

IN THE MATTER OF

DAVID M. ROBERTSON TRADING AS ROBERTSON INVESTMENT COMPANY, ETC.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 8936. Complaint, July 30, 1973—Order, May 14, 1974

Order requiring a Springfield, Va., seller, distributor and installer of carpeting and floor coverings, among other things to cease misrepresenting the nature or status of his business or the size of his facilities; misrepresenting the nature or character of merchandise offered for sale; misrepresenting "sale" prices; misrepresenting the amount of savings accorded customers; failing to maintain records to substantiate savings claims; and misrepresenting quantity or merchandise in stock.

Appearances

For the Commission: *Everette E. Thomas, Richard F. Kelly, Alice C. Kelleher, and Maureen McGill.*

For the respondent: *Pro se.*

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 David M. Robertson, an individual, trading and doing business as Robertson Investment Company and Beltway Park Apartments Warehouse, hereinafter referred to as respondent, has 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. Respondent David M. Robertson, is an individual trading and doing business as Robertson Investment Company and Beltway Park Apartments Warehouse. His principal office and place of business is located at 7970 Forbes Place, Springfield, Va.

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.

PAR. 3. In the course and conduct of his business as aforesaid, respondent has caused, and now causes, the dissemination of certain

advertisements concerning the aforesaid carpeting and floor coverings, 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 for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of respondent's said merchandise.

In the further course and conduct of his business, as aforesaid, respondent purchases for resale carpeting and floor coverings from a number of suppliers located throughout the United States. Respondent has caused, and now causes, these products, when purchased by him, to be transported from the place of manufacture or purchase to his places of business located in the States of Virginia, Maryland and Pennsylvania. Thus, respondent maintains and at all times mentioned herein has maintained a substantial course of trade 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:

RUG SALE

LARGE APT. DEVELOPMENT has HUGE surplus of NEW RUGS.

* * * * *

RUGS-RUGS

BONANZA

OUR ANNUAL FALL RUG SALE IS HERE AGAIN

COME JOIN THE CROWD FOR GREAT SAVINGS

One of the Nation's largest rug outlets has huge supply and selection of area rugs, now selling to the public as well as apartment complexes and home developers. Get lost in our gigantic warehouse and 'Pick a Winner.'

* * * * *

WE NEVER SELL FREIGHT LIQUIDATION OR DAMAGED MERCHANDISE.
ALL FIRST QUALITY. SATISFACTION GUARANTEED.

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RUGS LIQUIDATION

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CARPET LIQUIDATION

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RUGS LIQUIDATION SALE

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Large Selection, all sizes and Colors.

* * * * *

RUGS
FINAL NOTICE
TRUCKLOAD
LIQUIDATION

* * * * *

BELTWAY PARK APARTMENTS WAREHOUSE

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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. By and through the use of said name "Beltway Park Apartments Warehouse," separately or in connection with the foregoing statements and representations or by said statements and representations alone, that he is engaged in the sale or disposition of surplus merchandise originally purchased by him for the use of his apartment development.

2. By and through the use of said name "Beltway Park Apartments Warehouse," separately or in connection with the foregoing statements and representations or by said statements and representations alone, that the facility at which the said merchandise is being offered for sale is a warehouse used primarily for storage in connection with respondent's apartment development.

3. By and through the use of the words "Rugs Liquidation," "Rugs Notice Truckload Liquidation," and other words of similar import and meaning not set out specifically herein, that the advertised rugs are salvage, distress or surplus merchandise, and are therefore being offered for sale at prices below those usually and customarily charged at retail.

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

5. All sizes and colors of rugs are available for the prospective customer's selection.

PAR. 6. In truth and in fact:

1. Respondent is not engaged in the sale or disposition of surplus merchandise originally purchased by him for the use of his apartment development. Instead, respondent is in the business of purchasing the advertised merchandise from manufacturers or suppliers and selling it at retail to the purchasing public.

2. The facility at which the said merchandise is being offered for sale is not a warehouse used primarily for storage in connection with respondent's apartment development. Instead, such facility is used primarily for the display and retail sales of merchandise.

3. The advertised rugs are not salvage, distress or surplus merchandise, and they are not being offered for sale at prices below those usually and customarily charged at retail.

4. Respondent's products are not being offered for sale at special or reduced prices. To the contrary, the price respondent regularly advertises and his so-called advertised "sale" price are identical and are used to mislead prospective customers into believing there is a saving from a bona fide regular selling price.

5. All sizes and colors of rugs are not available for the prospective customer's selection. To the contrary, respondent has available only standard size area rugs in a limited selection of colors.

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 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. 8. The use by respondent 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 respondent's products and services by reason of said erroneous and mistaken belief.

PAR. 9. 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.

INITIAL DECISION BY MILES J. BROWN, ADMINISTRATIVE LAW
JUDGE

JANUARY 7, 1974

This proceeding was commenced by the issuance of a complaint on July 30, 1973, charging David M. Robertson, an individual, trading and doing business as Robertson Investment Company and Beltway Park Apartments Warehouse, with unfair and deceptive acts and practices and unfair methods of competition in commerce, in violation of Section 5 of the Federal Trade Commission Act by making certain false, misleading and deceptive claims in connection with his business in the advertising, offering for sale, sale, distribution and installation of carpeting and floor coverings to the public.

At the prehearing conference held on September 25, 1973, respondent was represented by counsel, Ronald Willoner, Esq., College Park, Md. At that conference the administrative law judge was advised that the complaint had actually been served on respondent on September 20, 1973. Accordingly, October 20, 1973, became the due date for the filing of respondent's answer. By order dated September 25, 1973, the initial adjudicative hearing date in this matter was scheduled for December 17, 1973.

By letter dated October 16, 1973, addressed to the Secretary of the Federal Trade Commission, Mr. Willoner advised that he was no longer representing respondent and advised that he wished to withdraw his appearance. Mr. Willoner stated that respondent had decided to represent himself in this matter.

By letter dated October 19, 1973, also addressed to the Secretary of the Federal Trade Commission, respondent requested an extension of thirty (30) days to allow him ample time to answer. By order dated October 24, 1973, the time in which respondent was to file his answer was extended to and including November 19, 1973.

The initial adjudicative hearing was convened as scheduled on December 17, 1973. As of that date respondent had not filed an answer to the complaint. In addition, respondent did not appear at the adjudicative hearing, although an employee of the Federal Trade Commission had personally delivered to respondent's residence a subpoena requiring such attendance (Tr. 5).¹ Furthermore, respondent did not make any request to either the administrative law judge or counsel supporting the complaint to be excused from the operation of the subpoena or to have the hearings postponed.

At hearing of December 17, 1973, the administrative law judge ruled

¹ The official records in Docket No. 8936 reveal that proper service of all relevant documents has been made on respondent pursuant to the requirements of Section 4.4 of the Commission's Rules of Practice.

that respondent was in default and counsel supporting the complaint was instructed to advise the witnesses who had been subpoenaed to testify on December 18 and 19 that they were excused. In addition, the hearings scheduled for December 18 and 19 were cancelled (Tr. 6-7).

On December 19, 1973, respondent telephoned the administrative law judge inquiring about the hearings in this matter. Respondent was advised that on December 17 he had been adjudged to be in default and that subsequent hearings had been cancelled.

It is clear that respondent is in default under Section 3.12(c) of the Commission's Rules of Practice. By reason of such default, respondent has waived his right to appear and contest the allegations of the complaint and the administrative law judge, under said Section 3.12(c), is authorized, without further notice to respondent, to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions, and order.

FINDINGS

1. Respondent David M. Robertson is an individual trading and doing business as Robertson Investment Company and Beltway Park Apartments Warehouse. His principal office and place of business is located at 7970 Forbes Place, Springfield, Va.

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.

3. In the course and conduct of his business as aforesaid, respondent has caused, and now causes, the dissemination of certain advertisements concerning the aforesaid carpeting and floor coverings, 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 for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of respondent's said merchandise.

In the further course and conduct of his business, as aforesaid, respondent purchases for resale carpeting and floor coverings from a number of suppliers located throughout the United States. Respondent has caused, and now causes, these products, when purchased by him, to be transported from the place of manufacture or purchase to his places of business located in the States of Virginia, Maryland and Pennsylvania. Thus, respondent maintains and at all times mentioned herein has maintained a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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:

RUG SALE LARGE APT. DEVELOPMENT has HUGE surplus of NEW RUGS.

* * * * *

RUGS-RUGS
BONANZA

OUR ANNUAL FALL RUG SALE IS HERE AGAIN
COME JOIN THE CROWD FOR GREAT SAVINGS

One of the Nation's largest rug outlets has huge supply and selection of area rugs, now selling to the public as well as apartment complexes and home developers. Get lost in our gigantic warehouse and "Pick a Winner."

* * * * *

WE NEVER SELL FREIGHT LIQUIDATION OR DAMAGED MERCHANDISE.
ALL FIRST QUALITY. SATISFACTION GUARANTEED.

* * * * *

RUGS LIQUIDATION

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CARPET LIQUIDATION

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RUGS LIQUIDATION SALE

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Large Selection, all sizes and Colors.

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RUGS FINAL NOTICE TRUCKLOAD LIQUIDATION

* * * * *

BELTWAY PARK APARTMENTS WAREHOUSE

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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:

a. By and through the use of said name "Beltway Park Apartments Warehouse," separately or in connection with the foregoing statements and representations or by said statements and representations alone, that he is engaged in the sale or disposition of surplus merchandise originally purchased by him for the use of his apartment development.

b. By and through the use of said name "Beltway Park Apartments Warehouse," separately or in connection with the foregoing statements and representations or by said statements and representations alone, that the facility at which the said merchandise is being offered for sale is a warehouse used primarily for storage in connection with respondent's apartment development.

c. By and through the use of the words "Rugs Liquidation," "Rugs Notice Truckload Liquidation," and other words of similar import and meaning not set out specifically herein, that the advertised rugs are salvage, distress or surplus merchandise, and are therefore being offered for sale at prices below those usually and customarily charged at retail.

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

e. All sizes and colors of rugs are available for the prospective customer's selection.

6. In truth and in fact:

a. Respondent is not engaged in the sale or disposition of surplus merchandise originally purchased by him for the use of his apartment development. Instead, respondent is in the business of purchasing the advertised merchandise from manufacturers or suppliers and selling it at retail to the purchasing public.

b. The facility at which the said merchandise is being offered for sale is not a warehouse used primarily for storage in connection with respondent's apartment development. Instead, such facility is used primarily for the display and retail sales of merchandise.

c. The advertised rugs are not salvage, distress or surplus merchandise, and they are not being offered for sale at prices below those usually and customarily charged at retail.

d. Respondent's products are not being offered for sale at special or reduced prices. To the contrary, the price respondent regularly advertises and his so-called advertised "sale" price are identical and are used to mislead prospective customers into believing there is a saving from a bona fide regular selling price.

e. All sizes and colors of rugs are not available for the prospective

customer's selection. To the contrary, respondent has available only standard size area rugs in a limited selection of colors.

Therefore, the statements and representations as set forth in Findings 4 and 5, hereof, were and are false, misleading and deceptive.

7. 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.

8. The use by respondent 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 respondent's products and services by reason of said erroneous and mistaken belief.

CONCLUSIONS

1. The aforesaid acts and practices of the respondent, as herein found, were and are all to the prejudice and injury of the public and of respondent's competitors, and such acts and practices 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.

2. The Federal Trade Commission has jurisdiction of and over respondent and the subject matter of this proceeding.

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

ORDER

It is ordered, That respondent David M. Robertson, an individual, trading and doing business as Robertson Investment Company and Beltway Park Apartments Warehouse, 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 the words "Apartment," "Warehouse" or any other word or words of similar import or meaning in or as part of respondent's retail merchandise business or trade name or names; or misrepresenting, orally or in writing, directly or by implication, the

nature or status of respondent's business or the size, description or classification of any of respondent's physical facilities.

2. Representing, directly or indirectly, orally or in writing, that any merchandise offered for sale is bankrupt, salvage, distrained, distress or transportation company surplus merchandise; or misrepresenting, in any manner, the source, character or nature of the merchandise being offered for sale.

3. 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 respondent for a reasonably substantial period of time in the recent, regular course of his business.

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

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

(c) Representing, orally or in writing, directly or by implication, that by purchasing any of said merchandise, customers are afforded savings amounting to the difference between respondent's stated price and a compared value price for comparable merchandise, 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 respondent has in good faith conducted a market survey or obtained a similar representative sample of prices in his trade area which establishes the validity of said compared price and it is clearly and conspicuously disclosed that the comparison is with merchandise of like grade and quality.

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 Three 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 indirectly, orally or in writing, that respondent has all sizes and colors of rugs in stock; or misrepresenting, in any manner, the colors, patterns, size, kind or quantity of carpeting or other merchandise in stock and available for sale, delivery or installation.

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 utilized by respondent to obtain leads for the sale of carpeting, 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 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, 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 respondent 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.

FINAL ORDER

The administrative law judge filed his initial decision in this matter on January 7, 1974, finding respondent to have engaged in the acts and practices as alleged in the complaint and entering a cease-and-desist

1728 FEDERAL TRADE COMMISSION DECISIONS

Complaint

83 F.T.C.

order against respondent. A copy of the initial decision and order was served on the respondent on February 7, 1974. No appeal was taken from the initial decision; and on March 8, 1974, the Commission entered an order staying the effective date thereof until further order of the Commission.

The Commission having now determined that the matter should not be placed on its own docket for review, and that the initial decision should become effective.

It is ordered, That the initial decision and order contained therein shall become effective as of the date of service of this order.

It is further ordered, That respondent shall, within sixty (60) days after service of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order contained in the initial decision.

IN THE MATTER OF