IN THE MATTER OF

ZEIGER & GREEN, INC., ET AL.

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

Docket C-1472. Complaint, Dec. 26, 1968—Decision, Dec. 26, 1968

Consent order requiring a New York City manufacturing furrier to cease misbranding, falsely invoicing and deceptively guaranteeing its fur products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Zeiger & Green, Inc., a corporation, and Charles Mitnick and Jack Zeiger, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Zeiger & Green, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondents Charles Mitnick and Jack Zeiger are officers of the corporate respondent. They formulate, direct and control the acts, practices and policies of the said corporate respondent including those hereinafter set forth.

Respondents are manufacturers of fur products with their office and principal place of business located at 333 Seventh Avenue, New York, New York.

PAR. 2. Respondents are now and for some time last past have been engaged in the introduction into commerce, and in the manufacture for introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and have manufactured for sale, sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of furs which have been shipped and received in commerce, as the terms "commerce," "fur" and "fur product"

are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they were falsely and deceptively labeled to show that fur contained therein was natural, when in fact such fur was pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, in violation of Section 4(1) of the Fur Products Labeling Act.

PAR. 4. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

Among such misbranded fur products, but not limited thereto, were fur products with labels which failed to disclose that the fur contained in the fur products was bleached, dyed, or otherwise artificially colored, when such was the fact.

PAR. 5. Certain of said fur products were falsely and deceptively invoiced by the respondents in that they were not invoiced as required by Section 5(b) (1) of the Fur Products Labeling Act and the Rules and Regulations promulgated under such Act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products covered by invoices which failed to disclose that the fur contained in the fur products was bleached, dyed, or otherwise artificially colored when such was the fact.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in that said fur products were invoiced to show that the fur contained therein was natural, when in fact such fur was pointed, bleached, dyed, tip-dyed or otherwise artificially colored, in violation of Section 5(b) (2) of the Fur Products Labeling Act.

PAR. 7. Respondents furnished false guaranties that certain of their fur products were not misbranded, falsely invoiced or falsely advertised when respondents in furnishing such guaranties had reason to believe that fur products so falsely guarantied would be introduced, sold, transported or distributed in commerce, in violation of Section 10(b) of the Fur Products Labeling Act.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Fur Products Labeling Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 respondents 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 respondents have violated the said Acts, 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 thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Zeiger & Green, Inc., is a corporation organized, 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 333 Seventh Avenue, New York, New York.

Respondents Charles Mitnick and Jack Zeiger are officers of said corporation and their address is the same as that of said corporation.

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 Zeiger & Green, Inc., a corporation, and its officers, and Charles Mitnick and Jack Zeiger, individually and as officers of said corporation, and respondents'

representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding any fur product by:

1. Representing directly or by implication on a label that the fur contained in such fur product is natural when such fur is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

2. Failing to affix a label to such fur product showing in words and in figures plainly legible all of the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

B. Falsely or deceptively invoicing any fur product by:

1. Failing to furnish an invoice, as the term "invoice" is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

2. Representing, directly or by implication, on an invoice that the fur contained in such fur product is natural when such fur is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

It is further ordered, That respondents Zeiger & Green, Inc., a corporation, and its officers, and Charles Mitnick and Jack Zeiger, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty that any fur product is not misbranded, falsely invoiced or falsely advertised when the respondents have reason to believe that such fur product may be introduced, sold, transported, or distributed in commerce.

It is further ordered, That the respondent corporation shall

forthwith distribute a copy of this order to each of its operating divisions.

It is further 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 this order.

INTERLOCUTORY, VACATING, AND
MISCELLANEOUS ORDERS

KOPPERS COMPANY, INC.

Docket 8755. Order and Opinion, July 2, 1968

Order remanding to hearing examiner his order of April 23, 1968, denying respondent's application for leave to take depositions from officials of a third party.

OPINION OF THE COMMISSION

The Commission has before it respondent's appeal from the hearing examiner's order of April 23, 1968, denying respondent's application for leave to take depositions [1] of six named officials of United States Pipe and Foundry Company (hereafter U.S. Pipe). Complaint counsel has filed an answer opposing the appeal.

The ruling below is based upon the examiner's finding that:

> *** all persons whose depositions are sought are expected to testify at formal hearings; taking of depositions will unduly delay the proceedings; and may circumvent the orderly presentation of evidence at formal hearings.

A brief review of the facts is necessary to place the examiner's ruling in its proper perspective. The complaint herein charges respondent, Koppers Company Inc., with developing and maintaining a monopolistic control of the market in Resorcinol. After setting out this charge in broad terms, the complaint goes on to allege that a meeting took place, in March of 1965, between officials of respondent and representatives of U.S. Pipe, at which

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[1] Section 3.33 of the Commission's Rules of Practice provides, in pertinent part, as follows:

§ 3.33 Depositions.—(a) When justified.—At any time during the course of a proceeding, whether or not issue has been joined, the hearing examiner, in his discretion may order the taking of a deposition and the production of documents by the deponent. Such order may be entered upon a showing that the deposition is necessary for purposes of discovery, and that such discovery could not be accomplished by voluntary methods. Such order may also be entered in extraordinary circumstances to preserve relevant evidence upon a showing that there is substantial reason to believe that such evidence could not be presented through a witness at the hearing. Insofar as consistent with considerations of fairness and the requirements of due process and the rules in this part, a deposition should not be ordered when it appears that it will result in undue burden to any other party or in undue delay of the proceeding, and it should not be ordered to obtain evidence from a person relating to matters with regard to which he is expected to testify at the hearing, or to obtain evidence which there is reason to believe can be presented at a hearing without the need for deposition, or to circumvent the orderly presentation of evidence at the hearing.

officials of respondent urged that U.S. Pipe refrain from entering the Resorcinol market. The balance of the complaint deals with respondent's alleged reaction, by price cuts, restrictive agreements and long-term contracts, to U.S. Pipe's announcement that it was constructing a plant for the production of Resorcinol.

It will thus be observed that the entire thrust of the complaint is to respondent's dealings with and reactions to its alleged potential competitor, U.S. Pipe, the cumulative effect of which, it is alleged, caused U.S. Pipe to fail in its attempt to enter the Resorcinol market. The complaint mentions no other competitors, actual or potential, nor does it allege acts or practices directed against any other firm. Thus it is obvious that respondent, to answer these charges, must be prepared to meet the testimony of complaint counsel's prime witnesses, officials of U.S. Pipe.

Respondent's informal request to interview these officials met with polite refusal. Thereafter, respondent moved for leave to take their depositions, pursuant to Section 3.33 of the Commission's Rules of Practice. The denial of respondent's motion forms the basis of this appeal.

Section 3.33 provides that an order for taking of depositions may issue "at any time during the course of a proceeding" upon a showing that it is "necessary for purposes of discovery, and that such discovery could not be accomplished by voluntary methods." A deposition may also issue to "preserve relevant evidence," if it can be established that there is "substantial reason to believe that such evidence could not be presented through a witness at the hearing." Section 3.33(f)(2) controls the use of depositions taken to preserve evidence. Like Federal Rule 26(d)(3), it provides for the admission of depositions in evidence upon a finding that the witness is unable for reasons of age, infirmity, etc., to appear to give testimony.

Thus, Section 3.33(a) provides for depositions "for purposes of discovery," and "to preserve relevant evidence," and Section 3.33(f)(2) controls the use of the latter type as evidence at the hearing. In conformity to this distinction, Section 3.33(a) further provides that

> Insofar as consistent with considerations of fairness and the requirements of due process and the rules in this part, a deposition should not be ordered *** *to obtain evidence* from a person relating to matters with regard to which he is expected to testify at the hearing, or *to obtain evidence* which there is reason to believe can be presented at a hearing without the need for deposition or to circumvent the orderly presentation of evidence at the hearing. (Emphasis supplied.)

Since, under subsection (f)(2), the contents of a deposition can

only constitute evidence in a narrow class of circumstances, it follows that subsection (a) prohibits the use of a deposition to preserve evidence when the would-be deponent is expected to present the same material testimonially, or the evidence can be presented at the hearing independently, without recourse to depositions. In both cases, depositions to preserve evidence would serve no useful purpose, since they would be inadmissable in evidence under subsection (f) (2). It is the purpose of this portion of subsection (a) to spare counsel and witnesses the harassment and delay of a "trial-by-deposition," whereby depositions are taken neither for purposes of discovery nor to preserve evidence, but are attempts to secure information that is often marginal, cumulative, already known to counsel or of no substantial value to him, all as a device to clog the record and burden opposing counsel and witnesses with the attendant delay and disruption at the pretrial stage.

In denying respondent's motion on the ground that "all persons whose depositions are sought are expected to testify at formal hearings" the hearing examiner has plainly applied the standards of subsection (a) relating to depositions intended for later use as evidence. However, it is clear that respondent does not seek the requested depositions "to obtain evidence," but "for purposes of discovery," more specifically, for use in cross-examination.[2]

If such depositions were to be unavailable merely because the persons whose depositions are sought are expected to testify, respondent plausibly argues that effective cross-examination would be impossible.[3] It is not the purpose of subsection (a) to deny to respondent advance knowledge of the testimony of complaint counsel's witnesses. The right to effective cross-examination is embodied in the Administrative Procedure Act,[4] and is customarily protected by the use of depositions. Although this discovery mechanism, like others, is susceptible to abuse, this possibility is not suggested by the facts before the Commission at this juncture. It would appear that the testimony of the witnesses whose depositions are sought may be of substantial importance.

In addition to the grounds previously mentioned, the hearing examiner premised his ruling upon his finding that the "taking of depositions will unduly delay the proceedings, and may circumvent the orderly presentation of evidence at formal hearings." There is no indication in the record now before us, however, that

[2] In its brief on appeal, respondent expresses as its chief concern the difficulty of preparing for cross-examination without advance knowledge of the testimony to be presented by complaint counsel's witnesses.

[3] R.B.A., p. 16.

[4] 60 Stat. 241 (1946), 5 U.S.C. § 556(d) (1967).

the granting of respondent's application would delay the opening of formal hearings. All the witnesses whose depositions are sought are located in the same city. Respondent asserts in its brief on appeal that all six could be deposed in a relatively few days. Formal hearings are not scheduled to begin for several weeks. Any possibility of delay might perhaps be avoided by the simple expedient of including in an order granting respondent's application a provision limiting its effect to such depositions as respondent is able to obtain by an agreed-upon date well in advance of formal hearings.[5]

In the circumstances, we believe that this matter should be returned to the hearing examiner for further consideration in the light of this opinion and the other opinions in the discovery matters decided in this case today. Any order granting respondent's application should limit the scope of inquiry to matters necessary to prepare a defense, and should also contain such safeguards as may be necessary to prevent improper disclosures of trade secrets or other privileged or confidential information.

Commissioner MacIntyre concurred in the result.

ORDER OF REMAND TO HEARING EXAMINER

Upon consideration of the appeal of respondent from the hearing examiner's ruling of April 23, 1968, and for the reasons stated in the accompanying opinion,

It is ordered, That the matter be remanded to the hearing examiner for further consideration.

Commissioner MacIntyre concurred in the result.

KOPPERS COMPANY, INC.

Docket 8755. Order and Opinion, July 2, 1968

Order denying appeal to produce certain documents and request for oral argument and remanding case to hearing examiner for further proceedings.

OPINION OF THE COMMISSION

We have before us the appeal of United States Pipe and Foundry Company (hereafter referred to as U.S. Pipe), a corporation not a party to this proceeding, from the ruling of the hearing examiner embodied in orders filed respectively April 11, 1968, and April 15, 1968 (Prehearing Order No. 2 and an amendment

[5] In its reply memorandum on appeal, respondent has indicated its willingness to comply with "any reasonable order which would enable it to take these depositions and still ensure that no delay will come about." Respondent's Memorandum in Reply, p. 2.

thereto), which, among other things, denied in part and granted in part the motion of U.S. Pipe to limit or quash subpoena duces tecum issued on the application of counsel for respondent. Respondent, on April 29, 1968, filed a brief in opposition to the appeal.

The hearing examiner, in amended Prehearing Order No. 2, directed the production of the subpoenaed documents on April 22, 1968, under conditions set forth in such order. Under § 3.35 of the Commission's Rules of Practice it is provided that an appeal from a ruling such as that here involved shall not operate to suspend the hearing unless otherwise ordered by the hearing examiner or the Commission. U.S. Pipe, on or prior to April 22, 1968, made no motion to stay the matter pending the appeal, and made no appearance on April 22, 1968, in compliance with the examiner's order. Accordingly, the examiner, on April 23, 1968, certified to the Commission the failure of U.S. Pipe to comply with the subpoena. The examiner, in his certification, noted that no claim was made concerning the breadth of the disputed paragraph of the subpoena in the written motion submitted to him. Thereafter, on April 26, 1968, U.S. Pipe belatedly sought a stay of the subpoena pending decision by the Commission on the appeal. The examiner certified this request to the Commission on April 29, 1968, with a recommendation that the return date of the subpoena involved be extended to and including the tenth day after the decision of the Commission on the appeal, if the Commission sustains the examiner in the issuance of the subpoena as limited.

The portion of the subpoena in dispute reads as follows:

4. All documents including any graphs, charts, tables, tabulations, and compilations prepared by your company, any officer or employee of your company, or by any other person or organization:

(a) which concern, discuss, study or project the contemplated entry of United States Pipe and Foundry Company into the business of production and sale of commercial resorcinol and resorcinol products including, among others, the following matters: (i) the costs of production, (ii) the contemplated volumes of production, (iii) any relationship of the cost of production with volume, (iv) and profitability of production, (v) price levels, and (vi) competition but specifically excluding references to specific actual customers;

(b) those documents which reflect or relate to the actual implementation of the plans and studies for the entry of United States Pipe and Foundry Company into the market for resorcinol production and sale, including those matters referred to in Paragraph 4(a) above, but excluding specific sales to specific customers.

The hearing examiner, in amended Prehearing Order No. 2, included protective provisions dealt with hereinafter.

U.S. Pipe, on the merits of its appeal, makes three arguments:

first, that the documents sought are irrelevant; secondly, that the subpoena is too sweeping; and, finally, that the subpoena seeks trade secrets, the disclosure of which, it is contended, would be injurious to the public interest and to U.S. Pipe. On this last point U.S. Pipe additionally argues that the order of the hearing examiner does not afford it sufficient protection. The appellant finally requests oral argument on its appeal.

We are not persuaded that the hearing examiner has clearly abused his discretion, but our consideration of this matter leads us to believe that one of the three bases for objection advanced by U.S. Pipe, the protection of U.S. Pipe's trade secrets, may warrant reconsideration by him. Moreover, U.S. Pipe's objection to the breadth of the subpoena, the third basis cited in its appeal, has not been considered by the hearing examiner. Since we are remanding for reconsideration of the question of protection of trade secrets, he will have an opportunity to consider the question of breadth.

With regard to relevancy, we think the hearing examiner ruled properly. The allegations of the complaint with respect to the Respondent's alleged contacts with U.S. Pipe and the effects of Respondent's alleged activities to exclude U.S. Pipe may, or may not, have been a necessary concomitant to the charge of monopolization by Koppers, but the allegations in the complaint establish the relevancy of the documents sought in a discovery proceeding. The ultimate issues of the materiality and relevancy of material sought should be ruled upon at the time they are sought to be introduced. Any questions with respect to those rulings may be presented to the Commission upon review, if any is sought, of the entire record.

We feel constrained to point out that unless there is a clear showing of an abuse of discretion the Commission, in the absence of unusual circumstances, will not disturb a ruling of a hearing examiner in matters involving procedure and discovery. See *Topps Chewing Gum, Inc.*, Docket No. 8463 (order issued July 2, 1963) [63 F.T.C. 2196]; *Associated Merchandising Corporation*, Docket No. 8651 (order issued September 23, 1965 [68 F.T.C. 1175], and order issued November 13, 1967 [72 F.T.C. 1015]); and *American Brake Shoe*, Docket No. 8622 (order issued September 1, 1965) [68 F.T.C. 1169].

The second basis for U.S. Pipe's appeal is that the subpoena is too sweeping. We are not persuaded that U.S. Pipe's documents which "concern, discuss, study or project" its contemplated entry into the resorcinol market, *must necessarily* extend to the details

of U.S. Pipe's "costs of production," "contemplated volume of production," "relationship of the cost of production with volume," "profitability of production," or "price levels." If Koppers wishes to defend this law suit by showing that U.S. Pipe decided not to enter the market for reasons unrelated to any activities of Koppers, then it might be able to do so with the documents sought under Item 4(a) and (b) without the specific data enumerated in subparagraphs (i)-(v).

Obviously, it may be difficult to separate out some of this raw data which would fall into the area of trade secrets from memoranda and other documents which would relate to its reasons for not entering this market.

This brings us to the third basis for appeal: the argument that the material sought by Koppers constitutes trade secrets which U.S. Pipe should not be compelled to disclose. The hearing examiner is in the best position to determine how this can best be accomplished. In his Prehearing Order No. 2 ordering the production of the subpoenaed documents the hearing examiner ordered protective provisions as follows:

> 3. The motion of United States Pipe and Foundry Company is granted to the extent that all papers called for by Paragraph 4 of said subpoena shall be produced at the prehearing conference to be held April 22, 1968, and shall be exhibited to and placed in the custody of William Simon and Paul d'Hedouville, counsel for respondent, provided, however, that said William Simon and Paul d'Hedouville as counsel for respondent shall first undertake and agree that all such documents shall be retained in their personal custody, shall not be copies or abstracted, and that no information contained in any of them shall be disclosed to any other person except on 10 days notice to Thad G. Long, counsel for intervenors, who may then arrange with all counsel and the hearing examiner for a suitable date to offer testimony and other evidence seeking *in camera* treatment in compliance with Rule 3.45 and may secure a ruling thereon by the hearing examiner before any disclosure may be made. And, on the further condition that said William Simon and Paul d'Hedouville further undertake and agree to return all such documents not admitted in evidence to said Thad G. Long at the conclusion of the testimony of witnesses from United States Pipe and Foundry Company.

We are still not wholly satisfied at this point that the protective provisions which he has proposed are adequate. At least we think that before adopting those provisions he should give consideration to the procedures adopted in *Mississippi River Fuel Corp.*, Docket No. 8657, Order June 8, 1966 [69 F.T.C. 1186]. Here again, however, he is closer to the case and is in a better position than the Commission to consider in the first instance what protective provisions would be most appropriate. He should be satisfied that Koppers have the material which is necessary, but, to the extent

possible, in a form which provides the adequate protection of the trade secrets of U.S. Pipe.

U.S. Pipe has requested permission to present oral argument to the Commission in this matter. We think in view of our disposition of the appeal that the oral argument should more properly be addressed to the hearing examiner.

Finally, U.S. Pipe having failed to make timely request and receive a stay in the effective date of the hearing examiner's order and having failed to comply with the subpoena as directed is now technically in violation of the examiner's order. The hearing examiner, in his second certification of April 29, 1968 (made upon receipt of U.S. Pipe's belated request for a stay), by recommending an extension of time for the return date of the subpoena, in the event the Commission denies the appeal, has apparently concluded that the failure to comply with his order was inadvertent and not willful. Accordingly, we will not press further on this deficiency.

An appropriate order is issued herewith.

Commissioner MacIntyre concurred in the result.

ORDER DENYING APPEAL FROM EXAMINER'S ORDER AND REQUEST FOR ORAL ARGUMENT AND REMANDING TO HEARING EXAMINER FOR FURTHER PROCEEDING

United States Pipe and Foundry Company appealed from the examiner's ruling requiring it to produce certain documents in response to a subpoena duces tecum issued upon the application of respondent herein and requested oral argument on the appeal; and

The Commission having determined for the reasons stated in the accompanying opinion that such appeal and request for oral argument should be denied and that this matter should be remanded to the hearing examiner for further proceedings in accordance with such opinion:

It is ordered, That the appeal of the United States Pipe and Foundry Company from the hearing examiner's ruling and its request for oral argument of its appeal is denied.

It is further ordered, That the hearing examiner's order of compliance with the subpoena duces tecum issued against United States Pipe and Foundry Company on March 12, 1968, be vacated and that the hearing examiner consider the arguments of the United States Pipe and Foundry Company and those of respondent in accordance with the accompanying opinion, make such determinations as the hearing examiner deems appropriate, and enter such further orders as may be justified and appropriate in light of such arguments.

Commissioner MacIntyre concurred in the result.

KOPPERS COMPANY, INC.

Docket 8755. Order, July 2, 1968

Order granting respondent's request to file interlocutory appeal and vacating hearing examiner's order directing hearings in more than one city by restricting hearings to Pittsburgh only.

ORDER GRANTING RESPONDENT'S INTERLOCTORY APPEAL AND VACATING EXAMINER'S ORDER FOR HEARINGS IN MORE THAN ONE PLACE

This matter having come before the Commission on the request by respondent Koppers Company, Inc., pursuant to Rule 3.23(a) for permission to file an interlocutory appeal from the order of the examiner dated May 17, 1968, granting the motion of complaint counsel to hold hearings in three cities, New York, Pittsburgh, and Birmingham, Alabama; and

The Commission having considered said request, the order of the examiner dated May 17, 1968, and all of the memoranda directed to the examiner by the parties including complaint counsel's motion of April 29 and affidavit of May 10 and respondent's opposition memorandum of May 6 and answer of May 16; and

The Commission believing that counsel supporting the complaint has clearly failed to carry the burden of establishing the presence of "unusual and exceptional circumstances" required to justify the holding of hearings in more than one place under Section 3.41(b) of the Commission's Rules in accordance with the Commission's order of April 9, 1968, in *Universe Chemicals*, Docket 8752 [73 F.T.C. 1259]:

It is ordered, That the respondent's interlocutory appeal be granted.

It is further ordered, That the hearing examiner's order granting complaint counsel's motion for hearings in more than one place be vacated and that the hearings be held only in Pittsburgh.

Commissioner MacIntyre did not concur.

KOPPERS COMPANY, INC.

Docket 8755. Order and Opinion, July 2, 1968

Order denying application of respondent for subpoena duces tecum and for the release of confidential information.