

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

Docket 8981. Complaint, July 8, 1974 - Decision, Feb. 6, 1975

Order requiring a Takoma Park, Md., carpet retailer and installer, among other things
to cease using bait and switch tactics and other deceptive sales practices.

Appearances

For the Commission: *Everette E. Thomas, Alice C. Kelleher and Gary
M. Laden.*

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ing to hinder, suppress or eliminate competition between or among distributors or between or among retailers handling Coors beer.

It is further ordered, That respondent corporation shall forthwith distribute of copy of this order to each of its operating divisions, to its present and future sales representatives, to its present and future distributors.

It is further ordered, That respondent 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 the order.

In the event that respondent proposes a change in the corporate respondent, as set forth above, respondent shall require said successor or transferee to file, with the Commission, at the time of respondent's notification, a written agreement to be bound by the terms of this order; *Provided,* That if respondent wishes to present to the Commission any reasons why said order should not apply in its present form to said successor or transferee, respondent shall submit to the Commission a written statement setting forth said reasons at least sixty (60) days prior to the consummation of said succession or transfer.

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

Commissioner Thompson did not participate.

IN THE MATTER OF

SIR CARPET, INC., ET AL.

ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL
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Order requiring a Takoma Park, Md., carpet retailer and installer, among other things to cease using bait and switch tactics and other deceptive sales practices.

Appearances

For the Commission: *Everette E. Thomas, Alice C. Kelleher and Gary M. Laden.*

For the respondents: *John H. Harman, Coggins, Fireison & Harman*, Wash. D. C.

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 Sir Carpet, Inc., a corporation and Bennett Weiner, individually and as an officer of said corporation, hereinafter sometimes 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. Respondent Sir Carpet, Inc. 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 6836 New Hampshire Ave., Takoma Park, Md.

Respondent Bennett Weiner is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

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 aforesaid, respondents now cause, and for some time last past have caused, their said merchandise, when sold, to be shipped from their place 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 maintain and at all times mentioned herein have 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 their aforesaid business, and for the purpose of inducing the purchase of their carpeting and floor coverings, respondents have made, and are now making, numerous statements and representations by repeated advertisements inserted in newspapers of interstate circulation, and by oral statements and representations of respondents' salesmen to prospective purchasers with respect to their products and services.

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

QUALITY WALL-TO-WALL
100% NYLON PILE CARPET

3 Rooms
\$109

Complaint

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includes carpet, bonded
padding and installation
up to 270 sq. feet

* * * * *

FREE VACUUM CLEANER
with the purchase of
Our Deluxe 501
36 sq. yd. minimum

* * * * *

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 forth 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. Respondents are 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. Purchasers of the said Dupont 501 Carpet receive a "free" vacuum cleaner.

PAR. 6. In truth and in fact:

1. Respondents' offers are not bona fide offers to sell 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 respondents' salesmen, who make 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 respondents' salesmen attempt to sell and frequently do sell the higher priced carpeting.

2. Purchasers of respondents' Dupont 501 Carpet do not receive a free vacuum cleaner. To the contrary, the cost of the "free" gift is added to and regularly included in the selling price of the merchandise sold to the customer.

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 their business, and in furtherance of a sales program for inducing the purchase of their carpeting and floor coverings, respondents' 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, respondents or their 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.

Therefore, the acts and practices as set forth in Paragraph Seven hereof were and are unfair and false, misleading and deceptive acts and practices.

PAR. 8. In the further course and conduct of their aforesaid business, and in connection with the representations set forth in Paragraph Four above, respondents offer carpet with padding and installation included at a price based upon specified areas of coverage. In making such offer, respondents have failed to disclose the material fact that the prices stated for such specified areas of coverage are not applied at the same rate for additional quantities of carpet needed, but are priced substantially higher.

The aforesaid failure of respondents to disclose said material facts to purchasers has the tendency and capacity to lead and induce a substantial number of such persons into the understanding and belief that the prices charged for quantities of carpet needed in excess of the specified areas of coverage will not be substantially higher than the rate indicated by the initial offer.

Therefore, respondents' failure to disclose such material facts was, and is, unfair, false, misleading and deceptive.

PAR. 9. In the further course and conduct of their business, and for the purpose of inducing the purchase of their products, respondents use the term "up to 270 sq. ft." to indicate the quantity of carpeting available at the advertised price.

PAR. 10. The unit of measurement usually and customarily employed in the retail advertising of carpet is square yards. Consumers are accustomed to comparing the price of carpet in terms of price per square yard, therefore respondents' use of the square foot unit of measurement confuses consumers who compare respondents' prices with competitors' prices advertised on a square yard basis.

Furthermore, respondents' use of square foot measurements exag-

gerates the size or quantity of carpeting being offered, and therefore has the capacity and tendency to mislead consumers into the mistaken belief they are being offered a greater quantity of carpet than is the fact.

Therefore, the acts and practices as set forth in Paragraph Nine hereof were and are unfair, false, misleading and deceptive.

PAR. 11. In the further 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 and floor coverings and services of the same general kind and nature as those sold by respondents.

PAR. 12. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, acts and practices, and their 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 respondents' products and services by reason of said erroneous and mistaken belief.

PAR. 13. 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 consitututed, 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 JOSEPH P. DUFRESNE, ADMINISTRATIVE
LAW JUDGE

NOVEMBER 12, 1974

PRELIMINARY STATEMENT

In a complaint issued on July 8, 1974, in accord with its Rule 3.11, the Federal Trade Commission instituted a proceeding charging respondents with unfair and deceptive representations and unfair acts and practices. Specifically, respondents were charged with advertising, offering for sale, sale, distribution and installation of carpeting and floor coverings to the public in violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. §45). Prior to issuance of the formal complaint, unsuccessful attempts to settle the matter were made.

In their answer to complaint, respondents admitted each material allegation, count and paragraph in the complaint, without prejudice.

They specifically objected to those provisions in the proposed order accompanying the complaint calling for the inclusion in each advertisement by respondents of a notice set off from the text by a black border which would read as follows:

The Federal Trade Commission has found that we engage in bait and switch advertising; that is, the salesman makes it difficult to buy the advertised product and he attempts to switch you to a higher priced item.

Below, this is referred to as the black border provision.

Commission Rule 3.12(b)(2) provides that when respondent's answer contains an admission of the allegations made in the complaint, the answer constitutes a waiver of hearings. The rule permits respondents to submit proposed findings, conclusions and order, together with reasons therefor and supporting briefs, in accord with Rule 3.46.

Pursuant to these rules, the undersigned ordered both parties to submit such proposed findings of fact, conclusions of law and order, together with reasons and briefs. In their submittal, respondents again admitted the material allegations of the complaint but took exception to the black border provision in the proposed order.

THE BLACK BORDER PROVISION

The provision appears to the undersigned to be more a punishment of respondents than an action oriented toward putting a stop to and preventing recurrence in the future of acts and practices violative of Section 5 of the Federal Trade Commission Act. Rather than being corrective in the traditional sense or calling for affirmative disclosure related to the carpeting sold, the black border provision smacks of a personal requirement that a scarlet letter is to be worn on respondents' chests or that a tattooed number is to be placed on their arms or that a placard is to be hung about their necks proclaiming their having been found guilty of a "crime." To my way of thinking, a requirement of this sort is more a punishment than a corrective action and it is well settled that the Commission may not punish respondents. *Coro, Inc., et al. v. Federal Trade Commission*, 338 F.2d 149, 153 (1st Cir. 1964), *cert. denied*, 380 U.S. 954 (1965). The purpose of the Federal Trade Commission Act is protection of the public, not punishment of a wrongdoer. *Gimbel Bros. Inc. v. Federal Trade Commission*, 116 F.2d 578 (2d Cir. 1941).

It also is well settled, however, that the Commission may order both affirmative acts and affirmative disclosures and that it has broad discretion in determining the type of order necessary to insure discontinuance of the unlawful practices found. The basic requirement is that the corrective action ordered must be reasonably related to the

unlawful practices found to exist. "*Corrective Advertising Orders of the Federal Trade Commission*," 85 Harvard Law Review 477, 498.

There are many decisions by the courts in which Commission orders calling for mandatory acts or disclosures by respondents were upheld. But, in each I have read, the orders were designed to bring an end to the offensive practice directly or to apprise consumers of factual information regarding a product, rather than by requiring respondents to publicize the fact in all of their advertisements that they have been found to have engaged in bait and switch tactics or some other specific unlawful trade practice. Some examples of the typical "corrective" order cases are: mandatory patent licensing under Section 5 of the F.T.C. Act. *American Cyanamid Co. v. Federal Trade Commission*, 363 F.2d 757 (6th Cir. 1966); requiring a disclosure that most states do not accept correspondence courses for admission to the bar. *La Salle Extension University*, 78 F.T.C. 1272 (1971), *aff'd*. No. 71-1648 (7th Cir. Oct. 23, 1973 (unreported)); requiring the makers of "Geritol" to disclose that most persons do not have deficiencies in vitamins the product contains. *The J. B. Williams Co., Inc. and Parkson Advertising Agency, Inc. v. Federal Trade Commission*, 381 F.2d 884 (6th Cir. 1967); requiring a disclosure that eating thinly sliced "Profile" bread is not as effective as represented for weight reduction, *ITT Continental Baking Co.*, Docket No. C-2015. 79 F.T.C. 248 (1971); requiring a disclosure that most baldness is of the male pattern type which is not helped by administering respondents' preparation, *Keele Hair & Scalp Specialists, Inc., et al. v. Federal Trade Commission*, 275 F.2d 18 (5th Cir. 1960), and numerous others.

Going beyond such requirements are those in which the Commission has required respondents to post a cease and desist order in their place of business and to furnish a copy of the order to consumers on request or to media in which respondents advertise. *Arthur Murray Studio of Washington, Inc., et al. v. Federal Trade Commission*, 458 F.2d 622 (5th Cir. 1972), 78 F.T.C. 401 (1971); *Robert W. Ricklefs, t/a Cortland Music Co.*, F.T.C. File No. 702 3348, 1970-1973 Transfer Binder, Trade Reg. Rep., ¶19,632 at p. 21681 (1971); *Nelson James Inc., et al.*, File No. 712 3184, 1970-1973 Transfer Binder, Trade Reg. Rep. ¶19,629, at p. 21681 (1971). The requirements of the orders in the Arthur Murray, Ricklefs, and James cases, however, were the genesis of the add-to-the-contract-and-provide-the-order-to-consumers-on-request provision added to the order herein in substitution for the black border provision (Par. 16, order below).

There has been a consent order recently accepted by the Commission in which respondents agreed to a consent order containing a black border provision. *William D. Campbell, Jr. and Jack S. Owens*,

individually, trading and doing business as Rhode Island Carpets, Docket No 8946, Oct. 1, 1974 [84 F.T.C. 555]. Most recently, however, the Commission, in otherwise affirming the administrative law judges' initial decisions, deleted black border provisions from cease and desist orders in the matters of *Wilbanks Carpet Specialists, et al.*, Docket No. 8933 (Sept. 24, 1974 [84 F.T.C. 510]) and *Tri-State Carpets, Inc., et al.*, Docket No. 8945 (Oct. 15, 1974 [84 F.T.C. 1078]). Both of those matters were litigated.

In my view, the black border provision called for in the proposed order does not bear a reasonable relationship to the unlawful practices admitted by respondents. Those practices are addressed in other provisions of the proposed order in that it contains anti-bait and switch provisions, cancellation provisions, a requirement that copies of the order are to be sent to the advertising media which respondents use and to sales personnel, etc. *Niresk Industries, Inc., et al. v. Federal Trade Commission*, 278 F.2d 337 (7th Cir. 1960); *Federal Trade Commission v. National Lead Co. et al.*, 352 U.S. 419 (1957); *Federal Trade Commission v. Ruberoid Co.*, 343 U.S. 470 (1952).

These order provisions should bring an end to the bait and switch tactics in which respondents have been engaging and should provide for "* * * disclosure of informative facts in the interest of truth." *Maurice J. Feil, et al., trading as Enurstone Company v. Federal Trade Commission*, 285 F.2d 879, 899 (9th Cir. 1960). If they do not and respondents persist in their unlawful practices, they will be risking a District Court awarding \$10,000 per violation as a penalty for each violation of the final order (15 U.S.C. §45(1)).

Therefore, having reviewed the complaint, answer, and the briefs submitted, the undersigned, in accord with Commission Rule 3.12(b)(2), makes the following findings of fact, conclusions and order comprising his initial decision.

FINDINGS OF FACT

1. Respondent Sir Carpet, Inc. 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 6836 New Hampshire Ave., Takoma Park, Md.

Respondent Bennett Weiner is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

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.

3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their said merchandise, when sold, to be shipped from their place 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 maintain and at all times mentioned herein have maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their carpeting and floor covering, respondents have made, and are now making, numerous statements and representations by repeated advertisements inserted in newspapers of interstate circulation, and by oral statements and representations of respondents' salesmen to prospective purchasers with respect to their products and services.

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

QUALITY WALL-TO-WALL	3 Rooms
100% NYLON PILE CARPET	\$109
includes carpet, bonded	
padding and installation	
up to 270 sq. feet	

* * * * *

FREE VACUUM CLEANER
with the purchase of
Our Deluxe 501
36 sq. yd. minimum

* * * * *

5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set forth herein, separately and in connection with the oral statements and representation of respondents' salesmen to customers and prospective customers, respondents have represented, and are now representing directly or by implication, that:

a. Respondents are 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.

b. Purchasers of the said Dupont 501 Carpet received a "free" vacuum cleaner.

6. In truth and in fact:

a. Respondents' offers are not bona fide offers to sell 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 respondents' salesmen, who make 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 respondents' salesmen attempt to sell and frequently do sell the higher priced carpeting.

b. Purchasers of respondents' Dupont 501 Carpet do not receive a free vacuum cleaner. To the contrary, the cost of the "free" gift is added to and regularly included in the selling price of the merchandise sold to the customer.

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

7. In the further course and conduct of their business, and in furtherance of a sales program for inducing the purchase of their carpeting and floor coverings, respondents' 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 4 through 6 above, respondents or their 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.

Therefore, the acts and practices as set forth in Paragraph 7 hereof were and are unfair and false, misleading and deceptive acts and practices.

8. In the further course and conduct of their aforesaid business, and in connection with the representations set forth in Paragraph 4 above, respondents offer carpet with padding and installation included at a price based upon specified areas of coverage. In making such offer, respondents have failed to disclose the material fact that the prices stated for such specified areas of coverage are not applied at the same rate for additional quantities of carpet needed, but are priced substantially higher.

The aforesaid failure of respondents to disclose said material facts to purchasers has the tendency and capacity to lead and induce a substantial number of such persons into the understanding and belief

that the prices charged for quantities of carpet needed in excess of the specified areas of coverage will not be substantially higher than the rate indicated by the initial offer.

Therefore, respondents' failure to disclose such material facts was, and is, unfair, false, misleading and deceptive.

9. In the further course and conduct of their business, and for the purpose of inducing the purchase of their products, respondents use the term "up to 270 sq. ft." to indicate the quantity of carpeting available at the advertised price.

10. The unit of measurement usually and customarily employed in the retail advertising of carpet is square yards. Consumers are accustomed to comparing the price of carpet in terms of price per square yard, therefore respondents' use of the square foot unit of measurement confuses consumers who compare respondents' prices with competitors' prices advertised on a square yard basis.

Furthermore, respondents' use of square foot measurements exaggerates the size or quantity of carpeting being offered, and therefore has the capacity and tendency to mislead consumers into the mistaken belief they are being offered a greater quantity of carpet than is the fact.

Therefore, the acts and practices as set forth in Paragraph 9 hereof were and are unfair, false, misleading and deceptive.

11. In the further 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 and floor coverings and services of the same general kind and nature as those sold by respondents.

12. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, acts and practices, and their 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 respondents' products and services by reason of said erroneous and mistaken belief.

13. The aforesaid acts and practices of respondents 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.

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction of and over respondents and the subject matter of this proceeding.
2. The Complaint herein states a cause of action, and this proceeding is in the public interest.
3. Respondents have committed unfair and deceptive acts and practices in commerce and have engaged in unfair methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents Sir Carpet, Inc., a corporation, its successors and assigns, and its officers, and Bennett Weiner, individually and as an officer 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, distribution and installation 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, directly or indirectly, orally or in writing, 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, directly or indirectly, orally or in writing, 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 following the date of publication of any advertisement, 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. Representing, directly or indirectly, orally or in writing, that any price amount is respondents' regular price for any article of merchandise or service unless said amount is the price at which such merchandise or service has been sold or offered for sale by respondents for a reasonably substantial period of time in the recent, regular course of their business and not for the purpose of establishing fictitious higher prices upon which a deceptive comparison or a "free" or similar offer might be based.

7. Representing, directly or indirectly, orally or in writing, that a purchaser of respondents' merchandise or services will receive a "free" vacuum cleaner or any other "free" merchandise, service, prize or award unless all conditions, obligations, or other prerequisites to the receipt and retention of such merchandise, services, gifts, prizes or awards are clearly and conspicuously disclosed at the outset in close conjunction with the word "free" wherever it first appears in each advertisement or offer.

8. Representing, directly or indirectly, orally or in writing, that any merchandise or service is furnished "free" or at no cost to the purchaser of advertised merchandise or services, when, in fact, the cost of such merchandise or service is regularly included in the selling price of the advertised merchandise or service.

9. Representing, directly or indirectly, orally or in writing, that a "free" offer is being made in connection with the introduction of new merchandise or services offered for sale at a specified price unless the respondents expect, in good faith, to discontinue the offer after a limited time and commence selling such merchandise or service, separately, at the same price at which it was sold with a "free" offer.

10. Representing, directly or indirectly, orally or in writing, that merchandise or service is being offered "free" with the sale of merchandise or service which is usually sold at a price arrived at through bargaining, rather than at a regular price, or where there may be a regular price, but where other material factors such as quantity, quality, or size are arrived at through bargaining.

11. Representing, directly or indirectly, orally or in writing, that a "free" offer is available in a trade area for more than six (6) months in any twelve (12) month period. At least thirty (30) days shall elapse before another such "free" offer is made in the same trade area. No more than three such "free" offers shall be made in the same area in any twelve (12) month period. In such period, respondents' sale in that area of the product or service in the amount, size or quality promoted with the "free" offer shall not exceed 50 percent of the total volume of

its sales of the product or service, in the same amount, size or quality, in the area.

12. Representing, directly or indirectly, orally or in writing, that a product or service is being offered as a "gift," "without charge," "bonus," or by other words or terms which tend to convey the impression to the consuming public that the article of merchandise or service is free, when the use of the term "free" in relation thereto is prohibited by the provisions of this order.

13. 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.

14. Advertising any carpeting or floor covering using a unit of measurement not usually and customarily employed in the retail advertising of carpet or which tends to exaggerate the size or quantity of carpeting or floor covering being offered at the advertised price.

15. 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.

16. 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 immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in bold face type of a minimum size of 10 points, a statement in substantially the following form:

YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT. ALSO, SINCE WE ARE SUBJECT TO A CEASE AND DESIST ORDER OF THE FEDERAL TRADE COMMISSION IN DOCKET NO. 8981 FOR HAVING ENGAGED IN BAIT AND SWITCH TACTICS, YOU MAY EXAMINE OR HAVE A COPY OF THE COMPLAINT AND ORDER BY ASKING THE SALESMAN SERVING YOU TO PROVIDE IT.

17. Failing to furnish each buyer, at the time he signs the sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION," which shall be attached to the contract or receipt and easily detachable, and which shall contain in ten point bold face

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type the following information and statements in the same language, e.g., Spanish, as that used in the contract:

NOTICE OF CANCELLATION

[enter date of transaction]

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO [Name of seller], AT [address of seller's place of business], NOT LATER THAN MIDNIGHT OF (date).

I HEREBY CANCEL THIS TRANSACTION.

(Date)

(Buyer's signature)

18. 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.

19. 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.

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

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

22. 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.

23. 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.

24. 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 this order shall relieve respondents 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, respondents 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.

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 deliver a copy of this order to cease and desist to all present and future personnel of respondents 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 respondents secure a signed statement acknowledging receipt of said order from each such person.

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

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 the order.

It is further ordered, That the respondent Bennett Weiner, promptly notify the Commission of the discontinuance of his present business or employment and of his affiliations 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 said 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.

ORDER PLACING MATTER ON DOCKET FOR REVIEW AND FINAL ORDER

An initial decision by the administrative law judge having been issued in this matter on Nov. 13, 1974, containing a provision that would require respondents' contracts to include a statement that they are subject to a cease and desist order of the Federal Trade Commission "for having engaged in bait and switch tactics" and that the consumer can examine a copy of the complaint and order on request;

And the Commission having determined that this initial decision should be placed on its own docket for review *sua sponte* pursuant to Section 3.53 of its Rules of Practice and modified in accordance with its decision in *Wilbanks Carpet Specialists, Inc.*, Docket 8933 (Sept. 24, 1974) [84 F.T.C. 670], and *Tri-State Carpets Inc.*, Docket 8945 (Oct. 15, 1974) [84 F.T.C. 1078];

Now therefore it is ordered, That the initial decision in this matter be, and it hereby is, placed on the Commission's docket for review; and

It is further ordered, That the said initial decision be, and it hereby is, modified by deleting the portion of the initial decision under the caption "The Black Border Provision" and by striking from paragraph 16 of the order the following sentence: "Also, since we are subject to a cease and desist order of the Federal Trade Commission in Docket No. 8981 for

having engaged in bait and switch tactics, you may examine or have a copy of the complaint and order by asking the salesman serving you to provide it;" and

It is further ordered, That, as so modified, the initial decision and order be, and they hereby are, adopted as the decision and order of the Commission.