

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

Docket C-1668. Complaint, Jan. 14, 1970—Decision, Jan. 14, 1970

Consent order requiring an El Paso, Texas, marketer of carpets and rugs to cease falsely advertising and misbranding its textile fiber products, making deceptive pricing, savings and guarantee representations, and failing to disclose all details of its "free" offers.

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 House of Carpets, Inc., a corporation, and Gilbert Malooly, 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 charges in that respect as follows:

PARAGRAPH 1. Respondent House of Carpets, Inc., is a corporation 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 601 North Oregon Street, El Paso, Texas.

Respondent Gilbert Malooly is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation and his office and principal place of business is located at the same address as that of the corporate respondent.

Respondents are engaged in the sale of carpets and rugs to the consuming public and building contractors. A few accommodation sales are made to other retailers. The respondents' trading area includes parts of the States of Texas, New Mexico and Arizona.

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 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 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 "100% Continuous Filament Nylon" or "100% 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 the exempted backings, fillings or paddings. 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 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. 5. 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 paddings, said 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 advertisements, 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. 6. 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. 7. 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. 8. 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: "Ten Year Wear Guarantee." "Fifteen Year Wear Guarantee."

PAR. 9. 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 were unconditionally guaranteed for ten years and fifteen years respectively.

PAR. 10. In truth and in fact, said floor coverings were not unconditionally guaranteed for ten years and fifteen years respectively and the nature and extent of the guarantee and the manner in which the guarantor would perform were 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. 11. 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:

100% Continuous Filament Nylon, \$2.88 sq. yd., Values to \$7.95.
 100% Commercial Filament Nylon, \$3.95 sq. yd., Values to \$9.95.
 100% Continuous Filament Nylon, \$4.88 sq. yd., Values to \$11.95.
 Steals of a Lifetime, Values to \$4.00, Your Choice, \$1.00 sq. yd.
 Closing Out!!! Values to \$10.00, Your Choice, \$4.00 sq. yd.
 Steals of a Lifetime, Values to \$13.00, Your Choice, \$6.00 sq. yd.
 Values to \$6.00, Your Choice, \$2.00 sq. yd.
 Values to \$12.00, Your Choice, \$5.00 sq. yd.
 Values to \$14.00, Your Choice, \$7.00 sq. yd.
 Values to \$8.00, Your Choice, \$3.00 sq. yd.
 Value to \$20.00, Your Choice, \$8.00 sq. yd.

PAR. 12. By and through the use of the above higher price representations in connection with the term value and a corresponding lower price, the respondents represented that the said higher prices were the prices at which the said products were usually and customarily sold at retail in the recent, regular course of business in the respondents' trade area and that the difference between the higher and lower prices represented a savings to the purchasers of the said products.

PAR. 13. In truth and in fact, the said higher prices were not the prices at which the said products were usually and customarily sold at retail in the recent regular course of business in the respondents' trade area but were in excess of such usual and customary prices and savings were not afforded the purchasers of such products as represented.

PAR. 14. In the further course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their said

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products, respondents have made certain other 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:

Limited Supply, 9x12 Braid Rugs, Reg. \$39.95, Limit One to a Customer, Full Price \$11.00.

Limited Supply! 9x12 Mohawk Axminster Rugs, Reg. \$99.95, Limit One to a Customer, Full Price \$48.88.

Limited Supply! 9x12 Hand-Made Wool Genuine Oriental Rugs, Reg. \$800.00, Limit One to a Customer, Full Price \$395.00.

Limited Supply, 9x12 Mill Trial Rugs, Reg. \$29.95, Limit One to a Customer, Full Price \$9.00.

Limited Supply! 9x12 Rug Pads, Reg. \$9.88, Limit One to a Customer, Full Price \$2.88.

Limited Supply! 3x5 Fringed Area Rugs, Reg. \$29.95, Limit One to a Customer, Full Price \$9.95.

PAR. 15. 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 the higher stated prices set out in said advertisements were the prices at which the said products were 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. 16. In truth and in fact, the higher prices set out in said advertisements were not the prices at which the said products were 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 such higher prices and savings were not afforded the purchasers of such products as represented.

PAR. 17. Further in the course and conduct of their business, and for the purpose of inducing the sale of their products, respondents have made certain other statements with respect to 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:

Free (In very large type).

Of Extra Charge (In smaller type).

Two Bedrooms Full of Carpet. Offer Includes Padding, Installation and 500 Mile Delivery (Up to 30 sq. yds.) With the Purchase of Living Room, Dining Room and Hall Carpet for as Little as \$188.00 (Minimum of 40 sq. yds.) (in small print).

Buy Your Living Room, Dining Room and Hall Carpet (A minimum of 40 sq. yds.) For as Little as \$188.00 and Get Two Bedrooms Carpeted Free (of extra charge up to 30 sq. yds.). Value of free carpet is \$199.00.

Five Rooms Carpeted Wall-to-Wall for the Price of 1.

Attention Carpet Customers, Place your orders now! Receive Your Free Bedroom Carpet. In Addition receive free of Extra Charge finest quality padding, installation, free 500 mile delivery and service after the sale.

Hundreds of Carpet Styles and Patterns to choose from. All nationally famous brand carpets and all at great savings! Buy with cash or use our convenient credit plan! Pay the average price for one room of carpet and get all five carpeted for only \$188.00.

PAR. 18. By and through the use of said statements the respondents have made confusing and contradictory representations as to the availability of "free" carpeting, which statements lend themselves to differing interpretations and to the confusion of the purchasing public.

PAR. 19. In truth and in fact, all of the conditions, obligations, and prerequisites to the receipt and retention of "free" carpeting by the purchasers thereof were not clearly and conspicuously set forth. Therefore, the aforesaid representations were false, deceptive and misleading.

PAR. 20. The aforesaid acts and practices of the respondents, as herein alleged in Paragraphs Eight through Nineteen, 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, 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

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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 House of Carpets, Inc., is a corporation 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 601 North Oregon Street, El Paso, Texas.

Respondent Gilbert Malooly is an officer of said corporation. He formulates, directs and controls the policies, acts and practices 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 House of Carpets, Inc., a corporation, and its officers, and Gilbert Malooly, 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 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 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.

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 any 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 backing, fillings 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 in plainly legible and conspicuous type.

It is further ordered, That respondents House of Carpets, Inc., a corporation, and its officers, and Gilbert Malooly, 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 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 is the retail price or value of any such product when such price or

value is in excess of the price at which such product has been usually and customarily sold at retail in the recent regular course of business in the trade area where the representation is made or otherwise misrepresenting in any manner the retail price or value of such product in the trade area where the representation is made.

3. 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 substantial 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.

4. 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 any such product.

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

6. Using the word "Free" or any other word or words of similar import and meaning, to designate or describe any of respondents' products unless all of the conditions, obligations, or other prerequisites to the receipt and retention of the "free" products are clearly and conspicuously explained or set forth at the outset so as to leave no reasonable probability that the terms might be misunderstood.

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

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

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 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

KLEIN & BLUMENSTEIN, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS
LABELING ACTS*Docket C-1669. Complaint, Jan. 14, 1970—Decision, Jan. 14, 1970*

Consent order requiring a New York City retail furrier to cease falsely advertising and deceptively invoicing its fur products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Klein & Blumenstein, Inc., a corporation, and Meyer Klein and Henry Blumenstein, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling 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 Klein & Blumenstein, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondents Meyer Klein and Henry Blumenstein are officers of the corporate respondent. They formulate, direct and control the acts, practices and policies of the said corporate respondent including those hereinafter set forth.

Respondents are fur dealers with their office and principal place of business located at 140 West 30th Street, New York, New York.

PAR. 2. Respondents are now and for some time last past have been engaged in the introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and have sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of furs which have been shipped and received in commerce; and have introduced into commerce, sold, advertised and offered for sale in commerce, and transported and distributed in commerce, furs as the terms "commerce,"