

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of NATIONAL LEAD COMPANY, a corporation, et al.	}	Docket No. 5253
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ANSWER OF RESPONDENT, NATIONAL LEAD COMPANY

Comes now the respondent, National Lead Company, by its attorneys, Alexander & Green, and reserving the right to move to dismiss the complaint herein for lack of jurisdiction and all rights to object to lack of jurisdiction herein, answers the complaint of the Federal Trade Commission in the above entitled matter as follows:

Answer to Count I:

1. Answering PARAGRAPH ONE of COUNT I, this respondent states that it is without knowledge of the reason for the belief of the Federal Trade Commission that the parties named in the caption hereof have violated the provisions of Section 5 of the Federal Trade Commission Act, or that a proceeding thereunder would be in the interests of the public, and it hereby denies that it has in any way violated Section 5 or any other provision of the Federal Trade Commission Act or that this proceeding is in the public interest.

2. Answering PARAGRAPH TWO of COUNT I, this respondent denies the truth of the charges against it therein contained and states that it is without knowledge or information as to any facts forming the basis for the charges against the other respondents.

3. Answering the allegations of PARAGRAPH THREE of COUNT I, this respondent admits that it is a New Jersey corporation, with its principal offices at 111 Broadway, New York, N. Y.

4. With respect to PARAGRAPH FOUR of COUNT I, this respondent states: As to Subdivision A it admits that white lead is a white, exceedingly fine powder, which, when it contains principally lead carbonate and lead hydroxide (the percentages of which may vary slightly in the products of different manufacturers), is a basic lead carbonate. It is a chemical compound derived through processes including corrosion of metallic pig lead. White lead is one of several lead pigments. It is commonly sold to paint manufacturers in its dry or powdered form and referred to as white lead or dry white lead. It is commonly sold to painters in the form of a paste made by grinding with a small percentage of linseed oil and is referred to as lead-in-oil. So far as this respondent knows dry white lead in powder form is not used by painters in making white lead paint. White lead paint of the desired consistency may be made by mixing paste white lead or lead-in-oil with varying amounts of linseed oil and in some instances turpentine and other thinners and driers. Except as expressly admitted as above, this respondent denies each and every allegation contained in Subdivision A of PARAGRAPH FOUR of COUNT I.

5. Answering the allegations of PARAGRAPH FIVE of COUNT I of the complaint, this respondent admits:

That certain of the respondents herein are engaged in the manufacture, sale and distribution of white lead in interstate commerce, which is an important item of this respondent's commerce between and among the several states and that this respondent is engaged in the manufacture of white lead paint. White lead is the principal item used in the manufacture of white lead paint, meaning paint containing no pigment other than white lead, that being the sense in which the term white lead paint is used in the paint industry. White lead paint is held in high esteem by painters and users for application to exteriors of buildings and other structures.

As to the second and third paragraphs of PARAGRAPH FIVE of COUNT I of the complaint, this respondent states that it is without knowledge with respect thereto, except that it admits that respondents, Eagle-Picher Lead Company or Eagle-Picher Sales Company, have sold

or distributed white lead in commerce, and that at some period respondents, Anaconda Copper Mining Company or its Division, Anaconda Lead Products Company, or Anaconda Sales Company, or International Smelting & Refining Company, or some of them, have manufactured and sold white lead.

As to the last paragraph of PARAGRAPH FIVE of COUNT I, this respondent admits that the total combined production of the producing respondents constitutes a very substantial proportion of all white lead produced and sold in the United States, and that the production of this respondent represents approximately 55% of all white lead. It is without knowledge as to the exact proportion of the total produced and sold by respondents other than itself or as to the aggregate production of the other respondents.

Other than as above set forth, this respondent states that it is without knowledge with respect to the allegations contained in PARAGRAPH FIVE of COUNT I of the complaint.

6. This respondent denies each and every allegation contained in PARAGRAPH SIX of COUNT I of the complaint.

7. Answering PARAGRAPH SEVEN of COUNT I, this respondent denies each and every allegation contained in PARAGRAPH SEVEN A of the complaint and in each and every subdivision thereof, except as hereinafter stated. It admits that:

On or about December 8, 1891, it acquired the properties formerly owned by Cornell Lead Co. of Buffalo, N. Y., The National Lead & Oil Co. of New York, N. Y., Atlantic White Lead & Linseed Oil Co. of New York, N. Y., Salem Lead Co. of Massachusetts, The J. H. Morley Lead Co. of Cleveland, Ohio, The Eckstein White Lead Co. of Cincinnati, Ohio, Anchor White Lead Co. of Cincinnati, Ohio, Maryland White Lead Co. of Baltimore, Maryland, American White Lead Co. of Louisville, Kentucky, Kentucky Lead & Oil Co. of Louisville, Kentucky, Southern White Lead Co. of Chicago, Illinois, D. B. Shipman White Lead Works of Chicago, Illinois, Southern White Lead Company of St. Louis, Missouri, St. Louis Lead and Oil Co. of St. Louis, Mis-

souri, Collier White Lead & Oil Co. of St. Louis, Missouri, and Red Seal Castor Oil Co. of St. Louis, Missouri, together with the following shares of stock in the following companies:

- 1195 shares Cornell Lead Co.
- 9993 shares The National Lead & Oil Co. of N. Y.
- 495 shares Atlantic White Lead & Linseed Oil Co.
- 670 shares Salem Lead Co.
- 1995 shares The J. H. Morley Lead Co.
- 6495 shares The Eckstein White Lead Co.
- 531 shares Anchor White Lead Co.
- 295 shares Maryland White Lead Co.
- 950 shares American White Lead Co.
- 267 shares Kentucky Lead & Oil Co.
- 9995 shares Southern White Lead Co. of Illinois
- 2995 shares D. B. Shipman White Lead Works
- 9993 shares Southern White Lead Co. of Missouri
- 2995 shares St. Louis Lead & Oil Co.
- 993 shares Collier White Lead & Oil Co.
- 495 shares Red Seal Castor Oil Co.,

the sixteen companies whose properties were acquired as aforesaid having been previously engaged in the manufacture, sale and distribution of white lead, linseed oil and kindred products, the stock ownership of which had been in or controlled by the National Lead Trust.

In February, 1906, it acquired all of the stock of United Lead Company, which company was engaged principally in the manufacture, sale and distribution of metallic lead and lead alloy products.

In February, 1907, it acquired all of the stock of the Magnus Metal Company (Magnus Company, Inc.). This company never engaged in the manufacture, sale or distribution of white lead, linseed oil or kindred products.

In March, 1913, it acquired all of the stock of the Heath & Milligan Manufacturing Company, and in September, 1919, disposed of such stock to The Glidden Company.

In March, 1906, it acquired all of the stock of Carter White Lead Company, which had properties in Chicago, Illinois, and Omaha, Nebraska; in July, 1912, it acquired all of the stock of Matheson Lead

Company; in 1915, the River Smelting & Refining Company was organized jointly by National Lead Company and Stone & Webster; in March, 1916, it acquired all of the stock of Bass-Hueter Paint Company; in December, 1917, it organized National Lead Company S. A. (Argentina) as a wholly owned subsidiary; in January, 1919, it acquired the properties and assets of Hirst & Begley Company.

It asserts and represents that the cost of its inventories of corroding quality pig lead and of the lead content of white lead in process and in finished stock is the most important single factor in its determination and fixing of its price for white lead since pig lead is the principal material used in the manufacture of white lead, except that since March, 1942 its prices for white lead have been limited by government regulation.

As to PARAGRAPH SEVEN B of COUNT I, this respondent denies each and every allegation contained therein and in each and every subdivision thereof.

8. This respondent denies each and every allegation contained in PARAGRAPH EIGHT and each of its subdivisions except as hereinafter stated. This respondent quotes delivered prices for its white lead products, which vary as between certain geographical areas, sometimes referred to as zones. Its delivered prices, within certain areas, are the same even though there are variations in freight rates between this respondent's mills or plants and the customers' locations. The variations in delivered prices quoted correspond generally to those shown on the map referred to in PARAGRAPH EIGHT A of COUNT I of the complaint but are not identical therewith, and the zones or territories or geographical areas as shown on the map, while corresponding substantially with those used as the basis for this respondent's delivered prices, are not identical. This respondent's delivered prices are calculated in terms of differentials above a par price in par or base territory. This respondent is without knowledge as to whether the delivered prices which it quotes are the same as those quoted by its competitors, including the other respondents named herein. The pricing methods adopted by this respondent and the prices quoted by

it have been adopted and quoted in good faith and its prices are established on the basis of actual and anticipated costs of manufacture and costs of distribution with consideration being given to competitive factors within and without the industry. Under this respondent's pricing methods certain of its customers located at or near its plants are charged the same price as that charged to other customers located at a greater distance.

9. This respondent denies each and every allegation contained in PARAGRAPH NINE of COUNT I of the complaint.

10. This respondent denies each and every allegation contained in PARAGRAPH TEN of COUNT I of the complaint.

11. This respondent denies each and every allegation contained in PARAGRAPH ELEVEN of COUNT I of the complaint.

Answer to Count II:

12. Answering PARAGRAPH ONE of COUNT II of the complaint, this respondent states that it is without knowledge or information as to the reason for the belief of the Federal Trade Commission that the respondents have violated the provisions of the Clayton Act, as amended by the Robinson-Patman Act, as therein alleged, and it hereby denies that it has violated the provisions of the Clayton Act, as amended by the Robinson-Patman Act; or that this proceeding is in the public interest.

13. With respect to PARAGRAPH TWO of COUNT II of the complaint, this respondent denies the truth of the charges against it therein contained.

14. With respect to PARAGRAPHS THREE to FIVE inclusive of COUNT II of the complaint, this respondent repeats and incorporates herein its answer to PARAGRAPHS THREE to FIVE of COUNT I of the complaint as fully as if again set forth verbatim.

15. This respondent denies each and every allegation contained in PARAGRAPH SIX of COUNT II of the complaint insofar as the same relate to it.

16. This respondent denies each and every allegation contained in PARAGRAPH SEVEN of COUNT II of the complaint insofar as the same relate to it except as hereinafter stated. This respondent quotes delivered prices for white lead sold by it which vary in different geographical areas, sometimes referred to as zones. The variations in delivered prices correspond generally to those shown on the map referred to in said paragraph of the complaint although they are not identical therewith, and the same is true with respect to the geographical areas involved in this respondent's quotation of delivered prices as far as the said map is concerned.

17. This respondent denies each and every allegation contained in PARAGRAPH EIGHT of COUNT II of the complaint insofar as the same relate to it, except that it admits that in the delivered prices quoted by it for its white lead the prices quoted throughout a certain geographical area will be the same throughout that area notwithstanding the fact that there may be variations in the cost of freight to deliver to a customer in one part of the geographical area as compared with delivery to another customer in another part of the area. The price quoted a customer located at or near its plants is the same as that quoted a comparable customer located at a more distant point in the same geographical area.

18. This respondent denies each and every allegation contained in PARAGRAPH NINE of COUNT II of the complaint insofar as the same relate to it.

19. This respondent denies each and every allegation contained in PARAGRAPH TEN of COUNT II of the complaint insofar as the same relate to it, except that it states that, when there are sales to customers in different geographical areas located at or near the boundary dividing said areas, this respondent's delivered prices to purchasers

in one area near the boundary are higher than its delivered prices to comparable customers in the other area contiguous to the boundary.

20. This respondent denies each and every allegation contained in PARAGRAPH ELEVEN of COUNT II of the complaint but states that it has certain price classifications which make due and proper allowance for differences in the cost of sale and delivery resulting from the differences in the quantities of white lead purchases.

21. This respondent denies each and every allegation contained in PARAGRAPHS TWELVE, THIRTEEN and FOURTEEN of COUNT II of the complaint.

WHEREFORE this respondent respectfully prays that the complaint herein be dismissed.

NATIONAL LEAD COMPANY

By HAROLD ROWE

Vice-President

ALEXANDER & GREEN,

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