

Complaint

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IN THE MATTER OF

CARPETVILLE, INC., ET AL.

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

Docket 8764. Complaint, July 3, 1968—Decision, August 7, 1969

Consent order requiring a Penndel, Pa., former retailer of carpeting to cease misbranding, falsely advertising, and deceptively guaranteeing its textile fiber products.

COMPLAINT

Pursuant to 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 Carpetville, Inc., a corporation, and Broadloom Distributors, Inc., a corporation, and Sidney Soifer and Philip Bohm, individually and as officers of Carpetville, Inc., and Broadloom Distributors, Inc., and Allan Portnoy and Burton Snyder, individually and as officers of Broadloom Distributors, Inc., 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. Respondent Carpetville, Inc., is a corporation which was organized, existed and did business under and by virtue of the laws of the Commonwealth of Pennsylvania and was engaged in the retail sale of carpeting with its office and principal place of business located at 2026 Hunting Park Avenue, Philadelphia, Pennsylvania.

Respondent Broadloom Distributors, Inc., is a corporation which was organized, existed and did business under and by virtue of the laws of the Commonwealth of Pennsylvania, and was engaged in the retail sale of carpeting, with its office and principal place of business located at 397 West Lincoln Highway, Penn-
del, Pennsylvania.

Respondents Sidney Soifer and Philip Bohm are officers of Carpetville, Inc., a corporation, and of Broadloom Distributors, Inc.,

a corporation. They were primarily responsible for formulating, directing and controlling the policies, acts and practices of said corporations. The address of respondent Sidney Soifer is 3462 Bristol Pike, Cornwall Heights, Pennsylvania. The address of respondent Philip Bohm is 1319 Cardeza Street, Philadelphia, Pennsylvania.

Respondents Allan Portnoy and Burton Snyder, are officers of Broadloom Distributors, Inc., a corporation. They cooperated and were equally responsible with Sidney Soifer and Philip Bohm for formulating, directing and controlling the policies, acts and practices of said corporation. Their address is 3462 Bristol Pike, Cornwall Heights, Pennsylvania.

The aforesaid corporations appear to be inactive although according to the records of the Commonwealth of Pennsylvania, no proceedings in merger, sale or dissolution have been filed with respect to either of the aforementioned corporations.

PAR. 2. Respondents were, 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, 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 respondents 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 newspapers published in various cities of the United States and having a wide circulation in various other States of the United States. Among such newspapers, but not limited thereto, was The Philadelphia Sunday Inquirer, a newspaper published in the city of Philadelphia, Commonwealth of Pennsylvania, in that the respondents in disclosing the fiber content in-

formation 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 any such floor covering and not to be 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 the respondents, 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 respondents, in making disclosures or implications 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 textile fiber products which were falsely and deceptively advertised in the following respect by means of advertisements placed by respondents in newspapers published in various cities of the United States and having a wide circulation in various other States of the United States. Among such newspapers, but not limited thereto, was The Philadelphia Sunday Inquirer, in that respondents in disclosing the required 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 any such floor covering and not to exempted backings, fillings or paddings.

PAR. 6. Certain of said textile fiber products were falsely and deceptively advertised 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 adver-

tised in the following respects by means of advertisements placed by respondents in newspapers published in various cities of the United States having a wide circulation in various other States of the United States. Among such newspapers but not limited thereto, was The Philadelphia Sunday Inquirer, published in the city of Philadelphia, Commonwealth of Pennsylvania, in that:

(a) In disclosing the required fiber content information as to floor coverings containing exempted backings, fillings, or paddings, 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 backings, fillings, or paddings, in violation of Rule 11 of the aforesaid Rules and Regulations.

(b) All parts of the required information were not set forth in immediate conjunction with each other in legible and conspicuous type of 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 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 methods of competition and unfair and deceptive acts or practices, in commerce, under the Federal Trade Commission Act.

PAR. 8. 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 from the respondents' suppliers to purchasers thereof located in various 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. 9. In the course and conduct of their business the respondents have caused their said textile fiber products to be offered for sale in newspapers published in various cities of the United States. Among such newspapers, but not limited thereto, were various editions of The Philadelphia Sunday Inquirer, a newspaper published in the city of Philadelphia, Commonwealth of Pennsylvania.

PAR. 10. Respondents, in the course and conduct of their business, as aforesaid, have made the following guarantee statements

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in newspaper advertising of their textile products, namely, floor coverings:

*	*	*	*	*	*	*
			10 Years For Wear			
*	*	*	*	*	*	*
			Guaranteed 10 Years For Wear			
*	*	*	*	*	*	*
			Guaranteed 10 Years For Wear			
			At Tremendous Savings			

PAR. 11. Through the use of said statements and representations, as set forth above, and others similar thereto but not specifically set out herein, the respondents have 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 were not set forth as required. Therefore, the statements and representations made by the respondents, as hereinbefore stated, were and are false, misleading and deceptive.

PAR. 13. In the course and conduct of their business and for the purpose of inducing the purchase of their products, the respondents, their salesmen and representatives have made certain statements and representations with respect thereto in advertisements inserted in the aforementioned newspapers published in various cities of the United States and having a wide circulation in various States of the United States, of which the following are typical and illustrative, but not all inclusive:

1. The Philadelphia Inquirer, Sunday Morning, June 9, 1963:

*	*	*	*	*	*	*
			*** Buys Out Bankrupt			
			Famous Mill ***			
			*** 3 Rooms			
			100% Nylon Carpet			
			Completely Installed ***			

2. The Philadelphia Inquirer, Sunday Morning, August 18, 1963:

*	*	*	*	*	*	*
			*** Buys Direct From			
			Famous Mill ***			

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*** We Have On Sale
 "100%"
 Nylon
 Carpet ***
 *** Only \$139 ***

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 their salesmen and representatives, the respondents have represented, directly or by implication, that they were making a bona fide offer to sell carpeting or floor coverings at the prices specified in the advertising.

PAR. 15. In truth and in fact, the respondents' offers were not bona fide offers to sell the said carpeting or floor coverings, 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 or floor coverings. After obtaining leads through response to such advertisements and calling upon such persons, the respondents, their salesmen and their representatives made no effort to sell the advertised carpeting or floor coverings 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.

PAR. 16. In the course and conduct of their business and for the purpose of inducing the purchase of their products, the respondents, their salesmen and representatives have made certain statements and representations offering free merchandise with the purchase of carpeting in advertisements inserted in the following newspapers distributed in interstate commerce, of which the following are typical and illustrative, but not all inclusive.

Evening Journal, Wilmington, Delaware, July 18, 1966:

Take your choice	Grand Opening
Fedders Air Conditioner	Free
New 1966 Portable TV	Gift
	Offer
* * *	* *

The Times Herald, Morristown, Pennsylvania, Thursday May 31, 1966:

Free
 With your purchase—A swinger
 Polaroid Camera

PAR. 17. Through the use of said statements and representations, and others of similar import and meaning, but not specifically set out herein, the respondents have represented, directly or indirectly, to the purchasing public that said offers were bona fide offers of gift merchandise to purchasers of respondents carpeting.

PAR. 18. In truth and in fact, respondents' offers were not bona fide offers of gift merchandise to be given to purchasers of respondents' carpeting but were made for purpose of obtaining leads and information as to persons interested in the purchase of carpeting or floor coverings. After obtaining such leads through response to such advertisements and effecting sales of advertised merchandise, respondents, their salesmen and their representatives, in many instances did not fulfill the offer of free gifts made in said advertisements or would only fulfill the offer upon payment of undisclosed charges.

PAR. 19. In the course and conduct of their business, in soliciting the sale of and in selling the aforementioned products, individual respondents Sidney Soifer, Philip Bohm, Allan Portnoy and Burton Snyder and corporate respondent, Broadloom Distributors, Inc., did business under the name Broadloom Distributors, Inc. and used such name on purchase orders and in advertisements of their products.

PAR. 20. By means of the aforesaid advertisements and purchase orders, and through the use of the word "Distributors" as part of respondents' corporate name, individual respondents Sidney Soifer, Philip Bohm, Allan Portnoy and Burton Snyder and corporate respondent, Broadloom Distributors, Inc., represented themselves to be engaged in the wholesale distribution of carpeting.

PAR. 21. In truth and in fact, individual respondents Sidney Soifer, Philip Bohm, Allan Portnoy and Burton Snyder and corporate respondent, Broadloom Distributors, Inc., were not engaged in the wholesale distribution of carpeting but were engaged in the retail sale of carpeting, maintaining a small inventory and often placing orders for carpeting only as orders were received from purchasers.

PAR. 22. There is a preference on the part of many consumers and the purchasing public to buy products including floor coverings, from distributors believing that by so doing lower prices and other advantages thereby accrue to them.

Therefore, the statements, representations and practices set forth in Paragraphs Thirteen, Fourteen, Fifteen, Sixteen, Seven-

teen, Eighteen, Nineteen, Twenty and Twenty-one thereof were false, misleading and deceptive.

PAR. 23. In the conduct of their business at all times mentioned herein, the respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of carpeting or floor coverings of the same general kind and nature as those sold by the respondents.

PAR. 24. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 25. The aforesaid acts and practices of the respondents, as herein alleged, were all to the prejudice and injury of the public and of the respondents' competitors, and constituted, 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 IN DISPOSITION OF THIS PROCEEDING AS TO
ALL RESPONDENTS EXCEPT RESPONDENT CARPETVILLE, INC.

The Commission having issued its complaint in this proceeding on July 3, 1968, charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Textile Fiber Products Identification Act; and

Upon motion and for good cause shown, the Commission having, on January 29, 1969, pursuant to § 2.34(d) of its Rules, withdrawn the matter from adjudication for purposes of granting respondents opportunity to negotiate, under Subpart C of Part 2 of its Rules, a settlement by the entry of a consent order; and

Respondents (except respondent Carpetville, Inc.) and counsel supporting complaint having thereafter signed an agreement containing a consent order, an admission by the signatory respondents of all the jurisdictional facts alleged in the complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by the signatory respondents that the law has been violated as alleged in such

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complaint, and waivers and other provisions as required by the Commission's Rules; and which agreement also recites that respondent Carpetville, Inc., is an inactive corporation upon which valid service was not obtainable; and

The Commission, having considered the agreement and having accepted same, and the agreement having thereupon been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order in disposition of the proceeding as to all respondents except respondent Carpetville, Inc.:

1. Respondent Broadloom Distributors, Inc., is a corporation which was organized, existed and did business under and by virtue of the laws of the Commonwealth of Pennsylvania, and was engaged in the retail sale of carpeting, with its office and principal place of business located at 397 West Lincoln Highway, Penn-
del, Pennsylvania.

Respondent Philip Bohm was an officer of Carpetville, Inc., an inactive corporation, and is at present an officer of Broadloom Distributors, Inc., a corporation. The former address of respondent Philip Bohm was 1319 Cardeza Street, Philadelphia, Pennsylvania. The present address of respondent Philip Bohm is 791 Furrow Lane, Huntingdon Valley, Pennsylvania.

Respondents Alan R. Portnoy * and Burton Snyder are presently officers of Broadloom Distributors, Inc. The former address of respondents Alan R. Portnoy and Burton Snyder was 3462 Bristol Pike, Cornwall Heights, Pennsylvania. The present address of respondent Alan R. Portnoy is 589 Remson Road, Philadelphia, Pennsylvania. The present address of respondent Burton Snyder is 805 Foster Street, Philadelphia, Pennsylvania.

Respondent Sidney Soifer was an officer of both Carpetville, Inc., an inactive corporation, and Broadloom Distributors, Inc., a corporation. The former address of respondent Sidney Soifer was 3462 Bristol Pike, Cornwall Heights, Pennsylvania. The present address of respondent Sidney Soifer is 611 B Summerset House, Cherry Hill, New Jersey.

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

* Erroneously designated in the complaint as Allan Portnoy.

ORDER

It is ordered, That respondents Broadloom Distributors, Inc., a corporation, and its officers, and Philip Bohm, individually and as a former officer of Carpetville, Inc., and as a present officer of Broadloom Distributors, Inc., and Alan R. Portnoy and Burton Snyder, individually and as officers of Broadloom Distributors, Inc., and Sidney Soifer, individually and as a former officer of Carpetville, Inc., and Broadloom Distributors, Inc., and respondents' 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 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. 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 backings, fillings or paddings, 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. Advertising textile fiber products by:
 - 1. Making any representations by disclosure or by implication as to the fiber content of any textile fiber product 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, without disclosing in the said advertisement 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, 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 backings, 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 backings, fillings, or paddings.

3. 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 respondents Broadloom Distributors, Inc., a corporation, and its officers, and Philip Bohm, individually and as a former officer of Carpetville, Inc., and as a present officer of Broadloom Distributors, Inc., and Alan R. Portnoy and Burton Snyder, individually and as officers of Broadloom Distributors, Inc., and Sidney Soifer, individually and as a former officer of Carpetville, Inc., and Broadloom Distributors, Inc., 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 floor coverings or other related textile products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

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

3. Disparaging in any manner or refusing to sell any products advertised.

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

5. Representing that any of respondents' 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 respondents Broadloom Distributors, Inc., a corporation, and its officers, and Philip Bohm, Alan R. Portnoy and Burton Snyder, individually and as officers of Broadloom Distributors, Inc., and Sidney Soifer, individually and as a former officer of Broadloom Distributors, Inc., 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 floor coverings or other related textile products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly using the word "Distributors" or any other term of similar import or meaning in or as a part of respondents' corporate or trade name, or representing in any other manner that respondents are engaged in wholesale distribution of floor coverings or other related textile products unless and until respondents do in fact become wholesale distributors.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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.

ORDER WITHDRAWING COMPLAINT AS TO RESPONDENT CARPETVILLE,
INC.

It appearing to the Commission that it would not be in the public interest to adjudicate the issues raised as to this corporate respondent for the reason that such respondent is out of business and an inactive corporation at this time:

It is ordered, That the complaint be, and it hereby is, withdrawn

as to the respondent Carpetville, Inc., without prejudice to the right of the Commission to bring a new proceeding if the facts should so justify.
