

sion a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

It is further ordered, That the initial decision, as modified, be, and it hereby is, adopted as the decision of the Commission.

IN THE MATTER OF

FHA MOBILE HOME BROKERS, INC., ET AL.

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

Docket C-2324. Complaint, Nov. 30, 1972—Decision, Nov. 30, 1972

Consent order requiring a Hixson, Tennessee, retailer and distributor of mobile homes, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that FHA Mobile Home Brokers, Inc., a corporation and K. L. Ficken, James R. Whisnant, and James L. Stanley, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and implementing regulation, 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 FHA Mobile Home Brokers, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal office and place of business located at 5749 Highway 153, Hixson, Tennessee.

Respondents K. L. Ficken, James R. Whisnant, and James L. Stanley are officers of the corporate respondent. They formulate, direct and control the policy, acts and practices of the corporation, including the acts and practices hereinafter set forth. Their 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 and retail sale and distribution of mobile homes to the public.

PAR. 3. In the ordinary course of their business as aforesaid, respondents regularly extend consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, in the ordinary course of their business as aforesaid, and in connection with their credit sales, as "credit sale" is defined in Regulation Z, respondents have caused and are causing their customers to enter into contracts for the sale of respondents' goods and services. On these contracts, hereinafter referred to as "the contract," respondents provide certain consumer credit cost information. Respondents do not provide these customers with any other consumer credit cost disclosures.

By and through use of the contract, respondents:

1. Fail to exclude from the "amount financed" and to include in the "finance charge" the cost of the credit investigation required by the respondents in connection with the credit sale, as required by Section 226.4(a)(4) of Regulation Z.

2. Fail to disclose the "annual percentage rate" accurately to the nearest quarter of one percent, in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

3. Include the charge for credit life insurance in the "amount financed" and fail, in certain instances, to secure a separately signed and dated credit life insurance authorization, as required by Section 226.4(a)(5) of Regulation Z.

PAR. 5. In the ordinary course of their business as aforesaid, respondents cause to be published advertisements of their goods and services, as "advertisement" is defined in Regulation Z. These advertisements aid, promote, or assist directly or indirectly extensions of consumer credit in connection with the sale of these goods and services. By and through the use of the advertisements, respondents:

1. State the rate of finance charge without describing that rate as an "annual percentage rate," in violation of Section 226.10(d)(1) of Regulation Z.

2. State the amount of the downpayment required and the amount of monthly installment payments which can be arranged in connection with a consumer credit transaction, without also stating all of the following items, in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) thereof:

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

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

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

(v) The deferred payment price.

PAR. 6. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act and pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Atlanta Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act; 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 aforesaid draft of 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 alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of the rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent FHA Mobile Home Brokers, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Tennessee, with its office and principal place of business located at 5749 Highway 153, Hixson, Tennessee.

Respondents K. L. Ficken, James R. Whisnant and James L. Stanley are individuals and are corporate officers of FHA Mobile Home

Brokers, Inc. They direct, formulate, and control the acts and practices of the respondent corporation including the acts and practices under investigation.

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 FHA Mobile Home Brokers, Inc., a corporation, its successors and assigns, and its officers, and K. L. Ficken, James R. Whisnant and James L. Stanley, individually and as officers of said corporation and respondents' agents, representatives and employees, directly or through any corporate, subsidiary, division or other device in connection with any extension of consumer credit or advertisement to aid, promote or assist directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. § 226) of the Truth in Lending Act (Pub. L. 90-321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Failing to exclude from the "amount financed" and to include in the "finance charge" the cost of the credit investigation required by the respondents in connection with the credit sale, as required by Section 226.4 (a) (4) of Regulation Z.

2. Failing to disclose the "annual percentage rate" accurately to the nearest quarter of one percent, in accordance with Section 226.5 of Regulation Z, as required by Section 226.8 (b) (2) of Regulation Z.

3. Failing, in any credit transaction in which the charge for credit life insurance is included in the "amount financed," to secure a signed and dated credit life insurance authorization, as required by Section 226.4 (a) (5) of Regulation Z.

4. Stating, in any advertisement, the rate of any finance charge unless respondents state the rate of that charge expressed as an "annual percentage rate," as required by Section 226.10 (d) (1) of Regulation Z.

5. Stating, in any advertisement, the amount of the downpayment required and the amount of monthly installment payments which can be arranged in connection with a consumer credit transaction, without also stating all of the following items, in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10 (d) (2) thereof:

(i) The cash price;

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

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

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

(v) The deferred payment price.

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

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 consummation of any extension of consumer credit or in any aspect of preparation, creation, or placing of advertising, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

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

It is further ordered, That the respondents 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.

IN THE MATTER OF

COLMAN & RIDDELL, INC., ET AL.

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

Docket C-2325. Complaint, Nov. 30, 1972—Decision Nov. 30, 1972

Consent order requiring three Seattle, Washington, real estate agents, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

Complaint

81 F.T.C.

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing regulation promulgated thereunder and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Colman & Riddell, Inc., Cape George Village, Inc., corporations, and Birch Bay Investors, a limited partnership, and Howard G. Riddell and V. Keith Colman, individually, as officers of said corporations, and as general partners in Birch Bay Investors, hereinafter referred to as respondents, have violated the provisions of said Acts and implementing regulation, 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 Colman & Riddell, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington with its office and principal place of business located at 333 Taylor North, Suite 201, Seattle, Washington.

Cape George Village, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Washington with its office and principal place of business located at 333 Taylor North, Suite 201, Seattle, Washington.

Birch Bay Investors is a limited partnership existing and doing business in the State of Washington. Its office and principal place of business is located at 333 Taylor North, Suite 201, Seattle, Washington.

Respondents Howard G. Riddell and V. Keith Colman are officers of the corporate respondents and are the only general partners in the respondent partnership Birch Bay Investors. They jointly formulate, direct and control the policies, acts and practices of the corporate respondents and the respondent partnership, including the acts and practices hereinafter set forth. Their 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 sale to the public of parcels of land located within land developments and the advertising of same in various media.

PAR. 3. In the ordinary course of their business as aforesaid, respondents Colman & Riddell, Inc., Howard G. Riddell, and V. Keith Colman arrange and have arranged for the extension of consumer credit, as "consumer credit" and "arrange for the extension of consumer credit" are defined in Regulation Z, the implementing regula-

tion of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

In the ordinary course of their business as aforesaid, respondents Cape George Village, Inc., Birch Bay Investors, Howard G. Riddell, and V. Keith Colman regularly extend and have extended consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, in the ordinary course of their business as aforesaid, and in connection with credit sales, as "credit sales" is defined in Regulation Z, respondents Colman & Riddell, Inc., Howard G. Riddell, and V. Keith Colman have provided and are offering to provide consumer credit which is or will be extended by another person, as "person" is defined in Section 226.2(v) of Regulation Z, through the consummation of credit sale contracts for the sale of parcels of land. During the same period of time and in the ordinary course of their business as aforesaid, and in connection with credit sales, as "credit sale" is defined in Regulation Z, respondents Cape George Village, Inc., Birch Bay Investors, Howard G. Riddell, and V. Keith Colman have entered into and are entering into credit sale contracts for the sale of parcels of land. On the contracts referred to hereinabove in this paragraph, hereinafter referred to as "the contract," respondents have provided certain limited consumer credit cost information, but have not provided the credit buyers with substantially all of the disclosures required by Sections 226.6 and 226.8 of Regulation Z. More particularly, respondents have:

1. Failed in credit sales to disclose accurately the price at which respondents, in the regular course of business, offered to sell for cash the said parcels of land which were the subject of the credit sale and to use the term "cash price" to describe that price, as required by Section 226.8(c) (1) of Regulation Z.

2. Failed to use the term "cash downpayment" to describe the downpayment in money made in connection with the credit sale, as required by Section 226.8(c) (2) of Regulation Z.

3. Failed to disclose the difference between the "cash price" and the downpayment and to use the term "unpaid balance of cash price" to describe that amount as required by Section 226.8(c) (3) of Regulation Z.

4. Failed to disclose the amount of credit extended, and to describe that amount as the "amount financed" as required by Section 226.8(c) (7) of Regulation Z.

5. Failed to disclose the sum of all charges which are required by Section 226.4 of Regulation Z to be included in the finance charge

and to use the term "finance charge" to describe that sum, as required by Section 226.8(c)(8)(i) of Regulation Z.

6. Failed to disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, and to describe that sum as the "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.

7. Failed to disclose the "annual percentage rate," computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

8. Failed to disclose the number of payments required to repay the indebtedness, as required by Section 226.8(b)(3) of Regulation Z.

9. Failed to disclose the sum of the payments scheduled to repay the indebtedness, and to describe that sum as the "total of payments," as required by Section 226.8(b)(3) of Regulation Z.

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

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereto with violation of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of 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 to issue herein, 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 alleged 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 thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues

its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Colman & Riddell, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the state of Washington, with its office and principal place of business located at 333 Taylor North, Seattle, Washington.

Respondent Cape George Village, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the state of Washington, with its office and principal place of business located at 333 Taylor North, Seattle, Washington.

Respondent Birch Bay Investors is a limited partnership organized, existing and doing business under and by virtue of the laws of the state of Washington, with its office and principal place of business located at 333 Taylor North, Seattle, Washington.

Respondents Howard G. Riddell and V. Keith Colman are officers of said corporations and are general partners in the above limited partnership. They formulate, direct and control the policies, acts and practices of said corporations and the said limited partnership, and their principal office and place of business is located at the above stated address.

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, Colman & Riddell, Inc., a corporation, Cape George Village, Inc., a corporation, and their officers, and Birch Bay Investors, a limited partnership, and their successors and assigns, and Howard G. Riddell and V. Keith Colman, individually, as officers of the above corporations, and as general partners in Birch Bay Investors, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension of consumer credit, or advertisement to aid, promote or assist directly or indirectly any extension of consumer credit, as "consumer credit," and "advertisement" are defined in Regulation Z (12 C.F.R. § 226) of the Truth in Lending Act (Pub. L. 90-321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Failing to disclose accurately the price at which the subject of any credit sale is offered for sale for cash in the regular course of business and to use the term "cash price" to describe that price as required by Section 226.8(c)(1) of Regulation Z.

2. Failing to use the term "cash downpayment" to describe the downpayment in money made in connection with the credit sale, as required by Section 226.8(c)(2) of Regulation Z.

3. Failing to disclose the difference between the "cash price" and the downpayment and to use the term "unpaid balance of cash price" to describe that amount as required by Section 226.8(c)(3) of Regulation Z.

4. Failing to disclose the amount of credit extended, and to describe that amount as the "amount financed" as required by Section 226.8(c)(7) of Regulation Z.

5. Failing to disclose the sum of all charges which are required by Section 226.4 of Regulation Z to be included in the finance charge and to use the term "finance charge" to describe that sum, as required by Section 226.8(c)(8)(i) of Regulation Z.

6. Failing to disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge and to describe that sum as the "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.

7. Failing to disclose the "annual percentage rate," computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

8. Failing to disclose the number of payments required to repay an indebtedness, as required by Section 226.8(b)(3) of Regulation Z.

9. Failing to disclose the sum of payments scheduled to repay the indebtedness, and to describe that sum as the "total of payments," as required by Section 226.8(b)(3) of Regulation Z.

10. Failing to prominently display no less than two signs on the premises of each sales office which will clearly and conspicuously state that a customer must receive a complete copy of the consumer credit cost disclosures, as required by the Truth in Lending Act, in any transaction which is financed, before the transaction is consummated.

11. Failing in any consumer credit transaction or advertising to make all disclosures determined in accordance with Sections 226.4 and 226.5 of Regulation Z, at the time and in the manner, form, and amount required by Sections 226.6, 226.8 and 226.10 of Regulation Z; and to give all notices of the right to rescind at the time and in the manner and form required by Section 226.9 of Regulation Z.

It is further ordered, That respondents deliver a copy of this order to cease and desist to each operating division and to all present and

future personnel of respondents engaged in the consummation of any extension of consumer credit, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

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

It is further ordered, That the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment. Such notice shall include respondents' current business address and a statement as to the nature of the business or employment in which they are engaged as well as a description of their duties and responsibilities.

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

IN THE MATTER OF

HOWARD CARPET MILLS, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS

Docket 8894. Complaint, July 10, 1972—Decision, Dec. 1, 1972

Order requiring a New York City manufacturer of carpets, among other things to cease marketing dangerously flammable products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Howard Carpet Mills, Inc., a corporation, and Howard S. Stein, individually and as an officer of the said corporation, hereinafter referred to as respondents, have violated the provisions of the said Acts and the rules and regulations promulgated under the Flammable Fabrics Act, as amended, 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 Howard Carpet Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Respondent Howard S. Stein, is an officer of the said corporate respondent. He formulates, directs, and controls the acts, practices, and policies of the said corporation.

Respondents are engaged in the manufacture and sale of carpets and rugs, with their manufacturing facilities located at 105 Easterling Street, Dalton, Georgia and principal place of business located at 919 Third Avenue, New York, New York.

PAR. 2. Respondents are now and for some time last past have been engaged in the manufacturing for sale, sale and offering for sale, in commerce, and have introduced, delivered for introduction, transported and caused to be transported in commerce, and have sold or delivered after sale or shipment in commerce, products, as the terms "commerce" and "products," are defined in the Flammable Fabrics Act, as amended, which products fail to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the Flammable Fabrics Act, as amended.

Among such products mentioned hereinabove was carpeting designated by the style "Premier."

PAR. 3. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act, as amended, and the rules and regulations promulgated thereunder, and as such constituted, and now constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Frank W. Vanderheyden supporting the complaint.

Mr. Charles F. Mintz, Krisel, Lessal, Mintz & Dowling, New York, New York for respondents.

INITIAL DECISION BY DAVID H. ALLARD, ADMINISTRATIVE LAW JUDGE

OCT. 16, 1972

PRELIMINARY STATEMENT

This proceeding was commenced by the issuance of a complaint on July 10, 1972, charging the corporate respondent, Howard Carpet Mills, Inc., and Howard S. Stein, individually and as an officer of Howard Carpet Mills, Inc., with violating the Flammable Fabrics Act and the Federal Trade Commission Act as amended.

Respondent Howard Carpet Mills, Inc., admits the allegations of fact set forth in the complaint. The sole issue in controversy is whether the named individual respondent, Howard S. Stein, should be embraced within the order. Briefs on this point were filed by the parties on October 6, 1972. However, the matter essentially is being handled under the provisions of Section 3.12(2) of the Commission's Rules of Practice.

FINDINGS

1. Respondent Howard Carpet Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

2. Respondent Howard S. Stein, is an officer of the said corporate respondent. He formulates, directs, and controls the acts, practices, and policies of the said corporation.

3. Respondents are engaged in the manufacture and sale of carpets and rugs, with their manufacturing facilities located at 105 Easterling Street, Dalton, Georgia and principal place of business located at 919 Third Avenue, New York, New York.

4. Respondent Howard Carpet Mills, Inc., has not engaged in any purchases, sales or manufacture of any of the materials here assailed since the time it was so advised by the Federal Trade Commission of the violations of the Flammable Fabrics Act.¹

5. Respondents are now and for some time last past have been engaged in the manufacturing for sale, sale and offering for sale, in commerce, and have introduced, delivered for introduction, transported and caused to be transported in commerce, and have sold or delivered after sale or shipment in commerce, products, as the terms "commerce" and "product," are defined in the Flammable Fabrics Act, as amended, which products fail to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the Flammable Fabrics Act, as amended.

Among such products mentioned hereinabove was carpeting designated by the style "Premier."

CONCLUSIONS

1. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act, as amended, and the rules and regulations promulgated thereunder, and as such constituted, and now constitute unfair methods of competition and unfair and deceptive acts

¹ Upon receiving the Commission's notice, Howard S. Stein promptly ordered the corporate respondent to recall whatever merchandise was out with distributors and purchasers and he caused to be removed all the merchandise from any future sales.

and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

2. Respondents argue on brief that the individual respondent should not "be a party to this consent order and decree [because] he stands in a position no worse than an officer of a large corporate structure." Since the named individual respondent admittedly was the person responsible for the management, direction and control of the corporate respondent, effective administration of the Flammable Fabrics Act, as amended, dictate that an outstanding order be directed against the responsible individual and not merely against a lifeless corporate entity. For respondent Howard S. Stein is the alter ego of Howard Carpet Mills, Inc., *Cf. Fred Meyer, Inc.*, 63 F.T.C. 1; *Pati-Port, Inc. v. Federal Trade Commission*, 313 F. 2d 103, 105 (4th Cir. 1963).

3. The Flammable Fabrics Act, as amended, addresses itself to protecting the public from bodily harm. The Commission must, therefore, "be allowed effectively to close all roads to the prohibited goal, so that its order may not be by-passed with impunity." *Federal Trade Commission v. Ruberoid Co.*, 343 U.S. 470, 473 (1952).

4. The remedy in the accompanying order has a reasonable relationship to the unlawful practice here found to exist. It is the only reasonable action which could be calculated to preclude a revival of the illegal practices.

5. The Federal Trade Commission has jurisdiction of and over respondents and the subject matter of this proceeding.

6. The complaint herein states a cause of action and this proceeding is in the public interest.

ORDER

It is ordered, That respondent Howard Carpet Mills, Inc., a corporation, its successors and assigns, and its officers, and respondent Howard S. Stein, individually and as an officer of said corporation and respondents' agents, representatives and employees directly or through any corporation, subsidiary, division, or other device, do forthwith cease and desist from manufacturing for sale, selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric, or related material; or manufacturing for sale, selling, or offering for sale, any product made of fabric or related material which has been shipped or received in commerce, as "commerce," "product," "fabric" and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric or related material fails to conform to an applicable standard or regulation con-

tinued in effect, issued or amended under the provisions of the aforesaid Act.

It is further ordered, That respondents notify all of their customers who have purchased or to whom have been delivered the products which gave rise to this complaint, of the flammable nature of said products and effect recall of said products from such customers.

It is further ordered, That the respondents herein either process the products which gave rise to the complaint so as to bring them into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products.

It is further ordered, That the provisions of this order with respect to customer notification, recall, and processing or destruction shall, in addition to the products set forth in subparagraph one of Paragraph Two of the complaint, be applicable to any other styles of carpeting found not to meet an applicable standard under the Flammable Fabrics Act, as amended, since the issuance of the complaint and until the order becomes final within the meaning of the Federal Trade Commission Act.

It is further ordered, That respondents herein shall, within ten (10) days after service upon them of this order file with the Commission a special report in writing setting forth the respondents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the products which gave rise to the complaint, (2) the identity of the purchasers of said products, (3) the amount of said products on hand and in the channels of commerce, (4) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and of the results thereof, (5) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or to destroy said products, and the results of such action and (6) any disposition of said products since November 10, 1971. Respondents will submit with their report, a complete description of each style of carpet or rug currently in inventory or production. Upon requests, respondents will forward to the Commission for testing a sample of any such carpet or rug. Respondents will also advise the Commission fully and specifically concerning items (1) through (5) above with regard to any products coming within the purview of Paragraph Four of this 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

Final Order

81 F.T.C.

a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

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

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 or employment in which he is engaged as well as a description of his duties and responsibilities.

FINAL ORDER

No appeal from the initial decision of the administrative law judge having been filed, and the Commission having determined that the case should not be placed on its own docket for review and that pursuant to Section 3.51 of the Commission's Rules of Practice (effective August 15, 1971), the initial decision should be adopted and issued as the decision of the Commission:

It is ordered, That the initial decision of the administrative law judge shall, on the 1st day of December 1972, become the decision of the Commission.

It is further ordered, That Howard Carpet Mills, Inc., a corporation, and Howard S. Stein, individually and as an officer of the corporation, 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.

IN THE MATTER OF

ESTELLE COHEN, TRADING AS INCOME TAX PREPARATION
CO., ET AL.

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

Docket C-2326. Complaint, Dec. 1, 1972—Decision, Dec. 1, 1972

Consent order requiring a New York City personal income tax preparation service, among other things to cease misrepresenting the terms and conditions of any guarantees; representing that respondent will reimburse customers for any additional payments because of mistakes made on tax returns; failing to disclose respondents' responsibility for, or obligation resulting from, errors attributable to respondents' preparation of tax returns; and misrepresenting the training, competence, or ability of respondents' tax-preparing personnel.

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 Estelle Cohen, an individual trading and doing business as Income Tax Preparation Co., and Leonard Cohen, individually, and as manager of said company 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 Estelle Cohen is an individual trading and doing business as Income Tax Preparation Co. Respondent Leonard Cohen is her husband, and as manager of said company he formulates, directs and controls its policies, acts and practices. Their address, and that of the office and principal place of business of the company, is 146 East 46th Street, New York, New York.

PAR. 2. Respondents are now, and for some time last past, have been engaged in the advertising, offering for sale and sale of personal income tax preparation services.

Respondents and their employees sell their aforesaid services directly to the public during the tax season at 40 different locations.

PAR. 3. In the course and conduct of their business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the said income tax preparation services by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said income tax preparation services.

PAR. 4. Among the advertisements disseminated in the aforesaid manner, are certain newspaper and classified telephone directory insertions. These advertisements contain certain statements and representations respecting a guarantee, and the expertise of their employees. Typical of the statements and representations in said advertisements, but not all inclusive thereof, are the following:

a. Newspaper:

PREPARED BY EXPERTS

All returns prepared by us are guaranteed for Accuracy and Correctness. We will pay cost of any penalties arising from guarantee.

b. Classified telephone directory:

INCOME TAX PREPARATION CO.

Our professional know-how will get you all of your deductions.

* * * * *

Complaint

81 F.T.C.

ALL TYPES TAX RETURNS for INDIVIDUALS, COMPANIES and CORPORATIONS Prepared Quickly, Accurately, Efficiently, Confidentially
We Represent You At Audits & Examinations.

OUR PLEDGE:

All returns prepared by us are checked for accuracy and correctness. Based upon information supplied, we will pay cost of any penalty arising from this statement.

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning, but not expressly set out herein, respondents have represented, and are now representing, directly or by implication, that:

1. Respondents will reimburse taxpayers for all payments the taxpayers are required to make in addition to their initial tax payments, if the additional payments result from an error made by respondents and their employees in the preparation of tax returns.

2. Respondents' tax preparers are specially trained and unusually competent in preparing tax returns and giving tax advice, and that they have the ability and capacity to prepare complex tax returns and give advice regarding complex and detailed income tax returns.

PAR. 6. In truth and in fact:

1. Respondents reimburse taxpayers only for penalties and interest assessed against them by the Internal Revenue Service. Respondents do not pay the additional tax that taxpayers may have to pay as a result of errors committed by them or their tax preparers.

2. Many of respondents' tax preparers are seasonal employees, who are not specially trained or unusually competent in preparing tax returns and giving tax advice, and such tax preparers do not have the ability and capacity to prepare complex tax returns and give advice regarding complex and detailed income tax returns.

Therefore, the statements and representations set forth in Paragraphs Four and Five hereof were, and are, false, misleading and deceptive.

PAR. 7. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of income tax preparation services of the same general kind and nature.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements and representations, and unfair acts and practices, has had, and now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of respondents' income tax preparation services by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of the respondents as herein alleged, were and are all to the prejudice and injury to the public and of respondents' competitors, and have 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.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of Section 5 of the Federal Trade Commission Act; 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 to issue herein, 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 alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its rules, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Estelle Cohen is an individual trading and doing business as Income Tax Preparation Co. Respondent Leonard Cohen is her husband, and as manager of said company he formulates, directs and controls its policies, acts and practices. Their address, and that of the office and principal place of business of the company, is 146 East 46th Street, New York, 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 respondents, Estelle Cohen, an individual trading and doing business as Income Tax Preparation Co., and Leonard Cohen, individually, and as manager of said company, their successors and assigns, and their agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in or in connection with the advertising, offering for sale, and sale of income tax preparation services, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using any guarantee without clearly and conspicuously disclosing the terms, conditions and limitations of any such guarantee; or misrepresenting, in any manner, the terms and conditions of any guarantee.

2. Representing, directly or by implication, that respondents will reimburse their customers for all payments the customers may be required to make in addition to their initial tax payments, in instances where the additional payments result from an error by respondents in the preparation of the tax return; *Provided, however,* nothing herein shall prevent truthful representations that respondents will reimburse their customers for penalty or interest payments resulting from respondents' error.

3. Failing to disclose, clearly and conspicuously, whenever respondents make any representation, directly or by implication, as to their responsibility for, or obligation resulting from, errors attributable to respondents in the preparation of tax returns, that respondents will not assume the liability for additional taxes assessed against the taxpayer.

4. Representing, directly or by implication, that respondents' tax-preparing personnel are specially trained or unusually competent in the preparation of tax returns and the giving of tax advice: or that they have the ability and capacity to prepare and give advice concerning complex and detailed income tax returns; or misrepresenting, in any manner, the competence or ability of respondents' tax-preparing personnel.

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

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the respondents such

906

Complaint

as dissolution, assignment or sale resulting in the emergence of a successor, the creation or dissolution of subsidiaries or any other change which may affect compliance obligations arising out of the order.

IN THE MATTER OF

GLEN HEAD MILLS OF GEORGIA, INC., ET AL.

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

Docket C-2327. Complaint, Dec. 1, 1972—Decision, Dec. 1, 1972

Consent order requiring a Jasper, Georgia, wholesaler of carpeting fabrics fabricated from its yarns, among other things to cease removing or mutilating information required by the Textile Fiber Products Identification Act; failing to maintain adequate records; and misbranding its textile fiber products. Respondent is further required to cease using the word "Mills" as part of the corporate or trade name which misrepresents that respondent owns, operates or controls mills, factories or manufacturing plants.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Glen Head Mills of Georgia, Inc., a corporation, and Edward Negola, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Proposed respondent Glen Head Mills of Georgia, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia. The respondent corporation maintains its office and principal place of business at 1 Carl E. Sanders Avenue, Jasper, Georgia.

Proposed respondent Edward Negola is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of the corporate respondent including those hereinafter referred to. His address is the same as that of the corporate respondent.

Complaint

81 F.T.C.

PAR. 2. Proposed respondents were engaged in the business of purchasing carpet remnants from various sources and the wholesaling of such in the form of rugs. Proposed respondents are currently engaged in the business of purchasing carpet yarns from various sources, having such tufted into carpet rolls to their specifications and the wholesaling of such carpet rolls, as well as rugs made therefrom.

COUNT I

Alleging violation of the Textile Fiber Products Identification Act and the Federal Trade Commission Act, the allegations of Paragraphs One and Two are incorporated by reference in Count I as if fully set forth herein.

PAR. 3. Respondents are now and for some time last past have been engaged in the introduction, delivery for introduction, manufacture for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and in the importation into the United States, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products, either in their original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber products" are defined in the Textile Fiber Products Identification Act.

PAR. 4. Certain of said textile fiber products were misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form as prescribed by the rules and regulations promulgated under said Act. Among such misbranded textile fiber products, but not limited thereto, were textile fiber products, namely area rugs, with labels affixed by Glen Head Mills of Georgia, Inc., which failed to disclose the percentage of the fibers present by weight.

Also among such misbranded textile fiber products were carpet rolls offered by Glen Head Mills of Georgia, Inc., which did not have labels affixed thereto disclosing:

1. The percentages of the fibers present by weight.
2. The generic names of the fibers present.

PAR. 5. Respondents have failed to maintain proper records showing the fiber content of the textile fiber products fabricated from their yarns and manufactured to their specifications, in violation of Section 6(a) of the Textile Fiber Products Identification Act and Rule 39 of the regulations promulgated thereunder.

PAR. 6. Respondents, in violation of Section 5(a) of the Textile Fiber Products Identification Act have caused and participated in the removal of, prior to the time textile fiber products subject to the provisions of the Textile Fiber Products Identification Act were sold and delivered to the ultimate consumer, labels required by the Textile Fiber Products Identification Act to be affixed to such products, without substituting therefore labels conforming to Section 4 of said Act and in the manner prescribed by Section 5(b) of said Act.

PAR. 7. Respondents in substituting stamps, tags, labels, or other identification pursuant to Section 5(b) of the Textile Fiber Products Identification Act have not maintained such records as will show the information set forth on these stamps, tags, labels, or other identification removed together with the name or names of the person or persons from whom such textile fiber products were received in violation of Section 6(b) of the Textile Fiber Products Identification Act.

PAR. 8. Certain of said textile fiber products were misbranded in violation of the Textile Fiber Products Identification Act in that they were not labeled in accordance with the rules and regulations promulgated thereunder in that in disclosing the required fiber content information as to floor coverings containing exempted backings, fillings, or paddings, such disclosure was not made in such a manner as to indicate that such required fiber content information related only to the face, pile or outer surface of the floor covering and not to the backing, filling or padding, in violation of Rule 11 of the aforesaid rules and regulations.

PAR. 9. The acts and practices of respondents as set forth above were, and are, in violation of the Textile Fiber Products Identification Act and the rules and regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices, in commerce, under the Federal Trade Commission Act.

COUNT II

Alleging violation of the Federal Trade Commission Act, the allegations of Paragraphs One and Two are incorporated by reference in Count II as if fully set forth herein.

PAR. 10. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, to be shipped from their place of business in the State of Georgia to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 11. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind as that sold by respondents.

PAR. 12. In the course and conduct of their business, the aforesaid respondents, variously on their labels and elsewhere, refer to the corporate respondent as "Glen Head Mills," thus stating or implying that said corporate respondent functions as a mill to manufacture the products which it sells. In truth and in fact, while the corporate respondent directs the fabrication of its products, the corporate respondent does not function at all as a mill nor does it own, operate, or directly and absolutely control a mill. Thus, the aforesaid representations are false, misleading, and deceptive.

PAR. 13. There is a preference on the part of many members of the public to buy products directly from mills or factories in the belief that by doing so certain advantages accrue to them, including lower prices.

PAR. 14. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead dealers and other purchasers into the erroneous and mistaken belief that such statements and representations were, and are, true, and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 15. The aforesaid acts and practices of respondents, as herein alleged in Paragraphs Twelve through Fourteen, were and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Division of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Textile Fiber Products Identification Act; 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 aforesaid draft of 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 alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34 (b) of its rules, the Commission hereby issues its complaint; makes the following jurisdictional findings, and enters the following order:

1. Respondent Glen Head Mills of Georgia, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia. Its general offices and principal place of business are located at 1 Carl E. Sanders Avenue, Jasper, Georgia.

Respondent Edward Negola is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of the corporate respondent including those hereinafter referred to. The address of Edward Negola is the same as that of the corporate respondent.

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

I

It is ordered, That respondents Glen Head Mills of Georgia, Inc., a corporation, its successors and assigns, and its officers, and Edward Negola, individually and as an officer of Glen Head Mills of Georgia, Inc., and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the introduction, manufacture for introduction, sale, advertising or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale, in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to

be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by failing to affix a stamp, tag, label or other means of identification to each such product showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

B. Failing to maintain or preserve records of fiber content of textile fiber products fabricated from their yarns and manufactured to their specifications as required by Section 6(a) of the Textile Fiber Products Identification Act and Rule 39 of the rules and regulations promulgated thereunder.

C. Removing or mutilating, or causing or participating in the removal or mutilation of, the stamp, tag, label or other identification required by the Textile Fiber Products Identification Act to be affixed to any textile fiber product, after such textile fiber product has been shipped in commerce, and prior to the time such textile fiber product is sold and delivered to the ultimate consumer without substituting therefor labels conforming to Section 4 of said Act and the rules and regulations promulgated thereunder and in the manner prescribed by Section 5(b) of the Act.

D. Failing to maintain and preserve, as required by Section 6(b) of the Textile Fiber Products Identification Act, such records of the fiber content of textile fiber products as will show the information set forth on the stamps, tags, labels or other identification removed by respondents, together with the name or names of the person or persons from whom such textile fiber products were received, when substituting stamps, tags, labels or other identification pursuant to Section 5(b) of the Textile Fiber Products Identification Act.

E. Failing to set forth in disclosing fiber content information as to floor coverings containing exempted backings, fillings or paddings, that such disclosure relates only to the face, pile or outer surface of such textile fiber products and not the exempted backings, fillings, or paddings.

II

It is further ordered, That respondents Glen Head Mills of Georgia, Inc., a corporation, its successors and assigns, and its officers, and Ed-

ward Negola, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering for sale, sale or distribution of carpet rolls, rugs, or any other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Directly or indirectly using the word "Mills" or any other word or term of similar import or meaning in or as a part of respondents' corporate or trade name or representing in any other manner that respondents perform functions of a mill or otherwise manufacture or process the products sold by them unless or until respondents own, operate, or directly or absolutely control the mill, factory or manufacturing plant wherein said products are manufactured.

2. Misrepresenting in any manner that respondents own, operate or control mills, factories or manufacturing plants where their products are manufactured.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, Glen Head Mills of Georgia, Inc., 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 the respondent corporation, Glen Head Mills of Georgia, Inc., shall forthwith distribute a copy of the order to each of its operating divisions.

It is further ordered, That 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.

Complaint

81 F.T.C.

IN THE MATTER OF

PAKISTAN ARTS AND CRAFTS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS*Docket C-2328. Complaint, Dec. 6, 1972—Decision, Dec. 6, 1972.*

Consent order requiring a New York City importer and manufacturer of wearing apparel, among other things to cease manufacturing for sale, selling, importing, or distributing any product, fabric, or related material which fails to conform to an applicable standard of flammability or regulation issued under the provisions of the Flammable Fabrics Act, as amended.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Pakistan Arts and Crafts, Inc., a corporation, and Jamil Akhter, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Flammable Fabrics Act, as amended, 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 Pakistan Arts and Crafts, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Its address is 35 West 30th Street, New York, New York.

Respondent Jamil Akhter is an officer of the corporate respondent. He formulates, directs and controls the acts, practices and policies of the said corporate respondent including those hereinafter set forth.

Respondents are engaged in the importation, manufacture and sale of wearing apparel and accessories, including, but not limited to, ponchos.

PAR. 2. Respondents are now and for some time last past have been engaged in the manufacture for sale, the sale and offering for sale, in commerce, and the importation into the United States, and have introduced, delivered for introduction, transported and caused to be transported in commerce, and have sold or delivered after sale or shipment in commerce, products, as the terms "commerce," and "product" are defined in the Flammable Fabrics Act, as amended, which

fail to conform to an applicable standard or regulation in effect, issued or amended under the provisions of the Flammable Fabrics Act, as amended.

Among such products mentioned hereinabove were ponchos.

PAR. 3. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act, as amended, and the rules and regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Flammable Fabrics Act and the Federal Trade Commission Act; and

Respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the aforesaid draft of 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 alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order.

1. Respondent Pakistan Arts and Crafts, 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 located at 35 West 30th Street, New York, New York.

Respondent Jamil Akhter is president of said corporation. He formulates, directs and controls the acts, practices and policies of said corporation and his principal office and place of business is located at the above stated address.

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 the respondents Pakistan Arts and Crafts, Inc., a corporation, its successors and assigns, and its officers, and Jamil Akhter, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from manufacturing for sale, selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric, or related material; or manufacturing for sale, selling or offering for sale, any product made of fabric or related material which has been shipped or received in commerce as "commerce," "product," "fabric" and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric, or related material fails to conform to an applicable standard or regulation issued, amended or continued in effect, under the provisions of the aforesaid Act.

It is further ordered, That respondents notify all of their customers who have purchased or to whom have been delivered the ponchos which gave rise to the complaint, of the flammable nature of said ponchos and effect the recall of said ponchos from such customers.

It is further ordered, That the respondents herein either process the ponchos which gave rise to the complaint so as to bring them into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said ponchos.

It is further ordered, That the respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission an interim special report in writing setting forth the respondents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the ponchos which gave rise to the complaint, (2) the number of said ponchos in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flam-

mability of said ponchos and effect the recall of said ponchos from customers, and of the results thereof, (4) any disposition of said ponchos since November 6, 1970, and (5) any action taken or proposed to be taken to bring said ponchos into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said ponchos, and the results of such action. Such report shall further inform the Commission as to whether or not respondents have in inventory any product, fabric, or related material having a plain surface and made of paper, silk, rayon and acetate, nylon and acetate, rayon, cotton or any other material or combinations thereof in a weight of 2 ounces or less per square yard, or any product, fabric or related material having a raised fiber surface. Respondents shall submit samples of not less than 1 square yard in size of any such product, fabric, or related material with this report.

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 this order.

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 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 the order to cease and desist contained herein.

IN THE MATTER OF

WILLIAM FREIHOFFER BAKING CO., INC.

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

Docket C-2329. Complaint, Dec. 7, 1972—Decision, Dec. 7, 1972.

Consent order requiring an Allentown, Pennsylvania, producer of bakery goods, among other things to cease misrepresenting the nutritional value of its bread.

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 William Freihofer

Baking Company, Inc., a corporation, hereinafter referred to as respondent, has 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. The proposed respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 1701 Union Boulevard, Allentown, Pa.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, sale and distribution of a bakery product, specifically a bread which comes within the classification of a "food," as said term is defined in the Federal Trade Commission Act.

PAR. 3. Respondent causes the said product, when sold, to be transported from its place of business in Pennsylvania to purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said product in commerce as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

PAR. 4. In the course and conduct of its said business, respondent has disseminated, and caused the dissemination of, certain advertisements concerning the said product by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements in newspapers, point of purchase advertisements, and by means of radio broadcasts transmitted by radio stations with sufficient power to carry such broadcasts across state lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said product; and has disseminated, and caused the dissemination of, advertisements concerning said product by various means, including, but not limited to the aforesaid media, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said product in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among and typical of the statements and representations contained in said advertisements disseminated as hereinabove set forth are the following:

1) A flyer attached to packages of said product which bears a picture of two muscular children, above which is written:

The Inside story of Freihofer's Double Double Enriched Bread

2) A statement in said flyer that:

We at Freihofer have been concerned over the alarming reports of poor nutrition in America today. Because of improper diet and empty calories, many, many thousands of people in our cities are *nutritionally* starving. That's why our research staff has devoted much of their efforts to the development of a High-Nutrition White Bread.

Our Now Double Enriched White Bread contains almost twice the nutrition including, for the first time, NATURAL WHEAT GERM (for good circulation and youthful vigor). Each new loaf contains the same natural wheat germ found in 100% Whole Wheat Bread. This also increases the protein content for a slightly firmer, better tasting loaf.

Our new Double Enriched Bread is truly twice as nutritious * * *

3) A statement in a radio commercial to the effect that:

Ladies and Gentlemen, it's here at last. A nutritional bread-through. It's Freihofer's new double enriched bread. Freihofer's new double-enriched bread is now double nutritious with almost twice the vitamins and iron. Plus, for the first time, natural wheat germ. Wheat germ, the life-giving part of the wheat kernel, is nature's great wonder worker for good circulation and youthful vigor. And now double-enriched Freihofer's bread contains the same natural wheat germ found in 100% whole wheat bread, plus 80% more vitamins, more iron and more protein. Starting today, give your family better nutrition and better health with Freihofer's. Freihofer's, now fortified with natural wheat germ, plus more vitamins, iron and protein. So, whose got the new double-enriched bread? Freihofer's—that's who.

4) A statement in another radio advertisement for said product to the effect that:

Ladies and Gentlemen, it's here at last. A great nutritional bread-through. It's Freihofer's new (ECHO) Double-Enriched Bread. Honey, this toast tastes terrific! Yes, I switched to Freihofer's new bread, look at the wrapper. It says double-enriched. Right, Freihofer's new double-enriched with vitamins and iron. Double enriched, hey, that is great. Yea, and fortified with natural wheat germ. Wheat germ gives us good circulation you know. Sure, keeps us young and healthy, we have been adding extra wheat germ to our food for years. Well, not any more, because Freihofer's now contains the same natural wheat germ as 100% whole wheat bread. And all those extra vitamins and iron. Boy, double-enriched Freihofer's is some high power bread. It's double nutritious, dear. Yea, double delicious too. Freihofer's now fortified with natural wheat germ, plus more vitamins, iron and protein. So whose got the new double-enriched bread? Freihofer's, that's who.

5) A newspaper advertisement which states almost exactly what the flyer described in (1) above states, but above which, in large type is written

NOW FREIHOFER'S DOUBLE ENRICHED BREAD HAS ALMOST TWICE THE NUTRITION * * * NATURAL WHEAT GERM PLUS 80% MORE VITAMINS—55% MORE IRON—MORE PROTEIN.

Below that writing, in a circular background is the phrase

Complaint

81 F.T.C.

NOW FORTIFIED WITH NATURAL WHEAT GERM. It contains the same natural wheat germ found in 100% whole wheat bread.

6) A shelf-hanger which describes said bread as "twice as nutritious."

PAR. 6. Through the use of said advertisements and others similar thereto not specifically set out herein, respondent has represented directly and by implication:

1) that Freihofer's bread represents a nutritional breakthrough, and is of extraordinary nutritional value, especially in maintaining good circulation and youthful vigor;

2) that Freihofer's bread has the same quantity of wheat germ as is contained in a loaf of whole wheat bread;

3) that Freihofer's bread has twice the nutritional value of
a) either any other bread, or
b) the previous model of Freihofer's bread.

PAR. 7. In truth and in fact

1) Freihofer's bread is well within the range of nutritional quality of large selling enriched breads in the United States and in no sense represents a nutritional breakthrough, particularly in terms of maintaining good nutrition and youthful vigor;

2) Freihofer's bread does not have even approximately as much wheat germ as is contained in whole wheat bread and in fact has far less;

3) Freihofer's bread has neither twice the nutrition of many widely sold breads, nor twice the nutrition Freihofer's bread had before reformulation.

Therefore, the statements and representations set forth in Paragraphs Five and Six were and are false, misleading and deceptive and the advertisements referred to in Paragraph Five were and are misleading in material respects and constituted and now constitute "false advertisements" as that term is defined in the Federal Trade Commission Act.

PAR. 8. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent has been, and now is, in substantial competition in commerce with corporations, firms and individuals in the sale of bread of the same general kind and nature as that sold by respondent.

PAR. 9. The use by respondent of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of

substantial quantities of respondent's product by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of respondent, including the dissemination by respondent of the "false advertisements," as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act and;

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

I

1) The proposed respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and its principal place of business located at 1701 Union Boulevard, Allentown, Pa.

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

II

It is ordered, That respondent William Frehofer Baking Company, a corporation, their successors and assigns, and their agents, officers, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of any bread or baked product, forthwith cease and desist from:

(1) Disseminating or causing the dissemination of any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which contains the following:

(a) any representation, orally, visually, or by any other means, that Frehofer's Bread is "double enriched," has "almost twice the nutrition," is "double nutrition," or has "almost twice the vitamins and iron," as ordinary enriched bread,

(b) any representation, or implication, orally, visually, or by any other means, that the wheat germ content of Frehofer's Bread is equivalent to that of whole wheat bread, such as by saying "* * * Frehofer's now contains the same natural wheat germ as 100% whole wheat bread,"

(c) any representation, orally, visually, or by any other means that Frehofer's Bread represents a "nutritional bread through" or break-through, or any other representation to that effect;

It is provided, however, That should respondent reformulate its bread so as to make any of the above-proscribed representations true, that the above-proscribed representations may be made.

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

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

It is further ordered, That respondent shall, within sixty (60) days after service of the order upon it, file with the Commission a report in detail the manner and form of their compliance with the order to cease and desist.

IN THE MATTER OF

STRASSBERG AND TAMA, INC., ET AL.

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

Docket C-2330. Complaint, Dec. 12, 1972—Decision, Dec. 12, 1972

Consent order requiring a New York City manufacturer of fur products, among other things, to cease misbranding and falsely invoicing its fur products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Strassberg and Tama, Inc., a corporation, and Maurice Strassberg and Solomon Tama, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Fur Products Labeling 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 Strassberg and Tama, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondents Maurice Strassberg and Solomon Tama are officers of the corporate respondent. They formulate, direct and control the policies, acts and practices of the corporate respondent including those hereinafter set forth.

Respondents are manufacturers of fur products with their office and principal place of business located at 350 Seventh Avenue, New York, New York.

PAR. 2. Respondents are now and for some time last past have been engaged in the introduction into commerce, and in the manufacture for introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and dis-

tribution in commerce, of fur products; and have manufactured for sale, sold, advertised, offered for sale, transported and distributed, fur products which have been made in whole or in part of furs which have been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they were falsely and deceptively labeled to show that fur contained therein was natural, when in fact such fur was pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, in violation of Section 4(1) of the Fur Products Labeling Act.

PAR. 4. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the rules and regulations promulgated thereunder.

Among such misbranded fur products, but not limited thereto, were fur products with labels which failed to disclose that the fur contained in the fur products was bleached, dyed, or otherwise artificially colored, when such was the fact.

PAR. 5. Certain of said fur products were falsely and deceptively invoiced by the respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act and the rules and regulations promulgated under such Act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products covered by invoices which failed to disclose that the fur contained in the fur products was bleached, dyed, or otherwise artificially colored, when such was the fact.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in that certain of said fur products were invoiced to show that the fur contained therein was natural when in fact such fur was pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 7. The aforesaid acts and practices of respondents as herein alleged, are in violation of the Fur Products Labeling Act and the rules and regulations promulgated thereunder and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the New York Regional Office

proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Fur Products Labeling Act; and

The respondent 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 aforesaid draft of 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 alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it has reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondents Strassberg and Tama, 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 located at 350 Seventh Avenue, New York, New York.

Respondents Maurice Strassberg and Solomon Tama are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation and their 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 Strassberg and Tama, Inc., a corporation, its successors and assigns, and its officers, and Maurice Strassberg, and Solomon Tama, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offer-

ing for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding any fur product by:

1. Representing directly or by implication on a label that the fur contained in such fur product is natural when such fur is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

2. Failing to affix a label to such fur product showing in words and in figures plainly legible all of the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

B. Falsely or deceptively invoicing any fur product by:

1. Failing to furnish an invoice, as the term "invoice" is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

2. Representing directly or by implication on an invoice that the fur contained in such fur product is natural, when such fur is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

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 respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment. Such notice shall include respondents' current business or employment in which they are engaged as well as a description of their duties and responsibilities.

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

Complaint

IN THE MATTER OF

H. GRONER & CO., INC., ET AL.

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

Docket C-2331. Complaint, Dec. 12, 1972—Decision, Dec. 12, 1972

Consent order requiring a Chicago, Ill. importer and jobber of various products, including scarves among other things, to cease selling, importing, or distributing any product, fabric, or related material which fails to conform to an applicable standard of flammability or regulation issued under the provisions of the Flammable Fabrics Act, as amended.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that H. Groner & Co., Inc., a corporation, and Henry Groner, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Flammable Fabrics Act, as amended, 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 H. Groner & Co., Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 318 West Adams, Chicago, Illinois.

Respondent Henry Groner is an officer of the corporate respondent. He formulates, directs and controls the acts, practices and policies of said corporation. His address is the same as that of the corporate respondent.

Respondents are importers and jobbers of various products including scarves.

PAR. 2. Respondents are now and for some time last past have been engaged in the sale and offering for sale, in commerce, and in the importation into the United States, and have introduced, delivered for introduction, transported and caused to be transported in commerce and have sold or delivered after sale or shipment in commerce, products as the terms "commerce" and "product" are defined in the Flammable Fabrics Act, as amended, which products failed to conform

Decision and Order

81 F.T.C.

to an applicable standard or regulation continued in effect, issued or amended under the provisions of the Flammable Fabrics Act, as amended.

Among such products mentioned hereinabove were scarves.

PAR. 3. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act, as amended, and the rules and regulations promulgated thereunder, and constituted and now constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Division of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act, and the Flammable Fabrics Act, as amended; 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 aforesaid draft of 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 alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent H. Groner & Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois.

Respondent Henry Groner is an officer of the corporate respondent. He formulates, directs and controls the acts, practices and policies of said corporation.

Respondents are importers and jobbers of various products including scarves. Their office and principal place of business is located at 318 West Adams, Chicago, Illinois.

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 H. Groner & Co. Inc., a corporation, its successors and assigns, and its officers, and Henry Groner, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce any product, fabric or related material; or selling or offering for sale any product made of fabric or related material which has been shipped or received in commerce, as "commerce," "product," "fabric" and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric or related material fails to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the aforesaid Act.

It is further ordered, That respondents notify all of their customers who have purchased or to whom have been delivered the products which gave rise to this complaint of the flammable nature of said products, and effect recall of said products from such customers.

It is further ordered, That the respondents herein either process the products which gave rise to the complaint so as to bring them into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products.

It is further ordered, That the respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission a special report in writing setting forth the respondents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the products which gave rise to the complaint, (2) the number of said products in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and of the results thereof, (4) any disposition of said products since March 19, 1971, and (5) any action taken or proposed to be taken to

bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or to destroy said products, and the results of such action. Such report shall further inform the Commission as to whether or not respondents have in inventory any product, fabric, or related material having a plain surface and made of paper, silk, rayon and acetate, nylon and acetate, rayon, cotton or any other material or combinations thereof in a weight of two ounces or less per square yard, or any product, fabric or related material having a raised fiber surface. Respondents shall submit samples of not less than one square yard in size of any such product, fabric, or related material with this report.

It is further ordered, That the 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 or employment in which he is engaged as well as a description of his duties and responsibilities.

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 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.

IN THE MATTER OF

CALIFORNIA TEXTURES, INC., ET AL.

CONSENT ORDER ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS

Docket C-2332. Complaint, Dec. 12, 1972—Decision, Dec. 12, 1972

Consent order requiring a Commerce, California, manufacturer of carpets and rugs, among other things to cease manufacturing, selling and distributing carpeting which does not meet the acceptable criteria for carpeting under the Flammable Fabrics Act, as amended.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that California Textures, Inc., a corporation, and Richard Oliver, individually and as an officer of the said corporation, hereinafter referred to as respondents, have violated the provisions of the said Acts and the rules and regulations promulgated under the Flammable Fabrics Act, as amended, 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 California Textures, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. Respondent Richard Oliver is an officer of the said corporate respondent. He formulates, directs, and controls the acts, practices, and policies of the said corporation.

Respondents are engaged in the manufacture and sale of carpets and rugs, with their principal place of business located at 3435 Malt Avenue, city of Commerce, California.

PAR. 2. Respondents are now and for some time last past have been engaged in the manufacturing for sale, sale and offering for sale, in commerce, and have introduced, delivered for introduction, transported and caused to be transported in commerce, and have sold or delivered after sale or shipment in commerce, products, as the terms "commerce" and "product," are defined in the Flammable Fabrics Act, as amended, which products fail to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the Flammable Fabrics Act, as amended.

Among such products mentioned hereinabove were carpets and rugs Style "Air Flight" and "Easton" subject to Department of Commerce Standard For The Surface Flammability of Carpets and Rugs (DOC FF 1-70).

PAR. 3. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act, as amended, and the rules and regulations promulgated thereunder, and as such constituted, and now constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Division of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act, and the Flammable Fabrics Act, as amended; 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 aforesaid draft of 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 alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34 (b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent California Textures, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California.

Respondent Richard Oliver is an officer of the said corporation. He formulates, directs and controls the acts, practices and policies of the said corporation.

Respondents are engaged in the manufacture and sale of carpets and rugs, with the office and principal place of business of respondents located at 3435 Malt Avenue, city of Commerce, California.

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 California Textures, Inc., a corporation, its successors and assigns, and its officers, and respondent Richard

Oliver, individually and as an officer of said corporation and respondents' agents, representatives and employees directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from manufacturing for sale, selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric, or related material; or manufacturing for sale, selling or offering for sale, any product made of fabric or related material which has been shipped or received in commerce, as "commerce," "product," "fabric" and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric or related material fails to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the aforesaid Act.

It is further ordered, That respondents notify all of their customers who have purchased or to whom have been delivered the products which gave rise to this complaint, of the flammable nature of said products and effect the recall of said products from such customers.

It is further ordered, That the respondents herein either process the products which gave rise to the complaint so as to bring them into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products.

It is further ordered, That respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission a special report in writing setting forth the respondents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the products which gave rise to the complaint, (2) the identity of the purchasers of said products, (3) the amount of said products on hand and in the channels of commerce, (4) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and of the results thereof, (5) any disposition of said products since February 26, 1972, and (6) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or to destroy said products, and the results of such action. Respondents will submit with their report, a complete description of each style of carpet or rug currently in inventory or production. Upon request, respondents will forward to the Commission for testing a sample of any such carpet or rug.

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 respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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.

IN THE MATTER OF

THE CREDIT BUREAU OF COLUMBUS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE FAIR CREDIT REPORTING ACTS

Docket C-2333. Complaint, Dec. 15, 1972—Decision, Dec. 15, 1972.

Consent order requiring five affiliated midwestern credit bureaus, located in Ohio and Indiana, among other things to cease violating the Fair Credit Reporting Act by failing to require users of consumer reports to identify themselves and certify in writing the purpose for which the information is sought and not used for any other purpose; failing to incorporate into contracts that information will be requested only for the prospective user's exclusive use in connection with the extension of credit, employment, insurance, governmental use, or other legitimate business transaction involving the consumer; failing to require non-consumer credit customers to furnish required information; failing to forbid employees from obtaining reports on themselves or associates; and failing to cease doing business with any user of reports who does not follow the procedures specified by the order.

COMPLAINT

Pursuant to the provisions of the Fair Credit Reporting Act, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that The Credit Bureau of Columbus, Inc., The Credit Bureau of Mansfield, Inc., The Credit Bureau of Marion, Inc., The Credit Bureau of Newark, Inc., and The Credit Bureau of South Bend, Inc., corporations, and William B. Price, and William H. Price, individually and as officers and/or directors and/or managers of said

corporations, or any of them, hereinafter referred to as respondents, have violated the provisions of said Acts, 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 I. Respondent The Credit Bureau of Columbus, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 170 East Town Street, Columbus, Ohio. The Credit Bureau of Columbus, Inc. owns and operates five (5) unincorporated divisions known as The Credit Bureau of Delaware, located at 11 West Winter Street, Delaware, Ohio; The Credit Bureau of Bellefontaine, located at 111 South Madriver Street, Bellefontaine, Ohio; The Credit Bureau of Urbana, located at 212 South Main Street, Urbana, Ohio; The Credit Bureau of Fayette County, located at 132½ East Court Street, Washington Court House, Ohio; and Allen County Collection Company, located at 424 National Bank Building, Lima, Ohio.

Respondent The Credit Bureau of Mansfield, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 28 Park Avenue, West, Mansfield, Ohio. The Credit Bureau of Mansfield, Inc., owns and operates one (1) unincorporated division known as The Credit Bureau of Ashland, located at 159 West Main Street, Ashland, Ohio.

Respondent The Credit Bureau of Marion, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 142 East Center Street, Marion, Ohio.

Respondent The Credit Bureau of Newark, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 4½ North Second Street, Newark, Ohio.

Respondent The Credit Bureau of South Bend, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at 312 West Colfax Road, South Bend, Indiana.

Respondent William B. Price is a manager of The Credit Bureau of Columbus, Inc., and an officer of The Credit Bureau of Mansfield, Inc., The Credit Bureau of Marion, Inc., and The Credit Bureau of Newark, Inc., and a director of The Credit Bureau of South Bend, Inc. Respondent William H. Price is an officer and director of The Credit Bureau of Columbus, Inc., and a director of The Credit Bureau

of South Bend, Inc. They formulate, direct and control the acts and practices of the corporate respondents, including those hereinafter set forth. Their address is 170 East Town Street, Columbus, Ohio.

PAR. 2. Respondents are now, and for some time in the past have been, for monetary fees and/or dues, regularly engaged in the practice of assembling or evaluating information on consumers for the purpose of furnishing to third parties consumer reports, as "consumer report" is defined in Section 603(d) of the Fair Credit Reporting Act. Respondents regularly use a means or facility of interstate commerce for the purpose of preparing and furnishing said consumer reports. Therefore, respondents are a consumer reporting agency, as "consumer reporting agency" is defined in Section 603(f) of the Fair Credit Reporting Act.

PAR. 3. Subsequent to April 25, 1971, in the ordinary course and conduct of their business as a consumer reporting agency, respondents:

1. Failed, as to users of respondents' credit reporting service who were users or "members" prior to April 25, 1971, to establish procedures requiring said users to certify the purposes for which the information on consumers is sought and that the information will be used for no other purpose.
2. Failed to require prospective users who became "members" of respondents' service after April 25, 1971, to certify the purposes for which the requested information was sought.

Therefore, respondents failed to maintain reasonable procedures designed to limit the furnishing of consumer reports to the purposes specified under Section 604 of the Fair Credit Reporting Act, thereby violating Section 607 of the Fair Credit Reporting Act.

PAR. 4. In the ordinary course and conduct of respondents' business, as aforesaid, respondents contracted to provide their services to "persons," as defined in Section 603(b) of the Fair Credit Reporting Act, such as Federal, state or local governmental subdivisions or agencies, private legal counsel or attorneys, and private detectives or investigators, who do not, in the ordinary course of business, regularly extend credit or insurance for personal, family or household use. Respondents knew, or should have known, that said persons may not have a permissible purpose for consumer reports pursuant to Section 604 of the Fair Credit Reporting Act. Despite such knowledge, respondents provided consumer reports to such persons when they had no permissible purpose for a report under Section 604 of the Act. Further, respondents failed, in a number of instances, to obtain from such persons, at the time of their request for the consumer reports, a written certification of the purpose for which the reports were sought. Accordingly, re-

spondents failed to maintain reasonable procedures designed to limit the furnishing of consumer reports to the purposes specified under Section 604 of the Fair Credit Reporting Act, thereby violating Section 607 of the Fair Credit Reporting Act.

PAR. 5. Respondents' aforesaid failures to comply with the provisions of the Fair Credit Reporting Act constitute violations of that Act and, pursuant to Section 621 thereof, respondents have thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Cleveland Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; 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 aforesaid draft of 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 alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its rules, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent The Credit Bureau of Columbus, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 170 East Town Street, Columbus, Ohio. The Credit Bureau of Columbus, Inc., owns and operates five (5) unincorporated divisions known as the Credit Bureau of Delaware, located at 11 West Winter Street, Delaware, Ohio; The Credit Bureau of

Bellefontaine, located at 111 South Madriver Street, Bellefontaine, Ohio; The Credit Bureau of Urbana, located at 212 South Main Street, Urbana, Ohio; The Credit Bureau of Fayette County; located at 132½ East Court Street, Washington Court House, Ohio; and Allen County Collection Company, located at 424 National Bank Building, Lima, Ohio.

Respondent The Credit Bureau of Mansfield, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 28 Park Avenue, W., Mansfield, Ohio. The Credit Bureau of Mansfield, Inc., owns and operates one (1) unincorporated division known as The Credit Bureau of Ashland, located at 159 West Main Street, Ashland, Ohio.

Respondent The Credit Bureau of Marion, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 142 East Center Street, Marion, Ohio.

Respondent The Credit Bureau of Newark, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 4½ North Second Street, Newark, Ohio.

Respondent The Credit Bureau of South Bend, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at 312 West Colfax Road, South Bend, Indiana.

Respondent William B. Price is a manager of The Credit Bureau of Columbus, Inc., and an officer of The Credit Bureau of Mansfield, Inc., The Credit Bureau of Marion, Inc., and The Credit Bureau of Newark, Inc., and a director of The Credit Bureau of South Bend, Inc. Respondent William H. Price is an officer and director of The Credit Bureau of Columbus, Inc., and a director of The Credit Bureau of South Bend, Inc. They formulate, direct and control the policies, acts and practices of the corporate respondents. Their address is 170 East Town Street, Columbus, Ohio.

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 The Credit Bureau of Columbus, Inc., The Credit Bureau of Mansfield, Inc., The Credit Bureau of Marion, Inc., The Credit Bureau of Newark, Inc., and The Credit Bureau of South Bend, Inc., corporations, their respective successors and assigns,

and their officers, and William B. Price and William H. Price, individually and as officers and/or directors and/or managers of said corporations, or any of them, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the collecting, assembling or furnishing of consumer reports, as "consumer report" is defined in section 603(d) of the Fair Credit Reporting Act (Pub. L. No. 91-508, 15 U.S.C. Section 1601, *et seq.*), shall forthwith cease and desist from:

1. Failing to require all prospective users of consumer reports to identify themselves and to certify, in writing, through a contract or written certification form with the respondents, the purpose for which the information is sought and that the information will be used for no other purpose, in accordance with Section 607 of the Fair Credit Reporting Act.

2. Failing to incorporate the following statements on the face of all contracts or written certification forms between the respondents and the prospective users of consumer reports, with such conspicuousness and clarity as is likely to be read and understood by the prospective users of consumer reports:

ATTENTION

User will comply with all
the provisions of
The Fair Credit Reporting Act
Pub. L. No. 91-508

1. Information will be requested only for the User's exclusive use, and the User certifies that inquiries will be made only for one or more of the following permissible purposes and no other:

- a. In connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

- b. In connection with employment purposes; or

- c. In connection with the underwriting of insurance involving the consumer;

or

- d. In connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

- e. In connection with a legitimate business need for the information in connection with a business transaction involving the consumer.

2. Reports on employees will be requested only by the User's designated representatives. Employees will be forbidden to attempt to obtain reports on themselves, associates, or any other person except in the exercise of their official duties.

3. It is understood by the User that Pub. L. No. 91-508, § 619, states "Any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses shall be fined not more than \$5,000 or imprisoned not more than one year, or both."

Decision and Order

3. Failing to require prospective users of consumer reports, who are not, in the ordinary course of business, regularly extending consumer credit and/or consumer insurance including, but not limited to, those who operate, either in whole or in part, as Federal, state or local governmental subdivisions or agencies except those covered by Paragraph 4 of this order, private legal counsel or attorneys, and private detectives or investigators, to identify themselves and to certify in writing, either at the time the prospective users seek each consumer report or within ten (10) business days after an oral certification of a request for each consumer report, the purpose for which the information is sought and that the information will be used for no other purpose, in accordance with Section 607 of the Fair Credit Reporting Act.

4. Failing to require prospective users of consumer reports, who are not, in the ordinary course of business, regularly extending consumer credit and/or consumer insurance, but who regularly use consumer reports for "employment purposes," as defined in Section 603(h) of the Fair Credit Reporting Act, to identify themselves and to certify in writing, through a contract or written certification form with the respondents, that the only purpose for which information is sought is for employment and that the information will be used for no other purpose, unless the prospective users identify themselves and certify, in writing, each time the prospective users seek a consumer report, the purpose for which the information is sought and that the information will be used for no other purpose, in accordance with Section 607 of the Fair Credit Reporting Act.

5. Failing to inform all prospective users of consumer reports, in writing, at the time of entering into a contract or executing a written certification form with the respondents, of their responsibilities as users of consumer reports, including the provisions of Paragraphs 3 and 4 of this order.

6. Failing to cease doing business with any user or prospective user of consumer reports who does not follow any of the oral or written procedures as specified by this order, or who the respondents know, or have reason to believe, is violating any provisions of the Fair Credit Reporting Act.

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 assembling or evaluating of information on consumers for the purpose of furnishing to third parties consumer reports and that respondents secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment. Such notice shall include respondents' current business or employment in which they are engaged, as well as a description of their duties and responsibilities.

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

It is further ordered, That respondents 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 the order to cease and desist contained herein.

IN THE MATTER OF

DIENER'S, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION ACT AND THE TEXTILE FIBER
PRODUCTS IDENTIFICATION ACT

Docket 8804. Complaint. Nov. 25, 1969—Decision. Dec. 21, 1972

Order requiring a carpeting chain in the Washington, D.C. area, among other things to cease misrepresenting its prices and savings claims; failing to maintain adequate records; misbranding and falsely advertising its textile fiber products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Diener's, Inc., Diener's of Virginia, Inc., Diener's of Rockville, Inc., Diener's of Lanham, Inc., Diener's of Tysons Corner, Inc., and Mayfield Company, Inc., corporations, and Walter Diener, Milton Diener, and Harold Reznick, individually and as officers of each of said corporations, hereinafter referred to as respondents, have violated the provisions of said Acts, and the rules and regulations promulgated under the Textile Fiber Products Identifi-

fication 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. Diener's Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 4511 Rhode Island Avenue, in Brentwood, State of Maryland.

Mayfield Company, 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 4511 Rhode Island Avenue, in Brentwood, State of Maryland.

Diener's of Lanham, 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 7450 Annapolis Road, in Lanham, State of Maryland.

Diener's of Rockville, 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 1616 Rockville Pike, in Rockville, State of Maryland.

Diener's of Virginia, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal office and place of business located at 6437 Arlington Boulevard, in Falls Church, Commonwealth of Virginia.

Diener's of Tysons Corner, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal office and place of business located at Tysons Center, in McLean, Commonwealth of Virginia.

The coordinating office for the aforesaid corporations is located at 4511 Rhode Island Avenue, in Hyattsville, State of Maryland.

Respondents Walter Diener, Milton Diener and Harold Reznick are individuals and are officers of each of the six corporate respondents. They formulate, direct and control the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. Their addresses are the same as the corporate respondent, Diener's Inc., located at 4511 Rhode Island Avenue, in Brentwood, State of Maryland.

The respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

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 rugs, carpets, and floor coverings to the public at retail.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their said merchandise, when sold, to be shipped from their places of business in the States of Virginia and Maryland to purchasers thereof located in various States of the United States and in 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 merchandise, the respondents have made, and are now making, numerous statements and representations in advertisements inserted in newspapers of general interstate circulation, by means of radio and television broadcasts and in advertisements appearing on billboards. Typical and illustrative of the foregoing, but not all inclusive thereof, are the following:

Diener's and Monarch AT YOUR SERVICE WITH A FANTASTIC 6 STORE FACTORY INVENTORY CLEARANCE THURSDAY, FRIDAY AND SATURDAY CARPET SAVINGS OF 29%-61%.

Warehouse Carpet Sale 33% to 64% SAVINGS.

DIENER'S STOREWIDE CARPET SALES

CARPET STAIR TREAD SETS Reg. \$24.95 Set. Enough for 13 steps & risers. Choice of colors, weaves & qualities. \$10.00 Set. Limit (1) to a customer/cash & carry.

SAVE \$3.50 SQ. YD. MONARCH RUGGED NYLON PILE AREA'S COMPETITIVE PRICE \$7.95 SQ. YD. and \$4.45 SQ. YD. A Diener's Exclusive Policy—buy today—have delivered and installed today, tomorrow or at your convenience.

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning not expressly set out herein, respondents have represented and are now representing, directly or by implication, that:

1. During the period of the advertised "Diener's Storewide Carpet Sale," or "Fantastic 6 Store Factory Inventory Clearance," or words of similar import and meaning, that the advertised price of any merchandise represents a reduction from the price at which respondents have made a bona fide offer to sell and have sold said merchandise on a regular basis for a reasonably substantial period of time in the recent, regular course of their business.

2. Purchasers of merchandise advertised under the phrases: "Carpet Savings of 29%-61%," or "33% to 64% Savings," or terms of similar import and meaning, would realize a savings of the stated percentage amount from the actual price at which the merchandise was offered for sale or sold by respondents in good faith for a reasonably substantial period of time in the recent, regular course of their business.

3. The higher prices, accompanied by the words "Regular," "Reg.," or words of similar import and meaning, were the prices that the advertised merchandise was offered for sale or sold by the respondents in good faith for a reasonably substantial period of time in the recent, regular course of their business. Purchasers of such merchandise would save an amount equal to the difference between respondents' higher selling prices and the corresponding advertised lower selling prices.

4. The higher prices, accompanied by the words, "area's competitive price," or words of similar import and meaning, were prices which do not appreciably exceed prices at which substantial sales of the same merchandise were made in respondents' trade area.

5. The represented reduced prices are offered only during the limited period of the sale and such reduced prices will be returned to respondents' pre-sale bona fide offering price or to some other substantially higher amount immediately after completion of the sale.

6. During the regular course and conduct of respondents' business, purchasers of rugs, carpets and floor coverings in all instances when so desired will receive delivery and installation of said merchandise within 48 hours after such merchandise is purchased from the respondents.

PAR. 6. In truth and in fact:

1. During the period of the advertised "Diener's Storewide Carpet Sale," or "Fantastic 6 Store Factory Inventory Clearance" or words of similar import and meaning, the advertised price of any merchandise did not represent a reduction from the price at which respondents have made a bona fide offer to sell or have sold said merchandise on a regular basis for a reasonably substantial period of time in the recent, regular course of their business.

2. Purchasers of merchandise advertised as "Carpet Savings of 29%-61%," or "33% to 64% Savings," or terms of similar import and meaning, did not realize a savings of the stated percentage amount from the actual price at which the merchandise was offered for sale or sold by respondents in good faith for a reasonably substantial period of time in the recent, regular course of their business.

3. The higher prices, accompanied by the words "Regular," "Reg.," or words of similar import and meaning, were not the prices that the advertised merchandise was offered for sale or sold by respondents in good faith for a reasonably substantial period of time in the recent, regular course of their business, and purchasers thereof, would not save amounts equal to the difference between respondents' higher selling prices and the corresponding advertised lower selling prices.

4. The higher prices, accompanied by the words, "area's competitive price," or words of similar import and meaning, were prices which do appreciably exceed prices at which substantial sales of the same merchandise were made in respondents' trade area.

5. The represented reduced prices are not offered for a limited period of time, but are the prices which respondents sell or offer to sell their merchandise on a regular basis for a reasonably substantial period of time in the recent, regular course of their business.

6. During the regular course and conduct of respondents' business, purchasers of rugs, carpets and floor coverings in all instances when so desired cannot receive delivery and installation of said merchandise within 48 hours after such merchandise is purchased from the respondents.

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 conduct of their business at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of merchandise of the same general kind and nature as the aforesaid merchandise sold by the respondents.

PAR. 8. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations, acts and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public concerning the savings available to them on respondents' merchandise and, more generally, to mislead them into the erroneous and mistaken belief that said statements and representations are true and into the purchase of substantial quantities of respondents' merchandise by reason of said erroneous and mistaken belief.

PAR. 9. The acts and practices of the respondents as set forth above 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.

PAR. 10. Respondents are now, and for some time last past have been, engaged in the introduction, delivery for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and in the importation into the United States, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported,

textile fiber products, which have been advertised, or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products; as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 11. Certain of said textile fiber products were misbranded by respondents within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and the rules and regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, invoiced, advertised, or otherwise identified as to the name or amount of constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, were floor coverings which were falsely and deceptively advertised in the Washington Post and the Evening Star, newspapers published in the city of Washington, District of Columbia, and having a wide circulation in said District of Columbia and various States of the United States, in that the respondents in disclosing the fiber content information as to floor coverings containing exempted backings, fillings, or paddings, failed to set forth such fiber content information in such a manner as to indicate that it applied only to the face, pile, or outer surface of the floor coverings and not to the exempted backings, fillings, or paddings.

PAR. 12. Certain of said textile fiber products were falsely and deceptively advertised in that respondents in making disclosure or implications as to the fiber content of such textile fiber products in written advertisements used to aid, promote and to assist, directly or indirectly, in the sale or offering for sale of said products, failed to set forth the required information as to fiber content as specified by Section 4(c) of the Textile Fiber Products Identification Act and in the manner and form prescribed by the rules and regulations promulgated under said Act.

Among such textile fiber products, but not limited thereto, were carpets which were falsely and deceptively advertised by means of printed matter, in newspapers, distributed by the respondents throughout the United States to customers and salesmen. The aforementioned carpets were described by such fiber-connoting terms among which, but not limited thereto, were "Acrilan," "Kodel," and "Herculon" and the true generic name of the fiber contained in such products was not set forth.

PAR. 13. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, re-

spondents have falsely and deceptively advertised textile fiber products in violation of the Textile Fiber Products Identification Act in that said textile fiber products were not advertised in accordance with the rules and regulations promulgated thereunder in the following respects:

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

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

(c) A fiber trademark was used in advertising textile fiber products, containing only one fiber and such fiber trademark did not appear, at least once in the said advertisement, in immediate proximity and conjunction with the generic name of the fiber, in plainly legible and conspicuous type, in violation of the Rule 41(c) of the aforesaid rules and regulations.

PAR. 14. The acts and practices of respondents as set forth in Paragraphs Eleven through Thirteen above were, and are, in violation of the Textile Fiber Products Identification Act and the rules and regulations promulgated thereunder, and constituted, and now constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, under the Federal Trade Commission Act.

Mr. Edward D. Steinman and *Mr. Donald L. Bachman* supporting the complaint.

Mr. Jacob A. Stein, Stein & Mitchell, Washington, D.C., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

JULY 12, 1971

PRELIMINARY STATEMENT

The complaint in this proceeding, issued on November 25, 1969, charges that Diener's, Inc., Diener's of Virginia, Inc., Diener's of Rockville, Inc., Diener's of Lanham, Inc., Diener's of Tysons Corner, Inc., Mayfield Company, Inc., corporations, and Walter Diener, Milton

Diener, and Harold Reznick, individually and as officers of each of said corporations, violated the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act in the advertising, sale and installation of rugs, carpets and floor coverings to the public at retail.

The respondents answered the complaint, admitting the existence of the corporate respondents as alleged in Paragraph One of the complaint, but denied that the individual respondents formulate, direct, control and act together in carrying out the acts and practices of corporate respondents as alleged. Respondents also denied the other allegations of the complaint.

After several postponements, the hearing began on July 27, 1970, and the record for the reception of evidence was closed on August 4, 1970. Proposed findings of fact, conclusions of law, and briefs were originally scheduled to be filed on or before September 18, 1970. However, due to the loss by the reporter of more than 100 Commission exhibits, consisting of newspaper advertisements which had been placed in the Washington Post and the Evening Star by respondents during the period, April 19, 1967 through October 12, 1968, complaint counsel filed several separate requests for extensions of time within which to file proposed findings of fact, etc. These requests for extensions of time were based on the absence of these exhibits. These requests extended the filing date for proposed findings, etc., to November 19, 1970.

On November 17, 1970, complaint counsel filed a motion to reopen the record so as to receive in evidence reproductions of the lost Commission exhibits. Complaint counsel stated that the reproductions had been made from microfilm of newspapers contained in the files of the Library of Congress, and requested that these reproductions be received in evidence and substituted for the original exhibits, CX 49 through CX 150, which had been lost.

On November 19, 1970, counsel for respondents filed an opposition to complaint counsel's motion to reopen the record to receive in evidence reproductions of the lost exhibits. Also, on November 19, 1970, counsel for respondents filed proposed findings of fact, conclusions of law, and brief on behalf of respondents.

On November 23, 1970, complaint counsel filed their proposed findings of fact, conclusions of law, brief, and a proposed order.

By order dated November 24 and filed November 25, 1970, the hearing examiner granted complaint counsel's motion to reopen the record for the stated purpose of affording complaint counsel an opportunity to offer and substitute in evidence reproductions from microfilmed copies of respondents' newspaper advertisements (CX 49-150), which

had been received in evidence at hearings but subsequently lost by the reporter; a reopened hearing for this purpose was scheduled for December 15, 1970.

On November 27, 1970, complaint counsel filed a "Motion to Supplement the Purpose For Reopening the Record" in this proceeding. (The original motion to reopen the record filed on November 17, 1970 was for the stated purpose of affording complaint counsel an opportunity to offer and there be received in evidence reproductions of the lost Commission exhibits.) The Motion to Supplement the Purpose for Reopening the Record, filed on November 27, 1970, requested, among other things, that, at the reopened hearing, in addition to receiving in evidence reproductions of the lost Commission exhibits, the hearing examiner consider making certain written reports of a Commission attorney-investigator, who, at the original hearing, had testified as a Commission witness, available to counsel for respondents for examination prior to cross-examining the attorney-investigator in the event counsel for respondents should desire to cross-examine this witness at the reopened hearing.

On December 3, 1970, counsel for respondents filed an opposition to complaint counsel's Motion to Supplement the Purpose for Reopening the Record and, on December 8, 1970, complaint counsel filed a reply to respondents' opposition to complaint counsel's Motion to Supplement the Purpose for Reopening the Record.

On December 9, 1970, pursuant to the request of complaint counsel, the hearing examiner rescheduled the date for the reopening of the hearing from December 15, 1970 to December 11, 1970.

At the reopened hearing on December 11, 1970, the reproductions of the lost Commission exhibits were received in evidence and certain investigation reports made by Mr. Joseph J. Koman, Jr., an attorney-investigator in the employ of the Commission, who made the investigation of this matter and testified as a Commission witness at the original hearing, were produced by complaint counsel and made available to counsel for respondents for his examination pursuant to complaint counsel's Motion to Supplement the Purpose for Reopening the Record, filed on November 17, 1970. However, upon complaint counsel's refusal to produce a summary memorandum prepared by Mr. Koman in connection with his investigation of respondents and about which he had testified at the hearing, and the production of which had been requested by counsel for respondents, the hearing examiner struck the testimony which Mr. Koman had given at the hearing. At the request of complaint counsel, the hearing examiner held the record open while complaint counsel sought to file an interlocutory appeal to the Commission from the ruling of the hearing examiner striking the testimony.

In a majority opinion and order issued February 8, 1971, the Commission decided that the ruling of the hearing examiner was correct and denied complaint counsel's request for permission to file an interlocutory appeal from the ruling of the hearing examiner striking the testimony of Mr. Koman, the attorney-investigator. In the majority opinion,¹ after ruling that the hearing examiner was correct in striking the testimony and denying an interlocutory appeal, the Commission stated, among other things, that "* * * the examiner might find it appropriate to reopen the record to give complaint counsel an opportunity to produce the Koman summary memorandum and, if produced, to afford respondent his full 'Jencks' rights."

On February 25, 1971, complaint counsel filed a Motion to Reopen the Record "to allow the production of the summary memorandum and if such is desired cross-examination of Attorney Koman."

On March 3, 1971, counsel for respondents filed an opposition to the motion to reopen, and on March 4, 1971 complaint counsel filed their reply to respondents' opposition to complaint counsel's motion to reopen.

Pursuant to notice, a further hearing was held on April 12, 1971, at which time complaint counsel produced and delivered to respondents' counsel for his perusal the summary memorandum written by Mr. Koman, which complaint counsel had previously refused to produce. Complaint counsel also produced Mr. Koman and he was cross-examined by counsel for respondents. At the conclusion of his cross-examination that same day, April 12, 1971, the record for the reception of evidence was again closed.

Supplementary Proposed Findings of Fact and Conclusions of Law have been filed by counsel for respondents.

All proposed findings of fact and conclusions of law not found or concluded herein are denied. Upon the basis of the entire record, the hearing examiner makes the following findings of fact and conclusions of law, and issues the following order:

FINDINGS OF FACT

1. Diener's, Inc., is a corporation organized and doing business under the laws of the State of Delaware, with its office and place of business located at 4511 Rhode Island Avenue, Brentwood, Maryland.
2. Diener's of Virginia, Inc., is a corporation organized and doing business under the laws of the Commonwealth of Virginia, with its office and place of business located at 6437 Arlington Boulevard, Falls Church, Virginia.

¹ Commissioner MacIntyre dissented, and filed a dissenting statement.

3. Diener's of Rockville, Inc., is a corporation organized and doing business under the laws of the State of Maryland, with its office and place of business located at 1616 Rockville Pike, Rockville, Maryland.

4. Diener's of Lanham, Inc., is a corporation organized and doing business under the laws of the State of Maryland, with its office and place of business located at 7450 Annapolis Road, Lanham, Maryland.

5. Diener's of Tysons Corner, Inc., is a corporation organized and doing business under the laws of the Commonwealth of Virginia, with its office and place of business located at Tysons Center, McLean, Virginia.

6. Mayfield Company, Inc., is a corporation organized and doing business under the laws of the State of Maryland, with its office and place of business located at 4511 Rhode Island Avenue, Brentwood, Maryland.

7. The executive office for the aforesaid corporations is located at 4511 Rhode Island Avenue, Brentwood, Maryland (admitted in Ans., Par. 2).

8. The respondents, Walter Diener, Milton Diener, and Harold Reznick, are stockholders and officers of each of the six corporate respondents. Mr. Milton Diener is president; Mr. Walter Diener is secretary-treasury; and Mr. Reznick is executive vice president and general manager of Diener's, Inc., the parent of the subsidiary corporations named in Paragraph numbered 1 above. Messrs. Milton and Walter Diener and Harold Reznick are members of the boards of directors of the respondent corporations. However, due to illness, including a serious heart ailment, Mr. Walter Diener has not been active in the business of the corporations for several years and does not share full responsibilities in the management with his brother, Milton Diener, and Mr. Reznick. He visits and spends a few hours at his office each day he feels able to do so (Tr. 27, 148-149). As executive vice president and general manager, Mr. Reznick controls the operation of the respondent corporations (Tr. 21, 26-27, 159-160, 164). The business offices of the five subsidiaries are located at the office of the corporate respondent, Diener's, Inc., 4511 Rhode Island Avenue, Brentwood, Maryland (admitted in Ans., Par. 2).

9. Respondents Diener's are now, and for some time last past have been, engaged in the advertising, offering for sale, sale, distribution and installation of floor covering, including rugs and carpets, to the public at retail (Tr. 21).

10. In the course and conduct of their business as aforesaid, respondents Diener's now cause, and for some time last past have caused, their said merchandise, when sold, to be shipped from their places of

business in the States of Virginia and Maryland to purchasers thereof located in various States of the United States and in 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 (Tr. 26).

11. The complaint is directed toward improper use of the terms "regular" and "area's competitive price," and also toward representations in newspaper advertisements with respect to the time of delivery and installation of carpets, which are alleged to be false, misleading and deceptive. The complaint also alleges violations of the Textile Fiber Products Identification Act in some of the Diener's newspaper advertising. Specifically, the complaint alleges that, in the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their merchandise, the respondents have made, and are now making, numerous statements and representations in advertisements inserted in newspapers of general interstate circulation. Typical and illustrative of the representations and advertisements are the following:

[A] Diener's and Monarch AT YOUR SERVICE WITH A FANTASTIC 6 STORE FACTORY INVENTORY CLEARANCE THURSDAY, FRIDAY AND SATURDAY CARPET SAVINGS OF 29%-61%

(The above representations are contained in CX 90.)

[B] Warehouse Carpet Sale 33% to 64% SAVINGS

(This representation is contained in CX 85 and 86.)

[C] DIENER'S STOREWIDE CARPET SALE

(This representation is contained in CX 61 and 88.)

[D] CARPET STAIR TREAD SETS Reg. \$24.95 Set Enough for 13 steps & risers. Choice of colors, weaves & qualities. \$10.00 Set Limit (1) to a customer/cash & carry.

(The representation in [D] above is contained in CX 74, 77, 105, 115, 118-120, 129-131, and 149-150.)

[E] SAVE \$3.50 SQ. YD. MONARCH RUGGED NYLON PILE AREA'S COMPETITIVE PRICE \$7.95 SQ. YD. 4.45 SQ. YD.

(The representations in [E] above are contained in CX 68, 104, and 135.)

[F] A Diener's Exclusive Policy—buy today—have delivered and installed today, tomorrow or at your convenience

(The representation set out in [F] above is not contained in any of the numerous Commission exhibits received in evidence.)

12. The complaint further alleges that, through the use of the above-quoted statements and representations, respondents have represented and are now representing, directly or by implication, that:

(1) During the period of the advertised "Diener's Storewide Carpet Sale," or "Fantastic 6 Store Factory Inventory Clearance," or words of similar import and meaning, that the advertised price of any merchandise represents a reduction from the price at which respondents have made a bona fide offer to sell and have sold said merchandise on a regular basis for a reasonably substantial period of time in the recent, regular course of their business, whereas, in truth and in fact, the advertised price of any merchandise did not represent a reduction from the price at which respondents have made a bona fide offer to sell or have sold said merchandise on a regular basis for a reasonably substantial period of time in the recent, regular course of their business.

(2) Purchasers of merchandise advertised under the phrases: "Carpet Savings of 29%-61%," or "33% to 64% Savings," or terms of similar import and meaning, would realize a savings of the stated percentage amount from the actual price at which the merchandise was offered for sale or sold by respondents in good faith for a reasonably substantial period of time in the recent, regular course of their business, whereas, in truth and in fact, purchasers of such advertised merchandise did not realize a savings of the stated percentage amount from the actual price at which the merchandise was offered for sale or sold by respondents in good faith for a reasonably substantial period of time in the recent, regular course of their business.

(3) The higher prices, accompanied by the words "Regular," "Reg.," or words of similar import and meaning, were the prices that the advertised merchandise was offered for sale or sold by the respondents in good faith for a reasonably substantial period of time in the recent, regular course of their business. Purchasers of such merchandise would save an amount equal to the difference between respondents' higher selling prices and the corresponding advertised lower selling prices, whereas, in truth and in fact, the higher prices were not the prices that the advertised merchandise was offered for sale or sold by respondents in good faith for a reasonably substantial period of time in the recent, regular course of their business, and purchasers thereof would not save amounts equal to the difference between respondents' higher selling prices and the corresponding advertised lower selling prices.

(4) The higher prices, accompanied by the words, "area's competitive price," or words of similar import and meaning, were prices which do not appreciably exceed prices at which substantial sales of the same merchandise were made in respondents' trade area, whereas, in truth and in fact, the higher prices were prices which do appreciably exceed

prices at which substantial sales of the same merchandise were made in respondents' trade area.

(5) The represented reduced prices are offered only during the limited period of the sale and such reduced prices will be returned to respondents' pre-sale bona fide offering price or to some other substantially higher amount immediately after completion of the sale, whereas, in truth and in fact, the represented reduced prices are not offered for a limited period of time, but are the prices which respondents sell or offer to sell their merchandise on a regular basis for a reasonably substantial period of time in the recent, regular course of their business.

(6) During the regular course and conduct of respondents' business, purchasers of rugs, carpets and floor coverings in all instances when so desired will receive delivery and installation of said merchandise within 48 hours after such merchandise is purchased from the respondents, whereas, in truth and in fact, during the regular course and conduct of respondents' business, purchasers of rugs, carpets and floor coverings in all instances when so desired cannot receive delivery and installation of said merchandise within 48 hours after such merchandise is purchased from the respondents.

Wherefore, the complaint alleges, the statements and representations as set forth in Paragraphs Four and Five of the complaint (Paragraph numbered 12 above) were and are false, misleading and deceptive.

13. Mr. Joseph J. Koman, Jr., an attorney-investigator for the Federal Trade Commission, who made the investigation and recommended the issuance of the complaint in this proceeding, was the principal witness offered by complaint counsel to establish the greater part of the allegations contained in the complaint. Mr. Koman's testimony is based upon information obtained by Mr. Koman from his examination of the Diener's records, invoices, more than 100 newspaper advertisements which appeared in the Washington Post and the Evening Star during the years 1967-1968, and statements allegedly made to Mr. Koman by Mr. Harold Reznick, vice president and general manager of Diener's, Inc., the principal corporate respondent herein, during Mr. Koman's first visit to the main office of Diener's on January 24, 1968 (Tr. 168; 225). The statements allegedly made by Mr. Reznick to Mr. Koman included the identification by Mr. Reznick of the quality or pattern designation of floor covering or carpeting and padding which were advertised by Diener's in a full-page newspaper advertisement in the Washington Post on Thursday, June 29, 1967 (CX 68; Tr. 168-169).

14. Ordinarily, Diener's and other retailers of floor covering and carpeting located in the District of Columbia metropolitan area do not identify the quality designation of the carpet advertised in newspapers (Tr. 431). A carpet advertisement, describing the carpet as "NYLON PILE," "ACRILAN ACRYLIC PILE," or "ALL WOOL PILE," for example, but giving the name of the manufacturer, is not sufficient information by which the carpet can be identified by quality, and thus determine the price (Tr. 260). Carpet manufacturers generally produce more than one grade or quality of carpeting, and give each grade or quality a name designation so that it can be identified. The quality designation for the carpeting advertised for sale by Diener's in CX 68 was not given in the advertisement so, in order to determine the accuracy or truthfulness of the representations in the advertisement with respect to price, it was necessary for Mr. Koman to identify the various carpets referred to in the advertisement by obtaining their respective name designations. Mr. Koman testified that, during his first interview with Mr. Reznick on January 24, 1968, pursuant to Mr. Koman's request, Mr. Reznick identified the carpeting by giving to Mr. Koman the quality name designation of each of the carpets advertised in the seven segments of the main carpet portion of the advertisement, which appears in the center portion of the advertisement (CX 68; Tr. 168-169). At the hearing, Mr. Koman then proceeded to identify by quality name designation the carpet advertised in each of the seven segments of CX 68 from the information and identification which Mr. Koman testified that Mr. Reznick had previously given to him.

15. Beginning with the carpet advertised in the first segment of the advertisement, Mr. Koman identified the "MONARCH RUGGED NYLON PILE AREA'S COMPETITIVE PRICE \$7.95 SQ. YD. 4.45 SQ. YD." as being either Garland or Benton, which Diener's call Princess or Westernaire. Mr. Reznick advised Mr. Koman that the Garland and the Benton were discontinued merchandise, and that the Westernaire was a regular pattern or quality (Tr. 167-170).

16. Mr. Koman then proceeded to the second segment of the advertisement (CX 68), counter-clockwise, referred to in the advertisement as featuring "A QUALITY ASSURED CARPET FROM DIENER'S SAVE \$4.28 SQ. YD. Luxury Quality MONARCH NYLON PILE * * * AREA'S COMPETITIVE PRICE \$10.95 SQ. YD. 6.67 SQ. YD." as being "* * * either Park West plush or Luxurious, which they purchased for \$3.80 a square yard, or Glen Contessa, which he now calls Penfield, at \$3.95 a square yard" (Tr. 170).

17. Mr. Koman then identified the carpeting listed in the third segment of the advertisement (CX 68), counter-clockwise, referred to in the advertisement as "A QUALITY ASSURED CARPET FROM DIENER'S SAVE \$3.39 TO \$4.39 SQ. YD. CUSTOM QUALITY SOLID COLOR GRACIOUS PLUSH ACRILAN ACRYLIC PILE * * * AREA'S COMPETITIVE PRICES \$13.95 TO \$14.95 SQ. YD. 10.56 SQ. YD." as being "Monarch Langston, * * * Monarch's Classic, pattern and quality, * * * and Monarch's Royalite and Colonnade" (Tr. 172).

18. Mr. Koman then identified the carpet advertised in the fourth and bottom segment of the advertisement (CX 68), "A QUALITY ASSURED CARPET FROM DIENER'S SAVE \$5.06 SQ. YD. LEES * ALDON * MOHAWK Ultra Plush 100% ALL WOOL PILE RANDOM PLUSH * SHAG * TWIST OR SOLID COLOR PLUSH PILES AREA'S COMPETITIVE PRICE \$17.95 SQ. YD. 12.89 SQ. YD.," as being "Lee's Grand Parade and Tabor Island, * * * Alden Duchéss Desiree, and Camelot, * * * and Mohawk Avalon quality or pattern" (Tr. 172).

19. Mr. Koman identified the carpet advertised in the fifth segment of CX 68, "A QUALITY ASSURED CARPET FROM DIENER'S SAVE \$2.06 SQ. YD. FROM THE WORLD'S LARGEST CARPET MAKER Luxury Quality ACRILAN Acrylic Pile * * * AREA'S COMPETITIVE PRICE \$10.95 SQ. YD. 8.89 SQ. YD.," as being "Monarch Plantation, * * * Delta, * * * and Monarch's Carefree" (Tr. 172).

20. Mr. Koman identified the carpet advertised in the sixth segment of CX 68, "A QUALITY ASSURED CARPET FROM DIENER'S SAVE \$2.17 TO \$4.17 SQ. YD. MOHAWK * MONARCH ACRILAN ACRYLIC PILE * * * AREA'S COMPETITIVE PRICES \$9.95 TO \$11.95 SQ. YD. 7.78 SQ. YD.," as being "Monarch Kenesaw or Fairway quality patterns * * * Mohawk Mayflower or Glencairn" (Tr. 173).

21. Mr. Koman then identified the carpet advertised in the seventh segment of CX 68, "A QUALITY ASSURED CARPET FROM DIENER'S SAVE \$4.39 SQ. YD. FABULOUS '501' NYLON PILE * * * AREA'S COMPETITIVE PRICE \$9.95 SQ. YD. 5.56 SQ. YD.," as being "Monarch Twin Star, * * * Alden Contessa or Glen" (Tr. 173).

22. Mr. Koman further testified that Mr. Reznick also identified the "HEAVY WAFFLE RUBBERIZED PADDING Reg. \$1.49 Sq. Yd. 76¢ SQ. YD." advertised in CX 68 as being Orange Supreme, 42 ounce, manufactured by Crown, and at times it was the Diplomat

padding, 38 ounce. With respect to the "THICK LUXURY WAFFLE FOAM RUBBER PADDING Reg. \$1.95 Sq. Yd. \$1.16 SQ. YD.," advertised in CX 68, Mr. Koman testified that Mr. Reznick identified this as either the Golden Sparkle or Somerset padding manufactured by Crown, or the Washingtonian or rubber top padding from the Allen Company (Tr. 175-176).

23. Mr. Koman further testified that Mr. Reznick identified the carpet stair tread sets advertised in the lower left-hand corner of CX 68, "Reg. \$24.95 Set 10.66 SET" as being manufactured by Montauk Rug and Carpet Co. of New York City, and were offered by Diener's at prices ranging from \$10.66-\$10.88 on an advertised basis, and at unadvertised times for not more than \$13.00 per set. In answer to a question by complaint counsel as to whether Mr. Reznick made "any explanation as to why there was a regular \$24.95 representation on the ad," Mr. Koman replied: "Outside of the fact that the stair tread sets at other locations, competitors might be selling for \$24.95 a set. But as far as Diener's regular retail price, they never sold it for more than \$13. He admitted that, that that particular segment carpet stair tread was in error, and that should be changed" (Tr. 178).

24. In reply to a question by complaint counsel as to whether Mr. Reznick offered any explanation as to how he determined the "area competitive price" for the carpeting advertised in CX 68, Mr. Koman replied as follows:

Yes, he advised me that with respect to either the representation "regular" or the representation "area's competitive price," or to obtain the other saving representations contained in such ads, they would normally take or he would take the distributor's cost on a cut or raw basis, and with this price he would times it by a 60 percent markup, which he stated was the normal markup for most carpeting concerns located in the Metropolitan D.C. Area, and that the cut order price plus the markup would equal either the regular or the area's competitive price (Tr. 179).

25. Mr. Koman testified that he then examined sales tickets from each of the Diener's stores covering the period from June through October and, for some stores, through November, 1967, to determine the actual prices at which Diener's were selling the identified carpeting and padding (Tr. 179-180); and that, after examining the sales tickets, he found no evidence of sales of the carpeting, padding, and stair treads advertised in CX 68 at the higher, regular prices set forth in the various segments of CX 68 (Tr. 180; 516). Mr. Koman further testified that he then made a selection "*" * * of certain merchandise that was featured on the sales tickets at either the advertised price, or the price higher, but not the higher regular price. A sampling of these

sales tickets appears as Commission Exhibits 1 through 44" (Tr. 180-181). Mr. Koman further testified that, due to the fact that Diener's use various colors of sales tickets for each of their stores, such as pink, blue, etc., photostatic representations of some of these sales tickets are not legible, and it was not until he received the photostats of the sales tickets (CX 1-44), during his visit to Diener's on February 27, 1968, did he become aware that some of the sales tickets were not legible (Tr. 180-181; 190). (This hearing examiner has examined each of the copies of sales invoices which are in evidence (CX 1-44), and approximately 23 of the 44 copies are illegible.)

26. Mr. Koman also testified that he questioned Mr. Reznick concerning some of the representations of Diener's in an advertisement in the July 20, 1967 issue of the Washington Post (CX 71). In this advertisement Diener's announced that they had purchased from James Lees & Sons Company its entire roll inventory of Romantica carpeting and Diener's were offering this carpeting as follows:

AREA'S COMPETITIVE PRICE \$11.95 SQ. YD. SOLD FOR AS LOW AS \$9.95 SQ. YD. DIENER'S SPECIAL PURCHASE PRICE ONLY 6.63 SQ. YD.

Mr. Koman testified that he questioned Mr. Reznick with regard to the representation in this advertisement, "SOLD FOR AS LOW AS \$9.95 SQ. YD.," and that Mr. Reznick replied that, "* * * if Reznick made purchases during 1966 and the early part of 1967 that it would have been sold by Diener's for as low as \$9.95 a square yard" (Tr. 215). Mr. Koman further testified that Diener's did not purchase Romantica carpeting in 1965, and only offered it through special order at their Rhode Island Avenue store (Tr. 217). With respect to the representation of "AREA'S COMPETITIVE PRICE \$11.95 SQ. YD." in CX 71, Mr. Koman testified that Mr. Reznick explained that Diener's arrived at the area's competitive price "* * * if the merchandise was purchased at distributor cut order price and if the retailer took a 60 per cent markup on the cut order price, it would be the area's competitive price" (Tr. 217).

27. By and through the use of the representations "DIENER'S STOREWIDE CARPET SALE" in CX 61 and 88, for example, and "FANTASTIC 6 STORE FACTORY INVENTORY CLEARANCE" in CX 90, for example, Diener's represented that, during the period of "DIENER'S STOREWIDE CARPET SALE" and "FANTASTIC 6 STORE FACTORY INVENTORY CLEARANCE," the advertised price of any merchandise contained in the said advertisements represents a reduction from the price at which respondents have made a bona fide offer to sell, and have sold, said merchandise on a regular basis for a reasonably substantial period

of time in the recent, regular course of their business. And, in this connection, Mr. Reznick testified that, when Diener's used the words "regular price" in an advertisement, Diener's meant that Diener's "* * * had previously sold merchandise for the regular price" (Tr. 420). When such representations are used in connection with the words "regular price," Diener's thereby represent that they have, in the past, made a bona fide offer to sell, and have sold, said merchandise on a regular basis. However, the evidence shows that the advertised price of certain merchandise did not represent a reduction from the price at which Diener's have made a bona fide offer to sell, or have sold, said merchandise on a regular basis for a reasonably substantial period of time in the recent, regular course of their business. For example, in CX 79, 80, 85, and 86, Diener's advertised Romantica carpeting, a self-identifying pattern or quality, as follows: "* * * REG. \$9.95 Sq. Yd. * * * ONLY 7.88 SQ. YD." Mr. Koman testified, among other things, that he obtained all sales receipts or invoices for each store operated by Diener's for the period, June through November, 1967 (CX 1-44), for the specific purpose of ascertaining whether Diener's ever sold the carpeting at the higher regular price and found no sales at the advertised regular price (Tr. 179-180; 516). An examination of the legible copies of the sales receipts (CX 1-44), which are in evidence, do not show any sales of Romantica at the advertised regular price of \$9.95 per square yard, and, at the hearing, respondents did not offer any sales receipt or otherwise go forward with evidence to rebut or contradict the evidence offered by complaint counsel to the effect that an examination of the Diener's sales invoices for the period, June through November, 1967, did not show any sales of Romantica at the advertised higher regular price of \$9.95 per square yard. Sales receipts or invoices CX 7, 10 and 36 do list sales of Romantica at \$6.63 per square yard, and CX 43 lists a sale of Romantica at \$7.00 per square yard. It is found, therefore, that the representation of Diener's that \$9.95 is their regular price for Romantica carpeting is false.

28. Other examples of deceptive use by Diener's of the word "Regular" or "Reg." are their regular price representations with respect to carpet stair tread sets, "* * * Reg. \$24.95 Set \$10 SET," as advertised in CX 74, 77, 105, 115, 118-120, 129-131, and 149-150. (See Paragraph numbered 23 of this decision as to Mr. Koman's testimony with regard to Mr. Reznick's explanation as to the use by Diener's of the representation "Reg. \$24.95 Set" for their stair tread sets.) None of the legible copies of sales receipts (CX 1-44), which are in evidence, show any sales of carpet stair tread sets for \$24.95 (Tr. 180). However, CX 13 reflects a sale of stair tread sets at \$10.88. Upon the basis of

the testimony, it is found that the representation by Diener's that \$24.95 is their regular price for stair tread sets is false and misleading.

29. The representation of Diener's with respect to the "regular" price being false, the representations of Diener's in their advertisements of carpet savings of "34% to 63%" in CX 79 and 80, and "33% to 64%" in CX 85 are also false and misleading since a purchaser of the advertised Romantica carpet would not realize a savings of the stated percentage amount from the actual price at which the carpet was offered for sale or sold by Diener's in good faith for a reasonably substantial period of time in the recent, regular course of their business.

30. In an effort to establish the allegations contained in subparagraphs 4 of Paragraphs Five and Six of the complaint with respect to "area's competitive price," complaint counsel offered the testimony of several carpet buyers for local stores, including Mr. Ralph Berlin, carpet buyer at the Kann's department store, Washington, D.C., since 1949 (Tr. 248). Mr. Berlin testified that Kann's sold Monarch's "Langston" pattern carpet in 1967 at \$9.95 and \$10.95 per square yard. The Langston is one of the patterns which Mr. Koman testified that Mr. Reznick identified as being referred to in the third segment of CX 68, wherein Diener's advertise "A QUALITY ASSURED CARPET FROM DIENER'S SAVE \$3.39 TO \$4.39 SQ. YD. CUSTOM QUALITY SOLID COLOR GRACIOUS PLUSH ACRYLAN ACRYLIC PILE * * * AREA'S COMPETITIVE PRICES \$13.95 TO \$14.95 SQ. YD. 10.56 SQ. YD." (CX 68; Tr. 172; 249-250). It is seen that the Kann's price for the Langston is considerably less than the "AREA'S COMPETITIVE PRICES \$13.95 TO \$14.95" per square yard represented by Diener's in CX 68. Mr. Berlin also testified that Kann's sold Monarch's "Park West" in 1967 at \$4.95 and \$5.95 per square yard. According to Mr. Koman, Mr. Reznick identified the Park West as being one of the carpet patterns offered in the second segment of CX 68, "* * * Luxury Quality MONARCH NYLON PILE * * * AREA'S COMPETITIVE PRICE \$10.95 SQ. YD. 6.67 SQ. YD." (CX 68; Tr. 172; 250). Thus, it appears that the Kann's price for the Park West is much less than the area competitive price represented by Diener's in the second segment of CX 68. (Mr. Reznick testified that the words "area competitive price" as used by Diener's in their advertising mean the price charged by Diener's competitors for the same or comparable merchandise [Tr. 420].)

31. Mr. Berlin further testified that Kann's also sold Monarch's quality or pattern carpet called "Kennesaw" at \$6.95 per square yard

and at an installed price of \$9.00 per square yard. The Kennesaw pattern carpet is one of the patterns which Mr. Koman testified that Mr. Reznick identified as being referred to in the sixth segment of CX 68, "* * * MOHAWK * MONARCH ACRILAN ACRYLIC PILE * * * AREA'S COMPETITIVE PRICES \$9.95 TO \$11.95 SQ. YD. 7.78 SQ. YD." (CX 68; Tr. 173; 250). It is plainly evident that the Kann's price of \$6.95 per square yard for the Kennesaw is considerably less than the "AREA'S COMPETITIVE PRICES \$9.95 TO \$11.95 SQ. YD." represented by Diener's in the sixth segment of CX 68.

32. Another witness offered by complaint counsel was Mr. Kenneth Mink, buyer of floor coverings at Woodward & Lothrop, a department store, located in Washington, D.C., with branch stores in Maryland and Virginia. Mr. Mink testified as follows: In 1967, Woodward & Lothrop sold three patterns of carpeting manufactured by Monarch, "Delta," "Royalite," and "Classic." Woodward & Lothrop sold the Delta pattern at \$7.12 per square yard in 1967, without padding or installation. Woodward & Lothrop sold the Royalite at \$8.12 per square yard, and the Classic pattern at \$10.12 per square yard in 1967 (Tr. 267). The Delta is one of the patterns which Mr. Koman testified that Mr. Reznick identified as being referred to in the fifth segment of CX 68, "* * * Luxury Quality ACRILAN Acrylic Pile * * * AREA'S COMPETITIVE PRICE \$10.95 SQ. YD. 8.89 SQ. YD." (CX 68; Tr. 172). The Classic and Royalite are two of the patterns which Mr. Koman testified that Mr. Reznick identified as being referred to in the third segment of CX 68, "* * * CUSTOM QUALITY SOLID COLOR GRACIOUS PLUSH ACRILAN ACRYLIC PILE * * * AREA'S COMPETITIVE PRICES \$13.95 TO \$14.95 SQ. YD. 10.56 SQ. YD." (CX 68; Tr. 172). It is plainly evident that Woodward & Lothrop's prices for these three patterns of carpeting are considerably less than the area competitive prices as represented by Diener's in the third segment of CX 68.

33. Mr. Quinn M. Cardwell, general manager of Cardwell's, Inc., a carpet specialty store in Arlington, Virginia, testified, among other things, as follows: In 1967, Cardwell's, Inc. carried several qualities of Monarch carpeting, including "Park West," priced at \$6.00 per square yard; "Langston" priced at \$10.00 per square yard; "Classic," at \$10.00 per square yard, and "Delta" at \$7.50 per square yard during the early part of 1967, and raised to \$8.00 per square yard during the year 1967 (Tr. 277). Cardwell's, Inc. also sold several lines of carpeting manufactured by James Lees and Sons Company, including "Romantica," which Cardwell's, Inc. retailed at \$8.50 per square yard.

34. Mr. John Taylor, carpet buyer for the Hecht Company, with stores in Washington, D.C., Maryland, and Virginia, testified as follows: In 1967, the Hecht Company sold several qualities of floor covering manufactured by Monarch, including "Delta" and "Kennesaw" at \$8.09 per square yard; "Langston" at \$10.95 or \$11.95 per square yard; "Park West" at \$5.00 per square yard; and "Royalite" at \$9.95 per square yard. The Hecht Company also sold a floor covering manufactured by Mohawk called "Avalon" at \$14.95 per square yard.

35. Mr. Stanley Rochlin, buyer of floor covering for Giant Food, was another witness offered by complaint counsel, and testified as follows: In 1967, Giant Food offered and sold a floor covering manufactured by James Lees and Sons Company by the name of "Romantica" at \$9.99 per square yard (Tr. 339). Giant Food also sold a quality of carpeting called "Contessa" at \$12.99 per square yard (Tr. 340). Under a preponderance of the evidence, it is found that the allegations in subparagraphs 4 of Paragraphs Five and Six of the complaint have been sustained.

36. Complaint counsel contend that, through the use of the quoted statement "A Diener's Exclusive Policy—buy today—have delivered and installed today, tomorrow or at your convenience," set out in Paragraph Four of the complaint, Diener's represent that purchasers of floor coverings and carpets "in all instances when so desired will receive delivery and installation of said merchandise within 48 hours after such merchandise is purchased from respondents." Complaint counsel contend that advertisements of Diener's contain statements to the effect "that purchased merchandise will be delivered and installed the same or following day of the purchase," which complaint counsel contend amounts to 48 hours. (See complaint counsel's Eighteenth Proposed Finding of Fact.) This hearing examiner has examined each of the reproductions of the newspaper advertisements of Diener's in the record and does not find an advertisement identical with the quoted statement set out in Paragraph Four of the complaint. As a matter of fact, the statements used by Diener's in most of the advertisements in the record with respect to the Diener's delivery and installation policy are as follows:

A DIENER'S EXCLUSIVE DELIVERY AND INSTALLATION POLICY—
BUY TODAY—HAVE TODAY, TOMORROW OR AT YOUR CONVENIENCE
(CX 68-89.)

37. A reasonable interpretation of the above statement does not support the contention advanced by complaint counsel that Diener's were, by the above representation, obligated to install and deliver floor covering within 48 hours after purchase—such a construction

would be strained and distorted. Complaint counsel offered the testimony of several customer purchasers of floor coverings from Diener's, but their testimony is unrelated to a claim of 48-hour delivery. The first witness testified that the carpet was not delivered within two weeks after its purchase as the salesman had promised at the time of purchase (Tr. 323-324). Another witness testified that he purchased carpet during the week in February 1968, and the salesman promised delivery on the following Saturday, but delivery was not made until five days later (Tr. 352-353). Another witness happened to be in Wheaton, Maryland, with her husband and daughter, and walked into the Diener's store to look at carpeting. They decided to purchase a carpet and the salesman promised delivery in two to three weeks (Tr. 356-357). The carpeting was not delivered as promised (Tr. 359). The final witness testified that he purchased carpeting on September 2, 1968, and the salesman agreed to deliver and install it by the time the witness and his wife took possession of a new apartment on the first of October (Tr. 368). By the time the witness moved into the apartment on October 3, the padding had been installed but not the carpeting (Tr. 369).

38. Complaint counsel also contend that the alleged 48 hour delivery representation was violated even in instances of special orders of carpeting from the factory, which normally requires several weeks and, in some instances, several months for delivery, and also where the customer made application to a bank for a loan with which to pay for a carpet purchase. In cases of special order and bank loan applications, the salesman gives the customer an estimate as to the time the special order is expected from the factory (Tr. 74-75), and agrees to notify the customer as soon as Diener's receive notification by the bank of its action on the customer's bank loan application. This hearing examiner finds no merit in complaint counsel's contentions with respect to the alleged 48 hour delivery representation.

39. With respect to the allegations that Diener's mishandled certain textile fiber products in violation of Section 4(a) of the Textile Fiber Products Identification Act and the rules and regulations thereunder, it is found that certain floor coverings advertised by Diener's in the Washington Post and the Evening Star were falsely and deceptively advertised as to the name or amount of constituent fibers contained therein in that Diener's, in disclosing the fiber content information as to floor coverings containing exempted backings, fillings, or paddings, failed to set forth such fiber content information in such a manner as to indicate that it applied only to the face, pile, or outer surface of the floor coverings and not the exempted backings, fillings, or

padding. In many of their newspaper advertisements which are in evidence herein, Diener's failed to use the word "pile" or similar word so as to indicate that the fiber information pertained to the top or outer surface of the floor covering advertised. Some examples of the failure by Diener's to so indicate in advertisements of Oriental Rugs are CX 49, 51, 54-63, 65, 66, 68-73 and many others. Some examples with respect to Nylon Rugs are CX 49, 52, 79, 80, 85, 86 and many others. Examples with respect to Acrilan-Acrylic carpeting are CX 72, 78, 81, 87-90 and many others. Some examples with respect to Fortrel Polyester or Kodel Polyester carpeting are CX 93, 94, 101, 102, 106 and others. Examples with respect to Herculon-Olefin carpeting are CX 88, 89, 96, 97, 99-102 and others. Examples with respect to 100% Imported Wool carpeting are CX 95 and 144, in violation of Section 4(a) and Rule 11 of the Textile Fiber Products Identification Act.

40. Certain of the Diener's floor coverings were falsely and deceptively advertised in that Diener's failed to set forth the required information as to fiber content as specified in Section 4(c) of the Textile Fiber Products Identification Act and the rules and regulations thereunder in that in some newspaper advertisements the carpeting was described by such fiber-connoting terms as "Acrilan," "Kodel," and "Herculon," and the true generic name of the fiber contained in such carpeting was not set forth, in violation of Section 4(c) and Rule 41 of the Textile Fiber Products Identification Act. In many of their newspaper advertisements, when offering the fiber trade name Acrilan, Diener's failed to use the generic name Acrylic, such as in CX 49, 50, 52-57, 60, 63, 65, and others; failed to use the generic name Polyester when advertising the fiber trade names Kodel or Fortrel, in CX 76, 100-110, 123-128, and others, and the generic name Olefin when advertising the fiber trade name Herculon, as in CX 73, 74, 77, 78, and others, in violation of Section 4(c) and Rule 41 of the Textile Fiber Products Identification Act. Also, in many of the Diener's newspaper advertisements in evidence, asterisks and abbreviations are used in an apparent attempt to provide the fiber content information required by Section 4(a) and Rule 41 of the Textile Fiber Products Identification Act. The use of asterisks or abbreviations is specifically prohibited by Rule 5 of the regulations promulgated under the Act.

41. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents have falsely and deceptively advertised textile fiber products in violation of the Textile Fiber Products Identification Act in that said textile fiber products were not advertised in accordance with the rules and regulations promulgated thereunder in the following respects:

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

(b) A fiber trademark was used in advertising textile fiber products, without a full disclosure of the fiber content information required by said Act, and the regulations thereunder in at least one instance in said advertisement, in violation of Rule 4(a) of the aforesaid rules and regulations.

(c) A fiber trademark was used in advertising textile fiber products, containing only one fiber and such fiber trademark did not appear, at least once in the said advertisement, in immediate proximity and conjunction with the generic name of the fiber, in plainly legible and conspicuous type, in violation of the Rule 41(c) of the aforesaid rules and regulations.

42. The use by Diener's of the aforesaid false, misleading and deceptive statements, representations, acts and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public as to the savings available to them on floor covering and carpeting from Diener's, and misleads them into the mistaken and erroneous belief that said statements and representations are true and into the purchase of substantial quantities of respondents' merchandise by reason of said erroneous and mistaken belief.

43. In the conduct of their business, Diener's have been in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of floor covering and carpeting of the same general kind and nature as that sold by Diener's. The aforesaid acts and practices of Diener's as found herein 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.

44. The acts and practices of respondents as herein found in Findings 39-41 herein were, and are, in violation of the Textile Fiber Products Identification Act and the rules and regulations promulgated thereunder, and constitute unfair methods of competition in commerce, and unfair and deceptive acts and practices in commerce, under the Federal Trade Commission Act.

Initial Decision

81 F.T.C.

CONCLUSIONS

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

2. Complaint counsel request that any order to be issued herein be directed to the individual respondents, Milton Diener, Walter Diener, and Harold Reznick, in their capacities as individuals, as well as officers and directors of the corporate respondents. The evidence shows, and it has been found, that Mr. Walter Diener has not been active in recent years in management responsibilities of the corporate respondents due to ill health. Although he visits his office on days when he feels physically able to do so, he does not participate in full management responsibilities. For this reason, the order herein will not be directed toward Mr. Walter Diener as an individual.

ORDER

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

1. Using the words "Diener's Storewide Carpet Sale," "Fantastic 6 Store Factory Inventory Clearance" or any other word or words of similar import or meaning unless the price of such merchandise being offered for sale constitutes a reduction, in an amount not so insignificant as to be meaningless, from the actual bona fide price at which such merchandise was sold or offered for sale to the public on a regular basis by respondents for a reasonably substantial period of time in the recent, regular course of their business.

2. Using the words "Save" or "Savings" or any other word or words of similar import or meaning in conjunction with a stated dollar or percentage amount of savings, unless the stated dollar or percentage amount of savings actually represents the difference between the offering price and the actual bona fide price at which such merchandise had been sold or offered for sale on a regular

basis to the public by the respondents for a reasonably substantial period of time in the recent, regular course of their business.

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

4. Using the words "area's competitive price," or words of similar import and meaning, to refer to any price amount which is appreciably in excess of the prices at which substantial sales of the same merchandise have been made in respondents' trade area and unless respondents have in good faith conducted a market survey which establishes the validity of the trade area prices; or misrepresenting, in any manner, the price at which merchandise has been sold in respondents' trade area.

5. (a) Representing, in any manner, that by purchasing any of said merchandise, customers are afforded savings amounting to the difference between respondents' stated price and respondents' former price unless such merchandise has been sold or offered for sale in good faith at the former price by respondents for a reasonably substantial period of time in the recent, regular course of their business.

(b) Representing, in any manner, that by purchasing any of said merchandise, customers are afforded savings amounting to the difference between respondents' stated price and a compared price for said merchandise in respondents' trade area unless a substantial number of the principal retail outlets in the trade area regularly sell said merchandise at the compared price or some higher price.

(c) Representing, in any manner, that by purchasing any of said merchandise, customers are afforded savings amounting to the difference between respondents' stated price and a compared value price for comparable merchandise, unless substantial sales of merchandise of like grade and quality are being made in the trade area at the compared price or a higher price and unless respondents have in good faith conducted a market survey or obtained a similar representative sample

of prices in their trade area which establishes the validity of said compared price and it is clearly and conspicuously disclosed that the comparison is with merchandise of like grade and quality.

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

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

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

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

It is further ordered, That respondents Diener's, Inc., Diener's of Virginia, Inc., Diener's of Rockville, Inc., Diener's of Lanham, Inc., Diener's of Tysons Corner, Inc., and Mayfield Company, Inc., corporations, and their officers, and Milton Diener and Harold Reznick, individually and as officers of said corporations, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, of any textile fiber product which has been advertised or offered for sale, in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the

Textile Fiber Products Identification Act, do forthwith cease and desist from:

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

B. Falsely and deceptively advertising textile fiber products by:

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

2. Failing to set forth in disclosing fiber content, information as to coverings containing exempted backings, fillings or paddings, that such disclosure relates only to the face, pile or outer surface of such textile fiber products and not to the exempted backings, fillings, or paddings.

3. Using a fiber trademark in advertising textile fiber products without a full disclosure of the required fiber content information in at least one instance in said advertisement.

4. Using a fiber trademark in advertising textile fiber products containing only one fiber without such fiber trademark appearing at least once in the advertisement, in immediate proximity and conjunction with the generic name of the fiber, in plainly legible and conspicuous type.

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

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

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

DISSENTING STATEMENT OF COMMISSIONER MARY GARDINER JONES

I agree with the Commission's decision to sustain the hearing examiner's findings and conclusions on liability.

I dissent from the order which the Commission is entering in this case. Its provisions do no more than direct the respondent "to sin no more" in language which is to me incomprehensible. It promises virtually no relief at all for the deceptions in this case which have bilked consumers of hundreds of dollars and unfairly injured honest advertisers. Moreover, entry of this type of essentially meaningless order renders useless the sizable Commission resources expended in bringing this case.

While I recognize that the meaning of these order provisions can be clarified in compliance, it is this type of order which the Commission has been historically entering and which has accounted in such large part for the essential ineffectiveness of so many Commission enforcement activities in the past. Its entry at this time seems a strange and unaccountable throwback to an earlier phase of the Commission's life which some of us had hoped would not again be repeated.

OPINION OF THE COMMISSION

BY KIRKPATRICK, *Commissioner*:

This matter is before the Commission on respondents' appeal from the initial decision of the administrative law judge. The Commission's complaint of November 25, 1969, alleged that the respondents¹ had violated Section 5 of the Federal Trade Commission Act by deceptively advertising their rugs, carpets, and floor coverings. The complaint also alleged violations of Sections 4 (a) and (c) of the Textile Fiber Products Identification Act. Respondents filed an answer denying the allegations. And on July 12, 1971, the administrative law judge issued an initial decision upholding the charges of the complaint and entered an order to cease and desist. Respondents are now appealing from this decision.

As this Commission observed quite some time ago, "people love a bargain."² And one of the most effective ways of selling them some-

¹ Respondent, Diener's, Inc., is the parent of the five other subsidiary corporations named in the complaint: Diener's of Virginia, Inc., Diener's of Rockville, Inc., Diener's of Lanham, Inc., Diener's of Tysons Corner, Inc. and Mayfield Company, Inc. The respondents, Walter Diener, Milton Diener, and Harold Reznick, are stockholders and officers of each of the six corporate respondents. Mr. Milton Diener is president; Mr. Walter Diener is secretary-treasurer; and Mr. Reznick is executive vice-president and general manager of Diener's, Inc. Messrs. Milton and Walter Diener and Harold Reznick are members of the boards of directors of the respondent corporations. The complaint was dismissed as to Walter Diener and no appeal was taken from that decision.

² *Revco D. S., Inc., et al.*, 67 F.T.C. 1239 (1965).

thing is to tell them that they are getting a bargain price. A misrepresentation of the existence or extent of the bargain either by comparison with "regular" prices or with the prices of competitors has long been held a violation of Section 5. Both such types of comparative price claims were challenged by the complaint in this proceeding. And, as corollary to the "regular" price charges, the complaint also alleged that certain "savings" claims were also deceptive.³

Respondents are appealing from the initial decision of the administrative law judge on essentially two grounds. First, they contend that the administrative law judge improperly relied upon the testimony of the Commission attorney, Joseph J. Koman, who investigated the case. And second, they contend that complaint counsel failed to make a *prima facie* case both as to the "regular" price allegations and the "area competitive price" allegations. They contend that complaint counsel failed to prove that they did not make substantial sales at the advertised regular prices. Nor, they contend, did he prove that the advertised "area competitive prices" were above those prices actually charged by their competitors.

I. THE EVIDENCE

Most of the essential elements of complaint counsel's case were contained in the testimony of Mr. Joseph J. Koman, Jr., the Commission attorney who investigated the matter. Koman testified that on February 23 and 27, 1968, he interviewed Mr. Harold Reznick, vice president and general manager of Diener's Inc. At these interviews, Koman had with him a set of the newspaper advertisements run by Diener's from March through December 1967. According to Koman, Reznick went through these advertisements, and in a number of instances, identified the specific types of carpet and floor covering material that were advertised.

Reznick's assistance in identifying the specific items featured in the advertisements was essential to Koman because of the curious practice of retailers (at least in the Washington area) of advertising carpet without disclosing its grade or quality.⁴ All that is usually given is color, the material from which the carpet is made, the price and, on occasion, the manufacturer's name. Since each carpet manufacturer produces several grades or qualities of carpet that could fit

³ Respondents were also charged with misrepresenting the time in which their merchandise would be delivered and installed. This charge was dismissed by the administrative law judge and no appeal has been taken from that ruling.

⁴ Tr. 260, 269. This aspect of the respondents' advertising was not challenged in this proceeding.

such a limited description, Koman, not to say the poor customers, had no way of knowing which type of carpet had been advertised. Obviously, if he did not know what carpet was being advertised, he could not determine whether it had ever been sold at the advertised "regular" price. Manufacturers, however, designate each of the various grades or qualities with a name so that it can easily be identified. It was this essential information which Reznick gave to Koman, and, with one exception, Koman's testimony, as to what Reznick told him, is the only record evidence connecting the advertisements with specific types of carpeting and floor covering material.

Koman specifically testified, at considerable length, concerning Commission Exhibit 68, which was a full page advertisement run in the Washington Post on June 29, 1967.

He testified that Reznick went over the various floor covering items advertised on this page and identified each one by the manufacturer's name. Koman also testified that Reznick had explained that the items advertised on this page were the same items that Diener's advertised throughout 1967. Being able to identify the carpets advertised on this page, one could identify the carpets featured in any of the 1967 advertisements. Once Koman knew which specific grades of carpet were featured in the advertisements, he was then able to examine the respondents' sales records in order to determine whether any sales were actually made at the higher "regular" prices.

A. Regular Price Claims

Koman took the Washington Post advertisement of June 29, 1967, and compared the advertised "regular" prices with prices on the sales tickets from each of the respondents' stores during the period from June through October, and for some stores, June through November. Koman testified that he could find no evidence that any of the essential carpet or floor covering material had sold at the advertised "regular" prices.

Koman made copies of a sampling of the tickets that reflected the prices at which the advertised items had actually sold during this period. The tickets, however, were printed on colored papers and 23 out of 44 of the sample copies Koman made turned out to be illegible.

With regard to one type of carpet in Diener's advertisements, Koman did not have to rely on Reznick's identification. This carpet manufactured by James Lee & Sons Company was actually advertised under its quality designation "Romantica." In a number of advertisements (CX 79, 80, 85 and 86), the respondents advertised "Romantica" carpeting as:

* * * Reg. \$9.95 Sq. Yd. * * * ONLY 7.88 Sq. Yd.

And in two of the advertisements they represented that savings of "34% to 63%" could be realized by purchasing "Romantica." In the other two advertisements the savings were represented as being "33% to 64%." Koman testified that he could find no evidence in the respondents' sales records covering June through November 1967, that it had sold for \$9.95.

Among the legible copies of the sales tickets that were placed in evidence, there were three (CX 7, 10, and 36) which indicated sales of "Romantica" at \$6.63 per square yard. One other sales receipt (CX 43), indicated a sale at \$7.00 per square yard. Koman testified that he questioned Reznick specifically about "Romantica" and that Reznick told him that Diener's had not sold "Romantica" for a year prior to featuring it in their 1967 advertisements. Between 1965 and 1967, Reznick admitted to Koman that Diener's offered "Romantica" only in the sense that a sampling was kept at a headquarter's store and it could have been ordered special for any customer who wanted it. Reznick explained that if Diener's had purchased "Romantica" in 1966, it would have been sold at \$9.95 per square yard.

Koman testified that in the course of these interviews, Reznick made another admission concerning some carpet stair tread which had been advertised as regularly selling at \$24.95. According to Koman, Reznick admitted that the stair tread was never sold by Diener's for more than \$13.00.

Koman was questioned by the complaint counsel as to whether Reznick offered any explanation as to how he determined the area competitive price for the carpets advertised in CX 68 and Mr. Koman replied as follows:

Yes, he advised me that with respect to either the representation "regular" or the representation "area's competitive price," or to obtain the other saving representations contained in such ads, they would normally take or he would take the distributor's cost on a cut or raw basis, and with this price he would times it by a 60 percent markup, which he stated was the normal marketup [sic] for most carpeting concerns located in the Metropolitan D.C. Area, and that the cut order price plus the markup would equal either the regular or the area's competitive price. (Tr. 179).

Respondent's evidence on the "regular" price issue consisted of the testimony of Reznick, who said that "regular" price in an advertisement meant that Diener's had previously sold that item for the advertised "regular" price. He stated that as a general rule carpets featured in advertisements are not advertised more than one time, and claimed that all records of which products are featured in a particular advertisement are destroyed as soon as the advertisements

are forwarded to the advertising agency. However, Mr. Reznick was unable to recall any of the details of his conversation with Mr. Koman.

B. Area Competitive Price Claims.

To establish their case regarding the misrepresentations of area prices, complaint counsel again had to rely on the identification of the grade or qualities of the advertised carpets which were given to Koman by Reznick. Complaint counsel called, as witnesses, five carpet buyers from other stores in the Washington area. Each of these was questioned about the prices that their respective firms charged in 1967, for particular lines of carpet that were identified as having been advertised by Diener's. In each case, a comparison showed that these prices were considerably less than the "area competitive price" advertised by Diener's. Each buyer also testified on the measures that he or his firm took to insure that their prices were competitive.

Respondents' evidence on the "area competitive price" issue consisted of testimony by Reznick who said that he shopped "at least eight to ten" competitors every Saturday. On cross-examination, however, Reznick was unable to recall what stores he visited. And, at another place in the record, Reznick described a procedure somewhat more consistent with that attributed to him by Koman:

Q. Who determines the comparative prices that are offered for sale in those ads?

A. Sometimes the manufacture [sic], sometimes I do. (TR. 89).

II TESTIMONY OF THE COMMISSION INVESTIGATOR

Presumably, respondents are not challenging Koman's competence to testify. The issue of his competence does not appear to have been raised at trial and their brief appears to concede the point.⁵ Apparently, the issue they are attempting to raise is that of the weight which should be given his testimony in view of his status as a Commission employee. But since they cite no record evidence of bias, they are apparently asking us to assume the existence of bias in Koman's testimony from the mere fact of his employment. The testimony of a Commission employee, like any other witness, may contain bias. And that bias may even be a product of his employment, but this is a matter for the administrative law judge to determine. As one court bluntly put it, "The credibility of witnesses must be left in large part to the

⁵ At one point in their brief, respondents appear to concede Koman's competence to testify, but further on, they claim that the trial judge erred in even admitting Koman's testimony at all. And in their Reply Brief, respondents contend that "the central issue in this case [is] the weight to be given the testimony of the attorney-investigator, Mr. Koman."

hearer of the testimony, a proposition too elementary to require citation of authority." [*Communist Party of U.S. v. SACB*, 254 F. 2d 314 at 331 (D.C. Cir. 1958)].⁶ A party seeking to overturn an initial decision on the grounds that the administrative law judge improperly evaluated the credibility of a witness ought to be able to cite a solid record basis for its contention. But the respondents cite no error on the part of the administrative law judge except a simple failure to find that Koman's status as an employee alone rendered his testimony unbelievable. Nor do they now present any persuasive reason as to why the Commission should find, as a matter of law, that its employees are less credible than the general run of mankind.

Respondents also attack Koman's testimony as conclusionary:

The testimony of the attorney-investigator shows that he made an on sight inspection of certain documents and concluded that the respondents were guilty of various charges. The function of examining the documents and drawing inferences therefrom is conferred on the Hearing Examiner and not the staff investigator. If the course of conduct adopted by staff counsel is approved by the Commission we can look for more Star Chamber proceedings justified in the name of Consumerism. If the end justifies the means there is really no need for any testimony other than the attorney-investigator. He can decide what he wants to prove and then by his on sight inspection merely report that he concludes there has been a violation. The staff's theory is that once the attorney-investigator concludes that there is a violation the burden shifts to the respondent to disprove what an employee of the Commission has decided in an ex parte investigation. (Respondents' Reply Brief, p. 2.)

If Koman's testimony was conclusionary, as the respondents contend, then it was indeed improper for the administrative law judge to rely on it. Conclusionary testimony is as improper coming from a Commission investigator as it is coming from any other witness. If Koman had expressed any opinions as to whether or not the respondents violated the law, they would have been simply irrelevant and should not have been relied upon by the administrative law judge in any way. We find, however, after a careful review of the record, that Koman's testimony was in no way conclusionary. He testified, as any other witness, about those things he physically heard and saw. Nor do we find any indication that the administrative law judge improperly relied on Koman's testimony.

There is a more serious question here, however, and it deserves some examination even though it was not expressly raised by the respondents. It is whether it is fair to permit complaint counsel to base his *prima facie* case on testimony by a Commission employee. Without

⁶ This ruling was affirmed by the Supreme Court, *Communist Party of U.S. v. SACB*, 367 U.S. 1, 28-29, after remand to Board, 277 F. 2d 78 (1959).

deciding whether or not such procedure could, under some circumstances, be unfair, we find that there was no unfairness here. Koman's testimony hardly involved matters about which respondents would have had difficulty producing evidence. On the contrary, his testimony concerns matters which, but for his investigation, were exclusively within the respondents' knowledge and control. Sheer facetiousness must have inspired respondents' counsel to suggest that complaint counsel should have proved his case wholly by documents after his own client testified that the documents necessary to connect the advertisements with the advertised items were routinely destroyed.

III. REGULAR PRICE CLAIMS

Respondents contend that complaint counsel's *prima facie* case is defective in other respects in addition to its reliance on Koman's testimony. With regard to the allegations dealing with "regular" price, respondents claim that complaint counsel failed to show a violation of the Commission's "Guides Against Deceptive Pricing." Guide 1 provides, *inter alia* that: "If the former price is the actual *bona fide* price at which the article was offered to the public on a regular basis for a reasonably substantial period of time, it provides a legitimate basis for the advertising of a price comparison." Respondents cite Reznick's testimony that "regular price" meant "that we had previously sold merchandise for the regular price." They contend that the only evidence introduced by complaint counsel to show that no sales were made at the "regular" price were the 23 legible invoices or tickets which covered a period of only three or four months. Respondents also claim that the invoices do not reflect the date of purchase, nor do they identify the carpet purchased and, therefore, they cannot be related to the advertisements. Respondents also make much of the fact that 20 some receipts copied by Koman turned out to be illegible.

It is a little difficult to find much substance in the quibble over these invoices. The only way for complaint counsel to have proved that there were *no* sales of the items in question at the "regular" prices was to produce evidence as to all of the respondents' sales records. Hence, the crucial part of complaint counsel's evidence on this point was Koman's testimony that he examined *all* respondents' sales tickets and found *none* that reflected sales at the higher "regular" prices. It is hard to see how twenty-three or even forty-four tickets could add much to this. Koman did, of course, represent that the tickets reflected the prices at which the advertised items had actually been sold. But the tickets themselves do not establish this, independent of his testimony.

We find no error in the administrative law judge's decision to give

greater weight to Koman's testimony over Reznick's cryptic and self-serving statement.

Respondents protest that Koman examined only four months worth of invoices. From this, they claim, one cannot conclude that the regular price claims were deceptive.⁷ Koman, however, testified that while his examination of sales tickets went back only four months for some stores, it went back six months for many others, depending only upon what was available in the respondents' files. Since it is most unlikely the "regular" prices would have prevailed at some stores and not others, the question then becomes whether it is fair to make a regular price claim when that "regular" price has not prevailed for six months. Even the respondents seem unwilling to endorse such a proposition.

IV AREA COMPETITIVE PRICE CLAIMS

Respondents also contend that complaint counsel failed to present a *prima facie* case concerning the "area competitive price" claims. They say that complaint counsel's proof falls short of the standard established in Guide II of the "Guides Against Deceptive Pricing." This Guide, they insist, requires complaint counsel to prove their "area competitive prices" exceeded the prices at which "substantial sales" of the article were being made in the area. The only evidence as to area prices was the testimony of the six buyers who testified only as to their own prices and not the prices prevailing in the area. This evidence was insufficient under the Commission's decision in *Revco*, where it was held that evidence of the prices of three chains with some seventy-five drugstores was insufficient evidence as to the prevailing prices in a market with over 600 drugstores.

This argument is unpersuasive for a number of reasons.⁸ All of the

⁷ Respondent's counsel rather disingenuously claims that Koman testified that he found sales tickets showing advertised items being sold at the higher "regular" prices. This claim is clearly contradicted by the record of Koman's testimony:

"By Mr. Stein:

"Q. I believe you testified, sir, that you saw some sales tickets in the Diener's files which supported their claim that they were offering a bona fide sale but you also added to that they were few in number, you said few. Is that a fair paraphrase of your testimony?"

"A. If I could go back again, the investigation, the sales tickets examination dealt with regular pricing. I went through four months supply of sales tickets that was furnished to try to find out whether Diener's ever sold the merchandise at the higher regular price. I found no such sales.

"The next thing is what prices was Diener's selling this merchandise for during this time period. It was either at the advertised price or slightly higher than the advertised price.

"HEARING EXAMINER POINDEXTER: The advertised sale price or reduced price?"

"THE WITNESS: Right."

(Tr. 515-516).

⁸ The Guides are not intended to establish a standard of proof for litigated proceedings. They are what they say they are: "practical aids to the honest businessman who seeks manufacturer's list prices obtained by respondent."

six buyers testified that they took serious measures to know the prices of their competitors and to insure that their own prices were competitive. In comment on similar testimony in *Giant Food, Inc.* [61 F.T.C. 326], the Commission said: "If the prices * * * were thus deemed 'competitive' by these experts in the field, it is highly unlikely that a preponderant or even substantial segment of the Washington retailing community was charging the inflated manufacturer's list prices advertised by respondent." (p. 352). This reasoning is particularly applicable here where, as the respondents themselves have pointed out, two of the buyers that testified represented firms that made no special effort to undersell their competitors. One of these, Mr. Vern Miller of Carpets, Inc., testified (on respondents' cross-examination) that his firm preferred to compete on the basis of service rather than price. He testified that his firm never ran an advertisement in a newspaper nor displayed a sale sign in 16 years.

Similarly, Mr. Quinn M. Cardwell of Cardwell's Inc., testified that his firm was a specialty store and while he attempted to keep his prices competitive, he did not deal with a particular price conscious trade and therefore simply used a mechanical markup procedure.⁹ Yet, even the prices of these firms were below the "area competitive prices" advertised by the respondents.

The evidence of other buyers is significant for the same reason. And again, it was the testimony elicited by respondents' counsel which established that the department stores use a conventional markup procedure that reflects a higher overhead. Yet again, the prices charged by the department stores were lower than the prices represented by the respondents as the "area competitive prices."

In the face of such evidence, we are compelled to agree with the administrative law judge that complaint counsel clearly established a *prima facie* case.

On the basis of advertisements placed in evidence, the administrative law judge found that the respondents violated certain provisions

⁹ "Basically speaking, I use a fairly mechanical procedure in markup that my retail price is a function of my delivered cost price on the merchandise, and the material either is successfully sold at the retail price or if we have a situation occurring where one manufacturer's line we have repeated difficulty in selling or some particular fabrics we have repeated difficulty in selling because of price and where the problem where interested consumers literally don't buy the carpet because they say it is available at a better price elsewhere exists, we may review to make sure we don't have some error in our pricing structure and if we find we have no error and this continues, my general procedure [sic] is to discontinue the fabric where we are high in price." (Tr. 273).

of the Textile Fiber Products Identification Act.¹⁰ Respondents are appealing from this ruling on the grounds that "there is no finding indicating that these technical offenses occurred after the first part of 1968, of that there is any likelihood that these offenses will be repeated in the future."

The Commission has dealt with this argument many times. Quite recently we said:

It is well established that the mere fact that the offending practices have been discontinued prior to the issuance of a complaint does not provide, by itself, the requisite assurance that an order is unnecessary and not in the public interest. As the courts have noted, it is the timing and circumstances of the claimed abandonment which is of importance to the issue of the necessity for an order. Where, as here, the abandonment took place only after the Commission's hand was on the respondent's shoulder, the courts are clear that abandonment of the practices under such circumstances will not support a conclusion that the practices will not be resumed.¹¹

We see no reason to abandon this rule in the present case.

The Initial Decision and Order of the administrative law judge is affirmed.

FINAL ORDER

This matter is before the Commission on the appeal of respondents from the initial decision and order of the administrative law judge issued July 12, 1971. Upon examination of the record, the brief, and after full consideration of the issues of fact and law presented, the Commission has concluded that the initial decision of the administrative law judge should be adopted and issued as the decision of the Commission. Accordingly,

It is ordered, That respondents' appeal from the initial decision of the administrative law judge be, and it hereby is, denied.

It is further ordered, That the initial decision of the administrative law judge be, and it hereby is, adopted as the decision of the Commission.

By the Commission, without the concurrence of Commissioner MacIntyre. He did not concur because he said it is apparent to him that much of the decision of the majority rests upon the testimony of

¹⁰ He found that respondents (1) failed to disclose the fiber content information in such a manner as to indicate that it applied to the face, pile or outer surface of the floor covering and not to the backings, fillings, or paddings; (2) failed to set forth the required information as to fiber content as specified in Section 4(c) of the Textile Fiber Products Identification Act and the rules and regulations thereunder in that in some advertisements carpeting was described by such fiber-connoting terms as "Acrilan," "Kodel," and "Herculon," and the true generic name of the fiber was not disclosed; (3) falsely and deceptively advertised textile fiber products in violation of the Textile Fiber Products Identification Act.

¹¹ *Zale Corp.*, Docket No. 8810 (1970).

Complaint

81 F.T.C.

witness Koman. It is the view of Commissioner MacIntyre that the testimony of witness Koman should have been stricken for the reason stated in a dissenting opinion by him in January 1971 [78 F.T.C. 1564], during the course of an interlocutory appeal proceeding herein. Commissioner Jones agreed to the opinion on liability, but dissented to the order, and submitted a dissenting statement.

IN THE MATTER OF

GEORGIA-PACIFIC CORPORATION

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT AND CLAYTON ACT, SEC. 7

Docket 8843. Complaint, May 26, 1971—Decision, Dec. 26, 1972.

Consent order requiring, among other things, the divestiture by the nation's leading producer and distributor of softwood plywood, headquartered in Portland, Ore., of certain acquisitions alleged to be anticompetitive and monopolistic in nature. The principal provisions of the order are that the respondent shall create an independent corporation and transfer approximately 20 percent of its assets to said corporation. The order further restricts and prohibits future acquisitions in the timber industry in the South for five years and places a ten-year ban on the acquisition of the stocks and assets of softwood plywood concerns without prior Federal Trade Commission approval.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named above, as hereinafter more particularly designated and described, has violated and is now violating the provisions of Section 7 of the Clayton Act, as amended, (U.S.C. Title 15, Section 18) through the acquisition of the stock and assets of various corporations, as hereinafter more particularly designated and described, hereby issues its complaint pursuant to the provisions of Section 11 of the aforesaid Clayton Act (U.S.C. Title 15, Section 21) stating its charges in this respect in the following Count I.

The Federal Trade Commission, having further reason to believe that aforesaid party respondent also has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act, as amended (U.S.C. Title 15, Section 45), through the acquisition of the stock and assets of various corporations, as hereinafter more particularly designated and described, and it appearing to the Commission that a proceeding by it with reference thereto would be in the public