

Schools, Inc., corporations, and Verna L. Hansen, individually and as an officer of said corporations, and Carl C. Hansen, individually and as an officer of The Colonial Academy, Inc., 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 the order to cease and desist.

IN THE MATTER OF
PACIFIC GAMBLE ROBINSON CO.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 2(a) OF THE CLAYTON ACT

Docket 8078. Complaint, Aug. 11, 1960—Decision, Dec. 7, 1960

Consent order requiring the nation's largest wholesaler of fresh fruits and vegetables, with headquarters in Seattle, Wash., and some 58 shipping centers in various states, to cease discriminating in price among its competing customers in violation of Sec. 2(a) of the Clayton Act, by such practices as giving some retailers in the Yakima, Wash., area a 16% price advantage over others on purchases of lettuce.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated and is now violating the provisions of subsection (a) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, hereby issues this complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Pacific Gamble Robinson Co. is a corporation organized and doing business under the laws of the State of Delaware, with its principal office and place of business located at King and Occidental Streets, Seattle, Washington.

PAR. 2. Respondent, among other things, has been engaged, and is presently engaged, in the business of selling and distributing at

wholesale fresh fruits and vegetables, canned goods, and other grocery products. These products are sold and distributed by respondent to retail outlets and wholesale distributors located in various sections of the nation, including the States of Washington and Oregon. Respondent is the nation's largest wholesaler of fresh fruits and vegetables. Its sales in 1958 exceeded \$180,000,000.

Respondent owns and operates at least fifty-eight shipping centers located in various states. These centers, on behalf of respondent, make local purchases of fresh fruits and vegetables, and other grocery products. These products are then transported from the shipping centers to branch warehouses owned and operated by respondent. Many of such warehouses are situated in states other than where the shipping centers are located. The fresh fruits and vegetables, and other grocery products, are then resold and redistributed by respondent to retail outlets and wholesale distributors located in various states, including states other than where respondent originally purchases the aforesaid products for resale to the aforesaid purchasers.

PAR. 3. In the course and conduct of its business, respondent has engaged, and is presently engaged, in commerce, as "commerce" is defined in the amended Clayton Act, in that respondent ships its products, or causes them to be shipped, from its place of business to purchasers located in states other than the State of origin of such shipments. There is now, and has been for many years, a constant current of trade in commerce in the aforesaid products between and among the various States of the United States.

PAR. 4. In the course and conduct of its business in commerce, respondent has been, and is now, discriminating in price between purchasers of commodities of like grade and quality. Respondent has been, and is now, selling fresh fruits and vegetables and other grocery products to some retailer-purchasers at prices substantially higher than those charged other retailer-purchasers of these products of like grade and quality who have been, and are now, competing with said unfavored purchasers.

For example, respondent has sold, and now sells, its 2d lettuce in the Yakima, Washington area to some retailer-purchasers at prices approximately 16 percent higher than the prices at which it has sold, and now sells, such lettuce to some of its other retailer-purchasers.

PAR. 5. The effect of respondent's discriminations in price, as alleged above, may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and its retailer-purchasers are respectively engaged; to injure, de-

stroy, or prevent competition between respondent and other sellers of fresh fruits and vegetables, and other grocery products; or to injure, destroy or prevent competition between said favored and unfavored retailer-purchasers of respondent's products.

PAR. 6. The acts and practices of respondent, as alleged above, violate subsection (a) of Section 2 of the amended Clayton Act.

Mr. Jerome Garfinkel and Mr. Walter W. Harris for the Commission.

Ryan, Askren, Mathewson, Carlson & Bush, by *Mr. John E. Ryan, Jr.*, of Seattle, Wash., for respondent.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated August 11, 1960, the respondent is charged with violating the provisions of subsection (a) of section 2 of the Clayton Act, as amended.

On September 23, 1960, the respondent and its attorney entered into an agreement with counsel in support of the complaint for a consent order.

Under the foregoing agreement, the respondent admits the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondent of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recite that it is for settlement purposes only and does not constitute an admission by the respondent that it has violated the law as alleged in the complaint.

The hearing examiner finds that the content of the agreement meets all of the requirements of section 3.25 (b) of the Rules of the Commission.

The hearing examiner being of the opinion that the agreement and the proposed order provides an appropriate basis for disposition of this proceeding as to all of the parties, the agreement is hereby accepted and it is ordered that the agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Respondent Pacific Gamble Robinson Co. is a corporation existing and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at King and Occidental Streets, in the City of Seattle, Washington.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

It is ordered. That respondent Pacific Gamble Robinson Co., a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in or in connection with the sale of grocery products, including fresh fruits and vegetables, in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from discriminating, directly or indirectly, in price by selling such grocery products of like grade and quality to any purchaser at prices higher than those charged any other purchaser:

1. Where such other purchaser competes with the unfavored purchaser in the resale and distribution of such products, or
2. Where respondent in the sale of such products is in competition with any other seller.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 7th day of December, 1960, become the decision of the Commission; and, accordingly:

It is ordered. That the respondent herein shall, within sixty (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 the order to cease and desist.

IN THE MATTER OF

KERR GLASS MANUFACTURING CORPORATION