

IN THE MATTER OF
MARYLAND CARPET OUTLET, INCORPORATED, ET
AL.

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

Docket No. 8943. Complaint, Dec. 7, 1973-Decision, Apr. 22, 1975

Order requiring a Brooklyn Park, Md., seller, distributor, and installer of carpeting and floor coverings, among other things to cease using bait and switch tactics and other deceptive selling practices. Further, the order requires respondents to cease violating the Truth in Lending Act by failing to disclose to customers, in the extension of consumer credit, such information as is required by Regulation Z of the said Act and to cease violating the Textile Fiber Products Identification Act.

Appearances

For the Commission: *Everette E. Thomas, Richard C. Donohue, and Thomas J. Keary.*

For the respondents: *Jacob A. Stein, Stein, Mitchell and Mezines, Wash., D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Textile Fiber Products Identification Act, the Truth in Lending Act and the implementing Regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Maryland Carpet Outlet, Incorporated, a corporation, and Allen R. Tepper, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, the implementing Regulation, 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 Maryland Carpet Outlet, Incorporated, 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 4328 Ritchie Hwy., Brooklyn Park, Md.

Respondent Allen R. Tepper is an individual and is the principal 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 business 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.

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 now cause, and for some time last past have caused, their said merchandise, when sold, to be shipped from their places of business located in the State of Maryland, to purchasers thereof located in various other States of the United States and the District of Columbia, and 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, the respondents have made, and are now making, numerous statements and representations by repeated advertisements inserted in newspapers of interstate circulation, by advertisements transmitted over television and radio, and by oral statements and representations of their 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:

PRE-HOLIDAY SALE
3 ROOMS
FIRST QUALITY

Complaint

85 F.T.C.

NYLON
WALL TO WALL
CARPET
\$139

* * * * *

SALE
3 ROOMS OF LUXURIOUS
WALL TO WALL
NYLON CARPET
\$159
INCLUDES INSTALLATION AND
SEPARATE HEAVY DUTY WAFFLE PADDING

* * * * *

SALE
3 ROOMS
FIRST QUALITY
NYLON
WALL TO WALL
CARPET
\$139

* * * * *

FREE!
HOOVER VACUUM CLEANER
WITH PURCHASE OF OUR
DELUXE 501 CARPET.
OVER 100 COLORS AND PATTERNS
IN STOCK FOR

IMMEDIATE INSTALLATION

* * * * *

FREE
KITCHEN CARPET
OR
VACUUM CLEANER
Up to 90 sq. ft. when
you purchase 3 rooms of
our deluxe 501 nylon carpet

* * * * *

OUR DECORATOR WILL BRING SAMPLES
DAY OR EVENING

* * * * *

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

3. Purchasers of the said DeLuxe 501 Carpet receive a "free" vacuum cleaner or kitchen carpet.

4. By and through the use of the words "Over 100 colors and patterns in stock" and other words of similar import and meaning not set out specifically herein, the advertised carpeting is available in 100 different colors and patterns from which the prospective purchaser may choose.

5. By and through the use of the words "INCLUDING PADDING, INSTALLATION AND LABOR" and other words of similar import and meaning not set out specifically herein, all of the carpeting mentioned in such advertisements is installed with separate padding included at the advertised price.

6. By and through the use of the words "our decorator", and other words of similar import and meaning not set out specifically herein, respondents offer to the prospective customer the services of a trained and qualified interior decorator.

7. Certain of respondents' products are unconditionally guaranteed for various periods of time such as fifteen (15) years.

PAR. 6. In truth and in fact:

1. Respondents' offers are not bona fide offers to sell said carpeting and floor coverings at the price and on the terms and conditions stated in the advertisements. To the contrary, said offers are made for the purpose of obtaining leads to persons interested in the purchase of carpeting. Members of the purchasing public who respond to said advertisements are called upon in their homes by respondents or their 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, through their salesmen, attempt to sell and frequently do sell the higher priced carpeting.

2. Respondents' products are not being offered for sale at special or reduced prices. To the contrary, the price respondents regularly advertise and their 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. In fact, seldom, if ever, are the advertised items sold, because the offer is designed to act as the inducement for the practices set forth in Paragraph Six 1., hereof.

3. Purchasers of respondents' DeLuxe 501 Carpet do not receive a free vacuum cleaner or free kitchen carpet. 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.

4. The advertised carpeting is not available in 100 different colors and patterns from which the customer may choose. To the contrary, respondents have available only a very limited selection of colors and patterns.

5. A substantial portion of the carpeting advertised by the respondents is not installed with separate padding which is included in the advertised price. To the contrary, a substantial portion of the advertised carpeting has rubberized backing which is bonded to the carpeting.

6. Respondents do not employ or have available for their prospective customers a trained, qualified interior decorator. To the contrary, respondents' regularly employed salesmen, who do not have any special training in the art of decorating, are utilized as "decorators" by respondents.

7. Respondents' carpeting and floor coverings are not unconditionally guaranteed for the period of time orally represented by the respondents' salesmen. To the contrary, such written guarantees as they have provided to their customers were subject to conditions and limitations not disclosed in respondents' representatives' oral representations, and in a substantial number of instances customers did not receive a written guarantee.

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 and their salesmen or

representatives have engaged in the following additional unfair, false, misleading and deceptive acts and practices:

In 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 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. 9. 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 Eight hereof were and are unfair, false, misleading and deceptive.

PAR. 10. 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 and floor coverings and services of the same general kind and nature as those sold by respondents.

PAR. 11. 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. 12. 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 Paragraphs One and Two hereof are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 13. 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, 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. 14. 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. 15. 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. 16. Among such textile fiber products, but not limited thereto, was carpeting which was falsely and deceptively advertised in *The Washington Post* and *The Evening Star*, newspapers published in the District of Columbia, and having a wide circulation in the District of Columbia and various other States of the United States, in that said carpeting was described by such fiber connoting terms among which, but not limited thereto, was "Acrilan," and the true generic name of the fiber contained in such carpeting was not set forth.

PAR. 17. By means of the aforesaid advertisements and others of

similar import and meaning not specifically referred to herein, respondents 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 covering and not to the backing, filling or padding, in violation of Rule 11 of the aforesaid rules and regulations.

2. A fiber trademark was used in advertising textile fiber products, without a full disclosure of the fiber content information required by said Act, and the regulations promulgated thereunder, in at least one instance in said advertisement, in violation of Rule 41(a) of the aforesaid rules and regulations.

3. A fiber trademark was used in advertising textile fiber products, containing only one fiber and such fiber trademark did not appear, at least once in the said advertisement, in immediate proximity and 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. 18. 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.

COUNT III

Alleging violation of the Truth in Lending Act and the implementing regulation promulgated thereunder, and of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count III as if fully set forth verbatim.

PAR. 19. In the ordinary course and conduct of their business, as aforesaid, respondents regularly extend consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 20. Subsequent to July 1, 1969, respondents, in the ordinary course of business as aforesaid, and in connection with their credit sales, as "credit sale" is defined in Regulation Z, have caused, and are

causing, customers to execute binding retail installment contracts, hereinafter referred to as the "contract".

PAR. 21. By and through the use of the contract, respondents:

Fail to use the term "amount financed" to describe the amount of credit extended as required by Section 226.8(c)(7) of Regulation Z.

PAR. 22. In the ordinary course of their business as aforesaid, respondents have caused to be published, subsequent to July 1, 1969, advertisements of their goods and services, as "advertisement" is defined in Regulation Z. In the aforesaid advertisements respondents made and for some time last past have made, certain statements which aid, promote, or assist directly or indirectly in the extension of consumer credit and credit sales as "consumer credit" and "credit sales" are defined in Regulation Z, of which the following statements are illustrative, but not all inclusive:

NO MONEY DOWN

NO PAYMENT FOR 3 MONTHS

PAR. 23. By and through the use of the advertisements referred to in Paragraph 22 hereof, respondents represent, and have represented, directly or by implication, that no downpayment is necessary in connection with the extension of credit.

In truth and in fact, respondents usually and customarily require a downpayment, in violation of Section 226.10(a)(2) of Regulation Z.

PAR. 24. In the ordinary course of their business as aforesaid, respondents cause to be published advertisements of their goods and services, as "advertisement" is defined in Regulation Z. These advertisements aid, promote, or assist directly or indirectly extensions of consumer credit in connection with the sale of these goods and services. By and through the use of the advertisements, respondents:

Use the term "no money down," thereby implying no downpayment is required in connection with a consumer credit transaction, without also stating all of the following items in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) thereof:

- (i) the cash price;
- (ii) the number, amount and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;
- (iii) the amount of the finance charge expressed as an annual percentage rate; and
- (iv) the deferred payment price.

PAR. 25. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section

108 thereof, respondents have thereby violated the Federal Trade Commission Act.

INITIAL DECISION BY RAYMOND J. LYNCH, ADMINISTRATIVE LAW
JUDGE

DECEMBER 23, 1974

PRELIMINARY STATEMENT

On Dec. 7, 1973, the Federal Trade Commission issued a complaint in this proceeding alleging that the respondents Maryland Carpet Outlet, Incorporated, a corporation, and Allen R. Tepper, individually and as an officer of said corporation, violated the provisions of the Federal Trade Commission Act, the Textile Fiber Products Identification Act, the Truth in Lending Act and the implementing regulations promulgated thereunder.

Respondents filed an answer to the complaint on Jan. 2, 1974, and subsequent thereto several prehearing conferences were held. The matter finally came on for hearing before the undersigned on Sept. 9, 10, 11 and 12, 1974. The parties filed their respective proposed findings of fact, conclusions of law and proposed order.

Any motions not heretofore or herein ruled on specifically are hereby denied.

The proposed findings, conclusions and briefs of the parties have been given careful consideration and to the extent not adopted in this initial decision in the form proposed, they are rejected as either not being supported by the evidence or as immaterial for determination of the issues in this proceeding.

Having considered the entire record in this proceeding, and having observed the witnesses who testified herein, together with the proposed findings, conclusions and orders submitted by the parties, the undersigned makes the following findings of fact.

FINDINGS OF FACT

1. Respondent Maryland Carpet Outlet, Incorporated 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 4328 Ritchie Highway, Brooklyn Park, Md. (Admitted in Answer, Par. 1; Tr. 350-381).*

2. Respondent Allen R. Tepper is an individual and is the principal

* References to the record are made in parentheses, and certain abbreviations are used as follows:

CX - Commission Exhibit

Tr. - Transcript page

(Continued)

officer of the corporate respondent. He formulates, directs and controls the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondent (Admitted in Answer, Par. 1). Allen R. Teppner testified that he is vice president of the corporation (Tr. 350) and then he later testified that he may be president of the corporation (Tr. 378-379).

3. Mr. Teppner testified that he owned all the stock of the corporation (Tr. 350), and his duties and responsibilities as vice president of Maryland Carpet Outlet included taking care of the administrative work as well as the hiring and training of salesmen (Tr. 382). From 1966 through 1973, Maryland Carpet Outlet was managed on a day-to-day basis by Allen R. Teppner (Tr. 382-383).

4. Mr. Teppner testified that he employed an advertising agency at various times to do the advertising for Maryland Carpet Outlet (Tr. 89, 388).

5. Mr. Teppner also testified that he participated with the advertising agency in formulating the advertisements for Maryland Carpet Outlet, Inc. (Tr. 92, 388). In Respondents' Answer to Request for Admissions, Par. 1, Allen R. Teppner admits that the 212 representative samples of newspaper advertisements (CX A1-CX A106 and CX A109-CX A204) were placed in newspapers at his direction or with his knowledge. These aforementioned 212 newspaper advertisements encompass a period of time from July 1968 through June 1973.

6. Mr. Teppner further testified that he purchased carpet from various mills and suppliers (Tr. 392), and that he employed various different installers to install the carpet for Maryland Carpet (Tr. 390). In addition, Mr. Teppner testified that he trained the salesmen employed by Maryland Carpet, that he had a lot of contact with his salesmen, participated in sales meetings with his salesmen, and discussed sales techniques with them (Tr. 394-395). Mr. Teppner also stated in his testimony that either Mr. Teppner or whoever was the manager at the time would give final approval to all contracts negotiated by his salesmen (Tr. 398-399).

7. Maryland Carpet Outlet, Inc. was originally incorporated in 1959, but did not operate under the name Maryland Carpet Outlet until 1964 or 1965 (Tr. 351). Mr. Teppner testified that up until 1971, Maryland Carpet Outlet had branch offices (Tr. 351-352). One of the branch offices was located at 5648 Annapolis Road, Bladensburg, Md. (Tr. 352; CX A22-52, 75-106, 109-147, 150, 153-205, 206-216). This branch office is now a separate corporation called Maryland Virginia Carpet (Tr. 352).

References to testimony sometimes cite the name of the witness and the transcript page number without the abbreviation "Tr."

Upon questioning, Mr. Tepper attempted to explain the business connection between the two corporations (Maryland Carpet Outlet and Maryland Virginia Carpet) in this manner:

Q. Is Maryland Virginia Carpet in any way related to Maryland Carpet Outlet?

A. No.

Q. How does Maryland Virginia Carpet advertise?

A. How do they advertise?

Q. Yes, under what name?

A. In the newspapers.

Q. Under what name?

A. Maryland Carpet.

JUDGE LYNCH: You just advertise as Maryland Carpet and use the Bladensburg Road address?

THE WITNESS: Yes.

JUDGE LYNCH: How does that square with the fact you say Maryland Virginia has nothing to do with Maryland Carpet?

THE WITNESS: It once did, sir. It was one of our branches at one time, and we were advertising over there as Maryland Carpet. Then, Mr. Baron, who was working for me, at the time - we had an arrangement - I gave him 50 percent of the business if he would run it so we started a new corporation - we called it Maryland Virginia Corporation. The advertising just went on like that because we had been advertising as Maryland Carpet, but there was no other connection. The 2 companies are separate corporations. (Tr. 357-359).

8. Although Mr. Tepper tried to establish in his testimony that the branch office was now a separate corporation entity, it became apparent through not only his testimony, but the testimony of former salesmen and employees that Allen R. Tepper controlled all of the acts and practices of his branch office, Maryland Virginia Carpet, even after the corporate changeover (Tr. 352-353, 360-361).

9. Allen R. Tepper's responsibility for and control of the Maryland Virginia Carpet company can be further substantiated when viewed in relation to his control over the internal affairs of Maryland Virginia Carpet even after the corporate changeover. From Mar. 1970 to Jan. 1974, the general manager of the store at 5648 Annapolis Road in Bladensburg, Md., was Ann Marie Gittings (Tr. 123-124). During the time she worked there, Allen R. Tepper was the acknowledged owner (Tr. 129). During the time she worked there, Allen R. Tepper participated in the internal affairs of this corporation by hiring and firing people, exercising power over the determination of employees' salaries, and by having access to the financial accounts of the corporation. Mrs. Gittings testified as to these activities of Mr. Tepper as follows:

Q. Who was the owner of the company you worked for?

A. Allen R. Tepper. (Tr. 129)

10. When Maryland Virginia Carpet, Incorporated advertised, they did so under the name Maryland Carpet Outlet, Inc. (CX A109-147, 150, 154-205, 206-216). This even continued up until the present time, as can

be noted when viewing CX A206-216 which advertisements cover a time period up until Aug. 11, 1974. In these recent advertisements, nowhere can the name Maryland Virginia be found, only the name Maryland Carpet.

11. Maryland Carpet Outlet also functioned under the trade name Baltimore Carpet. Baltimore Carpet became a separate corporation on Dec. 7, 1973 (Tr. 375). Before that time, it was a subsidiary of Maryland Carpet Outlet, Inc. Allen R. Tepper testified as to the relationship between Maryland Carpet Outlet and Baltimore Carpet as follows:

Q. What is the relation of Baltimore Carpet to Maryland Carpet Outlet?

A. At the moment it is a corporation which is not being used at all. (Tr. 375)

12. The fact that Baltimore Carpet was nothing more than just a trade name for Maryland Carpet Outlet is further substantiated upon inspection of the financing documents of a consumer transaction between Baltimore Carpet and Mrs. Henry C. Prince. Although Mrs. Prince thought that she and her husband were entering into a transaction with Baltimore Carpet (Tr. 270), and the sales contract states that the contract is with Baltimore Carpet (CX B43), the receipt from the finance company, U.S. Life Credit Corporation (CX H27, p. 2), clearly shows that the assignor of the retail installment sales contract was Maryland Carpet Outlet, Inc. In summary, it is apparent that although Allen R. Tepper operated Maryland Carpet Outlet under various trade names and endeavored to set up separate corporations, he still directed and controlled all the retail carpet operations of these various companies for the benefit of himself and Maryland Carpet Outlet, Inc.

13. 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 (Admitted in Answer, Par. 1; see also Tr. 381).

14. 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 places of business located in the State of Maryland, to purchasers thereof located in various other States of the United States and the District of Columbia, and maintains and at all times mentioned herein have maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act (Admitted in Answer, Par. 1).

15. In 1968, respondents conducted quite a substantial course of trade in commerce, with gross sales of approximately \$1.1 million (CX C2). Allen R. Tepper testified concerning the amount of sales generated by Maryland Carpet Outlet during 1973, and 1972 as follows:

Q. Could you give me an estimate then of your total sales volume for 1969, 1970, 1972 and 1973, if it is possible?

A. Last year was somewhere around \$400,000 to \$500,000. (Tr. 384)

16. Respondents are also in commerce by virtue of their advertising in Washington, D.C., area newspapers (CX G1-7; Respondents' Answer to Requests for Admissions, Par. 1). This newspaper advertising in papers of interstate circulation is further substantiated by the former advertising agent of Maryland Carpet Outlet, Inc., Bernard Sandler (Tr. 89-91).

17. Further, respondents are in commerce by virtue of the fact that they advertised on radio (CX G8; see also Respondents' Answer to Requests for Admissions, Par. 1) and television (Tr. 90; see also Respondents' Answer to Requests for Admissions, Par. 1; and also CX A108, pp. 1-25).

18. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their carpeting and floor coverings, the respondents have made, and are now making, numerous statements and representations by repeated advertisements inserted in newspapers of interstate circulation, by advertisements transmitted over television and radio, and by oral statements and representations of their 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:

PRE-HOLIDAY SALE
3 ROOMS
FIRST QUALITY
NYLON
WALL TO WALL
CARPET
\$139
(CX A12, 60, 62, 64)

* * * * *

SALE
3 ROOMS OF LUXURIOUS
WALL TO WALL
NYLON CARPET
\$159
INCLUDES INSTALLATION AND
SEPARATE HEAVY DUTY WAFFLE PADDING
(CX A51)

* * * * *

SALE
3 ROOMS

Initial Decision

85 F.T.C.

FIRST QUALITY
 NYLON
 WALL TO WALL
 CARPET

\$139

(CX 8, 9, 11, 37, 40, 95, 97)

* * * * *

FREE!
 HOOVER VACUUM CLEANER
 WITH PURCHASE OF OUR
 DELUXE 501 CARPET.
 OVER 100 COLORS AND PATTERNS
 IN STOCK FOR
 IMMEDIATE INSTALLATION
 (CX A1, 3, 4, 6, 11, 13, 20)

* * * * *

FREE
 KITCHEN CARPET
 OR
 VACUUM CLEANER
 Up to 90 sq. ft. when
 you purchase 3 rooms of
 our deluxe 501 nylon carpet
 (CX A109, 110, 111, 112, 122, 123)

* * * * *

OUR DECORATOR WILL BRING SAMPLES
 DAY OR EVENING

(CX A1, 3, 4, 6, 12, 13, 15, 17, 23, 24, 25, 117, 140)

19. Respondents admit placing advertisements such as the above in newspapers (*on behalf of Maryland Carpet*) for the purpose of inducing the purchase of their carpet and floor coverings (Request for Admissions, Pars. 2, 3; admitted in Answer to Requests for Admissions, Par. 1). Respondents also admit that advertisements CX A1-106 and CX A109-204, from which the above have been taken are *representative samples* of newspaper advertisements caused to be published by Maryland Carpet during the time period July 1968 through June 1973 (Request for Admissions, Par. 1; admitted in Respondents' Answer to Requests for Admissions, Par. 1). Counsel supporting the complaint took notice of the fact that these advertisements were representative of the newspaper advertisements for the time period July 1968 to June 1973 in order to explain what the consumer witnesses had seen and had attracted them to Maryland Carpet's advertisements (Tr. 338-339).

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

c. Purchasers of the said DeLuxe 501 Carpet receive a "free" vacuum cleaner or kitchen carpet.

d. By and through the use of the words "Over 100 colors and patterns in stock" and other words of similar import and meaning not set out specifically herein, the advertised carpeting is available in 100 different colors and patterns from which the prospective purchaser may choose.

e. By and through the use of the words "INCLUDING PADDING, INSTALLATION AND LABOR" and other words of similar import and meaning not set out specifically herein, all of the carpeting mentioned in such advertisements is installed with separate padding included at the advertised price.

f. By and through the use of the words "our decorator" and other words of similar import and meaning not set out specifically herein, respondents offer to the prospective customer the services of a trained and qualified interior decorator.

During the trial, the testimony of the consumers revealed the reasons for which they contacted the respondents after seeing respondents' advertisements (Jones 64-65; Earle 174, 176; Wyre 195; Bonge 293-294; Maslin 185; Tait 331; Blythe 308).

The interpretation of the statements contained in respondents' advertisements is left to the expertise of the administrative law judge. However, the fact that so many customers responded to the advertisement is evidence that these statements appeared to be bona fide offers.

g. Certain of respondents' products are unconditionally guaranteed for various periods of time such as fifteen (15) years.

21. Respondents' offers are not bona fide offers to sell said carpeting and floor coverings at the price and on the terms and conditions stated in the advertisements. To the contrary, said offers are

made for the purpose of obtaining leads to persons interested in the purchase of carpeting. Members of the purchasing public who respond to said advertisements are called upon in their homes by respondents or their salesmen, who make little or no effort to sell 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, through their salesmen, attempt to sell the higher priced carpeting (Jackson 106, 110-111; Gittings 151; Smith 162-163; Maslin 186; Owens 224; Harris 281; Blythe 309; Thomas 324; Tait 332).

22. Not only was the appearance of the advertised carpet poor, but in many instances it was disparaged by the salesmen, either through comparison with more expensive carpeting or verbally (Earle 177; Maslin 187; Wyre 196; Harris 281; Thomas 324; Tait 333).

Upon cross examination by counsel for respondents, Mr. Earle testified:

Q. You have told us what Mr. Vincenti told you about the comparison between the advertised carpet and the carpets that he had with him. Is that correct?

A. Yes, that is correct. He immediately disparaged, after identifying it as the advertised carpeting, disparaged it, as to color, and said it would wear out very quickly. (Tr. 184)

Former salesman George Gittings stated in court:

Q. Would you describe the color of the advertised carpeting?

A. I carried Gold and Green.

Q. Did you make any statements about the availability of colors of the advertised carpet?

A. If a particular customer wanted red, I would say we didn't have that in stock.

Q. This would be any color you did not carry, you did not have in stock?

A. Right.

Q. Once you had received the lead, would you describe what you would do next, at that point?

A. I would call and verify that both the husband and wife would be home because you couldn't make a sale without both of their signatures or get it financed. I would go into the house, not bring any good carpeting with me, go in with the adv. sample, measure, draw the diagram, and I would say — 9 times out of 10, it was more than the 270 feet advertised, which is a very short space, and the additional yardage over 30 yards, I would add that up and tell them how many square feet they had. Then, I would go in and show them the advertised carpet, and naturally, just to look at it would turn the customer off.

Q. Would you describe the advertised carpeting?

A. It was very flimsy, had no life to it.

Q. Would you make a statement about durability of the advertised carpet?

A. I would tell them there was no guarantee with it, none whatsoever, which there wasn't. It was a good buy for the amount of money, but there was no guarantee. I would state to them that mostly people who were in the Government, that were here on

temporary assignment, anywhere from 6 months to a year, buy this carpet, the purpose being they have no intention of becoming permanent residents. In their case, they was going to be permanent, and I was sure they would want something better.

Q. Did you ever make any sales of the advertised carpet?

A. The first year and a half or year, I was with them, I made one sale.

Q. Could you estimate the total number of sales you made during the period of your employment?

A. Of the advertised carpet?

Q. Of all carpeting?

A. I would have no idea. It was——maybe 3 or 4 hundred sales——I don't know. (Tr. 152-153)

23. Respondents' products are not being offered for sale at special or reduced prices. To the contrary, the price respondents regularly advertise and their 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. In fact, seldom, if ever, are the advertised items sold, because the offer is designed to act as the inducement for the practices set forth above.

24. In Request for Admissions, Par. 16 (admitted by respondents in Answer to Request for Admissions, Par. 1), it is stated that the specific carpet advertised by Maryland Carpet in 1968 for "\$139 for 3 rooms can be identified by the fiber trademark, El Camino." For the week of Oct. 27, 1968, 3 rooms of El Camino were advertised for \$139 (CX A7). El Camino was also offered for \$139 for the week of Nov. 3, 1968 (CX A8), likewise for the week of Nov. 10, 1968 (CX A10), and the week of Dec. 8, 1968 (CX A12). Yet for the week of Dec. 1, 1968 (CX A11), Maryland Carpet Outlet announced a "Sale" in which the sale carpeting (El Camino) was still offered for \$139 for 3 rooms. There was no reduction in price at all during the week (CX A11) when Maryland Carpet was supposedly having a "sale."

This lack of reduction in price is further confirmed by the testimony of Allen R. Tepper. He testified as follows:

Q. Referring back to the advertisements, specifically Commission Exhibit A-11, you use the term, sale - December 1, 1968 advertisement - you advertise 3 rooms of carpeting for \$139. You have already stated, in the admissions, during 1968, the sale carpeting was El Camino. Now, in the 2 months before that, you advertised El Camino for 3 rooms for \$139, also, the same price. The week after your sale, you also offered El Camino for \$139, and then for the month after that you offered El Camino for \$139, and you used the term, clearance, for it. What do you mean by, sale, exactly?

A. To me, the term was used by the advertising agency because of what existed in the trade - everybody used the word, sale. To me it was just a word you use in advertising. I have been told since you are not supposed to do that and we don't do it.

Q. Did it constitute a reduction in your ordinary and customary selling price?

A. No. (Tr. 415-416)

A further example of this is that from the week of Jan. 19, 1969 to the week of June 1, 1969, Maryland Carpet Outlet advertised 3 rooms of carpet for \$139 (CX A14 through 33), yet during the week of Jan. 26,

1969 (CX A15), they used the term "Clearance" to describe the 3 rooms for \$139. During the week of Feb. 16, 1969 (CX A18), respondents used the term "Washington's Birthday Special" to describe the 3 rooms for \$139. The same goes of the week of May 4, 1969, when the term "Spring Special" was used (CX A29) and the week of May 25, 1969 (CX A32), when the term "Memorial Day Special" was used to describe the 3 rooms for \$139.

25. Purchasers of respondents' DeLuxe 501 Carpet do not receive a free vacuum cleaner or free kitchen carpet. 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.

In CX A109, 110, 111, 112, 122, 123, for example, respondents advertise "Free Kitchen Carpet * * *." Yet, in CX D6, p. 1, a Commission and Par Sheet, Sept. 1, 1969, the instructions to the salesmen state:

Monarch "Nice N' Easy" kitchen carpet will be our give-away up to 90 square feet or 10 square yards. You will be charged \$8.00 per square yard off of the top or up to \$80.00. Make sure this is reflected in the contract price. Any yardage the customer might need in addition to this, charge her \$12.95 a square yard. You will always be charged at \$8.00 per square yard, so if the customer needs more than 10 square yards, you can defer some of the cost of the give-away by selling her the additional yardage at \$12.95 per square yard.

There will never be a commission paid on Nice N' Easy that is sold as a give-away as \$8.00 is our cost. If Nice N' Easy is sold as a separate job, it will be commissioned at the usual 3-5 or 10% as listed in the store selling prices.

Former salesman George Gittings testified concerning the giving of a free vacuum cleaner to customers who purchased the 501 carpet.

Q. Who would pay for the vacuum, actually?

A. It was the same vacuum you could buy for \$23, and we were charging them \$30. You added the \$30 before you gave them the price of the carpet. (Tr. 157)

26. The advertised carpeting is not available in 100 different colors and patterns from which the customer may choose. To the contrary, respondents have available only a very limited selection of colors and patterns (Jackson 111; Gittings 152; Earle 177; Owens 230-231; Bonge 299-300; Tepper 407-408).

When former salesman James Smith was questioned concerning the availability of colors for the advertised carpeting, he testified as follows:

Q. Would you tell me how many colors of the advertised carpet you carried?

A. I believe it was about 4 at that time. (Tr. 163)

27. A substantial portion of the carpeting advertised by the respondents is not installed with separate padding which is included in the advertised price. To the contrary, a substantial portion of the advertised carpeting has rubberized backing which is bonded to the carpeting (Jackson 110; Smith 161; Tait 332; Blythe 309; Thomas 324; Tepper 409).

28. Respondents do not employ or have available for their prospective customers a trained, qualified interior decorator. To the contrary, respondents' regularly employed salesmen, who do not have any special training in the art of decorating, are utilized as "decorators" by respondents. Mr. Tepper admitted that there was no decorator training given the salesmen (Tr. 394).

29. Respondents' carpeting and floor coverings are not unconditionally guaranteed for the period of time orally represented by the respondents' salesmen. To the contrary, such written guarantees as they have provided to their customers were subject to conditions and limitations not disclosed in respondents' representatives' oral representations, and in a substantial number of instances customers did not receive a written guarantee (Tepper 414).

30. Although the guarantee was subject to conditions and limitations, in many cases this was not disclosed to the consumer by respondents' sales representatives in their oral presentation. This was especially true regarding disclosure of prorated condition of the guarantee (Jones 67; Wyre 197; Schaber 249; Prince 274; Harris 283; Thomas 327; Tait 335). The guarantee only applied to the nonsale carpeting (Tepper 415).

31. 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 and their salesmen or representatives have engaged in the following additional unfair, false, misleading and deceptive acts and practices:

In substantial number of instances, through the use of the false, misleading and deceptive statements, representations and practices, 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.

32. All of the former salesmen called by the Commission testified that their sales were customarily made upon the first visit and that their sales presentations were directed to induce a customer to make their purchase upon the salesman's initial visit to the customer's home (Smith 166-167; Owens 233).

Salesman Jack K. Jackson testified:

Q. Did you make any sales on the first visit to the customer?

A. You didn't have to make a sale. It was a one shot deal. You walk in - if you can't go in and close it, then you are not much of a salesman. If you can't close it the first time, you won't close it the second or third.

Q. Was your presentation directed to induce a customer to make a purchase on the first visit?

A. Yes. You went to the presentation and after the presentation you tried your best to close it* * *. (Tr. 112-113)

Salesman George Gittings testified:

Q. Did you ever make a sale upon the first visit to the customer?

A. Yes, that was the whole idea.

Q. What percentage of your sales were made on the first visit?

A. Of my sales?

Q. Yes.

A. 99 percent.

Q. Was your sales presentation then directed to inducing a purchase upon your first visit to the customer?

A. That is correct. (Tr. 153-154)

33. Evidence of the pressure by salesmen to secure a signed contract without giving the customer sufficient time to consider the purchase is further seen in consumer testimony such as that of Mrs. Henry C. Prince.

Q. Did you sign your contract for sale the same night the salesman was in your home?

A. Yes.

Q. Why did you sign it that night?

A. I didn't want to sign it that night because I figured he was there in our home and he knew what kind my husband and I liked, and I figured we would talk it over the next day and call him and let him know if that is the carpet we really wanted. I disagreed that night and that is when he completely ignored me. It was 20 after 9, and it was getting late, and he said he had another appointment, and he wanted us to sign it then.

Q. And the contract was signed that night?

A. Yes. (Tr. 274-275)

34. In the 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 (see CX A3; CX A46; CX A51; CX A145; CX A204).

35. 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.

Respondents admitted that the unit of measurement most commonly employed in the retail carpet trade is square yards in Answer to Request for Admissions, Par. 1. Respondents went on in Answer to Requests for Admissions, Par. 1, to admit that manufacturers or suppliers from whom Maryland Carpet purchases carpet, sell such carpet by the square yard.

36. 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 (see Findings 1 - 35).

37. 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 covering 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.

In Respondents' Answer to the Complaint, Par. 1, respondents have admitted to having been engaged in "commerce" as defined in the Federal Trade Commission Act (52 Stat. 111; 15 U.S.C. 44, Section 4) and, by virtue of Section 7(b) of the Textile Fiber Products Identification Act (72 Stat. 1721; 15 U.S.C. 70 e), having been engaged in "commerce" as defined by Section 2(k) of the same Act (72 Stat. 1717; 15 U.S.C. 70). Further, in Respondents' Answer to the Complaint, Par. 1, respondents did admit to the offering for sale, sale, distribution and installation of carpeting and floor covering to the public. It is manifest with regard to representation of respondents in their advertising of carpeting and floor covering that respondents merchandise is a "textile fiber product" as defined by Section 2(g) and (h) of the Textile Fiber Products Identification Act (72 Stat. 1717, 15 U.S.C. 70). See CX A1 through CX A204 for copies of respondents' advertising.

38. 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 (Admitted in Answer, Par. 6).

39. 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 (Admitted in Answer, Par. 6).

40. Among such textile fiber products, but not limited thereto, was carpeting which was falsely and deceptively advertised in *The Washington Post* and *The Evening Star*, newspapers published in the District of Columbia, and having a wide circulation in the District of Columbia and various other States of the United States, in that said carpeting was described by such fiber connoting terms among which, but not limited thereto, was "Acrilan," and the true generic name of the fiber contained in such carpeting was not set forth (Admitted in Answer, Par. 6).

41. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents 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:

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

b. A fiber trademark was used in advertising textile fiber products, without a full disclosure of the fiber content information required by said Act, and the regulations promulgated thereunder, in at least one instance in said advertisement, in violation of Rule 41(a) of the aforesaid rules and regulations.

c. 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.

(Admitted in Answer, Par. 6)

42. Moreover, certain of the advertising of respondents regarding carpeting or floor covering set forth information as to fiber content of the floor covering or carpeting, which carpeting contained a backing, filling or padding. Such information was incomplete in that it failed to indicate that the information related only to the face, pile or outer surface of the floor covering and not to the backing, filling or padding,

as is required by the Commission's Rules and Regulations under the Textile Fiber Products Identification Act (Title 16 C.F.R. Section 303.11). Statements in advertising constituting violations of the aforesaid Rule and thereby constituting a misbranding within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act (72 Stat. 1719; 79 Stat. 124; 15 U.S.C. 70 b), include but are not limited to "First Quality Wall-to-Wall Nylon Carpet" (see CX A37 through CX A47 and CX A57 through CX A101).

43. In certain of the advertisements of respondents, the term "Acrilan" was used in reference to carpeting advertised therein without setting forth the generic name of the fiber, as required by Section 4(c) of the Textile Fiber Products Identification Act (see CX A46 through CX A49 and CX A100 through CX A103).

44. In the ordinary course and conduct of their business, as aforesaid, respondents regularly extend consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System (Admitted in Answer, Par. 7; Tepper 404).

45. Subsequent to July 1, 1969, respondents, in the ordinary course of business as aforesaid, and in connection with their credit sales, as "credit sale" is defined in Regulation Z, have caused, and are causing, customers to execute binding retail installment contracts, hereinafter referred to as the "contract" (Admitted in Answer, Par. 7).

46. The fact that respondents use retail installment contracts in the financing of carpeting was further admitted in the testimony of respondent Allen Tepper (Tr. 404) and copies of unexecuted retail installment contracts used by respondents were introduced in evidence (CX F2, CX F3, CX F4, CX F5, CX F6, CX F7, CX F8; Tr. 404).

47. By and through the use of contract, respondents failed to use the term "amount financed" to describe the amount of the credit extended as required by Section 226.8(c)(7) of Regulation Z (Admitted in Answer, Par. 7; see also CX H14, CX H15, CX H18, CX H19, CX H20, CX H23, which are copies of executed conditional sales contracts (Tr. 405-406)).

48. In the ordinary course of their business as aforesaid, respondents have caused to be published, subsequent to July 1, 1969, advertisements of their goods and services as "advertisement" is defined in Regulation Z. In the aforesaid advertisements respondents made, and for some time last past have made, certain statements which aid, promote, or assist, directly or indirectly, in the extension of consumer credit and credit sales as "consumer credit" and "credit sales" are defined in Regulation Z, of which the following statements are illustrative, but not all inclusive:

Initial Decision

85 F.T.C.

NO MONEY DOWN
NO PAYMENT FOR 3 MONTHS

(Admitted in Answer, Par. 7)

49. By and through the use of the advertisements referred to herein, respondents represent, and have represented, directly or by implication, that no downpayment is necessary in connection with the extension of credit.

In truth and in fact, respondents usually and customarily require a downpayment, in violation of Section 226.10(a)(2) of Regulation Z (Admitted in Answer, Par. 7).

50. In the ordinary course of their business as aforesaid, respondents cause to be published advertisements of their goods and services, as "advertisement" is defined in Regulation Z. These advertisements aid, promote, or assist, directly or indirectly, extensions of consumer credit in connection with the sale of these goods and services. By and through the use of the advertisements, respondents use the term "no money down," thereby implying no downpayment is required in connection with a consumer credit transaction, without also stating all of the following items in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) thereof:

- (i) the cash price;
- (ii) the number, amount and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;
- (iii) the amount of the finance charge expressed as an annual percentage rate; and
- (iv) the deferred payment price.

(Admitted in Answer, Par. 7)

See also CX A48, CX A49, CX A102, CX A103 for examples of the advertising of respondents (Tr. 386).

For evidence of the fact that respondents usually and customarily require a downpayment, see copies of executed retail installment contracts CX H3 through CX H26 (Tr. 405-406).

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of respondents Maryland Carpet Outlet, Inc., a corporation, and Allen R. Tepper, individually and as an officer of said corporation.

2. Said respondents have at all times relevant hereto been engaged in interstate commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

3. The aforesaid acts and practices of respondents, as herein found, 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.

4. Pursuant to Section 7(a) and (b) of the Textile Fiber Products Identification Act, respondents' failure to comply with the Textile Fiber Products Identification Act and the rules and regulations promulgated thereunder, constituted, and now constitutes, unfair and deceptive acts and practices, in commerce, and unfair methods of competition in commerce, under the Federal Trade Commission Act.

5. Pursuant to Section 103(q) of the Truth in Lending act, respondents' failures to comply with the provisions of Regulation Z constitute violations of that Act, and pursuant to Section 108 thereof, respondents thereby violated the Federal Trade Commission Act.

LEGAL FINDINGS

Under the *Crowell-Collier* test for interstate commerce jurisdiction (*Crowell-Collier Publishing Company, et al.*, 75 F.T.C. 291 (1969)), corporate respondent qualifies because of the shipments of merchandise from the Maryland Carpet Outlet warehouse in the State of Maryland to customers located in Virginia and the District of Columbia.

In addition to interstate shipments of merchandise, Maryland Carpet Outlet, Inc. has advertised in several newspapers of interstate circulation and television and radio stations having sufficient power to broadcast across state lines. In *Ford Motor Company v. FTC*, 120 F.2d 175 (1941), the interstate distribution of advertising by an intrastate credit corporation was sufficient to support Section 5 jurisdiction. Similarly, in *Guziak v. FTC*, 1966 Trade Cases ¶ 71,794, the Court held that it did not appear to be necessary for jurisdictional purposes that there be any sales attributable to the interstate advertising. The Court noted that, while involved in defining Federal Trade Commission powers under Section 5, a Senate Committee had stated, "Since the powers of the Commission in this respect are injunctive rather than punitive, (it) should have the power to restrain an unfair act before it becomes a method of practice * * *." S. Rep. No. 221, 75th Cong., 1st Sess., 3-4 (1937). This view is in accord with that taken by the Court in *Morton, Inc. v. FTC*, 286 F.2d 158 (1961), a Fur Products Labeling Act case also dealing with the "in commerce" question in which it was held that interstate advertising would give the Commission jurisdiction despite the fact that all sales were intrastate.

If the customer pays for the "free" merchandise or service because it is included in the total price, then it is not free. In other words, if the cost of the "free" item is regularly included in the price of the

merchandise, the use of the term is deceptive *Sunshine Art Studios, Inc., et al.*, *aff'd* 481 F.2d 1171 (1st Cir. 1973).

In determining the impression created by an advertisement, the Commission need not look to the technical interpretation of each phrase but must look to the overall impression likely to be made on the consuming public. *Murray Space Shoe Corporation v. FTC*, 304 F.2d 270 (2d Cir. 1962). In *National Bakers Services, Inc. v. FTC*, 329 F.2d 365 (7th Cir. 1964), the Court said "The important criterion in determining the meaning of an advertisement is the net impression that it is likely to make on the general populace."

It is not essential that the Commission find actual deception to support its complaint when the representations have the capacity to deceive. *Charles of the Ritz Dist. Corp. v. FTC*, 143 F.2d 676 (2d Cir. 1944). In *FTC v. Standard Education Society, et al.*, 302 U.S. 112 (1937), the Court said the fact that a representation "may be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced."

The Commission's expertise to interpret representations and determine their capacity to deceive the consuming public has long been upheld. *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374 (1965).

The use of deceptive advertising to obtain prospects for the sale of merchandise other than that advertised has perhaps been one of the most frequently challenged practices violative of Section 5 of the Federal Trade Commission Act. "Guides Against Bait Advertising" issued in 1959, 4 CCH Trade Reg. Rep., ¶ 39,011.

It is not essential to show evidence of disparagement of the advertised product to find "bait and switch". The Commission may infer that customers were "switched from the advertised product by evidence of bait advertising and minimal sales of the advertised product." *Tashof v. FTC*, 437 F.2d 707 (D.C. Cir. 1970); *Giant Food Inc. v. FTC*, 322 F.2d 977 (1963), *cert. denied*, 376 U.S. 967 (1964).

In this instance, the purchase and sale of the advertised product in minimal. This fact in combination with the poor appearance of the product, disparagement of the product by the salesmen, lack of economic feasibility of sale, and the lack of incentive to sell the advertised product, as well as the advertisements themselves, evidence a bait and switch selling scheme.

The erroneous implication created by respondents that their advertised prices constitute a drastic reduction from their regular prices is in practice similar to that condemned by the Commission in *Giant Food, Inc. v. FTC*, 61 F.T.C. 326 (1962). In that case, the Commission found that respondents were making savings claims by comparing their "Super Giant Low Price" which was actually their

regular selling price with a fictitious "Manufacturers Suggested Price" or "Regular Price." The Commission ordered Giant to refrain from:

Representing in any manner that, by purchasing any of its merchandise, customers are afforded savings amounting to the difference between respondent's stated selling price and any other price used for comparison with that selling price, unless the comparative price used represents the price at which the merchandise is usually and customarily sold at retail in the trade area involved, or is the price at which such merchandise has been usually and regularly sold by respondent at retail in the recent, regular course of its business. (p. 362)

Although the practice of the respondents in the instant case differs from that of *Giant*, the effect on consumers is the same in that they are led to believe that substantial savings from the regular price are available if they purchase carpet during respondents' "sale" or "jubilee" or "carnival," when, in fact, there is no saving.

It is an unfair trade practice to offer an unconditional guarantee in an advertisement or on a customer contract or by oral statement when, in fact, there are undisclosed conditions on the terms of the actual guarantee. The Commission's "Guides Against Deceptive Advertising of Guarantees", 16 C.F.R. 429 (promulgated 4/26/60), apply to guarantees "however made, i.e., in advertising or otherwise." The same disclosures have been required when offering guarantees which have conditions or limitations. *Coro, Inc. v. FTC*, 338 F.2d 149 (1st Cir. 1964), *cert. denied*, 380 U.S. 954 (1965); *Benrus Watch Co. v. FTC*, 352 F.2d 313 (8th Cir. 1965), *cert. denied*, 384 U.S. 939 (1966).

The Commission has determined that its orders should prevent not only the initial deceptive contact through a bait and switch scheme, but should go further to prevent the subsequent manipulation of a customer by high-pressure tactics which preclude a careful consideration of the entire transaction, free from the influence of deceptive sales techniques. *Household Sewing Machine Co., Inc., et al.*, 76 F.T.C. 207 (1956). *FTC v. National Lead Co.*, 352 U.S. 419 (1956).

The Remedy

As previously stated herein, the parties filed briefs and recommended the nature of the sanction to be imposed. It is the contention of counsel supporting the complaint that in order to protect the public interest, corrective advertising such as that set forth in the complaint must be issued:

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.

The respondents, on the other hand, contends that Section 5 of the Federal Trade Commission Act in no way gives the Commission the power to issue an order requiring "the respondents [to] devote a

certain portion of their future advertising to a confession and admission that they have been found by the Federal Trade Commission to have engaged in 'Bait and Switch' tactics." The respondents argue that the recommended remedy is unconstitutional and the taking of property without just compensation. Furthermore, that the public interest does not require an order of such broad scope.

The Commission is vested with broad discretion in determining the type of order necessary to ensure discontinuance of the unlawful practices found. *FTC v. Colgate-Palmolive Co.*, *supra* at 392. The Commission's discretion is limited only by the requirement that the remedy be reasonably related to the unlawful practices found. *Jacob Siegel Co. v. FTC*, 327 U.S. 608, 613 (1946); *Niresk Industries, Inc. v. FTC*, 278 F.2d 337 (7th Cir. 1960), *cert. denied*, 364 U.S. 883. It is well settled that the Commission may require affirmative statements in advertising where failure to make such statements leaves the prospective consumer without all the material facts on which to base his choice as to whether to do business with the advertiser or purchase the product advertised. *FTC v. Algoma Lumber Co.*, 291 U.S. 67, 78 (1934).

The position of the Commission with respect to corrective advertising has been set forth very clearly in *Firestone Tire and Rubber Co.*, 81 F.T.C. 398, 471, where the Commission held that:

An order requiring corrective advertising is well within the arsenal of relief provisions which the Commission may draw upon in fashioning effective remedial measures to bring about a termination of the acts or practices found to have been unfair or deceptive. If such relief is warranted to prevent continuing injury to the public, it is neither punitive nor retrospective.

Corrective advertising orders where necessary and appropriate will violate neither the letter nor the spirit of the First Amendment guarantees of free speech and press and are clearly within the remedial authority of the Commission.

Subsequently, the Commission had occasion to reiterate the theories in *ITT Continental Baking Co. Inc.*, F.T.C. Docket No. 8860, wherein it stated:

We have further evidence that many months after conclusion of the advertising campaign a small percentage of consumers recall the nutritional advertising of respondents though it is not clear from this evidence to what extent those consumers continued to believe that Wonder Bread is an extraordinary food (the misrepresentation found to have been made * * * we cannot find in the record a sufficient basis upon which to conclude that corrective advertising is needed to eliminate the misrepresentation found.

In addition, the Commission has also set forth its position with respect to the imposition of sanctions in both the *Curtis Publishing Company* case, Docket No. 8800, and the *Universal Credit Acceptance Company* case, Docket No. 8821, wherein they very emphatically decided that even in a case of what was deemed restitution, they had the power to, and indeed did in *Universal Credit*, *supra*, impose an

order which was referred to throughout as restitutionary relief. The Commission was reversed in *Universal Credit* by the Ninth Circuit Court of Appeals. However, in *Holiday Magic, Inc.*, Docket No. 8834 [84 F.T.C. 748], the Commission continues to claim the power to order relief as set forth in *Universal Credit*.

Taking into consideration all of the cases that have come before, and the Commission's repeatedly stated position, the undersigned is of the opinion that he is bound by the precedent that has already been established by the Commission.

Therefore, the undersigned concludes that as a result of the respondents' activities, the request of counsel supporting the complaint for corrective advertising is not beyond the scope of the Commission's power, and that in order to stop the respondents and deter others from engaging in acts and practices as set forth herein, the corrective advertising provision of the Commission's order should be imposed. The facts in this case, in the opinion of the administrative law judge, constitute fraud to such a degree that respondents should be stopped by whatever means possible from defrauding the public. Therefore, an order will issue as recommended by counsel supporting the complaint even though the Commission took a different view in *Wilbanks Carpet Specialists, Inc., et al.*, Docket No. 8933 [84 F.T.C. 510]

ORDER

I

It is ordered, That respondents Maryland Carpet Outlet, Incorporated, a corporation, its successors and assigns, and its officers, and Allen R. Tepper, 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 or distribution of carpeting and floor coverings, or any other article of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using, in any manner, a sales plan, scheme, or device wherein false, misleading, or deceptive statements or representations are made in order to obtain leads or prospects for the sale of carpeting or other merchandise or services.

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

3. Advertising or offering merchandise or services for sale when the advertised merchandise or services is inadequate for the purposes for which it is offered.

4. Discouraging or disparaging in any manner the purchase of any merchandise or services which are advertised or offered for sale.

5. Failing to maintain and produce for inspection and copying for a period of three years adequate records to document for the entire period during which each advertisement was run and for a period of six weeks after the termination of its publication in press or broadcast media:

a. the cost of publishing each advertisement including the preparation and dissemination thereof;

b. the volume of sales made of the advertised product or service at the advertised price; and

c. a computation of the net profit from the sales of each advertised product or service at the advertised price.

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

7. Representing, 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.

8. Using the words "Sale," "Clearance," "Pre-Holiday Sale," or any other word or words of similar import or meaning not set forth specifically herein, unless the price of such merchandise or service 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 or service 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.

9. (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 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.

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

11. 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.

12. Representing, directly or indirectly, orally or in writing, that a purchaser of respondents' merchandise or services will receive a "free" vacuum cleaner or kitchen carpeting 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. Representing, directly or indirectly, orally or in writing, that respondents have "over 100" or any other number of patterns and colors of carpeting in stock unless respondents have the stated number of patterns or colors in stock and available for immediate sale and delivery; or misrepresenting, in any manner, the colors, patterns, size, kind or quantity of carpeting in stock and available for sale, delivery or installation.

19. Representing, directly or indirectly, orally or in writing, that a stated price for carpeting or floor coverings includes the cost of a separate padding and the installation thereof, unless in every instance where it is so represented the stated price for floor covering does, in fact, include the cost of such separate padding and installation thereof; or misrepresenting in any manner, the prices, terms or conditions under which respondents supply separate padding in connection with the sale of floor covering products.

20. Representing, directly or indirectly, orally or in writing, that respondents employ or have available for their prospective customers a

trained, qualified interior decorator; or misrepresenting in any manner, the training or qualifications of any of respondents' employees, agents, or representatives.

21. Representing, directly or indirectly, orally or in writing, that any product or service is guaranteed unless the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed; and respondents deliver to each purchaser a written guarantee clearly setting forth all of the terms, conditions and limitations of the guarantee fully equal to the representations, directly or indirectly, orally or in writing, made to each such purchaser, and unless respondents promptly and fully perform all of their obligations and requirements under the terms of each such guarantee.

22. 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.

23. 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.

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

Initial Decision

85 F.T.C.

NOTICE OF CANCELLATION

[enter date of transaction]

(date)

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)

25. 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.

26. 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.

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

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

29. 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.

30. 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.

31. 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.

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

Provided, however, That nothing contained in Part I of 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 proper showing, shall make such modifications as may be warranted in the premises.

II

It is further ordered, That respondents Maryland Carpet Outlet, Incorporated, a corporation, its successors and assigns, and its officers, and Allen R. Tepper, 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 introduction, sale, advertising, or offering for sale, in commerce, or the transportation or 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:

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

B. Falsely and deceptively advertising textile products by:

1. Making any representations by disclosure or by implication, as to fiber content of any textile fiber product in any written advertisement which is used to aid, promote or assist, directly or indirectly, in the sale, or offering for sale, of such textile fiber product unless the same information required to be shown on the stamp, tag, label or other means of identification under Sections 4(b)(1) and (2) of the Textile Fiber Products Identification Act is contained in the said advertisement, except that the percentages of the fibers present in the textile fiber product need not be stated.

2. Failing to set forth in advertising the fiber content of floor covering containing exempted backings, fillings or paddings, that such disclosure 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.

III

It is further ordered, That respondents Maryland Carpet Outlet, Incorporated, a corporation, its successors and assigns, and its officers, and Allen R. Tepper, 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 any extension of consumer credit or advertisement to aid, promote, or assist directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in

Regulation Z (12 CFR §226) of the Truth in Lending Act (Pub.L. 90-321, 15 U.S.C. 1601, *et seq.*), do forthwith cease and desist from:

1. Failing to use the term "amount financed" to describe the amount of credit extended, as required by Section 226.8(c)(7) of Regulation Z.

2. Representing, directly or indirectly, orally or in writing, that no downpayment will be required unless respondents usually and customarily accept no downpayment, in accordance with Section 226.10(a)(2) of Regulation Z.

3. Representing, directly or indirectly, in any advertisement as "advertisement" is defined in Regulation Z, the amount of the downpayment required or that no downpayment is required, the amount of any installment payment, the dollar amount of any finance charge, the number of installments or the period of repayment, or that there is no charge for credit, unless all of the following terms are stated in terminology prescribed under Section 226.8 of Regulation Z:

- (i) the cash price;

- (ii) the amount of the downpayment required or that no downpayment is required, as applicable;

- (iii) the number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;

- (iv) the amount of the finance charge expressed as an annual percentage rate; and

- (v) the deferred payment price.

4. Failing in any consumer credit transaction or advertisement to make all disclosures determined in accordance with Sections 226.4 and 226.5 of Regulation Z at the time and in the manner, form and amount required by Sections 226.6, 226.8 and 226.10 of Regulation Z.

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

The Federal Trade Commission has found that we 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.

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

It is further ordered, That 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, or to advertise, promote, or sell 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 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 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 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 individual respondent, Allen R. Tepper, 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.

OPINION OF THE COMMISSION

APRIL 22, 1975

BY HANFORD, *Commissioner*

Respondents appeal from that part of the order entered by the administrative law judge constituting a "consumer warning" requirement, which provides that respondents must include the following disclosure in all of their advertisement:

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.

This is the sixth time within the past year that we have been faced with the question of whether such a warning is justified in a contested carpet bait and switch case. In each of the five earlier instances, we determined that the record did not support such a requirement.¹ In framing his order, Administrative Law Judge Lynch took into account this Commission position, but nevertheless ordered consumer warning relief here because he believed that "the facts in this case* * * constitute fraud to such a degree that respondents should be stopped by whatever means possible from defrauding the public."² We have reviewed the record in this proceeding with care and find nothing exceptional about the conduct of these respondents when compared with the conduct of respondents in the five earlier proceedings. Fraud is the essence of bait and switch. To the extent that it was present here, it was also present in the earlier cases in which we declined to order consumer warning relief. Therefore we find it necessary to delete Judge Lynch's "consumer warning" from the order. This determination is, of course, without prejudice to the Commission's right to reopen this proceeding to consider the imposition of a "consumer warning" requirement, or to seek imposition of such relief in a civil penalty action against respondents,³ should their future conduct warrant either course of action.

In all other respects, the order of the administrative law judge is affirmed.

FINAL ORDER

This matter has come before the Commission on the motion of

¹ Wilbanks Carpet Specialists, Inc., *et al.*, Docket 8933 (Sept. 24, 1974 [84 F.T.C. 510]), Tri-State Carpets, Inc., *et al.*, Docket 8945 (October 15, 1974 [84 F.T.C. 1078]), Theodore Stephen Co., Inc., *et al.*, Docket 8944 (Jan. 28, 1975 [85 F.T.C. 152]), Sir Carpet, Inc., *et al.*, Docket 8981 (Feb. 6, 1975 [85 F.T.C. 190]), Freight Liquidators, Inc., *et al.*, Docket 8937 (Feb. 25, 1975 [85 F.T.C. 274]).

² Initial decision at 31 [p. 783, herein].

³ Section 5(1) of the Federal Trade Commission Act (15 U.S.C. Sec. 45(1)) empowers district courts hearing civil penalty actions "to grant mandatory injunctions and such other and further equitable relief as they deem appropriate in the enforcement of * * * final orders of the Commission."

respondents for consideration of the question whether the consumer warning provision ordered by the administrative law judge should be adopted as part of the Commission's cease and desist order. The Commission has determined that this matter is indistinguishable from the matters of *Wilbanks Carpet Specialists, Inc., et al.*, Docket 8933 [84 F.T.C. 510], *Tri-State Carpets, Inc., et al.*, Docket 8945 [84 F.T.C. 1078], *Theodore Stephen Co., Inc., et al.*, Docket 8944 [85 F.T.C. 152], *Sir Carpet, Inc., et al.*, Docket 8981 [85 F.T.C. 190], and *Freight Liquidators, Inc., et al.*, Docket 8937 [85 F.T.C. 274], inasmuch as the record presents insufficient evidence that a consumer warning is a necessary or appropriate means for the termination of the acts or practices complained of or for the prevention of their recurrence. Having declined to order a consumer warning in the five earlier matters, the Commission has concluded that the same disposition is warranted herein.

Accordingly, the initial decision issued by the judge should be modified in accordance with the foregoing views of the Commission, and as so modified, adopted as the decision of the Commission.

It is ordered, That the initial decision issued by the administrative law judge be modified by striking therefrom the following:

Those portions of the conclusions of law which concern "consumer warning" relief (at pp. 29-31 *sub nom.* "THE REMEDY"); and the first "FURTHER ORDERED" paragraph of Part III of the order to cease and desist issued by the judge (at pp. 51-52).

As so modified, the initial decision is hereby adopted.
