

Complaint

IN THE MATTER OF
MAGNESIUM COMPANY OF AMERICA, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2 (a) OF THE CLAYTON ACT

Docket 6370. Complaint, June 27, 1955—Decision, Jan. 6, 1956

Consent order requiring one of the largest manufacturers of dockboards in the country, with annual gross sales approximating \$4,000,000 for all its material handling equipment, including magnesium dockboards, loading ramps, hand trucks, barrel skids, etc., to cease violating Sec. 2 (a) of the Clayton Act as amended by discriminating in price between different purchasers through use of a system of quantity and dollar volume discounts, both noncumulative and cumulative, under which the discount was determined, respectively, by the number of dockboards purchased, regardless of price, or by a customer's total purchase during a 12-month period, and permitted customers to pool orders from several branches under either plan.

Before *Mr. James A. Purcell*, hearing examiner.

Mr. Edward S. Ragsdale and *Mr. Cecil G. Miles* for the Commission.

Bell, Boyd, Marshall & Lloyd, of Chicago, Ill., for respondent.

COMPLAINT

The Federal Trade Commission having reason to believe that the party respondent named in the caption herein, and hereinafter more particularly designated and described, has violated and is now violating the provisions of subsection (a) of Section 2 of the Clayton Act (U.S.C. Title 15, Section 13), as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Magnesium Company of America, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office, place of business, and plant located at 5222 Indianapolis Boulevard, East Chicago, Indiana. Respondent also has a branch office and branch plant located at 1017 Elsegundo Boulevard, Los Angeles, California, and deliveries are made out of either the East Chicago or the Los Angeles plants. Respondent has other branch offices located at:

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30 Rockefeller Plaza,
New York, New York.
8001 S. Hampton Avenue,
Philadelphia, Pennsylvania.
734 15th Street NW.,
Washington, D. C.
7657 Moline Street,
Houston, Texas.
Russ Building,
San Francisco, California.

PAR. 2. Respondent Magnesium Company of America, Inc., was originally organized in Illinois on December 31, 1944, as a subsidiary of the Christiansen Corporation, a Delaware corporation, but in July 1951 it was acquired by and consolidated with the Bates Expanded Steel Corporation, an Indiana corporation, which was also a subsidiary of the Christiansen Corporation, and assumed the name of Magnesium Company of America, Inc., hereinafter sometimes referred to as "MAGCOA."

PAR. 3. Respondent is engaged in the manufacture, sale and distribution of material handling equipment such as magnesium dockboards, loading ramps, hand trucks and barrel skids. It is also engaged in the general fabrication of magnesium alloys. In addition, it has an aluminum foundry in connection with which it manufactures automotive pistons and a line of aluminum 4-wheel hand trucks. Respondent is one of the largest manufacturers of dockboards in the industry, with gross sales of all its products approximating \$4,000,000 annually.

The price of respondent's dockboards ranges from \$100 to \$1000, and higher, but the average price is approximately \$225. Respondent's dockboards and other equipment are sold for the use of the buyer rather than for resale. It sells its products both through its own salesmen and through independent sales representatives to what might be classified as "regular" and "national account" customers. Respondent classifies a "national account" customer as any company or corporation in the United States to which it has sold dockboards, which operates six or more branches, plants, or warehouses.

PAR. 4. In the course and conduct of its business as aforesaid, respondent is now engaged, and for the past several years has been engaged, in commerce, as "commerce" is defined in the Clayton Act, having sold its products manufactured by it at its plants located in Indiana and California and transported, or caused the same to be transported, from its places of business in said States to purchasers

located in other States of the United States, and in other places under the jurisdiction of the United States. At least one of the sales involved in each of the discriminations in price hereinafter alleged was in interstate commerce.

PAR. 5. In 1949 respondent inaugurated and put into effect a system of quantity and dollar volume discounts. Such discounts are both noncumulative and cumulative, and, in a number of instances, are retroactive. These discounts are set out as follows:

	<i>Discount</i>
(a) On a single order of 4 dockboards.....	0%
(b) On a single order of 5 through 9 dockboards.....	3%
(c) On a contract, blanket order, or letter of intent to purchase 10 or more dockboards within one year.....	5%

The price of dockboards is not a determining factor as to whether the above discounts will be allowed—it is the number of dockboards, regardless of price, which determines whether a discount will be given and the amount thereof.

In addition to the above dockboard discounts which are given on each invoice at the time the customer is billed, respondent also gives an annual dollar volume cumulative discount based on the customer's purchases of all its products during a 12-month period as follows:

	<i>Discount</i>
(a) Up to, but not including, \$10,000.....	0%
(b) \$10,000 to, but not including, \$20,000.....	5%
(c) \$20,000 and over	10%

On or about July 1, 1954, respondent offered a number of its national account customers a 5% discount on their purchases of its "Tobey industrial trucks," a 4-wheel hand truck. This line of trucks is also included in respondent's cumulative annual volume discount offered to such customers.

Respondent has no standard form of agreement covering the above discount schedule. On the 3% discount on the purchase of 5 to 9 dockboards, inclusive, no agreement is required, except that it must be a "single order" purchase. On the above 5% discount on dockboards, respondent has three different types of agreements. They are:

- (a) A formal contract to purchase 10 or more dockboards within one year.
- (b) A blanket order by a customer to purchase 10 or more dockboards within one year.
- (c) A letter of intent by a customer to purchase 10 or more dockboards within one year.

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A substantial majority of these agreements also include therein a provision for the allowance of the above-described annual dollar volume cumulative discount.

Respondent allows its national account customer who has one of these agreements, and who has several branches, plants, or warehouses, to pool the purchases of all such branches, plants, and warehouses in order to qualify for both the noncumulative discount and the annual dollar volume cumulative discount, even though none of the branches individual purchases would be sufficient to entitle the purchaser to any discount at all. Respondent does not require this type of customer to order more than one dockboard at a time to entitle it to the 5% noncumulative discount, which discount is allowed at the time of purchase. In many instances, these national account customers, who have signed these agreements or letters of intent, have failed to purchase the required minimum number of ten dockboards during the twelve month period to entitle them to this 5% discount. In none of these instances, however, has respondent collected or attempted to collect from the customer, or to have the customer refund this 5% discount previously allowed. In fact, in one of its letters and bulletins, dated June 18, 1953, to all MAGCOA representatives, it instructed its representatives to inform these national account customers, who have a policy against entering into binding contracts, that the contracts with MAGCOA are not binding, and that if they do not buy the minimum of ten dockboards, MAGCOA will not force the issue.

This bulletin further states to its representatives with regard to these national accounts that:

The general overriding thought to keep in mind in dealing with National Accounts is that blanket orders pay off no matter how we get them. We should always try to get the most from a blanket order which is to have the main office recommend our dockboards to all plants and refuse to purchase any competitive items. It is very important to have our dockboards placed in a company's standard equipment catalog (Western Electric warehouse division). Although U. S. Rubber Company has decentralized purchasing, MAGCOA dockboards must be purchased or a reason given why our dockboards will not work. Obviously, it is impossible to have all companies with MAGCOA contracts purchase only MAGCOA dockboards, but after this possibility has been entirely eliminated, try the next best method.

According to a tabulation submitted by respondent showing approximate figures, it had a total number of 1536 dockboard purchasers during the calendar year 1953. Of this number, 1390 received no discount at all, while the remaining 146 received either a 3%, 5%, 10% or 15% discount. These are broken down into the various discount brackets as follows:

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Calendar Year of 1953

Volume brackets	Discount rate	Number of purchasers	Percent of purchasers	Dollar volume of purchases	Percent
5 to 9 dockboards..	3 percent.....	28.....	1.82	34,900.87	2.5
10 dockboards.....	5 percent.....	96 (440 different locations).	6.25	250,963.61	17.9
\$10,000.00 to \$19,999.99.	Additional 5 percent.	14 (306 different locations).	.91	156,181.02	11.1
\$20,000.00 or over..	Additional 10 percent.	8 (205 different locations).	.52	188,307.42	13.4
Others.....	0 percent.....	1,390.....	90.50	769,647.08	55.1
		1,536.....	100.0	1,400,000.00	100.0

PAR. 6. Respondent, in the allowance and payment of these discounts by means of its quantity discount system, both noncumulative and cumulative, as hereinbefore outlined and described, has been for the past several years and is now discriminating in price between its said different purchasers, in commerce, of its products of like grade and quality by charging some of said purchasers higher prices than respondent charged or charges to others.

PAR. 7. There are other manufacturers of material handling equipment, including Magnesium dockboards, hand trucks, barrel skids, and 4-wheel hand trucks, in the United States who have been for the past several years and are now in competition with respondent in the manufacture, sale and distribution of similar material handling equipment to purchasers. Respondent's discrimination in price as described above in many instances in the past have been sufficient to divert, and have diverted, substantial business from respondent's competitors to respondent, and are sufficient to divert substantial business from respondent's competitors to respondent in the future.

It is therefore alleged that there is a reasonable probability that the effect of respondent's said discriminations in price may be substantially to lessen competition in the lines of commerce in which respondent is engaged. Said practices of respondent also have a dangerous tendency unduly to hinder competition and to create a monopoly respecting the effects not only as to respondent's existing competitors but also as to respondent's potential competitors.

PAR. 8. The aforesaid discriminations in price made by respondent Magnesium Company of America, Inc., as hereinbefore alleged and described, constitute violations of subsection (a) of Section 2 of the aforesaid Clayton Act, as amended.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The Federal Trade Commission issued its complaint in this proceeding on June 27, 1955, charging the respondent, Magnesium Com-

pany of America, Inc., with violation of subsection (a) of Section 2 of the Clayton Act, (U.S.C. Title 15, Section 13), as amended by the Robinson-Patman Act, approved June 19, 1936, in the granting to its customers of discriminatory discounts on sales of material handling equipment such as magnesium dockboards, loading ramps, hand trucks and barrel skids.

After the issuance of said complaint the respondent entered into an agreement for consent order with counsel in support of complaint, disposing of all the issues in this proceeding, which agreement was duly approved by the Director of the Bureau of Litigation. It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint.

By the terms of said agreement, the respondent admitted all the jurisdictional allegations of the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations. By said agreement the parties expressly waived a hearing before the hearing examiner or the Commission, the making of findings of fact or conclusions of law by the hearing examiner or the Commission, the filing of exceptions and oral argument before the Commission, and all further and other procedure before the hearing examiner and the Commission to which the respondent may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission.

By said agreement, respondent further agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if made after a full hearing, presentation of evidence and findings and conclusions thereon, and specifically waived any and all right, power or privilege to challenge or contest the validity of such order.

It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order issued pursuant to said agreement; and that the said order may be altered, modified or set aside in the manner provided by the statute for the orders of the Commission.

Said agreement recites that the correct corporate name of the respondent is Magnesium Company of America (Incorporated), and in this behalf the caption of this proceeding should be so amended. Accordingly the caption is hereby ordered to conform and the order hereinafter passed will be issued against respondent by its correct

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corporate designation; that respondent is a corporation existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at No. 5222 Indianapolis Boulevard, in the City of East Chicago, State of Indiana.

The Hearing Examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provides for an appropriate disposition of this proceeding, the same is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Commission's Rules of Practice, and consonant with the terms of said agreement, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent named herein and that this proceeding is in the interest of the public wherefore the following order is issued:

ORDER

It is ordered, That the respondent, Magnesium Company of America (Incorporated), a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the sale or distribution of material handling equipment in commerce, as "commerce" is defined in the afore-said Clayton Act, do forthwith cease and desist from:

Discriminating in price, directly or indirectly, in the sale of its material handling equipment of like grade and quality, including dockboards, loading ramps, hand trucks, or any other product, by the use of a cumulative discount or rebate or other allowance or device granted to one purchaser or group over that granted to any other purchaser where respondent, in the sale of such material handling equipment, is in competition with any other seller.

DECISION OF THE COMMISSION AND ORDER TO FILE
REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 6th day of January, 1956, become the decision of the Commission; and, accordingly:

It is ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist.

IN THE MATTER OF

SOL BARNETT TRADING AS
AMERICAN ANTIMONY COMPANYCONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT*Docket 6387. Complaint, June 30, 1955—Decision, Jan. 6, 1956*

Consent order requiring a seller of household paints in Los Angeles, Calif., to cease advertising falsely in newspapers, etc., that he was forced to sell a limited amount of high-grade paint at a special reduced price.

Before *Mr. J. Earl Cox*, hearing examiner.

Mr. J. W. Brookfield, Jr. for the Commission.

Mr. Louis Licht and *Mr. Bernard Kriegel*, of Los Angeles, Calif., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Sol Barnett, an individual, trading as American Antimony Company, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Sol Barnett is an individual trading as American Antimony Company. Respondent is now, and for more than one year last past has been, engaged in the promotion, sale and distribution of interior and exterior household paints. Respondent's office and principal place of business is located at 1417 South Robertson Boulevard, Los Angeles, California. Said paints are sold directly to purchasers by the respondent from his Los Angeles office.

PAR. 2. In the course and conduct of his business, respondent now causes and has caused said products, when sold, to be transported from his place of business in the State of California and from public warehouses in States other than California to purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade, in commerce, in said products.

PAR. 3. Respondent at all times mentioned herein has been in substantial competition, in commerce, with other persons and with