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# NY Court Embraces the Law of Supply and Demand, Shows Hostility to Price Gouging Complaint

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On September 23, 2020, the New York Supreme Court dismissed Attorney General Letitia James' lawsuit against Quality King Distributors alleging that the wholesaler unlawfully increased the price of its Lysol products. In a decision no longer than a page, Judge Eileen A. Rakower found that Quality King's prices were neither "unconscionable or overall extreme."

The lawsuit, a first of its kind to reach a decision during the COVID-19 pandemic, may provide useful guidance to other courts analyzing similar issues. Particularly, in determining whether Quality King's pricing was unconscionable, Judge Rakower appears to have considered its average prices for a particular product or category of products, rather than looking at each transaction individually. This basis, along with Judge Rakower's determination that Quality King's prices were not unconscionable when considered in the scheme of things, may provide future price gouging defendants with a plausible defense to any alleged price increases.

This case began in May 2020 when AG James filed a lawsuit against wholesale grocery distributor Quality King and its CEO for price gouging in violation of New York's General Business Law § 396-r. Section 396-r, which has since been amended, provides that "[d]uring any abnormal disruption of the market for consumer goods . . . vital and necessary for the health, safety and welfare of consumers, no party within the chain of distribution of such consumer goods . . . shall sell or offer to sell any such goods . . . for an amount which represents an unconscionably excessive price. . . ." However, Section 396-r includes an exception that a "defendant may rebut a prima facie case with evidence that (1) the increase in the amount charged preserves the margin of profit that the defendant received for the same goods or services prior to the abnormal disruption of the market or (2) additional costs not within the control of the defendant were imposed on the defendant for the goods or services."

The lawsuit alleged that between January 2020 and April 2020, the wholesaler raised the price of Lysol from around $4.25 for a 19-ounce can, up to as high as $9.15. According to the lawsuit, Quality King's costs did not increase. The wholesaler's alleged actions resulted in a median unit margin on sales of Lysol of 47% for February, and 95.5% for March 2020. Quality King sold 46,104 cans of Lysol during the time in question, and "each time one of these [] cans of Lysol was sold at retail for an inflated price – and each time a person bought any other Lysol product whose price Quality King had inflated – Quality King's price-gouging caused injury to a consumer," the lawsuit stated. Furthermore, Quality King's customers passed those price increases on to their customers, charging as much as $16.99. AG James sought, among other relief, disgorgement of all profits from the illegal practice and a civil penalty of $25,000.

Judge Rakower heard oral arguments on September 22, 2020, and just one day later issued an order dismissing the lawsuit. The Court concluded that while Quality King may have sold Lysol at prices that "were seemingly increased to the extreme," it did not "uniformly" raise the price of the product. Further, when considering the wide array of Lysol products offered at the time "the pricing overall did not indicate any use of unfair leverage, an abuse of bargaining power or unconscionable means; nor did the pricing represent a gross disparity between the price of the goods and their value measured by the price at which they were sold immediately prior to March 7, 2020." Lastly, Judge Rakower concluded that not only were Quality King's prices competitive when compared to some competitors, Quality King demonstrated that their costs increased.

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