IN THE MATTER OF

GROLIER, INCORPORATED, ET AL.

Docket 8879. Interlocutory Order, Sept. 12, 1980

ORDER REOPENING PROCEEDING AND DIRECTING SUBMISSION OF FURTHER INFORMATION

On January 24, 1980, the United States Court of Appeals for the Ninth Circuit remanded this case to the Commission.[1] *Grolier, Inc.* v. *FTC,* 615 F.2d 1215, 1222 (9th Cir. 1980). The purpose of the remand was to allow us to reconsider our denial of discovery "and in light of the results of that reconsideration, the disqualification motion" filed by Grolier. 615 F.2d at 1222. The Court did not require us to grant discovery but instead authorized the use of affidavits to show "the existence and extent of ALJ von Brand's involvement with the Grolier case while he served as attorney-advisor." *Id.* Under the procedure established by the Court, Grolier then has the burden of offering evidence to contradict these sworn statements or show any deficiency in them before it will be permitted to subpoena agency records. *Id.*

The Court mandated this course of action to us because it believed that our order denying discovery (87 F.T.C. 179, 181 (1976)) was an improper "flat refusal" (615 F.2d at 1222) to disclose anything at all about Judge von Brand's participation in the Grolier case while he was an attorney-advisor to Commissioner MacIntyre.

Since we denied the combined disqualification and discovery motion, however, Grolier has gained access to most of the information sought in its discovery request by virtue of a Freedom of Information Act ("FOIA") request that repeated the discovery request *in haec verba.* Indeed, most of the documents sought and an index of the few documents withheld have been available to Grolier since before Judge von Brand issued his Initial Decision. We note that the record of the district court proceeding contains much information, in affidavit form, which may make the discovery request moot. *Grolier, Inc.* v. *FTC,* No. 76-1559 (D.D.C.), *appeal pending,* D.C. Cir. No. 79-2263. We invite the parties to address this issue in the filings required by this order.

Because our earlier view was that attorney-advisors do not perform investigative or prosecutive functions there was no need for us to determine which of the twenty documents Grolier appended to the disqualification motion actually reached the Commission or

[1] A petition for rehearing was denied but the opinion was amended on April 17, 1980.

whether they involved this "or a factually related case." See 5 U.S.C. 554(d). The need for this type of analysis is apparent in view of the Ninth Circuit's ruling. We believe the parties should address these questions in their submissions.[2]

A related concern is what effect, if any, Grolier's failure to use documents in its possession before the Initial Decision issued should have on its ability to augment the record now. Some courts have held that the failure of a party to use information in its possession (from whatever source) renders a belated disqualification challenge untimely. See, *e.g.*, *Marquette Mfg. Co.* v. *FTC*, 147 F.2d 589, 592 (7th Cir. 1945), *aff'd.*, 333 U.S. 683 (1978); *Safeway Stores, Inc.* v. *FTC*, 336 F.2d 795, 802 (9th Cir. 1966), *cert. denied*, 386 U.S. 932 (1967). See also *Marcus* v. *Director, Office of Wkrs' Comp. Prog.*, 548 F.2d 1044, 1050–57 (D.C. Cir. 1976). We urge the parties to address this issue also.

To provide a complete record on review and to minimize delay Grolier is directed to supplement the record of this proceeding, within five days of the receipt of this order, with: (1) the complaint (and attachments) filed in its FOIA suit *Grolier, Inc.* v. *FTC*, C.A. No. 76–1559 (D.D.C.); (2) the affidavit and index of documents filed by the Commission in response thereto; (3) the Commission's sworn answer to Plaintiffs' Interrogatories to Defendants—Second Set; (4) the affidavit of Carol M. Thomas dated September 15, 1977; (5) all memoranda, orders and judgments of the District Court in No. 76–1559 (D.D.C.); and (6) the affidavit of Carol M. Thomas dated March 21, 1979.

Thereafter Grolier will be allowed 25 days to renew its motion to disqualify Judge von Brand. At that time we expect Grolier to present evidence on: (1) the question of timeliness; (2) Judge von Brand's involvement with *ex parte* matters; (3) the specific documents, and the portions thereof (and the date Grolier received them), which show Judge von Brand could have had access to "information received outside of the controlled adjudicative setting" (615 F.2d at

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[2] The Attorney General's Manual on the Administrative Procedure Act (1947), characterized by the Court of Appeals (615 F.2d at 1219) as an authoritative guide to the APA states (p. 54, n.6):

> The limitation of the prohibition against consultation to those who perform investigative or prosecuting functions "in that or a factually related case", should be construed literally. * * *
>
> * * * * * * *
>
> **The phrase** "factually related case" connotes a situation in which a party is faced with two different proceedings arising out of the same or a connected set of facts * * * [as distinguished from cases that] may form a pattern similar to those which [the staff person] had theretofore investigated or prosecuted.

See also *Cisternas-Estay* v. *INS*, 531 F.2d 155, 161 n.4 (3d Cir.) (Gibbons, J., dissenting), *cert. denied*, 429 U.S. 853 (1976).

1220); and (4) whether the information involves this or a factually related case.

We also direct complaint counsel to review the 28 documents withheld from Grolier in the FOIA suit and ascertain what connection, if any, they have to the facts of this case. The results of this review shall be set forth in an affidavit to be filed and served (by express mail) within 15 days of this order.

Within a like period we request that Judge von Brand execute an affidavit recording his efforts to ascertain the extent, if any, of his involvement with Grolier matters while he was an attorney-advisor. The Secretary shall expeditiously serve the affidavit on the parties.

Complaint counsel may respond to Grolier's renewed motion within 20 days of being served with it. At that time the Commission will determine if any further proceedings are warranted.

Commissioner Pitofsky did not participate.

IN THE MATTER OF

totes incorporated

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3040. Complaint, Sept. 12, 1980—Decision, Sept. 12, 1980

This consent order requires, among other things, a Loveland, Ohio manufacturer of umbrellas and related rainwear, to cease withholding cooperative advertising credits or allowances, or in any way limiting or restricting dealers from participating in any cooperative advertising program because of the resale price at which the dealer has advertised or sold a product or because the dealer has used price comparisons in the advertising and sale of a product.

Appearances

For the Commission: *Jeffrey A. Klurfeld.*

For the respondent: *William Baskett* and *Foston Jacobs,* Cincinnati, Ohio.

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 totes incorporated, a corporation, hereinafter sometimes 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 as follows:

For purposes of this complaint, the following definitions shall apply:

"Product" is defined as any item which is manufactured, offered for sale or sold by respondent.

"Dealer" is defined as any person, partnership, corporation or firm which is authorized by respondent to purchase any product.

"Resale Price" is defined as any price, price floor, price ceiling, price range, or any mark-up, formula or margin of profit used by any dealer for pricing any product. Such term includes, but is not limited to, any retail price suggested or established by respondent, any customary resale price, or the retail price in effect at any dealer.

PARAGRAPH 1. Respondent totes incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 10078 East Kemper Road, Loveland, Ohio.

PAR. 2. Respondent is now, and for some time last past, has been engaged in the manufacture, advertising, offering for sale, sale and distribution of rubber footwear, umbrellas, hats, scarfs and other wearing apparel.

PAR. 3. Respondent maintains, and has maintained, a substantial course of business, including the acts and practices as hereinafter set forth, which are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent sells and distributes its products directly to more than 3,000 retail dealers located throughout the United States who in turn resell respondent's products to the general public.

PAR. 5. In the course and conduct of its business, and at all times mentioned herein, respondent has been, and now is, in substantial competition in or affecting commerce with corporations, firms and individuals engaged in the manufacture, advertising, offering for sale, sale and distribution of merchandise of the same general kind and nature as merchandise manufactured, advertised, offered for sale, sold and distributed by respondent.

PAR. 6. In the course and conduct of its business as above described, respondent has for some time last past administered and conducted cooperative advertising programs which contain a limitation or restriction denying cooperative advertising credits or allowances to dealers for advertisements which do not feature respondent's suggested retail prices.

PAR. 7. The administering or conducting by respondent of cooperative advertising programs with the limitation or restriction described in Paragraph Six hereinabove has the capacity, tendency and effect of establishing, maintaining, stabilizing or otherwise illegally influencing the resale prices of dealers in respondent's products, and has had and still has the capacity, tendency and effect of hindering, suppressing or eliminating competition between or among those dealers selling respondent's products.

PAR. 8. The aforesaid acts and practices of respondent have been and are now having the effect of hampering and restraining competition in the resale and distribution of respondent's products, and, thus, are to the prejudice and injury of the public, and constitute unfair methods of competition in or affecting commerce or unfair acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. The acts and practices of respondent as herein alleged, are continuing and will continue in the absence of the relief herein requested.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the San Francisco Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent totes incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 10078 East Kemper Road, in the City of Loveland, State of Ohio.

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

ORDER

For the purposes of this Order, the following definitions shall apply:

"Product" is defined as any item which is manufactured, offered for sale or sold by respondent.

"Dealer" is defined as any person, partnership, corporation or firm which is authorized by respondent to purchase any product.

"Resale Price" is defined as any price, price floor, price ceiling, price range, or any mark-up, formula or margin of profit used by any

dealer for pricing any product. Such term includes, but is not limited to, any retail price suggested or established by respondent, any customary resale price, or the retail price in effect at any dealer.

It is ordered, That respondent totes incorporated, a corporation, its successors and assigns; and respondent's officers, agents, representatives and employees, directly or indirectly, or through any corporation, subsidiary, division or other device, in connection with the designing, implementing, conducting, administering or auditing of any cooperative advertising program, or portion thereof, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall cease and desist from:

I

1. Threatening to withhold or withholding cooperative advertising credits or allowances from any dealer, or limiting or restricting the right of any dealer to participate in any cooperative advertising program for which it would otherwise qualify, because of the resale price at which said dealer advertises or sells any product, or proposes to advertise or sell any product.

2. Threatening to withhold or withholding cooperative advertising credits or allowances from any dealer, or limiting or restricting the right of any dealer to participate in any cooperative advertising program for which it would otherwise qualify, because said dealer has advertised or sold, or proposes to advertise or sell, any product using or featuring any resale price comparison.

II

It is further ordered, That respondent shall within thirty (30) days after service of this Order, mail under separate cover a copy of the enclosure set forth in the attached Exhibit A to each of its present accounts. Respondent, however, need not send said enclosure to any account of its "XIIX Karat," A,J, Bergren, Eastman Products, or L. P. Henryson divisions. An affidavit shall be sworn to by an official of respondent verifying that the attached Exhibit A was so mailed.

III

It is further ordered, That respondent shall forthwith distribute a copy of this Order to each of its operating divisions; and, for a period of three (3) years from the date of service of this Order, to each of its personnel, agents or representatives having sales, advertising or

policy responsibilities with respect to the subject matter of this Order.

IV

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the Order.

V

It is further ordered, That respondent 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 this Order.

EXHIBIT A

Dear Retailer:

totes incorporated, without admitting any violation of the law, has agreed to the entry of an Order by the Federal Trade Commission regulating its cooperative advertising programs. In connection therewith, the Company has agreed to send you this letter describing the Order.

The Order provides, among other things, as follows:

You are free to participate in, and receive reimbursement under, any totes incorporated cooperative advertising program regardless of the retail price you feature in otherwise qualifying advertisements.

If you have any questions regarding the Order or this letter, please call _____ at totes.

_____

for totes incorporated

IN THE MATTER OF

TINGLEY RUBBER CORP.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3041. Complaint, Sept. 12, 1980—Decision, Sept. 12, 1980

This consent order requires, among other things, a South Plainfield, N.J. manufacturer of molded rubber footwear to cease withholding cooperative advertising credits or allowances, or in any way limiting or restricting dealers from participating in any cooperative advertising program because of the resale price at which the dealer has advertised or sold a product; or because the dealer has used price comparisons in the advertising and sale of a product.

Appearances

For the Commission: *Jerome S. Lamet.*

For the respondent: *Allan J. Weinschel, Weil, Gotschal & Manges,* New York City.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 41, *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Tingley Rubber Corp., hereinafter sometimes referred to as respondent, a corporation, 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 as follows:

For purposes of this complaint, the following definitions shall apply:

"Product" is defined as any item which is manufactured, offered for sale or sold by respondent.

"Dealer" is defined as any person, partnership, corporation or firm which purchases any product for retail sale.

"Resale Price" is defined as any price, price floor, price ceiling, price range, or any mark-up, formula or margin of profit used by any dealer for pricing any product. Such term includes, but is not limited to, any retail price suggested or established by respondent, any customary resale price or the retail price in effect at any dealer.

"Cooperative Advertising" is defined as advertising which invites the public to purchase respondent's products at dealer's place of

business, whether the cost of the advertising is borne by respondent alone or shared by dealer and/or wholesaler and respondent.

PARAGRAPH 1. Respondent Tingley Rubber Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business at 200 South Ave., South Plainfield, New Jersey.

PAR. 2. Respondent is now, and for some time last past, has been engaged in the manufacture, advertising, offering for sale, sale and distribution of molded rubber footwear for men, women and children. Sales by respondent for fiscal year 1978 exceeded twelve million dollars.

PAR. 3. Respondent maintains, and has maintained, a substantial course of business, including the acts and practices as hereinafter set forth, which are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent sells and distributes its products to more than one hundred footwear wholesalers located throughout the United States who in turn resell respondent's products to dealers.

PAR. 5. Except to the extent that competition has been hindered, frustrated, lessened and eliminated, as set forth herein, in the course and conduct of its business, and at all times mentioned herein, respondent has been, and now is, in substantial competition in or affecting commerce with corporations, firms and individuals engaged in the manufacture, advertising, offering for sale, sale and distribution of merchandise of the same general kind and nature as merchandise manufactured, advertised, offered for sale, sold and distributed by respondent.

PAR. 6. In the course and conduct of its business, as above described, respondent has for some time administered cooperative advertising programs which limit or restrict the rights of dealers to obtain cooperative advertising credits or allowances for any merchandise which has been:

a. Advertised at a sale price, at a discount price, at a promotional price, at a reduced price, at an off-price, or at a mark-down.

b. Advertised at less than the suggested retail price, or at less than any minimum resale price.

c. Advertised using a price comparison.

PAR. 7. The administering by respondent of cooperative advertising programs or plans with any of the limitations or restrictions described in Paragraph Six hereinabove has the capacity, tendency and effect of establishing, maintaining, fixing, stabilizing or otherwise illegally influencing the resale prices of dealers in respondent's

products, and has had and still has the capacity, tendency and effect of hindering, suppressing or eliminating competition between or among those dealers selling respondent's products.

PAR. 8. The aforesaid acts and practices of respondent have been and are now having the effect of hampering and restraining competition in the resale and distribution of respondent's products, and, thus, are to the prejudice and injury of the public, and constitute unfair methods of competition in or affecting commerce or unfair acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Chicago Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Tingley Rubber Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 200 South Ave., in the City of South Plainfield, State of New Jersey.

2. The Federal Trade Commission has jurisdiction of the subject

matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

For the purposes of this Order, the following definitions shall apply:

"Product" is defined as any item which is manufactured, offered for sale or sold by respondent.

"Dealer" is defined as any person, partnership, corporation or firm which purchases any product for retail sale.

"Resale Price" is defined as any price, price floor, price ceiling, price range, or any mark-up, formula or margin of profit used by any dealer for pricing any product. Such term includes, but is not limited to, any retail price suggested or established by respondent, any customary resale price or the retail price in effect at any dealer.

"Cooperative Advertising" is defined as advertising which invites the public to purchase respondent's products at dealer's place of business, whether the cost of the advertising is borne by respondent alone or is shared by dealer and/or wholesaler and respondent.

I

It is ordered, That respondent Tingley Rubber Corp., a corporation, its successors and assigns; and respondent's officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the designing, implementing, conducting, administering or auditing of any cooperative advertising program or any other promotional assistance program, or portion thereof, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall cease and desist from:

1. Threatening to withhold or withholding cooperative advertising credits or allowances or any other promotional assistance payments from any dealer, or limiting or restricting the right of any dealer to participate in any cooperative advertising program or any other promotional assistance program for which it would otherwise qualify, because of the resale price at which said dealer advertises or sells any product, or proposes to advertise or sell any product.

2. Threatening to withhold or withholding cooperative advertising credits or allowances or any other promotional assistance payments from any dealer, or limiting or restricting the right of any dealer to participate in any cooperative advertising program or any other promotional assistance program for which it would otherwise

qualify, because said dealer has advertised or sold, or proposes to advertise or sell, any product using or featuring any resale price comparison.

II

It is further ordered, That respondent shall:

1. Within thirty (30) days after service of this Order, mail under separate cover a copy of the enclosure set forth in the attached Exhibit A to each of its present wholesalers and to all publications soliciting advertising for respondent's products. An affidavit shall be sworn to by an official of respondent verifying that the attached Exhibit A was so mailed.

2. Mail under separate cover a copy of the enclosure set forth in the attached Exhibit A to any person, partnership, corporation or firm that becomes a new wholesaler or solicits advertising for respondent's products within three (3) years after service of this Order.

III

It is further ordered, That respondent shall forthwith distribute a copy of this Order to all of its operating divisions, and to present or future personnel, agents or representatives having sales, advertising or policy responsibilities with respect to the subject matter of this Order, and that respondent secure from each such person a signed statement acknowledging receipt of said Order.

IV

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the Order.

V

It is further ordered, That respondent 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 this Order.

EXHIBIT A

Dear Wholesale Distributor/Publisher:

Tingley Rubber Corp., without admitting any violation of the law, has agreed to the entry of an Order by the Federal Trade Commission regulating its cooperative advertising programs. In connection therewith, the Company has agreed to send you this letter describing the Order.

The order provides, among other things, as follows:

1. Dealers are free to participate in any cooperative advertising program or any other promotional assistance program conducted by Tingley Rubber Corp. regardless of the retail price at which they advertise or sell any Tingley product.

2. Dealers will receive reimbursement under any Tingley cooperative advertising program or any other promotional assistance program regardless of the retail price featured in otherwise qualifying advertisements.

If you have any questions regarding the Order or this letter, please call _____ at Tingley.

_____

for Tingley Rubber Corp.

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IN THE MATTER OF

TENNECO, INC.

Docket 9097. Interlocutory Order, Sept. 22, 1980

ORDER DENYING RESPONDENT'S MOTION FOR RELIEF NECESSITATED BY EX PARTE CONTACT WITH THE COMMISSION AND RESPONDENT'S MOTION TO DISQUALIFY COMMISSIONER PITOFSKY

On August 12, 1980, respondent, Tenneco, Inc., filed two motions alleging due process violations and procedural irregularities arising out of Commission consideration of a separate staff investigation of certain acquisitions by respondent, acquisitions that are not at issue in the present adjudicative matter. Because the issues raised by respondent in those two motions are so closely related, as are our conclusions, we find it appropriate to respond to both motions in a single order.

In one motion, respondent seeks alternative forms of relief occasioned by what it describes as improper *ex parte* contacts with the Commission by complaint counsel involving factual issues yet to be decided in the present proceeding.[1] In another, respondent moves that Commissioner Pitofsky be disqualified from participation in the decision of this appeal because, in presenting the facts of that separate merger investigation to the Commission, he allegedly prejudged certain issues in the present adjudication.[2] Complaint counsel have responded to each of these motions,[3] and Commissioner Pitofsky has submitted a response to the disqualification motion.[4]

Background

The issue central to this controversy is whether the investigation of a series of foreign acquisitions by Tenneco distinct from the acquisition in adjudication here was conducted as, and was in fact, a "separate" investigation as that term is used in Rule 4.7(f) of the Commission's Rules of Practice. Briefly, these are the relevant facts. Respondent contends that in December 1976, in response to a letter of inquiry from the Bureau of Competition, issued in order to

[1] Respondent's Motion for Relief Necessitated by Complaint Counsel's *Ex Parte* Contact with the Commission, August 12, 1980 (hereinafter "*Ex Parte* Motion").

[2] Respondent's Motion To Disqualify Commissioner Pitofsky, August 12, 1980 (hereinafter "Disqualification Motion").

[3] Opposition to Respondent's Motion for Relief Necessitated by Complaint Counsel's *Ex Parte* Contact with the Commission, September 12, 1980; Opposition To Respondent's Motion To Disqualify Commissioner Pitofsky, September 12, 1980.

[4] Decision of Commissioner Pitofsky in Response to Motion of Tenneco, Inc. To Disqualify Him from Participation in This Proceeding, September 9, 1980.