

Complaint.

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FEDERAL TRADE COMMISSION

v.

THE MENNEN COMPANY.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914, AND OF SECTION 2 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Docket 606—March 3, 1922.

SYLLABUS.

Where a corporation engaged in the manufacture and sale at fixed uniform list prices, freight prepaid, of talcum powder and other similar products of uniform grade and quality, all nationally known, did not consistently extend to all customers or prospective customers discounts based upon quantity, difference in cost of selling, transportation, or competitive conditions, but in accordance with a selection based upon the purchasers' purposes, policies and practices divided the same into two classes, to one of which it allowed more liberal discounts than to the other, regardless of quantity purchased; with the result that such discrimination placed the class discriminated against at a serious competitive disadvantage, tended to cause its retail customers to bestow their patronage upon the favored class, and tended dangerously unduly to hinder competition between retail as well as wholesale distributors of its products:

Held, That such practices, under the conditions and circumstances set forth, constituted unfair methods of competition in violation of Section 5 of the Act of Congress approved September 26, 1914, and also an unlawful discrimination in price, in violation of the provisions of Section 2 of the Act of Congress approved October 15, 1914.

AMENDED COMPLAINT.

I.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that The Mennen Company, hereinafter referred to as the respondent, has during the two years last past violated and is violating Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in this respect would be to the interest of the public, issues this amended complaint stating its charges in this respect on information and belief as follows:

PARAGRAPH 1. That the respondent, The Mennen Company, 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 the City of Newark, in the State of

New Jersey, and is now and at all times hereinafter mentioned [has been] engaged in the business of manufacturing and selling talcum powder, tooth paste, shaving soap, and various other toilet articles, causing same to be transported to purchasers thereof from the State of New Jersey, through and into various States of the United States, the Territories thereof, the District of Columbia and foreign countries, in direct competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. That respondent has adopted a plan for the allowance of trade discounts in the marketing of its products; that in pursuance of such plan respondent has and continues to classify its customers into two groups according to a basis of selection adopted by it and has allowed and does allow to purchasers of the same quantity and quality of its products, different discount rates according to the classification of such purchasers by respondent.

PAR. 3. That this practice of varying discounts irrespective of quantity and quality, tends unduly to hinder competition between distributors of respondent's products to retailers or directly to the consuming public.

PAR. 4. That by reason of the facts recited, the respondent is using an unfair method of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

II.

And the Federal Trade Commission, having reason to believe from a preliminary investigation made by it that The Mennen Company, hereinafter referred to as respondent, has been and is violating the provisions of Section 2 of an Act of Congress, approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," issues this complaint, stating its charges in that respect on information and belief, as follows:

PARAGRAPH 1. That the several recitals in Paragraphs One and Two of Count I thereof, are hereby charged as fully and completely as though the several paragraphs were repeated verbatim.

PAR. 2. That the varying discount rates allowed by the respondent are a discrimination in price between purchasers of respondent's commodities for use, consumption or resale within the United States and the District of Columbia, the effect of which may be to substantially lessen competition in the distribution of respondent's products or between distributors thereof.

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PAR. 3. That such discrimination is not founded in difference in the grade, quality or quantity of the commodity sold and does not make only due allowance for difference in the cost of selling or transportation and is not made in good faith to meet competition; that the plan for classification of customers and the allowance of varying discount rates as previously set forth is not a selection of customers in bona fide transactions not in restraint of trade.

PAR. 4. That the actions and doings of the said respondent herein referred to and recited are contrary to the intent and meaning 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and an Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," the Federal Trade Commission issued and served an amended complaint upon the respondent, The Mennen Company, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of Section 5 of said Act of Congress approved September 26, 1914, and with a violation of the provisions of Section 2 of said Act of Congress approved October 15, 1914.

The respondent having entered its appearance by its attorney, Gilbert H. Montague, and filed its amended answer herein, hearings were had and evidence was thereupon introduced in support of the allegations of said amended complaint, and on behalf of the respondent, before John W. Bennett, an examiner of the Federal Trade Commission theretofore duly appointed:

And thereupon this proceeding came on for final hearing, and the Commission having heard argument of counsel and duly considered the record, and being now fully advised in the premises, makes this its findings as to the facts, and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondent, The Mennen Company, 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 in the City of Newark, in the State of New Jersey.

PAR. 2. That respondent is now, and for more than five years last past has been, engaged in the business of manufacturing and selling talcum powder, tooth paste, shaving soap and various other toilet articles, and causing said articles or commodities to be transported to purchasers thereof, from the State of New Jersey through and into various States of the United States, the territories thereof, the District of Columbia and foreign countries, in direct competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. That respondent has adopted a plan for the allowance of trade discounts in the marketing of its products and in pursuance of such plan, respondent did, on or about January 1, 1917, classify, and continue to classify, its customers into groups according to a basis of selection adopted by it, and has allowed and does allow to purchasers of the same quantity and quality of the same products, different discount rates, according to the classification of such purchasers by respondent in the following manner:

(a) Prior to January 1, 1917, respondent made no classification of its customers for the purpose of giving different discounts to different customers or to different classes of customers, but gave the same discounts and the same prices to all customers alike who bought the same goods of respondent in identical quantities—that is to say, the quantity purchased was the only basis upon which respondent made discrimination between its customers as to discounts and prices.

(b) January 1, 1917, respondent took its first step in classifying its customers as a basis of giving different discounts, and in the course of that year made distinctions in two particulars, namely: On all goods of which the unit retail resale price named by respondent was 25 cents, the purchasers then classified and designated by respondent as “retailers” secured a discount of but 10 per cent from respondent’s list price, no matter what quantity they might purchase, while the customers classified and designated by respondent as “jobber” or “wholesaler” received from respondent, in the purchase of its goods, discounts from respondent’s list prices upon the goods named of 15 per cent, as a minimum, and from that amount to 17 per cent, on assorted quantity orders. Talcum powder, the retail package price of which was in 1917 named by respondent at 15 cents, was sold by respondent to “retailers” at a discount of 15 per cent from respondent’s list price, in any quantity above a certain fixed minimum, while in the sale of normal jobbing quantities to “jobbers,” respondent gave such “jobbers” or “wholesalers” a discount of 16 per cent or 17 per cent from such prices.

(c) In March, 1917, respondent announced that it contemplated such a change in sales methods as would develop a line of 25-cent

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packages upon which the demarcation between "jobbers" and "retailers" would be sharply drawn in the allowance of the different discounts.

(d) Respondent issued and circulated a price list of its products, designated by it "General Price List," effective January 1, 1917, canceling all previous lists, wherein it offered, on orders of not less than \$30 net, a trade discount of 15 per cent off list upon articles, including "Borated Talcum Powder," listed by respondent at \$1.50 a dozen as a minimum resale price from wholesaler to retailer, and 15 cents a package as a retail resale price, and a trade discount of 10 per cent off list price upon articles listed by respondent at \$2 a dozen as a minimum price from wholesaler to retailer, and 25 cents a package as a minimum resale price at retail. Terms were named in this price list at 2 per cent cash, 10 days, 30 days net, freight allowed, no cartage. Orders for less than \$30 net, respondent announced, would be supplied only through jobbers, at not less than list prices. At the time that such list was in force and effect, being until June 1, 1917, sales of its product were made by respondent to customers classified and designated by it as "retailers" at prices and on terms set forth in said "General Price List of 1917."

Sales of its products were not made by respondent, nor products offered to said customers so classified by it as "retailers" at prices less, nor discounts greater, than shown in said list, while said list was in force and effect, no matter what the quantities purchased at a single purchase. No other price list of respondent applying to customers classified by it as "retailers" was in force at this time.

(e) Respondent herein also issued and circulated another price list of its products, designated "Wholesale Price List, 1917," effective January 1, 1917, canceling all previous lists, wherein respondent offered, upon orders amounting to not less than \$150 net, a 15 per cent discount on such \$150 quantities; 16 per cent discount on \$250 quantities; 17 per cent discount upon \$500 quantities of respondent's products, including Borated Talcum Powder listed by it at \$1.50 a dozen of \$18 per gross minimum price from wholesaler to retailer, with cash discount not more than 2 per cent. Respondent also granted said wholesalers a like discount on shaving cream and other products listed by respondent at \$2 per dozen, or \$24 per gross, with cash discount of not more than 2 per cent. Terms upon purchases of goods in accordance with said "Wholesalers Price List, 1917," were announced therein as 2 per cent cash ten days, or 30 days net, freight allowed, no cartage. Sales were made by respondent of its goods at the time said "Wholesalers Price List, 1917," was in force and effect, being until June 1, 1917, at the prices and

upon the discounts and terms named in such price list to customers classified by it as "jobbers" or "wholesalers." Said price list was the only price list of respondent in force and effect between January 1, 1917, and June 1, 1917, applying to the class of customers classified and designated by it as "wholesalers."

(f) Respondent herein issued and circulated a "General Price List, 1917," effective June 1, 1917, canceling the previous list of January 1, 1917, whereby respondent offered for shipment direct from the factory, in single purchases of \$30 or more after all trade discounts had been deducted, to customers by it classified and designated as "Retailers," talcums at list prices "wholesaler to retailer," as follows:

1. "Large size," \$2.15 per dozen, trade discount 10 per cent.
2. "Medium size," \$1.50 per dozen, trade discount 15 per cent.
3. "Introductory size," 90 cents per dozen, trade discount 10 per cent. For large, medium, and introductory sizes respectively of talcum, in said last mentioned price list, respondent named 25 cents, 15 cents and 10 cents, respectively, as resale prices at retail.

Respondent also offered in said last mentioned price list, for shipment direct from its factory for single purchases of not less than \$30 after all trade discounts had been deducted, to customers by it classified and designated as "retailers," "other products," including shaving cream, at list prices "wholesaler to retailer" at \$2.15 per dozen, a trade discount of 10 per cent. Terms named in said list by said respondent were 2 per cent cash, 30 days net, freight allowed, no cartage. On orders for less than \$30 net, minimum, respondent announced in said list that customers would be supplied only through the jobber and at list prices.

At the times said last mentioned price list was in force and effect, being from June 1 to September 1, 1917, respondent sold its said products to said customers classified and designated by it as "retailers," at prices and discounts, and upon the terms, named in said last mentioned price list. Sales of its products were not made by respondent nor its products offered to said customers so classified and designated by it as "retailers" at prices less, nor at discounts greater, than shown in said list, while said list was in force, no matter what the quantities purchased at a single purchase. No other price list of said respondent applying to said customers classified and designated by it as "retailers," was in force and effect at that time.

(g) Respondent herein issued and circulated its price list designated "Wholesale Price List, 1917," effective June 1, 1917, canceling

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previous list of January 1, wherein it offered to customers classified and designated by it as "wholesalers," the following minimum prices from "wholesalers to retailers":

1. "Large Size Talcums" at \$2.15 per dozen.
2. "Other Items" at \$2.15 per dozen.
3. "Medium Size Talcums" at \$1.50 per dozen.
4. "Introductory size Talcums" at 90 cents per dozen.

In said last mentioned price list, respondent stipulated that minimum jobbing prices should be charged on resale, as follows:

1. "Large Size Talcums" and "Other Items," jobbing price \$25.80 per gross, \$2.15 per dozen, with a cash discount of not over 2 per cent.
2. "Medium Size Talcums," jobbing price \$18.00 per gross, \$1.50 per dozen, with cash discount of not over 2 per cent.
3. "Introductory Size Talcum," jobbing price \$10.80 per gross, or 90 cents per dozen, with a cash discount of not over 2 per cent.

From said prices so offered in said last mentioned list, respondent also offered to its customers by it classified and designated as "jobbers" or "wholesalers," trade discounts as follows:

1. \$175 quantities, list less 15 per cent.
2. \$300 quantities, list less 16 per cent.
3. \$600 quantities, list less 17 per cent.

Terms 2 per cent cash 10 days, 30 days net, freight prepaid; no cartage.

During the time said last mentioned price list was in force and effect, being from June 1 to September 1, 1917, respondent sold its said products to its customers classified and designated by it as "wholesalers," at the prices and discounts and upon the terms named in said last mentioned price list. No other price list of said respondent applying to said customers so classified by it as "jobbers" or "wholesalers" was in force or effect until said list was canceled September 1, 1917 (from June 1, 1917).

(h) Respondent issued and circulated its price list of its products, which it designated "General Price List, 1917," effective September 1, canceling previous list of June 1, wherein it offered for direct shipment in purchases of \$30 minimum after all trade discounts had been deducted, to its customers by it classified and designated as "retailers," the following "wholesale prices":

1. "Large Size Talcums," \$2.50 per dozen, trade discount 10 per cent; 25 cents per package, resale price at retail.
2. "Other Items"—

Shaving Cream	-----	\$3.00 per dozen;
Tar Shampooing Cream	-----	3.00 per dozen;

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2. "Other Items"—Continued.

Cold Cream	\$2. 50 per dozen ;
Ruvia	2. 50 per dozen ;
Kora Konia	2. 50 per dozen ;
Borated Soap	2. 50 per dozen ;
Liquid Corn Plaster	2. 50 per dozen.

Trade discount 10 per cent.

Resale retail price, 25 cents and 35 cents.

3. "Medium Size Talcums," \$1.50 per dozen, trade discounts 10 per cent; 20 cents per package, resale price at retail.

Terms 2 per cent cash 10 days from date of invoice, or 30 days net. Freight allowed; no cartage.

Orders for less than minimum of \$30 for each purchase, it was announced in said last mentioned price list, would be supplied only through the jobber, at not less than list prices for each product.

At the time the said last mentioned price list was in force and effect, being from September 1, 1917, to March 11, 1918, respondent sold its said products to its said customers by it classified and designated as "retailers," at the prices and discounts and upon the terms named in said price list. Sales of its said products were not made by respondent, nor its products offered to said customers so classified and designated by it as "retailers," at prices less, nor discounts greater, than shown in said list so in force and effect, no matter what the quantities purchased at a single purchase. No other price list of said respondent applying to said customers so classified and designated by it as "retailers," was in force or effect until March 11, 1918 (and from September 1, 1917).

(i) Respondent issued and circulated its price list of its said products which it designated "Wholesalers Price List, 1917," effective September 1, canceling previous list of June 1, wherein respondent offered its products at "wholesale prices," as follows:

1. "Large Size Talcums"..... \$2. 50 per dozen ;
2. "Other Items"—

Shaving Cream	3. 00 per dozen ;
Tar Shampooing Cream	3. 00 per dozen ;
Cold Cream	2. 50 per dozen ;
Ruvia	2. 50 per dozen ;
Kora Konia	2. 50 per dozen ;
Borated Soap	2. 50 per dozen ;
Liquid Corn Plaster	2. 50 per dozen.
3. "Medium Size Talcums"..... 1. 75 per dozen.

In said price list, request was made that a minimum price of \$36 per gross and \$3 per dozen be made on Shaving Cream and on Tar Shampooing Cream, \$30 per gross or \$2.50 per dozen on items scheduled in said list at \$2.50 per dozen "wholesale prices" and \$21 per gross or \$1.75 per dozen on "Medium Size" talcums, with cash discount of not more than 2 per cent.

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From the above-named "wholesale prices" so named in last mentioned list, respondent offered in said list the following discounts to its customers classified and designated by it as "jobbers" or "wholesalers":

1. \$175 quantitles, list less 15 per cent.
2. \$300 quantitles, list less 16 per cent.
3. \$600 quantitles, list less 17 per cent.

Terms 2 per cent, cash 10 days, or 30 days net, freight prepaid, no cartage.

At the time the said last mentioned list was in force and effect, being from September 1, 1917, to March 15, 1918, respondent sold to its customers so classified and designated by it as "jobbers" or "wholesalers," at the prices and discounts and upon the terms named in said last mentioned list. No other list of said respondent for its products applying to its said customers so classified and designated by it as "wholesalers" was in force and effect from the time said last mentioned list was made effective until on or about March 15, 1918.

(j) Respondent herein issued and circulated its price list for its products, dated March 11, 1918, in the form of a circular letter designated by it, "Introductory Offer," "March 15 to April 15, 1918," wherein respondent offered to its customers of all classes a trade discount of 10 per cent on orders of two gross or more to be shipped directly from its factory, and a cash discount of 5 per cent 10 days from date of invoice or sight draft bill of lading attached, freight allowed, no cartage. For the period of one month, being for orders taken between March 15, 1918, and April 15, 1918, respondent offered to its customers, in addition, an extra cash discount of 10 per cent, upon conditions named in said document designated "Introductory Offer." Incorporated in said document so designated "Introductory Offer" was a price list of respondent's products, as follows:

1. "Large Size Talcums"-----	\$2. 50 per dozen;
2. "Medium Size Talcums"-----	1. 75 per dozen;
3. "Other Items"-----	
Borated Soap-----	2. 50 per dozen;
Liquid Corn Plaster-----	2. 50 per dozen;
Ruvia-----	2. 50 per dozen;
Cold Cream in Tubes-----	2. 50 per dozen;
Shaving Cream-----	3. 25 per dozen;
Tar Shampooing Cream-----	3. 25 per dozen;
Cream Dentifrice-----	3. 25 per dozen;
Kora Konia-----	4. 50 per dozen.

Minimum shipments direct from the factory, respondent designated in said "Introductory Offer" as 2 gross. Orders for less than 2 gross, it was announced in said document, would be shipped through the "jobber" at his prices and terms only; and said document was circulated to all classes of customers and the details above outlined as to offers applied to all classes of customers, both "wholesalers" and "retailers" as classified and designated by respondent. In addition to the offer contained in said document designated as "Introductory Offer," however, said respondent also issued and circulated in connection therewith, "Notice to Wholesalers," being its customers so classified and designated by it, which offered trade and cash discounts on all wholesalers' invoices after March 15th, as follows:

1. Less than 10 gross—less 10 per cent and 5 per cent for cash.
2. Ten gross and over—less 10 per cent and 7 per cent for cash.
3. Twenty gross and over—less 10 per cent and 8 per cent for cash.
4. Thirty gross and over—less 10 per cent and 9 per cent for cash.

Freight prepaid as heretofore. No advance datings or drop shipments.

Discounts offered in said "Notice to Wholesalers" to respondent's customers classified and designated by it as "jobbers" and "wholesalers," were not offered nor given by it to respondent's customers classified and designated by it as "retailers," no matter what quantities they may have purchased. From on or about March 15, 1918, to on or about April 15, 1918, sales were made by respondent to its customers classified and designated by it as "retailers," at prices and upon discounts designated in said "Introductory Offer," and to its customers classified and designated by it as "jobbers" or "wholesalers" at prices and discounts designated in said "Introductory Offer" as modified by said "Notice to Wholesalers" accompanying said "Introductory Offer"; and no other list of said respondent for its products was in force or effect from about March 15, 1918, to about April 15, 1918.

(k) Respondent herein issued and circulated its price list of its products, dated April 15, 1918, designated by it as "Scale Prices," in which it announced that shipments direct from the factory must amount to 2 gross; that orders for less than the above 2 gross minimum would be shipped only through the jobber, at his prices and terms; that a trade discount of 10 per cent from list price would apply to all orders for 2 gross or more, and a cash discount of 5 per cent for payment within 10 days, or 30 days net, freight allowed, no cartage. In said "Scale of Prices" respondent announced its list prices as follows:

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1. "Large Size Talcums"-----		\$2. 50 per dozen ;
2. "Other Items"—		
Borated Soap -----		2. 50 per dozen ;
Liquid Corn Plaster-----		2. 50 per dozen ;
Ruvla -----		2. 50 per dozen ;
Cold Cream in tubes-----		2. 50 per dozen ;
Shaving Cream -----		3. 25 per dozen ;
Tar Shampooing Cream-----		3. 25 per dozen ;
Cream Dentifrice -----		3. 25 per dozen ;
Kora Konla -----		4. 50 per dozen.

Discounts of 10 per cent trade and 5 per cent cash were worked out by respondent and results placed in said list in parallel columns.

Said "Scale of Prices" embodied the list prices and discounts at which respondent herein sold its said products immediately after April 15, 1918, and until on or about August 5, 1918, to its customers classified and designated by it as "retailers," and said "retailers" were given by respondent no lower prices and no other nor greater discounts than designated in said "Scale of Prices," no matter in what quantities they may have purchased said products at a single purchase. On the other hand, respondent's customers classified and designated by it as "jobbers" and wholesalers," received upon their purchase of the goods of said respondent, between April 15, 1918, and August 5, 1918, when purchased in 10 gross or over at a single purchase, larger discounts, and therefore, lower prices, which discounts were designated in "Notice to Wholesalers," effective March 15, 1918, and no other list of said respondent's said products was in force and effect from April 15, 1918, to on or about August 5, 1918.

(7) Respondent herein issued and circulated its price list for its said products, or price list so dated August 5, 1918, designated by it "Scale of Prices," wherein it announced that shipments direct from its factory must amount to $1\frac{1}{2}$ gross, and that orders for less than $1\frac{1}{2}$ gross minimum would be supplied only through the "jobber" at his regular prices and terms, and that a trade discount of 10 per cent from list would be applied to orders for $1\frac{1}{2}$ gross or more, and a cash discount of 5 per cent may be taken within 10 days of the date of invoice or on sight draft attached to bill of lading; freight allowed, no cartage. In said "Scale of Prices" dated August 5, 1918, respondent herein announced the following list of prices for its products:

1. "Large Size Talcums"-----	\$2. 25 per dozen ;
2. "Other Items"—	
Borated Soap-----	2. 25 per dozen ;
Liquid Corn Plaster-----	2. 25 per dozen ;
Ruvla-----	2. 25 per dozen ;
Cold Cream in tubes-----	2. 25 per dozen ;
Shaving Cream-----	3. 25 per dozen ;
Tar Shampooing Cream-----	3. 25 per dozen ;
Cream Dentifrice -----	3. 25 per dozen ;
Kora Konla-----	4. 25 per dozen.

At the time immediately following August 5, 1918, and until on or about January 1, 1919, the respondent herein sold its said products at the prices and discounts and upon the terms designated in said "Scale of Prices" dated August 5, 1918, to its customers classified or designated by it as "retailers," and said "retailers" were given by respondent at said time no lower prices and no greater discounts than the discounts designated in said "Scale of Prices," no matter in what quantities they may have purchased its said products. On the other hand, the respondent's customers classified and designated by it as "jobbers," or "wholesalers," received from respondent upon their purchases of its said products, when purchased in 10 gross quantities or over at a single purchase, the larger discounts, and therefore lower prices designated in "Notice to Wholesalers," effective March 15, 1918, the list prices announced in said "Scale of Prices" dated August 5, 1918, being the basis upon which discounts were reckoned for both said classes of customers, and no other list of said respondent for its products was in force and effect from on or about August 5, 1918, to on or about January 1, 1919.

(m) Respondent herein issued and circulated its price lists for its said products designated by it "Scale of Prices," and dated January 1, 1919, wherein it announced that shipments direct from the factory must amount to $1\frac{1}{2}$ gross, and that orders for less than $1\frac{1}{2}$ gross would be supplied only through "jobber" at his regular prices and terms, and that its terms were 10 per cent trade discount upon all orders of $1\frac{1}{2}$ gross and over, and a cash discount of 5 per cent less, 10 days from the date of invoice, or 30 days net; freight prepaid; no cartage. It also announced in said "Scale of Prices" dated January 1, 1919, prices for its said products as follows:

1. "Large Size Talcums"-----	\$2.25 per dozen;
2. "Other Items"—	
Borated Soap-----	2.25 per dozen;
Liquid Corn Plaster-----	2.25 per dozen;
Cold Cream in tubes-----	2.25 per dozen;
Tar Shampooing Cream-----	3.25 per dozen;
Cream Dentifrice-----	3.25 per dozen;
Shaving Cream (large size only)-----	4.25 per dozen;
Kora Konia-----	4.25 per dozen.

Results of discounts above as applied to said list prices were set out also by respondent in parallel columns in its price schedule designated as "Scale of Prices," dated January 1, 1919.

Respondent herein, at the time immediately following January 1, 1919, and while said "Scale of Prices" was in force and effect, being until on or about June 1, 1920, sold its products at the prices and discounts, and upon the terms designated in its said last mentioned "Scale of Prices" to its customers classified and designated by it as

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"retailers," and said "retailers" were given by respondent at such times no lower prices and no greater discounts than the discounts designated in said "Scale of Prices," dated January 1, 1919, no matter in what quantities said "retailers" may have purchased its said products. On the other hand, respondent's customers classified and designated by it as "jobbers" or "wholesalers," received from respondent upon their purchases of its said products, when purchased in 10 gross quantities and over at a single purchase, between March 15, 1918, to, on or about January 1, 1920, the larger discounts, and, therefore, lower prices, designated in its "Notice to Wholesalers" effective March 15, 1918, and no other list of said respondent for its products applying to said customers classified and designated by it as "retailers" was in force or effect from on or about January 1, 1919, to on or about June 1, 1920.

(n) Respondent herein issued and circulated its price list dated January 1, 1920, designated by it "Wholesalers' Price List," wherein it announced that shipments direct from the factory must amount to a minimum of $1\frac{1}{2}$ gross, and that its terms and discounts were as follows:

1. For orders of $1\frac{1}{2}$ to 10 gross, list price less 10 per cent trade discount; cash discount 5 per cent for payment within 10 days from date of invoice, or 30 days net.
2. For orders of 10 gross or over, list price less 10 per cent and 5 per cent trade discount, and cash discount of 3 per cent for payment within 10 days from date of invoice, or 30 days net; freight prepaid; no cartage.

Said respondent, in said "Wholesalers' Price List," dated January 1, 1920, announced the following prices for its said products:

LIST PRICES:

1. Shaving Cream	\$3.00 per dozen;
Kora Konia	4.00 per dozen;
2. Tar Shampooing Cream	3.25 per dozen;
Cream Dentrifice	3.25 per dozen;
3. Borated Soap	2.25 per dozen;
Liquid Corn Plaster	2.25 per dozen;
Cold Cream in tubes	2.25 per dozen;
Borated	2.25 per dozen;
Violet	2.25 per dozen;
Flesh tint	2.25 per dozen;
Cream tint	2.25 per dozen;
Talcum for men	2.25 per dozen.

At the time immediately following January 1, 1920, and during the time that said "Wholesalers' Price List" dated January 1, 1920, was in force and effect, being from January 1, 1920, until June 1, 1920, respondent sold its said product to its customers classified and desig-

nated by it as "jobbers," or "wholesalers," at the prices and upon the terms set forth in said last-mentioned "Wholesalers' Price List," giving such "jobbers" or "wholesalers" trade discounts of 10 per cent and 5 per cent from list prices, and 3 per cent cash discount, in cases where said customers purchased respondents' products in quantities of 10 gross and over. On the other hand, customers of respondent classified and designated by it as "retailers" were given by respondent, upon their purchases of respondent's said products, at such times, but 10 per cent trade discount and 5 per cent cash discount, even though they may have purchased said products in 10-gross lots or over at a single purchase.

From January 1, 1920, until June 1, 1920, there was in force and effect no other price list of said respondent for its products, applying to its customers classified and designated by it as "wholesalers."

(c) Respondent herein issued and circulated its price list of its said products, dated June 1, 1920, and designated by it "Scale of Prices," wherein it announced that shipments direct from the factory must amount to $1\frac{1}{2}$ gross, and that orders for less than the above-stated minimum would be supplied only through the "jobber" at his regular prices and terms, and that its terms were trade discount of 10 per cent from list prices as applied to all orders for $1\frac{1}{2}$ gross or more, and a cash discount of 5 per cent within 10 days from date of invoice, or 30 days net, freight prepaid, no cartage. In said last-mentioned "Scale of Prices" respondent designated its list prices as follows:

Shaving Cream.....	\$4.00 per dozen;
Kora Konia.....	4.00 per dozen;
Tar Shaving Cream.....	3.25 per dozen;
Cream Dentifrice.....	3.25 per dozen;
Borated Soap.....	2.25 per dozen;
Liquid Corn Plaster.....	2.25 per dozen;
Cold Cream in tubes.....	2.25 per dozen;
"Borated".....	2.25 per dozen;
Violet.....	2.25 per dozen;
Flesh Tint.....	2.25 per dozen;
Cream Tint.....	2.25 per dozen;
Talcum for men.....	2.25 per dozen.

Respondent applied its discounts above mentioned in said "Scale of Prices" to its said list prices, and set forth the result in parallel columns in said "Scale of Prices." Immediately following, on or about June 1, 1920, and until October, 1920, respondent sold its said products to its said customers classified and designated by it as "retailers," at the prices and discounts, and upon the terms set forth in said last-mentioned "Scale of Prices," and said retailers were given by respondent at such times no lower prices and no greater

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discounts upon its said products than the discounts designated in said "Scale of Prices," dated June 1, 1920, even though they did or may purchase its products in quantities greater than 10 gross at a single purchase.

(p) Respondent issued and circulated its price list of its said products, dated June 1, 1920, designated by it, "Price List for Service Wholesalers," wherein it announced that shipments must amount to a minimum of $1\frac{1}{2}$ gross, and that its terms were, on $1\frac{1}{2}$ gross to 10 gross, list price less 10 per cent trade discount and cash discount of 5 per cent for payment within 10 days, or 30 days net, and upon purchases of 10 gross or over, list price less 10 per cent and 5 per cent trade discount, cash discount of 3 per cent for payment within 10 days from date of invoice, freight prepaid, no cartage. In said "Price List for Service Wholesalers," respondent announced its list prices as follows:

LIST PRICE:

1. Shaving Cream, large size-----	\$4. 00 per dozen;
Kora Konla-----	4. 00 per dozen;
Tar Shampooing Cream-----	3. 25 per dozen;
Cream Dentifrice-----	3. 25 per dozen;
Borated Soap-----	2. 25 per dozen;
Liquid Corn Plasters-----	2. 25 per dozen;
Cold Cream in tubes-----	2. 25 per dozen;
Borated-----	2. 25 per dozen;
Violet-----	2. 25 per dozen;
Flesh Tint-----	2. 25 per dozen;
Cream Tint-----	2. 25 per dozen;
Talcum for men-----	2. 25 per dozen.

At the time immediately following on or about June 1, 1920, and until on or about June 1, 1921, the period in which said price list for "Service Wholesalers" was in force and effect, said respondent sold its said products to its customers classified and designated by it as "jobbers" or "wholesalers," at the prices and upon the terms set forth in said "Price List for Service Wholesalers," and at said times no other price list applying to said customers classified and designated by it as "jobbers" and "wholesalers" was in force or effect.

(q) Respondent issued and circulated a price list of its said products, dated October 1, 1920, and designated by it "Scale of Prices," wherein it announced that shipments from the factory must amount to $1\frac{1}{2}$ gross and that orders for less than $1\frac{1}{2}$ gross minimum would be supplied only through the jobber at his regular price and terms, and that its terms were trade discount of 10 per cent from list applied to all orders of $1\frac{1}{2}$ gross or more, 5 per cent cash discount within 10 days from the date of invoice, 30 days net, freight prepaid,

no cartage. In its said "Scale of Prices," dated October 1, 1920, respondent set forth list prices for its products as follows:

1. Shaving Cream, large size only-----	\$4. 00 per dozen;
Kora Konla -----	4. 00 per dozen;
Tar Shampooing Cream-----	3. 25 per dozen;
Cream Dentifrice -----	3. 25 per dozen;
Borated Soap-----	2. 25 per dozen;
Liquid Corn Plaster-----	2. 25 per dozen;
Cold Cream in tubes-----	2. 25 per dozen;
Borated-----	2. 25 per dozen;
Violet-----	2. 25 per dozen;
Flesh Tint-----	2. 25 per dozen;
Cream Tint-----	2. 25 per dozen;
Talcum for men-----	2. 25 per dozen.

Respondent applied its discounts above-named in said last-mentioned list to its list prices therein, and set forth therein the results in parallel columns. At the time immediately following October 1, 1920, and during such times as said last-mentioned "Scale of Prices" was in force and effect, being October 1, 1920, to January 3, 1921, respondent sold its said products to its customers classified and designated by it as "retailers" at the prices and discounts, and upon the terms set forth in said "Scale of Prices" dated October 1, 1920, and said "retailers" were given by respondent at such times no lower prices and no greater discounts upon its said products than the prices and discounts named in said last-mentioned "Scale of Prices," even in cases where they might or did purchase said products in quantities of 10 gross or over at a single purchase. From October 1, 1920, until January 3, 1921, no other price list of respondent for its products applying to its customers classified and designated by it as "retailers" was in force and effect.

(r) Respondent herein issued and circulated its price list dated January 3, 1921, and designated by it, "Scale of Prices," wherein it announced that shipments direct from the factory must amount to $1\frac{1}{2}$ gross and orders for less than $1\frac{1}{2}$ gross would be supplied only through the jobber at his regular prices and terms, and that its terms were, trade discount of 10 per cent from list applied to all orders of $1\frac{1}{2}$ gross and over, 5 per cent cash discount within 10 days from date of invoice, or 30 days net, freight prepaid, no cartage. That said "Scale of Prices" dated January 3, 1921, set forth respondent's list prices for said products, as follows:

1. Mennen Shaving Cream-----	\$4.00 per dozen;
Mennen Kora Konla -----	4.00 per dozen;
Mennen Tar Shampooing Cream-----	4.00 per dozen;
2. Mennen Cream Dentifrice -----	3.25 per dozen;

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3. Mennen Borated Soap-----	\$2. 25 per dozen ;
Mennen Liquid Corn Plaster-----	2. 25 per dozen ;
Mennen Cold Cream in tubes-----	2. 25 per dozen ;
Mennen Borated Talcum-----	2. 25 per dozen ;
Mennen Violet Talcum-----	2. 25 per dozen ;
Mennen Flesh Tint Talcum-----	2. 25 per dozen ;
Mennen Cream Tint Talcum-----	2. 25 per dozen ;
Mennen Talcum for men-----	2. 25 per dozen.

Respondent applied its discounts above named in said last mentioned "Scale of Prices" to its said list prices, and set forth the results thereof in parallel columns therein.

At the times immediately following January 3, 1921, and during the time that said "Scale of Prices" dated January 3, 1921, was in force and effect, being from about January 3, 1921, until about June 1, 1921, said respondent sold its customers classified and designated by it as "retailers" its said products at the prices and discounts and upon the terms named in said "Scale of Prices" dated January 3, 1921. The said "retailers" were given by respondent at such times no lower prices and no greater discounts upon its said products than the prices and discounts named in said last mentioned "Scale of Prices," even though they did purchase said products in quantities of 10 gross and over. Between January 3, 1921, and June 1, 1921, no other price list of said respondent for its said products relating to its customers classified and designated by it as "retailers" was in force and effect.

(s) Respondent herein issued and circulated its price list for its products, dated June 1, 1921, and designated by it, "Scale of Prices," wherein it announced that shipments from the factory must amount to 1½ gross, and that orders for less than 1½ gross minimum would be supplied only through the jobber at his regular prices and terms, and that its terms were, trade discount of 10 per cent from list prices applied to all orders of 1½ gross and more, and 5 per cent cash discount within 10 days from date of invoice, or 30 days net, freight prepaid, no cartage.

In said "Scale of Prices," dated January 1, 1921, respondent set forth list prices for its products as follows:

1. Mennen Shaving Cream-----	\$4. 00 per dozen ;
Mennen Tar Shampooing Cream-----	4. 00 per dozen ;
2. Mennen Cream Dentifrice-----	3. 25 per dozen ;
Mennen Kora Konia-----	3. 25 per dozen ;
3. Mennen Borated Soap-----	2. 25 per dozen ;
Mennen Liquid Corn Plaster-----	2. 25 per dozen ;
Mennen Cold Cream in tubes-----	2. 25 per dozen ;
Mennen Borated Talcum-----	2. 25 per dozen ;
Mennen Violet Talcum-----	2. 25 per dozen ;
Mennen Flesh Tint-----	2. 25 per dozen ;
Mennen Cream Tint-----	2. 25 per dozen ;
Mennen Talcum for men-----	2. 25 per dozen.

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Respondent applied its discounts above named in said last mentioned "Scale of Prices" to its said list prices, and set forth the results thereof in parallel columns therein.

At the times immediately following June 1, 1921, and during such times as said last mentioned "Scale of Prices" was in force and effect, being at least until September 14, 1921, the date of the commencement of the formal hearing in this proceeding, respondent sold to its customers classified and designated by it as "retailers" its said products, at the prices and discounts, and upon the terms set forth in said last mentioned "Scale of Prices," and said "retailers" were given by respondent no lower price and no higher discounts in the purchase of its goods than the prices and discounts set forth therein, even though they did purchase or may purchase said products in 10 gross lots or more.

Between June 1, 1921, and September 14, 1921, no other price list of said respondent for its said products was in force and effect applying to its customers classified and designated by it as "retailers."

(t) Respondent herein issued and circulated its price list of its said products dated June 1, 1921, designated by it "Price List for Service Wholesalers," wherein it announced that shipments must amount to a minimum of $1\frac{1}{2}$ gross, and that its terms for $1\frac{1}{2}$ to 10 gross were, list price less 10 per cent trade discount, cash discount 5 per cent for payment within 10 days from date of invoice or 30 days net; for 10 gross and over, list price less 10 per cent and 5 per cent trade discount, cash discount 3 per cent for payment within 10 days from date of invoice, or 30 days net, freight prepaid, no cartage. In said last-mentioned "Price List for Service Wholesalers" respondent set forth its list prices for its said products as follows:

1. Shaving Cream, large size only.....	\$4.00 per dozen;
Kora Konia.....	4.00 per dozen;
2. Tar Shaving Cream.....	3.25 per dozen;
Cream Dentifrice.....	3.25 per dozen;
3. Borated Soap.....	2.25 per dozen;
Liquid Corn Plaster.....	2.25 per dozen;
Cold Cream in tubes.....	2.25 per dozen;
Borated.....	2.25 per dozen;
Violet.....	2.25 per dozen;
Flesh Tint.....	2.25 per dozen;
Cream Tint.....	2.25 per dozen;
Talcum for men.....	2.25 per dozen.

At times immediately following June 21, 1921, and at such times as said last named "Price List for Service Wholesalers" was in force and effect, being from June 1, 1921, at least to September 14, 1921, the time of commencing formal hearings in this proceeding, said respondent sold to its customers by it classified and designated

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as "jobbers" or "wholesalers," said products, at the prices and upon the term set forth in said "Price List for Service Wholesalers" dated June 1, 1921.

Between June 1, 1921, and September 14, 1921, no other price list of respondent for its said products, applying to its customers classified and designated by it as "wholesalers," was in force and effect.

(u) *Summaries:*

At all times since January 1, 1920, said respondent has given its customers classified and designated by it as "jobbers" or "wholesalers," when selling in quantities of 10 gross or more, a trade discount of 10 per cent and 5 per cent from its list prices, and a cash discount of 3 per cent, while to its customers classified and designated by it as "retailers," when selling to them in quantities of 10 gross or more, it has given a trade discount of 10 per cent from its list prices, and a cash discount of 5 per cent, list prices being identical in both instances, thus discriminating in price between its customers buying like quantities, of the same commodities.

That previous to January 1, 1920, and subsequent to January 1, 1917, similar price discriminations were made by respondent between said classes of customers in the sale of like quantities of the same commodities, such discrimination having varied in amounts at various times between said last two dates mentioned.

PAR. 4. The price lists issued by respondent for its said products, applying to its customers classified and designated by it as "jobbers" or "wholesalers," were usually distinctive in color, and it was the practice of said respondent not to circulate said "Wholesalers Price List" among its customers classified and designated by it as "retailers," and as a consequence said "retailers" were at times, if not usually, in ignorance of the fact that such price lists had been issued or circulated, or that any other class of customers were being sold respondent's products by respondent at a lower price or at higher discounts from list than was being received by said retailers upon the same quantities of the same commodities.

PAR. 5. (a) Respondent has placed in the class designated by it as "retailers," cooperative and mutual corporations organized as corporate entities, buying from the manufacturers or importers in wholesale quantities, maintaining stocks of products of manufacturers and distributing said products in wholesale quantities to retail dealers in such products, and selling none of such products at retail or to ultimate consumers.

(b) That the distributors of respondent's products classified or designated by it as "jobbers" or "wholesalers" have no activity in common relevant to their classification as "retailers" [jobbers] or

"wholesalers," in the ordinary acceptance of the terms, except in purchasing products in wholesale quantities from importers or manufacturers and distributing in wholesale quantities to dealers, and that many cooperative and mutual corporations classified and designated by respondent as "retailers" are also engaged in purchasing products in wholesale quantities from importers and manufacturers, and in distributing such products in wholesale quantities to dealers.

(c) That respondent classified and designated as "retailers," and thus cut off their receiving its lowest prices or largest discounts in the purchase of its products in wholesale quantities, among others, the following corporations, as a rule cooperative in form, and functioning as distributors at wholesale:

Washington Wholesale Drug Exchange, Washington, D. C.,
June 8, 1917.

Philadelphia Wholesale Drug Company, Philadelphia, Pa., June
8, 1917.

Northwestern Drug Company, Minneapolis, Minn., June 8, 1917.

American Wholesale Drug Company, Denver, Colo.

Mutual Drug Company, Cleveland, Ohio, June 8, 1917.

Hoosier Drug Company, Indianapolis, Ind., June 8, 1917.

Jefferson Drug Company, Beaumont, Tex., February 7, 1920.

Marshall Drug Company, Cleveland, Ohio, June 8, 1917.

Elliott Drug Company, Buffalo, N. Y., June 8, 1917.

St. Louis Wholesale Drug Company, St. Louis, Mo.

(d) At least 53 concerns, many of them corporations cooperative or mutual in form and functioning as distributors at wholesale, were so classified and cut off by respondent from its best prices and discounts, when purchasing the same quantities of the same commodities as other buyers to whom such best prices and discounts were allowed.

(e) That in each and every case the corporation thus classified was in active competition in the sale of respondent's products with concerns classified and designated by respondent as "jobbers" and "wholesalers," which were given lower prices and better discounts by respondent in the purchase of the same quantities of the same commodities.

PAR. 6. That such classification of its customers into "jobbers," "wholesalers" and "retailers," so designated by it, so far as it relates to corporations mutual or cooperative in form of organization, whose capital stock is held by retailers in the same line of trade, which said corporations function as wholesale distributors, is used by respondent as a basis for denying to such corporations the prices and terms in the purchase of said products of said respondent accorded to other concerns likewise functioning as wholesale distributors, but classified and designated by respondent as "jobbers" or "wholesalers."

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PAR. 7. That discrimination in price by respondent in the sale of its said products, as more fully set forth in paragraph 3 hereof, between its customers classified and designated by it as "jobbers" or "wholesalers" and its customers classified and designated by it as "retailers" so far as it relates to corporations mutual or cooperative in form of organization, functioning as distributors at wholesale, is practiced by respondent for the purpose of placing such corporations at a competitive disadvantage as compared with the respondent and with the other concerns classified and designated by it as "jobbers" or "wholesalers," and is used and has been used as an instrument to "break up" such corporations, cooperative or mutual in form of organization and functioning as distributors at wholesale. That such policy was adopted after protests were made individually and at conventions of the National Wholesale Druggists' Association against respondent's policy practiced prior to January 1, 1917; that said policy was discussed by respondent with said "wholesalers" and approved by them, and that said policy consisted essentially in discriminating against said corporations, cooperative or mutual in form of organization, and functioning as distributors, at wholesale as compared with "jobbers" or "wholesalers" so classified and designated by respondent. That said policy of discrimination so practiced by respondent against said corporations cooperative in form and functioning as wholesalers, in favor of "jobbers" or "wholesalers" so designated by respondent, served as a basis for an understanding between said latter class and respondent herein, that said "jobbers" and "wholesalers" should push the sale of said respondent's products more vigorously than the sale of products of other manufacturers, refusing so to discriminate against such cooperative corporations and in favor of said "jobbers" or "wholesalers" so designated by respondent.

That in each section or territory where respondent, in the sale of its products, practiced or does practice discrimination in discounts, and therefore in prices, as hereinbefore set forth especially in paragraph 3 herein, such discrimination has a dangerous tendency unduly to hinder competition between the wholesale distributors of respondent's products in interstate commerce, and likewise retail distributors in the same line of commerce.

PAR. 8. That an overwhelming majority of manufacturers marketing drugs and kindred products sell to cooperative or mutual corporations engaged in selling exclusively to the retail trade at the same prices and upon the same terms as to other concerns engaged in selling exclusively to the retail trade. In the entire drug and sundry trade in the United States less than six manufacturers discriminate

in price, quantity and quality being the same, in favor of the class of purchasers designated by respondent as "jobbers," as against cooperative or mutual corporations engaged in selling exclusively at wholesale to the retail trade.

PAR. 9. That in the sale of its said products as wholesaler direct to retailers, in quantities of $1\frac{1}{2}$ gross or more, respondent is in direct competition in interstate commerce with wholesalers engaged in selling said products to retailers. Retailers who purchase respondent's products direct from respondent, in quantities of $1\frac{1}{2}$ gross or over, are given the same trade discounts and cash discounts, namely, 10 per cent trade and 5 per cent cash, that are given to cooperative or mutual corporations engaged in selling exclusively at wholesale to retailers. Respondent has used the situation thus created to take away from said cooperative or mutual corporations their retail customers for the products of respondent, or lessen the volume of such trade.

PAR. 10. That the policy of respondent in discriminating in price between purchasers selling at wholesale, as hereinbefore set forth, now has, and has had the tendency to cause the retail customers of such cooperative or mutual wholesalers to withdraw their custom or patronage from said cooperative or mutual wholesalers and to give their custom or patronage to respondent directly, or to other wholesalers, competitors of said cooperative or mutual wholesalers and who receive the benefit of this discrimination in price.

PAR. 11. (a) That competition on the part of corporations cooperative or mutual in form and functioning as distributors at wholesale, but classified and designated by respondent as "retailers," with concerns classified and designated by respondent as "jobbers" or "wholesalers" has arisen largely within the 15 years last past.

(b) Such cooperative corporations originated in an effort upon the part of small retailers to find some means of purchasing products at prices which would enable them to meet the competition of larger retail dealers which were able to purchase from manufacturers and wholesale distributors in larger quantities and at lower prices than said small retail competitors. Said cooperative corporations met the situation by offering retail customers wholesale distributing service at cost, and also offering to cut such cost to a minimum. Such costs were reduced:

- (1) By keeping in touch through membership or a permanent sales arrangement with customers, and thus eliminating the necessity and expense, to a large extent, of employing traveling salesmen making repeated personal solicitation for sale of goods.

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- (2) By substituting for personal solicitation solicitation over the telephone or by circular or catalogue.
 - (3) By securing quick turnovers (from 5 to 20 times per year) and thus avoiding the necessity of larger capitalization or of carrying large stocks, thus cutting down overhead expenses.
 - (4) By doing business upon a cash basis or upon short credit terms, thus eliminating bad debts and reducing the expenses of financing.
 - (5) By having few salaried officers.
- (c) Such service at cost was realized in practice by such cooperative associations, in some cases, by:
- (1) Giving customers cost prices, thus passing on to them, immediately, all lower prices or better discounts secured from producers, importers or manufacturers; or,
 - (2) Giving customers some species of dividend or profit of participation at the end of fixed periods.
- (d) Such corporations, cooperative in form of organization and functioning as distributors at wholesale but classified and designated by respondent herein as "retailers," in several instances, in addition to sales methods outlined above in this paragraph, have employed a limited number of traveling salesmen who personally solicit customers in the sale of goods distributed by such corporations.
- (e) Jobbers or wholesalers so classified and designated by respondent herein, generally demand of retailers and manufacturers a profit for wholesale distribution service in addition to the actual cost of such service. For a large group of such "jobbers" or "wholesalers" reporting to the National Wholesale Druggists' Association in 1919, the cost of their said distributing service was announced through said association as 12.75 per cent, reckoned in percentages on sales price and the cost of such service for a representative of said group in 1920 was 12.71 per cent, reckoned in percentages upon sales prices, 8 per cent of which was administrative and general, which includes everything not specifically named; 3.7 per cent of sales, salesmen, and delivery expenses; 55 per cent bad debts and other small items.
- "Jobbers" so classified and designated by respondent herein, as a rule carry larger stocks in proportion to their annual sales, employ a greater number of traveling salesmen and extend credit for longer terms than corporations cooperative and mutual in form and functioning as distributors at wholesale, but classified and designated by respondent as "retailers." Some "jobbers" or "wholesalers," however, so classified and designated, by respondent, and receiving its

lowest prices and highest discounts in the sale of its said goods, do not employ traveling salesmen, nor issue catalogues, nor perform many other services rendered to purchasers by many cooperative or mutual corporations engaged in selling at wholesale.

(f) Growth of such cooperative corporations has been very rapid, both in number and in volume of business, so that at the present time they distribute at wholesale a substantial percentage of all the products manufactured in the United States in the drug and kindred lines, have millions of aggregate capital and carry stocks of goods worth millions in the aggregate. The aggregate gross sales for the year 1920, for 12 cooperative or mutual corporations engaged in selling exclusively at wholesale to the retail trade, totaled \$22,890,282.31.

(g) The great bulk of such distributing trade, however, is still in the hands of "jobbers" or "wholesalers," so classified and designated herein, such customers of respondent having numbered about 275, as compared with about 50 or less of the cooperative corporations. In one locality, at least, such a cooperative corporation is a dominant factor in the wholesale distributing trade in the field of drugs and kindred products.

PAR. 12. That the policy of respondent herein, of discriminating against corporations cooperative in form and functioning as distributors at wholesale, but classified by it as "retailers," has tended to and now tends to hinder and lessen competition between such distributors, and to drive from the field of distribution at wholesale such corporations, cooperative or mutual in form, and thus to close one channel of distribution at wholesale for such products, which channel of distribution is entitled to an unhindered opportunity to demonstrate its economic efficiency on equal terms with the previously existing methods or agencies of distribution.

PAR. 13. That respondent herein advertises its products nationally and extensively, and such products are in active demand by retailers who distribute that class of goods, so that it is practically necessary for all distributors at wholesale to handle such products in order to supply the wants of their customers, even though such products may be distributed at no profit, or at a loss, and for that reason the policy of respondent in discriminating in discounts, and therefore in prices, in favor of concerns classified and designated by it as "jobbers" or "wholesalers," and against corporations cooperative or mutual in form and functioning as distributors at wholesale and classified by respondent as "retailers," causes losses to the latter class and hinders its competitive effort to maintain itself on a basis of economic efficiency.

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PAR. 14. That respondent herein does a business in the manufacture and sale of its said products of about \$1,500,000 a year, and is in competition with many other manufacturers who make and sell similar product or products used for similar purposes—but one of the products of respondent, namely, Mennen Tar Shampooing Cream, is unique. That the products of respondent are of a uniform grade and quality, but one grade or quality of each item being sold or distributed.

PAR. 15. That respondent herein is not confined, in the distribution of its products at wholesale or at retail, to drug dealers or drug stores, but distributes its products through general stores, department stores, grocery stores, hardware stores, etc.

PAR. 16. That the varying discount rates given by respondent herein in the sale of its said products to its customers classified and designated by it as “retailers,” as compared with the class of its customers classified and designated by it as “jobbers” or “wholesalers,” as hereinbefore set forth more especially in paragraph 3 hereof, are discriminations in price between purchasers of respondent's commodities, for their use, consumption and resale within the United States and in the District of Columbia, the effect of which may be to substantially lessen competition in the sale and distribution of respondent's products, or between distributors thereof.

PAR. 17. (a) That said discrimination in price by respondent in the sale of its products between classes of its customers hereinabove set forth more especially in paragraph 3 hereof, is not on account of differences in grade, quality or quantity of the commodity sold; nor such as to only make due allowance for difference in cost of selling or transportation; nor is it made in good faith to meet competition; nor is it a selection of customers in bona fide transactions not in restraint of trade.

(b) All products sold by respondent are of the same grade or quality, and respondent pays transportation on all products sold to all customers, and does not vary its prices with localities. There is no evidence in this proceeding that it has cost respondent more to sell the class of purchasers from which it has exacted higher prices than it cost to sell to the class which it has given greater discounts and hence, lower prices; no competition has been shown or indicated compelling or tending to compel respondent to make such discrimination, since the great mass of its competitors do not so discriminate; nor has respondent selected its customers, or refused to sell, but has made sales of its products at varying, discriminating prices and discounts.

CONCLUSION.

1. That the practices of said respondent, as hereinbefore set forth and recited, in the circumstances and under the conditions as hereinbefore set forth, are unfair methods of competition in interstate commerce, and constitute a violation of the act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

2. That the practices of said respondent as hereinbefore set forth and recited, in the circumstances and under the conditions hereinbefore set forth, are in violation of Section 2 of the Act of Congress entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the amended answer of the respondent, the testimony and evidence and the argument of counsel, and the Commission having made its findings as to the facts, with its conclusion that the respondent has violated the provisions of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and also the provisions of the Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes":

It is now ordered, That the respondent, The Mennen Company, its officers and agents and employees do cease and desist from discriminating in net selling prices, by any method or device, between purchasers of the same grade, quality and quantity of commodities, upon the basis of a classification of its customers as "jobbers," "wholesalers," or "retailers," or any similar classification which relates to the customers' form of organization, business policy, business methods, or to the business of the customers' membership or shareholders, in any transaction in, or directly affecting interstate commerce, in the distribution of its products:

Provided, That nothing herein contained shall prevent discrimination in prices between purchasers of commodities on account of differences in grade, quality or quantity of the commodity sold, or that makes only due allowance for differences in the cost of sale or transportation, or discrimination in prices in the same or different communities made in good faith to meet competition, or the selection of customers in good faith and not in restraint of trade.

Order.

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And it is further ordered, That respondent, The Mennen Company, shall file with the Commission, within ninety (90) days from the date of this order, its report in writing, stating in detail the manner and form in which this order has been conformed to, and shall attach to such report true copies of all classified lists of customers, price lists, circulars and catalogues, advertisements and other printed matter in which are set forth the classifications of its said customers and trade discounts, cash discounts or prices of its products offered or given by respondent to the purchasers of said products.

HALL-MARVIN CO. ET AL.

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Complaint.

FEDERAL TRADE COMMISSION

v.

HALL-MARVIN COMPANY AND THE REYNOLDS-THOMP-
SON CORPORATION.