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744 FT Case
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February 27, 1957

The Reporter of Decisions
Supreme Court of the United States
Washington, D. C.

Re: Federal Trade Commission v.
National Lead Company, et al.,
No. 63, October Term, 1956

Dear Sir:

In the page proof of the Court's slip opinion in the above-entitled case, the Court inadvertently indicated that the respondents had never appealed from the Commission's findings that they were guilty of a conspiracy to adopt and use a zone delivered pricing system in the sale of lead pigments.

Specifically, the last sentence of the following quotation from page 10 of the Court's opinion seems clearly to give that erroneous impression:

"The respondents were found to have plainly disregarded the law. In this respect the Commission correctly considered the circumstances under which the illegal acts occurred. These in utter disregard of law, as here, 'call for repression by sterner measures than where the steps could reasonably have been thought permissible.' United States v. United States Gypsum Co., 340 U.S. 76, 89-90 (1950). Respondents made no appeal from the findings as to their guilt." (Emphasis supplied.)

Actually, the respondents' petitions for review of the order of the Commission in the Court of Appeals for

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the Seventh Circuit specifically sought reversal of the Commission's findings of conspiracy. In fact, the largest single portion of the brief and appendix filed by National Lead Company in the Seventh Circuit (which were adopted by the other respondents) was devoted to that issue. Again, when the Commission sought review of the question now decided by the Court, respondents filed a cross petition for a writ of certiorari (No. 877, October Term, 1955)¹ in which the first two "Questions Presented" were stated as follows (Cross Petition, p. 2):

- "1. Whether a finding of conspiracy may be based solely on evidence of activities concerned with the formulation of an NRA Code, undertaken by members of an industry at the insistence of NRA officials.
2. Whether, in any event, there is substantial evidence, in the light of the whole record, to support the finding of conspiracy."

The respondents' cross petition was denied. National Lead Co. v. Federal Trade Commission, 351 U.S. 964.

Under these circumstances we submit that the statement on page 10 of the Court's opinion that "Respondents made no appeal from the findings as to their guilt" is inaccurate.

In many of the press reports concerning the Court's decision in this case, that particular sentence has been emphasized and we believe it gives a wrong impression of what actually occurred.

1. The Commission's Brief in this case (p. 7, note 3) refers to the fact that such a cross petition was filed.

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We therefore respectfully request that the last sentence of the above-quoted portion of the Court's opinion be deleted or otherwise corrected so as not to be misleading.

This letter is being written on behalf of counsel for all respondents.

Very truly yours,

EUGENE Z. DuBOSE

Counsel for respondent
National Lead Company

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