SKYLARK ORIGINALS, INC., ET AL.*

Docket 8771. Order, Sept. 25, 1970

Order vacating initial decision, and case remanded to hearing examiner for further proceedings.

Order Vacating Initial Decision and Remanding Proceeding to Hearing Examiner

The complaint in this proceeding, issued November 27, 1968, charged that respondents violated the Federal Trade Commission Act by engaging in false and misleading advertising of their ladies' clothing and wigs by advertising fictitious prices at which their products were claimed to have been sold; falsely advertising that they unconditionally guarantee the return of the purchaser's money on request; falsely advertising that their wigs were available in five styles and ten colors at reduced prices from a limited supply for a limited time; and falsely advertising that their merchandise would be delivered promptly.

On November 26, 1969, the hearing examiner certified to the Commission a motion by respondents requesting that an agreement containing a consent order be accepted. Complaint counsel had joined in respondents' motion and the hearing examiner recommended that it be approved. This motion was denied by the Commission on December 18, 1969 [76 F.T.C. 1091], and a subsequent motion for reconsideration also was denied.

Thereafter, counsel for respondents and counsel supporting the complaint submitted to the hearing examiner a stipulation of facts and an agreed order with the understanding that the facts were stipulated subject to the acceptance by the Commission of the agreed order. On the basis of this stipulation the examiner cancelled hearings which were scheduled to commence March 23, 1970, and entered his initial decision adopting the stipulated facts and the order agreed upon by counsel.

The Commission by order of June 1, 1970, placed this proceeding on its own docket for review to permit a determination of whether the changes in Paragraphs 3, 5, 6 and 9 of the order which accompanied the complaint, particularly the addition of the language "in good faith," was warranted by the facts and whether the revised paragraphs would effectively prevent a resumption of the practices they purported to cover. Pursuant to authorization in said order, counsel supporting the complaint and counsel for respondents have filed briefs on the above issue.

---

*Order to cease and desist issued by Commission, March 9, 1972, 80 F.T.C. 337.

Paragraphs 3, 5, 6 and 9 in the notice order would prohibit respondents from failing to make refunds within the time and in the amount represented, failing to perform all of the actual and represented obligations under the terms of their guarantee, advertising merchandise of stated features or characteristics unless such merchandise is on hand and available to fill orders, and failing to make timely delivery of merchandise. According to the briefs submitted by counsel, the words "in good faith" were added to each of these paragraphs for the purpose of affording respondents a defense in the event of a violation which might occur without their knowledge or beyond their control. Counsel contend that such an order would effectively prevent recurrence of the practices found to be unlawful. Counsel further contend (as did the hearing examiner) that the inclusion of the "good faith" provision in the above paragraphs is consistent with the use of the same provision in Paragraphs 1, 7 and 8 of the original order.

With respect to the latter contention, the words "in good faith" as used in Paragraphs 1, 7 and 8 of the notice order do not provide respondents with a defense for practices which would otherwise be proscribed. In fact, the exact opposite is true. The words "in good faith" as used in these three paragraphs have nothing to do with a "defense" or with violations "which might occur without respondents' knowledge or beyond their control." Rather than provide a defense, these words would impose additional restrictions on respondents.[1]

Counsel are also in error in contending that an order which would permit respondents to make claims which may be false because of events or circumstances beyond respondents' control would be effective in preventing recurrence of the violations found by the hearing examiner. Respondents, having chosen to make representations about refunds, guarantees, availability and deliveries, must either perform as advertised or discontinue making these representations. The public is entitled to get what is advertised irrespective of respondents' good intentions or innocent motives. It should be emphasized that it is completely immaterial whether respondents' representations are made in good faith or bad faith. The purpose of the order is to protect the public from false and misleading claims and an order which would permit respondents to make such claims if they are "motivated by honest intentions" as complaint counsel suggests, would not accomplish that end.

For the foregoing reasons, the Commission has determined that the modification of Paragraphs 3, 5, 6 and 9 of the notice order is not

[1] In Paragraphs 1 and 7 these words would require respondents to use only a *bona fide* offer to sell as a basis for claiming that an offering price is a regular or former price. In Paragraph 8 respondents would be prohibited from representing that an offer is limited unless such limitation is actually imposed and "in good faith" adhered to.

warranted by the facts and that these paragraphs, as modified by the agreed order, will not effectively prevent a resumption of the practices they purport to cover. The agreed order therefore is deemed unacceptable.

The stipulation of facts upon which the initial decision is based was entered into subject to the acceptance by the Commission of the order agreed upon by counsel.

Accordingly, *It is ordered*, That the initial decision of the hearing examiner be, and it hereby is, vacated and set aside.

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

Commissioner Elman not participating.

CCM: ARTS & CRAFTS, INC., ET AL.

Docket 8817. Order and Opinion, Oct. 15, 1970

Order denying respondents' request for permission to file interlocutory appeal from orders of the hearing examiner striking a portion of respondents' answer to the complaint and denying their motion for discovery of certain Commission documents; and returning the case to hearing examiner for further action.

Opinion and Order Denying Respondents' Requests for Permission to Appeal and Remanding to the Examiner

This matter is before the Commission upon two requests by the respondents both filed September 23, 1970, for permission to file interlocutory appeal. The first seeks to pursue an appeal from the hearing examiner's order dated September 14, 1970, striking a portion of respondents' answer to the complaint. The second is a request for permission to appeal from the examiner's order of September 14, 1970, denying in part their motion for the discovery of certain Commission documents. Complaint counsel on September 30, 1970, filed in separate documents their statements opposing the requests of the respondents.

The examiner's order striking a part of respondents' answer resulted from a motion by complaint counsel requesting the examiner to strike three different portions of such pleading on the grounds that "the cited portion of respondents' answer are immaterial and impertinent, and, even if true, do not establish a legal defense to the charges contained in the complaint." The hearing examiner after receiving respondents' answer to such motion, and without stating his reasons therefor, granted in part complaint counsels' motion and ordered that a portion of Paragraph 4 of the answer be stricken, which portion reads as follows:

* * * which Order has obviously not been the subject of any effective enforcement proceedings, and but for such dereliction the instant proceeding would not have been instituted.[1]

The second request to appeal relates to the order of the hearing examiner denying respondents' motion for the discovery of documents to the extent that they had requested "all Commission memoranda, correspondence and other documents relating to complaints, investigations or enforcement proceedings against Ramonts pursuant to the 1961 Federal Trade Commission Order in Docket 8217." In denying such part of the request the examiner apparently was concurring in the argument of complaint counsel which states in part: "To explore the happenings in the Ramonts matter would obfuscate the question before the examiner and would be of no probative value." and "The steps the Commission took to enforce the order against Ramonts do not bear upon the essential allegations contained in the complaint or provide a defense thereto." (Answer filed September 8, 1970 to respondents' motion for discovery) The hearing examiner in his order denying the stated portion of respondents' request for discovery gave no reasons for his action.

Respondents in their request for permission to appeal consider these two actions by the examiner to be related. They also construe his actions as meaning that he will not permit them to make one of their claimed defenses which is

that their supplier of wood fibre materials was under a Cease and Desist Order prohibiting the sale of untreated materials of this nature and that the failure effectively to enforce such Order was a contributing cause to the allegedly flammable materials being in respondents' hands. (Request to appeal from denial of discovery, pg. 2)

The examiner has the power to strike portions of pleadings and he may strike a claimed defense for the reason, among others, that it is clear under any of the facts to be proved such would not constitute a valid defense to the complaint. Sections 3.42(c), 3.15 and 3.21(a)(2)[2] We are of the view, however, that amending or striking a portion of a pleading so as to deny a party a defense requires in fairness that this action be explicit and unequivocal. In this instance, the examiner has not said that he is denying to respondents one of their defenses, and it is uncertain whether or not he did so even though the parties speculate that this is the effect of his actions. He has said nothing on what the

[1] Of the three portions of the answer requested stricken by complaint counsel the examiner struck only a part of one. His selective action creates doubt whether such order, by itself, amounts to a rejection of respondents' claimed defense, since other assertions possibly involving this defense including a reference to the Ramonts order were not stricken.

[2] *Cf.* 12(f) of the Federal Rules of Civil Procedure which provides that the court may, upon the motion of a party, order stricken any pleading containing "any insufficient defense or any redundant, immaterial, impertinent or scandalous matter."

orders in question mean. We do not wish to be understood, however, as suggesting that the examiner would be either correct or incorrect here if he acts so as to deny to respondents their claimed defense. We do not pass on that question.

We believe respondents are entitled to a clear statement on the issue raised and if the hearing examiner has, in fact, rejected a defense asserted by them, we believe they are also entitled to the reasons or the basis for such action.

In the circumstances, the matter is not ripe for review. We believe that the issue should be further considered and acted upon by the examiner in the light of our views expressed herein. Accordingly,

It is ordered, That the requests of the respondents filed September 23, 1970, for permission to file interlocutory appeal be, and they hereby are, denied.

It is further ordered, That this matter be, and it hereby is, returned to the hearing examiner for further appropriate consideration and action in the light of the opinion herein.

Commissioner Elman no participating.

UNIVERSE CHEMICALS, INC., ET AL.

Docket 8752. Order, Oct. 22, 1970

Order granting an individual respondent time to perfect an appeal from the initial decision; granting said respondent time to make satisfactory proof of financial inability to retain counsel; and referring the cause to the examiner to make findings of fact respecting said respondent's financial condition.

Order

Whereas, the hearing examiner entered an initial decision herein on February 10, 1970, concluding that the respondents had violated Section 5 of the Federal Trade Commission Act, and respondents through their counsel filed due notice of intent to appeal, which was thereafter withdrawn by letter from said counsel dated April 14, 1970;

Whereas, respondent Jordan L. Lichtenstein notified the Commission by letter dated April 24, 1970, that he did not have the funds to pay counsel for the prosecution of an appeal, and requested that the Commission appoint one of its own attorneys to represent him in the conduct of such appeal and judicial review proceedings;

Whereas, the Commission issued an Order dated May 13, 1970, adopting the initial decision of the hearing examiner as the final decision of the Commission except as to respondent Jordan L. Lichtenstein as an individual, and extending the time within which respondent Lichtenstein could perfect an appeal from the initial decision to

fourteen (14) days after said respondent was served with the order dated May 13, 1970;

Whereas, respondent Jordan L. Lichtenstein, within fourteen (14) days after being served with the order of the Commission dated May 13, 1970, notified the Commission by letter dated June 9, 1970, that he still desired to perfect an appeal to the Commission but lacked sufficient resources to retain counsel, and set forth allegations of fact in support of said claim of inability to retain counsel;

Now therefore it is ordered, That the letter of June 9, 1970, from respondent Jordan L. Lichtenstein being treated as a request for further time within which to perfect an appeal to the Commission, such request be, and hereby is, granted as to respondent Jordan L. Lichtenstein as an individual, and that said respondent shall have an additional period of time within which to make satisfactory proof of financial inability to retain counsel, as set forth hereinafter.

It is further ordered, That the cause is hereby referred to the hearing examiner for the purpose of making findings of fact on the issue of whether the respondent Jordan L. Lichtenstein presently possesses sufficient financial resources to retain counsel for prosecuting an appeal to the Commission.

It is further ordered, That the respondent Jordan L. Lichtenstein shall execute under oath the form of affidavit served herewith, and shall return the aforesaid executed affidavit to the Federal Trade Commission at the following address, either in person or by registered mail with return receipt requested, within seven (7) days after being served with this order:

Robert L. Camenisch, Federal Trade Commission
Room 486, U.S. Courthouse & Federal Office Building,
219 South Dearborn Street,
Chicago, Illinois 60604

It is further ordered, That the respondent Jordan L. Lichtenstein shall, on the fourteenth (14) days after being served with this order, be present for a hearing before the hearing examiner at the time and place set forth below, unless advised by the hearing examiner that such appearance is unnecessary, and shall within five (5) days thereafter submit to the hearing examiner such further information or documents relating to the said respondent's financial condition as the examiner may direct.

Time and place for appearance: 10:00 a.m.,
at Room 486 of the United States Courthouse
and Federal Office Building, 219 South
Dearborn Street, Chicago, Illinois. 60604

It is further ordered, That the hearing examiner shall, within five (5) days after receiving all relevant and necessary information from

respondent, or if respondent should fail or refuse to appear or to produce such information, within five (5) days of such failure or refusal, transmit to the Commission findings of fact regarding respondent's financial condition.

AFFIDAVIT OF FINANCIAL STATUS

Notice to Respondent: This form must be filled out under oath, and witnessed by a notary public. Supplying false answers or failing to provide all material facts called for by the questions may subject you to fine or imprisonment, or both, under Federal law.

The above-named respondent, ____ being first duly sworn, deposes and makes under oath the following statement regarding his marital status, residence, employment, and financial status:

I. MARITAL STATUS:

a. Single__ Married__ Separated__ Divorced__

b. Dependents: Wife__ Children, No. __ Others, No. __ and Relationship __________

II. RESIDENCE:

Respondent's address: Street____

City_________________________________ State____________ Phone__________

2. Other property:

a. Automobile: Make________________________________ Model_____________

In whose name registered____

Present value of car_______________________________________ $__________

Amount owed____ $__________

Owed to____ $__________

b. Cash on hand____ $__________

Cash in banks and savings & loan associations

____ $__________

Name and addresses of banks and associations:

____

____

3. Obligations:

a. Monthly rental on house or apartment_____________________ $__________

b. Mortgage payments on house (monthly)___________________ $__________

c. Other debts:

To whom owed	Amount
____	$__________
____	$__________
____	$__________
____	$__________
Total monthly payments on debts__________________________	$__________

4. Other information pertinent to Respondent's financial status:

a. List any stocks, bonds, savings bonds, interests in trusts either owned or jointly owned:

____

____

____

b. List any future source of income you might receive such as a pension, social security, or unemployment compensation and the year when such future source of income is anticipated to become due:

Signed____________________
(Respondent)

Subscribed and sworn before me
this ________________ day of ________ 19____.

MAREMONT CORPORATION

Docket 8763. Order and Opinion, Oct. 22, 1970

Order granting respondent's motion for a waiver of page limitation, denying all other motions of the respondent, and returning case to hearing examiner for trial.

Opinion and Order Denying Interlocutory Requests and Remanding to Hearing Examiner

This matter is before the Commission upon respondent's interlocutory appeal and requests for leave to appeal as follows: (1) Respondent's Appeal from Order Denying Applications for Issuance of Subpoenas *Duces Tecum* filed October 27, 1969; (2) Respondent's Request for Leave to File Interlocutory Appeal from Order Denying Discovery Applications filed October 27, 1969; (3) Respondent's Request for Leave to File Interlocutory Appeal from Order Scheduling Hearings filed October 27, 1969; and finally (4) Respondent's Request for Leave to File Interlocutory Appeal from Order Denying Request for Certification to the Commission of "Motion to Dismiss or, in the Alternative, for Plenary Hearing on Commingling of Functions and Ex Parte Communications," filed November 10, 1969.[1] Complaint counsel filed a response to this latter request on November 12, 1969.

On November 3, 1969, subsequent to the filing of its October 1969 interlocutory requests and prior to any Commission action thereon, and prior to the filing of its November 1969 request to appeal,

[1] Respondent also on October 27, 1969, filed a document entitled "Emergency Motion for Stay of Hearing Examiner's Order of October 16, 1969." This request was mooted by respondent's action to enjoin the Commission and by the Commission's order issued November 6, 1969 [76 F.T.C. 1081] cancelling hearings for the interim. Additionally, respondent on October 27, 1969, moved for a waiver of page limitation so as to permit one extra page for its request to appeal as to the scheduling of hearings which motion will be granted.

respondent filed suit in Federal district court against the Federal Trade Commission and its Commissioners seeking declaratory and injunctive relief, claiming that the Commission was violating its constitutional and statutory rights. On November 4, 1969, the U.S. District Court for the Northern District of Illinois, Eastern Division issued an order restraining the Commission from conducting hearings or otherwise going forward with this proceeding until further order of the Court; *Maremont Corporation* v. *Federal Trade Commission, et al.*, Civil Action No. 69 C 2266. The Commission thereupon on November 6, 1969, issued its order cancelling the hearings then set to begin November 12, 1969, "pending the district court's disposition of the Commission's motion to dismiss * * *, and pending the Commission's decisions on the interlocutory matters in this proceeding which are now before the Commission."

The district court thereafter on January 5, 1970, dismissed the complaint filed by respondent and respondent appealed. Pending appeal, the district court entered an order restraining the Commission from holding any further hearings.

The Circuit Court of Appeals for the Seventh Circuit rendered its decision on such appeal on September 3, 1970, and affirmed the decision of the district court. *Maremont Corporation* v. *Federal Trade Commission, et al.*, 431 F.2nd 124 (7th Cir. 1970); 1970 Trade Cases, ¶73310 [8 S. & D. 1233]. It also ordered on September 22, 1970, that the district court's order of January 16, 1970 restraining the Commission from further proceeding pending the appeal be vacated.

Thus, the Commission is now free to continue with the interrupted proceedings in this matter.

I

Respondent's appeal under Section 3.35(b) of the Commission's rules is from the examiner's order issued October 16, 1969 denying its application for issuance of subpoenas *duces tecum*. This appeal is cross referenced to respondent's other request filed contemporaneously with the appeal which seeks leave to file interlocutory appeal from the same order of the examiner insofar as it denies other discovery motions made by respondent. The other motions denied were (a) respondent's motion for access to special industry survey and (b) its motion for renewed consideration of certain discovery requests.

On the appeal from the order denying subpoenas, respondent generally challenges the appropriateness of the examiner's ruling and contends his action is arbitrary. Similarly as to the requests to appeal involving the special industry survey and other discovery matters discussed below, respondent's challenge is chiefly directed to the ex-

aminer's exercise of his discretion in denying their requests. In connection with the subpoenas the hearing examiner ruled as follows:

> Respondent's third application was made ex parte, for the issuance of discovery subpoenas duces tecum to 13 manufacturers of automotive parts. The specifications for said subpoenas call for a vast array of sales data, broken down by nine customer classifications and multiple geographic areas, and considerable other data and documents, including names of customers and financing of customers. The data requested cover a minimum period of three years and, in some instances, five years. Based on extensive experience in similar cases, the examiner would estimate that it will take over six months to accomplish even minimal compliance with said subpoenas, assuming no motions to quash, limit or for protective orders were filed. Were such motions to be filed, and typical interlocutory appeals taken, a delay of at least one year would ensue. The vast bulk of the data and documents sought by respondent are either plainly irrelevant, or their relevance has not been adequately demonstrated in its application. Considering the lateness of the hour and the dubious relevance of much of what is sought, the examiner is not disposed to issue the requested subpoenas duces tecum, and await the filing of the usual third-party motions. Should the relevance of any of the data be demonstrated after the start of hearings, respondent may renew its application on a more limited basis, and appropriate arrangements can be made to recess the hearings to permit discovery necessarily deferred. (Order Denying Discovery Applications, filed October 16, 1969, Pgs. 4 and 5)

The hearing examiner has broad discretion in the discovery area. There has been no showing here of any abuse of his discretion. Moreover, the examiner has indicated that if the relevance of the data should later be demonstrated, respondent may renew its application, albeit on a more limited basis. We do not believe that this appeal has been justified under the Commission's Rule Section 3.35(b) and it will, accordingly, be denied.

II

The request to appeal from the examiner's order filed October 16, 1969, so far as it denies respondent's other two motions, in effect raises for reconsideration matters previously presented to the Commission. On the "motion for renewed consideration of certain discovery requests," the examiner notes that he previously denied such requested discovery by his order of April 7, 1969; that a request for permission to appeal such order of denial was denied by the Commission; and that respondent has presented no substantial reason for modifying his prior order. The examiner notes that the type of discovery sought would only result in protracted delay and serve no constructive purpose.

The respondent's second motion denied seeks "access to special industry survey." The examiner concluded that this request was actually a motion for reconsideration of his order of April 2, 1969, denying such request, and as to which a request to appeal was also denied. The

examiner states that respondent has advanced no substantial new reason not previously considered by him and that were he to grant the request, it would result in a delay of from six months to a year or more. Finally, the examiner suggested that to the extent any of such material may be relevant for defense purposes, respondent may renew its application at the end of complaint counsel's case-in-chief.

On both these matters involving pretrail discovery, the examiner, as stated, has broad discretion and no showing is made that he abused his discretion. There has been no adequate showing here as required by Commission Rule Section 3.23 to justify an interlocutory appeal. Such requests will therefore be denied.

III

The respondent, in its remaining document filed October 27, 1969, requests leave to file an appeal from the examiner's order scheduling hearings filed October 17, 1969. Respondent raises two main points in this request.

The first relates to the examiner's conclusion that the proceeding is ready for trial. Respondent's argument under this point concerns details of the availability to respondent of complaint counsel's evidence including "basic statistical evidence." A part of respondent's complaint seems to be that there have been delays in the turning over of this material particularly in its final form, and that it therefore needs more time to prepare its defense. This point was, of course, made about one year ago. The intervening period has assuredly given respondent ample time to review the materials and prepare its defense. We recognize that respondent's argument goes somewhat beyond merely seeking additional time, *i.e.*, it seems to be suggesting that it is not receiving the production of certain of the documents to which it is entitled for the purpose of preparing its defense. It claims for instance it has not been furnished "summaries" of the expected testimony of some 40 out of 75 witnesses which complaint counsel has indicated they will call, allegedly in defiance of the hearing examiner's order.

The question on the completeness of the production ordered seems to us to be quite clearly a matter concerning procedure and the conduct of the trial which should be left to the hearing examiner's discretion. We do not believe there has been a showing he has abused his discretion in scheduling the formal hearings to begin especially since as indicated above respondent has now had an additional year for preparation.

The second point respondent raises on this request is the assertion that the examiner erred in selecting Washington, D.C. as the appro-

priate place for trial. On this issue of venue the examiner held as follows: "In the considered judgment of the examiner hearings will proceed with far more expedition, and will cause much less overall inconvenience if they are held in Washington, D.C." He also indicated that should it become necessary to recess at the end of complaint counsel's case-in-chief he would give further consideration to a request from respondent as to the necessity for setting *defense hearings* in Chicago.

We are of the view that the examiner here appropriately exercised his discretion in balancing the various interests on this matter of place of trial. See also the court's discussion of this issue in *Maremont Corporation* v. *Federal Trade Commission*, *supra*. There has been no showing here to justify an appeal under Section 3.23 of the Commission's rules; therefore, respondent's request will be denied.

IV

Finally, respondent on November 10, 1969, subsequent to the day the Commission was restrained in the interim from further proceedings filed a request titled as follows:

> Respondent's Request for Leave to File Interlocutory Appeal from Order Denying Request for Certification to the Commission of "Motion to Dismiss or, in the Alternative, for Plenary Hearing on Commingling of Functions and Ex Parte Communications."

Respondent claims that it was error for the hearing examiner not to certify its motion concerning alleged *ex parte* activities asserting that the motion was addressed to the Commission's administrative discretion. Respondent attached to its request a copy of its motion entitled:

> Motion to Dismiss or, in the Alternative, for Plenary Hearing on Commingling of Functions and Ex Parte Communications.

Since the motion is in fact before us as if it had been certified, we believe it is unnecessary in the circumstances here to consider the assertion of error for failure to certify. We will go immediately to consideration of the motion.

Respondent in its motion, bases its claim of *ex parte* communications on the statements made by complaint counsel relative to the role in this proceeding of Steven Nelson, an economist employed by the Commission. It is averred that complaint counsel stated among other things in their motion filed September 16, 1969, contending for Washington, D.C. as the place of trial that Mr. Nelson "is frequently consulted by the Commission and senior staff members regarding factual background and policy in the automotive parts industry. * * *" It claims that this admission constitutes an acknowledgement of a violation of

the Commission's own rules, the Administrative Procedure Act and the constitutional guarantees of due process.

Complaint counsel in their response filed November 12, 1969, attached their response to the examiner on this issue and an affidavit of Mr. Nelson. In the latter document, Mr. Nelson states, among other things:

Since my participation in helping to prepare the staff recommendation to the Commission that a proposed complaint should issue against Maremont Corporation, I have had no *ex parte* communications of any kind, written or verbal, by way of advice or otherwise, concerning the Maremont complaint (D. 8763) or any aspect thereof with the Hearing Examiner, the Commission, any Commissioner or any member of any Commissioner's personal staff.

The court in *Maremont* v. *Federal Trade Commission*, *supra* in considering this issue held that the facts outlined to them "do not constitute a violation of the doctrine of separation of functions." The Commission concludes on the basis of Mr. Nelson's affidavit and on the basis of the knowledge of the Commissioners that Mr. Nelson since the issuance of the complaint here under Part 3 of the Commission's rules has not engaged in *ex parte* communications concerning the Maremont matter of any kind with the Commission, with any Commissioner or any officer or employee of the Commission connected with the decisional process. Furthermore, there will be no such communications. We believe there has been a complete separation of functions in this matter fully in accord with the letter and the spirit of Sec. 5(c) of the Administrative Procedure Act and the Commission's rules. Respondent's requests in its motion to dismiss or in the alternative for plenary hearing on alleged commingling of functions and *ex parte* communications filed October 23, 1969, will be denied. Accordingly,

It is ordered, That respondent's motion for a waiver of page limitation on its request to appeal as to the scheduling of hearings be, and it hereby is, granted.

It is further ordered, That respondent's appeal filed October 27, 1969, from the order denying applications for the issuance of subpoenas *duces tecum* be, and it hereby is, denied.

It is further ordered, That respondent's request filed October 27, 1969, for leave to file interlocutory appeal from order denying discovery applications be, and it hereby is, denied.

It is further ordered, That respondent's request filed October 27, 1969, for leave to file interlocutory appeal from order scheduling hearings be, and it hereby is, denied.

It is further ordered, That respondent's motion to dismiss or, in the alternative for plenary hearing on commingling of functions and *ex parte* communications filed with the hearing examiner and treated