

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.

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*

* 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.

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.¹

¹ 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.

