

app 9/23/75

SYNOPSIS OF FEDERAL TRADE COMMISSION DECISIONS
CONCERNING "BAIT AND SWITCH" SALES PRACTICES

The Federal Trade Commission has determined that "bait and switch" practices are unfair or deceptive trade practices and are unlawful under Section 5(a)(1) of the Federal Trade Commission Act. "Bait and switch" is the advertising of a product without the bona fide intention to sell it, for the purpose of establishing contact with a prospective customer in order to induce or "switch" him to purchase another product. This is achieved through a variety of practices designed to discourage the sale of the advertised product at the advertised price. 1/

— It is an unfair or deceptive trade practice to disparage an advertised product for the purpose of "switching" a customer to the purchase of another product. 2/

— It is an unfair or deceptive trade practice to advertise a product whose actual appearance or performance discourages its purchase by being below the quality implied or represented in the advertising. 3/

— It is an unfair or deceptive trade practice to "switch" a customer to the higher priced product by refusing to show or to sell the advertised product. 4/

1/ Leon A. Tashof d/b/a New York Jewelry Company, Docket 812 (December 2, 1968); Steven Rizzi d/b/a/ Freight Liquidators, Docket 8937 (February 25, 1975).

2/ Aluminum Industries Inc., et al., Docket 8534 (January 1965); Wilbanks Carpet Specialists, Inc., et al., Docket 8831 (September 24, 1974); Southern States Distributing Co., et al., Docket 8882 (December 26, 1973); Seekonk Freezer Meats, Inc., et al., Docket 8880 (March 15, 1973); Lawrence TV Corp., et al., Docket 8754 (April 10, 1968).

3/ Charles A. Olson d/b/a/ Consolidated Sewing Machine Co., et al., Docket 8705 (March 27, 1967); James R. Boaman d/b/a R&B Sewing Machine & Vacuum Cleaner Co., et al., Docket 8706 (December 1966); Consumers Products of American, Inc., et al., (Docket 8939) (September 7, 1967); Seekonk Freezer Meats, Docket 8880; The State Carpets, Inc., et al., Docket 8945 (October 15, 1974); Wilbanks Carpet Specialists, Inc., Docket 8933.

4/ Barbara E. Martin d/b/a Household Sewing Machine Co., Docket 6148 (September 16, 1955); Lifetime Inc., et al., Docket 7616 (December 1, 1961).

— It is an unfair or deceptive trade practice to "switch" a customer by claiming that the advertised product is unavailable or by failing to have the advertised product available in reasonable quantity. 5/

— It is an unfair or deceptive trade practice to "switch" a customer by refusing to take orders for delivery or failing to make delivery, if an order is taken, within a reasonable period of time. 6/

The existence of bait and switch schemes may also be evidenced by the following factors: whether in fact there were a significant number of sales of the advertised product at the advertised price; 7/ whether salesmen received commissions on the sale of the advertised product or whether their commissions on such product were lower than for other products 8/ or whether there were large advertising expenditures for a product whose sales were minimal. 9/

5/ Better Living Inc., et al., Docket 6290 (November 29, 1957); Lifetime, Inc., Docket 7616; Holiday Carpets, Inc., et al., Docket 8784 (November 20, 1969).

6/ Southern States Distributing Co., Docket 8882; Royal Construction Co., et al., Docket 8690 (June 1, 1967).

7/ Leon A. Tashof, Docket 8714; Southern States Distributing Co., Docket 8882; Wilbanks Carpet Specialists, Inc., Docket 8933.

8/ Consumers Products of America, Docket 8679; Wilbanks Carpet Specialists, Inc., Docket 8933.

9/ Southern States Distributing Co., Docket 8882.