

## IV

*It is further ordered, That respondent shall:*

\* A. within thirty (30) days after this order becomes final, distribute a copy of this order to each of its operating divisions;

\* B. within thirty (30) days after this order becomes final, notify each developer of shopping centers, in which respondent is a tenant, of this order by providing each such developer with a copy thereof by registered certified mail;

\* C. within sixty (60) days after this order becomes final, file with the Commission a report showing the manner and form in which it has complied and is complying with each and every specific provision of this order; and

D. 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.

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IN THE MATTER OF  
HORIZON CORPORATION

*Docket 9017. Order, June 10, 1975*

General counsel ordered to take action to notify the Arizona District Court in accordance with Commission's determination contained in its order.

*Appearances*

For the Commission: *Eugene Kaplan, Alan N. Schlaifer and Morgan D. Hodgson.*

For the respondent: *Basil Mezines, Stein, Mitchell & Mezines, Wash., D.C. and Samuel Pruitt, Jr. and J. Michael Brennan, Gibson, Dunn & Crutcher, Los Angeles, Calif.*

ORDER DIRECTING GENERAL COUNSEL TO TAKE  
APPROPRIATE ACTION IN JUDICIAL PROCEEDING

By motion filed May 12, 1975, complaint counsel requested that the General Counsel of the Commission be directed to appear as *amicus*

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\* Commission order of July 29, 1975, corrected the statement of compliance deadlines in the final order by substituting the words "this Order becomes final," for the words "service of this Order upon respondents" in each of subparagraphs IV A., B., and C.

Order

85 F.T.C.

*curiae* in *O'Neil v. Horizon Corp.*, Docket No. 10427, an action now pending in the Arizona District Court in which, they contend, a proposed settlement may have some effect on the above-captioned matter. Respondent does not object to such an appearance by a representative of the Commission, but argues that it would violate the Administrative Procedure Act, 5 U.S.C. § 554(d), for the General Counsel, as the Commission's chief legal adviser, to perform the investigative and prosecutorial duties necessary to make the appearance. Pursuant to Section 3.22 of the Commission's Rules of Practice, the law judge certified this motion to the Commission.

The Commission has determined to grant the motion to the extent of notifying the court of 1) the pending Commission action against Horizon; 2) the authority of the Commission to seek consumer redress in court and the possibility that such authority might be exercised if a final cease and desist order were entered against Horizon; and 3) the effect of the proposed settlement in the *O'Neil* case on any future Commission consumer redress action. The Commission finds no impropriety in the General Counsel representing the Commission in this matter, since he will not be prosecuting the Commission's complaint within the meaning of 5 U.S.C. § 554(d) but will simply be informing the court of matters relevant to the court's consideration of the potential settlement in the *O'Neil* case.

*It is ordered*, That the General Counsel take action to notify the court in the *O'Neil* case in accordance with the above.

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IN THE MATTER OF

CENTRAL CARPET CORPORATION, INC., ET AL.

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

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

Consent order requiring a Bradbury Heights, Md., seller, distributor and installer of carpeting and floor coverings, among other things to cease using bait and switch tactics and other deceptive selling practices.

*Appearances*

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

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

## COMPLAINT

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

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

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

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

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

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

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

\$109  
3 Rooms  
NYLON PILE CARPET  
Quality Wall to Wall

Complaint

85 F.T.C.

up to 270 sq. ft.

\*            \*            \*            \*            \*            \*

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

\*            \*            \*            \*            \*            \*

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

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

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

PAR. 6. In truth and in fact:

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

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

Therefore, the statements and representations as set forth in

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

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

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

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

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

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

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

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

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

Furthermore, respondents' use of square foot measurements exag-

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

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

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

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

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

INITIAL DECISION BY ALVIN L. BERMAN, ADMINISTRATIVE LAW  
JUDGE

APRIL 17, 1975

PRELIMINARY STATEMENT

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

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

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

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

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

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

<sup>1</sup> References to the record are set forth in parentheses, and certain abbreviations, set forth below, are used:  
Ans. - Respondents' answer to the complaint.  
RPF - Proposed findings of fact submitted by respondents, followed by the page being referenced.  
RRB - Reply brief submitted by respondents, followed by page being referenced.  
CX - Commission's exhibit, followed by number of exhibit being referenced.  
RX - Respondents' exhibit, followed by number of exhibit being referenced.  
RRA - Respondents' reply to request for admissions, followed by number of the reply being referenced.  
Tr. - Official transcript of the formal hearings, followed by the page number being referenced and preceded by the name of the witness whose testimony is being referenced.

## FINDINGS OF FACT

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

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

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

4. Respondents at all relevant times mentioned herein have been, and now are, in substantial competition in commerce with corporations, firms and individuals in the sale and distribution of rugs, carpeting and floor coverings and services of the same general kind and nature as those sold by respondents (Ans.; Taylor, Tr. 13).

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



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

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

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

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

## FREE Shop-At-Home decorator service

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

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

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

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

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

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

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

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

11. By and through the use of the above-described type of advertisements (Findings 6-10, *supra*), respondents have represented and are now representing that they were and are making a bona fide offer to sell the advertised carpeting and floor coverings at the price and on the terms and conditions stated in their advertisements, and that the carpeting was suitable for the uses for which advertised (Ans., Taylor, Tr. 9).

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

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

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

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

Q. What did the carpeting sample look like?

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

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

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

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

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

Mrs. Eleanor Lewis testified similarly:

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

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

Q. What did that advertised sample look like?

A. A piece of cheesecloth.

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

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

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

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

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

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

<sup>3</sup> This is similar to the reaction of the undersigned to his examination of CX 249.

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

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

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

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

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

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

Over 98 percent of the total sales were for more than \$109.<sup>6</sup> Approximately 100 sales, or more than 73 percent of the total sales in evidence, were for more than \$400, excluding tax and finance charges. Approximately 54, or nearly 40 percent, were for over \$500. Nearly 22 percent were at prices greater than \$600. Five percent of total sales in the record were for prices greater than \$800, exclusive of tax and finance charges, and three customers made purchases of over \$1000.

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

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

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

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

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

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

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