

IN THE MATTER OF

PACIFIC GAMBLE ROBINSON CO.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-1177. Complaint, Feb. 28, 1967—Decision, Feb. 28, 1967

Consent order requiring a Seattle, Washington, wholesale and retail grocer to cease knowingly inducing or receiving from its suppliers any discriminatory service or facility or any discriminatory treatment forbidden by Section 2 of the Clayton Act.

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 Pacific Gamble Robinson Co., a corporation, has violated and is now violating the provisions of Section 5 of the said Act (U.S.C., Title 15, Section 45), 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 Pacific Gamble Robinson Co., hereinafter sometimes referred to as Pacific, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with an office in its principal place of business located at 4103 Second Avenue South, Seattle, Washington.

Respondent is now and has been for many years engaged in the wholesale and retail grocery business, buying and selling a wide variety of grocery products, including fresh fruits and vegetables. These products are sold and distributed by respondent to retail outlets and wholesale distributors located in various sections of the United States. Its total sales in 1964 exceeded \$197,000,000.

PAR. 2. Respondent, in the course and conduct of its business, has engaged and is presently engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondent purchases its products from suppliers, sometimes hereinafter referred to as shippers, located throughout the United States and causes such products to be transported from various States in the United States to other States for the purpose of reselling said products to both wholesalers and retailers.

PAR. 3. In the course and conduct of its business as herein described, respondent has been for many years, and is now, in substantial competition in the sale and distribution of its products, with other corporations, persons, firms and partnerships.

PAR. 4. The respondent has been conducting its business under its current corporate name since 1942. Prior thereto it operated under the corporate name and style of Pacific Fruit and Produce Co., Inc. In 1942, after a full trial, Pacific Fruit was found to have engaged in a combination and conspiracy with others and was ordered by the Commission to cease and desist various practices, including the fixing of prices of broadleaf spinach or other produce (Docket 4487) [34 F.T.C. 734].

In 1951, the Commission issued its order against respondent prohibiting violations of Section 2(c) of the Clayton Act, as amended, in connection with fruits, grocery, household and other products (Docket 5819) [47 F.T.C. 1202]. During October 1962, after the Commission had directed a compliance hearing in connection with alleged violations of the 1951 order, respondent entered into a Stipulation of Facts and on November 26, 1962, after application by the Commission, the United States Court of Appeals, 9th Circuit, affirmed the Commission's order of 1951.

In December 1960, the Commission adopted an earlier order of a hearing examiner which ordered respondent to cease and desist violating Section 2(a) of the Clayton Act, as amended, in connection with its sale of grocery products to retailers (Docket 8078) [57 F.T.C. 1248].

PAR. 5. Incident to the interstate transportation of fresh fruits is the process of precooling. Such process prevents fruit from over-ripening and insures its maximum life. When picked, fruit grown in the San Joaquin Valley area of the State of California (hereinafter referred to as The Valley) may have a pulp temperature of a range of 90 degrees. Efficient precooling lowers this to the range of 40 degrees in 10 to 18 hours and to the range of 35 degrees in 18 to 30 hours. Pulp temperature is not lowered below 33 degrees.

Most fresh fruit is transferred to cooling rooms or rail cars for precooling after being packed since shippers and buyers recognize that such service is necessary to assure arrival at destination in the best possible condition.

Charges for this precooling service have been established on the basis of a fixed rate per rail car, truck, or package. Those rates, effective in the Valley in recent years, are shown below.

Complaint

71 F.T.C.

Precooling Charge

Year	Package			
	Standard lug or crate	California peach box	Rail car	Truck
1959	\$0.05	0.03	\$40	\$50
1960	.075	.05	50	75
1961	.075	.05	50	75
1962	.075	.05	50	75
1963	.10	.075	75	100

The rail car and truck rates shown above are the charges for a full car or truck load, irrespective of the number of packages involved. The package rate is applicable to less-than-car or truck loads, subject to the maximum for full car or truck.

Historically, the fixed charge (per rail car, truck, or package) for precooling services has been a separate, itemized charge to the buyer, and identified as such on the shipper's billing or invoice to the buyer for the fruit. The buyer has paid the precooling charge to the shipper without regard as to who actually performed the service—shipper or an independent cooling contractor.

Commercial precooling contractors uniformly billed shippers for precooling and shippers effected payment to them. As shippers gradually took over the precooling function from commercial cooling firms (by building and installing their own room precooling and cold storage facilities adjacent to their packing-shipping facilities), they have retained the amounts received from buyers for precooling as operating income in connection with their precooling operations. It has been, and is today, a well established practice for shippers to precool or arrange for the precooling of interstate shipments of fresh fruit and to bill and collect for this service from buyers.

PAR. 6. In the course and conduct of its business in commerce, as hereinbefore described, respondent has knowingly induced and received, or received, services of facilities furnished by suppliers in connection with respondent's processing, handling, sale or offering for sale of products purchased from said suppliers upon terms which respondent knew, or should have known, were not accorded on proportionately equal terms by said suppliers to all purchasers competing with respondent in the sale and distribution of said suppliers' products.

PAR. 7. For example, for many years, and specifically from 1959 to date, respondent has demanded and induced, by various means including threats to discontinue dealing, the furnishing by suppliers of precooling services without charge. As a result, many of respondent's suppliers located in the San Joaquin Valley area of California have waived the charges for precooling fresh fruit, including peaches, plums, nectarines and grapes, which respondent purchased and caused to be shipped to States other than the State of California.

The dollar value of the services thus waived was substantial and respondent knew or should have known that the suppliers furnishing such service or facility did not contract to furnish, or furnish, or contribute to the furnishing of similar services or facilities to all other purchasers, competing with respondent in the sale and distribution of their respective products of like grade and quality on terms proportionally equal to those accorded respondent.

PAR. 8. The acts and practices, as above alleged, are all to the prejudice of the public and constitute unfair methods of competition or unfair acts or practices within the intent and meaning of, and in violation of, Section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by

said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Pacific Gamble Robinson Co. is a corporation organized, 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 4103 Second Avenue South, in the city of Seattle, State of Washington.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Pacific Gamble Robinson Co., its officers, employees, agents and representatives, directly or through any corporate or other device, in or in connection with any purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of products purchased for resale, do forthwith cease and desist from:

1. Inducing and receiving, receiving or contracting for the receipt of any service or facility, or contribution thereto, furnished by any supplier in connection with the processing, handling, sale or offering for sale of produce or any commodity purchased from such supplier when respondent knows or should know that such service or facility, or contribution thereto, is not affirmatively offered and otherwise accorded by such supplier on proportionally equal terms to all other purchasers competing with respondent in the sale and distribution of such supplier's products, including other purchasers who resell to customers who compete with respondent in the resale of such supplier's products.

2. Knowingly inducing and receiving, receiving or contracting for the receipt of any discriminatory treatment as proscribed by Section 2 of the Clayton Act, as amended, from any supplier in connection with the processing, handling, sale or offering for sale of produce or any commodity purchased from any supplier.

It is further 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 this order.

Complaint

IN THE MATTER OF

PETER PAN FOUNDATIONS, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SECS. 2(d) AND 2(e) OF THE CLAYTON ACT*Docket C-1178. Complaint, Mar. 1, 1967—Decision, Mar. 1, 1967*

Consent order requiring a New York City marketer of women's foundation garments to cease discriminating among competing customers in paying promotional allowances and in furnishing services or facilities.

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 subsections (d) and (e) of Section 2 of the Clayton Act (U.S.C., Title 15, Section 13), as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

COUNT I

PARAGRAPH 1. Respondent Peter Pan Foundations, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 389 Fifth Avenue, New York, New York, with an administrative office located at 6 Penn Place, Pelham Manor, New York.

In September of 1965, Exquisite Form Industries, Inc. (incorporated in New York State in 1961), bought 80% of the stock in Peter Pan Enterprises Corp. (which was incorporated in New York State in September of 1965). Peter Pan Enterprises Corp. in turn owns 100% of Peter Pan Industries, Inc., (incorporated in the State of Delaware in 1962) and the latter corporation owns 100% of Peter Pan Foundations, Inc., the above-named respondent (which was incorporated in New York State in 1938). Peter Pan Enterprises Corp. and Peter Pan Industries, Inc., are nonoperating holding companies.

PAR. 2. Peter Pan Foundations, Inc., is engaged in the business of selling and distributing women's foundation garments, including brassieres, corselettes, girdles, and panty girdles bearing the Peter Pan label which are manufactured by various corporations in the Peter Pan complex. Respondent corporation's gross