IN THE MATTER OF

KENNEBEC MILLS CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE WOOL PRODUCTS LABELING ACTS

Docket 7353. Complaint, Jan. 9, 1959—Decision, June 27, 1959

Consent order requiring two affiliated manufacturers with offices in Fairfield, Maine, and New York City, respectively to cease violating the Wool Products Labeling Act by tagging as "50% reprocessed wool, 50% wool," fabrics which contained a substantial quantity of fibers other than wool, and by failing to label certain wool products as required.

Mr. Garland S. Ferguson for the Commission.

Mr. Frederick E. M. Ballon, of New York, N.Y., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated January 9, 1959, the respondents are charged with violating the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act and the Rules and Regulations made pursuant thereto.

On May 7, 1959, the respondents and their attorney entered into an agreement with counsel in support of the complaint for a consent order.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged on the complaint.

The hearing examiner finds that the content of the agreement meets all of the requirements of Section 3.25(b) of the Rules of the Commission.

The hearing examiner being of the opinion that the agreement and the proposed order provide an appropriate basis for disposition of this proceeding as to all of the parties, the agreement is hereby accepted and it is ordered that the agreement shall not become a part of the official record of the proceeding

unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Respondent Kennebec Mills Corporation is a corporation existing and doing business under and by virtue of the laws of the State of Maine, with its office and principal place of business located at Fairfield, Maine.

Respondent R. G. Fromkin Co., Inc. is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 450 Seventh Avenue, New York, N.Y.

Respondent Robert G. Fromkin is an individual and an officer of said corporations. He formulates, directs and controls the policies and practices of the corporate respondents. The address of the individual respondent is the same as that of the corporate respondent R. G. Fromkin Co., Inc.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Kennebec Mills Corporation, a corporation, and its officers, and R. G. Fromkin Co., Inc., a corporation, and its officers, and Robert G. Fromkin, individually and as an officer of said corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 of woolen fabrics or other "wool products" as such products are defined in, and subject to the said Wool Products Labeling Act, do forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amounts of the constituent fibers contained therein.

2. Failing to securely affix to or place on each such product a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner:

(a) The percentage of the total weight of such wool product, exclusive of ornamentation not exceeding five percentum of said

total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage, by weight of such fiber, is five percentum or more, and (5) the aggregate of all other fibers;

(b) The maximum percentage of the total weight of such wool product of any nonfibrous loading, filling, or adulterating matter;

(c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

It is further ordered, That respondents Kennebec Mills Corporation, a corporation, and its officers, and R. G. Fromkin Co., Inc., a corporation, and its officers, and Robert G. Fromkin, individually and as an officer of said corporations, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of woolen fabrics or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the constituent fibers of which their products are composed or the percentages or amounts thereof, in sales invoices, shipping memoranda, or in any other manner.

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 27th day of June 1959, become the decision of the Commission; and, accordingly:

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

SHEFFIELD MERCHANDISE, INC., ET AL. Docket 6627. Order and opinion, July 7, 1958.

Order vacating hearing examiner's dismissal, based on abandonment of challenged practices prior to complaint, and remanding case for further proceedings.

OPINION OF THE COMMISSION

By ANDERSON, Commissioner:

Complaint in this proceeding issued September 11, 1956, charging respondents with violation of the Federal Trade Commission Act in two respects. One was the deceptive use of the word "jeweled" on the faces of one-jewel watches and in advertising material, it being alleged that a jeweled watch is generally understood to be one containing at least seven jewels serving as frictional bearings. The other was misrepresentation through use of the term "guaranteed for one year" without adequate disclosure of the terms, conditions and limitations of the guarantee. The hearing examiner in an initial decision dated May 5, 1958, granted respondents' motion to dismiss and found that respondents abandoned the practices about five months prior to issuance of the complaint; that there is no likelihood that the practices will be resumed; and that everything which could be accomplished by a cease and desist order has already been accomplished by the voluntary act of respondents.

The Commission is of the opinion that the hearing examiner was in error in dismissing the complaint. The initial decision is, therefore, being vacated and the case remanded for further proceedings for the following reasons:

The Commission disagrees with the hearing examiner's application of the principles heretofore announced in the *Argus Cameras, Inc.* (D. 6199), *Wildroot Company, Inc.* (D. 5928), and *Bell & Howell Co.* (D. 6729) cases. In the *Argus Cameras* case, Chairman Gwynne, speaking for the Commission, stated:

"Dismissal of a complaint in cases of this general character is not the usual procedure. It should not be done unless there is a clear showing of unusual circumstances which in the interest of justice require it. Those circumstances exist in this case."

What are the circumstances in the instant case? Respondents admittedly engaged in the practices questioned in this proceeding and had done so over a considerable period. The practices were widespread in the industry and apparently were adopted by respondents for business and competitive reasons. Investigation of respondents was commenced in 1953 and respondents certainly were aware of the Commission's "hand upon their shoulders" and the reasons therefor. Assuming that discontinuance occurred as contended, respondents have never unequivocally receded from their position that use of the practices involved did not result in deception of confiding buyers. Furthermore, there is not present in the situation surrounding the abandonment the "unusual circumstances" which obtained in the *Argus Cameras* and other cases referred to in the initial decision upon which dismissal of the complaint here can be justified. In those cases, the Commission had definite assurances, by reason of existing industry-wide business conditions and other circumstances, that the practices involved surely would not be resumed. In the instant case, we have the promise of respondents that certain practices will not be engaged in again. That promise, though given in good faith, must be weighed in the light of attending facts, including the continued existence in the industry of the practices that led respondents initially to employ the questioned representations. In such setting, respondents for compelling competitive reasons would be free again to adopt the same or similar practices, absent some effective legal restraint. Clearly, in such a situation, the Commission would be remiss in its duty to prevent deceptive and misleading practices in their incipiency if in reliance on a mere promise not to resume questioned acts, it dismissed the complaint.[1] As the court stated in *C. Howard Hunt Pen Co.* v. *Federal Trade Commission*, 197 F. 2d 273 (C.A. 3, 1952), where discontinuance had been effected two years before issuance of the complaint:

"Petitioner's sole objection * * * is that its former practice * * * was discontinued in 1941, 2 years before the Commission's complaint was filed in this proceeding. Petitioner alleged in its answer to the complaint that it has no intention of resuming that practice but there is no specific testimony to that effect. We see no reason why even if there had been the Commission

[1] *Sears Roebuck & Co.* v. *Federal Trade Commission*, 258 Fed. 307 (C.A. 7, 1919); *Moir, et al.* v. *Federal Trade Commission*, 12 F.2d 22 (C.A. 1, 1926); *Perma-Maid, Inc.* v. *Federal Trade Commission*, 121 F.2d 282 (C.A. 6, 1941).

would have been bound simply by the promise of the petitioner."[2]

In a situation where practices were discontinued shortly before complaint issued, the Commission's cease and desist order was affirmed in *Hershey Chocolate Corp.* v. *Federal Trade Commission,* cited n. 2, where the Court said:

"The Commission would have no power at all if it lost jurisdiction every time a competitor halted an unfair practice just as the Commission was about to act. The practice may have been discontinued but without the Commission's order it could be immediately resumed." [at page 971]

Let it be clearly understood that we are not adjudicating here the merits of this case. The Commission, "having reason to believe" that respondents' practices were violative of the Federal Trade Commission Act, issued its complaint pursuant to that Act. Respondents answered, stating that the purchasing public understands a jeweled movement to be one that contains one or more jewels serving a functional purpose and denied that through their use of the word "jeweled" they represented, directly or by implication, that their watches contained at least seven jewels, as alleged in the complaint. There is no evidence of record to permit determination of the issue. Nor has there been any determination by the hearing examiner of the adequacy of disclosure of the terms and conditions of respondents' guarantee; and none is intended to be made here.

As indicated above, the Commission through issuance of its complaint made its administrative determination that the public-interest requires the disposition of this matter by adversary proceedings. By its order of July 23, 1957, denying respondents' motion to refer the proceeding to the Division of Stipulations, the Commission reaffirmed that decision and it is still of the opinion that the issues as to "jeweled" and the use of the term "guarantee," still remaining unlitigated, should be resolved on the basis of available evidence.

Respondents in advancing their motion to dismiss before the hearing examiner rely upon *Stokely Van Camp, Inc.* v. *Federal Trade Commission,* 246 F. 2d 458 (C.A. 7, 1957). We think that case is readily distinguishable from the circumstances presented

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[2] See also *Federal Trade Commission* v. *Goodyear Tire & Rubber Co.*, 304 U.S. 257, 260 (1938); *Hershey Chocolate Corp.* v. *Federal Trade Commission*, 121 F.2d 968, 971 (C.A. 3, 1941); *Consumer Sales Corp* v. *Federal Trade Commission*, 198 F.2d 404, 407 (C.A. 2, 1952), cert. denied 344 U.S. 912 (1953); *Consolidated Royal Chemical Corp.* v. *Federal Trade Commission*, 191 F.2d 896, 900 (C.A. 7, 1951); *Keaseby and Mattison Co.* v. *Federal Trade Commission*, 159 F.2d 940, 952 (C.A. 6, 1947).

in the instant proceeding and that it applies recognized legal principles to an entirely different situation than we have here.

In the order to accompany this opinion, the initial decision will be vacated and set aside and the case remanded to the hearing examiner for further proceedings consistent with this opinion.

ORDER VACATING INITIAL DECISION AND REMANDING CASE TO HEARING EXAMINER

It appearing that the hearing examiner filed, on May 5, 1958, an initial decision dismissing the complaint in this proceeding; and

The Commission, for the reasons stated in the accompanying opinion, having determined that the hearing examiner was in error in dismissing the complaint:

It is ordered, That the aforesaid initial decision be, and it hereby is, vacated and set aside.

It is further ordered, That this case be, and it hereby is, remanded to the hearing examiner for further proceedings.

GULF OIL CORPORATION. Docket 6689. Order and opinion, July 8, 1958.

Interlocutory order remanding respondent's motion alleging undue delay in presenting case-in-chief, transmitted by hearing examiner to Commission as raising issues beyond his authority to rule upon.

OPINION OF THE COMMISSION

By TAIT, Commissioner:

The respondent filed a motion alleging undue delay by staff counsel in presenting the case-in-chief and requesting that the hearing examiner order that submission of proof in support of the complaint be closed, or, alternatively, that an early date for termination of evidence be fixed by him. Counsel supporting the complaint then filed their answer in opposition denying various of the motion's averments. Under the order filed by him on May 19, 1958, the hearing examiner transmitted the motion to the Commission for its disposition as one raising issues and asking relief beyond his authority to rule upon.

Section 3.8 of the Commission's Rules prescribes that during pendency of proceedings before hearing examiners, all motions, except for one category not here material, shall be addressed to and ruled upon by the hearing examiner. A companion rule, §3.15, confers authority on such officers to regulate the course of

hearings and to rule upon procedural motions. The hearing examiner, therefore, erred in concluding that he lacked power to rule upon the merits of the respondent's motion. The motion accordingly is being remanded to the hearing examiner for disposition.

We note that this proceeding has been marked by the filing of an unusually large number of requests for us to consider various aspects of the case prior to final decision. The considerations of public policy militating against piecemeal adjudications are obvious and require no further comment. The Commission's Rules accordingly contemplate that rulings within the jurisdiction of the hearing examiner be made by him and that such rulings be accepted by the parties as governing except in unusual circumstances. Illustrating this is the fact that the category of interlocutory appeals qualifying to be granted under §3.20 of the Rules is a limited one. Hence, routine recourse to the Commission by interlocutory appeal or similarly authorized procedures prior to presentation of cases for final determination departs from the spirit of the rules.

ORDER REMANDING MOTION TO HEARING EXAMINER

The Commission having determined, for reasons stated in the accompanying opinion, that the hearing examiner erred in holding that he lacked authority to rule on the motion transmitted to the Commission for its consideration under his order filed on May 19, 1958:

It is ordered, That such motion be, and it hereby is, remanded to the hearing examiner.

MYTINGER & CASSELBERRY, INC., ET AL. Docket 6962. Order and opinion, July 15, 1958.

Interlocutory order denying respondents' appeal from hearing examiner's order granting complaint counsel's motion for modification of order directing compliance with modified subpoena duces tecum.

ON INTERLOCUTORY APPEAL

By the COMMISSION:

Counsel for respondents have appealed from the hearing examiner's order of May 22, 1958, granting the motion of counsel supporting the complaint for reconsideration and modification of an order directing compliance by respondents with a modified subpoena duces tecum. Counsel supporting the complaint answered and respondent filed a reply thereto. The order appealed from directs compliance with a previously modified subpoena

duces tecum and substitutes two paragraphs for three items of the original subpoena which have been quashed. The two substitute paragraphs require respondents to produce the originals, or copies, of statements of policy and instructions and correspondence which the corporate respondent has issued, or received, during 1954 to 1957 with regard to implementation and enforcement of its alleged policy of exclusive dealing. The scope of time coverage is two years shorter than in other items of the modified subpoena which respondents do not now contend to be unreasonable and from which no appeal has been taken.

Respondents argue that the two substitute paragraphs are vague, ambiguous, oppressive, burdensome and unreasonable, and constitute an improper attempt to use a subpoena for purposes of discovery.

The hearing examiner's ruling recognizes that compliance with the substitute paragraphs will impose a burden upon the respondents, but concludes that the modified requests are clearer and less burdensome than the quashed items of the original subpoena and expresses the view that the records sought are sufficiently relevant and material to the issues herein to justify the difficulties involved in producing them. The examiner was of the further opinion that such records should facilitate a just adjudication of this proceeding.

Under Section 9 of the Federal Trade Commission Act [1], the Commission has clear statutory authority to require by subpoena the production of documentary evidence of any corporation being investigated or proceeded against. This authority extends to proceedings initiated under that Act and under the Clayton Act, as amended.[2] *John T. Menzies* v. *Federal Trade Commission,* 242 F. 2d 81 (C.A. 4, 1957). The complaint in this proceeding is in three counts. Count I charges violation of Section 3 of the Clayton Act. Count II charges violation of Section 5 of the Federal Trade Commission Act. Both Count I and Count II involve alleged exclusive dealing. Count III charges violation of Section 5 of the Federal Trade Commission Act through misrepresentation of the effect of a consent decree of injunction issued by the United States District Court for the Southern District of California. The specifications of the modified subpoena with which we are concerned here relate only to Counts I and II of the complaint.

Clearly, the documents sought under the contested items of

[1] 15 U.S.C.A. 49.
[2] 15 U.S.C.A. 12–27.

the subpoena are sought for a lawful purpose and are relevant and material to the issues of respondents' alleged policy of exclusive dealing and the enforcement of that policy. The period of time covered is reasonable, and the documents are specified with reasonable particularity. This is apparent both on the face of the subpoena and from the allegations of the complaint. Under such circumstances, respondents' contentions must be rejected. *Endicott Johnson Corp.* v. *Perkins,* 317 U.S. 501 (1943); *Oklahoma Press Publishing Company* v. *Walling,* 327 U.S. 186 (1946); *United States* v. *Morton Salt Co.,* 338 U.S. 632 (1950).

Like the examiner, the Commission is aware of the fact that compliance with the modified subpoena may be burdensome to some extent, but does not believe it will be oppressively so. Compliance therewith is but a concomitant of adjudicatory proceedings of the nature here involved.

Respondents' appeal from the hearing examiner's order of May 22, 1958, should be denied. The Commission having further concluded that no good purpose would be served by oral argument, respondents' request therefor will also be denied. An appropriate order will be entered.

ORDER DENYING INTERLOCUTORY APPEAL

The respondents having filed an interlocutory appeal from the hearing examiner's order of May 22, 1958, granting the motion of counsel supporting the complaint for reconsideration and modification of an order directing compliance by respondents with a modified subpoena duces tecum; and

The Commission, for the reasons stated in the accompanying opinion, having determined that the ruling appealed from is not erroneous:

It is ordered, That respondents' appeal and their request for oral argument thereon be, and they hereby are, denied.

NATIONAL DAIRY PRODUCTS CORP. Docket 7018. Order, July 17, 1958.

Interlocutory order sustaining hearing examiner's denial of respondent's motion for leave to amend answer to protest against Commission's entry of desist order without issuing like orders simultaneously against its competitors.

The respondent having filed an interlocutory appeal from the hearing examiner's ruling of June 18, 1958, denying respondent's motion for leave to amend its answer to the complaint; and

It appearing that the proposed amendment consists of allegations that practices similar to those set forth in the complaint are widely employed by respondent's competitors and that respondent would be seriously injured if the Commission should enter a cease and desist order requiring it to discontinue such practices without issuing like orders simultaneously against its competitors; and

It further appearing that such allegations even if established by proof would not constitute a defense to the charges of the complaint; and

The Commission being of the opinion that the respondent's appeal, being directed to the Commission's administrative discretion, is not one to be granted under §3.20 of the Rules of Practice:

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

THE TEXAS CO. Docket 6898. Order, July 29, 1958.

Interlocutory order sustaining denial of motion to quash subpoena duces tecum on ground that counsel had stipulated that production of documents in question would not be required.

Counsel for respondent having filed an interlocutory appeal from the hearing examiner's refusal to quash a subpoena duces tecum calling for production of certain documents in respondent's possession upon the principal ground that counsel had stipulated in writing that production of such documents would not be required; and

The Commission having examined the exchange of correspondence between counsel, purporting to embody the aforesaid stipulation, and the pertinent portions of the transcript of record relative thereto, and having concluded that said stipulation was not intended to, and by its terms does not, preclude counsel supporting the complaint, at the proper time and through appropriate process, from seeking production of the documents included in the specifications of the subpoena duces tecum:

It is ordered, That respondent's appeal from the hearing examiner's ruling denying respondent's motion to quash the subpoena duces tecum be, and it hereby is, denied.

LURIA BROTHERS & COMPANY, INC., ET AL. Docket 6156. Order and opinion, July 30, 1958.

Interlocutory order denying complaint counsel's appeal from hearing examiner's rulings closing case before disposing of motions to strike evidence and requiring complaint counsel's findings to be filed before respondents'.

OPINION OF THE COMMISSION

By the COMMISSION:

When closing the record for the reception of evidence, the hearing examiner allotted counsel supporting the complaint four months' time within which to file their proposed findings and conclusions. The hearing examiner accorded the respondents six months' time for that purpose and additionally granted the respondents leave within that period to make or renew motions to strike certain evidence which had been received into the record over their objections. The appeal asks reversal of the action closing the case without disposing of all motions to strike evidence and of the action requiring that suggested findings be filed by counsel supporting the complaint prior to the date when respondents' proposals and motions are due to be submitted. These rulings, the appeal contends, violate basic concepts of orderly procedure and due process.

Orderly trial procedure ordinarily entails timely rulings on motions to strike prior to submission of the case for decision on its merits. At any stage of proceedings pending before them, however, hearing examiners may duly entertain requests for reconsideration of prior evidentiary rulings when warranted by the circumstances. Here, the examiner decided to defer the filing of motions to strike and to decline to rule thereon until after the case was closed. He attempted to eliminate cause for a renewal and reargument of respondents' prior exceptions to rulings on the reception of evidence. Throughout his rulings the hearing examiner laid stress upon the unusual number of severable allegations set forth in the Commission's complaint and the resulting complexity of the issues. He emphasized the need of having the evidence adduced during course of trial, and to be relied upon by counsel in support of the complaint, directed to and connected up with the issues to which it may be deemed relevant. The hearing examiner considered that the course taken by him in these circumstances would expedite the proceeding and be of material aid in rendering a sound decision on the merits.

It is true, as argued by counsel supporting the complaint, that if subsequently filed motions to strike are ruled upon adversely to them, the record for decision will differ from that existing when the proceeding was closed and submitted for decision. In such case, however, counsel would not be foreclosed on appeal from pressing exceptions to those rulings, irrespective of the manner of disposition by the hearing examiner of any motion to

reopen filed in recognition of rulings striking evidence. We do not believe, in the circumstances here presented, that the ruling closing the record and permitting filing of motions to strike contemporaneously with submission of respondents' proposed findings affected counsel's substantial rights or prejudicially departed from orderly procedure. This aspect of the appeal, accordingly, is denied.

Under the companion ruling to which the appeal likewise excepts, the hearing examiner, as previously noted, accorded the respondents six months' time for filing of their proposed findings; and, to counsel supporting the complaint, who had suggested at the outset that three months be allotted, the hearing examiner granted four months. Parties are authorized under §3.19 of the Commission's Rules to file their respective proposed findings at the close of the reception of evidence or "within a reasonable time thereafter" as fixed by the hearing examiner. Both periods fixed under the ruling exceed those customarily granted in Commission proceedings. However, the appeal's exceptions center on the time disparity feature. Inasmuch as the ruling is not attacked as according an unreasonable time for the submissions, the question of whether it essentially serves to prolong the proceeding unduly is not before us for review and not decided.

The appeal contends that the failure to fix the same expiration date for filing of proposals by all parties contravenes the Commission's rule and that the time afforded respondents handicaps counsel supporting the complaint in the presentation of their case. The fact that the respondents may be enabled to prepare their proposals in the form of counter-findings does not, however, deny counsel supporting the complaint opportunity to fully present their case. The rule itself does not require that the time fixed permit simultaneous filings by parties. It is, however, equitable and proper that parties be afforded equal time, running concurrently, for the submission of suggested findings. This has been the customary practice in Commission proceedings and it is one to be departed from only in unusual circumstances. While recognizing this, the hearing examiner deemed another course warranted by exigencies of the case and his statement in that regard included the following:

"The complaint is very involved. * * *

"* * * My impression at this time is that with respect to some of the allegations there is either no evidence or very, very marginal evidence. * * *

"I think that we can proceed more expeditiously in the long

run if we have counsel supporting the complaint file their proposals and have counsel for respondents file their answering or reply proposals—counter proposals. * * *

"* * * if I were to require you both to file your proposals at the same time, insofar as respondents are concerned they would be shooting somewhat in the dark and having to anticipate what your proposals would be—that is counsel supporting the complaint's proposals—and I would feel obligated to permit an additional time thereafter for answering proposals. I think under all circumstances that I am going to fix a time for the filing of the proposals by counsel supporting the complaint, fix an additional time thereafter within which counsel for respondents shall file their counter proposals."

The ruling clearly related to matters committed to the sound discretion of the hearing examiner. We cannot say that his action constituted an abuse of any discretionary limitations. This aspect of the interlocutory appeal accordingly is denied.

The appeal additionally excepts to the hearing examiner's order of May 7, 1958, denying the motion of counsel supporting the complaint to reconsider a prior ruling concerning Commission Exhibit 985. In the original ruling, the hearing examiner indicated he would grant a motion by respondents to strike such exhibit unless its underlying records were made available to respondents; and it appears from the appeal and respondents' answers that those data were duly made available for consideration. Hence, the hearing examiner has not stricken the exhibit and the contingency apparently is foreclosed which he stated would warrant its striking. Because the ruling nowise involves substantial rights affecting final decision, this part of the appeal also is denied.

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

ORDER DENYING INTERLOCUTORY APPEAL

This matter having come on for hearing upon the interlocutory appeal filed by counsel supporting the complaint from rulings contained in two orders filed by the hearing examiner on May 7, 1958, and upon the answers of respondents in opposition to the appeal; and

The Commission having determined, for reasons stated in the accompanying opinion, that the appeal should not be granted.

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

Commissioner Kern not participating.

EXQUISITE FORM BRASSIERE, INC. Docket 6966. Order, Aug. 1, 1958.

Order granting motion of complaint counsel, certified by the hearing examiner, and ordering complaint amended and supplemented by adding charges of violation of Section 2(e) of the Clayton Act.

This matter having come on to be heard upon the motion certified by the hearing examiner to the Commission for its determination, which motion was filed by counsel supporting the complaint and requested, among other things, that the Commission amend and supplement its complaint in this proceeding by adding allegations charging that the respondent has violated subsection (e) of Section 2 of the Clayton Act, as amended; and

The Commission having duly considered the motion and the respondent's answer in opposition thereto, and it appearing that the record contains information constituting adequate grounds for preliminary administrative determinations or "reason to believe" that the respondent has furnished the services of special personnel, known as "stylists," to some of its purchasers and has not accorded such services or facilities to other purchasers upon proportionally equal terms, in violation of the public policy expressed in subsection (e) of Section 2 of the Clayton Act, as amended; and

The Commission having determined that exercise of its administrative responsibility to issue an amended and supplemental complaint is required in the public interest and it appearing that the right of the respondent to full and fair hearing on the charges against it is protected under procedures provided for the conduct of the Commission's adjudicative proceedings:

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

It is further ordered, That the amended and supplemental complaint of the Commission issue herewith and be served upon the respondent Exquisite Form Brassiere, Inc.

It is further ordered, That the evidence heretofore introduced in support of and in opposition to the original complaint shall have the same force and effect as though received at hearings under the complaint, as amended and supplemented, this action being without prejudice to the hearing examiner's authority and duty to rule upon the merits of any motion which may be filed requesting opportunity to further cross-examine witnesses heretofore appearing in the proceeding or to take such further action as may be appropriate to protect any of the respondent's rights.