

Syllabus

IN THE MATTER OF

PECK AND HILLS FURNITURE COMPANY, INC.

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

Docket 5239. Complaint, Oct. 20, 1944—Decision, June 23, 1945

Where a corporation engaged in the operation in New York City of a so-called dealer or trade showroom for its interstate sale and distribution of household furniture and floor coverings—

- (a) Made false and deceptive representations concerning the values and prices of its said products through catalogs disseminated among small furniture dealers and interior decorators for inspection by their respective consumer purchasers, featuring the word "wholesale" on the cover page and showing a purported "list price" of the items illustrated, and in which, immediately inside the cover, there was included a perforated pink sheet—to be detached by the dealer or interior decorator before showing the catalog to prospective consumer purchasers—stating "YOUR DISCOUNT 60% From Catalog List Prices, But You Do Not Have to Figure It. Your cost is secretly shown in our numbering system. For example: 15J61-19 Each \$47.50," with the explanation that "the '15J61' was the pattern number and that '19' represented \$19.00, or dealer cost on the particular item listed at \$47.50 in the catalog," and the further statement "We show list price to enable you to sell your customer at a profit. Quoting 50% off list price will make a 25% markup over cost. TEAR THIS SHEET OUT"; and
- (b) Furnished small furniture dealers and interior decorators with so-called "courtesy cards" for prospective consumer purchasers of furniture, which, bearing its name and the words "Special Courtesy Card No. ——" together with the words "Wholesale Furniture, Floor Covering," requested it, over the name and address of the dealer, to "extend the courtesies of your wholesale showrooms to M—," and admitted only prospective consumer purchasers who presented such cards, or who were accompanied by a dealer or decorator to its showrooms, in which the furniture and floor coverings displayed were tagged with the list price shown in the aforesaid catalog or a price a little higher, and, after inspection, offered the prospect said products at approximately one-half the list prices;

The facts being that the prices for which its products were actually offered and sold were not, as thereby falsely represented and implied, special or wholesale prices or substantially less than regular retail selling prices; the so-called courtesy cards were not of value in the sense that they enabled holders to buy its products for less than its customary prices, and the "list" prices set forth in the catalog and on the tags actually were merely arbitrary figures that would, when reduced by 50%, indicate the approximate prices to be paid by the consumer purchaser;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that the selling prices of its products were special or wholesale prices, or substantially less than the retail selling prices, and into the consequent purchase of substantial quantities thereof:

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

Mr. Joseph Callaway for the Commission.

Baar, Bennett & Fullen, of New York City, for respondent.

Complaint

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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 Peck and Hills Furniture Company, Inc., a corporation, hereinafter referred to as respondent, has 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:

PARAGRAPH 1. Respondent, Peck and Hills Furniture Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal place of business at 42 East 32nd Street, New York, N. Y.

PAR. 2. Respondent is now, and for more than two years last past has been, engaged in the sale and distribution of household furniture and floor coverings and operates a so-called dealer or trade showroom at said location.

In the course and conduct of its business the respondent causes its said products, when sold, to be transported from its place of business in the State of New York to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business and for the purpose of inducing the purchase of its said products in commerce, respondent has made and is now making false deceptive and misleading representations with respect to the values and prices of its products. Respondent has represented and is now representing that its products may be purchased at a special or wholesale price or one that is substantially less than the retail selling price.

As a part of its plan and scheme to so represent the price of its products, respondent issues catalogs which are disseminated among small furniture dealers and interior decorators for inspection by their prospective consumer purchasers. These catalogs feature the word "wholesale" on the cover page thereof and show a price called the list price of each of the various items illustrated therein. Immediately inside the cover is a perforated pink sheet which is to be detached by the dealer or interior decorator before showing the catalog to prospective consumer purchasers. This pink sheet reads in part as follows:

YOUR DISCOUNT

60%

From Catalog List Prices

But You Do Not

Have to Figure It.

Your cost is secretly shown in our numbering system.

For example:

15J61-19 Each \$47.50

The pink sheet then explains that the "15J61" is the pattern number and that "19" represents \$19.00 or dealer cost on the particular item listed at \$47.50 in the catalog. The pink sheet states further:

We show list price to enable you to sell your customer at a profit.

Quoting 50% off list price will make a 25% markup over cost.

TEAR THIS SHEET OUT

PAR. 4. Some of the other acts and practices of the respondent in furtherance of its aforesaid plan and scheme to induce the belief on the part of consumer purchasers and prospective consumer purchasers that its products may be purchased at a special or wholesale price or a price that is substantially less than the retail selling price are set forth below.

Respondent furnishes small furniture dealers and interior decorators with blank admission cards or so-called courtesy cards for prospective consumer purchasers of furniture. The following is typical of such cards:

PECK AND HILLS FURNITURE COMPANY, INC., (Special
(Courtesy Card
(No.

WHOLESALE

Furniture, Floor Covering.

Please extend the courtesies of your wholesale showrooms

to M.....

Dealer

Address

Only the prospective consumer purchaser who presents admission or courtesy card or who is accompanied by a dealer or decorator, is admitted to the showrooms of respondent. There the displayed furniture and floor coverings are tagged with a list price which is approximately the same or a little higher than the list price shown in the aforesaid catalog. By personal statements of its representatives and employees and otherwise, respondent directly and by implication, represents that the list price of its products is the retail selling price. After inspecting the displayed furniture and floor coverings so tagged, the prospect is offered said products at approximately one half the list prices.

PAR. 5. By the aforesaid representations and acts and practices, and others of similar import and meaning not specifically set out herein, respondent directly and by implication has represented and is now representing that the price at which its products are sold and offered for sale is a special or wholesale price or one that is substantially less than the retail selling price.

PAR. 6. The foregoing representations are false, deceptive and misleading. In truth and in fact the prices for which respondent's products are actually sold and offered for sale are not special or wholesale prices and are not substantially lower than the established or regular retail selling prices. The so-called courtesy cards are not of value in the sense that they enable the holders thereof to buy respondent's products for less than the prices customarily charged therefor by the respondent. The "list" prices set forth in the catalog and on the tags do not represent the price at which respondent's products are sold or offered for sale to anyone. Actually said "list" prices are mere arbitrary figures that would when reduced by 50% indicate the approximate prices to be paid by the consumer purchaser.

PAR. 7. The aforesaid representations, acts and practices of respondent in connection with the sale and offering for sale of its products in commerce are parts of and together they constitute a plan or scheme which has the tendency and capacity to and does mislead and deceive a sub-

stantial portion of the purchasing public into the erroneous and mistaken belief that the selling price of respondent's products is a special or wholesale price or one substantially less than the retail selling price, and into the purchase of substantial quantities of respondent's products in commerce, because of such erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute 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 October 20, 1944, issued and thereafter served its complaint in this proceeding upon the respondent Peck and Hills Furniture Company, Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by counsel for respondent and Richard P. Whiteley, Assistant Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, might be taken as the facts in this proceeding in lieu of testimony in support of or in opposition to the charges stated in the complaint and that the Commission might proceed upon said complaint and statement of facts to make its report, stating its findings as to the facts (including inferences which might be drawn from said stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding without any intervening procedure. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint and stipulation, said stipulation having been approved, accepted, and filed by the Commission; and the Commission, having duly considered the matter and now being 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. Respondent, Peck and Hills Furniture Company, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of New York, with its principal place of business at 42 East 32nd Street, New York, N. Y. It is now, and for more than two years last past has been, engaged in the sale and distribution of household furniture and floor coverings and operates a so-called dealer or trade showroom at said location.

PAR. 2. In the course and conduct of the aforesaid business, respondent causes its said products, when sold, to be transported from its place of business in the State of New York to the purchasers thereof located in various other States of the United States and in the District of Columbia, and maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between various States of the United States and in the District of Columbia.

PAR. 3. For the purpose of inducing the purchase of its products, respondent has made false, deceptive, and misleading representations concerning the values and prices of its said products. It has issued and dis-

seminated catalogs among small furniture dealers and interior decorators for inspection by their prospective consumer purchasers. These catalogs feature the word "wholesale" on the cover page thereof and show a price called the list price of each of the various items illustrated therein. Immediately inside the cover is a perforated pink sheet which is to be detached by the dealer or interior decorator before showing the catalog to prospective consumer purchasers. This pink sheet reads in part as follows:

YOUR DISCOUNT

60%

From Catalog List Prices

But You Do Not
Have to Figure it.

Your cost is secretly shown in our numbering system. For example:

15J61-19

Each

\$47.50

The pink sheet explains that the "15J61" is the pattern number and that "19" represents \$19.00, or dealer cost on the particular item listed at \$47.50 in the catalog. Said sheet contains the further statements:

We show list price to enable you to sell your customer at a profit.

Quoting 50% off list price will make a 25% markup over cost.

TEAR THIS SHEET OUT

PAR. 4. Also for the purpose of causing consumer purchasers and prospective purchasers to believe that its products might be purchased at a special or wholesale price, and thereby inducing the sale of its products, respondent furnished small furniture dealers and interior decorators with blank admission cards or so-called courtesy cards for prospective consumer purchasers of furniture. A typical example of such cards reads:

PECK AND HILLS FURNITURE COMPANY, INC.,

(Special
(Courtesy Card
(No.

WHOLESALE

Furniture, Floor Covering.

Please extend the courtesies of your wholesale showrooms to

M.....

Dealer.....

Address.....

Only prospective consumer purchasers who presented admission or courtesy cards, or who were accompanied by a dealer or decorator, were admitted to the showrooms of respondent. The furniture and floor coverings displayed in said showrooms were tagged with a list price which was approximately the same or a little higher than the list price shown in the aforesaid catalog. After inspecting the displayed furniture and floor coverings so tagged, the prospect was offered said products at approximately one-half the list prices.

PAR. 5. By means of the aforesaid representations, acts, and practices, respondent has falsely represented and implied that the prices at which its products are sold are special or wholesale prices, substantially less than

Order

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regular retail selling prices. In truth and in fact, the prices for which respondent's products were, and are, actually sold and offered for sale have never been special or wholesale prices, and have never been substantially lower than the established or regular retail selling prices. The so-called courtesy cards are not, and have never been, of value in the sense that they enable the holders thereof to buy respondent's products for less than the prices customarily charged therefor by the respondent. The "list" prices set forth in the catalog and on the tags did not represent the price at which respondent's products were sold or offered for sale to anyone. Actually, said "list" prices were merely arbitrary figures that would, when reduced by 50%, indicate the approximate prices to be paid by the consumer-purchaser.

PAR. 6. The aforesaid representations, acts, and practices of respondent in connection with the sale and offering for sale of its products in commerce were parts of and together constituted a plan or scheme which had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the selling prices of respondent's products were special or wholesale prices, or prices substantially less than the retail selling prices, and into the purchase of substantial quantities of respondent's products in commerce because of such erroneous and mistaken belief.

CONCLUSION

The acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and constitute 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 and a stipulation as to the facts entered into between counsel for the respondent herein and Richard P. Whiteley, Assistant Chief Counsel for the Commission, which stipulation provides, among other things, that without further evidence or other intervening procedure, the Commission may enter its order disposing of the proceeding, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, Peck and Hills Furniture Company, Inc., a corporation, its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of household furniture and floor coverings or other products, do forthwith cease and desist from:

1. Representing, directly or by implication, that the established or regular retail selling prices at which its products are sold or offered for sale to consumer purchasers are special or wholesale prices.

2. Using courtesy cards as a means of representing, directly or by implication, that the holders thereof are thereby enabled to purchase respondent's products for less than the prices customarily charged therefor by the respondent.

3. Using in catalogs or on tags attached to the products offered for sale, or otherwise, "list" or other prices which do not represent the prices at which respondent's products are regularly and customarily sold by respondent in the normal and usual course of business.

It is further ordered, That the respondent shall, within 60 days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF
ROBERT W. HAILEY, G. P. HUBBLE, AND H. F. HALL,
TRADING AS COOKWARE ASSOCIATES

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

Docket 5084. Complaint, Nov. 17, 1943—Decision, June 25, 1945

Where two individuals engaged in interstate sale and distribution of cooking utensils which, prior to 1940, they purchased in the form of stainless aluminum castings and finished for the market in their polishing and finishing plant, and, subsequent to 1941, when Government restrictions due to war demand were placed upon the production of aluminum products, were glass and ceramic, known respectively as "fire glass ware" and "Old Hickory Ceramic Ware"; and which they sold direct to the public through agents whose practice it was to arrange demonstration meals involving the use of the utensils at the homes of housewives, to which friends and neighbors were invited, and thereafter solicit orders from those interested at said demonstrations under a plan by which a cash payment was made at the time of the order, which the agent retained as part compensation, and shipment was made C.O.D. either for the balance or, if sold under installment contract, for not less than 40% of the contract price; following a change to a baser alloy in 1940, due to war conditions, in the formula for the castings purchased by them, so that the utensils had a tendency to stain or darken and become pitted—

- (a) Continued, through their said agents, to make demonstrations, using the original stainless aluminum samples, and to take orders without advising the purchasers that utensils of a baser metal would be delivered; and aided and abetted in said deception of purchasers by repeatedly accepting orders taken in said manner; and countenanced the use of the stainless aluminum samples in the making of demonstrations;
- (b) Did not notify purchaser in advance that a baser-metal utensil would be supplied, but, on the same day that a shipment was forwarded, sent a notice advising the purchaser that they were sending utensils made of a newly improved alloy which reached the purchaser at about the time of the C.O.D. shipment, giving him no opportunity to cancel his order because of such change; and in all cases where a purchaser canceled or attempted to cancel the order because of the delivery of utensils different from the samples, refused to make any refund of the down payment; and

Where said individuals, following said discontinuance of the sale of aluminum and metal utensils and at a time when they knew they could not make deliveries—

- (c) Followed a practice of taking all orders possible therefor, instructing their agents to continue taking orders and to collect down payments;
- (d) Endeavored to induce purchasers, secured as aforesaid, to accept partial delivery and let the balance of the order stand until after the duration, or attempted to substitute cooking utensils made of glass or ceramic ware for the aluminum or aluminum alloy ordered by the customer; and
- e) Pursued the policy, if the purchaser was unwilling to accept substitute cooking utensils, of refusing to refund the down payment to the customer or to cancel the contract, and in all such instances notified the purchasers that they could not refund the deposit but would ship the ordered goods as soon as the governmental restrictions on the production of aluminum and aluminum alloy products were lifted;