

## Complaint

IN THE MATTER OF  
CARPETS "R" US, INC., ET AL.ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION AND TEXTILE FIBER  
PRODUCTS IDENTIFICATION ACTS

*Docket 8947. Complaint, Dec. 7, 1973—Final Order, Feb. 26, 1976*

Order requiring a Lanham, Md., distributor and installer of carpeting and floor coverings, among other things to cease using bait and switch tactics; misrepresenting free goods and services; misrepresenting exaggerated prices as regular and customary; misrepresenting the amount of carpeting offered for sale, *i.e.*, square feet vs. square yards; failing to disclose to customers their right to a three-day cooling-off period during which they may cancel their sales contract with full refund of monies paid; and misbranding and falsely invoicing their textile fiber products in violation of the Textile Fiber Products Identification Act.

*Appearances*

For the Commission: *Everette E. Thomas, Alice C. Kelleher, and Allen R. Caskie.*

For the respondents: *Ephraim Jacobs, Foley, Lardner, Hollabaugh & Jacobs, Washington, D.C.*

## 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 Carpets "R" Us, Inc., a corporation, and Paul W. Ferrone and Homer Bandy, 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 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. Respondent Carpets "R" Us, 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 9035 Lanham Severn Rd., Lanham, Maryland.

Respondents Paul W. Ferrone and Homer Bandy are individuals and officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts

and practices hereinafter set forth. Their business address is the same as that of the corporate respondent.

All of the aforementioned respondents cooperate and act together in the carrying out of 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 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, the respondents have made, and are now making, numerous statements and representations by repeated advertisements inserted in newspapers of interstate circulation, by advertisements transmitted over television, 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:

SPECTACULAR  
DUPONT 501  
\$159 up to 270 sq. ft.  
continuous nylon  
CARPET SALE  
FREE  
PADDING & LABOR  
3 ROOMS — WALL-TO-WALL  
- Living Room  
- Dining Room  
- Hall & Steps

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Also Available: Acrilon (sic),  
Polyester, Tip Sheers, Shags, etc. \* \* \*

\* \* \* \* \*

3 Rooms  
DUPONT 501  
\$189 \* \* \*

\* \* \* \* \*

\* \* \* - No Extras  
- No Free Gifts  
Just Down to Earth  
Low Prices \* \* \*

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

3. Purchasers of the said Dupont 501 Carpet receive "free" padding and installation labor.

PAR. 6. In truth and in fact:

1. 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 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.

2. 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 1. hereof.

3. Purchasers of respondents' Dupont 501 Carpet do not receive free padding and installation labor. To the contrary, the cost of the padding and labor 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 the 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 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 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 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 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 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 Textile Fiber Products Identification Act

and the implementing rules and regulations 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. 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, of textile fiber products including carpeting and floor covering 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. 15. Certain of said textile fiber products were falsely and deceptively advertised in that respondents in making disclosures 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.

PAR. 16. Among such textile fiber products, but not limited thereto, was carpeting which was falsely and deceptively advertised in *The Washington Daily News* and *The Evening Star*, newspapers published in the District of Columbia, and having a wide circulation in the District of Columbia and various other States of the United States, in that said carpeting was described by such fiber connoting terms among which, but not limited thereto, was "Acrilon" (sic), and the true generic name of the fiber contained in such carpeting was not set forth.

PAR. 17. 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:

1. 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 11 of the aforesaid rules and regulations.

2. 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 promulgated thereunder, in at least one instance in said advertisement, in violation of Rule 41(a) of the aforesaid rules and regulations.

3. 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 Rule 41(c) of the aforesaid rules and regulations.

PAR. 18. 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 and deceptive acts and practices, in commerce, and unfair methods of competition, in commerce, under the Federal Trade Commission Act.

INITIAL DECISION BY ERNEST G. BARNES, ADMINISTRATIVE  
LAW JUDGE

JANUARY 15, 1975

#### PRELIMINARY STATEMENT

[1] The Federal Trade Commission issued its complaint in this proceeding on December 7, 1973, charging respondents Carpets "R" Us, Inc., a corporation, and Paul W. Ferrone and Homer Bandy, individually and as officers of said corporation, with violation of Section 5 of the Federal Trade Commission Act, and of the Textile Fiber Products Identification Act and the implementing rules and regulations promulgated thereunder. The complaint issued in this proceeding has two parts. Count I thereof alleges the violation by respondents of Section 5 of the Federal Trade Commission Act. Count II thereof alleges [2] the violation by respondents of the Textile Fiber Products Identification Act and the implementing rules and regulations promulgated thereunder.

Respondents filed an answer to the complaint on February 12, 1974, admitting in part and denying in part the allegations of the complaint. Thereafter, prehearing conferences were held on February 28, 1974 and on April 26, 1974. Respondents' motions to dismiss the complaint as to respondent Paul W. Ferrone and to dismiss Paragraphs Seven and

Eight of the complaint were denied by order of the administrative law judge on May 24, 1974. Adjudicative hearings were held in Washington, D.C., on July 8, 1974 through July 12, 1974, and on July 29, 1974. The record was closed for the reception of evidence on August 12, 1974. Thereafter, proposed findings were filed by the parties on September 11, 1974, and replies thereto on September 26, 1974.

On October 30, 1974, the undersigned filed a request for extension of time until January 15, 1975 within which to file his initial decision in this proceeding. On November 1, 1974, the Commission issued its order extending the time to and including January 15, 1975 in which to file the initial decision in this matter.

This proceeding is before the undersigned upon the complaint, answers, testimony and other evidence, proposed findings of fact and conclusions and briefs filed by complaint counsel and by counsel for respondents. These submissions by the parties 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 record or as immaterial. Any motions not heretofore or herein specifically ruled upon, either directly or by the necessary effect of the conclusions in this decision, are hereby denied. The findings of fact made herein are based on a review of the entire record and upon a consideration of the demeanor of the witnesses who gave testimony in this proceeding.

For the convenience of the Commission and the parties, the findings of fact made hereinafter include references to the principal supporting evidentiary items in the record. Such references are intended to serve as convenient guides to the testimony and exhibits supporting the findings of fact, but do not necessarily represent complete summaries of the evidence considered in arriving at such findings.

[3] References to the record are set forth in parentheses, and certain abbreviations, as hereinafter set forth, are used:

CCPF — Proposed Findings of Fact, Conclusions of Law and Order submitted by complaint counsel, followed by the Proposed Finding being referenced.

RPF — Proposed Findings of Fact, Conclusions of Law and Order submitted by respondents, followed by the Proposed Finding being referenced.

CCRB — Reply Brief submitted by complaint counsel, followed by page or pages being referenced.

RRB — Reply Brief submitted by respondents, followed by page or pages being referenced.

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



RX — Respondents' Exhibit, followed by number of exhibit 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 Carpets "R" Us, 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 9035 Lanham Severn Rd., Lanham, Maryland (respondents' Answer, Par. One; CX 1-4; Bandy, Tr. 7-12).

[4] 2. Respondent Homer Bandy is an individual and an officer of corporate respondent Carpets "R" Us, Inc. Mr. Bandy, together with respondent Paul Ferrone, during the period in which Mr. Ferrone was associated with the corporation, formulated, directed, and controlled the acts and practices of corporate respondent Carpets "R" Us, Inc. Mr. Bandy currently owns all the stock of the corporation, is its President, and oversees the entire operation of the corporation, including the training of sales personnel. His address is 324 Windy Way, Glen Burnie, Maryland (respondents' Answer, Par. One; Bandy, Tr. 7, 9, 15, 27, 45; CX 1-4).

3. Respondent Paul Ferrone is an individual and a former officer of corporate respondent Carpets "R" Us, Inc. His address is 3733 McTavish Ave., Baltimore, Maryland. Mr. Ferrone, together with respondent Homer Bandy, formulated, directed and controlled the acts and practices of corporate respondent Carpets "R" Us, Inc. from February 1972 to September 1973 (respondents' Answer to Request for Admissions, Nos. 1-18). Mr. Ferrone, with respondent Homer Bandy and Claude Goldsmith, formed the corporation, Carpets "R" Us, Inc., in February 1972, each owning one-third of the stock (Bandy, Tr. 10; Ferrone, Tr. 92). Shortly after incorporation, respondents Paul Ferrone and Homer Bandy became sole owners of Carpets "R" Us, Inc. by purchasing Mr. Goldsmith's interest. Thereafter they were jointly responsible for the operation of the company throughout the entire period Mr. Ferrone was associated with Carpets "R" Us, Inc. Both respondents were members of the board of directors. Respondent Paul Ferrone was President of the corporation from the date of its incorporation in February 1972 until he sold his interest to respondent Homer Bandy in September 1973 (Ferrone, Tr. 82, 84, 93, 94; CX 1).

4. Prior to association with corporate respondent Carpets "R" Us, Inc. in early 1972, respondent Paul Ferrone was employed by several carpet companies (Tr. 89). After leaving Carpets "R" Us, Inc. in

September 1973, Mr. Ferrone, in December 1973, commenced employment with a carpet company located in Laurel, Maryland, which operates several carpet stores. At the time of hearings in this matter, Mr. Ferrone had been made manager of this company. His duties, *inter alia*, include supervising and training salesmen. Mr. Ferrone's present employer is primarily engaged in the sale of carpets in stores, as opposed to in-home sales of carpet (Ferrone, Tr. 80-81, 89-90, 95).

[5] 5. 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 (respondents' Answer, Par. Two). Their sales volume has been substantial, amounting to approximately \$200,000 in the calendar year 1973 (Bandy, Tr. 24). At all relevant times mentioned herein, respondents have been engaged in commerce as "commerce" is defined in the Federal Trade Commission Act. Respondents have sold and shipped carpet from their places of business located in the State of Maryland to purchasers located in Maryland, Virginia, and the District of Columbia (respondents' Answer, Par. Three). Respondents are also engaged "in commerce" by virtue of their advertising in newspapers which circulate in interstate commerce, and on television stations whose broadcast range is in interstate commerce (respondents' Answer to Request for Admissions, Nos. 5, 14-18, 23-25; Bandy, Tr. 27-30).

6. During the period from February 1972 (date of incorporation of respondent corporation; Bandy, Tr. 9) to July 14, 1972 (date of the investigational hearing in this proceeding; Bandy, Tr. 18), respondents advertised heavily in newspapers and over television for the purpose of promoting the sale of their carpeting and floor covering. There are four exhibits in the record which respondents admit are typical and illustrative of their advertising during the relevant time period (respondents' Answer to Request for Admissions, Nos. 11-18; CX 461-463, 300).

7. CX 461 is a newspaper advertisement that ran on Feb. 14, 1972 in *The Washington Daily News* (respondents' Answer to Request for Admissions, No. 12). It read as follows:

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Initial Decision

A VERY SPECIAL SALE! WALL-TO-WALL CARPET \$139.00.

LIVING ROOM — DINING ROOM — HALL & STEPS.

FREE!	up to 270
PADDING!	sq. ft. of
LABOR!	continuous Nylon
	NO EXTRAS
	Terms Available
	NO FREE GIFTS
	Just down to earth prices

[6] 8. Cx 462 is a newspaper advertisement that ran in *The Washington Daily News* on March 8, 9, 13, 15, 16, 20, 22, 23, 24, April 3, 6, 10, 11, 13, 26, 28, June 19, 20, 26, 27, 1972 (respondents' Answer to Request for Admissions, No. 14). It read as follows:

3 ROOMS

DU PONT  
501  
N

\$189

WALL-TO-WALL	FREE
LIVING ROOM	PADDING &
DINING ROOM	LABOR
HALL & STEPS	NO EXTRA'S
	NO FREE GIFTS
Also Available: Acrilon,	Just Down To Earth
Polyester, Tip sheers,	Low Prices
Shags, etc.	Terms Available!

9. CX 463 ran in *The Washington Daily News* on May 1, 3, 4, 5, 8, 10, 12, 15, 17, 18, 19, 23, 24, 1972 (respondents' Answer to Request for Admissions, No. 16). It read:

SPECTACULAR DU PONT 501 N \$159 Up to 270 Sq. Ft. Continuous Nylon.

FREE PADDING & LABOR

CARPET SALE  
3 ROOMS — WALL-TO-WALL

LIVING ROOM	NO EXTRAS
DINING ROOM	
HALL & STEPS	NO FREE GIFTS
Also Available: Acrilon,	Just Down To Earth
Polyester, Tip sheers,	Low Prices
Shags, etc.	Terms Available!

[7] 10. CX 300 is the text of a television commercial that ran from June 5, 1972 to September 1, 1972 (CX 104(d)). It read:

IT'S IN PROGRESS NOW \* \* \* EXTRA SAVINGS ARE YOURS TODAY \* \* \* DURING THIS SENSATIONAL CASH SAVING CARPET CARNIVAL AT CARPETS 'R' US

THINK OF IT \* \* \* FOR JUST \$189.00 YOU CAN CARPET THREE FULL ROOMS WALL TO WALL \* \* \* IN RUGGED RESILIENT RICHLY BEAUTIFUL DUPONT 501 NYLON \* \* \* NOT JUST NYLON \* \* \* BUT DUPONT 501 NYLON \* \* \* COMPLETELY INSTALLED \* \* \* FREE OF CHARGE \* \* \* OVER QUALITY FOAM RUBBER PADDING [Overlay reads "Up to 270 Sq. Ft." at this point]

\* \* \* \* \*

PLUSHES \* \* \* TIP SHEERS \* \* \* ACRILANS \* \* \* POLYESTERS \* \* \* WOOLS \* \* \* IN ALL COLORS AND PATTERNS \* \* \*

11. By and through the use of the above-quoted statements and representations (Findings 7-10, *supra*), respondents represented that they were 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. Consumers were in fact attracted by respondents' advertisements for what appeared to be low-priced, good quality carpeting (Byrd, Tr. 127; Thomas, Tr. 183; Barnes, Tr. 197; Banks, Tr. 216; Copeland, Tr. 230; Neff, Tr. 247; Black, Tr. 271; Satar, Tr. 285; Fuimaono, Tr. 298; Johnson, Tr. 306).

12. In truth and in fact, respondents' advertisements did not constitute bona fide offers to sell the advertised carpeting, but were used primarily to obtain "customer leads" in order to sell such persons more expensive carpeting (Findings 13-15, *infra*).

13. Consumers who responded to respondents' advertisements were called upon in their homes by respondents or their salesmen. The salesmen would exhibit what was represented to be the advertised carpeting. This carpet was of such poor quality and unattractive appearance that it was self-disparaging, and prospective customers almost uniformly rejected it on sight (Gilbert, Tr. 129; Morrill, Tr. 144; [8] Ortiz, Tr. 163; Thomas, Tr. 184; Barnes, Tr. 200, 215; Banks, Tr. 218; Copeland, Tr. 233; Neff, Tr. 248, 257; Krebs, Tr. 263; Black, Tr. 273; Satar, Tr. 286; Fuimaono, Tr. 299; Washington, Tr. 322).

14. Not only was the appearance of the advertised carpet poor, but in some instances respondents' salesmen openly disparaged it and compared it unfavorably with other, more expensive types of carpeting. For example, consumer witness Ortiz testified as follows (Tr. 163):

Q. Did he show you a sample of the advertised carpet?

A. Then he downgraded it immediately. He said, "This is not anything you would

want. This is something for people who tend to stay in apartments maybe six months to a year at the most." (*See also*, Miller, Tr. 105, 113; Gilbert, Tr. 116; Carpenter, Tr. 129, 130; Thomas, Tr. 184, 195; Barnes, Tr. 201; Krebs, Tr. 263; Black, Tr. 273, 274; Johnson, Tr. 309, 318; Washington, Tr. 324.)

The salesman would then exhibit higher-priced carpeting or floor covering of superior quality which by comparison further demeaned and disparaged the advertised carpeting.

15. Respondents made very few actual sales of the advertised carpeting at the price and on the terms set forth in the advertisements. During the relevant period from February, 1972 to July 14, 1972, respondents entered into one hundred and seventy-three (173) contracts for the sale of floor coverings (CX 105-278). Of these, three contracts were for the sale of padding without carpeting (CX 214, 230, 236). Of the remaining contracts, only sixteen (16) were for the sale of carpeting identified by respondent Homer Bandy as being the "advertised" carpeting (Bandy, Tr. 70-73; CX 124, 126, 127, 129, 131, 132, 134, 137, 139, 144, 147, 179, 254, 275, 251, 252), and of those only two contracts were at a price equal to or less than the advertised price of \$189.00 (CX 126, 252).

16. The representations set forth in Findings 7-10, *supra*, were false, misleading and deceptive (Findings 12-15, [9] *supra*), and had the tendency and capacity to deceive members of the consuming public.

17. For each price at which respondents have advertised their carpeting, *i.e.*, \$139, \$159 and \$189, they have also directly represented, through use of the word "sale" — or implied — through use of such phrases as "A VERY SPECIAL SALE," "SPECTACULAR \* \* \* CARPET SALE," AND "EXTRA SAVINGS ARE YOURS TODAY \* \* \* DURING THIS SENSATIONAL CASH SAVING CARPET CARNIVAL \* \* \*" — that such prices constituted a temporary reduction from their regularly established selling price, thereby affording customers substantial savings from respondents' regular selling price (Findings 7-10, *supra*). In truth and in fact, respondents never established a "regular" selling price for their advertised carpet and therefore none of the prices at which that carpet was advertised was a "reduced," or "sale," price (Findings 18-19, *infra*).

18. The first advertisement that appeared after the incorporation of Carpets "R" Us, Inc. was CX 461, featuring "A VERY SPECIAL SALE" of carpet at \$139 (Finding 7, *supra*). Obviously no "regular" price had been established at the time this advertisement appeared, and no claim was made in the advertisement that this was an "introductory" price to be favorably compared with a later "regular" price.

19. As found above, during the relevant period from February 1972 to July 14, 1972, only two sales of carpet were made at a price equal to

or less than the advertised price of \$189.00 (Finding 15, *supra*), which respondents contend is the "regular" selling price of such carpet. Such sales were not sufficient to establish a "regular" selling price for respondents' advertised carpet. CX 300, the T.V. commercial, states that the price of \$189 represents "\* \* \* EXTRA SAVINGS ARE YOURS TODAY \* \* \* DURING THIS SENSATIONAL CASH SAVING CARPET CARNIVAL \* \* \*" In fact, respondents did not regularly sell the advertised carpeting, but used it to obtain "customer leads" in order to sell such persons more expensive carpeting (Finding 12, *supra*). Therefore, respondents' representations set forth in Finding 17, *supra*, were false, misleading and had the tendency and capacity to deceive members of the consuming public.

20. Respondents' advertisements (Findings 7-10, *supra*) uniformly represent that padding and installation are "free" to purchasers of their advertised carpet. As found above [10] (Findings 18-19, *supra*), respondents have never established a regular selling price for their advertised carpet. By always offering "free" padding and installation, respondents have also failed to establish a regular selling price which excludes padding and installation, and against which a "free" offer could be measured. Moreover, the cost of padding and installation was included by respondents in calculating the sale price of the advertised carpet. Respondent Homer Bandy testified concerning the "par" system used by Carpets "R" Us, Inc. He stated that the cost of padding and installation is included in each "par" figure — the minimum price at which a carpet must be sold in order for the salesman to receive his commission (Bandy, Tr. 19-21).

21. Purchasers of respondents' advertised carpeting do not in fact receive free padding and installation labor; rather, the cost of padding and labor is added to and included in the selling price of each carpet (Finding 20, *supra*). Respondents' representations are therefore unfair, misleading and deceptive, and have the tendency and capacity to deceive the consuming public.

22. During the period February 1972 to July 14, 1972, respondents advertised carpeting in terms of square feet only (CX 461, 462, 463, 300; Findings 7-10, *supra*).

23. Respondents, themselves, were billed for carpet installation in terms of square yards (CX 5-103), and respondents' customer contracts often indicated the amount of carpet sold in terms of both square feet and square yards (see, for example, CX 109, 111, 112, 113, 115, 116, 117(a), 117(b), 118, 125, 126, 127, 134, 135, 136, 137, 141, 142, 146, 149, 151, 154, 155, 156, 158, 159, 160, 161, 162, 163, 165, 166, 167, 168, 170, 171, 177, 181, 199, 207, 251).

24. Albert Wahnnon was called by complaint counsel as an expert

