

It is ordered, That respondent's request for permission to file an interlocutory appeal from the hearing examiner's order filed July 23, 1969, denying respondent's and Martin A. Sherry's motion to stay compliance with a subpoena *duces tecum* be, and it hereby is, denied.

Commissioner Elman not concurring.

HARRY'S LINOLEUM COMPANY, ET AL.

Docket 8275. Order, Aug. 27, 1969

Order to show cause why decision of Commission dated December 27, 1961, should not be reopened and prior cease and desist order modified to require recordkeeping to substantiate claims relative to prices and savings.

ORDER TO SHOW CAUSE WHY PROCEEDING SHOULD NOT BE
REOPENED AND PRIOR CEASE AND DESIST ORDER
ALTERED OR MODIFIED

The Commission on December 27, 1961, having adopted the hearing examiner's initial decision herein issued November 8, 1961, and

It appearing that the order therein requires the respondents, in connection with the offering for sale, and sale and distribution of merchandise to cease and desist from:

1. Representing directly or by implication:

(a) That any amount is respondents' usual and customary retail price of merchandise unless such amount is the price at which the merchandise has been usually and customarily sold at retail by respondents in the recent regular course of business.

(b) that any saving is afforded in the purchase of merchandise from the respondents' retail price unless the price at which the merchandise is offered constitutes a reduction from the price at which said merchandise is usually and customarily sold at retail by the respondents in the recent regular course of business.

(c) that any merchandise, sold or offered for sale is guaranteed, unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

(d) that any merchandise is given away "free" with a purchase of other merchandise, or in any other manner, unless such is the fact.

(e) that carpeting made from duPont 501 Nylon is indestructible.

(f) that respondents are the only sellers of duPont 501 Nylon carpeting in a trade area where such a representation is made, unless such is the fact.

2. Using the words "made to sell for" or any other words or terms of similar import in connection with prices of merchandise unless such prices are

those at which the merchandise has been sold by respondents in the recent regular course of business, or unless such prices are those at which the merchandise has usually and customarily been sold at retail in the trade area where the representations are made.

3. Misrepresenting in any manner, the amount of savings available to purchasers of respondents' merchandise, or the amount by which the price of merchandise has been reduced either from the price at which it has been usually and customarily sold by respondents in the recent regular course of business, or from the price at which it has been usually and customarily sold at retail in the trade area where the representation is made.

It appearing to the Commission that subsequent to the entry of the order to cease and desist, respondents have continued to make representations directly and by implication, as to former prices, comparative prices, and the usual and customary retail prices of merchandise, and as to savings afforded to purchasers, but have failed to maintain records adequate to establish the accuracy of such representations so that compliance with the cease and desist order may be determined; and

The Federal Trade Commission having authority under Section 5(b) of the Federal Trade Commission Act to reopen a proceeding whenever, in its opinion, conditions of fact or law have so changed as to require such action or the public interest so requires, and after appropriate proceedings, to alter, modify, or set aside, in whole or in part, its order previously entered; and

The Commission having concluded that the public interest may require it to reopen and alter, or modify, the order to cease and desist so as to prohibit respondents from failing to maintain adequate records by which the accuracy of their representations as to former prices, comparative prices, and the usual and customary retail prices, and as to savings afforded to purchases, may be established;

Therefore it is ordered, Pursuant to Section 5(b) of the Federal Trade Commission Act and Section 3.72(b) of the Commission's Rules of Practice, that on or before the thirtieth day after service of this Order To Show Cause upon them, the respondents, may show cause, if any there be, why the public interest does not require the Commission to reopen this proceeding and alter, or modify, the order herein so that as altered or modified it will read as above with the addition of a new paragraph numbered 4 which will read:

4. Failing to maintain adequate records which disclose the facts upon which representations as to former prices, com-