
IN THE MATTER OF

DIENER'S, INC., ET AL.

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

Docket 8804. Complaint, Nov. 25, 1969—Modifying Order, Nov. 19, 1974

Order modifying previous Commission order issued Dec. 21, 1972, 81 F.T.C. 945, by enlarging its language to permit respondent to make savings claims in relation to either the difference between its previous and present prices or in relation to differences between its prices and those of its competitors.

Appearances

For the Commission: *Edward D. Steinman* and *Donald L. Bachman*.
For the respondents: *Stein & Mitchell*, Washington, D. C.

ORDER MODIFYING ORDER TO CEASE AND DESIST

Respondents, having filed in the United States Court of Appeals for the District of Columbia Circuit on Feb. 16, 1973, a petition to review and set aside an order to cease and desist issued herein on Dec. 21, 1972, and the Court having rendered its decision on Mar. 22, 1974 [494 F. 2d 1132], *affirming* the order to cease and desist, except for numbered Paragraph 2 of the order which it directed be modified;

Now, therefore, *It is hereby ordered*, That the aforesaid order to cease and desist be, and it hereby is, modified in accordance with the opinion of the Court to read as follows:

ORDER

It is ordered, That respondents Diener's, Inc., Diener's of Virginia, Inc., Diener's of Rockville, Inc., Diener's of Lanham, Inc., Diener's of

1306

Order Modifying Order to Cease and Desist

Tyson's Corner, Inc., and Mayfield Company, Inc., corporations, and their officers, and Milton Diener and Harold Reznick, individually and as officers of said corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of rugs, carpets, floor coverings, or any other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Diener's Storewide Carpet Sale," "Fantastic 6 Store Factory Inventory Clearance," or any other word or words of similar import or meaning 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. Using the words "Save" or "Savings" or any other word or words of similar import or meaning in conjunction with a stated dollar or percentage amount of savings between respondents' stated price and any other price used for comparison with that price, unless the stated dollar or percentage amount of savings actually represents the difference between the offering price and the actual price at which a substantial number of principal retail outlets in the trade area regularly sell or offer the merchandise for sale or between the offering price and the actual bona fide price at which such merchandise had been sold or offered for sale on a regular basis to the public by the respondents for a reasonably substantial period of time in the recent, regular course of their business.

3. Using the words "Regular," "Reg.," or any other words of similar import and meaning, to refer to any price amount which is in excess of the price at which such merchandise has been sold or offered for sale in good faith by respondents for a reasonably substantial period of time in the recent, regular course of their business and unless respondents' business records establish that said amount is the price at which such merchandise has been sold or offered for sale in good faith by respondents for a reasonably substantial period of time in the recent, regular course of their business.

4. Using the words "area's competitive price," or words of similar import and meaning, to refer to any price amount which is appreciably in excess of the prices at which substantial sales of the

same merchandise have been made in respondents' trade area and unless respondents have in good faith conducted a market survey which establishes the validity of the trade area prices; or misrepresenting, in any manner, the price at which merchandise has been sold in respondents' trade area.

5. (a) Representing, in any manner, that by purchasing any of said merchandise, customers are afforded savings amounting to the difference between respondents' stated price and respondents' former price unless such merchandise has 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, in any manner, that by purchasing any of said merchandise, customers are afforded savings amounting to the difference between respondents' stated price and a compared price for said merchandise in respondents' 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, in any manner, that by purchasing any of said merchandise, customers are afforded savings amounting to the difference between respondents' 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 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 of like grade and quality.

6. Misrepresenting, in any manner, the amount of savings available to purchasers or prospective purchasers of respondents' merchandise at retail.

7. Failing to maintain adequate records (a) which disclose the facts upon which any savings claims, including former pricing claims and comparative value claims, and similar representations of the type described in Paragraphs 2-6 of this order are based, and (b) from which the validity of any savings claims, including former pricing claims and comparative value claims, and similar representations of the type described in Paragraphs 2-6 of this order can be determined.

8. Representing, directly or by implication, that any offer is limited in point of time or restricted in any manner, unless the represented limitation or restriction is actually imposed and in good faith adhered to by respondents.

9. Failing to deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of respondents' products or services, and failing to secure from each such salesman or other person a signed statement acknowledging receipt of said order.

It is further ordered, That respondents Diener's, Inc., Diener's of Virginia, Inc., Diener's of Rockville, Inc., Diener's of Lanham, Inc., Diener's of Tysons Corner, Inc., and Mayfield Company, Inc., corporations, and their officers, and Milton Diener and Harold Reznick, individually and as officers of said corporations, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States 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:

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 constituent fibers contained therein.

B. Falsely and deceptively advertising textile fiber 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 disclosing fiber content, information as to coverings containing exempted backings, fillings or paddings, that such disclosure relates 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 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.

It is further ordered, That respondents notify the Commission at least thirty days prior to any proposed change in any of the corporate respondents 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 corporations, or any of them, which may affect compliance obligations arising out of this order.

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

IN THE MATTER OF

JOSEPHS FURNITURE CO., INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
FEDERAL TRADE COMMISSION AND TRUTH IN LENDING ACTS

Docket C-2599. Complaint, Nov. 19, 1974—Decision, Nov. 19, 1974

Consent order requiring a New York City furniture dealer, among other things to cease failing to make repairs on furniture delivered in damaged condition, and to cease violating the Truth in Lending Act by failing to disclose to consumers in a