

Complaint

IN THE MATTER OF

CLASSIC CARPET CENTER, INC. TRADING AS
CARPETERIA, ET AL.

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

Docket C-2455. Complaint, Sept. 17, 1973—Decision, Sept. 17, 1973.

Consent order requiring a Fairfax, Virginia, retailer of carpets and floor coverings, among other things to cease misrepresenting the word "sale;" misrepresenting prices as reduced; misrepresenting comparative prices; misrepresenting percentage savings; falsely advertising the value of carpet remnants; misrepresenting the availability of supplies and prices to competitors; misrepresenting the amount, type, or extent of credit terms respondents may arrange for its customers; falsely advertising and misbranding its textile fiber products; and failing to maintain adequate records.

Appearances

For the Commission: *Everette E. Thomas.*

For the respondents: *Ronald Goldberg*, Silver Spring, Md.

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 Classic Carpet Center, Inc., a corporation, trading and doing business as Carpeteria, and Michael J. Lightman and William R. Lightman, individually and as officers of said corporation, hereinafter sometimes referred to as respondents, have 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 Classic Carpet Center, Inc., trading and doing business as Carpeteria, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 9542 Arlington Boulevard, Fairfax, Virginia.

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Respondents Michael J. Lightman and William R. Lightman are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent. All of the aforementioned respondents cooperate and act together in the carrying out of 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.

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 their business as aforesaid, respondents have caused, and now cause, the dissemination of certain advertisements concerning the aforesaid articles of merchandise, by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers of interstate circulation, and by means of radio broadcasts transmitted by radio stations located in the States of Maryland and Virginia, having sufficient power to carry such broadcasts across state lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of respondents' said merchandise.

In the further course and conduct of their business, as aforesaid, respondents have caused, and now cause, their said merchandise to be shipped across state lines between their various retail outlets located in the States of Virginia and Maryland, for sale to purchasers thereof located in the aforesaid states. Thus, respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. By means of advertisements inserted in newspapers and broadcasts transmitted by radio stations, respondents have made various statements and representations of which the following are typical and illustrative, but not all inclusive thereof:

TENT SALE 1250 REMNANTS AT SALE PRICES

*	*	*	*	*	*	*
Stock No.	Color	Fiber	Size	Comp. value	Sale price	
4315-----	Blue-green----	Nylon-----	12' x 14'4''----	\$200	\$111	
4246-----	Rust-----	Nylon-----	12' x 16'-----	190	125	

* * * * *

No dealers please

* * * * *

INSTANT CREDIT

* * * * *

EASY FINANCING

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 respondents' salesmen to customers and prospective customers, respondents have represented, and are now representing, directly or by implication, that:

1. By and through the use of the word "SALE," and other words of similar import and meaning not set out specifically herein, that said carpeting and floor coverings may be purchased at special or reduced prices, and purchasers are thereby afforded savings from respondents' regular selling prices.

2. By and through the use of the words "No dealers please," and other words of similar import and meaning not set out specifically herein, that carpet dealers or retail floor covering establishments cannot purchase the carpeting or floor coverings at the same prices or from the same sources which are available to respondents.

3. By and through the use of the words "Instant Credit" and "Easy Financing," and other words of similar import and meaning not set out specifically herein, purchasers of their products are granted easy

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credit terms, without regard to their financial status or ability to pay, by financial institutions with which respondents deal.

PAR. 6. In truth and in fact:

1. Respondents' merchandise is not being offered for sale at special or reduced prices. To the contrary, the respondents' regular selling price and their so-called advertised "sale" prices are identical and are used to mislead prospective customers into believing there is a saving from a bona fide regular selling price.

2. Carpet dealers or retail floor covering establishments can purchase carpeting or floor coverings at the same prices or from the same sources which are available to respondents.

3. Purchasers of respondents' products are not granted easy credit terms, without regard to their financial status or ability to pay, by financial institutions with which respondents deal.

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

PAR. 7. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition in commerce, with corporations, firms and individuals in the sale and distribution of rugs, carpeting, floor coverings and services of the same general kind and nature as those sold by respondents.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, acts 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 complete, and into the purchase of substantial quantities of respondents' products and services by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of 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 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 Para-

graphs One and Two hereof are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 10. Respondents are now, and for some time last past have been, engaged in the introduction, delivery for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, of textile fiber products including carpeting and floor coverings and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, 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 product" are defined in the Textile Fiber Products Identification Act.

PAR. 11. Certain of said textile fiber products were misbranded by respondents 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. 12. Certain of said textile fiber products were falsely and deceptively advertised in that respondents 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 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.

PAR. 13. Among such textile fiber products, but not limited thereto, was carpeting which was falsely and deceptively advertised by means of radio broadcasts transmitted by radio stations WPGC, WWDC, WEEL, and WASH, located in the States of Maryland, Virginia and in the District of Columbia having sufficient power to carry such broadcasts across state lines, in that said carpeting was described by such fiber connoting terms among which, but not limited thereto, was "Kodel," and the true generic name of the fibers contained in such carpeting was not set forth.

PAR. 14. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, re-

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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:

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 coverings and not of the backings, fillings or paddings, 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 rules and 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 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. 15. The acts and practices of respondents 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 respondents named in the caption hereof, and the respondents 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 respondents with violations of the Federal Trade Commission Act, and the Textile Fiber Products Identification Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the afore-

said draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents 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 respondents have 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 Classic Carpet, Inc., trading and doing business as Carpeteria, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 9542 Arlington Boulevard, Fairfax, Virginia.

Respondents Michael J. Lightman and William R. Lightman are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, and their principal office and place of business is located at the above stated address.

2. 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 Classic Carpet Center, Inc., a corporation, trading and doing business as Carpeteria, or under any other trade name or names, its successors and assigns, and its officers, and Michael J. Lightman and William R. Lightman, individually, and as officers of said corporation, and respondents' agents, representatives and employees, 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 the word "Sale," or any other word or words of similar import or meaning not set forth specifically herein unless the price of such merchandise, being offered for sale constitutes a reduction, in an amount not so insignificant as to be meaningless, from the actual bona fide price at which such merchandise was sold or offered for sale to the public on a regular basis by respondents for a reasonably substantial period of time in the recent, regular course of their business.

2. (a) Representing, directly or indirectly, orally or in writing, that by purchasing any of said merchandise or services, customers are afforded savings amounting to the difference between respondents' stated price and respondents' former price unless such merchandise or services have been sold or offered for sale in good faith at the former price by respondents for a reasonably substantial period of time in the recent, regular course of their business.

(b) Representing, directly or indirectly, orally or in writing, that by purchasing any of said merchandise or services, customers are afforded savings amounting to the difference between respondents' stated price and a compared price for said merchandise or services in respondents' trade area unless a substantial number of the principal retail outlets in the trade area regularly sell said merchandise or services at the at the compared price or some higher price.

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

3. Advertising or otherwise representing a compared value price for carpet remnants or rugs (a) unless the carpet remnants or

rugs being advertised are of the same grade and quality as the carpets with which such advertised prices are compared; and (b) without disclosing in immediate conjunction therewith that the carpet remnants or rugs are usually sold for less than wall-to-wall prices, and that the compared value is based on the wall-to-wall price of carpeting of the same grade and quality.

4. Representing, directly or by implication, orally or in writing, that purchasers of respondents' merchandise will save any stated dollar or percentage amount without fully and conspicuously disclosing, in immediate conjunction therewith, the basis for such savings representations.

5. Failing to maintain and produce for inspection or copying for a period of three (3) years, adequate records (a) which disclose the facts upon which any savings claims, sale claims and other similar representations as set forth in Paragraphs One, Two, and Four of this order are based, and (b) from which the validity of any savings claims, sale claims and similar representations can be determined.

6. Representing, directly or by implication, orally or in writing, that carpet dealers or other floor coverings establishments cannot purchase carpets, floor coverings or any other merchandise at the same prices or from the same sources which are available to respondents.

7. Representing, directly or by implication, orally or in writing, that purchasers of respondents' products are granted easy or assured credit terms by financial institutions with which respondents deal; or misrepresenting, in any manner, the amount, type, extent or any other facet of the credit terms respondents arrange or may arrange for their purchasers.

II

It is further ordered, That respondents Classic Carpet Center, Inc., a corporation, trading and doing business as Carpeteria, or under any other trade name or names, its successors and assigns, and its officers, and Michael J. Lightman and William R. Lightman, individually, and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the introduction, sale, advertising, or offering for sale, in commerce, or the transportation or

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causing to be transported in commerce of any textile fiber product; 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:

1. 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.

2. Falsely and deceptively advertising textile fiber products by:

- (a) 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 Section 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) 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.

- (c) 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.

- (d) 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 respondents 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 respondents, for a period of one (1) year from the effective date of this order, shall provide each advertising agency utilized by respondents and each newspaper publishing company, television or radio station or other advertising media which is utilized by the respondents 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 respondents notify the Commission at least thirty (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 this order.

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

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

It is further ordered, That each of the individual respondents 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 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.

Dissenting Statement

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IN THE MATTER OF

SPERRY & HUTCHINSON COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 8671. Complaint, Nov. 15, 1965—Order, Sept. 18, 1973.**

Consent order requiring the nation's largest trading stamp redemption firm, based in New York City to cease combining or conspiring to prevent redemption of trading stamps or the operation of a trading stamp exchange. Respondent is further required to give \$2 in cash per book of 1200 green stamps to all customers who choose to redeem their stamps for cash. S&H is further obligated to redeem as few as 300 stamps for a cash value of \$.50 and to inform consumers of these new rights by prominent notices in S&H stamp saver books and redemption centers; and required to cancel all injunctions obtained against trading stamp exchanges in the last 12 years.

Appearances

For the Commission: *Sidney A. Steinitz* and *Morton Needleman*.

For the respondent: *Morrison, Clapp, Abrams & Haddock*, Washington, D.C. and *Casey, Lane & Mittendorf*, New York, New York.

DISSENTING STATEMENT

By JONES, *Commissioner*:

The Commission has accepted a consent order in this case which in my judgment is inadequate and contrary to the interests of consumers who are affected by the respondent's trading stamp practices challenged in the complaint.

The central issue in this case, which the Supreme Court directed the Commission to resolve, concerned the rationale relied upon by the Commission for its findings respecting the illegality of S&H's activities designed to prevent the redemption or exchange of S&H stamps by trading stamp exchanges or retailers not permitted to carry S&H stamps.¹

*See 73 F.T.C. 1099, and 82 F.T.C. 388, 390.

¹ In its opinion remanding this case to the Commission and reversing the Circuit Court's dismissal of this count, the Supreme Court held that while the Commission had ample power to eliminate unfair acts and practices, it was not able to sustain the Commission's findings and order relating to Count III of the complaint because the Commission's opinion lacked any rationale to support its order provisions based on "the Commission's assessment of particular competitive practices or considerations of consumer interests independent of possible or actual effects of competition." The Supreme Court directed the remand of this case to the Commission to enable the Commission to articulate a rationale for its