

Order

88 F.T.C.

IN THE MATTER OF
RSR CORPORATION

Docket 8959. Order, July 28, 1976

Order to show cause and order granting temporary *in camera* treatment.

Appearances

For the Commission: *K. Keith Thurman, James C. Egan and Annthalia Lingos.*

For the respondent: *Robert L. Wald, Wald, Harkrader & Ross, Washington, D. C. Merrill L. Hartman, Hewett, Johnson, Swanson & Barbee, Dallas, Tex.*

ORDER TO SHOW CAUSE AND ORDER GRANTING TEMPORARY
In Camera TREATMENT

On July 22, 1976, respondent filed a document styled "Motion to Strike Pages 19 through 25 of 'Complaint Counsel's Reply Brief.'" Respondent requested expedited treatment of its motion, alleging that the pages sought to be expunged contained information contained in *in camera* portions of the record in this proceeding.

The Commission has not as yet determined what disposition it will make of respondent's motion. However, pending a determination as to the alleged *in camera* status of the information contained in complaint counsel's brief it will order that this brief be maintained in the *in camera* portion of the docket of this case. The Commission notes, however, that *in camera* treatment should be granted sparingly. If respondent's allegation of *in camera* status is meant seriously as a separate claim from its motion to strike, respondent should specify within 15 days precisely those portions of pp. 19-25 which it believes should be maintained *in camera*, in the event that the motion to strike is not granted.

In addition, the Commission notes that the *in camera* findings of the administrative law judge filed in this matter contain information pertaining to market shares of RSR and Quemetco in 1971 and 1972 (I.D. 246-248, 256-258) and pertaining to the distances to which various plants of RSR and Quemetco shipped lead in those same years. (I.D. 217-218, 223) There is an obvious and substantial public interest in having decisions of the Commission contain, for public inspection and review, all information relevant to the Commission's determination. In light of this public interest, and in light of the fact that the information contained *in camera* is four to five years old, the Commission will order the parties within 15 days to show cause as to why the information

described below, to the extent that the Commission may determine it to be relevant, should not be made available to the public in the opinion of the Commission rendered in this matter. Therefore,

It is ordered, That the parties shall, within 15 days, file memoranda indicating for what reason, if any, the following categories of information may not be included in the opinion of the Commission in this matter and be made available to the public:

(1) *In camera* findings of the administrative law judge Nos. 246-248, 256-258 (whether or not CX 64 is placed on the public record).

(2) *In camera* findings of the administrative law judge 217-218, and 223, as well as other shipping distance figures derivable from CX 69-77, 79, including average plant shipping distance, percentage of plant production shipped to various States, and percentage of plant production shipped various distances.

It is further ordered, That pages 19-25 of complaint counsel's Reply Brief in this matter shall be maintained in the *in camera* portion of the record, pending Commission resolution of respondent's "Motion to Strike."

Order

88 F.T.C.

IN THE MATTER OF
HORIZON CORPORATION

Docket 9017. Order, July 28, 1976

Denial of respondent's motion to quash subpoenas duces tecum.

Appearances

For the Commission: *Eugene Kaplan, Lemuel W. Dowdy, John M. Tifford and Paul L. Chassy.*

For the respondent: *Basil Mezines, Stein, Mitchell & Mezines, Washington, D. C. J. Michael Brennan and Samuel Pruitt, Jr., Gibson, Dunn & Crutcher, Los Angeles, Calif.*

ORDER DENYING MOTION TO QUASH SUBPOENAS DUCES
TECUM

The administrative law judge ("ALJ") has certified to the Commission respondent's motion to quash subpoenas duces tecum issued to Aetna Business Credit, Inc., and FNB Financial Co.,¹ both of which, according to the motion, are respondent's creditors.² The subpoenas were issued by the Assistant Director of Marketing Practices, Bureau of Consumer Protection, in connection with an investigation of Unnamed Promoters and Sellers of Interests in Subdivided Land, File No. 742 3193 under Part II of the Rules of Practice.

Respondent asserts that the subpoenas seek information directly related only to matters involved in the instant adjudicatory proceeding, and that, accordingly, application for the subpoenas should have been made to the ALJ under Section 3.34. Respondent further argues that complaint counsel are attempting to circumvent the Commission's ruling in *Electronic Computer Programming Institute, Inc.*, 3 CCH Trade Reg. Rep. ¶21,039 (November 11, 1975) [86 F.T.C. 109], that the law judges should not permit the discovery or introduction of evidence relevant only to Section 19 of the F.T.C. Act³ and the ALJ's statements to complaint counsel during a May 3, 1976, prehearing conference that any additional subpoenas against respondent would have to be "very specific and very limited and you are going to have to demonstrate relevancy beyond any doubt. My advice is to wait until you get full

¹ An investigational subpoena has also issued to Ford Motor Credit Company. See Opposition and Answer by Complaint Counsel to Respondent's Motion to Quash Subpoenas Duces Tecum Issued to Respondent's Creditors and to Enjoin Complaint Counsel from Obtaining Documents Pursuant to these Subpoenas and Other Relief at 2. According to complaint counsel none of the subpoenaed companies has moved to quash or modify its subpoena. *Id.* at 9.

² The ALJ denied respondent's motion to enjoin complaint counsel from seeking or accepting documents or testimony from Aetna, FNB, or others through any Commission process other than that authorized by the Part III rules.

³ Section 19 authorizes the Commission to bring consumer redress actions in State and Federal courts.

compliance [with the subpoenas already issued] and give me one more subpoena.”

Complaint counsel respond that the purpose of the aforesaid subpoenas is to determine whether any of respondent's lenders have themselves violated Section 5 and not to obtain “backdoor discovery” against Horizon. Complaint counsel note that respondent has tentatively offered to supply complaint counsel with information bearing on Section 19 relief.

The Commission “* * * may conduct such investigations as it deems necessary even though such investigations may cover ground which is already the subject of an adjudicative proceeding.” *FTC v. Waltham Watch Co.*, 169 F. Supp. 614, 620 (S.D.N.Y. 1959). Of course, investigational subpoenas should not be used to circumvent safeguards designed to ensure fair and expeditious trials. We have already held that it is not in the public interest to delay Part III proceedings by the discovery and reception of evidence relevant only to Section 19 issues. *Electronic Computer Programming Institute, supra*. However, the ALJ has the means of preventing the introduction of irrelevant evidence, or evidence obtained in violation of any orders he issues relating to the timing and scope of discovery.⁴

No showing having been made that the investigational subpoenas will deprive respondent of a prompt and fair trial⁵ the Commission has determined to deny the aforesaid motion to quash.

It is so ordered.

⁴ We do not mean to suggest that relevant evidence which happens to be obtained pursuant to the investigational subpoenas will necessarily be inadmissible. See Rules of Practice, Section 3.43(c).

⁵ We disagree with complaint counsel that respondent lacks standing to move to quash the instant subpoenas. While a party may not ask for an order to protect the rights of another party or a witness if that party or witness does not claim protection for himself, see *Commercial Laundry v. Linen Supply Assn.*, 90 F. Supp. 470 (S.D.N.Y. 1950); 8 C. Wright & A. Miller, *Federal Practice and Procedure* §2035 at 261 (1970), he may seek an order if he believes his own interest is jeopardized. *Id.* Respondent, as the subject of an adjudicative proceeding, was entitled to raise its claim that the investigational subpoenas would jeopardize its procedural rights.

Modifying Order

88 F.T.C.

IN THE MATTER OF

CROWN CENTRAL PETROLEUM CORPORATION

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 8851. Complaint, July 14, 1971 — Modifying order, Aug. 3, 1976*

Order modifying an earlier order dated Nov. 26, 1974, 40 F.R. 12775, 84 F.T.C. 1493, by entering the modifying words "performance" before the words "quality" and "characteristic" in order provision 7(d) of the order.

Appearances

For the Commission: *Fauster J. Vittone* and *Jean F. Greene*.

For the respondent: *James H. Kelley* and *Leonard A. Tokus*, *Bergson, Borkland, Margolis & Adler*, Washington, D.C. and *Morton H. Sacks, Cable, McDaniel, Bowie & Bond*, Baltimore, Md.

ORDER MODIFYING ORDER TO CEASE AND DESIST

Respondent having filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit, and that Court having issued, on March 4, 1976, its order affirming the Commission's order to cease and desist entered November 26, 1974 [84 F.T.C. 1493], with the insertion of modifying words in one provision thereof:

It is ordered, That the Commission's order issued in this matter on November 26, 1974, be modified in accordance with the decision and judgment of the Court so as to read in full as follows:

It is ordered, That respondent Crown Central Petroleum Corporation, a corporation, its successors and assigns, and its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the advertising, offering for sale, sale or distribution of Crown gasolines, or the additive CA-101, or any other product in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication that any such product:

(a) Will produce or result in motor vehicle exhaust which is pollution free or generally pollution free; or

(b) Will eliminate or reduce air pollution caused by motor vehicles; or

(c) Will eliminate or reduce emissions from all or any number or group of motor vehicles in which it is used;

or that:

(d) Any gasoline or gasoline additive product has any other performance quality, performance ability or performance characteristic; or

(e) Tests, demonstrations, research or experiments have been conducted which prove or substantiate any of said representations; *unless* and only to the extent that each and every such representation is true and has been fully and completely substantiated by competent scientific tests. The results of said tests, the original data collected in the course thereof and a detailed description of how said tests were performed shall be kept available in written form for at least three years following the final use of the representation.

2. Representing directly or by implication that any such product has any effectiveness in reducing air pollution or any air pollutant or air pollutants without at the same time, in the same advertisement or other form of communication, conspicuously disclosing that not all of the harmful pollutants in automotive exhaust are affected by said product.

3. Representing directly or by implication that any product will reduce any emissions of pollutants from automobile exhaust by any percentage or numerical quantity unless in connection therewith there is a clear, accurate and conspicuous disclosure of the type of vehicle which can expect to achieve reductions of such magnitude and the approximate percentage of such vehicles in the general car population.

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 respondent shall 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 affects compliance obligations arising out of the order.

It is further ordered, That respondent shall, within sixty (60) days after service of the order upon it, file with the Commission a written report, signed by the respondent, setting forth in detail the manner and form of its compliance with the order to cease and desist.

Modifying Order

88 F.T.C.

IN THE MATTER OF
WEAVER AIRLINE PERSONNEL SCHOOL, INC., ET AL.
MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-2638. Complaint, Feb. 13, 1975 — Modifying order, Aug. 3, 1976

Order modifying an earlier order dated Feb. 13, 1975, 40 F.R. 15872, 85 F.T.C. 237, adds to Paragraph 12(2)(c) of the order the provision that if money required to be deposited in the Escrow Funds cannot be distributed, respondent must make direct pro rata payments to eligible students within 60 days.

Appearances

For the Commission: *Walter E. Diercks* and *Lawrence M. Hodapp*.
For the respondents: *Charles Edward Fairfax, III, Cahill, Gordon & Reindel*, New York City.

ORDER MODIFYING ORDER TO CEASE AND DESIST AND
ORDER DISCONTINUING STAY

On May 18, 1976 [87 F.T.C.1288], the Commission issued an order to show cause why the Commission's order to cease and desist, issued February 13, 1975 [85 F.T.C. 237], in this proceeding, should not be altered and modified by language specified in the order. The modification was proposed to make clear that respondent General Educational Services Corporation's obligation to pay restitution would not be affected by the removal of monies from the escrow account which will be funded by certain students of respondent Weaver Airline Personnel School, Inc. Respondents, in their answer to the order to show cause, indicate that they and Commission's staff have negotiated a modification that differs from the modification proposed in the order to show cause by providing that respondent General Educational Services Corporation "shall make direct pro rata payments to" eligible Weaver students "if any of the sums required to be deposited into the Escrow Funds have been removed or cannot be distributed." The modification proposed in the order to show cause was not so specific, providing that General Educational Services Corporation "shall assure * * * that the total sums required be deposited into the Escrow Fund for restitution are paid." We agree that the modification recommended by respondents is preferable, and we will order that the Commission's order to cease and desist be modified by the language recommended in respondents' answer to the order to show cause.

Accordingly, *it is ordered*, That the following language be added to Paragraph 12(2)(c) of the order:

Provided, however, That if, other than with the express written consent of the Federal Trade Commission, any of the sums required to be deposited in the Escrow Funds have been removed or cannot be distributed, then within sixty (60) days after the final date established for submission of student requests for restitution under this Paragraph, respondent General Educational Services Corporation shall make direct pro rata payments to the eligible Weaver students described in this Paragraph in the same amounts that each such eligible student would have received had such payments been made from the Escrow Funds, but the total amount so paid shall not exceed the total amount required to be deposited in the Escrow Funds.

* * * * *

The Commission further ordered on May 18, 1976, the reopening of this proceeding so as to stay and suspend enforcement of compliance with the notification provision of Paragraph 12 of the order of February 13, 1975. Because the obligation of General Educational Services Corporation has now been clarified, the stay and suspension of compliance is no longer necessary and compliance will be required.

Accordingly, *it is ordered*, that the stay and suspension of compliance with Paragraph 12 of the order of February 13, 1975 be, and it hereby is, discontinued.

Complaint

88 F.T.C.

IN THE MATTER OF

MAICO HEARING INSTRUMENTS, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 8927. Amended Complaint, April 30, 1976 — Decision, Aug. 4, 1976*

Consent order requiring a Minneapolis, Minn., manufacturer of hearing aids, among other things to cease imposing on its dealers customer and territorial restrictions and exclusive dealing requirements. The order also requires the firm, under certain circumstances, to make its products available to all qualified dealers, and to maintain, for a ten-year period, a file record of any refusal to sell.

Appearances

For the Commission: *Alan I. Leibowitz, L. Barry Costilo, James C. Donoghue and Dennis R. Carluzzo.*

For the respondent: *Thomas C. Kayser, Robins, Davis & Lyons, Minneapolis, Minn.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (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 the party identified in the caption hereof, and more particularly described and referred to hereinafter as respondent, has violated the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent Maico Hearing Instruments, Inc. (hereinafter sometimes "Maico") is a corporation organized under the laws of the State of Minnesota, with its principal office and place of business at 7375 Bush Lake Road, Minneapolis, Minnesota.

PAR. 2. Maico is engaged in the business of manufacturing, distributing, selling and repairing of Maico brand hearing aids. It distributes and sells to selected retail dealers located throughout the United States, who then resell to the general public.

PAR. 3. In the course and conduct of its business respondent ships or causes to be shipped hearing aids from Maico facilities in the State of Minnesota to selected retail dealers throughout the United States. There is now and has been for several years a constant and substantial flow of respondent's hearing aids in commerce, as "commerce" is defined in the Federal Trade Commission Act.

