

IN THE MATTER OF
SAMUEL PERLOFF, ET AL., TRADING AS ATLANTIC
PACKING COMPANY, ETC.

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

Docket 4822. Complaint, Aug. 25, 1942—Decision, July 10, 1943

Where four partners, engaged as wholesalers in competitive interstate sale and distribution of food products under various trade names—

Represented that they packed various items dealt in by them, by using on labels for dry packaged commodities and on certain canned goods, in addition to general trade names, the words "Atlantic Packing Co., Philadelphia, Pa.—Distributors";

The facts being that some 15 dry commodities packed by them constituted a very small part only of their total business, and, as respects their canned goods, obtained by them from other sources, they were not packers, with whom dealers in substantial numbers deal directly in preference to distributors merely;

With tendency and capacity to mislead and deceive a substantial number of dealers in said respects, thereby causing them to purchase said products; whereby substantial trade was diverted unfairly to said partners from competitors who did not misrepresent their business status or origin of their products:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

As respects contention that inclusion of word "Distributors" in legend "Atlantic Packing Co., Philadelphia, Pa.—Distributors," employed on labels of certain commodities dealt in by users of said trade name, who in fact packed only a part of the various products thus labeled, was sufficient to apprise prospective purchasers of the fact that the users were merely distributors rather than packers of the canned goods so labeled, and that such use of the word "Distributors" corrected any erroneous impression which might otherwise be conveyed through use of trade name in question: said position was not well taken, as prospective purchasers could reasonably conclude that said sellers were both the packers and distributors of the products, it also being impossible, since same words appeared on labels for both the dry commodities which they did pack and the canned goods which they did not, to determine from the label whether they packed or merely distributed the particular item.

Before *Mr. Clyde M. Hadley*, trial examiner.

Mr. B. G. Wilson for the Commission.

Sanders, Gravelle, Whitlock & Howrey, of Washington, D. C., for respondent.

Complaint

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 Samuel Perloff, Harry Perloff, Earl Perloff, and Morris Perloff, individuals, and copartners, trading as Atlantic Packing Co. and as Atlantic Packing Co., Distributors, hereinafter referred to as respondents, have violated the provisions of the 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:

PARAGRAPH 1. Respondents, Samuel Perloff, Harry Perloff, Earl Perloff, and Morris Perloff, as individuals, and as copartners, are now and for some time last past have been trading as Atlantic Packing Co. and as Atlantic Packing Co., Distributors, having their principal office and place of business located at 919 North Front Street, Philadelphia, Pa. Respondents are now and for some time last past have been engaged in the wholesale distribution of canned foods in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. The respondents now cause, and have caused, said canned foods, when sold, to be shipped from their place of business in the State of Pennsylvania to purchasers thereof at their respective points of location in various other States of the United States other than the State of Pennsylvania and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said foods in commerce between and among the various States of the United States and in the District of Columbia.

Respondents are, and for some time last past have been, in substantial competition with corporations, other partnerships and individuals engaged in the wholesale distribution of like or similar canned foods and said competitors sell and distribute their food commodities in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, as aforesaid, by the use of the word "Packing," which appears in their trade name, on their business stationery, on the labels affixed to the containers of their various canned food commodities, and in various other ways, respondents represent, and have represented, to their prospective customers and furnished, and have furnished, their customers the means of representing to their vendees and to the ultimate consuming public that they are the "packers" of their various canned food com-

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modities and that they are engaged in the food packing business. In truth and fact, the said respondents sell and distribute food commodities which are prepared and packed in plants, factories, and establishments which the said respondents do not actually own and operate or directly and absolutely control.

PAR. 4. For a long period of time the word "Packing" when used in connection with the wholesale food distribution business and with the foods pertaining thereto has had, and still has, a definite and significant meaning to the minds of wholesalers and retailers engaged in such business and to the ultimate purchasing public, to wit; to indicate that the food thus designated is actually prepared and packed by those concerns who use this word in any description of their respective businesses. A substantial portion of the purchasing public prefer to deal directly with concerns which prepare and pack their foods rather than with food brokers or wholesalers who merely resell food which has been prepared and packed by others, believing that by dealing with the former they secure a more uniform quality and better prices than by dealing with the latter.

PAR. 5. Among respondents' aforesaid competitors there are corporations, other partnerships and individuals engaged in the business of preparing and packing food commodities who truthfully represent themselves as "packers" or "packing companies." There are also among the aforesaid competitors of the respondents food wholesalers and brokers who do not prepare and pack their food commodities and who in no way misrepresent the nature or character of the business they are engaged in.

PAR. 6. The use by the respondents of the representations set forth herein has had, and now has, the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations are true and into the purchase of substantial quantities of respondents' food commodities because of such erroneous beliefs. As a result, trade is being, and has been, diverted unfairly to respondents from their aforesaid competitors and injury is being, and has been, done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 7. The aforesaid acts and practices of the respondents, acting individually and in concert with one another, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 25, 1942, issued and subsequently served its complaint in this proceeding upon the respondents, Samuel Perloff, Harry Perloff, Earl Perloff, and Morris Perloff, individuals and copartners trading as Atlantic Packing Co., and as Atlantic Packing Co., Distributors, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondents' answer, testimony and other evidence in support of the allegations of the complaint were introduced by the attorney for the Commission before a trial examiner of the Commission theretofore duly designated by it (no testimony or other evidence being offered on behalf of respondents), and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, briefs in support of and in opposition to the complaint, and oral argument; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Samuel Perloff, Harry Perloff, Earl Perloff, and Morris Perloff, are copartners doing business under the various trade names hereinafter referred to, with their principal office and place of business located at 919 North Front Street, Philadelphia, Pa. Respondents are now and for a number of years last past have been engaged in the wholesale distribution of food products, including canned foods.

PAR. 2. In the course and conduct of their business respondents cause and have caused their food products, when sold, to be transported from their place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States. Respondents maintain and have maintained a course of trade in their products in commerce among and between various States of the United States.

PAR. 3. Respondents are and have been in substantial competition with other copartnerships and individuals, and with corporations, engaged in the sale and distribution of food products in commerce among and between various States of the United States.

PAR. 4. In addition to their main place of business in Philadelphia, respondents also maintain branch houses in Chester, Wilkes-Barre, and Shenandoah, Pa. The principal trade name used by respondents for all their business operations is Perloff Brothers. However, they also use for the branch in Chester the name Chester Wholesale Grocery, and for the branches in Wilkes-Barre and Shenandoah the name Black Diamond Wholesale Grocery Co. Respondents' business is exclusively wholesale, all of their sales being made to dealers.

Respondents do not pack any of the canned goods sold by them, but they do pack in their Philadelphia establishment some 15 dry commodities, including rice, barley, lima beans, Morrow beans, kidney beans, lentils, and black-eyed peas. These dry commodities are packed in small pasteboard packages or cartons, which are in turn packed in cases for shipment to the trade. This feature of respondents' business constitutes only a very small part of their total volume of business.

In addition to the general trade names referred to above, respondents have also used on certain of their labels the words "Atlantic Packing Co., Philadelphia, Pa., Distributors." These words are used not only on the labels for the dry commodities packaged by respondents, but also on some of the canned goods, including fruits, vegetables, sardines, etc.

PAR. 5. The Commission is of the opinion and finds that while the name "Atlantic Packing Co." may properly be used by respondents in connection with the dry commodities which are packed by them, the name is erroneous and misleading as applied to those items which respondents do not pack, as the word "Packing" in the name constitutes a representation that such items are packed by respondents. All of respondents' canned goods are obtained by them from other sources, the labels for such products being supplied by respondents to the respective packers of the goods.

It is urged by respondents that the use of the word "Distributors" in connection with the trade name on the labels is sufficient to apprise prospective purchasers of the fact that respondents are merely distributors rather than packers of the canned goods, and that the use of this word corrects any erroneous impression which might otherwise be conveyed through the use of the trade name. The Commission is of the opinion, however, that this position is not well taken, as prospective purchasers could reasonably conclude that respondents are both the packers and the distributors of the products. Moreover, as the same words appear on the labels for both the dry commodities which are packed by respondents and the canned goods which are not packed by them, it is impossible for the prospective purchaser to de-

termine from the label whether the particular item is packed by respondents or merely distributed by them.

PAR. 6. There is a preference on the part of a substantial number of dealers for dealing with packers direct, rather than with concerns which do not pack their products but are merely distributors.

PAR. 7. The Commission finds further that the use by respondents of the name "Atlantic Packing Co." in connection with any products not packed by them has the tendency and capacity to mislead and deceive a substantial number of dealers with respect to respondents' business status and the origin of respondents' products, and the tendency and capacity to cause such dealers to purchase respondents' products as a result of the erroneous and mistaken belief so engendered. In consequence thereof, substantial trade has been diverted unfairly to the respondents from their competitors, among whom are those who do not misrepresent their business status or the origin of their products.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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, testimony and other evidence in support of the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it (no testimony or other evidence having been offered on behalf of respondents), report of the trial examiner upon the evidence, briefs in support of and in opposition to the complaint, and oral argument; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Samuel Perloff, Harry Perloff, Earl Perloff, and Morris Perloff, individually, and trading as Atlantic Packing Co., and as Atlantic Packing Co., Distributors, or trading under any other name, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of respondents' food products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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1. Using the trade name "Atlantic Packing Co.," or any trade name containing the word "Packing" or any other word of similar import, in connection with any product which is not in fact packed by respondents.

2. Representing, directly or by implication, that any product is packed by respondents when such is not the fact.

It is further ordered, That the respondents shall, within 60 days after service upon them 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 this order.

Complaint

IN THE MATTER OF

AMERICAN RUG & CARPET CO., INC.

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

Docket 4499. Complaint, May 10, 1941—Decision, July 13, 1943

Where a corporation, engaged in competitive interstate sale and distribution of rugs closely resembling Orientals, having their origin in Persia or Iran, including those known as "Sarouk," "Kashan," "Ardabil," and "Ardavan"—
Made use of names "Imperial Saroukan," "Iran Kashan," and "Imperial Ardavan" to designate certain of its said products in invoices to dealers and in otherwise referring thereto, and in labels attached thereto conspicuously displayed the name, together with a depiction of Oriental scenes;

The facts being that said rugs, while so closely simulating the true handmade Oriental with its distinctive knotting and other characteristics, as to be indistinguishable therefrom by a large portion of the purchasing public, were woven on power looms in the United States;

With tendency and capacity to mislead prospective purchasers into the mistaken belief that such representations were true and that aforesaid rugs were genuine Orientals, and thereby induce their purchase; and with result of placing in the hands of retailer purchasers thereof means of deceiving the public in the particulars aforesaid; whereby trade was unfairly diverted to it from competitor dealers in truthfully represented Orientals and domestics:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Mr. Randolph W. Branch for the Commission.

Hartman & Craven, of New York City, for respondent.

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 American Rug & Carpet Co., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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:

PARAGRAPH 1. Respondent, American Rug & Carpet Co., Inc., is a corporation, organized and existing under the laws of the State of New York and having an office and principal place of business at 105 Madison Avenue, city and State of New York.