

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 of their compliance with this order.

IN THE MATTER OF
ALBERT L. UPPERCO TRADING AS BEAUTY-RAMA
CARPET CENTERS

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

Docket C-2398. Complaint, May 2, 1973—Decision, May 2, 1973.

Consent order requiring a Baltimore, Maryland, seller, distributor and installer of carpets and floor coverings, among other things to cease misrepresenting various sales offers; disparaging any advertised products; failing to maintain adequate records; misrepresenting the nature or extent of services provided by respondent; misrepresenting guarantees; misrepresenting prices; failing to furnish copies of contracts in the language, *e.g.*, Spanish, as is principally used in oral sales presentations; failing to notify customers of their right to a three-day, cooling-off period, during which time they may cancel any sales contract; misbranding or falsely or deceptively advertising its textile fiber products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Albert L.

1340

Complaint

Upperco, an individual trading and doing business as Beauty-Rama Carpet Centers, a sole proprietorship, hereinafter referred to as respondent, has violated the provisions of said Acts, and the rules and regulations promulgated under the Textile Fiber Products Identification 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 Albert L. Upperco is an individual trading and doing business as Beauty-Rama Carpet Centers, with his principal office and place of business located at 818 Gorsuch Avenue, Baltimore, Maryland.

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

COUNT I

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

PAR. 3. In the course and conduct of his business as aforesaid, respondent now causes, and for some time last past has caused, his said merchandise, when sold, to be shipped from his places 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 inducing the purchase of his carpeting and floor coverings, respondent has made, and is now making, numerous statements and representations by repeated advertisements inserted in newspapers of interstate circulation, and by oral statements and representations of his salesmen to prospective purchasers with respect to his products and services.

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

Complaint

82 F.T.C.

Carpeting

TAKE YOUR PICK — ALL THE CARPET YOU NEED — WALL-TO-WALL
For Your Living Room, Dining Room, Stairway, Landing and Hall
5 AREAS REGARDLESS OF SIZE

One Low Price \$139

100% NYLON PILE

* * * * *

ACRILAN DEEP PLUSH

\$269 Includes 5 Areas

Regardless of Size

* * * * *

WE DO OUR OWN INSTALLATION
BY MASTER CRAFTSMEN

* * * * *

NEW! MIRACLE CARPETING

NOW AVAILABLE

GENUINE BEAUTY-RAMA'S

15-YEAR ALVIN

15-YEAR GUARANTEE

Beauty-Rama Carpet Centers

guarantees this NEW MIRACLE II ALVIN Carpet

to Wear 15 years on a pro-rated

monthly useage replacement basis

* * * * *

Another Beauty-Rama Carpet Value

3 FULL ROOMS

\$133 Quality Wall-to-Wall

Nylon Pile Carpet

Completely installed including padding

Covers up to 270 sq. ft. — Enough for an

11 x 14 living room, 8 x 10 dining room, and

den or hall or stairway.

* * * * *

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, respondent has represented, and is now representing, directly or by implication, that:

1. Respondent is 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 advertisements.

2. Certain of respondent's products are unconditionally guaranteed for various periods of time, such as fifteen (15) years.

3. Respondent or his employees regularly install carpeting and floor coverings sold by respondent.

PAR. 6. In truth and in fact:

1. Respondent's offers are not bona fide offers to sell said carpeting and floor coverings at the price and on the terms and conditions stated in the advertisements. To the contrary, said offers are made for the purpose of obtaining leads to persons interested in the purchase of carpeting. Members of the purchasing public who respond to said advertisements are called upon in their homes by respondent or his salesmen, who make little or no effort to sell to the prospective customer the advertised carpeting. Instead, they exhibit what they represent to be the advertised carpeting which, because of its poor appearance and condition, is frequently rejected on sight by the prospective customer. Higher priced carpeting or floor coverings of superior quality and texture are thereupon exhibited, which by comparison disparages and demeans the advertised carpeting. By these and other tactics, purchase of the advertised carpeting is discouraged, and respondent, individually or through his salesmen, attempts to sell and frequently does sell the higher priced carpeting.

2. Respondent's carpeting and floor coverings are not unconditionally guaranteed for the period of time orally represented by respondent's salesmen. To the contrary, such written guarantees as he has provided to his customers were subject to conditions and limitations not disclosed in respondent's representatives' oral representations, and in a substantial number of instances customers did not receive a written guarantee.

3. Respondent or his employees do not regularly install carpeting sold by respondent. Instead, respondent arranges for the installation of carpeting by independent carpeting installers.

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 further course and conduct of his business, and in furtherance of a sales program for inducing the purchase of his carpeting and floor coverings, respondent and his salesmen or representatives have engaged in the following additional unfair, false, misleading and deceptive acts and practices:

In a substantial number of instances, through the use of the false, misleading and deceptive statements, representations and practices set forth in Paragraphs Four through Six, above, respondent or his representatives have been able to induce

customers into signing a contract upon initial contact without giving the customer sufficient time to carefully consider the purchase and consequences thereof.

PAR. 8. In the course and conduct of his aforesaid business, and at all times mentioned herein, respondent has been, and now is, in substantial competition in commerce, with corporations, firms and individuals in the sale and distribution of rugs, carpeting and floor coverings and service of the same general kind and nature as those sold by respondent.

PAR. 9. The use by respondent of the aforesaid false, misleading and deceptive statements, representations, acts and practices, and his failure to disclose material facts, as aforesaid, 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 complete, and into the purchase of substantial quantities of respondent's products and services by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's 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 violation of the Textile Fiber Products Identification Act and the implementing rules and regulations promulgated thereunder, and of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof, are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 11. Respondent is now, and for some time last past has been engaged in the introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, of textile fiber products; and has 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 has 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 product" are defined in the Textile Fiber Products Identification Act.

PAR. 12. Certain of said textile fiber products were misbranded by respondent within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and of the rules and regulations promulgated thereunder, in that they were falsely and deceptively advertised, or otherwise identified as to the name or amount of constituent fibers contained therein.

PAR. 13. Certain of said textile fiber products were falsely and deceptively advertised in that respondent in making disclosures 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 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.

PAR. 14. Among such textile fiber products, but not limited thereto, was carpeting which was falsely and deceptively advertised in The Washington Post newspaper published in the District of Columbia, and having a wide circulation in the District of Columbia and various other States of the United States, in that said carpeting was described by such fiber connoting terms among which, but not limited thereto, was "Acrilan," and the true generic name of the fiber contained in such carpeting was not set forth.

PAR. 15. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondent has 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:

1. In disclosing the fiber content information as to floor coverings containing exempted backings, fillings, or paddings, such disclosure was not made in such a manner as to indicate that such fiber content information related only to the face, pile or outer surface of the floor covering and not to the backing, filling or padding, in violation of Rule 11 of the aforesaid rules and regulations.

2. A fiber trademark was used in advertising textile fiber products, without a full disclosure of the fiber content information required by said Act, and the regulations promulgated thereunder, in at least one instance in said

advertisement, in violation of Rule 41(a) of the aforesaid rules and regulations.

3. 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 in 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. 16. The acts and practices of respondent as set forth 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, and unfair methods of competition, in commerce, under 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 Washington, D.C. Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Federal Trade Commission Act; and the Textile Fiber Products Identification 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 Acts, 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 Section 2.34(b) of its rules, the Commission hereby issues its

complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Albert L. Upperco is an individual trading and doing business as Beauty-Rama Carpet Centers, with his office and principal place of business located at 818 Gorsuch Avenue, Baltimore, 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

I

It is ordered, That respondent Albert L. Upperco, an individual trading and doing business as Beauty-Rama Carpet Centers, or under any other name or names, and respondent's agents, representatives, and employees, successors and assigns, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of carpeting and floor coverings, 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 carpeting or other merchandise or services.

2. Making representations, orally or in writing, directly or by implication, purporting to offer merchandise for sale when the purpose of the representation is not to sell the offered merchandise but to obtain leads or prospects for the sale of other merchandise at higher prices.

3. Disparaging, in any manner, or discouraging the purchase of any merchandise or services which are advertised or offered for sale.

4. Representing, orally or in writing, 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. Failing to maintain and produce for inspection and copying for a period of three years adequate records to document for the entire period during which each

advertisement was run and for a period of six weeks after the termination of its publication in press or broadcast media:

- a. the cost of publishing each advertisement including the preparation and dissemination thereof;
- b. the volume of sales made of the advertised product or service at the advertised price; and
- c. a computation of the net profit from the sales of each advertised product or service at the advertised price.

6. Advertising the price of carpet, either separately or with padding and installation included, for specified areas of coverage without disclosing in immediate conjunction and with equal prominence the square yard price for additional quantities of such carpet with padding and installation needed.

7. Representing, orally or in writing, 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, prior to the signing of the sales contract, a written guarantee clearly setting forth all of the terms, conditions and limitations of the guarantee fully equal to the representations, orally or in writing, directly or by implication, 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.

8. Representing, orally or in writing, directly or by implication, that respondent or his employees install carpet or other floor coverings, or misrepresenting, in any manner, the nature or extent of services provided by respondent.

9. 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.

10. Failing to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language, *e.g.*, Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in

I HEREBY CANCEL THIS TRANSACTION.

(Date)

(Buyer's signature)

11. Failing, before furnishing copies of the "Notice of Cancellation" to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

12. Including in any sales contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this order including specifically his right to cancel the sale in accordance with the provisions of this order.

13. Failing to inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel.

14. Misrepresenting, directly or indirectly, orally or in writing, the buyer's right to cancel.

15. Failing or refusing to honor any valid notice of cancellation by a buyer and within 10 business days after the receipt of such notice, to (i) refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by the seller; (iii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

16. Negotiating, transferring, selling, or assigning any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased.

17. Failing, within 10 business days of receipt of the buyer's notice of cancellation, to notify him whether the seller intends to repossess or to abandon any shipped or delivered goods.

Provided, however, That nothing contained in Part I of this

order shall relieve respondent of any additional obligations respecting contracts required by federal law or the law of the state in which the contract is made. When such obligations are inconsistent, respondent 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 showing, shall make such modifications as may be warranted in the premises.

II

It is further ordered, That respondent Albert L. Upperco, an individual trading and doing business as Beauty-Rama Carpet Centers, or under any other name or names, and respondent's agents, representatives and employees, successors and assigns, directly or through any corporation or other device, in connection with the introduction, delivery for introduction, sale, advertising, or offering for sale in commerce, or the importation into the United States of any textile fiber products; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, of any textile fiber product, which has been advertised or offered for sale in commerce; or 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:

A. Misbranding textile fiber products by falsely or deceptively stamping, tagging, labeling, invoicing, advertising or otherwise identifying such products as to the name or amount of the constituent fibers contained therein.

B. Falsely and deceptively advertising textile products by:

1. Making any representations 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.

2. Failing to set forth in advertising the fiber content of floor covering containing exempted backings, fillings or paddings, that such disclosure related only to the face, pile or outer surface of such textile fiber products and not to the exempted backings, fillings or paddings.

3. Using a fiber trademark in advertising textile fiber products without a full disclosure of the required fiber content information in at least one instance in said advertisement.

4. 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 each of respondents do forthwith cease and desist from disseminating, or causing the dissemination of, any advertisement of merchandise by means of newspapers, or other printed media, television or radio, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, unless respondents clearly and conspicuously disclose in each advertisement the following notice set off from the text of the advertisement by a black border:

The Federal Trade Commission has found that we have engaged in bait & switch advertising solely designed to sell products other than those advertised.

One year from the date this order becomes final or any time thereafter, respondents upon showing that they have discontinued the practices prohibited by this order and that the notice provision is no longer necessary to prevent the continuance of such practices may petition the Commission to waive compliance with this order provision.

It is further ordered, That respondent shall maintain for at least a one (1) year period, following the effective date of this order, copies of all advertisements, including newspaper, radio and television advertisements, direct mail and in-store

solicitation literature, and any other such promotional material utilized for the purpose of obtaining leads for the sale of carpeting or floor coverings, or utilized in the advertising, promotion or sale of carpeting or floor coverings and other merchandise.

It is further ordered, That respondent, for a period of one (1) year from the effective date of this order, shall provide each advertising agency utilized by respondent and each newspaper publishing company, television or radio station or other advertising media which is utilized by the respondent to obtain leads for the sale of carpeting or floor coverings and other merchandise, with a copy of the Commission's News Release setting forth the terms of this order.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in his business organization such as dissolution, assignment, incorporation, partnership, sale or any other change which may effect compliance obligations arising out of this order.

It is further ordered, That respondent shall forthwith distribute a copy of this order to each of his operating divisions.

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

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 address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

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.

IN THE MATTER OF
IRVING M. BALDERSON, ET AL.
TRADING AS
NATIONAL CARPET SERVICE COMPANY, ET AL.
CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT

Docket C-2399. Complaint, May 2, 1973—Decision, May 2, 1973.

Consent order requiring two individuals trading as two different companies located in Fairmount Heights, Maryland, engaged in the selling, distribution, and installation of carpeting and floor coverings, among other things to cease misrepresenting various sales offers; failing to maintain adequate records; misrepresenting the prices, terms or conditions under which respondents supply separate padding and provide installation of floor coverings; misrepresenting guarantees; misrepresenting the quantity and qualities of stock on hand; misrepresenting the word "free" with respect to merchandise offered; and failing to inform customers of their right-to-cancel any sales contract within three (3) business days.

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 Irving M. Balderson and Steven C. Goldsmith, individually, trading and doing business as National Carpet Service Company, and Lanham Carpets, 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 that respect as follows:

PARAGRAPH 1. Respondents Irving M. Balderson and Steven C. Goldsmith are individuals trading and doing business as National Carpet Service Company and Lanham Carpets, with their principal office and place of business located at 1504 62nd Avenue, Fairmount Heights, Maryland. They formulate, direct and control, and have cooperated together in the performance of the acts and practices of their aforesaid business, including the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale, distribution and installation of carpeting and floor coverings to the public.

PAR. 3. In the course and conduct of their business as