

IN THE MATTER OF

KAUFMAN CARPET CO., INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 9030. Complaint, Apr. 29, 1975 — Decision, Sept. 17, 1976*

Consent orders requiring two carpet testing firms located in East Rockaway, N.Y., and Yonkers, N.Y., among other things to cease furnishing false or misleading carpet testing reports and/or test results; and changing, altering, or excluding pertinent particulars in their test reports.

Consent order requiring a Lodi, N.J., carpet retailer, among other things to cease misrepresenting guarantees, quality and grade of carpeting, authenticity and results of tests in test reports; and failing to conspicuously disclose exclusions, limitations, and conditions of guarantee coverage in conjunction with guarantee statements. Further, respondent is prohibited from influencing or altering the contents or results of test reports; and required to furnish to consumer complainants, by certified mail, true test reports within a specified time period, and to maintain adequate records relating to compliance obligations of the order.

Appearances

For the Commission: *John A. Crowley* and *Shirley F. Sarna*.

For the respondents: *Edward J. Walsh, Jr.*, *Hays, St. John, Abramson & Heilbron*, New York City, *Brian Rappaport*, Brooklyn, N.Y., *Bresler, Kallman, Hackmyer & Walzer*, New York City, *Benjamin Wiener*, Yonkers, N.Y.

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 Kaufman Carpet Co., Inc., a corporation, Henry Intrator, individually and as an officer of said corporation, Irving L. Mermer and Benjamin Wiener, individually and as co-partners trading and doing business as The Durotone Company, and Alvin Myman, individually, and trading and doing business as A & M Carpet Service Co., hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Kaufman Carpet Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws

of the State of New York, with its office and principal place of business at 370 Essex St., Lodi, New Jersey.

Respondent Henry Intrator is an individual and an officer of Kaufman Carpet Co., Inc. He formulates, directs and controls its policies, acts and practices, including those hereinafter set forth. His business address is the same as that of the corporate respondent.

Respondents Kaufman Carpet Co., Inc. and Henry Intrator are sometimes hereinafter collectively referred to as "Respondent Kaufman."

PAR. 2. Respondents Irving L. Mermer and Benjamin Wiener are individuals and are co-partners trading and doing business as The Durotone Company, with their office at 510 South Broadway, Yonkers, New York. Faye Mermer is an additional co-partner in The Durotone Company but is inactive with respect to the business operations of said company.

Respondents Irving L. Mermer and Benjamin Wiener are sometimes hereinafter collectively referred to as "Respondent Durotone."

PAR. 3. Respondent Alvin Myman is an individual who trades and does business under the name A & M Carpet Service Co., at 742 Longacre Ave., Woodmere, New York.

PAR. 4. Respondent Kaufman, through its subsidiary corporations, has been and is now engaged in the advertising, offering for sale, sale and distribution of carpeting at retail to the general public in several States of the United States.

In the course and conduct of its business, as aforesaid, Respondent Kaufman, through its subsidiary corporations, orders, sells and distributes carpeting in commerce by causing said merchandise to be shipped to and from its warehouse and from the places of business of its various suppliers located in the several States of the United States to the various subsidiary corporations of Kaufman Carpet Co., Inc. for sale at retail to the general public in States other than those in which said shipments originate. The States in which Respondent Kaufman primarily engages in retail sales are New York, New Jersey, Pennsylvania, Connecticut and Massachusetts. Respondent Kaufman's volume of business in the sale and distribution of carpeting is now and has been at all times mentioned herein substantial. Respondent Kaufman and its subsidiary corporations also cause advertising mats, circulars, checks, sales memoranda, policy directives, complaint department correspondence and other documents and communications to be transmitted by the United States Postal Service and by other interstate modes to and from the principal office of Respondent Kaufman and its subsidiary corporations and directly to customers located in the aforementioned several States of the United States.

In the further course and conduct of its business, in cases where disputes arise or claims are made by customers in connection with the purchase of Respondent Kaufman's carpets, Respondent Kaufman has used and is using the services of Respondent Durotone and Respondent Myman to make inspections of and reports on the condition of carpet installed in purchasers' homes which are located in several States of the United States. The inspections and reports have been and are being represented by Respondent Kaufman to be from independent carpet inspection service companies, which representation Respondent Durotone and Respondent Myman knew or should have known was false and misleading. In this manner, Respondent Durotone and Respondent Myman have provided and are providing a service that is an indispensable and necessary part of the scheme used by Respondent Kaufman in the perpetration of the acts and practices hereinafter alleged. Reports of said inspections are forwarded through the United States Postal Service to the Respondent Kaufman's offices in Lodi, New Jersey for further action by Respondent Kaufman.

Therefore, Respondent Kaufman, Respondent Durotone, and Respondent Myman maintain and at all times mentioned herein have maintained a substantial course of trade in said products, services, materials, or reports in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act.

COUNT 1

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One and Four hereof are incorporated herein by reference as if fully set forth verbatim.

PAR. 5. In the course and conduct of its business, for the purpose of inducing the purchase of the aforementioned merchandise, Respondent Kaufman expressly states on the face of its contracts:

"GUARANTEE—WE HEREBY GUARANTEE ALL MATERIALS AND
WORKMANSHIP TO BE FIRST GRADE AND FREE FROM DEFECTS
OTHER THAN THOSE CHARGED TO WEAR AND TEAR."

The above guarantee or others of similar import and meaning appear on the face of the aforementioned contracts of sale issued by Respondent Kaufman through its subsidiary corporations engaged in the sale of carpeting at retail to the general public in the aforementioned several States of the United States.

PAR. 6. By and through the use of the guarantee statement referred to in Paragraph Five above, and other representations and statements

similar thereto but not expressly set forth herein, Respondent Kaufman represents, and has represented, directly or indirectly, that:

- a) Its carpeting is first grade and free from any defects of either carpeting quality or workmanship;
- b) Its carpeting is guaranteed without qualification or limitation; and
- c) All carpeting which is not first grade nor free from defects other than those charged to wear and tear may be returned for adjustment, replacement or full refund of the purchase price.

PAR. 7. In truth and in fact, in a substantial number of instances, Respondent Kaufman has:

- a) Delivered carpeting which was not "first grade;"
- b) Imposed qualifications and limitations on its guarantee; and,
- c) Failed to accept return for adjustment, replacement or full refund of the purchase price, carpeting which is not of first grade or free from defects other than those charged to wear and tear.

Therefore, the guarantee statement referred to in Paragraph Five above is false, misleading and deceptive.

PAR. 8. In the further course and conduct of its business as aforesaid, Respondent Kaufman has printed on the reverse side of its contracts, in a location disconnected, separate and apart from the guarantee statement referred to in Paragraph Five above, the following:

Shading, shedding, fluffing or roll crush do not constitute manufacturing defects. These are inherent characteristics of all pile fabrics.

Missing tufts are not a manufacturing defect. Claims of this type will be entertained only on the basis of reinserting such missing tufts (reburling) without charge for labor and material.

The said clauses are set forth in small size type and interspersed among many other conditions.

PAR. 9. By and through the acts and practices set forth in Paragraph Eight above, Respondent Kaufman has failed to clearly and conspicuously disclose to purchasers those conditions or characteristics which limit and qualify the guarantee statement referred to in Paragraph Five above.

PAR. 10. The failure to clearly and conspicuously disclose the conditions or limitations set forth in Paragraph Eight above in conjunction with the guarantee statement set forth in Paragraph Five above has the capacity and tendency to mislead purchasers into believing that any carpeting purchased will be "first grade" and free from all defects.

The failure to disclose the limitations or conditions affecting the coverage and application of said guarantee clearly and conspicuously

and in conjunction with the statement or other description of said guarantee is unfair, misleading and deceptive.

PAR. 11. In the course and conduct of its business, Respondent Kaufman has failed to disclose, clearly and conspicuously, in conjunction with the guarantee referred to in Paragraph Five above, the identity of the guarantor, the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder. The failure to disclose the aforementioned facts has the capacity and tendency to mislead purchasers or prospective purchasers into the purchase of substantial quantities of Respondent Kaufman's carpeting by reason of said purchasers' or prospective purchasers' erroneous and mistaken belief that said guarantee is unlimited and that all carpeting which is not first grade will be replaced.

Therefore, the guarantee, as aforementioned, is false, misleading and deceptive.

PAR. 12. In the further course and conduct of its business, and in connection with its performance under its guarantee, Respondent Kaufman purports to rely upon reports of carpet inspections conducted by impartial third parties and, in many instances, cites such reports to purchasers seeking performance from Respondent Kaufman under the terms of the guarantee referred to in Paragraph Five above.

PAR. 13. By and through the representations made by Respondent Kaufman with respect to the reports referred to in Paragraph Twelve above, said respondent has represented and is now representing that a purchaser's complaint will be adjusted in an honest, reliable, and forthright manner.

PAR. 14. In truth and in fact in a substantial number of instances, Respondent Kaufman has misrepresented the import of said reports in denying or limiting its liability.

Therefore, the misrepresentation of the import of the reports referred to in Paragraph Twelve above is false, misleading and deceptive.

PAR. 15. In the course and conduct of its business, Respondent Kaufman has engaged in and does engage in the following practices:

a) In a substantial number of instances, Respondent Kaufman has represented to purchasers and governmental agencies that the inspection reports referred to in Paragraph Twelve above have been prepared by impartial third parties and as such are unbiased, professional and beyond the control of Respondent Kaufman;

b) In a substantial number of instances, Respondent Kaufman has represented to purchasers that the reports referred to in Paragraph Twelve above indicate that complaints are unjustified or that the

conditions complained of may be corrected and the carpeting restored to first quality condition; and

c) In a substantial number of instances, Respondent Kaufman has induced purchasers to execute a release discharging Respondent Kaufman or its subsidiary corporations from all liability, past or future, for defects in the carpeting purchased by said purchasers in reliance on the reports referred to in Paragraph Twelve above.

PAR. 16. In truth and in fact:

a) In a substantial number of instances, the inspection reports referred to in Paragraph Twelve above are not unbiased, professional, impartial or beyond the control of Respondent Kaufman because reports unfavorable to Respondent Kaufman have been changed to reports favorable to said respondent and facts relating to the condition of carpeting which would be unfavorable to Respondent Kaufman have been deleted from said reports at the behest of Respondent Kaufman;

b) In a substantial number of instances, the reports referred to in Paragraph Twelve above have been received by Respondent Kaufman stating that said purchasers' complaints are justified or that the conditions complained of could not be corrected and the carpeting restored to first quality condition; and,

c) In a substantial number of instances, Respondent Kaufman has enticed and coerced purchasers into executing the releases described in Paragraph Fifteen (c) by misrepresenting the contents of the inspection reports referred to in Paragraph Twelve above.

Therefore, the acts, practices and representations referred to in Paragraph Fifteen above are unfair, false, misleading and deceptive.

PAR. 17. In the course and conduct of its business, and at all times mentioned herein, Respondent Kaufman has been and is in substantial competition in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, with corporations, firms and individuals engaged in the sale of carpeting.

PAR. 18. The aforesaid acts and practices of Respondent Kaufman were and are to the prejudice and injury of the public and of competitors of Respondent Kaufman Carpet Co., Inc. and constituted and now constitute unfair methods of competition in or affecting commerce and unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs Two, Four, Five, Six, Twelve, Thirteen,

Fourteen, Fifteen and Sixteen hereof are incorporated herein by reference as if fully set forth verbatim.

PAR. 19. In the course and conduct of its business, Respondent Durotone conducts numerous inspection and service calls at the behest of Respondent Kaufman concerning purchaser complaints arising under the terms of the guarantee referred to in Paragraph Five above. Said inspection and service calls are made in the several States of the United States in which Respondent Kaufman and its subsidiary corporations are doing business. Reports of said inspection and service calls are then sent from Respondent Durotone's principal place of business to the principal place of business of Respondent Kaufman.

There is now, and has been, at all times mentioned herein, a substantial and continuous course of trade in said inspections and reports in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 20. In the course and conduct of its business, Respondent Durotone utilizes an inspection report form which contains on its face certain statements and representations. Typical and illustrative of said statements and representations are:

"This report is accurate and impartial, and based on information given by the consumer, and our physical examination and tests."

"Branches: Philadelphia, Pa. - Baltimore, Md.
Washington, D.C. - Bridgeport, Conn."

Through the use of the above statements and representations, Respondent Durotone represents, directly or by implication, that it is reliable, impartial and is of a size and has the technical competence to conduct said tests and examinations and submit an accurate, impartial report on the conditions about which the purchaser complained, and that such reports are based at least in part on tests.

PAR. 21. In truth and in fact:

a) Few, if any, tests are performed on the purchaser's carpeting. In most, if not all, instances Respondent Durotone relies on visual inspection of the carpeting in question.

b) Respondent Durotone has no branch offices in the cities listed on the face of the inspection form referred to in Paragraph Twenty above. Respondent Durotone's only other branch office is located at Silver Spring, Maryland.

Therefore, the representations referred to in Paragraph Twenty above are false, misleading and deceptive.

PAR. 22. In the course and conduct of its business as aforesaid, Respondent Durotone executes inspection reports which are used by

Respondent Kaufman as a basis for settlement of purchaser complaints arising under the terms of the guarantee referred to in Paragraph Five above. Said reports are represented to be impartial, unbiased and accurate.

PAR. 23. In truth and in fact:

a) In a substantial number of instances, the inspection reports referred to in Paragraph Twenty-Two above are not impartial, unbiased or accurate because Respondent Durotone changes, amends or alters the reports pursuant to instructions received from Respondent Kaufman.

b) In a substantial number of instances, Respondent Durotone is not independent because Respondent Kaufman dictates the contents of inspection reports prepared by Respondent Durotone.

Therefore, the representations referred to in Paragraph Twenty-Two above are false, misleading and deceptive.

PAR. 24. In the course and conduct of its business and at all times mentioned herein, Respondent Durotone has been and is in substantial competition in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, with corporations, firms and individuals engaged in the inspection and servicing of carpeting.

PAR. 25. The aforesaid acts and practices of Respondent Durotone were and are to the prejudice and injury of the public and of competitors of Respondent Durotone, and constituted and now constitute unfair methods of competition in or affecting commerce and unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

COUNT III

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs Three, Four, Five, Six, Twelve, Thirteen, Fourteen, Fifteen and Sixteen hereof are incorporated by reference herein as if fully set forth verbatim.

PAR. 26. In the course and conduct of his business, Respondent Myman, through his business A & M Carpet Service Co., conducts numerous inspection and service calls at the behest of Respondent Kaufman concerning purchaser complaints arising under the terms of the guarantee referred to in Paragraph Five above. Said inspection and service calls are made in the several States of the United States in which Respondent Kaufman and its subsidiary corporations are doing business. Reports of said inspection and service calls are then sent from Respondent Myman's principal place of business to the principal place of business of Respondent Kaufman.

There is now, and has been, at all times mentioned herein, a

substantial and continuous course of trade in said inspections and reports in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 27. In the course and conduct of his business as aforesaid, Respondent Myman executes inspection reports which are used by Respondent Kaufman as a basis for settlement with complaining purchasers. Said reports are stated to be impartial, unbiased and accurate because Respondents Kaufman and Myman state that Respondent Myman is an inspection company independent from Respondent Kaufman.

PAR. 28. In truth and in fact, in a substantial number of instances:

- a) The inspection reports referred to in Paragraph Twenty-Seven above are not impartial, unbiased or accurate because Respondent Myman withholds material information from the contents of said reports.

- b) Respondent Myman is not independent because Respondent Kaufman dictates the contents of inspection reports prepared by Respondent Myman.

Therefore, the representations referred to in Paragraph Twenty-Seven above are false, misleading and deceptive.

PAR. 29. In the course and conduct of his business, and at all times mentioned herein, Respondent Myman has been and is in substantial competition in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act with corporations, firms and individuals engaged in the inspection and servicing of carpeting.

PAR. 30. The aforesaid acts and practices of Respondent Myman were and are to the prejudice and injury of the public and of competitors of Respondent Myman and constituted and now constitute unfair methods of competition in or affecting commerce and unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER AS TO KAUFMAN CARPET CO., INC.

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint; and

The Commission having withdrawn the matter from adjudication for the purpose of considering settlement by the entry of a consent order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, a

statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 3.25 of its Rules, now in further conformity with the procedure prescribed in Section 3.25 of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Respondent Kaufman Carpet Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 370 Essex St., Lodi, New Jersey.

Respondent Henry Intrator is an individual and an officer of Kaufman Carpet Co., Inc. He formulates, directs and controls the policies, acts and practices of said corporation. His business address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Kaufman Carpet Co., Inc., a corporation, its successors and assigns, Henry Intrator, individually and as an officer of said corporation, and respondent Kaufman Carpet Co., Inc.'s officers, 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 product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Representing, directly or by implication, that any carpeting or floor coverings offered for sale, sold or distributed by respondents is guaranteed to be of first quality or first grade unless such be the fact; or misrepresenting in any manner the grade or quality of carpeting or floor coverings offered for sale, sold or distributed by respondents.

2. Representing, directly or by implication, that any of said respondents' products, installations or services are warranted or guaranteed, unless the nature and extent of the warranty or guarantee, the identity of the warrantor or guarantor and the manner in which the

warrantor or guarantor will perform thereunder are clearly and conspicuously disclosed in immediate conjunction therewith; and unless respondents promptly and fully perform all of their obligations and requirements, directly or impliedly represented under the terms of each such warranty or guarantee.

3. Failing to set forth in immediate conjunction with any warranty or guarantee statement, in a type size of at least 18 points, all characteristics and conditions of carpeting which are excluded from coverage under the aforementioned warranty or guarantee.

4. Representing to any purchaser, directly or by implication, that test or inspection reports in the possession of respondents are actual results of tests or inspections performed on the purchaser's carpeting by independent, unbiased testing concerns unless such tests or inspections are so devised and conducted as to constitute a reasonable basis for the stated results or conclusions.

5. Representing, directly or by implication, that any carpeting has been tested, unless:

(a) a test has in fact been conducted;

(b) the test is devised and conducted in a manner that assures an accurate evaluation of the condition, quality or characteristic tested; and,

(c) the test results are clearly and accurately represented; or, misrepresenting in any manner the results of any such test.

6. Representing, directly or by implication, that reports of examinations or tests performed on any purchaser's carpeting to determine the existence of manufacturing defects by independent, unbiased testing concerns are authentic and unbiased when in fact they have been altered, amended, added to or subtracted from by respondents or their agents.

7. Influencing, in any manner, the contents of test or inspection reports or the manner of inspection of purchaser's carpeting performed by The Durotone Company, A & M Carpet Service Co. or any other person or organization acting as the result of purchaser complaints made to Kaufman Carpet Co., Inc. or its subsidiary companies.

8. Failing to furnish, by certified mail within ten (10) working days after receipt of an inspection report from Respondent Durotone, Respondent Myman or any other person or organization, a true copy of said report to the purchaser whose inquiry or complaint caused the inspection to be made.

It is further ordered, That respondents distribute a copy of this order to all operating divisions of said corporation, partnership or other entity, and also distribute a copy of this order to all personnel, agents or representatives concerned with the promotion, sale and distribution of

carpeting and floor covering or with the inspection and servicing of carpeting and floor covering and secure from each such person a signed statement acknowledging receipt of said order.

It is further ordered, That respondents notify the Commission at least 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 named herein 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 respondents maintain adequate records, to be furnished upon request to the staff of the Federal Trade Commission, which evidence compliance with the provisions of this order, including but not limited to the names and addresses of all purchasers registering complaints about carpeting purchased from Kaufman Carpet Co., Inc. or its subsidiary companies, correspondence with said persons, all documents relating to the disposition of said complaints and all correspondence, memoranda or documents concerning customer complaints among the respondents in this matter.

It is further ordered, That no provision of this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondents from complying with agreements, orders or directives of any kind obtained by any other agency or act as a defense to actions instituted by municipal or State regulatory agencies. No provision of this order shall be construed to imply that any past or future conduct of respondents complies with the rules and regulations of, or the statutes administered by the Federal Trade Commission.

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.

Commissioner Dole not participating by reason of absence.

DECISION AND ORDER AS TO BENJAMIN WIENER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Section 5 of

the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint; and

The Commission having withdrawn the matter from adjudication for the purpose of considering settlement by the entry of a consent order; and

The respondents* and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 3.25 of its Rules, now in further conformity with the procedure prescribed in Section 3.25 of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Respondent Benjamin Wiener is an individual, trading and doing business as The Durotone Company, with his office at 75 Lockwood Ave., Yonkers, New York.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Benjamin Wiener, individually, and trading and doing business as The Durotone Company or under any name or names, his successors and assigns, respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the inspection and servicing of carpeting and floor coverings, or any other product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Furnishing any reports or test results which purport that any product examined, analyzed or tested has no manufacturing defects, unless such reports clearly and accurately state the test results and unless the tests themselves are so devised and conducted as to constitute a reasonable basis for the stated results or conclusions.

* The Commission determined that this Decision and Order should not apply to Irving L. Mermer.

2. Changing, altering or amending, in any manner, the contents of and conclusions contained in any report prepared by respondent as a result of a carpeting inspection or test. However, if a report prepared by respondent is subsequently found to contain errors, respondent may issue a clarifying report where: 1) the original report is specifically identified and referred to; 2) the correction is specifically set forth; and 3) the basis for the correction is fully explained in said corrected report.

3. Failing to include in any report prepared by respondent as a result of a carpeting inspection or test all defects and conditions found to exist with respect to purchaser complaints which respondent was requested to investigate.

4. Representing, directly or by implication, that respondent has branch offices in Philadelphia, Pennsylvania, Baltimore, Maryland, Washington, D.C., Bridgeport, Connecticut or any other location unless respondent maintains an actual office which is staffed during normal business hours in each location.

It is further ordered, That respondent distribute a copy of this order to all operating divisions of said corporation, partnership or other entity, and also distribute a copy of this order to all personnel, agents or representatives concerned with the promotion, sale and distribution of carpeting and floor covering or with the inspection and servicing of carpeting and floor covering and secure from each such person a signed statement acknowledging receipt of said order.

It is further ordered, That the individual respondent named herein 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 respondent shall, at all times subsequent to the effective date of this order, maintain complete business records relating to the manner and form of his continuing compliance with this order during the immediately preceding three year period, such records to include copies of all reports pertaining to carpet inspections or tests performed by respondent, and all correspondence, memoranda or documents relating thereto.

It is further ordered, That no provision of this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondent from complying with agreements, orders or directives of any kind obtained by any other agency or act as a defense to actions instituted by municipal or State regulatory agencies. No provision of this order shall be construed to imply that any past or

future conduct of respondent complies with the rules and regulations of, or the statutes administered by the Federal Trade Commission.

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

Commissioner Dole not participating by reason of absence.

DECISION AND ORDER AS TO A & M CARPET SERVICE, INC.

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint; and

The Commission having withdrawn the matter from adjudication for the purpose of considering settlement by the entry of a consent order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 3.25 of its Rules, now in further conformity with the procedure prescribed in Section 3.25 of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Respondent A & M Carpet Service, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at P.O. Box 100, East Rockaway, New York.

Respondent A & M Carpet Service of Maryland, Ltd. is a corporation, existing and doing business by virtue of the laws of the State of Delaware, with its office and principal place of business at P.O. Box 100, East Rockaway, New York.

Respondent Alvin Myman is an officer of each of said corporations. He formulates, directs and controls the policies, acts and practices of said corporations, and his business address is the same as that of the corporate respondents.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents A & M Carpet Service, Inc., and A & M Carpet Service of Maryland, Ltd., corporations, and Alvin Myman, individually and as an officer of each of said corporations, their successors and assigns, and respondents' officers, agents, representatives and employees directly or through any corporation, subsidiary, division or other device, in connection with the inspection and servicing of carpeting and floor covering, or any other product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Furnishing any reports or test results which purport that any product examined, analyzed or tested has no manufacturing defects, unless such reports clearly and accurately state the test results and unless the tests themselves are so devised and conducted as to constitute a reasonable basis for the stated results or conclusions.

2. Changing, altering or amending, in any manner, the contents of and conclusions contained in any report prepared by respondents as a result of a carpeting inspection or test. However, if a report prepared by respondents is subsequently found to contain errors, respondents may issue a clarifying report where: 1) the original report is specifically identified and referred to; 2) the correction is specifically set forth; and 3) the basis for the correction is fully explained in said corrected report.

3. Failing to include in any report prepared by respondents as a result of a carpeting inspection or test, all defects and conditions found to exist with respect to purchaser complaints which respondents were requested to investigate.

It is further ordered, That respondents distribute a copy of this Order to all operating divisions of said corporation, partnership or other entity, and also distribute a copy of this order to all personnel, agents or representatives concerned with the promotion, sale and distribution of carpeting and floor covering or with the inspection and servicing of carpeting and floor covering and secure from each such person a signed statement acknowledging receipt of said order.

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

It is further ordered, That the individual respondent named herein 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 respondents shall, at all times subsequent to the effective date of this order, maintain complete business records relating to the manner and form of their continuing compliance with this order during the immediately preceding three year period, such records to include copies of all reports pertaining to carpet inspections or tests performed by respondents and all correspondence, memoranda or documents relating thereto.

It is further ordered, That no provision of this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondents from complying with agreements, orders or directives of any kind obtained by any other agency or act as a defense to actions instituted by municipal or State regulatory agencies. No provision of this order shall be construed to imply that any past or future conduct of respondents complies with the rules and regulations of, or the statutes administered by the Federal Trade Commission.

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.

Commissioner Dole not participating by reason of absence.

Complaint

88 F.T.C.

IN THE MATTER OF

RELCO, INC., ET AL.

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

Docket C-2837. Complaint, Sept. 17, 1976 — Decision, Sept. 17, 1976

Consent order requiring a Houston, Tex., electronics manufacturer, among other things to cease misrepresenting the characteristics of its metal detector; misrepresenting the regular selling price of its dog trainer collar; misrepresenting that its trainer collar is waterproof; and failing to disclose relevant facts regarding its products. Further, respondents are required to offer purchasers a 10-day money-back guarantee.

Appearances

For the Commission: *Leslie L. Robinson.*

For the respondents: *Jack W. Thompson, Houston, Tex.*

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 Relco, Inc., a corporation, and Richard T. Harris, as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Relco, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 2210 West 34th St., Houston, Texas.

Respondent Richard T. Harris is president of the corporate respondent. He formulates, directs and controls the acts, policies and practices of 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 manufacture, advertising, offering for sale, sale and distribution of electronic metal detectors, animal training collars, welders and other electronic equipment, to members of the general public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from respondent's place of business in the