JAMES CARPETS, INC., ET AL.

Docket 8876. Order and opinion, Dec. 11, 1972

Order and opinion denying interlocutory appeal of denial of respondents' motion to stay complaint counsel from communicating with respondents' customers.

Opinion of the Commission

This case is on an interlocutory appeal from an administrative law judge's order dated August 8, 1972, denying respondents' motion to stay complaint counsel from communicating with respondents' customers pending conclusion of this case before the Commission. The administrative law judge found that the letters sent by complaint counsel to respondents' customers, which respondents complain of, are entirely in accordance with the enforcement procedures prescribed in the Commission's policy for enforcement of the Flammable Fabrics Act (36 Fed. Reg. 21544 (1971)). In our opinion, complaint counsel's letters to respondents' customers not only comply with the Commission's enforcement policy but are necessary in order for the Commis-

sion to effectively carry out its responsibilities under the Flammable Fabrics Act to protect the public against carpeting which may be dangerously flammable.

Respondents object to complaint counsel's stating in these letters that Commission's laboratory has conducted tests which disclose that styles of carpeting which are involved in this proceeding do not meet the applicable standard under the Flammable Fabrics Act. Respondents do not contend that such tests were not conducted or that they did not have the results indicated. Accordingly, complaint counsel should be allowed to inform respondents' customers of these tests, in order to alert them that the continued sale of the carpeting may violate the law.

Respondents also complain of complaint counsel's statement in these letters that the sale of the carpeting "is a violation of the Flammable Fabrics Act." We believe that this statement purports to reflect only the opinion of the complaint counsel since the letters are signed by complaint counsel in his capacity as complaint counsel.

ORDER DENYING INTERLOCUTORY APPEAL

Respondents having filed an interlocutory appeal from the order of the administrative law judge dated August 8, 1972, denying respondents' motion to stay complaint counsel from communicating with respondents' customers; and

The Commission having considered said appeal and the reply of complaint counsel in opposition thereto and having determined for the reasons stated in the accompanying opinion that the appeal should be denied:

It is ordered, That respondents' appeal from the administrative law judge's order dated August 8, 1972, be and it is hereby denied.

JAMES CARPETS, INC., ET AL.

Docket 8876. Order, Dec. 18, 1972.

Order denying recommendation of administrative law judge that Commission seek enforcement of subpoena issued to third party and returning matter to the administrative law judge for further consideration of such action as