

Complaint

75 F.T.C.

IN THE MATTER OF

IMPERIAL CARPETS COMPANY, ET AL.

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

Docket 8766. Complaint, Aug. 6, 1968—Decision, Jan. 24, 1969

Final order requiring a Kansas City, Mo., retail carpet distributor to cease using deceptive pricing and quality claims and other misrepresentations to sell its merchandise, and misbranding 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 Imperial Carpets Company, a corporation, and Edward D. Grube, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of 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. Imperial Carpets Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 3915 Main Street in the city of Kansas City, State of Missouri.

Respondent Edward D. Grube is an individual and an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His 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 carpeting at retail to the public.

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

their said products, when sold, to be shipped from their place of business in the State of Missouri to purchasers thereof located in various other States of the United States, 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 products, the respondents, together with their salesmen and representatives, have made and are now making numerous statements and representations to prospective purchasers.

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

1. That the carpeting which is offered to the prospective customer is heavy duty, high quality carpeting used only in commercial installations.
2. That the carpeting offered for sale is not available in retail stores.
3. That respondents are commercial carpeting specialists or wholesalers.
4. Respondents' carpeting is similar to carpeting previously sold only to commercial establishments, such as hotels, theaters, restaurants, hospitals, bowling alleys or other businesses.
5. Respondents' carpeting is being offered for sale at special reduced prices and that savings are thereby afforded purchasers from respondents' regular selling prices.
6. Homes of prospective purchasers have been specially selected as model homes for the installation of the respondents' carpeting; and, as a result of allowing their homes to be used as models, purchasers will be granted reduced prices.
7. That respondents' offer to sell said carpeting on the terms and conditions therein stated is limited in point of time.
8. Respondents' products are unconditionally guaranteed for a period of 15 years.
9. Respondents manufacture the products which they sell.
10. Respondents install the products which they sell.

PAR. 5. In truth and in fact:

1. 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.
2. The carpeting sold by respondents is available in retail stores.

3. Respondents are not commercial carpeting specialists or wholesalers, but are primarily retailers of carpeting to domestic users.

4. Carpeting similar to respondents' carpeting was not previously sold only to commercial establishments such as hotels, theaters, restaurants, hospitals, bowling alleys or businesses; but, on the contrary, respondents' products are similar to carpeting normally sold for residential purposes.

5. Respondents' carpeting is not being offered for sale at a special or reduced price, and savings are not granted respondents' customers because of a reduction of respondents' regular selling price. In fact, respondents do not have a regular selling price, but the price at which respondents' carpeting is sold varies from customer to customer depending upon the resistance of the prospective customer.

6. Homes of prospective purchasers are not specially selected as model homes for the installation of respondents' products; after installation such homes are not used for demonstration or advertising purposes by respondents; and purchasers as a result of allowing their homes to be used as models are not granted reduced prices.

7. Said sales at the alleged reduced prices are not limited to certain days or certain periods of time.

8. Respondents' products are not unconditionally guaranteed for a period of 15 years. Such guarantee as may be provided is subject to numerous terms, conditions and limitations, and fails to set forth the nature and extent of the guarantee, the identity of the guarantor and the manner in which the guarantor would perform thereunder.

9. Respondents do not manufacture the products sold by them, but on the contrary, purchase their products from wholesalers or manufacturers.

10. Respondents rely upon the services of other companies or subcontractors for the installation of their products.

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

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

PAR. 9. Respondents are now, and for some time last past have been, 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 have 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 have sold, offered for sale, advertised, delivered, transported and cause 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. 10. Certain of said textile fiber products sold by means of samples, swatches or specimens, namely floor coverings, and unaccompanied by an invoice or other paper showing the information required to appear on the label, were misbranded by the respondents in that there was not on or affixed to said textile fiber products any stamp, tag 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. 11. Certain of said textile fiber products were misbranded in violation of the Textile Fiber Products Identification Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in that samples, swatches or specimens of textile fiber products subject to the aforesaid Act, which were used to promote or effect sales of such textile

fiber products, were not labeled to show their respective fiber content and other information required by Section 4(b) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, in violation of Rule 21(a) of the aforesaid Rules and Regulations.

PAR. 12. The acts and practices of respondents, 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 and deceptive acts and practices, in commerce, and unfair methods of competition in commerce, under the Federal Trade Commission Act.

Mr. Bernard Rowitz supporting the complaint.

No appearance for respondents.

INITIAL DECISION BY ELDON P. SCHRUP, HEARING EXAMINER

NOVEMBER 13, 1968

STATEMENT OF PROCEEDINGS

The Federal Trade Commission on August 6, 1968, issued its complaint charging the respondents with violating the Textile Fiber Products Identification Act and the Federal Trade Commission Act. The notice of the complaint set the hearing date for September 24, 1968, at the Federal Trade Commission Offices, The 1101 Building, 11th Street and Pennsylvania Avenue, NW., Washington, D.C.

Section 3.12(a) of the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings allows a respondent thirty (30) days after service of the complaint within which to file answer thereto. Service of the complaint herein was not accomplished in sufficient time to meet such allowance and on September 19, 1968, by order of the hearing examiner the hearing date set in the complaint was cancelled, subject to being reset at a date to be determined.

Complaint counsel under date of November 4, 1968, has now moved for a default against respondents for failure to file answer as provided for in Section 3.12(c) of the aforesaid Rules. Said motion states that personal service of the complaint was made upon Edward D. Grube, individually and as an officer of the corporate respondent on September 13, 1968, at 6120 Oak Street, Kansas City, Missouri, 64113, as attested thereto by an affidavit

of Richard H. Harper, an attorney of the Federal Trade Commission assigned to and stationed at the Kansas City Office of the Federal Trade Commission. The original of said affidavit is stated to be on file in the Office of the Secretary of the Federal Trade Commission.

Said motion further states that a check at said date with the Office of the Secretary of the Commission and with the Assistant Secretary for Legal and Public Records of the Commission reveals that no answer to the complaint nor any other communication has been received from the aforesaid respondents. Complaint counsel's motion is therefore hereby granted.

Section 3.12(c) *Default* states that failure of the respondent to file an answer within the time provided shall be deemed to constitute a waiver of his right to appear and contest the allegations of the complaint and to authorize the hearing examiner, without further notice to the respondent, to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions, and order.

FINDINGS OF FACT

1. Imperial Carpets Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 3915 Main Street in the city of Kansas City, State of Missouri.

Respondent Edward D. Grube is an individual and an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

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

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

4. In the course and conduct of their aforesaid business, and

Initial Decision

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for the purpose of inducing the purchase of their products, the respondents, together with their salesmen and representatives, have made and are now making numerous statements and representations to prospective purchasers.

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

1. That the carpeting which is offered to the prospective customer is heavy duty, high quality carpeting used only in commercial installations.

2. That the carpeting offered for sale is not available in retail stores.

3. That respondents are commercial carpeting specialists or wholesalers.

4. Respondents' carpeting is similar to carpeting previously sold only to commercial establishments, such as hotels, theaters, restaurants, hospitals, bowling alleys or other businesses.

5. Respondents' carpeting is being offered for sale at special reduced prices and that savings are thereby afforded purchasers from respondents' regular selling prices.

6. Homes of prospective purchasers have been specially selected as model homes for the installation of the respondents' carpeting; and, as a result of allowing their homes to be used as models, purchasers will be granted reduced prices.

7. That respondents' offer to sell said carpeting on the terms and conditions therein stated is limited in point of time.

8. Respondents' products are unconditionally guaranteed for a period of 15 years.

9. Respondents manufacture the products which they sell.

10. Respondents install the products which they sell.

5. In truth and in fact:

1. 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.

2. The carpeting sold by respondents is available in retail stores.

3. Respondents are not commercial carpeting specialists or wholesalers, but are primarily retailers of carpeting to domestic users.

4. Carpeting similar to respondents' carpeting was not previously sold only to commercial establishments such as hotels,

theaters, restaurants, hospitals, bowling alleys or businesses; but, on the contrary, respondents' products are similar to carpeting normally sold for residential purposes.

5. Respondents' carpeting is not being offered for sale at a special or reduced price, and savings are not granted respondents' customers because of a reduction of respondents' regular selling price. In fact, respondents do not have a regular selling price, but the price at which respondents' carpeting is sold varies from customer to customer depending upon the resistance of the prospective customer.

6. Homes of prospective purchasers are not specially selected as model homes for the installation of respondents' products; after installation such homes are not used for demonstration or advertising purposes by respondents; and purchasers as a result of allowing their homes to be used as models are not granted reduced prices.

7. Said sales at the alleged reduced prices are not limited to certain days or certain periods of time.

8. Respondents' products are not unconditionally guaranteed for a period of 15 years. Such guarantee as may be provided is subject to numerous terms, conditions and limitations, and fails to set forth the nature and extent of the guarantee, the identity of the guarantor and the manner in which the guarantor would perform thereunder.

9. Respondents do not manufacture the products sold by them, but on the contrary, purchase their products from wholesalers or manufacturers.

10. Respondents rely upon the services of other companies or subcontractors for the installation of their products.

Therefore, the statements and representations as set forth in Finding 5 hereof were, and are, false, misleading and deceptive.

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

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.

8. The aforesaid acts and practices of respondents, as hereinbefore 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.

9. Respondents are now, and for some time last past have been, 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 have 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 have sold, offered for sale, advertised, delivered, transported and cause 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.

10. Certain of said textile fiber products sold by means of samples, swatches or specimens, namely floor coverings, and unaccompanied by an invoice or other paper showing the information required to appear on the label, were misbranded by the respondents in that there was not on or affixed to said textile fiber products any stamp, tag 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.

11. Certain of said textile fiber products were misbranded in violation of the Textile Fiber Products Identification Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in that samples, swatches or specimens of textile fiber products subject to the aforesaid Act, which were used to promote or effect sales of such textile fiber products, were not labeled to show their respective fiber content and other information required by Section 4(b) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, in violation of Rule 21(a) of the aforesaid Rules and Regulations.

12. The acts and practices of respondents, as set forth in Find-

ings 9 through 11 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 and deceptive acts and practices, in commerce, and unfair methods of competition in commerce, under the Federal Trade Commission Act.

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and over the respondents.
2. The complaint herein states a cause of action and the proceeding is in the public interest.
3. Based on the findings of fact and violations of the Textile Fiber Products Identification Act and the Federal Trade Commission Act hereinbefore set forth, the following order should be and hereby is issued.

ORDER

It is ordered, That respondents Imperial Carpets Company, a corporation, and its officers, and Edward D. Grube, individually and as an officer 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 carpeting or floor coverings or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

- (1) Respondents' carpeting is a heavy duty or commercial grade carpeting; or misrepresenting, in any manner, the grade or quality of respondents' products.
- (2) Respondents' carpeting is not available in retail stores.
- (3) Respondents are commercial carpeting specialists or wholesalers.
- (4) Respondents' principal business is selling heavy duty, high quality carpeting to commercial establishments.
- (5) Respondents' carpeting is similar to carpeting previously sold only to commercial establishments.
- (6) The price of respondents' products is a special or reduced price unless such price constitutes a significant reduction from any established selling price at which such products 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.

(7) The home of any of respondents' customers or prospective customers has been selected to be used or will be used as a model home, or otherwise, for advertising purposes; or that a reduced price or commission is given by respondents to purchasers in return for permitting the premises, in which respondents' products are to be installed to be used for model homes or demonstration purposes.

(8) Any offer of sale of respondents' products is limited in time or in any manner: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that any represented limitation or restriction was actually imposed and in good faith adhered to.

(9) Respondents' products are guaranteed, unless the nature and extent of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

(10) Respondents manufacture or install the products they sell; or misrepresenting, in any manner, the nature or character of the respondents' business operations or the manufacturer or source of respondents' products.

It is further ordered, That respondents Imperial Carpets Company, a corporation, and its officers, and Edward D. Grube, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, sale, advertising or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States of any textile fiber product; or in connection with the sale, offering or 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 Prod-

ucts Identification Act, do forthwith cease and desist from misbranding textile fiber products by:

1. Failing to affix a label to each such product showing a clear and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

2. Failing to affix labels to samples, swatches or specimens of textile fiber products used to promote or effect the sale of such textile fiber products showing in words and figures plainly legible all the information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of respondents' products or services, and secure from such salesmen or other persons a signed statement acknowledging receipt of said order.

FINAL ORDER

The initial decision in this case having been filed November 13, 1968; and

The Commission by order of December 27, 1968, having stayed the effective date of the initial decision of the hearing examiner for the reason that proof of service thereof upon the respondents had not been received by the Commission; and

The Commission having now received the sworn affidavit of its attorney Richard Harper dated December 26, 1968, attesting to the fact that he effected personal service of the initial decision upon respondents on December 23, 1968; and

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 3.51 of the Commission's Rules of Practice (effective July 1, 1967), 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 24th day of January, 1969, become the decision of the Commission.

It is further ordered, That Imperial Carpets Company, a corporation, and Edward D. Grube, individually and as an officer 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