

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

Docket C-1796. Complaint, Sept. 23, 1970—Decision, Sept. 23, 1970

Consent order requiring a Bethesda, Md., seller of floor coverings to cease using bait advertising, deceptive pricing and "free" claims, misleading guarantees, misrepresenting that sales are made on a "No Money Down" basis, failing to include padding and installation charges in advertised prices, misrepresenting that his carpets are approved by the Federal Housing Administration or any other Government agency, and inaccurately depicting the quality of carpets through illustrations in newspapers and television material.

1256

Complaint

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Burton A. Dietch, an individual doing business as Carpet Specialists, hereinafter referred to as respondent, has violated the provisions of said 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 Burton A. Dietch is an individual doing business as Carpet Specialists. His principal place of business is located at 4918 Cordell Avenue, Bethesda, Maryland.

PAR. 2. Respondent for some time last past has been, engaged in the advertising, offering for sale and sale of floor coverings to the public and in the distribution and installation thereof.

PAR. 3. In the course and conduct of his aforesaid business, respondent has caused his said merchandise, when sold, to be shipped from his place of business located in the State of Maryland to purchasers thereof located in various other States of the United States and the District of Columbia, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of his aforesaid business, and for the purpose of obtaining the names of prospective purchasers and inducing the purchase of his carpeting and floor coverings, the respondent has made numerous statements and representations by advertisements inserted in newspapers, and by oral statements and representations of his salesmen to prospective purchasers with respect to their products and services.

Typical and illustrative of said statements and representations, but not all inclusive thereof, are the following:

FREE! . .
SEWING MACHINE . . .
FREE TO THE FIRST 25
CUSTOMERS TO PURCHASE
40 SQ. YDS. OR MORE OF
OUR SPECIAL FHA APPROVED
CARPET.

* * * * *

ABSOLUTELY FREE!
22 Carat Gold Stamp Wheat Pattern
16-pc. Dinnerware Set
Nothing to Buy . . .

Complaint

77 F.T.C.

WALL TO WALL CARPET SALE

* * * *

SPECTACULAR CARPET OFFER

* * * *

3

ROOMS

COMPLETELY INSTALLED

\$133

LIMITED OFFER

* * * *

ALL DUPONT 501

NYLON PILE CARPET

PADDING & LABOR INCLUDED

NO MONEY DOWN

AS LITTLE AS \$2 per wk

BANK FINANCING

* * * *

BUY DIRECT & SAVE AS NEVER BEFORE

SHIPPED DIRECT FROM MILL TO YOU.

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set out herein, separately and in connection with the oral statements and representations of respondent's salesmen to customers and prospective customers, the respondent has represented, directly or by implication:

1. That respondent was making a bona fide offer to sell the advertised carpeting and floor coverings at the price and on the terms and conditions stated in the advertisement.

2. By and through the use of the word "SALE," and other words of similar import and meaning, that respondent's carpeting and floor coverings were being offered for sale at special or reduced prices, and that purchasers were thereby afforded savings from respondent's regular selling prices.

3. That prospective purchasers of the advertised merchandise would receive without any cost or obligation, a "free" dinnerware set.

4. That the first twenty-five purchasers of forty square yards or more of respondent's "special Fila approved carpet" would receive a "free" sewing machine.

5. That respondent's products were unconditionally guaranteed for various periods of time such as from 10 to 20 years by respondent.

6. By and through the use of the words "bank financing" and words of similar import and meaning, that no finance company was involved in the financing of the customer's purchase and that the customer's account would be discounted, negotiated or assigned to a bank.

7. By and through the statements "No Money Down," "As Little as \$2 per wk." and other similar statements and representations, that respondent regularly arranged financing of purchases for no down payment and on the represented low weekly terms.

8. By and through the use of the words "Padding & Labor Included" and words of similar import and meaning, that all of the advertised Dupont 501 Nylon Pile carpet was installed with separate padding included at the advertised price.

9. By and through the use of the words "FHA Approved" that the carpeting mentioned in such advertisements was approved by the Federal Housing Authority.

10. By and through the use of the term "Buy Direct and Save As Never Before Shipped Directly From Mill To You" that the carpeting mentioned in such advertisements were brought by the purchaser directly from the mill at reduced prices which eliminated the middleman's profits with consequent savings to the purchaser.

11. By and through the use of illustrations depicting a high plush pile that the carpeting mentioned in such advertisements had a high plush pile.

PAR. 6. In truth and in fact:

1. Respondent's offers were not bona fide offers to sell said carpeting and floor coverings at the price and on the terms and conditions stated in the advertisements, but were made for the purpose of obtaining leads to persons interested in the purchase of carpeting. After obtaining such leads through responses to said advertisements, respondent's salesmen called upon such persons, but made no effort to sell the advertised carpeting. Instead, they exhibited what they represented to be the advertised carpeting which, because of its poor appearance and condition was usually rejected on sight by the prospective purchaser. Concurrently, higher priced carpeting or floor coverings of superior quality and texture were presented, which by comparison disparaged and demeaned the advertised carpeting. By these and other tactics, purchase of the advertised carpeting was discouraged, and respondent through his salesmen attempted to and frequently did sell the higher priced carpeting.

2. Respondent's products were not being offered for sale at special or reduced prices, and purchasers were not thereby afforded savings from respondent's regular selling prices. In fact, respondent did not have a regular price.

3. The first twenty-five purchasers of forty square yards or more of respondent's special "*FHA approved*" carpeting did not receive "*free*" sewing machines. In those few instances when the purchaser

Complaint

77 F.T.C.

actually received a sewing machine, the cost of the "free" merchandise was added to and regularly included in the selling price of the merchandise sold to the customer.

4. Prospective purchasers of the advertised merchandise did not receive a "free" dinnerware set without any cost or obligation.

5. Respondent's carpets and floor coverings were not unconditionally guaranteed for the period of time orally specified by respondent's salesmen. Such guarantees as they may have provided customers were not respondent's guarantees but were from the manufacturer and were subject to numerous conditions and limitations not disclosed in respondent's representatives' oral statements. Furthermore, in a substantial number of instances customers did not receive a written guarantee setting forth the terms and conditions of the represented guarantee.

6. A finance company was involved in many instances in the financing of the customer's purchase and the customer's account was not customarily and usually discounted, negotiated or assigned to a bank.

7. Respondent did not regularly arrange financing of purchases for which no downpayment was required or on the represented low monthly terms.

8. The advertised Dupont 501 Nylon Pile Carpet is not installed with separate padding included at the advertised price.

9. The advertised carpeting was not approved by the Federal Housing Authority.

10. The advertised carpeting was not shipped directly to the purchaser from the mill at reduced prices with consequent savings to the purchaser.

11. The physical appearance of the sale advertised carpeting was inaccurately depicted in the advertisement. Said carpeting did not have a plush pile.

Therefore, the statements and representations as set forth in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. In the course and conduct of his aforesaid business, and at all times mentioned herein, respondent has been in substantial competition, in commerce, with corporations, firms and individuals in the sale and distribution of rugs, carpets and floor coverings products and services of the same general kind and nature as those sold by respondent.

PAR. 8. The use by the respondent of the aforesaid false, misleading and deceptive statements, representations and practices has had

the capacity and tendency to mislead and deceive 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 respondent's products and services by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of the respondent, as herein alleged, were all to the prejudice and injury of the public and of respondent's 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

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Deceptive Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent 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 respondent has violated the said Act, 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 Burton A. Dietch is an individual doing business as Carpet Specialists. His principal place of business is located at 4918 Cordell Avenue, Bethesda, Maryland.

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

ORDER

It is ordered, That respondent Burton A. Dietch, an individual doing business as Carpet Specialists or under any other trade name or names and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale, distribution or installation of carpeting or floor covering or any other article of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

2. Advertising or offering merchandise for sale for the purpose of obtaining leads or prospects for the sale of different merchandise when the advertised merchandise is inadequate to perform the functions for which it is offered and respondent does not maintain a reasonably adequate and readily available stock of said advertised merchandise.

3. Discouraging the purchase of or disparaging any merchandise or services which are advertised or offered for sale.

4. Representing, directly or by implication, that any merchandise or services are offered for sale when such offer is not a bona fide offer to sell such merchandise or services.

5. Using the words "Wall to Wall Carpet Sale," "Spectacular Carpeting Offer" or any other word or words of similar import or meaning unless the price for any merchandise being offered for sale constitutes a reduction, in an amount not so insignificant as to be meaningless, from the actual bona fide price at which the advertised merchandise was sold or offered for sale to the public on a regular basis by respondent for a reasonably substantial period of time in the recent regular course of his business.

6. (a) Representing, in any manner, that by purchasing any of respondent's merchandise, customers are afforded savings amounting to the difference between respondent's stated price and respondent's former price unless such merchandise has been sold or offered for sale in good faith at the former price by respondent for a reasonably substantial period of time in the recent, regular course of his business.

(b) Representing, in any manner, that by purchasing any of

respondent's merchandise, customers are afforded savings amounting to the difference between respondent's stated price and a compared price for said merchandise in respondent's trade area unless a substantial number of the principal retail outlets in the trade area regularly sell said merchandise at the compared price or some higher price.

(c) Representing, in any manner, that by purchasing any of respondent's merchandise, customers are afforded savings amounting to the difference between respondent's stated price and a compared value price for comparable merchandise, unless substantial sales of merchandise of like grade and quality are being made in the trade area at the compared price or a higher price and unless respondent has in good faith conducted a market survey or obtained a similar representative sample of prices in this trade area which establishes the validity of said compared price and it is clearly and conspicuously disclosed that the comparison is with merchandise of like grade and quality.

7. Failing to maintain adequate records which disclose the facts upon which any savings claims, sale claims and other similar representations as set forth in Paragraphs Five and Six of the order are based, and (b) from which the validity of any savings claims, sale claims and similar representation can be determined.

8. Representing, directly or by implication, that a prospective purchaser or respondent's products or services will receive a "free" dinnerware set or any other prize or award unless all conditions, obligations, or other prerequisites to the receipt of such prizes or award are clearly and conspicuously disclosed and respondent does in fact deliver said gift to all persons entitled to receive them.

9. Representing, directly or by implication, that any gift is furnished "free" or at no cost to a purchaser of advertised merchandise, when, in fact, the cost of such gift is obtained through an increase in the selling price of the advertised merchandise to cover the cost of the "free" gift or such cost is regularly included in the selling price of the advertised merchandise.

10. Representing, directly or by implication, that any product or service is guaranteed, unless the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed; and respondent delivers to each purchaser a

Decision and Order

77 F.T.C.

written guarantee clearly setting forth all of the terms, conditions and limitations of the guarantee fully equal to the representation, directly or impliedly made to each such purchaser, and unless respondent promptly and fully performs all of his obligations and requirements under the terms of each such guarantee.

11. Representing, directly or by implication, that respondent usually and customarily discounts, negotiates, or assigns customers' conditional sales contracts, promissory notes or other instruments of indebtedness to a bank, rather than to a finance company or other third party unless respondent does, in fact, usually and customarily assigns such customers' instruments of indebtedness to a bank.

12. Representing, directly or by implication, that respondent sells his products for "No Money Down" or that respondent sells his merchandise without requiring a down payment or for stated monthly installments or on any other terms or conditions, unless respondent does, in fact, sell his merchandise on the represented terms and conditions to all persons seeking to purchase said merchandise.

13. Representing, directly or by implication, that a stated price for floor covering includes the cost of a separate padding and the installation thereof, unless in every instance where it is so represented the stated price for floor covering does, in fact, include the cost of such separate padding and installation thereof; or misrepresenting in any manner, the prices terms or conditions under which respondent supplies separate padding in connection with the sale of floor covering products.

14. Representing, directly or by implication, that respondent's carpeting or floor covering is approved by the Federal Housing Authority, or any other governmental authority; or misrepresenting in any manner the nature or character of any approval or endorsement of respondent's product or service.

15. Representing, directly or by implication, that carpeting or any other product will be shipped directly to the purchaser from the mill or that such products are being sold at mill prices or at prices which eliminate the middleman profit.

16. Inaccurately depicting the depth of the pile face of carpeting or the characteristics or quality of any products through illustrations or other pictorial depictions in newspapers, television or other promotional material.

It is further ordered, That respondent deliver a copy of this order

1256

Order

to cease and desist to all present and future salesmen or other persons engaged in the sale of respondent's products or services, and secure from each such salesman or other person a signed statement acknowledging receipt of said order.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form of his compliance with this order.
