

Complaint

IN THE MATTER OF

FLORIDA CITRUS CANNERS COOPERATIVE ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (a) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5640. Complaint, Feb. 18, 1949—Decision, July 14, 1952

Where a corporate cooperative association, engaged in the canning of citrus fruit juice products processed from fruit obtained principally from its members, and in the competitive interstate sale and distribution thereof to customers competitively engaged with each other and with the customers of said association, also competitors, in the purchase and resale of such products within their respective trade areas;

In selling its said products to the Great Atlantic and Pacific Tea Company chain grocery system which, with its parent company and subsidiary organizations and affiliates, constituted the largest purchasers of retail grocery products within the United States, with warehouses in some thirty cities, and during the 1945-46 canning season purchased about 750,000 cases of said association's "Donald Duck" brand citrus products—

Discriminated in price between purchasers competing in the resale of its products of like grade and quality by selling to some at lower prices than it sold to others, and thereby discriminated in favor of said A & P system;

With the result that the aforesaid system, as recipient of discriminatory price benefits aggregating some \$600,000, was enabled to retail said "Donald Duck" citrus fruit juice products at a decided price advantage over competitive retailers selling said cooperative's products of like grade and quality in the areas involved;

Effect of which discriminations was, and might be, to substantially lessen competition in the sale and distribution of citrus fruit juice products in the respective lines of commerce in which said cooperative and its customers were engaged, and to injure, destroy or prevent competition in the sale and distribution of said products with it and its customers who received the benefits of said discriminatory prices:

Held, That such discriminations in price, under the circumstances set forth, constituted violations of Sec. 2 (a) of the Clayton Act, as amended.

Mr. Eldon P. Schrup and *Mr. James S. Kelaher* for the Commission.
Mr. Counts Johnson, of Tampa, Fla., for respondents.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, have violated and are now violating the provisions of section 2 (a) of the Clayton Act (U. S. C. Title 15, sec. 13), as amended by the Robinson-

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Patman Act, approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Florida Citrus Canners Cooperative is a corporate cooperative association organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business located at Lake Wales, Florida.

Said cooperative association, under the management and control of various officers, directors and members since its inception and now, is engaged in the business of the canning for sale of citrus fruit juice products processed from fruit obtained principally from association members.

Representative of the officers, directors and members of said association are the following for the 1945-1946 canning season:

President, Mr. H. S. Norman.

First Vice President, Mr. D. A. Hunt.

Second Vice President, Mr. W. J. Hanley.

Exec. Vice Pres. and General Manager, Mr. L. G. Foster.

Vice Pres. in Charge of Sales, Mr. C. P. Fish.

Secretary & Treasurer, Mr. Lee A. Wheeler.

Assistant Secretary and Treasurer, Mr. Ray M. Moore.

Avon Park Citrus Growers Association, Avon Park, Florida, with Director representative Mr. E. G. Todd, Avon Park, Florida.

Chase Investment Company, Sanford, Florida, with Director representative Mr. Sydney O. Chase, Jr., Sanford, Florida.

Citrus Grove Development Company, Babson Park, Florida, with Director representative Mr. A. H. Stafford, Babson Park, Florida.

Dundee Citrus Growers Association, Dundee, Florida, with Director representative Mr. L. P. Kinsey, Winter Haven, Florida.

Great Southern Citrus Association, Winter Haven, Florida, with Director representative Mr. H. L. Smith, Winter Haven, Florida.

Haines City Citrus Growers Association, Haines City, Florida, with Director representative Mr. H. E. Strohm, Davenport, Florida.

Hunt Bros. Cooperative, Lake Wales, Florida, with Director representative Mr. D. A. Hunt, Lake Wales, Florida.

Lake Byrd Citrus Packing Company, Avon Park, Florida, with Director representative Mr. C. H. Walker, Avon Park, Florida.

Mountain Lake Corporation, Lake Wales, Florida, with Director representative Mr. W. J. Hanley, Lake Wales, Florida.

South Lake Apopka Citrus Growers Association, Oakland, Florida, with Director representative Mr. H. C. Tilden, Winter Garden, Florida.

Umatilla Citrus Growers Association, Umatilla, Florida, with Director representative Mr. C. B. Hipson, Umatilla, Florida.

Waverly Growers Cooperative, Waverly, Florida, with Director representative Mr. H. S. Norman, Lake Wales, Florida.

Winter Haven Citrus Growers Association, Winter Haven Florida, with Director representative, Mr. G. B. Ayerigg, Winter Haven, Florida.

PAR. 2. Florida Citrus Canners Cooperative since June 19, 1936 and now, in the course and conduct of its said business, sells and distributes the aforesaid products in commerce to purchasers thereof located in the various States of the United States, and causes said products, when sold, to be shipped and transported from its place of business in the State of Florida to the purchasers thereof located in the various States of the United States other than and including the State of origin of such shipments. There is and has been at all times mentioned herein, a constant current of trade and commerce in said products between Florida Citrus Canners Cooperative located in the State of Florida; and its customers located in the various other States of the United States and in the District of Columbia. Said products are sold and distributed principally to wholesale grocers, super markets and chain stores for resale within and throughout the United States.

In the course and conduct of its business, as aforesaid, Florida Citrus Canners Cooperative has been, and is now, engaged in substantial competition, in commerce, with other canners, sellers and distributors of citrus fruit juice products, who, for many years prior hereto, have been and are now engaged in canning, selling and distributing such products, in commerce, across State lines, to purchasers thereof located in the various States of the United States and in the District of Columbia. Many of Florida Citrus Canners Cooperative's customers are competitively engaged with each other and with the customers of said association's competitors in the purchase and resale of such products within the trade areas in which Florida Citrus Canners Cooperative's said customers respectively offer for sale and sell such products so purchased.

PAR. 3. Florida Citrus Canners Cooperative, in the furtherance of the said sale and distribution of its said citrus fruit juice products, periodically publishes and causes to be distributed to the trade, price bulletins, telegrams and other material descriptive of said products and the prices at which said products are at such time available for purchase.

Florida Citrus Canners Cooperative operates in a competitive market subject to fluctuating prices, and said association's said prices

when so offered as above will approximate or equal the prices then offered or effected by other canners competing with Florida Citrus Canners Cooperative in the sale and distribution of similar products of like grade and quality at such times, and collectively such prices will represent the then prevailing market price for such products.

During the 1945-1946 canning season, Florida Citrus Canners Cooperative sold and distributed for resale throughout the United States approximately three and one-half million cases of its said citrus fruit juice products of like grade and quality, the preponderance of which products were sold and distributed under Florida Citrus Canners Cooperative's "Donald Duck" label, which represents a nationally advertised brand of well developed consumer recognition and acceptance.

PAR. 4. In the course and conduct of its business, as hereinabove described, since June 19, 1936, Florida Citrus Canners Cooperative has been and is now discriminating in price between different purchasers of its products of like grade and quality by selling said products to some of its customers at lower prices than it sells such products of like grade and quality to other of its customers, many of whom are competitively engaged, one with the other, in the resale of such products within the United States.

PAR. 5. The following designated Table "A" discloses the prevailing prices and the effective dates within the 1945-1946 canning season at which Florida Citrus Canners Cooperative's citrus fruit juice products of like grade and quality, under "Donald Duck" labels and otherwise, were offered for sale and sold and distributed by said association to some, but not all, of said association's buyer-customers:

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TABLE A

Selling prices, f. o. b. Lake Wales, Fla.	Grapefruit juice				Orange juice				Blended juice			
	12/46 oz. S/A per doz.	12/46 oz. unsw. per doz.	24/2 S/A per doz.	24/2 unsw. per doz.	12/46 oz. S/A per doz.	12/46 oz. unsw. per doz.	24/2 S/A per doz.	24/2 unsw. per doz.	12/46 oz. S/A per doz.	12/46 oz. unsw. per doz.	24/2 S/A per doz.	24/2 unsw. per doz.
EFFECTIVE DATES												
March 18, 1946	\$2.50	\$2.45	\$1.10	\$1.075	\$3.80	\$3.75	\$1.625	\$1.60	\$3.25	\$3.20	\$1.375	\$1.35
March 21, 1946	2.625	2.575	1.125	1.10	4.05	4.00	1.70	1.675	3.35	3.30	1.40	1.375
April 12, 1946	3.25	3.20	1.375	1.35	4.40	4.35	1.825	1.80	3.60	3.55	1.625	1.60
April 18, 1946	3.25	3.20	1.375	1.35	4.65	4.60	1.925	1.90	4.15	4.10	1.725	1.70
April 22, 1946	3.55	3.50	1.475	1.45	5.00	4.95	2.075	2.05	4.50	4.45	1.875	1.85

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PAR. 6. The New York Great Atlantic & Pacific Tea Company, Inc. and subsidiary organizations and affiliates comprising The Great Atlantic & Pacific Tea Company chain grocery system, are the largest purchasers and retailers of grocery products within the United States. Among the warehouses operated for and supplying the retail stores of said system with such products for resale in their respective areas, are those located as follows:

Albany, New York	Jacksonville, Florida
Altoona, Pennsylvania	Louisville, Kentucky
Atlanta, Georgia	Milwaukee, Wisconsin
Baltimore, Maryland	Newark, New Jersey
Birmingham, Alabama	New Orleans, Louisiana
Boston, Massachusetts	New York, New York
Buffalo, New York	Philadelphia, Pennsylvania
Charlotte, North Carolina	Pittsburgh, Pennsylvania
Chicago, Illinois	Portland, Maine
Cleveland, Ohio	Richmond, Virginia
Columbus, Ohio	Scranton, Pennsylvania
Des Moines, Iowa	Springfield, Massachusetts
Detroit, Michigan	St. Louis, Missouri
Grand Rapids, Michigan	Toledo, Ohio
Indianapolis, Indiana	Youngstown, Ohio

PAR. 7. The following designated Table "B" discloses the selling prices to other buyer customers for the same or like grade and quality products and the comparable discriminatory prices and the effective dates within the 1945-1946 canning season at which Florida Citrus Canners Cooperative's "Donald Duck" labeled citrus fruit juice products were offered for sale and sold and distributed by said association to The Great Atlantic & Pacific Tea Company system for resale by the retail stores of said system located in the warehouse areas hereinabove set forth:

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TABLE B

Prices are f. o. b. Lake Wales, Fla.	Grapefruit juice				Orange juice				Blended juice			
	12/46 oz. S/A per doz.	12/46 oz. unsw. per doz.	24/2 S/A per doz.	24/2 unsw. per doz.	12/46 oz. S/A per doz.	12/46 oz. unsw. per doz.	24/2 S/A per doz.	24/2 unsw. per doz.	12/46 oz. S/A per doz.	12/46 oz. unsw. per doz.	24/2 S/A per doz.	24/2 unsw. per doz.
Selling price effective Mar. 18, 1946.	\$2.50	\$2.45	\$1.10	\$1.075	\$3.80	\$3.75	\$1.025	\$1.60	\$3.25	\$3.20	\$1.375	\$1.35
A & P price	\$2.50	\$2.45	\$1.10	\$1.075	\$3.60	\$3.55	\$1.50	\$1.475	\$3.20	\$3.15	\$1.35	\$1.325
Price discrimination:												
Per dozen	None	None	None	None	\$0.20	\$0.20	\$0.125	\$0.125	\$0.05	\$0.05	\$0.025	\$0.025
Per can (cents)	None	None	None	None	1.7	1.7	1.0	1.0	.4	.4	.2	.2
Percent	None	None	None	None	5.3	5.3	7.7	7.8	1.5	1.6	1.8	1.9
Selling price effective Mar. 21, 1946.	\$2.625	\$2.575	\$1.125	\$1.10	\$4.05	\$4.00	\$1.70	\$1.675	\$3.35	\$3.30	\$1.40	\$1.375
A & P price	\$2.50	\$2.45	\$1.10	\$1.075	\$3.60	\$3.55	\$1.50	\$1.475	\$3.20	\$3.15	\$1.35	\$1.325
Price discrimination:												
Per dozen	\$0.125	\$0.125	\$0.025	\$0.025	\$0.45	\$0.45	\$0.20	\$0.20	\$0.15	\$0.15	\$0.05	\$0.05
Per can (cents)	1.0	1.0	2.2	2.3	3.8	3.8	1.7	1.7	1.3	1.3	1.4	1.4
Percent	4.8	4.9	2.2	2.3	11.1	11.3	11.8	11.9	4.5	4.5	3.6	3.6
Selling price effective Apr. 12, 1946.	\$3.25	\$3.20	\$1.375	\$1.35	\$4.40	\$4.35	\$1.825	\$1.80	\$3.90	\$3.85	\$1.625	\$1.60
A & P price	\$2.50	\$2.45	\$1.10	\$1.075	\$3.60	\$3.55	\$1.50	\$1.475	\$3.20	\$3.15	\$1.35	\$1.325
Price discrimination:												
Per dozen	\$0.75	\$0.75	\$0.275	\$0.275	\$0.80	\$0.80	\$0.325	\$0.325	\$0.70	\$0.70	\$0.275	\$0.275
Per can (cents)	6.3	6.3	2.3	2.3	6.7	6.7	2.7	2.7	5.8	5.8	2.3	2.3
Percent	23.1	23.4	20.0	20.4	18.2	18.4	17.8	18.1	17.9	18.2	16.9	17.2
Selling price effective Apr. 18, 1946.	\$3.25	\$3.20	\$1.375	\$1.35	\$4.65	\$4.60	\$1.925	\$1.90	\$4.15	\$4.10	\$1.725	\$1.70
A & P price	\$2.50	\$2.45	\$1.10	\$1.075	\$3.60	\$3.55	\$1.50	\$1.475	\$3.20	\$3.15	\$1.35	\$1.325
Price discrimination:												
Per dozen	\$0.75	\$0.75	\$0.275	\$0.275	\$1.05	\$1.05	\$0.425	\$0.425	\$0.95	\$0.95	\$0.375	\$0.375
Per can (cents)	6.3	6.3	2.3	2.3	8.8	8.8	3.5	3.5	7.9	7.9	3.1	3.1
Percent	23.1	23.4	20.0	20.4	22.6	22.8	22.1	22.4	22.9	23.2	21.7	22.1
Selling price effective Apr. 22, 1946.	\$3.55	\$3.50	\$1.475	\$1.45	\$5.00	\$4.95	\$2.075	\$2.05	\$4.50	\$4.45	\$1.875	\$1.85
A & P price	\$2.50	\$2.45	\$1.10	\$1.075	\$3.60	\$3.55	\$1.50	\$1.475	\$3.20	\$3.15	\$1.35	\$1.325
Price discrimination:												
Per dozen	\$1.05	\$1.05	\$0.375	\$0.375	\$1.40	\$1.40	\$0.575	\$0.575	\$1.30	\$1.30	\$0.525	\$0.525
Per can (cents)	8.8	8.8	3.1	3.1	11.7	11.7	4.8	4.8	10.8	10.8	4.4	4.4
Percent	29.6	30.0	25.4	25.9	28.0	28.3	27.7	28.0	28.9	29.2	28.0	28.4

PAR. 8. The discriminatory prices reflected in Table "B" above were granted in numerous transactions by and between Florida Citrus Cannery Cooperative and The Great Atlantic & Pacific Tea Company system which involved sales of approximately 750,000 cases of "Donald Duck" brand citrus fruit juice products offered for sale, sold and distributed to said system during the times set forth in said Table "B" at an aggregate purchase price of some \$2,000,000.00. Said sales transactions disclosed said system to have been the recipient thereby of discriminatory price benefits aggregating \$600,000.00 more or less, being the aggregate difference between the lesser purchase prices paid by said system for said products during said times and the comparable higher purchase prices offered to and paid by other buyer-customers of Florida Citrus Cannery Cooperative for such products of like grade and quality during said times.

The discriminatory prices at which said products were offered for sale, sold and distributed by Florida Citrus Cannery Cooperative to The Great Atlantic & Pacific Tea Company system as afore-described enabled said system to retail "Donald Duck" labeled citrus fruit juice products as a decided sales price advantage over other retailers selling Florida Citrus Cannery Cooperative's products of like grade and quality in competitive resale in the areas concerned.

The following designated Table "C" discloses the retail selling prices which The Great Atlantic & Pacific Tea Company system was enabled to effect in the competitive resale of such products in two representative areas in comparison with the purchase prices offered by and paid to Florida Citrus Cannery Cooperative during such times by other customers purchasing such products of like grade and quality for resale in all areas including said areas:

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Findings

TABLE C

	A & P retail selling price per can—Representative area No. 1	A & P retail selling price per can—Representative area No. 2	Purchase price per can, not including freight costs, offered to and paid by wholesalers, supermarkets, and chain stores for resale in all areas including A & P Representative areas Nos. 1 and 2
	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>
Grapefruit juice:			
12/46 S/A.....	29	27	29.6
12/46 unsw.....	29	27	29.2
24/2 S/A.....	13	11.7 (3 for 35).....	12.3
24/2 unsw.....	13	11.7 (3 for 35).....	12.1
Orange juice:			
12/46 S/A.....	40	38	41.7
12/46 unsw.....	40	38	41.3
24/2 S/A.....	16	16	17.3
24/2 unsw.....	16	16	17.1
Blended juice:			
12/46 S/A.....	36	34	37.5
12/46 unsw.....	36	34	37.1
24/2 S/A.....	15	14.5 (2 for 29).....	15.6
24/2 unsw.....	15	14.5 (2 for 29).....	15.4

PAR. 9. The effect of the discriminations in prices as hereinabove set forth may be, has been, and is substantially to lessen competition in the sale and distribution of citrus fruit juice products in the respective lines of commerce in which Florida Citrus Canners Cooperative and its recipient customers are engaged, and has been, and may be, to injure, destroy or prevent competition in the sale and distribution of said products with said association and with its customers who receive the benefits of such discriminatory prices.

PAR. 10. The foregoing discriminatory prices by said association between different purchasers of Florida Citrus Canners Cooperative citrus fruit juice products of like grade and quality in commerce as hereinbefore set forth, constitute violations of subsection (a) of section 2 of the Clayton Act (U. S. C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, approved June 19, 1936.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an Act of Congress approved June 19, 1936 (the Robinson-Patman Act) (15 U. S. C. Sec. 13), the Federal Trade Commission on February 18, 1949, issued and subsequently served its complaint in this proceeding upon the respondent, Florida Citrus Canners Cooperative, a corporate cooperative association, and upon

its officers and directors and upon certain members of said cooperative association as representative of all the members of the association as a class, charging said Florida Citrus Cannery Cooperative, its officers, directors, and members with having violated the provisions of subsection (a) of Section 2 of said Clayton Act, as amended by the Robinson-Patman Act.

After the issuance of said complaint and the filing of the respondents' answer thereto, the respondents, pursuant to leave granted, withdrew said answer and filed in lieu thereof a substitute answer in which for the purpose of this proceeding the respondents admitted all of the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearings as to said facts, but reserved to themselves the right of a hearing with oral argument and the filing of briefs before the Commission as to what order, if any, should be issued upon the facts admitted. Subsequently, counsel for the respondents waived oral argument and consented to submission of the matter to the Commission on the record as then constituted. Thereafter, the proceeding regularly came on for final hearing before the Commission upon the complaint, the respondents' substitute answer, a memorandum for disposition of the case filed by counsel in support of the complaint, attached to which was a proposed form of order to cease and desist, and brief filed by counsel for the respondents in which it was contended that no order to cease and desist should be issued herein, but that if an order is to be issued the order proposed was "probably as fair and reasonable to all parties concerned in its terms and provisions as any that could be issued."

The Commission, being of the opinion that the proposed form of order to cease and desist should be altered in certain material respects, declined to dispose of the proceeding by the entry of an order in the form recommended and, on September 24, 1951, issued a tentative order which the Commission proposed to enter after making appropriate findings as to the facts and conclusion based upon and fully consistent with the facts alleged in the complaint and admitted in the substitute answer thereto, and gave the respondents leave to show cause why said tentative order should not be entered herein as the Commission's order to cease and desist. The respondents on October 8, 1951, filed their "Objection to Tentative Order Issued September 24, 1951"; and the Commission, having duly considered said objection and the matter as a whole 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. Florida Citrus Canners Cooperative is a corporate cooperative association organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business located at Lake Wales, Florida.

Said cooperative association, under the management and control of various officers, directors and members, since its inception has been and now is engaged in the business of the canning for sale of citrus fruit juice products processed from fruit obtained principally from association members.

Representative of the officers, directors and members of said association are the following for the 1945-1946 canning season:

President, Mr. H. S. Norman.

First Vice President, Mr. D. A. Hunt.

Second Vice President, Mr. W. J. Hanley.

Executive Vice President and General Manager, Mr. L. G. Foster.

Vice President in Charge of Sales, Mr. C. P. Fish.

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Winter Haven Citrus Growers Association, Winter Haven, Florida, with Director representative, Mr. G. B. Aycrigg, Winter Haven, Florida.

PAR. 2. In the course and conduct of its business since June 19, 1936, Florida Citrus Canners Cooperative has sold and distributed, and now sells and distributes, the aforesaid products in commerce to purchasers thereof located in the various States of the United States, and said respondent has caused and now causes said products, when sold, to be shipped and transported from its place of business in the State of Florida to the purchasers thereof located in the various States of the United States other than and including the state of origin of such shipments. There is now and at all times mentioned herein there has been a constant current of trade and commerce in said products between Florida Citrus Canners Cooperative, located in the State of Florida, and its customers located in the various other States of the United States and in the District of Columbia. Said products are sold and distributed principally to wholesale grocers, super markets and chain stores for resale within and throughout the United States.

In the course and conduct of its business, as aforesaid, Florida Citrus Canners Cooperative has been, and is now, engaged in substantial competition in commerce with other canners, sellers and distributors of citrus fruit juice products, who, for many years prior hereto, have been and are now engaged in canning, selling and distributing such products in commerce to purchasers thereof located in the various States of the United States and in the District of Columbia. Many of Florida Citrus Canners Cooperative's customers are competitively engaged with each other and with the customers of said association's competitors in the purchase and resale of such products within the trade areas in which Florida Citrus Canners Cooperative's said customers respectively offer for sale and sell such products so purchased.

PAR. 3. Florida Citrus Canners Cooperative, in the furtherance of the said sale and distribution of its said citrus fruit juice products, periodically publishes and causes to be distributed to the trade price bulletins, telegrams and other material descriptive of said products and the prices at which said products are at such time available for purchase.

Florida Citrus Canners Cooperative operates in a competitive market subject to fluctuating prices, and said association's said prices when so offered as above will approximate or equal the prices then offered or effected by other canners competing with Florida Citrus Canners Cooperative in the sale and distribution of similar products of like grade and quality at such times, and collectively such prices will represent the then prevailing market price for such products.

During the 1945-1946 canning season, Florida Citrus Canners Cooperative sold and distributed for resale throughout the United States approximately three and one-half million cases of its said citrus fruit juice products of like grade and quality, the preponderance of which products were sold and distributed under Florida Citrus Canners Cooperative's "Donald Duck" label, which represents a nationally advertised brand of well developed consumer recognition and acceptance.

PAR. 4. In the course and conduct of its business, as hereinabove described, since June 19, 1936, and particularly during the 1945-1946 canning season, Florida Citrus Canners Cooperative has discriminated in price as between different purchasers of its products of like grade and quality by selling said products to some of its customers at lower prices than it sold such products of like grade and quality to others of its customers, many of whom were competitively engaged, one with the other, in the resale of such products within the United States.

PAR. 5. The following designated Table "A" discloses the prevailing prices and the effective dates within the 1945-1946 canning season at which Florida Citrus Canners Cooperative's citrus fruit juice products of like grade and quality, under "Donald Duck" labels and otherwise, were offered for sale and sold and distributed by said association to some, but not all, of said association's buyer-customers:

TABLE A

Findings												
Selling prices, f. o. b. Lake Wales, Fla.	Grapefruit juice				Orange juice				Blended juice			
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EFFECTIVE DATES												
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April 18, 1946.....	3.25	3.20	1.375	1.35	4.65	4.60	1.925	1.90	4.15	1.725	1.70	
April 22, 1946.....	3.55	3.50	1.475	1.45	5.00	4.95	2.075	2.05	4.50	1.875	1.85	

PAR. 6. The New York Great Atlantic & Pacific Tea Company, Inc., and subsidiary organizations and affiliates comprising The Great Atlantic & Pacific Tea Company chain grocery system are the largest purchasers and retailers of grocery products within the United States. Among the warehouses operated for and supplying the retail stores of said system with such products for resale in their respective areas are those located as follows:

Albany, New York	Jacksonville, Florida
Altoona, Pennsylvania	Louisville, Kentucky
Atlanta, Georgia	Milwaukee, Wisconsin
Baltimore, Maryland	Newark, New Jersey
Birmingham, Alabama	New Orleans, Louisiana
Boston, Massachusetts	New York, New York
Buffalo, New York	Philadelphia, Pennsylvania
Charlotte, North Carolina	Pittsburgh, Pennsylvania
Chicago, Illinois	Portland, Maine
Cleveland, Ohio	Richmond, Virginia
Columbus, Ohio	Scranton, Pennsylvania
Des Moines, Iowa	Springfield, Massachusetts
Detroit, Michigan	St. Louis, Missouri
Grand Rapids, Michigan	Toledo, Ohio
Indianapolis, Indiana	Youngstown, Ohio

PAR. 7. The following designated Table "B" discloses the selling prices to other buyer-customers for the same or like grade and quality products and the comparable discriminatory prices and the effective dates within the 1945-1946 canning season at which Florida Citrus Canners Cooperative's "Donald Duck" labeled citrus fruit juice products were offered for sale and sold and distributed by said association to The Great Atlantic & Pacific Tea Company system for resale by the retail stores of said system located in the warehouse areas hereinabove set forth:

Findings

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TABLE B

	Grapefruit juice				Orange juice				Blended juice			
	12/46 oz. S/A per doz.	12/46 oz. unsw. per doz.	24/2 S/A per doz.	24/2 unsw. per doz.	12/46 oz. S/A per doz.	12/46 oz. unsw. per doz.	24/2 S/A per doz.	24/2 unsw. per doz.	12/46 oz. S/A per doz.	12/46 oz. unsw. per doz.	24/2 S/A per doz.	24/2 unsw. per doz.
Prices are f. o. b. Lake Wales, Fla.												
Selling price effective Mar. 18, 1946.												
A & P prices.....	\$2.50	\$2.45	\$1.10	\$1.075	\$3.80	\$3.75	\$1.025	\$1.60	\$3.25	\$3.20	\$1.375	\$1.35
Price discrimination:												
Per dozen.....	None	None	None	None	\$0.20	\$0.20	\$0.125	\$0.125	\$0.05	\$0.05	\$0.025	\$0.025
Per can (cents).....	None	None	None	None	1.7	1.7	1.0	1.0	.4	.4	.2	.2
Percent.....	None	None	None	None	5.3	5.3	7.7	7.8	1.5	1.6	1.8	1.9
Selling price effective Mar. 21, 1946.												
A & P prices.....	\$2.025	\$2.50	\$1.125	\$1.10	\$4.05	\$3.60	\$1.70	\$1.675	\$3.35	\$3.30	\$1.40	\$1.375
Price discrimination:												
Per dozen.....	\$0.125	\$0.125	\$0.025	\$0.025	\$0.45	\$0.45	\$0.20	\$0.20	\$0.15	\$0.15	\$0.05	\$0.05
Per can (cents).....	1.0	1.0	2.2	2.3	3.8	3.8	1.7	1.7	1.3	1.3	.4	.4
Percent.....	4.8	4.9	2.2	2.3	11.1	11.3	11.8	11.9	4.5	4.5	3.6	3.6
Selling price effective Apr. 12, 1946.												
A & P prices.....	\$3.25	\$3.20	\$1.375	\$1.075	\$4.40	\$4.35	\$1.825	\$1.80	\$3.90	\$3.85	\$1.625	\$1.60
Price discrimination:												
Per dozen.....	\$0.75	\$0.75	\$0.275	\$0.275	\$0.80	\$0.80	\$0.325	\$0.325	\$0.70	\$0.70	\$0.275	\$0.275
Per can (cents).....	6.3	6.3	2.3	2.3	6.7	6.7	2.7	2.7	5.8	5.8	2.3	2.3
Percent.....	23.1	23.4	20.0	20.4	18.2	18.4	17.8	18.1	17.9	18.2	16.9	17.2
Selling price effective Apr. 18, 1946.												
A & P prices.....	\$3.25	\$3.20	\$1.375	\$1.075	\$4.65	\$4.60	\$1.925	\$1.90	\$4.15	\$4.10	\$1.725	\$1.70
Price discrimination:												
Per dozen.....	\$0.75	\$0.75	\$0.275	\$0.275	\$0.80	\$0.80	\$0.325	\$0.325	\$0.95	\$0.95	\$0.375	\$0.375
Per can (cents).....	6.3	6.3	2.3	2.3	8.8	8.8	3.3	3.3	7.9	7.9	3.1	3.1
Percent.....	23.1	23.4	20.0	20.4	22.6	22.8	22.1	22.4	22.9	23.2	21.7	22.1
Selling price effective Apr. 22, 1946.												
A & P prices.....	\$3.55	\$2.50	\$1.475	\$1.075	\$5.00	\$4.95	\$2.075	\$2.05	\$4.60	\$4.45	\$1.875	\$1.85
Price discrimination:												
Per dozen.....	\$1.05	\$1.05	\$0.375	\$0.375	\$1.40	\$1.40	\$0.575	\$0.575	\$1.30	\$1.30	\$0.525	\$0.525
Per can (cents).....	8.8	8.8	3.1	3.1	11.7	11.7	4.8	4.8	10.8	10.8	4.4	4.4
Percent.....	29.6	30.0	25.4	25.9	28.0	28.3	27.7	28.0	28.9	29.2	28.0	28.4

PAR. 8. The discriminatory prices reflected in Table "B" above were granted in numerous transactions by and between Florida Citrus Canners Cooperative and The Great Atlantic & Pacific Tea Company system which involved sales of approximately 750,000 cases of "Donald Duck" brand citrus fruit juice products offered for sale, sold and distributed to said system during the times set forth in said Table "B" at an aggregate purchase price of some \$2,000,000. Said sales transactions disclosed said system to have been the recipient thereby of discriminatory price benefits aggregating \$600,000 more or less, being the aggregate difference between the lesser purchase prices paid by said system for said products during said times and the comparable higher purchase prices offered to and paid by other buyer-customers of Florida Citrus Canners Cooperative for such products of like grade and quality during said times.

The discriminatory prices at which said products were offered for sale, sold and distributed by Florida Citrus Canners Cooperative to The Great Atlantic & Pacific Tea Company system as above described enabled said system to retail "Donald Duck" labeled citrus fruit juice products at a decided sales price advantage over other retailers selling Florida Citrus Canners Cooperative's products of like grade and quality in competitive resale in the areas concerned.

The following designated Table "C" discloses the retail selling prices which The Great Atlantic & Pacific Tea Company system was enabled to effect in the competitive resale of such products in two representative areas in comparison with the purchase prices offered by and paid to Florida Citrus Canners Cooperative during such times by other customers purchasing such products of like grade and quality for resale in all areas including said areas:

TABLE C

	A & P retail selling price per can— Representative Area No. 1	A & P retail selling price per can—Re- presentative Area No. 2	Purchase price per can, not including freight costs, of- fered to and paid by wholesalers, super markets, and chain stores for resale in all areas, including A & P Repre- sentative Areas Nos. 1 and 2
	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>
Grapefruit juice:			
12/46 S/A.....	29	27	29.6
12/46 unsw.....	29	27	29.2
24/2 S/A.....	13	11.7 (3 for 35)	12.3
24/2 unsw.....	13	11.7 (3 for 35)	12.1
Orange juice:			
12/46 S/A.....	40	38	41.7
12/46 unsw.....	40	38	41.3
24/2 S/A.....	16	16	17.3
24/2 unsw.....	16	16	17.1
Blended juice:			
12/46 S/A.....	36	34	37.5
12/46 unsw.....	36	34	37.1
24/2 S/A.....	15	14.5 (2 for 29)	15.6
24/2 unsw.....	15	14.5 (2 for 29)	15.4

Order

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PAR. 9. The record shows, and the Commission therefore finds, that the effect of the discriminations in price described herein, namely, price differences as small as 1.5 per cent of the higher price, was substantially to lessen competition in the sale and distribution of citrus fruit juice products in the respective lines of commerce in which Florida Citrus Canners Cooperative and its recipient customers are engaged, and was to injure, destroy or prevent competition in the sale and distribution of said products with said association and with its customers who received the benefits of such discriminatory prices. In view of this showing the Commission further finds that any substantial discrimination in price, including discriminations smaller than 1.5 per cent of the higher price, in the sale of citrus fruit juice products, may have the same or substantially the same competitive effect.

CONCLUSION

The discriminations in price by the respondent association between different purchasers of Florida Citrus Canners Cooperative citrus fruit juice products of like grade and quality, as herein found, constituted violations of subsection (a) of Section 2 of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Act of Congress approved June 19, 1936 (the Robinson-Patman Act).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the substitute answer of the respondents, in which answer said respondents, for the purpose of this proceeding, admitted all of the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearings as to said facts, a memorandum of counsel in support of the complaint proposing disposition of the case, attached to which was a proposed form of order to cease and desist, and briefs in support of and in opposition to the complaint and in opposition to the tentative order to cease and desist included in the Commission's order of September 24, 1951, rejecting the form of order to cease and desist proposed by counsel in support of the complaint and affording the respondents an opportunity to show cause why said tentative order should not be entered as the Commission's order to cease and desist; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of sub-

section (a) of Section 2 of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an Act of Congress approved June 19, 1936 (the Robinson-Patman Act) :

It is ordered, That the respondents, Florida Citrus Canners Cooperative, a corporate cooperative association, and its officers, members, agents, representatives, and any other parties acting for or on its behalf, directly or through any corporate or other device, in connection with the sale of citrus fruit juice products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from discriminating, directly or indirectly, in the price of such products of like grade and quality :

1. By selling such products to some purchasers thereof at prices lower than the prices charged other purchasers who in fact compete with the favored purchasers in the sale and distribution of such products.

2. By selling such products, directly or through brokers, to any purchaser at prices lower than the prices charged other purchasers when such other purchasers buy from the respondents directly or through the respondents' agents or representatives, including brokers, and in fact compete in the sale and distribution of such products with said favored purchaser.

For the purpose of comparison the term "price" as used in this order takes into account discounts, rebates, allowances and other terms or conditions of sale (excepting C. O. D. and other terms or conditions requiring payment before or upon delivery when shown by the respondents to have been used in a particular instance solely because poor or bad credit risk was involved).

It is further ordered, That the respondents shall, within sixty (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.

Commissioner Mead not participating.

IN THE MATTER OF
THE IRVING DREW CORPORATION

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

Docket 5946. Complaint, Jan. 22, 1952—Decision, July 15, 1952

An "orthopedic" shoe, in the medical profession, is understood to be one which is specifically designed and constructed to cure, correct or improve particular abnormalities, diseases or disorders of the feet, and is usually prescribed by an orthopedic specialist of the medical profession after a thorough physical examination of the individual involved, and such a shoe, sometimes also referred to as a "health" shoe, is likewise regarded as thus specially designed for the particular individual.

Despite similarities in type, the foot deformities or abnormalities of particular individuals vary, and may not even be the same as between the two feet of the same individual; and where, after proper examination and diagnosis, it is determined the treatment of the deformity, disease or abnormality of a particular individual requires special orthopedic shoes or devices, these are prescribed by the physician to meet his particular needs, but in many cases where an individual's foot condition has resulted from wearing improper shoes and has not become sufficiently aggravated to require the wearing of special orthopedic shoes or devices for corrective purposes, the physician may advise merely that the individual change to a standard well-fitted stock shoe of good construction.

Abnormalities and diseases of the feet result in some cases from causes residing in the feet and in others from causes which have a systemic origin, such as arteriosclerosis, circulatory insufficiency, arthritis or diabetes, in which event the medication or treatment of other parts of the body, without the wearing of special types of shoes or devices, may be required.

Even where the source of foot trouble lies primarily in the feet the treatment indicated may consist of exercise or other method which involves no special shoes or shoe devices.

Where the course of treatment revolves about the shoes, it may take the form of a special cushion, wedge, arch support or similar device or special orthopedic shoe prescribed by a physician to meet the particular needs of the individual, and no one shoe, and particularly no standard stock shoe, can assure balanced foot function or establish or maintain the health of the feet and the general health, or cause foot troubles to disappear, or afford relief from the various abnormalities, disorders and diseases of the feet.

Where a corporation engaged in the manufacture and interstate sale and distribution of shoes for women, designated as "The Drew Arch-Rest Shoe" and "Drew Cushion-Flex Shoes" and sold by retail stores to the general public—

- (a) Represented through use of the words "orthopedic" and "health" to describe its shoes and their construction and the last on which they were made, in statements on labels attached thereto and on containers, and in advertise-