

Order

IN THE MATTER OF

HARRY'S LINOLEUM COMPANY, ET AL.

MODIFIED ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 8275. Complaint, Jan. 13, 1961—Decision, Feb. 12, 1970*

Order modifying an earlier order dated December 27, 1961, 59 F.T.C. 1422, which prohibited five affiliated retailers of carpeting from making deceptive pricing and other false representations, by adding a new Paragraph 4 requiring respondents to cease failing to maintain adequate records by which the validity of its pricing claims might be established.

ORDER MODIFYING ORDER TO CEASE AND DESIST

The Commission on December 27, 1961 [59 F.T.C. 1422], having issued its order in this matter requiring respondents, in connection with the offering for sale, and sale and distribution of merchandise, in commerce, 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 is offered constitutes a reduction 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.

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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. And the Commission on August 27, 1967, having issued its order to show cause why this proceeding should not be reopened and its order by December 27, 1961, modified by the addition of a new paragraph numbered 4 which would read:

4. Failing to maintain adequate records which disclose the facts upon which representations as to former prices, comparative prices, and the usual and customary retail prices of merchandise, and as to savings afforded to purchasers, and similar representations of the type dealt with in paragraphs 1(a) and (b), 2 and 3 of this order, are based, and from which the validity of any such claims can be established.

Respondents having filed an answer which opposed this modification and raised substantial factual issues, the Commission thereafter directed that hearings be held for receipt of evidence before a hearing examiner and further directed that at the conclusion thereof the record be certified to the Commission, together with the examiner's recommendation for final disposition; and

Commission counsel and the president and counsel for respondents, on January 15, 1970, having stipulated that respondents would accept the modification of the order to cease and desist as set forth in the order to show cause, and having further stipulated that such acceptance of the modification was not an inference or admission that the provisions of the original order to cease and desist have or have not been violated; and

The hearing examiner having concluded that the filing of the stipulation disposes of the issues raised by the pleadings herein certified the matter to the Commission on January 30, 1970, with the recommendation that the stipulation be accepted and that an order be en-

tered amending the order to cease and desist of December 27, 1961, in the manner proposed in the order to show cause; and

The Commission being of the opinion that the public interest will be best served by modifying its order of December 27, 1961:

It is ordered, That the stipulation between the parties, dated January 15, 1970, be, and it hereby is, accepted by the Commission.

It is further ordered, That the Commission's order of December 27, 1961 [59 F.T.C. 1422], be, and it hereby is, modified by adding thereto as paragraph 4 the following:

4. Failing to maintain adequate records which disclose the facts upon which representations as to former prices, comparative prices, and the usual and customary retail prices of merchandise, and as to savings afforded to purchasers, and similar representations of the type dealt with in paragraphs 1(a) and (b), 2 and 3 of this order, are based, and from which the validity of any such claims can be established.

IN THE MATTER OF

COFFEE BAR MANUFACTURING COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT