

It appearing from the record that the ruling referred to occurred during the early stages of the hearings and that the respondents made no attempt to obtain a review thereof either by way of an interlocutory appeal to the Commission under the provisions of §3.20 of the Rules of Practice or by way of an appeal from the initial decision under the provisions of §3.22 of said rules, but, on the contrary, permitted said ruling to remain unchallenged until the present time; and

It further appearing that the respondents have made no showing of changed conditions of fact or of law which would or might require a modification of the Commission's decision and have made no showing that the public interest would or might require such action; and

The Commission being of the opinion that, in the circumstances, no further consideration of the respondents' request for reopening of the proceeding is warranted:

*It is ordered*, That said request be, and it hereby is, denied.

IN THE MATTER OF

MODERN METHODS, INC., ET AL.

*Docket 7568. Order, Dec. 31, 1959*

Interlocutory order upholding hearing examiner's denial of motion to dismiss, holding the prior dismissal by the Solicitor of the Post Office Department, primarily because of inadequacy of the record, could not bar proceeding under the principles of *res judicata*.

The Commission having considered the respondents' appeal from the hearing examiner's order of November 18, 1959, denying the respondents' motion to dismiss the complaint or, in the alternative, to strike therefrom paragraphs five through eight, inclusive; and

It appearing that the question for determination is whether this proceeding is barred under the principles of *res judicata* by an order of the Solicitor of the Post Office Department, dated July 18, 1958; and

It further appearing that the Solicitor of the Post Office Department by the aforesaid order reversed an initial decision of a hearing examiner and dismissed "without prejudice" a proceeding against the corporate respondent, allegedly instituted in connection with the sale of the same correspondence courses of instruction as those involved herein, in which proceeding the respondent was charged with having conducted a scheme for obtaining money through the mails by means of false and fraudulent pretenses, representations and promises in violation of Title 39, U.S. Code, §§259 and 732; and

It further appearing, however, that the order discloses on its face that no final action was taken on the issues in the proceeding in which it was issued, but that, on the contrary, the proceeding was dismissed primarily because of the inadequacy of the record, particularly in that it did not show what representations had been made by the respondent for a period of more than three years; and

The Commission being of the opinion that in the circumstances, and aside from the question of whether the issues and parties in the two proceedings were the same, the prior action of the Solicitor of the Post Office Department could not under the principles of *res judicata* bar this proceeding; and

The order of the hearing examiner to this effect being correct:

*It is ordered*, That the respondents' appeal therefrom and request for oral argument be, and hereby are, denied.

#### RECOTON CORPORATION ET AL.

*Docket 7601. Order, Dec. 31, 1959*

Order denying motion to defer hearings pending joinder as co-respondents, business concerns engaged in practices similar to those challenged.

This matter having come on for hearing upon the motion filed by respondent Recoton Corporation which requests that hearings be suspended pending joinder as co-respondents to this proceeding of the business concerns named in the motion, and stated in the motion's supporting affidavit to be engaged in practices similar to those challenged in the complaint; and

The Commission having duly considered the motion and its supporting affidavit and exhibits and the answer thereto filed by counsel supporting the complaint; and

The Commission having determined that the public interest will be better served if this case proceeds in regular course for disposition on its merits and that the motion should be denied, and the Commission having additionally directed that the Secretary transmit copies of the affidavit and exhibits to the Commission's Bureau of Investigation for appropriate consideration:

*It is ordered*, That the motion of respondent Recoton Corporation be, and it hereby is, denied.

#### SUNBEAM CORPORATION

*Docket 7409. Order, Jan. 14, 1960*

Interlocutory order denying appeal from the hearing examiner's rulings sustaining respondent's objections to receipt in evidence of certain documents and oral testimony.

Counsel in support of the complaint having filed an interlocutory appeal from a number of rulings of the hearing examiner sus-

taining the respondent's objections to the receipt in evidence of certain documents and oral testimony; and

It appearing that no showing has been made that the effect of said rulings is anything more serious than to require counsel to prove by other available evidence the facts sought to be established by the rejected documents and testimony; and

Counsel having thus failed to demonstrate that the rulings involve substantial rights or will materially affect the final decision of the case, or that a determination of the correctness of said rulings before conclusion of the trial would better serve the interests of justice; and

The Commission being of the opinion that the appeal is not one to be granted under §3.20 of the Rules of Practice:

*It is ordered*, That the aforesaid appeal be, and it hereby is, denied.

### SNAP-ON TOOLS CORPORATION

*Docket 7116. Order and Opinion, Jan. 21, 1960*

Interlocutory order reversing as erroneous, dismissal of a charge of maintenance of exclusive territories along with a ruling that prima facie cases were established with respect to resale price maintenance agreements.

ON APPEAL FROM RULING OF HEARING EXAMINER GRANTING IN PART  
A MOTION TO DISMISS

By the COMMISSION:

This matter is here for consideration of an interlocutory appeal, filed by counsel in support of the complaint, from an order of the hearing examiner granting in part the respondent's motion to dismiss the complaint, made at the close of the case-in-chief. The correctness of the order insofar as it denied the motion to dismiss is not in question.

The complaint charges the respondent with engaging in unfair acts and practices or an unfair method of competition in commerce in violation of Section 5 of the Federal Trade Commission Act. This is done, it was alleged, through and by means of written contracts with retail dealers providing, among other things, (1) that the dealer will not sell any of the products purchased from the respondent at a price varying from the price fixed by the respondent, (2) that he shall sell such products only within the geographical limits of a territory described in the agreement, (3) that he shall not sell to certain persons or firms specified in the agreement, and (4) that in the event of termination of his contract he will not for a period of one year thereafter engage in a similar business within the state in which he has been operating.

Treating the validity of each of these contract provisions as a

separate issue, the hearing examiner in ruling on the motion to dismiss held (1) that the complaint states a cause of action, (2) that on the issues of resale price maintenance agreements and the imposition of restrictions against former dealers engaging in a similar business, prima facie cases have been established, and (3) that on the issues of maintaining exclusive territories and restrictions against dealers selling to certain specified parties, prima facie cases have not been established. The appeal is from the ruling with respect to the maintenance of exclusive territories, the contention of counsel in support of the complaint being that any limitation by a manufacturer on the territory in which an independent dealer is permitted to sell his own products is unlawful *per se*.

This, however, is not a question that has to be decided in this case. The complaint, after setting forth the terms and conditions of the dealer contracts and a general description of the respondent's related activities, further alleges that each of the agreements, conditions and activities "either individually or collectively," is in undue restraint of trade. Thus, the complaint, in addition to challenging the legality of each of the conditions and limitations included in the contracts, strikes generally at the respondent's overall course of dealing and places in issue the broad question of whether the respondent's entire method of doing business, including the imposition on its dealers of all of the terms and conditions of the contracts and the use of all of the acts and practices engaged in pursuant thereto, considered together, constitute a restraint of trade in violation of the Federal Trade Commission Act.

Viewed in this light, it is immediately apparent that the ruling of the hearing examiner, based on considerations relating to separate fragments of the broad issue so presented, rather than to the issue as a whole, is erroneous. If, as the examiner held, a prima facie showing of illegality has been made with respect to the respondent's resale price maintenance agreements and its practice of restricting former dealers from engaging in similar businesses, either separately or collectively, the motion to dismiss the complaint should have been denied in toto. Assuming that the prima facie case is not rebutted, the subsidiary question of whether the maintenance of exclusive territories and the respondent's related practices, either or both, contribute to the illegality of the arrangement is one to be considered in final disposition of the case.

The ruling appealed from will be reversed with the direction that the respondent's motion to dismiss the complaint be denied.

ORDER

Counsel in support of the complaint having filed an interlocutory appeal from the hearing examiner's order of October 5, 1959, grant-

ing in part the respondent's motion to dismiss the complaint in this proceeding; and

The Commission, for the reasons set forth in the accompanying opinion, having determined that the hearing examiner was in error:

*It is ordered*, That the appeal be, and it hereby is, granted.

*It is further ordered*, That the order appealed from be, and it hereby is, vacated and set aside.

*It is further ordered*, That the case be referred back to the hearing examiner with directions to deny the motion to dismiss.

#### ALPINE QUILTING COMPANY, INC., ET AL.

*Docket 7619. Order, Jan. 27, 1960*

Order denying respondents' request for opportunity to execute agreement to cease and desist, the record in the case being substantially complete.

The respondents, by motion filed December 16, 1959, renewed January 12, 1960, having requested the Commission to stay this proceeding for the purpose of permitting them to enter into a voluntary agreement to cease and desist from the practices alleged to be unlawful; and

It appearing that the Commission, by issuing its complaint on October 22, 1959, indicated its prior administrative determination that a formal proceeding against the respondents would be in the public interest, and no showing having been made that this determination was incorrect; and

It further appearing that the trial of the case has proceeded to the point where the record is substantially complete, thus precluding the possibility of avoiding the expenditure of time and money by the acceptance of an informal agreement to cease and desist, as contemplated by §1.51 of the Commission's Rules of Practice, Procedures and Organization; and

It further appearing that no useful purpose would be served by oral argument on the respondents' motion:

*It is ordered*, That said motion be, and it hereby is, denied.

#### RADIO TELEVISION TRAINING ASSOCIATION, INC., ET AL.

*Docket 6616. Order, Feb. 10, 1960*

Order vacating initial decision and remanding case for ruling on the parties' proposed findings of fact.

This matter having come on for hearing upon the motion filed by the respondent Radio Television Training Association, Inc., which requests that this proceeding be remanded to the hearing examiner or, alternatively, that other procedural orders be entered by the Commission; and

The Commission having considered said motion, the answer in opposition filed by counsel supporting the complaint, and the reply thereto tendered by counsel for movant, counsel's request for leave to file such reply being hereby granted; and

The motion having stated that the hearing examiner's prior rulings did not clearly inform said respondent as to the action taken by the hearing examiner on each of the proposed findings of fact filed by respondents after the taking of evidence was completed, and it appearing that subsequent to the filing of such motion the hearing examiner has prepared and submitted a supplemental order under date of January 27, 1960, purporting to rule on the respondents' proposed findings of fact; and

The Commission having determined that the order dated January 27, 1960, should be stricken and that the initial decision should be vacated and the case remanded to the hearing examiner for filing of order ruling on the parties' proposed findings of fact and for incorporating any changes in the initial decision which he may desire to make in the light thereof:

*It is ordered*, That the hearing examiner's order dated January 27, 1960, be, and it hereby is, stricken from the record.

*It is further ordered*, That the initial decision be, and it hereby is, vacated.

*It is further ordered*, That the case be remanded to the hearing examiner.

#### LIBBY-OWENS-FORD GLASS COMPANY ET AL.

*Docket 7643. Order and Opinion, Feb. 26, 1960*

Interlocutory order granting respondent's application for access to one motion picture film in investigational files—as to which counsel for CBS stated his client had no objection—but denying it as to all other confidential material.

#### ON APPLICATION FOR ACCESS TO CERTAIN FILE MATERIAL

By the COMMISSION:

The respondent Libby-Owens-Ford Glass Company requests that two motion picture films designated in its application, together with any other motion picture films secured in the course of the Commission's investigation culminating in the institution of this proceeding, be exhibited to respondent's representatives.

Under the Commission's Rules of Practice adopted for the protection of material and information coming into the possession of the Commission or within the knowledge of any of its officers or employees in the performance of their official duties, all file material in the category to which the application relates constitutes

confidential information. With respect to one of the films referred to in the application, namely, that prepared by United States Testing Company, Inc., for CBS Television Network, counsel for Columbia Broadcasting System, Inc., has stated in a memorandum submitted with the application that his client has no objection to the films being exhibited to counsel for respondent Libbey-Owens-Ford Glass Company. CBS Television Network presumably was one of the media through which respondents disseminated advertising during the period to which the charges of the complaint relate. The Commission has determined that the application should be granted to the extent that it requests that the film prepared for CBS Television Network be exhibited to applicant's counsel.

Broad powers of compulsory process and visitation have been conferred by law upon the Commission. The releasing of information obtained by the Commission in the discharge of its statutory duties is consistent with its responsibilities in respect thereto only when such course will serve the public interest. The effective discharge of the Commission's duties requires that it request evidentiary information and receive voluntary submissions thereof from the public and the business community; and promptness and expedition in such submittals are fostered and promoted by duly preserving the confidential status of information so received. Other considerations of public policy become governing in the event the public interest requires introduction of such information in support of charges in adversary public proceedings. It accordingly is not controlling that applicant is of the view that access to Commission investigation files may assist applicant in preparing its defense to the charges of the complaint.

The application for access to confidential material other than the aforementioned film prepared for CBS Television Network is denied. An appropriate order granting the application to the extent noted above is being entered.

Commissioner Tait did not participate in the decision of this matter.

#### ORDER

Respondent Libbey-Owens-Ford Glass Company having made application for access to all motion picture films contained in the files of the Commission's investigation in this matter; and

The Commission having considered the matter and granted the application insofar as it relates to a motion picture film prepared for CBS Television Network by The United States Testing Company, Inc., and the Commission having additionally determined that such application should be in all other respects denied:

*It is ordered,* That counsel supporting the complaint in this pro-

