

Complaint

84 F.T.C.

IN THE MATTER OF

WILBANKS CARPET SPECIALISTS, INC., ET AL.

ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND TRUTH IN LENDING ACTS*Docket 8933. Complaint, June 28, 1973—Decision, Sept. 24, 1974*

Order requiring an Essex, Md., seller, distributor and installer of carpeting and floor coverings, among other things to cease misrepresenting itself as a manufacturer; using bait and switch tactics; disparaging merchandise; failing to maintain adequate records; misrepresenting offers as free when their cost is incorporated into the selling price; misrepresenting prices; and failing to inform consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the Truth in Lending Act.

Appearances

For the Commission: *Maureen L. McGill, Everette E. Thomas, Richard F. Kelly and Alice C. Kelleher.*

For the respondents: *Benjamin R. Civiletti and John Henry Lewin, Jr.*, Baltimore, Md., withdrew from participation on June 6, 1974.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Wilbanks Carpet Specialists, Inc., a corporation, trading as Mr. Carpet Centers and Design Carpets Consultants, and J.C.B. Distributors, Inc., a corporation, trading as Mr. Carpet Centers, and George Wilbanks and Lester L. Miller, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of said Acts, and the implementing regulation promulgated under the Truth in Lending 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 Wilbanks Carpet Specialists, Inc., trading as Mr. Carpet Centers and Design Carpets Consultants, 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 18 South Maryland Street, Essex, Md.

Respondent J.C.B. Distributors, Inc., trading as Mr. Carpet Centers, 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 10508 Baltimore Boulevard, Beltsville, Md.

Respondents George Wilbanks and Lester L. Miller are individuals and are officers of said corporate respondents. The said individual respondents formulate, direct and control the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. The address of respondent George Wilbanks is the same as that of corporate respondent Wilbanks Carpet Specialists, Inc., and the address of respondent Lester L. Miller is the same as that of corporate respondent J.C.B. Distributors, Inc.

All of the aforementioned respondents cooperated and acted together in the carrying out of the acts and practices hereinafter set forth.

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

COUNT I

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

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their said merchandise, when sold, to be shipped from their places of business located in the State of Maryland, to purchasers thereof located in various other States of the United States and the District of Columbia, and maintain and at all times mentioned herein have maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

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

CARPETING DIRECT FROM OUR FAMILY MILL

* * * * *

WE SELL FOR LESS — WE MAKE IT OURSELVES

* * * * *

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MR. CARPET SAYS: "YOU CAN NOW AFFORD" TO CARPET YOUR ENTIRE HOME—INCLUDING 5 AREAS—Living Room, Dining Room, Hall, Stairs and Landings \$139-100% NYLON PILE From Our Family's Factory To You! 270 Square Feet-WALL TO WALL-FREE PADDING AND LABOR!

Dupont 501 Nylon Carpet Up to 320 Sq. Ft. installed Wall to Wall at no additional cost. Free padding \$189-FREE! PORTABLE TELEVISION With the purchase of our deluxe carpeting

WASHINGTON'S GREATEST CARPET SALE!!

Mr. Carpet can save you money! We have our own mill and our own warehouse in order to lower our overhead. Thousands of yards in our warehouse. You lose money if you don't check with us before you buy carpeting!

INSTALLATION INCLUDED WALL-TO-WALL PADDING FREE

10 Year Guarantee

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

1. Respondents are an integrated manufacturing and retailing business organization, and by virtue of such integration respondents are able to sell carpeting at lower prices than other competing retail carpet dealers.

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

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

4. By and through the use of the words "INSTALLATION INCLUDED WALL-TO-WALL PADDING FREE" and other words of similar import and meaning, not set out specifically herein, that all of the carpeting mentioned in such advertisements is installed with separate padding included at the advertised price.

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

6. Purchasers of the said deluxe carpeting receive a "free" portable television.

PAR. 6. In truth and in fact:

1. Respondents are not an integrated manufacturing and retailing business organization. Respondents do not manufacture carpeting, but purchase it from sources which are generally available to their competitors.

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

3. Respondents' products are not being offered for sale at special or reduced prices. To the contrary, the price respondents regularly advertise and their so-called advertised "sale" price are identical and are used to mislead prospective customers into believing there is a saving from a bona fide regular selling price. In fact, seldom, if ever, are the advertised items sold, because the offer is designed to act as the inducement for the practices set forth in Paragraph Six, 2., hereof.

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

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

in a substantial number of instances customers did not receive a written guarantee.

6. Purchasers of respondents' deluxe carpeting do not receive a free portable television. To the contrary, the cost of the "free" gift is added to and regularly included in the selling price of the merchandise sold to the customer.

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

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

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

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

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

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

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

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

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

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

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

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

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

COUNT II

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

PAR. 14. In the ordinary course and conduct of their business, as aforesaid, respondents regularly extend consumer credit, as "consumer

credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 15. Subsequent to July 1, 1969, respondents, in the ordinary course of business as aforesaid, and in connection with their credit sales, as "credit sale" is defined in Regulation Z, have caused, and are causing, customers to execute binding retail installment contracts, hereinafter referred to as the "contract."

PAR. 16. By and through the use of the contract respondents:

(1) Failed in some instances to disclose the due dates or periods of payments scheduled to repay the indebtedness, as required by Section 226.8(b) (3) of Regulation Z.

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

PAR. 17. 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 thereby violated the Federal Trade Commission Act.

INITIAL DECISION BY MILES J. BROWN,
ADMINISTRATIVE LAW JUDGE
APRIL 24, 1974

PRELIMINARY STATEMENT

The Federal Trade Commission issued its complaint in this matter on June 28, 1973, charging respondents with 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 (15 U.S.C. 45), as well as with violations of the Truth in Lending Act (15 U.S.C. 1604, *et seq.*). By answer duly filed respondents denied summarily the substantive allegations of the complaint and denied violating the Federal Trade Commission Act or the Truth in Lending Act.

Adjudicative hearings were held in Wash., D.C. and Baltimore, Md., during Nov. 1973. The record in this proceeding was closed for the reception of evidence on Jan. 8, 1974. On Feb. 15, 1974, proposed findings and briefs were filed by counsel supporting the complaint and counsel for respondents, and a reply brief was filed by complaint counsel on Mar. 1, 1974. By letter dated Feb. 27, 1974, respondents' counsel advised the administrative law judge that respondents chose not to file a reply

brief. By order dated Mar. 15, 1974, the Commission extended until May 8, 1974, the time in which the initial decision should be filed.

Any motions appearing on the record not heretofore or herein specifically ruled upon either directly or by the necessary effect of the conclusions in this decision are hereby denied.

The proposed findings, conclusions and briefs submitted by counsel have been given careful consideration and to the extent not adopted by this decision in the form proposed or in substance are rejected as not supported by the evidence or as immaterial.¹

Some of the abbreviations used in this decision are as follows:

CX - Commission's Exhibit

RX - Respondents' Exhibit

CSCPF - Proposed Findings and conclusions filed by Counsel Supporting the complaint

RPF - Proposed Findings and conclusions filed by Respondents' Counsel

TR - Transcript of the testimony

CSC Reply - Reply Brief of Counsel Supporting the complaint. Specialists - Wilbanks Carpet Specialists, Inc.

J.C.B. Dist. - J.C.B. Distributors, Inc.

At the outset it should be pointed out that respondents now admit that they have engaged in certain practices challenged by the Commission (RPF, Concl. 3, 4, 5, & 6). Respondents' main contentions at this posture of the case are that the two corporate respondents are entirely separate business entities, that they operated in two distinct trading areas, Specialists in Baltimore, and J.C.B. Dist. in Washington, D.C., and that Specialists, which is still engaged in business, should not be held liable or subjected to an order because of certain practices engaged in by J.C.B. Dist. which ceased operations in late 1972. They further contend that the terms of the proposed order, especially the so-called "consumer warning" disclosure, should not be issued against Specialists.

Having reviewed the record in this proceeding, and having considered the demeanor of the witnesses as they testified, together with the proposed findings, conclusions, and briefs submitted by the parties, I make the following findings as to the facts.

FINDINGS OF FACT

1. Respondent Wilbanks Carpet Specialists, Inc., ("Specialists") which trades as Mr. Carpet Centers, is a Maryland corporation with its

¹Counsel supporting the complaint have meticulously annotated their proposed findings to the record in this proceeding. Where noted, instead of repeating long string citations to exhibits, I have adopted counsel's citations along with the finding, being satisfied that the finding is fully supported by the record.

principal office and place of business located at 11 South Marlyn Street, Essex, Md. (Ans., Tr. 21-25).

2. Respondent J.C.B. Distributors, Inc., ("J.C.B. Dist.") is also a Maryland corporation, and also traded as Mr. Carpet Centers from March of 1970 until about Thanksgiving of 1972, during most of which period it had its principal place of business at 10508 Baltimore Boulevard, Beltsville, Md. (Ans., CX B(1); Tr. 27, 28, 154).

3. Respondent George Wilbanks is an individual and an officer of both corporate respondents, Specialists and J.C.B. Dist., and he alone formulates, directs and controls the acts and practices of Specialists (Tr. 23, 25, 129, 130).

4. Respondent Lester L. Miller is an individual and was an officer of both corporations. He was in charge of the day-to-day operations at J.C.B. Dist. He now resides in Laurel Springs, N.C., where he is engaged in the retail carpet business (Tr. 23, 28-29, 139).

5. Wilbanks and Miller entered the carpet business as partners in 1967 (Tr. 23). They were the sole owners of Specialists with Wilbanks owning 55 percent interest and Miller 45 percent interest (Tr. 23, 140). In March of 1970, Wilbanks and Miller went into business with J. C. Briggs in the Washington area and when Briggs terminated his association with J.C.B. Dist., Wilbanks and Miller became sole owners thereof in the same proportion as their interest in Specialists, *i.e.*, 55 percent-45 percent (Tr. 27-29, 140, 142).

6. Both corporations, as well as the individual respondents, were engaged in the advertising, offering for sale, sale, distribution and installation of carpeting and floor covering to the general public at retail (Tr. 25, 29) and they used the trade name Mr. Carpet Centers, advertising and selling under that name (see CX D 1-39, 41; RX 1-10).

7. Specialists purchased and warehoused almost all of the carpeting ultimately sold at retail by J.C.B. Dist. (Tr. 32-33, 51, 143, 148, 747). After J.C.B. Dist. took orders for this carpeting, it was transported from Specialists' Baltimore warehouse by the installers who were employees of Specialists to various purchasers located in Maryland, Northern Virginia and the District of Columbia (Tr. 31-34, 48, 143). Specialists charged J.C.B. Dist. for the installing services and for the carpeting used in these installations (Tr. 33, 78, 156; see CX C 1-25). In the later operation of J.C.B. Dist., Wilbanks attached an installation crew to J.C.B. Dist.'s payroll (Tr. 34, 149).

8. Although Miller was in charge of the day-to-day operation of J.C.B. Dist., Wilbanks often visited the J.C.B. Dist. store location and at certain times went over its books (Tr. 144, 230-231). The overall policy decisions

for J.C.B. Dist. were made jointly by Miller and Wilbanks (Tr. 29; CX B-1), and the basic format for all J.C.B. Dist. advertising was decided on jointly by Wilbanks and Miller (Tr. 27-29, 142).

9. Specialists places advertisements under the name Mr. Carpet Centers in the TV Guide sections of the Sunday editions of the Baltimore Sun and Baltimore News American and on television on Baltimore channels 2, 13, and 45. Transmissions of these Baltimore television stations may be received in the District of Columbia and Northern Virginia and the Sunday editions of both newspapers are circulated in states other than Maryland (Tr. 26, 555, 568, 608, 609-617).

10. J.C.B. Dist. advertised on a regular basis in newspapers, including the Washington Post, the Washington Star, and the Washington Daily News, all of which have substantial interstate circulation, the latter two papers now constituting the Washington Star News (Tr. 31, 38, 142, 603), and it ran a commercial on Washington television channel 20 for a short period of time in 1971 (see CX B-7; Tr. 63).

11. In the course and conduct of their businesses of advertising, offering for sale, sale and installation of carpeting, respondents have engaged in a substantial course of trade in commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act (15 U.S.C. 44) (Findings 7, 8, 9, 10, *supra*).

12. In the course and conduct of their businesses, respondents in their advertisements and by representations of their salesmen have made, among other statements, the following statements to prospective purchasers with respect to their products and services:

- (a) CARPETING "DIRECT FROM OUR FAMILY MILL" (CX D 27, 28, 31);
- (b) WE SELL FOR LESS - WE MAKE IT OURSELVES (CX D 4, 9, 10, 11, 21, 22, 23);
- (c) MR. CARPET SAYS: "YOU CAN NOW AFFORD" TO CARPET YOUR ENTIRE HOME - INCLUDING 5 AREAS - Living Room, Dining Room, Hall, Stairs and Landings \$139 100% NYLON PILE, From our Family's Factory To You! 270 Square Feet WALL TO WALL FREE PADDING AND LABOR! (CX D 8, 12);
- (d) Dupont 501 Nylon Carpet Up to 320 Sq. Ft. installed Wall to Wall at no additional cost. Free padding \$189 FREE! PORTABLE TELEVISION With the purchase of our deluxe carpeting (CX D 27, 28, 35);
- (e) WASHINGTON'S GREATEST CARPET SALE!! Mr. Carpet can save you money! We have our own mill and our own warehouse in order to lower our overhead. Thousands of yards in our warehouse. You lose money if you don't check with us before you buy carpeting! (CX D 5, 13, 14, 15);
- (f) INSTALLATION INCLUDED WALL-TO-WALL PADDING FREE (CX D 27, 28, 35);
- (g) 10 Year Guarantee (CX F 14, 19, 23(a), 197).

13. Through such statements as "Carpeting Direct from our Family Mill" or "We sell for less - We make it ourselves," coupled with a picture

of a factory and a figure carrying rolls of carpet, respondents represent to prospective consumers that they are a factory outlet of an integrated manufacturing and retailing business organization, and accordingly, were able to sell carpeting at lower prices than other competing retail carpet dealers (CX D 27, 28, 31; see also Tr. 401, 410-413, 432, 438, 461, 462, 488, 506-507).

14. Respondents did not manufacture carpeting but purchased it from sources which were generally available to their competitors. Only a small quantity of carpeting was purchased by respondents from Wilbanks' in-law relatives (Tr. 92-95, 149, 196-198, 212-214).

15. The representations set forth in Finding 13, *supra*, were untrue and had the tendency to mislead prospective consumers (RPF, Concl. 3).

16. Through such statements as "You can now afford to carpet your entire home - including 5 areas - Living Room, Dining Room, Hall, Stairs and Landings, \$139, 100% Nylon Pile, From Our Family's Factory to You! 270 Square Feet, Wall to Wall, Free Padding and Labor!" respondents represent that they are making a bona fide offer to sell the advertised carpeting and floor coverings at the price and on the terms and conditions stated in the advertisements (see CX D 8, 12).

17. The so-called "5 areas for \$139" advertisements² did not constitute a bona fide offer to sell the advertised carpeting. Such advertising was used primarily to obtain "customer leads" in order to sell to them more expensive carpeting (see RPF, Concl. 4).

18. Because of the poor appearance and condition of the samples of the advertised carpeting shown to the prospective customers, they immediately rejected any idea of purchasing it (See CX J 1-6; Tr. 337-338, 402, 418, 441, 451, 463, 477, 466, 484, 507, 517-518, 533, 557, 570, 589, 596, 619, 635, 650, 675).

19. Very few actual sales were made of the advertised carpeting at the price and on the terms set forth in the advertisements (Tr. 241, 289; see CX F 1-550B).

20. The salesman's commission on the sale of the advertised carpeting was very small (Tr. 75, 146-147).

21. Although respondents did have some carpeting in stock which they could sell at the advertised price, *i.e.*, \$139, at little or no profit, such carpeting was not specifically designated in advance as the advertised carpeting and salesmen merely used respondents' generic names such as "Candystripe" or "Adios" to designate a sale of such carpeting (see Tr. 46, 69-72, 137; see also CX K).

²The areas and prices contained in this type of advertisement vary. Findings 17 through 28 refer also to all of the "areas for stated price" representations.

22. In addition to the very appearance of the samples of the advertised carpeting, respondents' salesmen disparaged this carpeting, saying, for example, that it was not good carpeting or that it would not last long (see Physical Exhibit CX J 1-6; Tr. 298, 457, 477, 484, 508, 518, 538, 557, 569, 619, 674).

23. In most instances, the salesman attempted to sell a different and more expensive carpet product than the advertised carpeting (*ibid.*).

24. Salesmen's commissions on the higher priced carpeting were substantially more than on the advertised carpeting, such commissions being based on the difference between the "par" price established by respondents and the amount of the sale. The sale price was established by the salesmen at the time that the sale was consummated at the customer's home, there being no established upper limit (Tr. 38-44, 159-160, 241-243, 288).

25. Although the offer of a "free" television set or vacuum cleaner was made in most advertisements (see CX D-43), an offer which appeared to be related to the advertised carpeting and which prompted many prospective consumers to call respondents initially, the "free" offer was limited to a "deluxe carpeting" determined at the discretion of the salesman, was not offered with the advertised carpeting, and, when given to the purchaser, the cost thereof was subtracted from the amount upon which the salesman's commission was computed (RPF, Concl. 6; Tr. 100, 150, 151, 156, 158-159, 246-249, 299-301; see Tr. 401, 456, 476, 479, 618, 634, 674; CX B-2; see also customer contracts, CSCPF p. 48).

26. Through the use of such advertising respondents were able to obtain leads to persons who were interested in purchasing carpeting, and, when calling upon said persons in their homes, attempted to and did sell more expensive carpeting than the advertised carpeting (Findings 16, 17, 18, 19, 20, 21, 22, 23, 24, 25; RPF, Concl. 4; Tr. 378-379, 434, 441-442, 458, 464-465, 477-478, 493-494).

27. Through the use of the word "SALE" and other words of similar import, respondents represented that the carpeting and floor covering offered in such advertisements could be purchased at reduced or special prices, affording consumers savings from respondents' regular selling price for such products (see CX D 30, 32, 33).

28. Examination of the advertisements themselves show, and Wilbanks testified, that the "sale" prices were the regular prices for which the advertised carpeting was offered for sale and such prices were not reduced or special prices and that the consumer would not receive a

saving from respondents' regular price for such products (RPF, Concl. 5; see Finding 21, *supra*; Tr. 96-100).

29. Through the use of such words as "Installation included, wall-to-wall padding free," respondents represented that all of the carpeting mentioned in said advertisements was to be installed with separate padding included at the advertised price (see CX D 27, 28, 35).

30. Certain of the advertised carpeting had a rubberized backing bonded to the carpeting and this carpeting was not installed with separate padding (Tr. 78, see Tr. 121-122, 134, see also Tr. 672).

31. Through the use of such words as "guaranteed for 10 years" or any other specifically mentioned period, either in their advertising or written on consumer contracts, respondents represented that the advertised carpeting or the carpeting actually sold was unconditionally guaranteed for the time period specified (CSCPF, p. 44).

32. Respondents' guarantee was not an unconditional guarantee, but was a limited "prorated wear" guarantee (CX B-12a; Tr. 104, 301, 302, 458, 477, 518, 539).

33. In the course and conduct of their business respondents, through various representations in their advertisements, as well as oral representations of their salesmen, induced consumers into signing customer contracts without giving the consumer sufficient time to consider carefully the purchase, and the terms or the consequences thereof (Tr. 378, 403, 418, 435, 493, 541, 571, 583, 589, 620).

34. In circumstances where respondents sold the advertised carpeting in quantities greater than the area of coverage contained in the advertisements, *i.e.* 270 square feet or 320 square feet, the additional carpeting was priced substantially higher than the rate for the advertised coverage, although no information to this effect is contained in the advertisement (Tr. 102-103, 153).

35. Although the unit of measurement usually and customarily employed in the retail sale of carpeting is square yards, respondents used square foot measurements to describe the coverage of their advertised carpeting, which tended to exaggerate the quantity of carpeting being offered (See Tr. 182-184, 252-253, 275-276, 401, 413, 420, 426, 437, 455, 475, 565, 575, 594-595).

36. In the course and conduct of their business, respondents have been, and now are, in substantial competition with corporations, firms and individuals in the sale and distribution of rugs, carpeting, and floor coverings, and service of the same general kind and nature as those sold by respondents (Tr. 123-124).

37. In the ordinary course and conduct of their business respondents regularly extend consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act (Ans. pp. 4, 5; CSCPF, 56).

38. Subsequent to July 1, 1969, respondents, in the ordinary course and conduct of their business, and in connection with their "credit sales" as defined in Regulation Z, have caused customers to execute binding retail installment contracts (Ans., p. 5; CSCPF, p. 56).

39. By and through the use of the retail installment contracts, respondents failed in some instances to disclose the due dates or periods of payments scheduled to repay the indebtedness, as required by Section 226.8(b)(3) of Regulation Z (see customer contracts, CSCPF, p. 57).

40. By and through the use of the retail installment contracts, respondents failed in some instances to disclose the "annual percentage rate" accurately to the nearest quarter of one percent, computed in accordance with the provision of Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z (see customer contracts, CSCPF, p. 57).

CONCLUSIONS OF LAW

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of respondents Specialists, Wilbanks, J.C.B. Dist. and Miller.

Said respondents have at all times relevant hereto engaged in interstate commerce within the intent and meaning of Sections 4 and 5 of the Federal Trade Commission Act. There is no doubt on this record that both Specialists and J.C.B. Dist. advertised in commerce. The newspapers in which such advertisements were placed have interstate circulation. The television stations over which such advertisements were transmitted, are interstate in range. In addition, during the period from early 1970 until Nov. 1972, J.C.B. Dist. and Specialists were engaged in a course of trade in commerce. Specialist purchased carpeting from suppliers located outside the State of Maryland and warehoused such carpeting in anticipation of sales to J.C.B. Dist. for shipment directly to customers located in the District of Columbia and Northern Virginia. *Standard Oil Co. v. Federal Trade Commission*, 340 U.S. 231 (1951); *Holland Furnace Co. v. Federal Trade Commission*, 269 F.2d 203 (7th Cir. 1959), *cert. denied*, 361 U.S. 932; *Guziak v. Federal Trade Commission*, 361 F.2d 700 (8th Cir. 1966). All acts and practices which were part of these transactions were methods of competition or acts and practices in commerce within the coverage of the Federal Trade Commission Act.

See *United States v. South-Eastern Underwriters Ass'n.*, 322 U.S. 533 (1944); *Holland Furnace Co. v. Federal Trade Commission*, *supra*.

2. Respondents Wilbanks and Specialists are responsible for their own actions as well as for the actions of J.C.B. Dist. Respondents contend that because Specialists and J.C.B. Dist. are separate corporations, operated separately in their own distinct geographic trading areas with different personnel, different stores, different banking arrangements etc. (see RPF 14), that the acts and practices of J.C.B. Dist. and its salesmen are not to be considered as the acts and practices of or the responsibility of Specialists (Tr. 129-130). Parsing the record, they contend that there is no direct evidence that Specialists engaged in the admittedly illegal conduct in which J.C.B. Dist. was engaged and that, accordingly, certain provisions of the proposed order should not be entered against Specialists. Wilbanks contends that he was not responsible for the day-to-day operation of J.C.B. Dist. or its salesmen's conduct, and that, accordingly, he is not responsible, individually, for the actions of J.C.B. Dist. or its salesmen.

Respondents' arguments must be rejected for at least three reasons.³ First, as stated in Conclusion 1, *supra*, Specialists was directly involved in the chain of events that resulted in the "switched carpet" being delivered to the consumer. It directly benefited from whatever practices J.C.B. Dist. and its salesmen used to make the sale of said products, including the advertising and the salesmen's representations. Specialists is responsible, under the Federal Trade Commission Act, for any illegal conduct engaged in by J.C.B. Dist. *Star Office Supply Co.*, 77 F.T.C. 383, 445 (1970), *affirmed per curiam*, 2d Cir. No. 35066 (1972) (not reported); *Parke, Austin & Lipscomb, Inc. v. Federal Trade Commission*, 142 F.2d 437 (2d Cir. 1944), *cert. denied*, 323 U.S. 753. policy decisions relative to the advertising format used by J.C.B. Dist. as well as its finances. He is also liable for the acts and practices in which J.C.B. Dist. was found to be engaged. *Sunshine Art Studios, Inc. v. Federal Trade Commission*, 481 F.2d 1171 (1st Cir. 1973).

Second, the J.C.B. Dist. advertising and sales policies, including the method of compensating its salesmen, and the handling of carpeting, placed in the hands of said salesmen the instrumentality by which certain unfair and deceptive acts and practices were conducted. Specialists and Wilbanks were essential to the J.C.B. Dist. operation and are

³The consumer testimony of the Baltimore witnesses, firmly established that Specialists' advertising, especially on television, included most, if not all, of the representations covered in this proceeding, and that Specialists' salesmen engaged in tactics designed to switch customers to a higher priced product. (See also CX D 29, 31, 32, 39; RX 1-12).

responsible for its acts and practices. Cf. *Federal Trade Commission v. Winsted Hosiery Co.*, 258 U.S. 483, 494 (1922); *C. Howard Hunt Pen Co. v. Federal Trade Commission*, 197 F.2d 273, 281 (3d Cir. 1952); *Regina Corp. v. Federal Trade Commission*, 322 F.2d 765 (3d Cir. 1963).

Third, the business operation of Specialists and J.C.B. Dist. are substantially the same. The advertising is similar, the Mr. Carpet Centers trade name was used by both (Tr. 69), and the method of selling appears to be similar (compare testimony of Washington area consumer witnesses with Baltimore area consumer witnesses). In the circumstances it is a fair inference that both corporations were guided by the same policies. Wilbanks and Miller, co-owners of both corporations, either were well aware or should have been aware of all the acts and practices challenged in this proceeding, and they are responsible for all of the acts and practices of both of the corporations. *Federal Trade Commission v. Standard Education Society*, 302 U.S. 112 (1937).

3. The said acts and practices of respondents challenged in the complaint and in which they were found to be engaged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted 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.

It is well established that it is an unfair trade practice to make statements in advertising which have the tendency and capacity to deceive the prospective customer. *Carter Products, Inc. v. Federal Trade Commission*, 323 F.2d 523 (5th Cir. 1963). The Commission may challenge and prevent true statements if, when considered in the context of all representations made, the advertisement has that tendency and capacity to mislead. *J. B. Williams Co. v. Federal Trade Commission*, 381 F.2d 884 (6th Cir. 1967). Furthermore, where the advertisements themselves sufficiently demonstrate their capacity to deceive, the Commission can find the requisite deception or capacity to deceive on a visual examination of the exhibits without evidence the public was actually deceived. *Double Eagle Lubricants, Inc. v. Federal Trade Commission*, 360 F.2d 268, 270 (10th Cir. 1965); *Mohr v. Federal Trade Commission*, 272 F.2d 401, 405 (9th Cir. 1959), *cert. denied*, 362 U.S. 920 (1960).

It is also an unfair trade practice to fail to reveal any relevant and material fact concerning the matters set forth in an advertisement where such information might be important to the prospective customer in his choice as to whether to purchase the product or service advertised. *Federal Trade Commission v. Colgate-Palmolive Co.*, 380 U.S.