

IN THE MATTER OF

CENTRAL CARPET CORPORATION, INC., ET AL.

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

Docket 8980. Complaint, July 8, 1974—Decision, June 12, 1975

Consent order requiring a Bradbury Heights, 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.

Appearances

For the Commission: *Everette E. Thomas, Richard F. Kelly, M. McGill, Alice Kelleher, Alan L. Cohen.*

For the respondents: *Jeremiah D. Griesemer, Wash., D. C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Central Carpet Corporation, Inc., a corporation, and James A. Taylor, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PAR. 1. Respondent Central Carpet Corporation, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its principal office and place of business located at 4407 Southern Ave., Bradbury Heights, Md.

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

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale, distribution and installation of carpeting and floor coverings to the public.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their said merchandise, when sold, to be shipped from their place of business located in the State of Maryland, to purchasers thereof located in various other States in 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, and by oral statements and representations 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:

\$109

3 Rooms

NYLON PILE CARPET

Quality Wall to Wall

Complaint

85 F.T.C.

up to 270 sq. ft.

* * * * *

Free
38 Piece
Ovenware Set
When you purchase 3 rooms
of our Deluxe 501 Nylon Carpet
Call Now

* * * * *

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

1. Respondents are making a bona fide offer to sell the advertised carpeting and floor coverings at the price and on the terms and conditions stated in the advertisements.

2. Purchasers of the said Dupont 501 Carpet receive a "free" 38-piece ovenware set.

PAR. 6. In truth and in fact:

1. Respondents' offers are not bona fide offers to sell carpeting and floor coverings at the price and on the terms and conditions stated in the advertisements. To the contrary, said offers are made for the purpose of obtaining leads to persons interested in the purchase of carpeting. Members of the purchasing public who respond to said advertisements are called upon in their homes by respondents' salesmen, who make no effort to sell to the prospective customer the advertised carpeting. Instead, they exhibit what they represent to be the advertised carpeting which, because of its poor appearance and condition, is frequently rejected on sight by the prospective customer. Higher priced carpeting or floor coverings of superior quality and texture are thereupon exhibited, which by comparison disparages and demeans the advertised carpeting. By these and other tactics, purchase of the advertised carpeting is discouraged, and respondents' salesmen attempt to sell and frequently do sell the higher priced carpeting.

2. Purchasers of respondents' Dupont 501 Carpet do not receive a free 38-piece ovenware set. To the contrary, the cost of the "free" gift is added to and regularly included in the selling price of the merchandise sold to the customer.

Therefore, the statements and representations as set forth in

Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. In the further course and conduct of their business, and in furtherance of a sales program for inducing the purchase of their carpeting and floor coverings, respondents have engaged in the following additional unfair, false, misleading and deceptive acts and practices:

In a substantial number of instances, through the use of the false, misleading and deceptive statements, representations and practices set forth in Paragraphs Four through Six, above, respondents or their representatives have been able to induce customers into signing a contract upon initial contact without giving the customer sufficient time to carefully consider the purchase and consequences thereof.

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

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

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

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

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

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

Furthermore, respondents' use of square foot measurements exag-

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

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

PAR. 11. In the further course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition in commerce, with corporations, firms and individuals in the sale and distribution of rugs, carpeting and floor coverings and services of the same general kind and nature as those sold by respondents.

PAR. 12. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, acts and practices, and their failure to disclose material facts, as aforesaid, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and complete and into the purchase of substantial quantities of respondents' products and services by reason of said erroneous and mistaken belief.

PAR. 13. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

INITIAL DECISION BY ALVIN L. BERMAN, ADMINISTRATIVE LAW
JUDGE

APRIL 17, 1975

PRELIMINARY STATEMENT

The Federal Trade Commission issued its complaint in this proceeding on July 8, 1974, charging respondents Central Carpet Corporation, Inc., a corporation, and James A. Taylor, individually and as an officer of said corporation, with having engaged in unfair and deceptive acts and practices and unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act.

More specifically, respondents were charged with (1) having engaged in bait and switch tactics in the advertising and sale of carpeting, (2) falsely representing that customers would receive a "free" gift, (3) utilizing the aforesaid acts and practices to be able to induce a customer

into signing a contract upon initial contact without giving him sufficient time to carefully consider the purchase and the consequences thereof, (4) failing to disclose the fact that advertised prices for stated areas of coverage are not applied to additional quantities required, but that the rates for such additional quantities are substantially higher and (5) offering carpeting for sale in terms of a price for a number of square feet, *e.g.*, "up to 270 sq. ft.," and so (a) confusing customers who attempt to compare respondents' prices with those of competitors who advertise on a square yard basis (the usual and customary unit of measurement employed in retail advertising of carpets) and (b) exaggerating the size or quantity of carpeting offered.

Respondents, who at the time were being represented *pro se* by James A. Taylor, were granted an extension of time for filing an answer to the complaint. Respondents filed their answer on Sept. 26, 1974, admitting the complaint in part but denying the allegations of violation.

After, on two separate occasions, allowing respondents additional time to respond to complaint counsel's request for admissions, hearings were scheduled to commence on Jan. 6, 1975. While respondents were in default in responding to the request for admissions, upon an appearance of counsel for respondents on Dec. 23, 1974, and upon motion of that counsel, a tardy response to the request for admissions was allowed to be filed and hearings were scheduled to commence on Jan. 20, 1975. Hearings were held on Jan. 20, 1975 through Jan. 23, 1975, at the conclusion of which the record was closed. Proposed findings were filed by the parties on Feb. 24, 1975, and respondents filed a reply on Mar. 12, 1975.

This initial decision is based on the record as a whole and upon a consideration of the demeanor of the witnesses who gave testimony in this proceeding. References to particular parts of the record are frequently cited as examples only. Proposed findings of fact and conclusions of law submitted by the parties have been given careful consideration and to the extent not included herein in the language proposed or in substance are rejected as not supported by the record or as immaterial or irrelevant.¹

¹ References to the record are set forth in parentheses, and certain abbreviations, set forth below, are used:

Ans. - Respondents' answer to the complaint.

RPF - Proposed findings of fact submitted by respondents, followed by the page being referenced.

RRB - Reply brief submitted by respondents, followed by page being referenced.

CX - Commission's exhibit, followed by number of exhibit being referenced.

RX - Respondents' exhibit, followed by number of exhibit being referenced.

RRA - Respondents' reply to request for admissions, followed by number of the reply being referenced.

Tr. - Official transcript of the formal hearings, followed by the page number being referenced and preceded by the name of the witness whose testimony is being referenced.

FINDINGS OF FACT

1. Respondent Central Carpet Corporation, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal place of business and office located at 4407 Southern Avenue, Bradbury Heights, Md. (RRA 1-6; Ans.; Taylor, Tr. 7).

2. Respondent James A. Taylor is an individual and an officer of the corporate respondent Central Carpet Corporation, Inc. His business address is the same as that of the corporate respondent. Mr. Taylor is the president and sole shareholder of Central Carpet Corporation, Inc. He formulates, directs and controls the acts and practices of the corporate respondent and has at all times done so. He formulated, directed and controlled the acts and practices of Central Carpet Company, the predecessor to the corporate respondent. Central Carpet Company started doing business on Jan. 5, 1973. The business was taken over by Central Carpet Corporation, Inc. when it was incorporated on May 1, 1973. Mr. Taylor was the only salesman employed by Central Carpet Company. He was the only salesman for Central Carpet Corporation, Inc., until Oct. 5, 1973 (RRA 10, 11, 13; Taylor Tr. 54, 58, 59, 306).

3. Respondents are now and for some time last past have been engaged in the advertising, offering for sale, sale and distribution and installation of carpeting and floor coverings to the public. Their gross sales for 1973 were close to \$200,000. At all relevant times mentioned herein, respondents have maintained a substantial course of trade in merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, in that they now sell and ship, and for some time last past have sold and shipped, carpet from their place of business located in the State of Maryland to purchasers located in Maryland, Virginia and the District of Columbia. Respondents, moreover, are engaged in commerce by virtue of their extensive advertising in Washington area newspapers which circulate in interstate commerce (RRA 12, 45-74; Ans.; Taylor, Tr. 8, 57-59, 82, 83).

4. Respondents at all relevant times mentioned herein 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 (Ans.; Taylor, Tr. 13).

5. Respondents advertised heavily in Washington area newspapers for the purpose of obtaining leads for, and inducing the purchase of, their carpeting and floor covering during the period from Jan. 7, 1973 to Oct. 6, 1974. At present, they advertise weekly in the TV Guide Section

of the Washington Star-News (Taylor, Tr. 83, 311; RRA 26). The record contains 13 Cental Carpet advertisements placed in the Washington Star-News by, or at the direction of, the respondents between Jan. 7, 1973 and Oct. 6, 1974, which are representative of all advertising placed by respondents during the relevant time period for the purpose of inducing the purchase of their carpeting and floor covering (CX 251-263; RRA 45-70).

6. CX 251, the earliest of respondents' advertisements in the record, appeared in the Washington Star and Daily News on Jan. 10, 1973. Identical advertisements appeared in that newspaper on Jan. 7, 14 and 21, 1973 (RRA 45, 46). It reads as follows:

3	Quality Wall to Wall	FREE
ROOMS	NYLON PILE CARPET	SHOP-AT-HOME
		DECORATOR
		SERVICE
	Up to 270 Sq. Ft.	
	PRICE INCLUDES	\$109
	SEPERATE (sic)	Call Anytime 'till
	CUSHION-EZE PADDING	11 PM
	AND INSTALLATION!	For Free Home
		Demonstration

7. CX 252 featured the same representations as CX 251 with the addition of an offer of a "Free 38 Piece-Ovenware Set" with the purchase of 3 rooms of Delux 501 Nylon Carpet. The availability of other carpets was also noted. This advertisement appeared in the Washington Sunday Star and Daily News TV Magazine on Mar. 4, 1973. Identical advertisements appeared on Jan. 28, 1973, Feb. 4, 11, 18 and 25, 1973, Mar. 11, 18 and 25, 1973 and Apr. 1 and 18, 1973 (RRA 47, 48). It reads as follows:

Initial Decision

85 F.T.C.

FREE Shop-At-Home decorator service

3 ROOMS		Easy Terms
NYLON PILE CARPET		to fit
QUALITY WALL TO WALL	\$109	your budget
UP TO 270 Sq. Ft.		
CALL ME NOW		
ASK ABOUT THESE OTHER	PRICE	FREE
BEAUTIFUL CARPETS	INCLUDES	38 PIECE
Shag	SEPARATE	OVENWARE SET
DuPont 501	CUSHION-EZE	When you purchase
Indoor-Outdoor	PADDING	3 Rooms of Our
Runners	and installation	Deluxe 501 Nylon
Mill Ends, Etc.		Carpet. Call Now
ALL SIZES AND COLORS		Custom Tackless
		Installation

8. CX 253 contained representations identical to those of CX 252. It appeared in the Washington Sunday Star and Daily News TV Magazine on Apr. 15, 1973. Identical advertisements appeared on Apr. 22 and 29, 1973, and May 6 and 13, 1973 (RRA 49, 50).

9. Respondents' advertisements appearing on May 20, 1973, and thereafter changed the offer of "3 Rooms" to "Any 3 Areas" or "Up to 3 Areas" of Nylon Pile Carpet (CX 245-63; RRA 51-69), and added a parenthetical "(30 Sq. Yds.)" after the offer of "270 Sq. Ft.". The "free gift" was changed to that of one room carpeted free - any size up to 12 x 10 with the purchase of 3 rooms of Deluxe 501 Nylon Carpet in CX 258 and 259; and again changed to an offer of "free" draperies for one window, with the purchase of three rooms of Deluxe 501 carpeting in CX 260 and 261. After Feb. 3, 1974, respondents' advertisements contained no representations as to any "free" gift (RRA 58-65). Of respondents' advertisements appearing after Aug. 19, 1973, several gave the price charged for additional yardage over the advertised 270 square feet (CX 257, 258, 260-62; RRA 56-59, 62-67).

10. Throughout respondents' advertising, though changed as set forth above, certain themes remain constant. The most arresting feature in each of the advertisements is the highlighted price of \$109, focusing the consumer's attention on the dominant representation that "3 rooms" or "areas" of "quality" nylon pile carpeting are being offered for \$109 (Findings 6-9, *supra*). The words, "up to 270 sq. ft.," read in the context of the entire advertisements, do not detract from or limit the dominant representation that 3 rooms of quality nylon pile carpet may be had for \$109. Indeed, those words could reasonably lead the consumer to believe that 270 square feet is the amount that would adequately cover the average three rooms, thus making it logical for

the advertiser to advertise in terms of "rooms." Visual inspection of respondents' advertisements in the record by the undersigned as well as consumer testimony compel the conclusion that "3 rooms" of "quality" nylon pile carpet for \$109 was in each instance respondents' dominant offer. The testimony of consumer witness John Smith, on cross-examination by respondents' counsel, is instructive on this point:

Q. Do you recall seeing in the advertisement in the TV Guide a statement that you should call Central about their other carpets, shags, DuPont 501, indoor-outdoor, runners et cetera?

A. No sir, I don't remember seeing that. If it was there I overlooked it because this type carpeting was run on a special price that I was interested in and I focused all my attention on that (Tr. 254).

(And see Mylechraine, Tr. 183-84; Kirtley, Tr. 213-14; Felder, Tr. 240-41; Lewis, Tr. 256).

11. By and through the use of the above-described type of advertisements (Findings 6-10, *supra*), respondents have represented and are now representing that they were and 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 their advertisements, and that the carpeting was suitable for the uses for which advertised (Ans., Taylor, Tr. 9).

12. In truth and in fact, respondents' advertisements did not constitute bona fide offers to sell the advertised carpeting on the terms and conditions stated in the advertisements, and the carpeting was not suitable for the uses for which advertised. To the contrary, the advertisements were used primarily for the purpose of obtaining leads to persons interested in purchasing carpeting in order to sell such persons more expensive carpeting (Findings 13-17, *infra*).

13. Consumers who responded to respondents' advertisements were called upon in their homes by respondent James Taylor or another salesman of respondent Central Carpet Corporation. The salesman would exhibit what was represented as the advertised carpet² (CX 249, RX 2, 3 or 4). Far from being "quality" carpet, the advertised carpet was of such poor appearance and condition that it was virtually self-disparaging and was frequently rejected on sight by the prospective customer. Respondent Taylor himself admitted that the carpeting (CX 249) was "at the low end of the spectrum of carpet offered by respondents or anyone" (RPF, p. 3); that while "the looks of the carpet [RX 2 and 3] is extremely better* * *, [t]he wear is not that much better" and that RX 4 is "possibly better" (Tr. 322-23). Albert Wahnnon, editor of Floor Covering Weekly, the leading trade publication in the

² CX 249 is the carpeting sold as the "advertised" carpeting from Jan. 5, 1973 through approximately June 1974 (Taylor, Tr. 322-26; RRA 15). CX 250 is the accompanying "cushion-eze" padding. Respondents substituted RX 2, 3 or 4 for CX 249, selling them as the "ad carpet," beginning in mid-1974, sometimes selling them concurrently (Taylor, Tr. 313-26.)

floor covering industry and one which regularly reviews advertisements in that industry, qualified as an expert witness in carpeting and carpet advertising (Wahnon, Tr. 409-15; RPF, p. 2). He too was of the opinion that the carpet (CX 249) was at the low end of the spectrum; that "it could not withstand too great wear * * * you could not walk over it too many times with shoes." (Wahnon, Tr. 428). The reaction of the consumer witnesses who testified in this proceeding, upon being shown the advertised carpeting, supports respondent Taylor's and Mr. Wahnon's assessment of the carpeting. Witness Mary Young's testimony was typical:

Q. What did the carpeting sample look like?

A. It was just cheesy, real thin, and looked like it had been washed, and everything.³ (Young, Tr. 172)

(And see Mylechraine, Tr. 185; Beck, Tr. 202-03; Kirtley, Tr. 215-16; Hughes, Tr. 225; Felder, Tr. 242; Smith, Tr. 205; Lewis, Tr. 299).

14. Not only was the appearance of the advertised carpeting shoddy and patently unsuitable, but in some instances, Central Carpet salesmen openly disparaged the advertised carpeting and drew unfavorable comparisons with the higher priced lines. For example, witness Mylechraine testified as follows:

Q. Did Mr. Taylor make any remarks to you about the [advertised] carpet?

A. He said it was, more or less, for people that were going to be moving and that they would just leave it behind. (Tr. 185)

Mrs. Eleanor Lewis testified similarly:

Q. What happened when the salesman came into your home?

A. Well, he had a sample of the carpet and he showed me what was on the ad. He told me by having children it was no good, it wouldn't last.

Q. What did that advertised sample look like?

A. A piece of cheesecloth.

Q. Then what happened after the salesman said this to you about that sample?

A. He showed me better, he told me that was a better carpet, that it would last. (Tr. 258)

Respondents' own witness, Mary E. Lewis, testified to respondent James Taylor's comments on the advertised carpet as follows:

Q. What did he say about the carpet he was advertising?

A. He said the carpet he was advertising was you know, he showed me the threads and everything in it, and he said it would not hold up too long. (Tr. 302)

(And see Hughes, Tr. 226; Smith, Tr. 251). Respondent Taylor himself testified that he always told and tells his customers that the advertised

³ This is similar to the reaction of the undersigned to his examination of CX 249.

carpeting will last only one to three years, while the higher priced DuPont 501 will last 20 to 30 years (Taylor, Tr. 151-52). All carpets other than the advertised \$109 grade are represented as being longer lasting. The time period represented has varied from five years to the 20 to 30 years for the DuPont 501 quality (Taylor, Tr. 151-52; Mylechraine, Tr. 185-86; Hughes, Tr. 226; Eleanor Lewis, Tr. 258; Epps, Tr. 389).

Still another drawback to, or limitation of suitability of, the advertised carpet was the fact that it was available only in from two to four colors, whereas each of the other carpets displayed by respondents came in six or seven colors (Taylor, Tr. 88; Hughes, Tr. 225; Smith, Tr. 250).⁴ As respondent Taylor explained, when he goes into a house he takes and displays seven different carpets, including the advertised \$109 carpet. While he shows the \$109 carpet first, he tries to ascertain what color the prospective customer is interested in (Taylor, Tr. 347).

15. Upon rejecting the advertised carpeting, customers are shown better quality carpeting by their Central Carpet salesmen which, by comparison, further serves to disparage the advertised carpeting. (See, *e.g.*, Young, Tr. 172; Mylechraine, Tr. 185-86; Beck, Tr. 203; Kirtley, Tr. 216; Hughes, Tr. 226; Smith, Tr. 251).

16. Under these circumstances and by these tactics, respondents are able to push their higher priced lines of carpeting to the virtual exclusion of the low-priced advertised carpet. Respondents made very few sales of the advertised carpeting at the price and on the terms set forth in the advertisements. There are in the record copies of customer contracts and charge tickets which reflect all sales of carpeting by respondents, except those made by James A. Taylor while working for other firms, namely Sir Carpet and Maryland Carpet Company, between Jan. 7, 1973 and Oct. 5, 1973 (CX 110-24; CX 126-29, 131-248; RRA 40). SALES OF THE ADVERTISED carpet (CX 249) can be identified on contracts and charge tickets as "nylon pile" or "nylon cut pile" (RRA 18; Taylor, Tr. 67). An examination of the exhibits reveals that only two contracts (CX 110 and 233) out of a total of 137 sales for this period were for the sale of the advertised carpet. Of these sales, only one (CX 110) was at the sale price of \$109, and that was to cover a "living area" only; the other (CX 233) was for the substantially higher cash price of \$381 for living room, dining room and hall. Therefore, less than one percent of Central Carpet's sales, for the only period for

⁴ Customer Hughes, for example, was shown two colors of the advertised carpet (Hughes, Tr. 225). Customer Smith was shown three (Smith, Tr. 250).

which complete records are in evidence, was for the sale of the advertised carpet at or less than the advertised price.⁵

Over 98 percent of the total sales were for more than \$109.⁶ Approximately 100 sales, or more than 73 percent of the total sales in evidence, were for more than \$400, excluding tax and finance charges. Approximately 54, or nearly 40 percent, were for over \$500. Nearly 22 percent were at prices greater than \$600. Five percent of total sales in the record were for prices greater than \$800, exclusive of tax and finance charges, and three customers made purchases of over \$1000.

17. The representations set forth in Findings 10 and 11, *supra*, were false, misleading and deceptive and had the tendency and capacity to deceive members of the purchasing public.

18. Respondents' advertisements, as set forth in Findings 7-9, *supra*, have represented further that purchasers of the DuPont 501 carpet receive a "free" 38-piece ovenware set or other "free" gift.

19. In truth and in fact, purchasers of respondents' DuPont 501 carpet did not receive a "free" 38-piece ovenware set. Respondents have no regularly established selling price for their carpet on which a "free" offer could be based (Taylor, Tr. 61-62). Moreover, the cost of the ovenware set was regularly included by respondents in the selling price of the carpet sold to such customers. Respondents state that they carried the cost of each ovenware set in their advertising budget from March through September 1973 (RPF, p. 4). It is irrelevant where they "carried" this cost. Respondent James Taylor himself testified that he included the cost of this "free" gift in calculating the price of his carpeting (Taylor, Tr. 61) (And see RRA 43). Moreover, he admitted that at times he has reduced the price of a customer's purchase on condition that the customer forego the "free" gift (Tr. 103-05, 133; CX 121, 156, 158, 179; RPF, p. 4).

20. Since purchasers of respondents' DuPont 501 did not in fact receive a "free" gift of ovenware with their purchase of carpeting, respondents' representation as set forth in Finding 18 is unfair, misleading and deceptive, and has the tendency and capacity to deceive members of the purchasing public.

21. During the period between Jan. 7, 1973 and May 13, 1973, respondents advertised carpeting in terms of square feet only (CX 251, 252, 253; Findings 6-8, *supra*), using the phrase "up to 270 sq. ft.". After that date, they added a parenthetical "(30 sq. yds.)" to the "270 sq. ft." Respondent Taylor admitted that this change was made in response to

⁵ The situation may realistically be viewed as no "advertised" sales having been made. The one sale of the advertised quality of carpet at \$109 was to cover one room. The newspaper offer represented that three rooms or areas would be covered for \$109 (Finding 10, *supra*).

⁶ There were two sales of pieces of carpeting—other than the advertised carpeting—at less than \$109.

"F.T.C. displeasure" (RPF, p. 2); that he was "nudged a little" by the Federal Trade Commission (Taylor, Tr. 137).

22. Mr. Albert Wahnnon, the expert in the field of retail carpet advertising (Finding 13, *supra*), testified that the customary and, in fact, standard unit of measurement employed by carpet retailers in their advertisements is the square yard (Wahnnon, Tr. 424-25). Respondents themselves admitted that, except for certain carpet dealers who advertise quantities of carpet in terms of a number of rooms for a stated price, the unit of measurement usually and customarily employed in the retail advertising of carpet is the square yard (RRA 39).

23. Since the unit of measurement customarily employed in the retail advertising of carpet is the square yard, consumers are accustomed to comparing prices of carpeting in terms of price per square yard. Respondents' use of "square feet" alone in their advertisements inhibited an accurate comparison, tended to exaggerate the amount of carpet being offered, both absolutely and in comparison to competitors who advertised in terms of square yards, and thus had the tendency and capacity to mislead and deceive consumers into believing they would get more carpeting for their money than was the fact. This tendency was bolstered by other representations in the advertisements that the offered carpeting would be sufficient for "three rooms" or "3 areas" wall to wall. Moreover, testimony in the record indicates that consumers were in fact deceived into thinking that the offered amount of 270 square feet would cover the areas they desired to carpet, when in fact those areas were much larger (Mylechraine, Tr. 188; Kirtley, Tr. 214; Hughes, Tr. 224-25; Felder, Tr. 243).

24. Between Jan. 7, 1973 and Aug. 19, 1973, respondents offered their featured advertised carpeting in terms of a set quantity-270 square feet or 30 square yards-for \$109. This is an effective rate of approximately \$3.63 per square yard (Findings 6-9, *supra*). In making such offers, respondents failed to reveal the material fact that, for additional quantities of the carpeting over and above the stated amount customers would be charged, variously \$5.99 or \$7.00 per square yard (RRA 21; Taylor, Tr. 92-93). Beginning with September 23, 1973, several of respondents' advertisements supplied the information that quantities of the advertised carpeting over and above 270 square feet would cost the purchaser \$5.99 per square yard (CX 257, 258, 260-63; finding 9, *supra*). Respondents admitted that this change in their advertisements was made as a result of "F.T.C. displeasure", that they were "nudged by the Federal Trade Commission" into making the change (RPF 2; Taylor, Tr. 335).

25. Respondents' failure to disclose the aforementioned material fact had the tendency and capacity to deceive consumers into believing that prices charged for quantities of carpeting in excess of the featured area would be at a rate identical to, or at least not substantially higher than, that indicated for the specified area.

26. Through the use of the unfair, false, misleading and deceptive statements, misrepresentations and practices found above, respondents and their salesmen have been able to induce customers into signing contracts upon initial contact, without giving them time to consider carefully the purchase and the consequences thereof. Ninety-nine percent of respondents' sales leads are from newspaper advertisements featuring the \$109 carpet (Taylor, Tr. 311). The consumer witnesses who testified in this proceeding were almost uniformly attracted to respondents' offer of carpeting for \$109; yet they and practically all of respondents' customers signed contracts on the initial contact for more expensive carpeting in amounts costing substantially more than the featured \$109 (Findings 10, 16, *supra*). Respondent Taylor testified that "99.44 percent" of his sales were consummated on the initial visit to the customer's home (Tr. 153).

DISCUSSION

Individual Liability of James A. Taylor

Respondents make no argument against holding James A. Taylor liable in his individual capacity for the acts and practices that may be found unfair and deceptive. It is settled that to prevent erosion of its orders, the Federal Trade Commission has the authority to name individually, officers, directors and the stockholders of corporations when they have participated in or controlled the challenged acts or practices. *Federal Trade Commission v. Standard Education Society*, 302 U.S. 112 (1937); *Rayex Corporation v. Federal Trade Commission*, 317, F.2d 290 (2d Cir. 1963); *Standard Distributors v. Federal Trade Commission*, 211 F.2d 7 (2d Cir. 1954). As the individual solely responsible for every facet of Central Carpet Corporation, Inc.'s operations, James A. Taylor is unquestionably liable for the acts and practices found herein.

The Unfair and Deceptive Acts and Practices

"Bait and Switch"

Bait advertising is an alluring but insincere offer to sell a product or service which the advertiser in truth does not intend or want to sell. Its purpose is to switch consumers from buying the advertised merchandise in order to sell something else, usually at a higher price or on a basis more advantageous to the advertiser. The primary aim of a bait advertisement is to obtain leads as to persons interested in buying

merchandise of the type so advertised. *Guides Against Bait Advertising*, 16 C.F.R. §238.0 (1957). Bait advertising and the practice of bait and switch whereby the customer responding to the "bait" is "switched" to a higher priced item have been repeatedly condemned by the Commission and the courts. *Tashof v. Federal Trade Commission*, 437 F.2d 707 (D.C. Cir. 1970); *Consumers Products of America, Inc. v. Federal Trade Commission*, 400 F.2d 930 (3rd Cir. 1968), *cert. denied*, 393 U.S. 1088; *Guides Against Bait Advertising*, 16 C.F.R. §238.1-4 (1975). Factors evincing bait advertising and a bait and switch scheme include, among others, the use of an offer using statements or illustrations that create a false impression of the grade, quality or usability of the offered product such that on disclosure of the true facts, the purchaser might be switched to another product; and the discouragement of the purchase of the advertised article by refusing to show it, disparaging the product by acts or words, or showing of a product which is defective, unusable or impractical for the purpose represented or implied in the advertisement. *Guides, supra*, §238.2(a), 238.3(a), (b), (e).

In light of the above, it is clear that respondents' advertising and selling practices constitute a bait and switch scheme. The "bait" here, which successfully caught the attention of consumers, is low quality, inferior and very unattractive carpeting, limited as to colors in which available, advertised and offered as "quality" "wall to wall" carpeting in amounts sufficient to cover three rooms or three areas at a very low price. In no way could this be considered a bona fide offer. The terms of the offer could not in fact be filled, because the product referred to was in fact *not* "quality"—with all that the word implies in terms of durability and attractiveness, *nor* was it suitable for wall to wall installation, *nor* would the amount offered usually cover three rooms or three "areas." The offer was patently a means of obtaining leads to persons who wanted carpeting. Exhibition of the advertised carpet was generally sufficient in itself to switch the prospective customer to higher priced carpeting—it was a self-disparaging product. The record here is devoid of some of the more outrageous examples present in other cases of salesmen's efforts to disparage their product and discourage its purchase, although even here, respondents' salesmen did point out all the shortcomings of their featured carpet.

As discussed above, the poor appearance of the carpet, together with the few colors in which it was available, made it unnecessary for the salesman to do more than merely exhibit the carpet to disparage it. At any rate, it is not essential to show evidence of actual disparagement of the advertised product to find "bait and switch." It may be inferred that customers were "switched" from the advertised product by

evidence of bait advertising, present here, and minimal sales of the advertised product. *Tashof v. Federal Trade Commission*, *supra*, at 709-10; see also, *National Lead Co. v. Federal Trade Commission*, 227 F.2d 825, 832 (7th Cir. 1955), *rev'd on other grounds*, 352 U.S. 419 (1957). Only one sale of the advertised carpeting at the advertised price is in the record—representing less than 1 percent of respondents' total carpet sales in evidence (Finding 16, *supra*). This is certainly "minimal" sales.⁷ The great number of sales of higher priced carpeting shows the success of the "switch."

Respondents argue that they never refused to show or demonstrate the advertised carpet and that they were always willing to sell it (RPF 3). The undisputed fact remains that the appearance of the advertised carpet alone could and did "switch" customers to higher priced carpeting. Respondents argue further that their salesmen were merely telling the truth in pointing out the advertised carpet's shortcomings (RPF 3; RRB 3). Clearly, however, the law is violated if the first contact with a customer is secured by deception, as here in the form of respondents' advertisements. *Guides*, *supra*, §238.2(b). An integral part of respondents' business operation, therefore, consisted of "baiting" the consumers with misleading advertisements of inexpensive carpeting, and subsequently "switching" them to higher priced carpeting through demonstrating and comparing the inferior carpeting with better quality goods. Respondents' purpose was accomplished, though it was unnecessary for them to resort to some of the egregious tactics employed in other "bait and switch" schemes.

Use of the Word "Free"

To represent that merchandise or services are offered "free" in connection with the sale of other merchandise or services, there must have been an established regular price on which to base the "free" offer. *Federal Trade Commission v. Mary Carter Paint Co.*, 382 U.S. 46 (1965). It is plainly deceptive to represent as was done by these respondents that an ovenware set is "free" if its cost, unknown to the purchaser, is included in the price of the advertised carpeting. *Sunshine Art Studios, Inc. v. Federal Trade Commission*, 481 F.2d 1171 (1st Cir. 1973); *Mary Carter Paint Co.*, *supra*; *Guide Concerning Use of the Word "Free" and Similar Representations*, 16 C.F.R. 251 (1975).

Use of "Square Feet" and Undisclosed Rates

⁷ The fact that for the only period for which there is documentary evidence, advertised carpet sales represented less than 1 percent of all sales tends, at best, to cast doubt on the accuracy of respondent Taylor's recollection that for all of 1973 and 1974 sales of the advertised carpet amounted to 7 percent of all carpet sold by respondents. Moreover, sales of the advertised merchandise does not preclude existence of a "bait and switch" scheme. It has been determined that, on occasions, this is a mere incidental by-product of the fundamental plan and is intended to provide an aura of legitimacy to the overall operation. *Guides To Bait Advertising*, *supra*.

In consideration of the fact that the unit of measurement customarily employed in advertising carpeting is by the square yard, the advertising of carpeting in terms of square feet, without disclosing the equivalent in square yards, is unfair and deceptive because (1) it inhibits an accurate comparison of respondents' prices with those of competitors, and (2) because it tends to exaggerate the amount of carpet being offered.

Further, it is an unfair trade practice to fail to reveal any relevant and material facts concerning representations in an advertisement where such information might be important to the prospective customer in making his decision as to whether to purchase the product advertised. *Federal Trade Commission v. Colgate-Palmolive Co.*, 380 U.S. 374 (1965); *Spiegel, Inc. v. Federal Trade Commission*, 495 F.2d 59 (7th Cir. 1974). Therefore, respondents' practices of advertising carpeting in terms of square feet only and of failing to disclose the higher rates charged for quantities of carpeting beyond the advertised amounts are unfair and have the tendency and capacity to deceive the public. It is of no matter that customers were informed of the true facts concerning respondents' offers before they made their purchases. The harm was done on initial contact in that these practices tended to enhance the "bait" quality of respondents' advertisements. *Exposition Press, Inc. v. Federal Trade Commission*, 295 F.2d 869, 873 (2d Cir. 1961), *cert. denied*, 370 U.S. 917 (1962); *Carter Products, Inc. v. Federal Trade Commission*, 186 F.2d 821, 824 (7th Cir. 1951).

Respondents argue that there was no evidence presented that persons responding to advertisements of respondents were misled by the failure to specify the cost of additional yardage and that no evidence was presented that such persons were misled by the use of square feet into thinking that they were being offered a greater quantity of carpeting than was the fact (RPF 5, 7). To the contrary, the record does establish that customers received the impression that greater amounts of carpet were being offered than was the fact (Finding 23, *supra*). In any event, evidence of actual deception of the public is not necessary to a finding of violation, a tendency and capacity to deceive being sufficient. *Feil v. Federal Trade Commission*, 285 F.2d 879 (9th Cir. 1960); *Montgomery Ward & Co. v. Federal Trade Commission*, 379 F.2d 666 (7th Cir. 1967). The Federal Trade Commission Act was not intended to protect only the sophisticated, but the unthinking and credulous who do not stop to analyze but are governed by general impressions. *Giant Food, Inc. v. Federal Trade Commission*, 332 F.2d 977 (D.C. Cir. 1963); *Helbros Watch Company, Inc. v. Federal Trade Commission*, 310 F.2d 868 (D.C. Cir. 1962), *cert. denied*, 372 U.S. 976 (1963). Therefore, in the context of all representa-

tions made, upon his own examination of the advertisements as well as the other pertinent portions of the record, the undersigned concludes that the use of square feet and the failure to disclose higher rates on quantities above the advertised amounts have the tendency and capacity to deceive the consumer. *J.B. Williams Co. v. Federal Trade Commission*, 381 F.2d 884 (6th Cir. 1967).

Cooling Off Period

In view of the facts that (1) respondents are able to secure entry into potential customers' homes by virtue of advertisements that stress the availability and suitability of inexpensive carpeting, (2) the actual sales made are almost invariably of a much higher priced carpet and for a substantially greater expenditure than that indicated in the advertisements and (3) these sales are practically always made upon the initial visit of the salesman, it is clear that respondents' customers require the protection of a "cooling off" period of the type enunciated in the Commission's Trade Regulation Rule, *Cooling Off Period For Door-To-Door Sales*, 16 C.F.R. Section 429 (1975).⁸ Such protection will be afforded by the order.

The Remedy

The Commission is vested with broad discretion in determining the type of order necessary to ensure the discontinuance of the unlawful practices found. *Federal Trade Commission v. Colgate-Palmolive Co.*, 380 U.S. 374 (1965). The Commission's discretion is limited only by the requirement that the remedy be reasonably related to the unlawful practices. *Jacob Siegel Co. v. Federal Trade Commission*, 327 U.S. 608, 613 (1946); *Federal Trade Commission v. Ruberoid Co.*, 343 U.S. 470 (1952). It is also settled that the Commission, as part of its remedial powers, has the authority to require respondents to take affirmative action, or make affirmative statements in advertising. *Federal Trade Commission v. Colgate-Palmolive, supra*; *American Cyanamid Co. v. Federal Trade Commission*, 401 F.2d 574 (6th Cir. 1968), *cert. denied*, 394 U.S. 920 (1969).

The order is reasonably related to the unlawful practices found and has been devised to bring about cessation of such practices. In addition to proscribing the unlawful acts and practices found and variations of those practices, the order is also directed at certain aspects of the unlawful practices which played an integral part in their execution. For

⁸ It is of no moment that the record does not contain actual evidence of instances of hard pressure tactics. The very fact that individuals who invite respondents into their homes to display an advertised inexpensive carpeting are somehow prevailed upon, on the very first calls, to contract for much more expensive carpeting demonstrates that respondents' customers require a "cooling off" period to reconsider what they have obligated themselves to do.

example, numbered paragraphs 14, 15 and 16 of the order are directed at specific aspects of the bait and switch that helped make the practice work. The inclusion in the advertisements of references to carpeting for "3 rooms" or "3 areas" or "up to 3 areas", regardless of how qualified, tends to infer that three rooms or areas will be carpeted. As an integral part of the bait, such advertising should be proscribed unless the rooms or areas referred to will be fully covered at the price advertised. Similarly, featuring carpeting which, for all practical purposes has limited suitability or availability because of a limited number of colors or short life expectancy under normal or not unusual conditions of use has also been an integral part of the bait. Such advertising should be proscribed unless the limitations are disclosed.

Respondents argue that since they have discontinued any offer of a "free gift" and have added the square yard measurement to their advertisements, an order addressed to those matters is no longer necessary (RPF, p. 8). It is settled that discontinuance or abandonment of a practice does not prevent the issuance of a cease and desist order directed to such practice. *Giant Food, Inc.*, 61 F.T.C. 326 (1962). This principle is particularly applicable to situations where the discontinuance was not entirely voluntary but occurred only after the Commission had begun an investigation into such practices, where respondent continues in the same line of business and where there is no guarantee that the practices may not be resumed. *Coro, Inc.*, 63 F.T.C. 1164, 1201 (1963), *modified and aff'd.*, *Coro, Inc. v. Federal Trade Commission*, 338 F.2d 149 (1st Cir. 1964), *cert. denied*, 380 U.S. 954 (1965). Respondents discontinued their "free gift" offer, and added "square yards" to their advertisements long after the first investigational hearing of March 20, 1973. Respondent Taylor himself admitted that he made the changes of adding "square yards" and disclosing the cost of carpeting over the specific advertised quantity only as a result of being "nudged" by the Commission (Findings 21, 24, *supra*). It should be noted that Mr. Taylor is still engaged in the same retail carpet business and there is no reason to believe he will not continue in that business. Under such circumstances, an order directed to the aforementioned practices is most appropriate and necessary. Without an order, the public has no definite assurance that the unlawful practices will not be resumed in the future.

In the "Notice Order" attached to the complaint, and in their proposed order, complaint counsel have included a provision requiring respondents to disclose clearly and conspicuously, by means of a black-bordered notice in all their advertisements, the fact that the Commission has found that they "engage in bait and switch advertising."

Despite the wide leeway granted the Commission in framing orders, the undersigned will not adopt such a proposal in this case. In four recent cases, *Wilbanks Carpet Specialists*, Docket No. 8933 (Sept. 24, 1974 [84 F.T.C. 510]); *Tri-State Carpets, Inc.*, Docket No. 8945 (Oct. 15, 1974 [84 F.T.C. 1078]); *Theodore Stephen Co., Inc.*, Docket 8944 (Jan. 28, 1975 [85 F.T.C. 152]); and *Sir Carpet, Inc.*, Docket 8981 (Feb. 6, 1975 [85 F.T.C. 190]), the Commission has struck similar warning provisions from orders issued in the initial decisions. The Commission held that the records in those cases presented insufficient evidence that a consumer warning was a necessary or appropriate means for the termination of the acts or practices complained of or for the prevention of their recurrence. The record in the instant matter presents no stronger evidence in this regard and complaint counsel's request is rejected.

CONCLUSIONS OF LAW

1. The Federal Trade Commission has had, and now has, jurisdiction over respondents, and the methods of competition and acts and practices charged in the complaint and found herein took place in commerce as "commerce" is defined in the Federal Trade Commission Act.

2. Respondents have engaged in false, misleading and deceptive advertising, and used unfair methods of competition and unfair and deceptive acts and practices in the offering for sale, sale and distribution of carpeting and floor coverings.

3. The aforesaid methods of competition and acts and practices of respondents were and are 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.

ORDER

It is ordered, That respondents Central Carpet Corporation, Inc., a corporation, its successors and assigns, and its officers, and James A. Taylor, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, distribution, and installation of carpeting and floor coverings, or any other article of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using, in any manner, a sales plan, scheme, or device wherein false, misleading, or deceptive statements or representations are made in order to obtain leads or prospects for the sale of carpeting or other merchandise or services.
2. Making representations, directly or indirectly, orally or in writing, purporting to offer merchandise 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. Disparaging in any manner, or discouraging the purchase of any merchandise or services which are advertised or offered for sale.
4. Representing, directly or indirectly, orally or in writing, that any merchandise or services are offered for sale when such offer is not a bona fide offer to sell such merchandise or services.
5. Failing to maintain and produce for inspection and copying for a period of three (3) years following the date of publication of any advertisement, adequate records to document for the entire period during which each advertisement was run and for a period of six (6) weeks after the termination of its publication in press or broadcast media:
 - a. the cost of publishing each advertisement including the preparation and dissemination thereof;
 - b. the volume of sales made of the advertised product or service at the advertised price; and
 - c. a computation of the net profit from the sales of each advertised product or service at the advertised price.
6. Representing, directly or indirectly, orally or in writing, that any price amount is respondents' regular price for any article of merchandise or service unless said amount is the price at which such merchandise or service has been sold or offered for sale by respondents for a reasonably substantial period of time in the recent, regular course of their business and not for the purpose of establishing fictitious higher prices upon which a deceptive comparison or a "free" or similar offer might be based.
7. Representing, directly or indirectly, orally or in writing, that 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.
8. 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.

9. 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.

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

11. 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 terms "free" in relation thereto is prohibited by the provisions of this order.

12. 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.

13. Advertising any carpeting or floor covering using square feet as the unit of measurement, unless square yards is also employed as the unit of measurement in immediate conjunction therewith and with equal prominence or using any term or terms which tends to exaggerate the size of quantity of carpeting or floor covering being offered at the advertised price.

14. Advertising the price of carpet, either separately or with padding and installation included, in terms of an area or areas unless the area or areas will be fully covered at the price advertised.

15. Featuring in an advertisement any carpet for use in wall to wall installation which carpet is not suitable for use in heavy traffic, in a household having children or over a particular number of individuals or which may not reasonably be expected to last at least five (5) years, without conspicuously disclosing any of such limitations.

16. Featuring in an advertisement any carpet which is available in five or less colors without conspicuously disclosing the colors in which the carpet is available.

17. 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.

18. 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 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.

19. 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:

NOTICE OF CANCELLATION

[enter date of transaction]

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE. IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED. IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK. IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY

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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 (date).

I HEREBY CANCEL THIS TRANSACTION.

(Date)

(Buyer's signature)

20. 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.

21. 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.

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

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

24. 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.

25. 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.

26. Failing, within 10 business days of receipt of the buyer's notice of cancellation, to notify him whether the seller intends to repossess or to abandon any shipped or delivered goods.

Provided, however, That nothing contained in this order shall relieve respondents of any additional obligations respecting contracts required by federal law or the law of the state in which the contract is made. When such obligations are inconsistent, respondents can apply to the

Commission for relief from this provision with respect to contracts executed in the state in which such different obligations are required. The Commission, upon showing, shall make such modifications as may be warranted in the premises.

It is further ordered, That respondents shall maintain for at least a one (1) year period, 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 respondents to obtain leads for the sale of carpeting or floor coverings and other merchandise, with a copy of this order.

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

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

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

It is further ordered, That the respondent James A. Taylor promptly notify the Commission of the discontinuance of his present business or employment and of his affiliations with a new business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

FINAL ORDER

The administrative law judge filed his initial decision in this matter on Apr. 17, 1975, finding respondents to have engaged in the acts and practices as alleged in the complaint and entering a cease and desist order against respondents. A copy of the initial decision and order was

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served on the respondents on May 9, 1975. No appeal was taken from the initial decision.

The Commission having now determined that the matter should not be placed on its own docket for review, and that the initial decision should become effective as provided in Section 3.51(a) of the Commission's Rules of Practice,

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

It is further ordered, That respondents shall, within sixty (60) days after service of this order upon them, file with the Commission a report in writing, signed by such respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.
