

IN THE MATTER OF
KUSTOM ENTERPRISES, INC., ET AL.

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

Docket 8846. Complaint, June 17, 1971—Decision, Jan. 24, 1972

Order requiring two Wheat Ridge, Colo., corporations selling and distributing residential carpeting and carpet padding to cease using telephone calls or free gifts to gain access to the homes of prospective purchasers, misrepresenting that they are the exclusive franchisee of carpet manufacturers or that a prospect's home has been specially selected for a test installation, making deceptive guarantees, failing to disclose that the selling price of carpet is by the square yard, failing to give Notice that any sales contract may be rescinded within three days, and negotiating any note to a finance company prior to midnight of the fifth day. Respondents are also required to make all disclosures required by Regulation Z of the Truth in Lending Act and comply with the misbranding and advertising provisions of the Textile Fiber Products Identification Act.

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Truth in Lending Act, and the implementing regulation promulgated thereunder and the Textile Fiber Products Identification Act, and the rules and regulations promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Kustom Enterprises, Inc., a corporation, and Joseph A. Padilla, Thomas M. Roth and Sherri Roth, individually and as officers of said corporation; and Marketing Enterprises, Inc., a corporation, and Eugene DeWitt and Julian Chavez, individually and as officers of said corporation, and F. E. Lester, individually, hereinafter referred to as respondents, have violated the provisions of said Acts, and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Kustom Enterprises, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Utah, with its principal office and place of business located at 6827 West 38th Avenue, Wheat Ridge, Colorado, and with mailing address at P.O. Box F, Wheat Ridge, Colorado.

Respondents Joseph A. Padilla, Thomas M. Roth and Sherri Roth are individuals and officers of the corporate respondent Kustom Enterprises, Inc. They formulate, direct, and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Respondent F. E. Lester, individually, in conjunction with respondents Joseph A. Padilla and Thomas M. Roth, formulates, directs, and controls the acts and practices of Carpet Banke, the trade name under which the corporate respondent Kustom Enterprises, Inc., has conducted business. Their addresses are the same as that of the corporate respondent.

Respondents are now trading, and for some time last past have traded, as: Kustom Carpets, Intermountain Wholesale Company, Allied Carpets, Allied, Ltd., National Carpets, Carpet Banke.

PAR. 2. Respondent Marketing Enterprises, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal place of business at 6827 West 38th Avenue, Wheat Ridge, Colorado.

Respondents Eugene DeWitt and Julian Chavez are individuals and officers of the corporate respondent Marketing Enterprises, Inc.

They, together with Joseph A. Padilla and Thomas M. Roth, formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their addresses are the same as that of the corporate respondent.

Respondents are now trading, and for some time last past have traded, as: Interstate Carpets, United Carpets.

PAR. 3. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of residential carpeting and carpet padding to the public. Respondents also install said carpeting and carpet padding.

COUNT I

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One, Two and Three above are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 4. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their said products to be shipped from their several places of business in the States of Utah, Colorado, Nebraska, and Missouri to purchasers thereof located in various other States of the United States, and also transmit to and receive from their various places of business advertising and promotional materials, contracts, and other business papers and documents; and 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. 5. In the course and conduct of their aforesaid business and for the purpose of inducing sales of their products, respondents have made, and are now making, numerous statements and representations through oral statements made to prospective purchasers by their salesmen or representatives, through telephone solicitation calls, salesmen's sales book presentations, advertising and other promotional material with respect to the nature of their offer, their prices, time limitations, guarantees, the origin of their products, and the quality of performance of their products.

Typical and illustrative of respondents' printed advertising representations, but not all inclusive thereof, are the following:

You can have complete confidence in ALLIED CARPETS every installation is inspected—registered—and guaranteed in writing for ten (10) years for your complete protection and satisfaction.

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CODE OF ETHICS

To maintain high standards of quality workmanship.

Use only Top Grade materials of standard quality and manufacture that carry with them the manufacturer's backing 100%.

Promptly correct any defective work.

To charge fair and just prices commensurate with the work executed on all contracts.

To conduct business in a manner as to reflect credit and confidence by the public for our industry.

To exercise a high degree of care in the execution of all work so as to do no ordinary preventable injury to properties or persons.

ALLIED LTD.

Atlanta, Georgia, March 14, 1968.

ALLIED CARPETS,
724 South 3d East,
Salt Lake City, Utah.

GENTLEMEN: We are pleased to announce that Allied Limited (the worlds only Commercial Camulon* Carpet Manufacturer) is happy to welcome your fine company as an exclusive agent for the distribution of the revolutionary new Commercial Camulon* Carpet.

In accordance with your instructions, the Commercial Camulon* Carpet was made to your distinctive pattern design and your construction specifications for exclusive use in the Rocky Mountain Area in accordance with your Franchise Agreement.

According to your Franchise Agreement, you must have five (5) working Sales Center Offices in the Rocky Mountain Area in the next twelve (12) months. Knowing your dynamic sales ability, we are sure you will accomplish this in half the allotted time.

You can be assured that Allied Carpets has the exclusive right to sell and distribute the Commercial Camulon* Carpet in the five (5) State Rocky Mountain Area.

Wishing your company the best of luck on this new venture, I am,

Very Truly Yours,

THOMAS ROTH, *President.*

*Camulon is the trade name of Allied Ltd. for its polyester fiber.

COMMERCIAL CARPET TAKES THE FLOOR

ALLIED LTD.

BRINGS

THE LUXURIOUS TEXTURED BROADLOOM

"COMMERCIAL CARPET" TO HOMEOWNERS

CONTINUOUS FILAMENT PILE YARNS OUTDATES

ALL OTHER MAN-MADE YARNS

TEN GOOD REASONS WHY ALLIED LTD. COMMERCIAL CARPET IS

YOUR BEST BUY

1. "Commercial" Camulon* Carpet Won't Fade.
2. "Commercial" Camulon* Carpet Is Non-Absorbent Resists 47 Stains.

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3. "Commercial" Camulon* Carpet Won't Peel or Fuzz-Stays Lovely.
4. "Commercial" Camulon* Carpet Is Thickly Tufted-Truly Elegant.
5. "Commercial" Camulon* Carpet Is Non-Allergenic: Won't Attract Dust.
6. "Commercial" Camulon* Carpet Is Abrasive Resistant-Woven to Wear.
7. "Commercial" Camulon* Carpet Keeps Down Pesky Static Build-Up.
8. "Commercial" Camulon* Carpet Is Positively Moth-Proofed Forever.
9. "Commercial" Camulon* Carpet Marvelously Grand: Won't Snag Heels.
10. "Commercial" Camulon* Carpet Comes in Many Beautiful Colors.

WHAT ABOUT "COMMERCIAL" CAMULON* CARPET

It took millions of dollars worth of research, plus years of testing to make this fiber as perfect as it is. Lightest fiber known giving you more bulk for your money. Also sta-press slacks.

WHAT ABOUT WEARABILITY

It could hardly be better. This broadloom was tested in the driveway of a service station, day after day cars and trucks rode on it, when it was cleaned it looked fresh and new * * * with hardly a sign of wear.

WHAT ABOUT CLEANABILITY

Cleans like a dream * * * almost as easy as washing your hands, detergent and water wipe away any stain (even pet accidents) since it's as static free as possible. It repels instead of attracting dirt.

IS IT GOOD?—YOU BET!

*Camulon is the trade name of Allied Ltd. for its polyester fiber.

PAR. 6. By and through the use of the aforesaid 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 their salesmen and representatives, the respondents have represented, and are now representing, directly or by implication, that:

1. Respondents are conducting a telephone survey when they initially contact prospective purchasers.
2. Respondents' salesmen and representatives will call on prospective purchasers in their homes for the purpose of delivering a free gift.
3. Respondents are the exclusive franchisee and the exclusive sales outlet for a manufacturer of carpet and carpet padding.
4. Respondents' carpeting and carpet padding were developed by a special manufacturing process exclusively for respondents by their franchising manufacturer.
5. Respondents' carpeting and carpet padding were developed and manufactured exclusively for commercial use and originally were

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sold only to commercial establishments such as hotels, motels, casinos, restaurants and theaters.

6. Respondents are newly established in the business of selling and installing carpeting and carpet padding in homes and are offering their products for the first time to homeowners.

7. Homes of prospective purchasers are specifically selected as test homes for installation of respondents' carpeting and carpet padding, and after installation, such homes will be used for demonstration and advertising purposes by the respondents.

8. Customers will receive reductions or discounts from respondents' regular or usual selling prices which are contingent upon their signing a purchase contract during the initial visit by respondents' sales representative and their agreeing to allow their names and homes to be used for respondents' advertising and promotional purposes.

9. Carpet and carpet padding of the grade and quality sold by the respondents are not available to prospective purchasers through normal retail outlets.

10. Respondents' carpeting will not fade, mat, snag heels, attract dirt or dust, is resistant to various stains and prevents build-up of static electricity.

11. Respondents' carpeting carries a ten-year written guarantee against wear and installation defects.

12. Respondents' carpeting is pre-cut to fit the purchasers' homes the same evening that sales are consummated, implying that purchasers cannot cancel their purchase contracts with the respondents once entered into.

13. The type of carpeting sold by respondents is sold in the carpet trade by the unit and not by the square yard, and therefore respondents' salesmen cannot quote prospective purchasers a price for their products based upon square yards.

14. The prices charged by respondents for their carpeting and carpet padding, and the installation thereof, are lower than those charged by their competitors for products of like grade and quality and for similar installation.

15. The quality of respondents' carpeting and carpet padding is superior to similar products of their competitors; and they have conducted durability tests on their carpeting which proved that it shows no stains or wear under adverse conditions of use.

PAR. 7. In truth and in fact:

1. Respondents' initial contact by telephone with prospective purchasers is not for the purpose of a survey but is made for the purpose of obtaining leads as to persons who may be interested in the purchase of respondents' carpeting and carpet padding.

2. Respondents' salesmen and representatives do not call on prospective purchasers in their homes for the purpose of delivering a free gift but rather to show carpeting and carpet padding samples and to make a sales presentation, using respondents' sales books and other advertising and promotional documents and materials.

3. Respondents are not the exclusive franchisee or the exclusive sales outlet for a manufacturer of carpets and carpet padding.

4. Respondents' carpeting and carpet padding were not developed exclusively for their sales operations through a special manufacturing process by their franchising manufacturer but are, in fact, standard lines of carpeting and carpet padding sold by the manufacturers thereof.

5. Respondents' carpeting and carpet padding were neither originally developed and manufactured exclusively for commercial use nor sold only to commercial establishments such as hotels, motels, casinos, restaurants and theaters.

6. Respondents have sold and installed residential carpeting and carpet padding for a substantial period of time and their products have been offered for sale on numerous occasions to homeowners for residential use for several years last past.

7. Homes of prospective purchasers are not specifically selected as test homes for the installation of respondents' carpeting and carpet padding; and after installation of said products, purchasers' homes are not used for respondents' demonstration or advertising purposes.

8. Reductions or discounts from respondents' regular, or usual, selling prices are not, in fact, contingent upon purchasers signing a contract during the initial visit by respondents' sales representative; and agreeing to allow their names and homes to be used for respondents' advertising and promotional purposes but, the giving of such reductions or discounts, depends upon the sales resistance of respondents' prospective purchasers.

9. Carpeting and carpet padding of like grade and quality as that sold by respondents is, in fact, available to prospective purchasers through normal retail outlets.

10. Respondents' carpeting will, in fact, fade, mat, snag heels, attract dirt and dust, generate static electricity, and stain, in the same manner and to the same degree as other carpeting of like grade and quality.

11. Respondents' carpeting does not carry a ten-year written guarantee against wear and installation defects; in fact, purchasers thereof are not provided with a written guarantee after they have purchased and had installed respondents' carpeting. When wear and

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installation defects are discovered within the period of the alleged guarantee, respondents have refused, in most cases, to make adjustments or to provide other appropriate relief to the purchasers.

12. Respondents' carpeting is not precut to fit the purchasers' homes on the same evenings that their sales are consummated; in fact, respondents' carpeting is delivered for installation to the purchasers' homes in rolls and cut to fit their homes at the job site, and purchasers' right to rescind or cancel their purchase contracts with respondents is not affected despite representations to the contrary by respondents' salesmen.

13. Carpeting of the type sold by respondents is sold in the carpet trade not by the unit but by the square yard and respondents' salesmen can, in fact, quote prices based upon the square yard when making sales presentation to prospective purchasers.

14. The prices charged by respondents for their carpeting, carpet padding and the installation thereof, are, in fact, normally higher than those prices charged for comparable and similar products and services by respondents' competitors.

15. The quality of respondents' carpeting and carpet padding is not, in fact, superior to similar products offered for sale by their competitors; and respondents have conducted no durability tests on their carpeting which proved that its ability to resist stains and wear under adverse conditions of use is greater than that of similar products sold by their competitors.

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

PAR. 8. In the course and conduct of their business, as aforesaid, respondents or their salesmen and representatives, in a substantial number of cases, fail and have in the past failed to disclose orally at the time of the sale, and in writing on any conditional sales contract, promissory note, retail time contract or other instrument executed by the purchaser, with such conspicuousness and clarity as is likely to be read and observed by the purchaser, that such conditional sales contract, promissory note, retail time contract or other instrument may, at the option of the seller and without notice to the purchaser, be negotiated or assigned to a finance company or other third party and that if such negotiation or assignment is effected, the purchaser will then owe the amount due under the contract to the finance company or third party and may have to pay this amount in full, whether or not he has claims against the seller under the contract for defects in the merchandise, installation, nondelivery or the like.

The aforesaid failure of the respondents or their representatives to reveal said facts to purchasers has the tendency and capacity to lead and induce a substantial number of such persons into the understanding and belief that the respondents will not negotiate or transfer such documents, as aforesaid, and that legal obligations and relationships will exist only between such respondents and purchasers and will remain unchanged and unaltered, and has the tendency and capacity to induce a substantial number of such persons to enter into contracts or execute promissory notes for the purchase of respondents' carpeting and carpet padding.

In truth and in fact, respondents frequently, and in a substantial number of cases and in the usual course and conduct of their business, sell, transfer, and assign said notes and retail time contracts to finance companies or third parties so as to bring about the aforementioned changes in legal obligations and relationships.

Therefore, the failure of respondents or their representatives to reveal such facts to prospective purchasers, as aforesaid, was and is an unfair and false, misleading, and deceptive act and practice.

PAR. 9. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of carpeting and carpet padding of the same general kind and nature as those sold by respondents.

PAR. 10. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true, and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 11. The aforesaid acts and practices of the respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors; and constituted, and now constitute, 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.

COUNT II

Alleging violations of the Truth in Lending Act and the implementing regulation promulgated thereunder, and of the Federal Trade Commission Act, the allegations of Paragraphs One, Two, and Three above are incorporated by reference in Count II as if fully set forth verbatim.

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PAR. 12. In the ordinary course and conduct of their business as aforesaid, respondents regularly extend consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 13. Subsequent to July 1, 1969, in the ordinary course and conduct of their business as aforesaid, and in connection with their credit sales, as "credit sale" is defined in Regulation Z, respondents have entered into installment contracts with their customers, hereinafter referred to as "the contract." Respondents make no consumer credit cost disclosures to customers other than on the contract. By and through use of the contract, respondents have, in some instances, failed to provide the customer with the disclosures required to be made by Section 226.8 of Regulation Z, in violation of that Section.

PAR. 14. Subsequent to July 1, 1969, and in connection with the credit sales referred to in Paragraph Thirteen above, respondents have entered into consumer credit transactions in which they retained or acquired a security interest in real property which was used or expected to be used as the principal residence of the customer. The customer thereby had the right to rescind the transaction as provided in Section 226.9(e) of Regulation Z. Respondents, in connection with these transactions:

1. Failed, in some instances, to provide each customer who had the right to rescind with copies of notice of the right to rescind in the number, manner and form prescribed in Sections 226.9(b) and 226.9(f) of Regulation Z, as required by Section 226.9(b) thereof.

2. Failed, in some instances, to delay performance of work and service for the customer in connection with transaction until the rescission period provided for in Section 226.9(a) of Regulation Z has expired, in violation of Section 226.9(c) of Regulation Z.

PAR. 15. Pursuant to Section 103(k) of the Truth in Lending Act, respondents' aforesaid failures to comply with the requirements of Regulation Z constitute a violation of the Act and, pursuant to Section 108 thereof, respondents thereby violated the Federal Trade Commission Act.

COUNT III

Alleging violation of the Textile Fiber Products Identification Act and the rules and regulations promulgated thereunder, the allegations of Paragraphs One, Two, and Three above are incorporated by reference in Count III as if fully set forth verbatim.

PAR. 16. Respondents now, and for some time last past, have been engaged in the introduction, delivery for introduction, sale, offering

for sale, advertising, transportation, and distribution in commerce, 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 products" are defined in the Textile Fiber Products Identification Act.

PAR. 17. Certain of said textile fiber products were misbranded by respondents within the intent and meaning of Section 4(b) of the Textile Fiber Products Identification Act and the rules and regulations promulgated thereunder, in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of said Section 4(b) and in the manner and form as prescribed by the rules and regulations promulgated under the said Act.

Among such misbranded textile fiber products, but not limited thereto, were carpets which were not labeled to show in words and figures plainly legible:

1. The true generic name of the fibers present.
2. The percentage of each fiber present, by weight, in the total fiber content of said textile fiber product.
3. The name, or other identification issued and registered by the Commission of the manufacturer of the carpeting.

PAR. 18. Certain of said textile fiber products were falsely and deceptively advertised in that respondents in making disclosure or implications as to the fiber content of such textile fiber products in written advertisements used to aid, promote, and to 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 certain carpets which were falsely and deceptively advertised by means of printed matter, in respondents' sales books used in sales presentations made to prospective customers in various States of the United States. The aforementioned carpets were described by such fiber-connoting terms among which, but not limited thereto, was "Camulon", and the true generic name of the fiber contained in such products was not set forth.

PAR. 19. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, re-

spondents have 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:

A fiber trademark was used in advertising textile fiber products, 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. 20. The acts and practices of respondents as set forth in Count III 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 and deceptive acts and practices in commerce, under the Federal Trade Commission Act.

DECISION AND ORDER

The Commission, having issued its complaint on June 17, 1971, charging the respondents named in the caption hereof, with violation of the Federal Trade Commission Act, the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Textile Fiber Products Identification Act, and the rules and regulations promulgated thereunder, and respondents having been served with a copy of that complaint; and

The Commission having duly determined upon motion duly certified to the Commission that, in the circumstances presented, the public interest would be served by waiver here of the provisions of Section 2.34(d) of its rules, that the consent order procedure shall not be available after issuance of complaint; and

Respondents and counsel for the complaint having thereafter executed an agreement containing a consent order, an admission by respondents of all jurisdictional facts set forth in the complaint, a statement that the signing of the agreement by respondents is for settlement purposes only and does not constitute an admission by respondents that the law has been violated, as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission having considered the aforesaid agreement, and having determined that it provides an adequate basis for appropriate disposition of this proceeding, the agreement is hereby accepted,

the following jurisdictional findings are made, and the following order is entered:

1. Respondent Kustom Enterprises, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Utah, with its principal office and place of business formerly located at 6827 West 38th Avenue, Wheat Ridge, Colorado.

2. Respondents Joseph A. Padilla, Thomas M. Roth and Sherri Roth are individuals and officers of the corporate respondent Kustom Enterprises, Inc. They formulate, direct and control the acts and practices of said corporate respondent, including the acts and practices as set forth in the complaint the Commission has issued. The current address of the individual respondent Joseph A. Padilla is 3490 Nelson Street, Wheat Ridge, Colorado. The current business address of the individual respondents Thomas M. Roth and Sherri Roth is 3021 Tejon Street, Englewood, Colorado.

3. Respondent Marketing Enterprises, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal office and place of business formerly located at 6827 West 38th Avenue, Wheat Ridge, Colorado.

4. Respondents Eugene DeWitt and Julian Chavez are individuals and officers of the corporate respondent Marketing Enterprises, Inc. They, together with the individual respondents Joseph A. Padilla and Thomas M. Roth, formulate, direct and control the acts and practices of said corporate respondent, as set forth in the complaint the Commission has issued. The current business address of the individual respondent Eugene DeWitt is 215 St. Paul Street, Denver, Colorado. The current address of the individual respondent Julian Chavez is 1544 South Kipling Court, Denver, Colorado.

5. 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

I

It is ordered, That respondents Kustom Enterprises, Inc., a corporation, and its successors and assigns, and its officers, and Joseph A. Padilla, Thomas M. Roth, and Sherri Roth, individually and as officers of said corporation, and respondents Marketing Enterprises, Inc., a corporation, and its successors and assigns, and its officers, and Eugene DeWitt and Julian Chavez, individually and as officers of said corporation, and respondents' agents, representatives, and

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

1. Representing, directly or by implication, that respondents are conducting a telephone survey when prospective purchasers are called by telephone; or representing, in any manner, that the purpose of said telephone calls is other than to obtain leads or prospects as to persons who may be interested in the purchase of carpeting, carpet padding, floor coverings, or other merchandise or services sold by respondents.

2. Representing, directly or by implication, that respondents' representatives will call on prospective purchasers in their homes for the purpose of delivery of a free gift; or misrepresenting, in any manner, the purpose of respondents' representatives' calls.

3. Failing to disclose to prospective purchasers that respondents' salesmen will call on them at their homes for the purpose of selling respondents' products.

4. Using, in any manner, a sales plan, telephone solicitation 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 carpeting, carpet padding, floor coverings, or other merchandise or services.

5. Representing, directly or by implication, that respondents operate or do business as an exclusive franchisee of, or exclusive sales outlet for, the manufacturer of carpeting and carpet padding; or misrepresenting, in any manner, the nature, scope or character of respondents' business.

6. Representing, directly or by implication, that carpeting and carpet padding sold by respondents have been developed exclusively for their sales operations through a special manufacturing process by their franchising manufacturer, or that such carpeting or carpet padding was developed by the manufacturer thereof exclusively for commercial use to be sold only to establishments such as hotels, motels, casinos, restaurants, and theaters, or that such carpeting and carpet padding are of commercial grade and quality.

7. Representing, directly or by implication, that respondents' carpeting and carpet padding are being offered for sale, or sold, for the first time to homeowners for residential use; or misrepresenting, in any manner, the length of time respondents' carpet-

ing or carpet padding has been offered for sale or sold to homeowners.

8. Representing, directly or by implication, that the homes of prospective purchasers have been specially selected to be used as test homes for the installation of respondents' carpeting and carpet padding or that thereafter they will be used for demonstration or advertising purposes.

9. Representing, directly or by implication, that reductions or discounts from respondents' regular or usual selling prices are contingent upon purchasers signing a contract during the initial visit by respondents' salesmen, or upon purchasers agreeing to allow their names or homes to be used by respondents for advertising or promotional purposes; or misrepresenting, in any manner, that respondents' offer of products is limited as to time or in any other manner, unless such limitations are, in fact, imposed and in good faith adhered to.

10. Representing, directly or by implication, that any price for respondents' carpeting, carpet padding, or for the installation thereof, or other merchandise or services, is a special or reduced price, unless such price constitutes a significant reduction from the price at which such merchandise or services have been sold, or offered for sale by the respondents for a reasonably substantial period of time in the recent, regular course of their business.

11. Representing, directly or by implication, that carpeting or carpet padding, of like grade and quality as that sold by respondents, is not available to purchasers through normal retail outlets.

12. Representing, directly or by implication, that respondents' carpeting will not fade, mat, snag heels, attract dirt or dust, generate static electricity, or show stains as other carpeting of like grade and quality; or misrepresenting, in any manner, the quality features or characteristics of products sold by respondents.

13. Representing, directly or by implication, that any of respondents' carpeting, carpet padding or other products or installations thereof, are guaranteed, unless the true nature, extent, and duration of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed in immediate conjunction therewith; or making any direct or implied representation that any of respondents' products are guaranteed,

unless in each instance a written guarantee is given to the purchaser, containing provisions fully equivalent to those contained in such representations, and unless respondents promptly fulfill all of their obligations under the terms of such guarantee.

14. Representing, directly or by implication, that respondents' carpeting is cut to fit the purchaser's home after the sale thereof, and before the carpeting is delivered to the purchaser's home for installation.

15. Representing, directly or by implication, that carpeting of the type sold by respondents is sold only by the unit, and not by the square yard; or misrepresenting, in any manner, methods used by respondents in the measurement of purchasers' homes for carpeting and carpet padding or the installation thereof, or in determining respondents' selling prices as based upon such measurements.

16. Failing to disclose that respondents' carpeting and carpet padding are sold by the square yard, and the selling price per square yard of such products.

17. Representing, directly or by implication, that the prices charged for respondents' carpeting, carpet padding, and the installation thereof, are lower than those charged by their competitors for products of like grade and quality and for like installation, unless respondents' prices are, in fact, substantially lower than those charged for such products and services in the trade area, during the same period of time, by their competitors for similar products and the installation thereof.

18. Failing to maintain adequate records (a) which disclose the facts upon which any savings claims, including former pricing claims and comparative value claims, and similar representations of the type described in Paragraphs 10 and 17 of this order are based, and (b) from which the validity of any savings claims, including former pricing claims and comparative value claims, and similar representations of the type described in Paragraphs 10 and 17 of this order can be determined.

19. Representing, directly or by implication, that respondents' carpeting and carpet padding have any performance characteristics, or are superior in quality or performance to other products, unless each such characteristic was fully and completely substantiated by competent scientific tests, the results of which are in writing and available for inspection, and the basis of comparison is clearly and specifically stated, and the comparison is based on identical conditions of use.

20. Failing to clearly and conspicuously incorporate the following statement on the face of all sales contracts, promissory notes or other evidence of indebtedness executed by or on behalf of respondents' customers:

NOTICE

Any holder takes this instrument subject to the terms and conditions of the contract which gave rise to the debt evidenced hereby notwithstanding any contractual provisions or other agreement to the contrary.

21. Contracting for any sale, whether in the form of trade acceptance, conditional sales contract, promissory note, or otherwise, which shall become binding on the buyer, prior to midnight of the third day, excluding Sundays and legal holidays, after the date of execution.

22. Failing to disclose orally, prior to the time of sale and in writing on any trade acceptance, conditional sales contract, promissory note or other instrument executed by the buyer, with such conspicuousness and clarity as is likely to be observed and read by such buyer, that the buyer may rescind or cancel the sale by directing or mailing a notice of cancellation to respondents' address prior to midnight of the third day, excluding Sundays and legal holidays, after the date of the sale. Upon such cancellation, the burden shall be on respondents to return any payments received from the buyer.

23. Failing to provide a separate and clearly understandable form which the buyer may use as a notice of cancellation.

24. Negotiating any trade acceptance, conditional sales contract, promissory note, or other instrument of indebtedness to a finance company or other third party, prior to midnight of the fifth day, excluding Sundays and legal holidays, after the date of execution by the buyer.

25. Failing, in any transaction, to delay the performance and the causing or permitting of performance of any of the following actions, until the cancellation period has expired and respondents have reasonably satisfied themselves that no customer to the transaction has exercised his right of cancellation:

- a. Making any physical changes in the property of the customer;
- b. Performing any work or service for the customer; or
- c. Making any deliveries to the residence of the customer.

Provided, however, That nothing contained in Part I of this order shall relieve respondents of any additional obligations respecting

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contracts required by federal law or the law of the state in which the contract is made. When such obligations are inconsistent, respondents can apply to the Commission for relief from this provision with respect to contracts executed in the state in which such different obligations are required. The Commission, upon proper showing, shall make such modifications as may be warranted in the premises.

II

It is further ordered, That respondents Kustom Enterprises, Inc., and Marketing Enterprises, Inc., corporations, and their successors and assigns, and their officers, and Joseph A. Padilla, Thomas M. Roth, and Sherri Roth, individually and as officers of the respondent Kustom Enterprises, Inc., and Eugene DeWitt and Julian Chavez, individually and as officers of the respondent Marketing Enterprises, Inc., and respondents' agents, representatives and employees, directly or through any corporate or other device in connection with any extension of consumer credit or any advertisement to aid, assist or promote, directly or indirectly, any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR §226) of the Truth in Lending Act (Pub.L. 90-321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Failing to make all disclosures required to be made by Section 226.8 of Regulation Z, as required thereby.

2. Failing, in any consumer credit transaction in which a security interest is or will be retained or acquired in real property, which is used or is expected to be used as the principal residence of the customer, to provide each customer, who has the right to rescind that transaction pursuant to the provisions of Section 226.9(a) of Regulation Z, with copies of the notice of right to rescind, in the number, manner and form prescribed in Sections 226.9(b) and 226.9(f) of Regulation Z, as required by Section 226.9(b) thereof.

3. Failing, in any consumer credit transaction in which a security interest is or will be retained or acquired in real property, which is to be used or is expected to be used as the principal residence of the customer, to delay the performance and the causing or permitting of performance of any of the following actions until the rescission period has expired and respondents have reasonably satisfied themselves that no customer to the transaction has exercised his right of rescission:

- a. Making any physical changes in the property of the customer;
 - b. Performing any work or service for the customer; or
 - c. Making any deliveries to the residence of the customer if the creditor has retained or will acquire a security interest other than one arising by operation of law, except as provided in Section 226.9(e) of Regulation Z, in instances where the customer modifies or waives his right to rescind, as required by Section 226.9(c) of Regulation Z.
4. Failing, in any consumer credit transaction or advertisement, to make all disclosures, determined in accordance with Sections 226.4 and 226.5 of Regulation Z, in the manner, form and amount required by Sections 226.7, 226.8, 226.9 and 226.10 of Regulation Z.

III

It is further ordered, That respondents Kustom Enterprises, Inc., a corporation, and its successors and assigns, and Joseph A. Padilla, Thomas M. Roth, and Sherri Roth, individually and as officers of said corporation, and respondents Marketing Enterprises, Inc., a corporation, and its successors and assigns, and Eugene DeWitt and Julian Chavez, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, 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:

1. Misbranding textile fiber products by failing to stamp, tag, label or otherwise identify such products as to each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act, in a clear, legible and conspicuous manner, as to:
 - a. The true generic name of the fibers present;
 - b. The percentage of each fiber present, by weight, in the total fiber content of said textile fiber product, exclusive of ornamentation, not exceeding five (5) per centum by weight of the total fiber content.

c. The name, or other identification issued and registered by the Commission, of the manufacturer of the textile fiber products.

2. Falsely and deceptively advertising fiber products by:

a. Making any representation by disclosure or by implication, as to 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 that the percentages of the fibers present in the textile fiber product need not be stated.

b. 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 the respondents shall forthwith distribute a copy of this order to each of their respective operating divisions.

It is further ordered. That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the offering for sale, or sale, of any product, or in the consummation of any extension of consumer credit, or in any aspect of preparation, creation, or placing of advertising, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered. That respondents notify the Commission at least thirty (30) days prior to any proposed change in any of the corporate respondents 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 corporations, or any of them, which may affect compliance obligations arising out of this order.

It is further ordered. That the 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.

Complaint

IN THE MATTER OF

JAMES P. SPRATT, ET AL. DOING BUSINESS AS CREDIT
ARRANGERS, ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE TRUTH IN LENDING ACTS

Docket C-2139. Complaint, Jan. 25, 1972—Decision, Jan. 25, 1972

Consent order requiring two Shreveport, La., operators of debt consolidation businesses to cease failing to disburse promptly to creditors any money received from clients, misrepresenting the efficacy of their service in dealing with creditors, and failing to contact creditors to attempt settlement; respondents also violated the Truth in Lending Act by failing to make disclosures in accordance with Regulation Z of said Act.

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 James P. Spratt and Harry P. Scroggins, individually, trading and doing business as Credit Arrangers, Credit Arrangers, Inc., and Credit Arrangers of Jefferson, Inc., hereinafter referred to as respondents, have 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 such respect in Count I hereof.

Also pursuant to the provisions of the Truth in Lending Act (15 U.S.C. §1601 *et seq.*), and the implementing Regulation Z promulgated thereunder, effective July 1, 1969, the Commission having reason to believe that the respondents have violated the said act of Congress, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission issues this its complaint stating its charges in such respect in Count II hereof.

COUNT I

Charge Under Federal Trade Commission Act

PARAGRAPH 1. James P. Spratt and Harry P. Scroggins formulate, direct and control, and have cooperated and acted together in the performance of the acts and practices of the business which they