
IN THE MATTER OF
MALOOLY'S FURNITURE AND CARPET CITY, ET AL.

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

Docket C-1664. Complaint, Dec. 24, 1969—Decision, Dec. 24, 1969

Consent order requiring an El Paso, Texas retailer of furniture, appliances and carpeting to cease falsely advertising and guaranteeing and misbranding its textile fiber products, making deceptive pricing claims, misrepresenting that it is endorsed by a Federal agency, and falsely claiming that it conducts factory bankrupt sales.

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 Malooly's Furniture and Carpet City, a partnership, and Edward T. Malooly, individually and as a copartner trading as Malooly's Furniture and Carpet City, and George J. Malooly, individually and as a copartner

trading as Malooly's Furniture and Carpet City, and as Malooly's Discount Center, or under any other name or names, 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 Malooly's Furniture and Carpet City is a partnership organized, existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 9220 Dyer Street, El Paso, Texas. George J. Malooly and Edward T. Malooly are individuals and copartners in said partnership, with their office and principal place of business located at 222 South Santa Fe Street, El Paso, Texas.

Respondent George J. Malooly is an individual trading as Malooly's Discount Center. Malooly's Discount Center is located at 600 North Main Street, Las Cruces, New Mexico. Individual respondent George J. Malooly maintains his office and principal place of business at 222 South Santa Fe Street, El Paso, Texas.

Respondents are primarily engaged in the retail sale of carpets. Sales of furniture and appliances are also made.

PAR. 2. 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 or 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 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 the constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, were floor coverings which were falsely and deceptively advertised in the El Paso Times, a newspaper published in the city of El Paso, Texas, and having a wide circulation in the said State and various other States of the United States.

Also among such misbranded textile fiber products, but not limited thereto, were textile fiber products, namely floor coverings, which were falsely and deceptively advertised by means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, in that said floor coverings containing exempted backings, fillings or paddings, were described therein as "DuPont 501 Nylon" without a disclosure that such fiber content information applied only to the face, pile or outer surface of the floor coverings and not to be exempted backings, fillings or paddings. The respondents' description of said floor coverings without such disclosure had the tendency and capacity to mislead respondents' customers and others into the erroneous belief that said floor coverings were composed entirely of nylon when this was not the fact. Such failure to disclose a material fact was to the prejudice of respondents' customers and the purchasing public and constituted false and deceptive advertising under Section 4(a) of the Textile Fiber Products Identification Act.

PAR. 4. Certain of said textile fiber products were misbranded by respondents in that there were not on or affixed to said textile fiber products any stamps, tags, labels, or other means of identification showing the required information, in violation of Section 4(b) of the Textile Fiber Products Identification 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 floor coverings which were falsely and deceptively advertised by means of advertisements placed by the respondents in the El Paso

Times, published in El Paso, Texas, and having a wide circulation in said State and various other States of the United States, in that the true generic names of the fibers in such floor coverings were not set forth.

PAR. 6. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised textile fiber products in violation of the Textile Fiber Products Identification Act in that said textile fiber products were not advertised in accordance with the Rules and Regulations promulgated thereunder in the following respects:

1. In disclosing the required fiber content information as to floor coverings containing exempted backings, fillings, or padings, 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.

2. A fiber trademark was used in advertising textile fiber products, namely floor coverings, containing only one fiber and such fiber trademark did not appear, at least once in the said advertisement, in immediate proximity and conjunction with the generic name of the fiber, in plainly legible and conspicuous type, in violation of Rule 41 (c) 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 and practices, in commerce, under the Federal Trade Commission Act.

PAR. 8. Respondents are now and for some time last past have been engaged in the advertising, sale, offering for sale, and distribution of floor coverings, and other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

In the course and conduct of their business, respondents have advertised their products in "The El Paso Times" a newspaper published in El Paso, Texas, and having a wide circulation in said State and various other States of the United States.

Also 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 their place of business in

the State of Texas to purchasers thereof located in various other States of the United States.

The respondents 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. Respondents in the course and conduct of their business, as aforesaid, have made guaranty statements in the El Paso Times, a newspaper published in El Paso, Texas, advertising their textile fiber products, namely, floor coverings, as:

"Guaranteed 10 Years."

PAR. 10. Through the use of such 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. 11. 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. 12. Respondents in the course and conduct of their business, as aforesaid, have made certain statements with respect to the pricing of their textile fiber products, namely, floor coverings, in the El Paso Times. Among and typical, but not all inclusive of such statements are the following:

\$10.95 sq. yd. to be sold for \$3.95 sq yd.

\$10.95 sq. yd. to be sold for \$3.85 sq. yd.

\$10 sq. yd. to be sold for \$3.95.

PAR. 13. By and through the use of the above-quoted statements, and others of similar import not specifically set out herein, respondents have represented, directly or by implication, that the higher stated prices set out in said advertisements were the prices at which the advertised merchandise was sold or offered for sale by respondents, in good faith, for a reasonably substantial period of time in the recent regular course of their business, and that the prices of respondents' products were reduced from the higher stated prices and the amounts of such reductions represented savings to the purchasers thereof.

PAR. 14. In truth and in fact, the higher prices set out in said advertisements were not the prices at which the advertised merchandise was sold or offered for sale by respondents, in good faith, for a reasonably substantial period of time in the recent, regular course of their business, and the prices of respondents' products were not reduced from the higher prices; therefore, the amounts of such reductions did not represent savings to the purchasers thereof.

PAR. 15. In the course and conduct of their aforesaid business, and for the purpose of bolstering and reinforcing their claims that certain floor coverings were being offered for sale at greatly reduced prices, respondents have made statements in advertisements inserted in the El Paso Times and the El Paso Herald Post, newspapers published in El Paso, Texas and having a wide circulation in said State and various other States of the United States. Among and typical of such statements are the following:

Government Approved F.H.A. Carpet
Dupont 501, Factory Bankruptcy sale * * *.

Malooly buys all remaining stock of Jackson Manufacturing Company, Jackson, Mississippi, and offers it to the public at Pennies on the Dollar!

Ring!! Ring!! Ring!! * * * Long Distance
call for Eddie Malooly! Curt Baxter,
President of Prestige Furniture at
Newton, North Carolina, calling. We
will give you up to 50% discount from
our wholesale prices.

PAR. 16. By and through the use of the above statements and others of similar import not specifically set out herein, respondents have represented, directly or by implication, that:

(a) The Federal Housing Administration had approved the respondents' business or the carpet respondents sell;

(b) Respondents were connected with or were conducting a bankruptcy sale;

(c) Respondents have acquired their products being offered for sale by means of special purchases from certain specific sources; and

(d) Through such special purchases savings are being afforded the purchasing public.

In truth and in fact:

1. Neither the Federal Housing Administration or any other agency has issued any "endorsement" or "approval" of respondents' business or any product of respondents' business.

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2. Respondents' were not conducting or connected with a bankruptcy sale.

3. Respondents did not acquire the products being offered for sale by special purchase from sources designated in the advertisement; and

4. Savings were not afforded the purchasing public as represented.

PAR. 17. The aforesaid acts and practices of the respondents, as herein alleged in Paragraphs Nine through Sixteen, were and are, all to the prejudice and injury of the public and of the respondents' competitors, and constituted, and now constitute, unfair and deceptive acts and practices in commerce, in violation of Section 5 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 Textile Fiber Products Identification Act; 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 respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement 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 issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Malooly's Furniture and Carpet City is a partnership with its office and principal place of business located at 9220 Dyer Street, El Paso, Texas.

Respondent George J. Malooly and Edward T. Malooly are individuals and copartners in said partnership, with their office and principal place of business located at 222 South Santa Fe Street, El Paso, Texas.

Respondent George J. Malooly is an individual trading as Malooly's Discount Center. Malooly's Discount Center is located at 600 North Main, Las Cruces, New Mexico.

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 Malooly's Furniture and Carpet City, a partnership, and Edward T. Malooly, individually and as a copartner trading as Malooly's Furniture and Carpet City, and George J. Malooly, individually and as a copartner trading as Malooly's Furniture and Carpet City, and as Malooly's Discount Center, or under any other name or names, and respondents' representatives, agents 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 for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

1. Falsely or deceptively stamping, tagging, labeling, invoicing, advertising or otherwise identifying such

products as to the name or amount of the constituent fibers contained therein.

2. Failing to affix a stamp, tag, label, or other means of identification to each such product showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

B. Falsely and deceptively advertising textile fiber products by:

1. Making any representations by disclosure or by implication as to the fiber content of any textile fiber 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, unless the same information required to be shown on the stamp, tag, label or other means of identification under Sections 4(b) (1) and (2) of the Textile Fiber Products Identification Act is contained in the said advertisement, except the percentages of 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, filling or paddings.

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

It is further ordered, That respondents Malooly's Furniture and Carpet City, a partnership, and Edward T. Malooly, individually and as a copartner trading as Malooly's Furniture and Carpet City, and George J. Malooly, individually and as a copartner trading as Malooly's Furniture and Carpet City, and as Malooly's Discount Center, or under any other name or names, and respondents' representatives, agents and employees, directly or through

any corporate or other device, in connection with the advertising, sale, offering for sale, or distribution of floor coverings, or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. 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 in immediate conjunction therewith.

2. Representing, directly or by implication, that any price, whether accompanied or not by descriptive terminology is the respondents' former price of any such product when such price is in excess of the price at which such product has been sold or offered for sale in good faith by the respondents for a reasonably substantially period of time in the recent regular course of business, or otherwise misrepresenting the price at which any such product has been sold or offered for sale by respondents.

3. Falsely representing that savings are afforded to the purchaser of any such product or misrepresenting in any manner the amount of savings afforded to the purchaser of such product.

4. Falsely representing that the price of any such product is reduced.

5. Falsely representing that the Federal Housing Administration, or any other agency of the United States Government, has issued an approval or endorsement of respondents' business or falsely representing that respondents' products have been endorsed by any other organization or person.

6. Falsely representing that respondents are conducting, or are in any way connected with, a "factory bankruptcy sale."

7. Falsely representing that respondents have acquired any products by means of special purchases or that through such special purchases, savings are being offered to the consuming public misrepresenting in any manner the source from which any of respondents' merchandise was obtained.

It is further ordered, That the respondents henceforth maintain full and adequate records supporting all pricing claims made by them.

It is further ordered, That 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.