

ORDERS OF DISMISSAL, OR CLOSING CASE, ETC.

HOOD RUBBER Co., INC. Complaint, May 28, 1943. Order, July 8, 1949. (Docket 4971.)

Charge: Discriminating in price between different purchasers of respondent's 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 to other of its customers, in violation of subsection (a) of section 2 of the Clayton Act as amended by the Robinson-Patman Act.

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, Hood Rubber Co., Inc., is a wholly owned subsidiary of the Goodrich Tire & Rubber Co., of Akron, Ohio, and is a Massachusetts corporation with its principal office and place of business located at Watertown, Mass.

PAR. 2. Respondent is now, and has been since June 19, 1936, principally engaged in the manufacture and sale of rubber and canvas footwear which it sells to jobbers or wholesalers, national retail chain organizations, mail-order houses, and other retail customers, located in States other than the State of Massachusetts.

Respondent causes said rubber and canvas footwear, when sold, to be transported from the place of manufacture within said State of Massachusetts to the purchasers thereof located in States other than the State of Massachusetts, 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 factory 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.

Respondent has annual dollar sales of rubber and canvas footwear of approximately \$16,500,000, sells approximately 8,250,000 units of rubber footwear and 6,250,000 units of canvas footwear annually, and is the second largest factor in the rubber and canvas footwear industry. Respondent in the maintenance of its national distribution of said products maintains 21 stocking points and 11 branch sales headquarters, located throughout the various States of the United States.

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 and canvas footwear is made up of its nationally advertised Hood and Goodrich brands, its unadvertised Shawmut brand, and private brands or special specification products privately branded or carrying no brand. Respondent's nationally advertised brands are sold principally to small retailers, although its Hood brand is sold by its branches to department stores and small local chains designated as "House Accounts." Moreover, some Hood brand canvas footwear is sold to large chains and mail-order houses designated as "National Accounts," but no Hood brand rubber footwear is so sold to such accounts. Respondent's Shawmut brand and private brand or special specification products are sold exclusively to large retail chains and mail-order houses. All of said first grade rubber and canvas rubber footwear of respondent, regardless of the various brand names as above described, are of like grade and quality. Large retailers and small local chain customers of respondent designated by it as "House Accounts" and mail-order houses and large chain customers designated by it as "National Accounts" which purchase rubber and canvas footwear of respondent, under the Shawmut brand 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 private brands or special specification products are of like grade and quality to respondent's nationally advertised brands, Hood and Good-

rich, sold by respondent's small retail customers in competition with said private brands or special specification products.

Respondent's second-grade rubber and canvas footwear is sold by it to the same classes of retailers as are its first-grade products, and under various brand names. Such second-grade rubber and 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 products in competition with each other in many 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 is now, 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 by respondent on sales of its advertised Goodrich and Hood brands of both canvas and rubber footwear to small retailers are—

On single shipments of—	Branch sales and shipments	Branch sales shipped by factory	
		Stock	Make-up
	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>
(1) Less than 144 pairs.....	None	None	None
(2) 145-479 pairs.....	3	3	3
(3) 480 pairs or more.....	3	3	8

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 make-up orders if shipped in lots of 480 pairs or more. "Make-up" orders are those placed far enough in advance to allow for orderly manufacture and shipment from factory to customers.

To the extent that respondent's advertised brands of rubber and canvas footwear are sold by its branches to department stores and

small local chains designated as "House Accounts" and to large chains and mail-order houses designated as "National Accounts" the discounts received by said accounts on such advertised brands are—

On single shipments of—	Branch sales and shipments	Branch sales shipped by factory		Factory sales and shipments	
		Stock	Make-up	Stock	Make-up
	Percent	Percent	Percent	Percent	Percent
(1) Less than 144 pairs.....	5	5	5	5	5
(2) 145-479 pairs.....	8	8	8	8	8
(3) 480 pairs or more.....	8	8	13	8	13

Discounts allowed by respondent to its "House" and "National Accounts" on its unadvertised Shawmut brand or rubber and canvas footwear of like grade and quality to its advertised brands aforesaid, and which the small retailers are not accorded the privilege of purchasing, are—

On single shipments of—	Branch sales and shipments	Branch sales shipped by factory		Factory sales and shipments	
		Stock	Make-up	Stock	Make-up
	Percent	Percent	Percent	Percent	Percent
(1) Less than 144 pairs.....	10	10	10	10	10
(2) 147-479 pairs.....	13	13	13	13	13
(3) 480 pairs or more.....	13	13	18	13	(1) (2)

¹ 18 percent on canvas.

² 18 and 5 percent on rubber (maximum to "House" accounts is 18 percent; the extra 5 percent is allowed only to "National" accounts.)

The Shawmut brand of footwear is sold by respondent subject to the above-described discounts under either that brand name or under the private brand of the purchaser or under no brand and is of like grade and quality to its first grade advertised brands, Goodrich and Hood.

Discounts allowed by respondent to small retailers on sale of its second-grade rubber and canvas footwear are the same as allowed on its first grade advertised products above set-out. However, on second-grade footwear, the large retailers designated as "House" and "National" accounts are accorded larger discounts, varying somewhat from those allowed them on first-grade footwear, and are as follows:

Discounts allowed on second-grade canvas footwear sold to "House" accounts

On single shipments of—	Branch sales and shipments—stock	Branch sales shipped by factory		Factory sales and shipments ¹	
		Stock	Make-up	Stock	Make-up
	Percent	Percent	Percent	Percent	Percent
Less than 144 pairs.....	5	5	5	5	5
144-479 pairs.....	8	8	8	8	8
480 pairs or more.....	8	8	13	8	13

¹(Not sold by factory.)

Discounts allowed on second-grade canvas footwear sold to "National" accounts

On single shipments of—	Branch sales and shipments—stock	Branch sales shipped by factory		Factory sales and shipments ¹	
		Stock	Make-up	Stock	Make-up
	Percent	Percent	Percent	Percent	Percent
Less than 144 pairs.....	5	5	5	5	5
144-479 pairs.....	8	8	5	8	8
480 pairs or more.....	8	8	18	8	18

Discounts allowed on second-grade rubber footwear sold to "House" and "National" accounts

On single shipments of—	Branch sales and shipments—stock	Branch sales shipped by factory		Factory sales and shipments ¹	
		Stock	Make-up	Stock	Make-up
	Percent	Percent	Percent	Percent	Percent
Less than 144 pairs.....	5	5	5	5	5
144-479 pairs.....	8	8	8	8	8
480 pairs or more.....	8	8	17.2	8	17.2

¹ (Not sold by factory.)

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 under the following titles: "1937 Waterproof Sales Policy (Revised) Hood and Goodrich"; "1937 Waterproof Sales Policy Old Colony, Massachusetts and Stafford Brands"; and "1937 Canvas Sales Policy." 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 more particularly described and/or as later modified, constitute the means by which respondent has discriminated 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 trade discounts are in addition thereto.

PAR. 6. The effect of such discriminations in price as set forth in Paragraphs Four and Five 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 benefits of such discriminations and competing purchasers who do not receive the same benefits.

in the various States of the United States other than the State of Utah, and in the District of Columbia.

Respondents sell and distribute their said products largely through jobbers and chain stores, the jobbers selling in turn to retailers, and in order to facilitate their sales and deliveries respondents maintain warehouses in various large cities of the Midwestern and Southwestern parts of the United States. Respondents maintain and at all times mentioned herein have maintained a course of trade in their said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business and in connection with the sale of their said product, "Sunshine Foam," respondents have made various false and misleading statements and representations to purchasers and prospective purchasers of said product by means of advertisements inserted in newspapers, magazines, and periodicals, by radio continuities, in circulars, leaflets and pamphlets, and through other advertising media, all of general circulation.

Among and typical of the said statements and representations so made but not all-inclusive are the following:

* * * * *

The marvelous FOAM in this new scientific cleaner does all the work. The millions of small bubbles penetrate through the rug and upholstery to the very base, cleaning, purifying, and mothproofing.

* * * * *

Kills and removes larvae, eggs, moth worms, and other pests.

* * * * *

SUNSHINE FOAM MOTH PROOFS AS IT CLEANS curtains, cushions, shades, drapes, sofas, daybeds, divans, ottomans, chairs, and fabrics are made noneatable by moth or carpet beetles. Kills and removes forever larvae, eggs, moth worms, and other pests.

PAR. 4. By and through the use of the foregoing statements and representations and others similar thereto but not specifically set out herein, respondents represent and have represented that their said product has distinct practical value as a mothproofing agent; that it will make treated fabrics noneatable by moths and carpet beetles and will remove forever the danger of reinfestation by larvae eggs, moth worms, and other insects; that Sunshine Foam is both a mothproofing and larvae-killing agency and that it can even be depended upon to kill all insects within upholstering materials, serving as a contact insecticide, killing and destroying all moths or moth larvae, eggs or worms, or other insects present in the padding or filling of cushions, sofas, day beds, divans, ottomans, overstuffed chairs or other articles of furniture by penetrating throughout the flax, straw, cotton, moss, hair, feathers, or other materials employed in the construction of stuffed or upholstered furniture or similar articles.

PAR. 5. In truth and in fact, respondents' said product has no practical value and is not dependable as a mothproofing agency; it does not make treated fabrics noneatable by moths and carpet beetles, and does not remove forever the danger of reinfestation by larvae, eggs, moth worms, and other insects, and in the case of cushions, sofas, day beds, divans, ottomans, and chairs containing upholstering materials such as moss, hair, and feathers, the thorough application of "foam" to the fabric cover will not kill insects within the upholstering materials.

While the said solution might kill fabric pests thoroughly wet with the product at the time of application, in doing this it would do no more than would be done by any so-called "contact" insecticide, and the application of "Sunshine Foam" to the fabric cover of cushions, sofas, day beds, ottomans, and chairs or other articles or furniture containing upholstering materials will not kill insects within the upholstering materials for the reason that such application cannot wet the interior sufficiently to allow the "foam" to act as a contact insecticide throughout the flax, straw, cotton, moss, hair, feathers, or other material used as upholstering in the construction of the furniture or other upholstered articles.

PAR. 6. The use by respondents of the said false and misleading statements and representations in connection with the sale of their aforesaid product has a tendency and capacity to, and does, mislead and deceive purchasers and prospective purchasers of respondents' said product into the erroneous and mistaken belief that such statements and representations are true, and because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' said product. By these means respondents have further placed in the hands of their dealers, agents, and distributors an instrument by means of which the latter mislead and deceive and have misled and deceived members of the consuming public.

PAR. 7. The aforesaid acts and practices of said respondents, as alleged herein, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Complaint dismissed without prejudice by the following order:

This matter came on to be heard in regular course upon motion to dismiss the complaint without prejudice, dated January 17, 1949, filed by counsel in support of the complaint, in which said motion counsel for respondents waive notice thereof and consent that it be granted.

The complaint herein, issued July 9, 1946, charges respondents with unfair and deceptive acts and practices in commerce in the sale and distribution of "Sunshine Foam," a preparation designed and in-

