

Complaint

IN THE MATTER OF

TITUS PACIFIC CORPORATION ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND THE WOOL PRODUCTS
LABELING ACTS

Docket C-1150. Complaint, Dec. 16, 1966—Decision, Dec. 16, 1966

Consent order requiring a San Francisco, Calif., importer and wholesaler of wool products, including wool blankets, to cease misrepresenting the fiber content of its merchandise.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Titus Pacific Corporation, a corporation, and Lothar Steinberg, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of the said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, 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 Titus Pacific Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of California.

Individual respondent Lothar Steinberg is an officer of said corporate respondent and participants in the formulation, direction and control of the acts, policies and practices of said corporation, including the acts and practices hereinafter referred to.

Respondents are importers and wholesalers of wool products with their office and principal place of business located at 9 First Street, San Francisco, California.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, respondents have introduced into commerce, sold, transported, distributed, delivered for shipment and offered for sale in commerce, as "commerce" is defined in said Act, wool products as "wool product" is defined therein.

PAR. 3. Certain of said wool products were misbranded within the intent and meaning of Section 4(a) (1) of the Wool Products

Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were certain blankets stamped, tagged or labeled as containing either "7% new cotton, 15% reprocessed cotton, 18% reused cotton, 17% reprocessed rayon, 15% reprocessed wool, 25% reused wool and 3% other unknown reclaimed fibers" or "40% reprocessed and reused wool and 60% cotton and other fibers," where in truth and in fact, said blankets contained substantially less woolen fibers than represented.

PAR. 4. Certain of said wool products were further misbranded in that they were not stamped, tagged, labeled or otherwise identified as required under the provisions of Section 4(a) (2) of the Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto, were certain blankets with labels on or affixed thereto which failed to disclose the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight of (1) woolen fibers; (2) each fiber other than wool if said percentage by weight of such fiber is 5 per centum or more; and (3) the aggregate of all other fibers.

PAR. 5. The acts and practices of the respondents as set forth above were, and are in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, 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.

PAR. 6. In the course and conduct of their business, respondents now cause and for some time last past, have caused their said products to be sold in the United States after importation into the United States from foreign countries and have maintained a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. Respondents in the course and conduct of their business, as aforesaid, have made statements on invoices and shipping memoranda to their customers misrepresenting the fiber content of certain of their said products.

Among such misrepresentations, but not limited thereto, were statements representing the fiber content thereof as "40% Re-Used and Repr. Wool, 60% Cotton and other fibers" whereas, in truth and in fact, said blankets contained substantially less woolen fibers than represented.

PAR. 8. The acts and practices set out in Paragraph Seven have had and now have the tendency and capacity to mislead and deceive the purchasers of said products as to the true content thereof and to cause them to misbrand products sold by them in which said materials were used.

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

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having reason to believe that the respondents have violated the said Acts, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Titus Pacific Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of

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business located at 9 First Street, in the city of San Francisco, State of California.

Respondent Lothar Steinberg is an officer of said corporation and his address is the same as that of said corporation.

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 respondents Titus Pacific Corporation, a corporation, and its officers, and Lothar Steinberg, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from introducing into commerce, or offering for sale, selling, transporting, distributing or delivering for shipment in commerce wool blankets or any other wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939:

1. Which are falsely and deceptively stamped, tagged, labeled, or otherwise identified as to the character or amount of the constituent fibers contained therein.

2. Unless each such product has securely affixed thereto or placed thereon a stamp, tag, label or other means of identification correctly 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 Titus Pacific Corporation, a corporation, and its officers, and Lothar Steinberg, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of blankets or any other textile products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the character or amount of constituent fibers contained in blankets or any other textile products on invoices or shipping memoranda applicable thereto or in any other manner.

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

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IN THE MATTER OF

YOUNGSTOWN CARPET GUILD DISTRIBUTORS CO.
ET AL.

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

Docket 8719. Complaint, Oct. 24, 1966—Decision, Dec. 20, 1966

Consent order requiring a Hyattsville, Md., distributor of carpets to cease using bait advertising and other pricing misrepresentations in selling 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 Youngstown Carpet Guild Distributors Co., a corporation, and Paul Kahn and Morton S. Falkaw, 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 Youngstown Carpet Guild Distributors Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 4806 Rhode Island Avenue, in the city of Hyattsville, State of Maryland.

Respondents Paul Kahn and Morton S. Falkaw 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 advertising, offering for sale, sale and distribution of floor covering products to the public. Respondents also do business as Youngstown Carpet Guild, Inc., and as Youngstown Carpet Distributors.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said

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products, when sold, to be shipped from their place of business in the State of Maryland 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 products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their carpeting, the respondents have made numerous statements and representations in advertisements appearing in newspapers of general circulation, respecting the character of their offer to sell and the merchandise included in such offer.

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

3 DAYS ONLY!
WALL-TO-WALL DUPONT NYLON CARPET SALE!
3 COMPLETE ROOMS
100% CONTINUOUS FILAMENT DUPONT NYLON
\$119
270 Square feet
Padding and Installation Optional
DuPONT
501
N
\$159
270 Sq. ft.
Padding & Installation Optional
FREE WITH PURCHASE SUNBEAM
ELECTRIC VACUUM SWEEPER

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning, but not specifically set out herein, the respondents have represented, directly or by implication, that they were making a bona fide offer to sell the advertised carpeting at the price and on the terms and conditions specified in the advertisement.

PAR. 6. In truth and fact, respondents' offers were not bona fide offers to sell the said carpeting at the aforesaid advertised prices and on the terms and conditions therein stated but were made for the purpose of obtaining leads and information as to persons interested in the purchase of carpeting. After obtaining leads through response to said advertisements, respondents' representatives called upon such persons but made no effort to sell the carpeting at the aforesaid advertised prices. Instead, respond-

ents' representatives attempted to and frequently did sell carpeting at much higher prices. In addition, on occasions when the carpeting was requested without installation or padding pursuant to the advertised offer, respondents failed or refused to furnish the carpeting under such conditions. Further, in some instances respondents failed or refused to furnish the free merchandise offered in their advertisements.

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

PAR. 7. By and through the use of phrases such as "3 Days Only," "3 Day Sale!" and other statements and representations of similar import and meaning but not specifically set out herein, respondents represent and have represented, directly or by implication, that the availability of respondents' advertised offer is limited to 3 days only, and that respondents' carpeting is being offered for sale at special or reduced prices, and purchasers are thereby afforded savings from respondents' regular selling prices.

PAR. 8. In truth and in fact the availability of respondents' advertised offer is not limited to 3 days only, and respondents' carpeting is not being offered for sale at special or reduced prices, and purchasers are not thereby afforded savings from respondents' regular selling prices. In fact, respondents do not have a regular selling price but the prices at which respondents' carpeting is sold varies from customer to customer depending on the resistance of the prospective purchaser.

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

PAR. 9. 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 floor covering products of the same general kind and nature as those sold by respondents.

PAR. 10. 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. 11. 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.

DECISION AND ORDER

The Commission having issued its complaint in this proceeding on October 24, 1966, charging respondents Youngstown Carpet Guild Distributors Co., a corporation, and Paul Kahn and Morton S. Falkow (erroneously designated in the complaint as Morton S. Falkaw), individually and as officers of said corporation, with violation of the Federal Trade Commission Act, and the respondents having been served with a copy of that complaint; and

The respondents having thereafter filed with the hearing examiner a motion requesting waiver of Rule 2.4(d) of the Commission's Rules, to which motion was attached an executed consent agreement entered into between respondents and counsel supporting the complaint; and

The hearing examiner having certified to the Commission the said motion, with attached agreement, which agreement contains, *inter alia*, a consent order, an admission by respondents of all the jurisdictional facts alleged in the complaint, 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 alleged in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission having determined that in the circumstances the public interest would be served by waiving, and hereby having waived, the provision of Rule 2.4(d) that the consent procedure shall not be available after issuance of complaint; and

The Commission having considered the aforesaid executed agreement, and having now determined that said agreement constitutes an adequate basis for appropriate disposition of this proceeding, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered:

1. Respondent Youngstown Carpet Guild Distributors Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 4806 Rhode Island Avenue, in the city of Hyattsville, State of Maryland.

Respondents Paul Kahn and Morton S. Falkow are officers of

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the corporate respondent and their office and principal place of business is the same as that of the corporate respondent.

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 respondents Youngstown Carpet Guild Distributors Co., a corporation, and its officers, and respondents Paul Kahn and Morton S. Falkow, 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 advertising, offering for sale, sale or distribution of floor covering products, or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using, in any manner, a sales plan, scheme or device wherein false, misleading or deceptive statements or representations are made in order to obtain leads or prospects for the sale of merchandise or services.

2. Making representations purporting to offer merchandise for sale when the purpose of the representation is not to sell the offered merchandise but to obtain leads or prospects for the sale of other merchandise at higher prices.

3. Representing, directly or by implication, that any merchandise or services are offered for sale when such offer is not a bona fide offer to sell said merchandise or services.

4. Failing or refusing to furnish ordered merchandise or services to purchasers in accordance with the terms and conditions of any advertised offer.

5. Failing or refusing to furnish free merchandise to purchasers, irrespective of a prior request therefor, upon fulfillment of the terms and conditions of any advertised offer.

6. Representing, directly or by implication, that the availability of any offer of products or services is limited to three days only, or is limited in any other manner: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that any represented limitation was

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actually imposed and in good faith adhered to by respondents.

7. Representing, directly or by implication, that any price for respondents' products or services is a special or sale price, unless such price constitutes a significant reduction from an established selling price at which such products or services have been sold in substantial quantities by respondents in the recent regular course of their business; or misrepresenting in any manner the savings available to purchasers or prospective purchasers of respondents' products or services.

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