

IN THE MATTER OF

**P. PERLMUTTER AND C. W. QUIGLEY, PARTNERS DOING
BUSINESS UNDER THE TRADE NAME AND STYLE OF
P & Q FACTORY DIRECT TO YOU FURNITURE**

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 1143. Complaint, Mar. 25, 1924—Decision, Dec. 18, 1926

Where a firm engaged in the sale of furniture, which it purchased from the manufacturers and resold to the consuming public as a dealer or middleman and at dealer's prices, including the costs and profits of itself and of the manufacturers, and neither manufacturing furniture dealt in by it, nor owning, controlling or operating any furniture factories, nor selling or distributing such furniture directly from the manufacturers to its customer purchasers without the intervention of middlemen and to the exclusion of the costs and profits thereof; included in its trade name the words "Factory direct to you furniture" and featured the same in its business correspondence, business cards, and newspaper advertisements, and on large and conspicuous signs displayed at its sales rooms and place of business, with the capacity and tendency to mislead and deceive the purchasing public into believing that purchasers from it were dealing directly with the manufacturer and thereby saving themselves the costs and profits of middlemen, and to cause many of them to buy said furniture in such belief, and with the effect of unfairly diverting trade from and otherwise injuring the business of competitors who as manufacturers sold their furniture directly to the consuming public under truthful representations as to their method of distribution, and competitor dealers who did not in any manner represent themselves as manufacturers of the furniture dealt in by them:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

*Mr. Morgan J. Doyle and Mr. Henry Müller for the Commission.
Mr. Samuel G. Schwartz, of Philadelphia, Pa., for respondents.*

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individuals, partners engaged in the sale of furniture which they bought from the manufacturers and resold at a profit and at substantially prevailing retail prices to purchasers in various States, and with principal place of business in Philadelphia,

with misrepresenting business status and advertising falsely or misleadingly in that, for more than a year preceding the complaint, they set forth the statement and slogan "Factory Direct To You", upon their letterheads used in soliciting customers, and upon the business cards furnished their salesmen for their use in soliciting customers, with the capacity and tendency to mislead and deceive many among the consuming public into believing that persons buying from them were purchasing direct from the manufacturer of the furniture and thus saving the profits of middlemen, and to induce many to purchase said furniture in such belief, all to the prejudice of the public and respondent's competitors, a number of whom as manufacturers, sell their furniture to the consuming public and a number of whom, as retail dealers do not in any manner hold themselves out as manufacturers of the furniture sold by them.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, P. Perlmutter and C. W. Quigley, partners doing business under the trade name and style of "P & Q—Factory Direct to You", charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondents having entered their appearances and filed their answer herein to said complaint, hearings were had and evidence and testimony was thereupon introduced in support of the allegations of the complaint and in opposition thereto before a trial examiner of the Federal Trade Commission theretofore duly appointed.

And thereupon this proceeding came on for decision; and the Commission having duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents P. Perlmutter and C. W. Quigley are copartners, trading for more than five years last past in and under the unincorporated trade name and slogan "P & Q—Factory to You Furniture", in conducting the business of selling and distributing household furniture to retail furniture dealers and the consuming public throughout various States, particularly the States of Pennsylvania, New Jersey, and Delaware, with their store and place of business at No. 119 North Second Street, in the city of Philadelphia,

Findings

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State of Pennsylvania. Approximately 80 per cent of respondents' sales are made to the consuming public and approximately 20 per cent of their sales go to retail furniture dealers. The method by which they have at all times mentioned conducted said business is as follows: Respondents purchase the furniture comprising their stock in trade from many different furniture manufacturers located in various States of the United States, which furniture so purchased is shipped to respondents' said place of business in Philadelphia, Pa., where respondents display, offer for sale and sell said furniture to the trade and consuming public. Respondents also offer for sale and solicit trade for said furniture through newspaper advertisements, and through letters, and similar business correspondence, which they send from their place of business in Philadelphia, Pa., to customers and prospective customers residing in other States. Further, respondents employ six traveling salesmen who call upon and solicit orders for the purchase of their furniture from the consuming public at their respective residences in various States, particularly the States of Pennsylvania, New Jersey, and Delaware. In the course of their employment said salesmen distribute to said customers and prospective customers respondents' business cards containing the name and description of respondents' business as set forth in paragraph 2 hereof. As a result of the offering for sale and solicitation of business as aforesaid, respondents sell from time to time large quantities of their furniture to the trade and consuming public in the approximate proportions stated; and in completing said sales respondents cause said furniture to be transported in interstate commerce from their place of business in Philadelphia, Pa., through and into other States of the United States, particularly the States of New Jersey and Delaware, and to be then and there delivered to the respective customer-purchasers thereof in said other States. In so conducting their business, respondents are and have been at all times herein mentioned in direct active competition with many individuals, partnerships and corporations engaged in the sale and distribution of household furniture in commerce between and among several States of the United States, particularly the States of Pennsylvania, New Jersey, and Delaware.

PAR. 2. In the course and conduct of said furniture business and as a means by which to induce the public to purchase said furniture, respondents at all times herein mentioned carried on said business under the name, slogan, and description "P & Q—Factory Direct to You Furniture" and caused said name and description of their business to be prominently and conspicuously displayed in aforesaid business correspondence, business cards, and newspaper advertise-

ments used in furthering the sale of said furniture, and on large and conspicuous signs publicly displayed at their salesrooms and place of business. Said place of business of respondents is not a factory or in any way connected with a furniture factory, nor have any of the respondents ever owned, controlled, or operated any factory or factories wherein or whereby was made any of said furniture. In carrying on their business as aforesaid, respondents are and were dealers or middlemen, and said furniture dealt in by them was not sold or distributed directly from the manufacturers thereof to the respondents' customer-purchasers without the intervention of middlemen or to the exclusion of the costs and profits of middlemen; but same was sold and distributed by respondents, as dealers or middlemen, to the public at dealers' prices, which included the costs and profits of themselves and of the manufacturers.

PAR. 3. The use by respondents of the slogan, description, and representation "Factory Direct to You," under the conditions and circumstances hereinbefore set forth, is false and misleading, has and had the capacity and tendency to mislead and deceive the purchasing public into, and to cause them to buy said furniture in, the erroneous belief—

(a) That respondents are and were the manufacturers of their furniture and owned, controlled, or operated the factory or factories in which said furniture was made, and

(b) That purchasers, in buying from respondents, are buying directly from the manufacturers of said furniture to the exclusion of middlemen and thereby saving to such purchasers the cost and profits of middlemen.

PAR. 4. There are among the competitors of respondents mentioned in paragraph 1 hereof a number of manufacturers of furniture who sell and distribute their furniture directly to the purchasing public and under truthful representations as to their method of distribution. Among said competitors of respondents are also numerous furniture dealers who do not in any manner represent that they manufacture the furniture which they sell; and the false and misleading practices of respondents as set forth in paragraphs 2 and 3 hereof tend to and do unfairly divert trade from and otherwise injure the business of said competitors, and are to the prejudice of the public.

CONCLUSION

The acts and things done by respondents under the conditions and circumstances described in the foregoing findings are to the injury and prejudice of the public and respondents' competitors, and are unfair methods of competition in interstate commerce and constitute

Order

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a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents thereto, the testimony and evidence; and the Commission having made its findings as to the facts with its conclusion that respondents have violated the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That respondents P. Perlmutter and C. W. Quigley, their agents, representatives, servants, and employees, cease and desist from directly or indirectly—

(a) Using in connection with the sale and distribution of furniture in interstate commerce, the slogan or statement "Direct from Factory to You" or any slogan or statement of similar import; and

(b) Representing in newspaper advertisements, signs, business correspondence or in any other manner whatsoever that respondents are the manufacturers of said furniture, or are selling and distributing said furniture directly from the manufacturers to respondents' customer-purchasers without the costs and profits of middlemen, unless and until respondents actually own and operate or directly and absolutely control a factory or factories wherein or by which is made all such furniture so offered for sale and sold.

It is further ordered, That respondents shall, within 60 days after the service upon them of a copy of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

Complaint

IN THE MATTER OF
ARNOLD ELECTRIC COMPANY

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 1308. Complaint, May 12, 1925—Decision, Dec. 23, 1926

Where a corporation engaged in the manufacture and sale of electrically driven drink mixing machines,

- (a) Procured assurances from a large number of its customer dealers whereby they undertook to maintain the resale price specified by it, and removed from its list those who failed to give such assurances; and
- (b) Requested its dealers to cooperate in the maintenance of its resale prices and to report and investigate cases of price cutting in order that it might eliminate the same by refusing further sales to the price cutters or by securing their assurances that in the future they would observe its prices;

With the result that it secured the cooperation of its customers, resale prices fixed by it generally prevailed, dealers engaged in the distribution and sale of its product were prevented from selling the same at such lower prices as they might deem warranted, and competition in respect of such products was suppressed and hindered:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Alfred M. Craven for the Commission.

Hand & Quinn of Racine, Wis., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Wisconsin corporation engaged in the manufacture of electrically driven drink-mixing machines and in the sale thereof to dealers in various States, and with principal office and place of business in Racine, Wis., with maintaining resale prices in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in that respondent for about four years preceding the complaint has enforced and enforces a merchandising system adopted by it of fixing and maintaining certain specified uniform prices at which its machine shall be sold by dealers handling the same and has enlisted and