

IN THE MATTER OF

HOWARD CARPET MILLS, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION AND THE FLAMMABLE FABRICS ACTS

Docket 8894. Complaint, July 10, 1972—Decision, Dec. 1, 1972

Order requiring a New York City manufacturer of carpets, among other things
to cease marketing dangerously flammable products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Howard Carpet Mills, Inc., a corporation, and Howard S. Stein, individually and as an officer of the said corporation, hereinafter referred to as respondents, have violated the provisions of the said Acts and the rules and regulations promulgated under the Flammable Fabrics Act, as amended, 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 Howard Carpet Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Respondent Howard S. Stein, is an officer of the said corporate respondent. He formulates, directs, and controls the acts, practices, and policies of the said corporation.

Respondents are engaged in the manufacture and sale of carpets and rugs, with their manufacturing facilities located at 105 Easterling Street, Dalton, Georgia and principal place of business located at 919 Third Avenue, New York, New York.

PAR. 2. Respondents are now and for some time last past have been engaged in the manufacturing for sale, sale and offering for sale, in commerce, and have introduced, delivered for introduction, transported and caused to be transported in commerce, and have sold or delivered after sale or shipment in commerce, products, as the terms "commerce" and "products," are defined in the Flammable Fabrics Act, as amended, which products fail to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the Flammable Fabrics Act, as amended.

Among such products mentioned hereinabove was carpeting designated by the style "Premier."

PAR. 3. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act, as amended, and the rules and regulations promulgated thereunder, and as such constituted, and now constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Frank W. Vanderheyden supporting the complaint.

Mr. Charles F. Mintz, Krisel, Lessal, Mintz & Dowling, New York, New York for respondents.

INITIAL DECISION BY DAVID H. ALLARD, ADMINISTRATIVE LAW JUDGE

OCT. 16, 1972

PRELIMINARY STATEMENT

This proceeding was commenced by the issuance of a complaint on July 10, 1972, charging the corporate respondent, Howard Carpet Mills, Inc., and Howard S. Stein, individually and as an officer of Howard Carpet Mills, Inc., with violating the Flammable Fabrics Act and the Federal Trade Commission Act as amended.

Respondent Howard Carpet Mills, Inc., admits the allegations of fact set forth in the complaint. The sole issue in controversy is whether the named individual respondent, Howard S. Stein, should be embraced within the order. Briefs on this point were filed by the parties on October 6, 1972. However, the matter essentially is being handled under the provisions of Section 3.12(2) of the Commission's Rules of Practice.

FINDINGS

1. Respondent Howard Carpet Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

2. Respondent Howard S. Stein, is an officer of the said corporate respondent. He formulates, directs, and controls the acts, practices, and policies of the said corporation.

3. Respondents are engaged in the manufacture and sale of carpets and rugs, with their manufacturing facilities located at 105 Easterling Street, Dalton, Georgia and principal place of business located at 919 Third Avenue, New York, New York.

4. Respondent Howard Carpet Mills, Inc., has not engaged in any purchases, sales or manufacture of any of the materials here assailed since the time it was so advised by the Federal Trade Commission of the violations of the Flammable Fabrics Act.¹

5. Respondents are now and for some time last past have been engaged in the manufacturing for sale, sale and offering for sale, in commerce, and have introduced, delivered for introduction, transported and caused to be transported in commerce, and have sold or delivered after sale or shipment in commerce, products, as the terms "commerce" and "product," are defined in the Flammable Fabrics Act, as amended, which products fail to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the Flammable Fabrics Act, as amended.

Among such products mentioned hereinabove was carpeting designated by the style "Premier."

CONCLUSIONS

1. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act, as amended, and the rules and regulations promulgated thereunder, and as such constituted, and now constitute unfair methods of competition and unfair and deceptive acts

¹ Upon receiving the Commission's notice, Howard S. Stein promptly ordered the corporate respondent to recall whatever merchandise was out with distributors and purchasers and he caused to be removed all the merchandise from any future sales.

and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

2. Respondents argue on brief that the individual respondent should not "be a party to this consent order and decree [because] he stands in a position no worse than an officer of a large corporate structure." Since the named individual respondent admittedly was the person responsible for the management, direction and control of the corporate respondent, effective administration of the Flammable Fabrics Act, as amended, dictate that an outstanding order be directed against the responsible individual and not merely against a lifeless corporate entity. For respondent Howard S. Stein is the alter ego of Howard Carpet Mills, Inc., *Cf. Fred Meyer, Inc.*, 63 F.T.C. 1; *Pati-Port, Inc. v. Federal Trade Commission*, 313 F. 2d 103, 105 (4th Cir. 1963).

3. The Flammable Fabrics Act, as amended, addresses itself to protecting the public from bodily harm. The Commission must, therefore, "be allowed effectively to close all roads to the prohibited goal, so that its order may not be by-passed with impunity." *Federal Trade Commission v. Ruberoid Co.*, 343 U.S. 470, 473 (1952).

4. The remedy in the accompanying order has a reasonable relationship to the unlawful practice here found to exist. It is the only reasonable action which could be calculated to preclude a revival of the illegal practices.

5. The Federal Trade Commission has jurisdiction of and over respondents and the subject matter of this proceeding.

6. The complaint herein states a cause of action and this proceeding is in the public interest.

ORDER

It is ordered, That respondent Howard Carpet Mills, Inc., a corporation, its successors and assigns, and its officers, and respondent Howard S. Stein, individually and as an officer of said corporation and respondents' agents, representatives and employees directly or through any corporation, subsidiary, division, or other device, do forthwith cease and desist from manufacturing for sale, selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric, or related material; or manufacturing for sale, selling, or offering for sale, any product made of fabric or related material which has been shipped or received in commerce, as "commerce," "product," "fabric" and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric or related material fails to conform to an applicable standard or regulation con-

tinued in effect, issued or amended under the provisions of the afore-said Act.

It is further ordered, That respondents notify all of their customers who have purchased or to whom have been delivered the products which gave rise to this complaint, of the flammable nature of said products and effect recall of said products from such customers.

It is further ordered, That the respondents herein either process the products which gave rise to the complaint so as to bring them into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products.

It is further ordered, That the provisions of this order with respect to customer notification, recall, and processing or destruction shall, in addition to the products set forth in subparagraph one of Paragraph Two of the complaint, be applicable to any other styles of carpeting found not to meet an applicable standard under the Flammable Fabrics Act, as amended, since the issuance of the complaint and until the order becomes final within the meaning of the Federal Trade Commission Act.

It is further ordered, That respondents herein shall, within ten (10) days after service upon them of this order file with the Commission a special report in writing setting forth the respondents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the products which gave rise to the complaint, (2) the identity of the purchasers of said products, (3) the amount of said products on hand and in the channels of commerce, (4) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and of the results thereof, (5) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or to destroy said products, and the results of such action and (6) any disposition of said products since November 10, 1971. Respondents will submit with their report, a complete description of each style of carpet or rug currently in inventory or production. Upon requests, respondents will forward to the Commission for testing a sample of any such carpet or rug. Respondents will also advise the Commission fully and specifically concerning items (1) through (5) above with regard to any products coming within the purview of Paragraph Four of this order.

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 the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business or employment in which he is engaged as well as a description of his duties and responsibilities.

FINAL ORDER

No appeal from the initial decision of the administrative law judge having been filed, and the Commission having determined that the case should not be placed on its own docket for review and that pursuant to Section 3.51 of the Commission's Rules of Practice (effective August 15, 1971), the initial decision should be adopted and issued as the decision of the Commission:

It is ordered, That the initial decision of the administrative law judge shall, on the 1st day of December 1972, become the decision of the Commission.

It is further ordered, That Howard Carpet Mills, Inc., a corporation, and Howard S. Stein, individually and as an officer of the corporation, shall, within sixty (60) days after service of this order upon them, file with the Commission a report in writing, signed by such respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.

IN THE MATTER OF

ESTELLE COHEN, TRADING AS INCOME TAX PREPARATION
CO., ET AL.