

IN THE MATTER OF
UNITED STATES RUBBER CO.

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

Docket 4972. Complaint, May 28, 1943—Decision, June 30, 1950

Where the largest single manufacturer of waterproof rubber footwear and, prior to its discontinuance of said line in 1942, of canvas footwear, in the United States, engaged in the interstate sale and distribution of such products to jobbers or wholesalers, national and regional and local retail chain store organizations, mail order houses and single retail store customers, selling its first grade products under its advertised and unadvertised brands through its numerous branch warehouses and sales agencies to single retail stores and local chains, and also under customers' private labels or special brands to mail order houses and national and regional chain stores;

In selling to retailers, many of which were engaged in competition with one another and with customers of its competitors in different trade areas, its said products of first grade and quality—other than its "U. S." and "U. S. Specialties Line" of waterproof footwear and its "Kedettes" and "Kedsman" canvas footwear, which it sold to all customers at uniform prices—under a discount schedule under which its advertised and nonadvertised brands were sold to retailers through its branch store system at list prices or at one of several discounts which ranged from 3 to 13 percent and 5 percent off list, depending upon the method and conditions of sale in each separate transaction, and under which its private brand footwear was sold to national stores and mail order houses at prices equivalent to 18 percent off list—

Discriminated in price through certain price differences thus brought about in the sale of its advertised and unadvertised brands of footwear to retailers under said branch store system, which exceeded differences in cost of manufacture, sale, and delivery by amounts ranging from \$0.0047 to \$0.0480 per dollar of gross sales in the case of certain of said discounts;

Effect of which discriminations in price had been or might be substantially to lessen competition in the line of commerce in which said corporation and its competitors were engaged and to injure, destroy, or prevent competition in the sale and distribution of rubber and canvas footwear between its purchasers who received the benefits of such discriminations and competing purchasers who did not;

Held, That such acts and practices under the circumstances set forth, were violative of subsection (a) of the Clayton Act as amended.

In said proceeding in which exhaustive cost studies disclosed that certain of respondent's price differences, including those between the prices on private brand footwear sold to national chains and mail order houses, and the prices on advertised and unadvertised brands sold to other retailers through its

Complaint

branch store systems, were justified by differences in cost of manufacture, sale, and delivery, and that certain of the other price differences were not so justified in that they exceeded the differences in the cost of manufacture, sale, and delivery by amounts ranging from \$0.0064, \$0.0047, and \$0.0092, per dollar of gross sales, up to amounts ranging from \$0.0424 to \$0.0480; the Commission was of the opinion that such unjustified price differences as those first set forth, which were less than 1 cent per dollar of gross sales, were de minimis and would not warrant the issuance of an order were it not for the other substantial amounts by which the differences in costs failed to justify the differences in prices.

In said proceeding in which respondent, in selling its unadvertised second grade and quality footwear, both rubber and canvas, effected a discount to chain stores and mail order houses of approximately 15 percent from the gross price by way of net prices which reflected such a discount on said products of like grade and quality, no cost studies or order were made with respect thereto, it appearing that production and sale of said products were discontinued in December 1941.

Before *Mr. Earl J. Kolb*, trial examiner.

Mr. James I. Rooney and *Mr. James S. Kelaher* for the Commission.
Arthur, Dry & Dole, of New York City, for respondent.

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, since June 19, 1936, has violated and is now violating the provisions of subsection (a) of section 2 of the Clayton Act (U. S. C. A. title 15, sec. 13), as amended by the Robinson-Patman Act approved June 19, 1936, hereby issues its complaint against the said respondent, stating its charges as follows:

PARAGRAPH 1. Respondent, United States Rubber Co., is a Delaware corporation with its principal office and place of business located at 1790 Broadway, New York City.

PAR. 2. Respondent is now and has been for many years last past engaged in the manufacture, sale, and distribution of numerous rubber products, including rubber and canvas footwear. Respondent through its wholly owned subsidiary, United States Rubber Products, Inc., and since said subsidiary's dissolution on January 1, 1939, through its Rubber Footwear Division, is now and has been since June 19, 1936, engaged in the business of manufacturing, selling and distributing rubber and canvas footwear which it sells to jobbers or wholesalers, national retail chain organizations, mail-order houses, and other retail customers. Respondent has annual dollar sales of rubber and canvas footwear of approximately \$20,000,000 and it is the

Complaint

46 F. T. C.

largest single factor in the rubber and canvas footwear industry. Respondent has factories located at Naugatuck, Conn., and Mishawaka, Ind., and maintains branches and warehouses functioning as sales agencies in 24 of the principal cities throughout the various States of the United States.

Respondent causes said rubber and canvas footwear, when sold, to be transported from the place of manufacture within said States of Connecticut and Indiana to the purchasers thereof located in States other than the States of Connecticut and Indiana, and there is and has been at all times herein mentioned a continuous current of trade and commerce in said products across State lines between respondent's factories or warehouses and the purchasers of such products. Said products are sold and distributed for use, consumption, and resale within the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid, respondent is now and during the time herein mentioned has been, in substantial competition with other corporations engaged in the business of manufacturing and selling rubber and canvas footwear in commerce between and among the various States of the United States and in the District of Columbia.

Many of respondent's retail customers are competitively engaged with each other and with the customers of the respondent's competitors in the resale of said products within the several trade areas in which the respondent's said customers respectively offer for sale and sell the said products purchased from respondent.

Respondent's first grade rubber footwear is made up of six nationally advertised brands: "United States Rubber Co.," "United States Royal," "Goodyear," "Goodyear Glove," and "Topnotch," all manufactured at its Naugatuck factory, its "Ball" brand, manufactured at its Mishawaka factory, and is unadvertised "Titan" and "American" brands and private brands or special specification products privately branded or carrying no brand, all manufactured in its Naugatuck factory. Respondent's nationally advertised brands are sold principally to small retailers, although some of said brands are sold by its branches to department stores and small local chains designated by it as large retailers. Respondent's "Titan" and "American" brands and private brands or special specification products are sold exclusively to large retail chains and mail-order houses. All of said first grade rubber footwear of respondent, regardless of the various brand names as above described, are of like grade and quality. Department stores and small local chain customers of respondent designated by it as large retailers and mail-order houses and large chain customers desig-

nated by it as national accounts which purchase rubber footwear of respondent under the "Titan" or "American" brands or private brands or no brands resell such products in many parts of the United States in competition with other retail customers of respondent selling respondent's regular advertised brands. Such unadvertised brands or private brands or special specification products are of like grade and quality to respondent's nationally advertised brands above described, which latter products are sold by respondent's small retail customers in competition with said unadvertised brands or private brands or special specification products.

Respondent's second-grade rubber footwear is made up of its "Dry Shod" and "Woonsocket" brands sold principally to small retailers and its "Acme" brand sold principally to large retailers or national accounts. Such second-grade rubber footwear regardless of the brand name under which same is sold and regardless of the class or type of retailer to whom such products are sold is of like grade and quality and the various classes or respondent's customer purchasers resell said products in competition with each other in many parts of the United States.

Respondent's first-grade canvas footwear is made up of its "Kedettes" brand, "United States Sport Shoes" brand, both of which are sold principally to small retailers, "Grips" and "Keds" brands sold both to small retailers and to department stores and small chain organizations designated by respondent as large retailers, and private brands or special specification products sold to large chain organizations and mail-order houses designated by respondent as national accounts. Such first-grade canvas footwear regardless of the brand name under which same is sold and regardless of the class or type of retailer to whom such products are sold, is of like grade and quality and the various classes of respondent's customers purchasers resell said products in competition with each other in various parts of the United States.

Respondent's second-grade canvas footwear is made up of its "Sprinter's" brand sold principally to small retailers and to department stores and small chain organizations designated by it as large retailers, and its "Crusader" brand sold both to small and large retailers and to national accounts. Such second-grade canvas footwear regardless of the brand name under which same is sold and regardless of the class or type of retailer to whom such products are sold, is of like grade and quality and the various classes of respondent's customer purchasers resell said product in competition with each other in various parts of the United States.

Complaint

46 F. T. C.

PAR. 4. Respondent in the course and conduct of its business as hereinbefore set forth has been since June 19, 1936, and now is, discriminating in price between different purchasers of its rubber and canvas footwear of like grade and quality by selling said products to some of its customers at higher prices than it sells such products of like grade and quality to other of its customers who are competitively engaged one with the other in the resale of said products within the United States.

PAR. 5. The discriminations in price referred to in paragraph 4 hereof have been effectuated through the use by respondent in its pricing plan of a schedule of discounts from list prices described in general terms as follows:

Discounts allowed small retailers by respondent on sales of its advertised brands of both first- and second-grade rubber and canvas footwear are:

	Branch sales and shipments (percent)	Branch sales shipped by factory	
		Stock (percent)	Makeup (percent)
On single shipments of—			
(1) Less than 144 pairs.....	None	None	None
(2) 144-479 pairs.....	3	3	3
(3) 480 pairs or more.....	3	3	5

Thus a differential of 3 percent is allowed on single shipments in excess of 144 pairs packed in standard case lots and an extra 5 percent differential for makeup orders if shipped in lots of 480 pairs or more. "Makeup" orders are those placed far enough in advance to allow for orderly manufacture and shipment from factory to customer.

Discounts allowed department stores and local chain organizations designated as large retailers for the same advertised brands of first-grade rubber and canvas footwear are—

	Branch sales and shipments—stock (percent)	Branch sales shipped by factory		Factory sales and shipments	
		Stock (percent)	Makeup (percent)	Stock (percent)	Makeup (percent)
On single shipments of—					
(1) Less than 144 pairs.....	0	0	0	0	0
(2) 144-479 pairs.....	3	3	3	3	3
(3) 480 pairs or more.....	3	3	13	3	13

To the extent, if any, that such large retailers purchase second-grade rubber and canvas footwear they are allowed by respondents the same discounts as allowed them on first-grade products.

Discounts allowed by respondents to its national accounts on its un-advertised brands and no brand and special specification rubber and canvas footwear, all of which are first-grade products of like grade and quality to its first-grade advertised brands, are—

	<i>Factory sales and shipments</i>	
	<i>Stock</i>	<i>Makeup</i>
	<i>(percent)</i>	<i>(percent)</i>
First-grade waterproof and canvas:		
On individual shipments in standard case lots of a		
kind, regardless of quantity, whether more or		
less than 144 pairs-----	18 and 5	18 and 5

Discounts allowed by respondent to its national accounts on its second-grade rubber and canvas footwear are—

	<i>Factory sales and shipments</i>	
	<i>Stock</i>	<i>Makeup</i>
	<i>(percent)</i>	<i>(percent)</i>
Second-grade waterproof and canvas footwear:		
On individual shipments in standard case lots of a kind,		
regardless of quantity, whether more or less than		
144 pairs-----	17.7	17.7

The discounts from list prices above described in general terms are more fully set forth in respondent's sales policies for the year 1937, which were published and circulated by respondent to its retail trade in various general letters under, among others, the following titles:

Water Proof Footwear—1937 Season.

Rubber Footwear—1937 Season (Woonsocket Brand).

Rubber Footwear—1937 Season (Dry Shod Brand).

Revision—Keds Sales Policy.

Revision—Grips Sales Policy.

Crusaders—Revised Prices Quantity Discount.

Respondent's discounts to its national accounts, above described, were not circulated in the form of published sales policies.

The pricing policies of respondent as above described in general terms and as more particularly described in respondent's published sales policies above referred to, have been continued in force by respondent with minor variations to date and such discounts as therein described and/or as later modified constitute the means by which respondent has been and now is discriminating in price as alleged in paragraph 4 hereof.

The discounts above described do not include certain cash and early order discounts likewise allowed by respondent but said discounts are in addition thereto.

PAR. 6. The effect of such discrimination in price as set forth in paragraphs 4 and 5 hereof has been or may be substantially to lessen

Findings

46 F. T. C.

competition in the line of commerce in which respondent and its competitors are engaged and may be to injure, destroy, or prevent competition in the sale and distribution of rubber and canvas footwear between those of respondent's purchasers who receive the benefits of such discriminations and competing purchasers who do not receive the same benefits.

PAR. 7. The foregoing alleged acts and practices of said respondent as set forth herein constitute violations of the provisions of section 2 (a) of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., title 15, sec. 13).

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 the act of Congress approved June 19, 1936 (the Robinson-Patman Act), and by virtue of the authority vested in the Federal Trade Commission by the aforesaid act, the Federal Trade Commission, on May 28, 1943, issued and subsequently served its complaint in this proceeding on respondent, United States Rubber Company, a corporation, charging it with violation of subsection (a) of section 2 of said Clayton Act as amended. After the issuance of the complaint and the filing of respondent's answer thereto, a stipulation as to the facts, dated July 30, 1945, was entered into by and between W. T. Kelley, Chief Counsel for the Federal Trade Commission, and respondent, which provided, among other things, that subject to the approval of the Federal Trade Commission the statement of facts contained therein may be taken as the facts in this proceeding and in lieu of all testimony in support of and in opposition to the charges stated in the complaint and that the Commission may proceed upon such statement of facts to make its findings as to the facts (including inferences which may be drawn from said statement of facts) based thereon and enter its order disposing of this proceeding without the presentation of argument or the filing of briefs. Said stipulation as to the facts was subsequently modified by supplemental stipulations as to the facts dated March 1, 1947, and January 14, 1949, entered into by and between Everette MacIntyre, Chief, Division of Antimonopoly Trials, of the Federal Trade Commission, and respondent, which stipulations provided among other things that subject to the approval of the Federal Trade Commission the respective parties might adduce certain additional evidence, and a trial examiner was duly appointed

by the Commission for the purpose of receiving such additional evidence. Thereafter, on January 31, 1949, an additional supplemental stipulation as to the facts was entered into by and between Everette MacIntyre and respondent, in which it was stipulated and agreed that, subject to the approval of the Federal Trade Commission, if certain witnesses were called to testify they would testify as set forth therein. Respondent expressly waived the filing of a recommended decision by the trial examiner. Briefs of counsel in support of and in opposition to the allegations of the complaint were filed, respondent having requested and obtained permission to file same.

Thereafter this proceeding came on for final consideration by the Commission on the complaint and answer, stipulations as to the facts (said stipulations having been approved by the Commission), and briefs of counsel; and the Commission, having duly considered the matter 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. Respondent United States Rubber Co. is a corporation organized and existing under and by virtue of the laws of the State of New Jersey with its principal office and place of business located at 1230 Sixth Avenue in the city of New York, State of New York.

PAR. 2. The respondent is now, and has been since June 19, 1936, engaged in the business of manufacturing, selling, and distributing rubber products, including waterproof rubber footwear. From June 19, 1936, to May 31, 1942, the respondent was also engaged in the business of manufacturing, selling and distributing canvas products, including canvas footwear.

The respondent, through its rubber footwear division, since June 19, 1936, has been selling and distributing the waterproof rubber footwear and, up to May 31, 1942, canvas footwear to jobbers or wholesalers, national and regional and local retail chain store organizations, mail order houses, and single retail store customers. The respondent, by volume of sales, is as to waterproof rubber footwear, and was, up to May 31, 1942, as to canvas footwear the largest single producer in the United States. It operates for the manufacture of waterproof rubber footwear, and operated up to May 31, 1942, for the manufacture of canvas footwear factories at Naugatuck, Conn., and Mishawaka, Ind. The respondent maintains and operates branch warehouses and sales agencies for the sale and distribution of waterproof

footwear in 18 of the principal cities located throughout the United States, and up to May 31, 1942, maintained and operated similar branch warehouses and sales agencies for the sale and distribution of canvas footwear.

Said respondent causes waterproof rubber footwear, and heretofore caused canvas footwear, when sold by it, to be transported from the place of manufacture within the said States of Connecticut and Indiana to purchasers thereof located in States other than the States of Connecticut and Indiana, and there is, and has been, at all times herein mentioned, a continuous current of trade and commerce in said products across State lines between respondent's factories or warehouses and the purchasers of such products. Said products were and are sold, respectively, for use, consumption and resale within the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of its business, as aforesaid, and during the time herein mentioned, the respondent was, and as to waterproof rubber footwear now is, in substantial competition with other corporations and firms engaged in the business of manufacturing and selling waterproof rubber footwear and canvas footwear in interstate commerce, and many of its retail customers are competitively engaged one with the other and with customers of the respondent's competitors in the resale of waterproof rubber footwear and heretofore were as to canvas footwear, within the several trading areas in which respondent's said customers respectively offer or offered for sale and sell or sold waterproof rubber footwear and canvas footwear purchased from the respondent.

Since June 19, 1936, respondent has sold in interstate commerce first-grade waterproof rubber footwear and has advertised the same under the following brand names: "U. S.," "Goodyear Glove," "Beacon Falls Topnotch" and "Ball Band." Said respondent has sold waterproof rubber footwear without advertising under the following brand names: "American" and "Titan." Said respondent has also engaged in the business of manufacturing waterproof rubber footwear for customers under such customers' private labels or special brands.

Such advertised brands and unadvertised brands of waterproof rubber footwear are generally sold by the respondent to single retail store customers and local retail chain store customers and such waterproof rubber footwear bearing the private or special brands of customers are sold by the respondent to mail order houses and national and regional retail chain store customers.

All of said first grade and quality waterproof rubber footwear, regardless of the various brand names, is of like grade and quality.

Single retail store, retail chain store and mail order house customers of respondent, who purchase waterproof rubber footwear from the respondent under the "Titan" or "American" brands or private brands resell such products in many parts of the United States in competition with other retail customers of respondent selling respondent's regular advertised brands. Such unadvertised brands, or private brands, are of like grade and quality to respondent's nationally advertised brands heretofore described, which latter products are sold by respondent's retail store customers in competition with said unadvertised brands or private brands.

Such waterproof footwear of first grade and quality bearing the brand "U. S." and sold as the "U. S. Specialties Line" of footwear is sold to all customers at uniform prices and is not subject to the discount schedule hereinafter set forth in the paragraph numbered 5.

From June 19, 1936, to December 18, 1941, respondent sold, in interstate commerce to retailers generally, articles known in the trade as waterproof rubber footwear of second grade and quality without advertising under the following brands, among others, namely: "Woonsocket" and "Dry Shod." Such second-grade waterproof rubber footwear, regardless of the brand name under which same was sold, and regardless of the class or type of retailer to whom such products were sold, was of like grade and quality and the various purchasers resold said products in competition with each other in many parts of the United States.

From June 19, 1936, to May 31, 1942, the respondent sold in interstate commerce articles known in the trade as canvas footwear of first grade and quality and advertised the same under the following brands, among others, namely: "Keds," "Kedettes," "Kedsman," "Ball Band," and "Grips." Respondent also sold canvas footwear without advertising under the following brand names from time to time, among others, namely: "Oneida," "American," and "Titan." Said respondent also sold such articles branded with private or special brands of its customers. Respondent's advertised and unadvertised brands of canvas footwear were sold to retailers generally, and the canvas footwear bearing private labels or special brands of customers were sold by the respondent to mail order houses and national and regional retail chain store customers.

Such canvas footwear of first grade and quality sold under the brand names of "Kedettes" and "Kedsman" were, during said period, sold to all customers at uniform prices and were not subject to the discount schedule hereinafter set forth in the paragraph numbered 5.

Such first-grade canvas footwear, regardless of the brand name under which same was sold, and regardless of the class or type of retailer to whom such products were sold, was of like grade and quality and the various classes of respondent's customer-purchasers resold said products in competition with each other in various parts of the United States.

From June 19, 1936, to December 18, 1941, respondent sold in interstate commerce articles known as canvas footwear of second grade and quality without advertising under the following brands from time to time, among others, namely: "Sturdy," "Leader" and "Sprinter." Such second grade and quality canvas footwear, regardless of the brand name under which same was sold, and regardless of the class or type of retailer to whom such products were sold, was of like grade and quality and the various classes of respondent's customer-purchasers resold said products in competition with each other in various parts of the United States.

PAR. 4. Respondent, in the course and conduct of its business, as hereinbefore set forth, has been, since June 19, 1936, and now is, discriminating in price between different retail purchasers of its first grade and quality waterproof rubber footwear of like grade and quality, other than the "U. S. Specialties Line," by selling said products to some of its customers at higher prices than it sells such products of like grade and quality to others of its customers who are competitively engaged one with the other in the resale of said products within the United States, and the same was the case from June 19, 1936, to May 31, 1942, as to its first grade and quality canvas footwear other than "Kedettes" and "Kedsman."

PAR. 5. The discriminations in price referred to in paragraph 4 hereof have been effectuated through the use by the respondent in its pricing plan of a schedule of discounts from list price described in general terms as follows: Discounts allowed retailers by respondent on sale of its first grade and quality waterproof rubber and canvas footwear are:

First grade and quality waterproof rubber footwear, other than the
"U. S. Specialties Line"

(1) List price on any order sold by the branches at any time during the year for any quantity in full or less than case lots for immediate delivery.

(2) Three percent on advertised brands for any order of less than 144 pairs or in any other quantities of less than case lots sold by the

branches during the period from January 1 to June 30, inclusive, for shipment April 1 to October 25 for payment December 1.

(3) Five percent on advertised brands for any order of 144 pairs or more but less than 480 pairs in case lots sold by the branches during the period from January 1 to June 30, inclusive, for shipment April 1 to October 25 with payment due December 1.

(4) Eight percent on advertised brands for any order of 480 pairs or more in case lots sold by the branches during the period from January 1 to June 30, inclusive, for shipment April 1 to October 25 with payment due December 1, or any order accepted during the balance of the year for 480 pairs or more in case lots (which are sufficiently large to permit individual manufacture), providing such order is placed sufficiently early to permit orderly manufacture and delivery.

(5) Thirteen percent on advertised brands for any order of 480 pairs or more sold by the branches to customers whose business is solicited and handled by the branch sales executives providing such order is placed sufficiently early to permit orderly manufacture and delivery.

(6) Thirteen and 5 percent on unadvertised brands for any order of 480 pairs or more sold by the branches to customers whose business is solicited and handled by the branch sales executives, providing such order is placed sufficiently early to permit orderly manufacture and delivery.

(7) Eighteen and 5 percent on any order accepted from national chain and mail order customers sold by the wholesale division located at the factory for private brand unadvertised footwear, by way of net prices which reflect 18-5 percent discount from the gross price.

First grade and quality canvas footwear other than "Kedettes" and "Kedsman"

(1) List price on any order sold by the branches at any time during the year for any quantity in full or less than case lots for immediate delivery.

(2) Three percent on advertised brands for any order of less than 144 pairs or in any other quantities of less than case lots sold by the branches during the period from August 1 to December 31, for shipment December 1 to April 25 with payment due June 1.

(3) Five percent on advertised brands for any order of 144 pairs or more, but less than 480 pairs, in case lots sold by the branches during the period from August 1 to December 31, inclusive, for shipment December 1 to April 25 with payment due June 1.

Findings

46 F. T. C.

(4) Eight percent on advertised brands for any order of 480 pairs or more, in case lots, sold by the branches during the period from August 1 to December 31, inclusive, for shipment from December 1 to April 25 with payment due June 1, or any order accepted during the balance of the year for 480 pairs or more in case lots (which are sufficiently large to permit individual manufacture) providing such order is placed sufficiently early to permit orderly manufacture and delivery.

(5) Thirteen percent on advertised brands for any order of 480 pairs or more sold by the branches to customers whose business is solicited and handled by the branch sales executives, providing such order is placed sufficiently early to permit orderly manufacture and delivery.

(6) Thirteen and 5 percent on unadvertised brands for any order of 480 pairs or more sold by the branches to customers whose business is solicited and handled by the branch sales executives, providing such order is placed sufficiently early to permit orderly manufacture and delivery.

(7) Eighteen and 5 percent on any order accepted from national chain and mail order customers sold by the wholesale division located at the factory for private brand unadvertised footwear by way of net prices which reflect an 18-5 percent discount from the gross price.

PAR. 6. The discounts above set forth do not include cash discounts allowed by respondent but said discounts are in addition to such cash discounts. The pricing policies of respondent as above described in general terms and as more particularly described in respondent's published sales policies have been continued in full force and effect by respondent as to its first grade and quality waterproof rubber footwear with minor variations to date, and as to its first grade and quality canvas footwear to May 31, 1942, and such discounts as herein described and as described in the published sales policies constitute the means by which respondent has been and is now discriminating in price as set forth in paragraph 4 hereof.

From August 1, 1939, to December 18, 1941, respondent effected a discount of approximately 15 percent from the gross price for second grade and quality private brand unadvertised canvas footwear to national and regional retail chain store and mail order house customers by way of net prices which reflected approximately 15 percent discount from the gross price. From January 1, 1940, to December 18, 1941, the same discount was effected by the respondent as to second grade and quality private brand unadvertised waterproof rubber footwear. On December 18, 1941, respondent discontinued the produc-

tion and sale of second grade and quality canvas and waterproof rubber footwear.

PAR. 7. The effect of such discriminations in price as set forth in paragraphs 4, 5, and 6 hereof has been or may be substantially to lessen competition in the line of commerce in which respondent and its competitors are engaged and may be to injure, destroy, or prevent competition in the sale and distribution of rubber and canvas footwear between those of respondent's purchasers who receive the benefit of such discriminations and competing purchasers who do not receive the same benefits.

PAR. 8. Respondent's defense to this proceeding is that the differences in the prices charged make only due allowance for differences in cost of manufacture, sale, and delivery resulting from the differing methods and quantities in which it sold waterproof rubber and canvas footwear. Exhaustive cost studies of respondent's operations were conducted and the results of these studies are a part of the record in this proceeding as exhibits to the stipulations as to the facts entered into by and between counsel supporting the complaint and respondent.

The cost studies conducted were primarily based upon costs and expenses incurred during the year 1940, the last year of normal operations during the period covered by the complaint, and are concerned with certain of respondent's advertised and unadvertised brands of footwear sold to retailers through its branch store system and private brands sold through its wholesale division to national chains and mail order houses, all of which footwear was manufactured at its plant at Naugatuck, Conn., and with other brands of footwear manufactured at its plant at Mishawaka, Ind., and sold mainly to retailers.

In the sale of its advertised and unadvertised brands of footwear to retailers through its branch store system, respondent sold at list prices or at one of several discounts ranging from 3 percent to 13 and 5 percent, depending upon the method and conditions of sale in each separate transaction. Sales of private brands through the wholesale division to national chains and mail order houses were made at net prices equivalent to 18 and 5 percent off list prices. Sales of the footwear manufactured at respondent's Mishawaka, Ind., plant were made in the same price brackets as in the branch store system up to and including only the discount of 8 percent off list.

The stipulated testimony of accountants for the Commission is to the effect that certain of respondent's price differences, including the differences between the prices on private brand footwear sold to national chains and mail order houses and the prices on advertised and unadvertised brands sold to other retailers through its branch store

Order

46 F. T. C.

system, were justified by differences in cost of manufacture, sale, and delivery, and that certain of the price differences were not so justified.

From the cost data presented by respondent as its defense to this proceeding and the stipulated testimony of accountants for the Commission pertaining thereto, the Commission finds that the differences in the prices at which respondent sold canvas and waterproof rubber footwear manufactured at its Naugatuck plant to retailers in the price categories indicated below exceeded the differences in the cost of manufacture, sale, and delivery to the extent shown in the following tabulation, and were therefore not justified.

CANVAS

Between—	Price difference	Cost difference	Excess of price difference over cost difference
	(per dollar of gross sales)		
List price less 5 percent and list price less 13 percent	\$0.0900	\$0.0361	\$0.0439
List price less 8 percent and list price less 13 percent	.0500	.0050	.0450

WATERPROOF

List price less 3 percent and list price less 13 percent	\$0.1000	\$0.0936	\$0.0064
List price less 5 percent and list price less 13 percent	.0800	.0376	.0424
List price less 8 percent and list price less 13 percent	.0500	.0020	.0480
List price less 8 percent and list price less 13 and 5 percent	.0935	.0888	.0047

It is further found that respondent's price difference of 0.03 per dollar of gross sales on waterproof footwear manufactured at its Mishawaka plant between retailers sold at list price less 5 percent and those sold at list price less 8 percent was not justified by the difference in cost of manufacture, sale, and delivery to the extent of 0.0092 per dollar of gross sales.

The unjustified price differences shown above in the amounts of 0.0064, 0.0047, and 0.0092 per dollar of gross sales would be considered by the Commission to be de minimi and would not warrant the issuance of an order to cease and desist if they were the only price differences found to be not justified by differences in costs. However, the other amounts by which the differences in costs fail to justify the differences in prices are substantial.

CONCLUSION

The acts and practices of respondent as herein found are violative of subsection (a) of section 2 of the Clayton Act as amended.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission; answer of the respondent;