally advised the hearing examiner that they did not wish to contest the allegations contained in the complaint and they asked that the proceedings about to commence in Racine be cancelled and that a hearing be held at

Chicago, Illinois, on September 21, 1966, to enable them to formally place upon the record their decision. Accordingly, with the consent of complaint counsel, the hearing examiner cancelled the hearings in Racine, Wisconsin, and orally rescheduled a hearing on September 21, 1966 in Chicago, Illinois.

At the hearing held in Chicago on September 21, 1966, respondents, by counsel, made a motion requesting leave to withdraw their answer previously filed in this matter on July 6, 1966, and to file a Substituted Answer admitting all the material allegations contained in the complaint. In addition, respondents agreed to waive any right of appeal from the findings of the hearing examiner based upon such admissions and also agreed to accept the Order set forth in the complaint. Counsel supporting the complaint stated that he had no objection to the motion. Accordingly, the hearing examiner received respondents' oral motion, together with written copies thereof that were thereafter filed with the Office of the Secretary, and ordered on the record that the motion to file a Substituted Answer be granted. There being no further business, the hearing was adjourned.

On September 26, 1966, the hearing examiner issued a formal order accepting the Substituted Answer and filed the same with the Office of the Secretary.

Based upon the entire record consisting of the complaint, Substituted Answer, and other matters of record, the hearing examiner makes the following findings as to facts, conclusions drawn therefrom, and order.

FINDINGS OF FACT

1. Respondent Lincoln Rug & Carpet Mart, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 6231 West Dempster, Morton Grove, Illinois. (Substituted Answer, hereinafter designated S.A.)

2. Respondents Dorothy Gordon and Joseph Gordon are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their business address is the same as that of the corporate respondent. (S.A.)

3. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale and distribution of carpeting and rugs to the public. (S.A.)

4. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped and transported from their place of business in the State of Illinois to purchasers thereof located in various other States of the United States, and maintain, and at all times hereinafter mentioned have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act. (S.A.)

5. 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 products of the same general kind and nature as those sold by respondents. (S.A.)

6. In the course and conduct of their business, as aforesaid, respondents employ salesmen and representatives who call upon prospective purchasers and solicit the purchase of their products. In the course of such solicitation, said salesmen or representatives have made many statements and representations, directly or by implication, to prospective purchasers of their products.

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

(1) That respondents are commercial carpeting specialists or wholesalers.

(2) That the carpeting which is offered to the prospective customer is heavy duty, high quality carpeting used in commercial installations.

(3) That respondents' principal business is selling to commercial establishments, such as hotels, motels, theatres, restaurants, office buildings and hospitals.

(4) That the carpeting being offered for sale are remnants left over from installations in commercial establishments.

(5) That the carpeting offered for sale is not available in retail stores.

(6) That the carpeting being offered for sales is offered to individual consumers only for a limited time each year.

(7) That as commercial wholesale carpeters, respondents are able to offer and are in fact offering remnants of heavy duty, high quality carpeting used in commercial installations to consumers at prices substantially less than the price of such commercial carpeting which is represented as selling at prices from \$20 per square yard up with consequent savings to the consumer. (S.A.)

7. In truth and in fact:

(1) Respondents are not commercial carpeting specialists or wholesalers, but are retailers of domestic grade carpeting.

(2) The carpeting which respondents sell is not heavy duty, high quality commercial carpeting, but is carpeting which is usually and customarily sold for domestic use in the home.

(3) Respondents' principal business is not selling carpeting to commercial establishments, such as hotels, motels, theatres, restaurants, office buildings and hospitals, but selling to all consumers.

(4) The carpetings offered to the prospective customer are not remnants from commercial installations, but are from respondents' regular stock of carpetings.

(5) The carpeting sold by respondents is available in retail stores.

(6) Respondents sell to individual consumers at any and all times during each year.

(7) Respondents do not offer to the consumers remnants of heavy duty, high quality commercial carpeting at prices substantially less than the price of such commercial carpeting with consequent savings to the consumer. (S.A.)

8. Accordingly, the hearing examiner finds that the statements and representations set forth in Paragraph 6 hereof were, and are false, misleading and deceptive.

9. The hearing examiner also finds that 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' products by reason of said erroneous and mistaken belief.

CONCLUSIONS

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

2. The Federal Trade Commission has jurisdiction of and over respondents and of the subject matter of this proceeding.

3. The complaint herein states a cause of action and this proceeding is in the public interest.

The order as hereinafter set forth follows the form of the order contained in the complaint and is also the order agreed to by the parties.

After due consideration, the hearing examiner believes that such order is appropriate and may be entered.

ORDER

It is ordered, That the respondents Lincoln Rug & Carpet Mart, Inc., a corporation, and its officers, and respondents, Dorothy Gordon and Joseph Gordon, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of carpeting, rugs or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication that:
 - a. They are commercial carpeting specialists or wholesalers.
 - b. The carpeting they are selling to individual consumers is heavy duty, high quality commercial carpeting.
 - c. Their principal business is selling heavy duty, high quality carpeting to commercial establishments.
 - d. The carpetings they are selling are remnants left over from commercial installations.
 - e. The carpeting they sell is not available in retail stores.
 - f. They sell to individual consumers, only for limited periods of time each year.
 - g. Remnants of heavy duty, high quality commercial carpeting used in commercial installations are offered to consumers at less than the price initially charged for the prime portion thereof: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish the truthfulness of such representations.
2. Misrepresenting, in any manner, the savings available to purchasers of respondents' merchandise; respondents'

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trade or business status; or the grade, quality, availability or source of their products.

FINAL ORDER

No appeal from the initial decision of the hearing examiner having been filed, and the Commission having determined that the case should not be placed on its own docket for review and that pursuant to Section 3.21 of the Commission's Rules of Practice (effective August 1, 1963), the initial decision should be adopted and issued as the decision of the Commission:

It is ordered, That the initial decision of the hearing examiner shall, on the 1st day of December 1966, become the decision of the Commission.

It is further ordered, That respondents, Lincoln Rug & Carpet Mart, Inc., a corporation, and Dorothy Gordon and Joseph Gordon, individually and as officers of said corporation shall, within sixty (60) days after service of this order upon them, file with the Commission a report in writing, signed by such respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.
