

IN THE MATTER OF

CROSSE & BLACKWELL COMPANY, POMPEIAN OLIVE
OIL CORPORATION, McCORMICK & COMPANY, INC.

Dockets 6463, 6468, 6470. Orders and opinion, Mar. 15, 1956

Interlocutory order in Clayton Act proceeding denying respondents' appeals from hearing examiner's denial of motions to quash subpoenas duces tecum issued by him.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Andrew C. Goodhope and *Mr. Frederic T. Suss* for the Commission.

Niles, Barton, Yost & Dankmeyer, of Baltimore, Md., and *Mr. James W. Cassedy*, of Washington, D. C., for Crosse & Blackwell Co.

Mr. Morton J. Hollander, of Baltimore, Md., and *Mr. James W. Cassedy*, of Washington, D. C., for Pompeian Olive Oil Corp.

Anderson, Barnes & Coe, of Baltimore, Md., and *Mr. James W. Cassedy*, of Washington, D. C., for McCormick & Co., Inc.

ORDER RULING ON RESPONDENTS' APPEALS FROM
ORDER OF HEARING EXAMINER

The respondents having filed appeals from the hearing examiner's order denying their motions to quash the subpoenas duces tecum issued by the hearing examiner on January 12, 1956; and

The matter having been heard on the briefs of counsel and the Commission having determined, for reasons stated in its accompanying opinion, that the appeals should be denied:

It is ordered, That the respondents' appeals be, and they hereby are, denied.

OPINION OF THE COMMISSION

Per Curiam:

The respondents in each of these cases filed motions to quash the subpoenas duces tecum which were issued by the hearing examiner directing production, by designated officers of the respective respondent corporations, of records and documentary information there described. Those motions were denied by the hearing examiner and, as permitted under Section 3.17 (d) of the Commission's published rules and procedures, the respondents have brought appeals here from his rulings.

The complaints in these proceedings charge that each of the respondents has engaged in acts and practices violative of subsection

(d) of Section 2 of the Clayton Act, as amended. The appellants contend that the hearing examiner erred in failing to quash the challenged subpoenas duces tecum for the reasons (a) that the Commission lacks such power of compulsory process in proceedings instituted under the Clayton Act, and (b) that the requirements of the subpoenas are unreasonable and their enforcement will serve to deprive the respondents of rights afforded them under the Fourth Amendment.

It is not controlling, however, that the Commission was not expressly empowered in the Clayton Act to issue subpoenas in inquiries and proceedings instituted under that Act. Nor is it material here that Section 9 of the Federal Trade Commission Act, in referring to the visitorial and other powers conferred upon the Commission thereunder, relates such authority to the purposes of that Act. Under the Clayton Act, service of complaints, orders and "other processes" is specifically provided for. Broad powers of compulsory process in the discharge of its duties have been conferred upon the Commission under the Federal Trade Commission Act. The Federal Trade Commission Act and the Clayton Act were enacted as remedial measures designed to correct apparent deficiencies in the Sherman Act through administrative proceedings. They are statutes *in pari materia* which were enacted in the same session of Congress and, therefore, are to be construed together so as to reinforce their common legislative purpose.

The Federal Trade Commission was designated as a major agency for enforcement of Sections 2, 3, 7 and 8 of the Clayton Act. That designation necessarily implied that the Commission was to be aided in the effective discharge of its duties in adversary proceedings by the compulsory processes which were being made available to it under its organic act. That Congress thus intended is clear because Section 11 of the Clayton Act provides for quasi-judicial hearings culminating in findings as to the facts and orders, including orders to cease and desist, and, without the power to compel the production of evidence in the course of proceedings thereunder, the danger of improvident orders lacking bases in fact would be great. We hold, therefore, that there is sound legal basis for the issuance and enforcement of the Commission's processes requiring the production of appropriate information in Clayton Act inquiries and adjudicative proceedings.

Also without merit are the appellants' contentions that the requirements of the challenged subpoenas are unreasonable and impinge on the respondents' constitutional rights. The appeals do

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not challenge the Commission's substantive authority to institute these proceedings or the lawful purpose thereof. The date and information requested in each of the subpoenas are limited to designated periods of time and confined to three metropolitan areas wherein each of the respondents apparently engages in the distribution of products; and the documents and information requested are clearly identified. The data's relevancy to the allegations of the complaints is apparent and the material requested appears necessary for disposition of the issues which will be presented for determination in each proceeding. In these circumstances, the directions of the subpoenas must be regarded as reasonable and valid.

There being no error in the rulings appealed from, the appeals are being denied.

Decision

IN THE MATTER OF
HARPER & BROTHERS

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT AND OF SEC. 2 (a) OF THE CLAYTON ACT

Docket 5898. Complaint, June 29, 1951—Decision, Mar. 22, 1956

Consent order—identical with the order in the *Doubleday*¹ case—requiring a New York City corporate book publisher to cease discriminating in price in the sale of trade books, through granting book clubs which leased them the printing plates, exclusive rights to publish, sell, and distribute “book club editions” of certain titles of their trade books; and fixing and maintaining minimum resale prices for its publisher’s editions of certain of its trade books sold to retail book sellers, while permitting book clubs to sell their “book club editions” of the same titles at any prices and on any terms and conditions; and order requiring it to cease selling its trade books at higher prices to some purchasers than to certain of their competitors.

Mr. Fletcher G. Cohn and *Mr. Lewis F. Depro* for the Commission.

Mr. Alexander S. Andrews, of New York City, for respondent.

Wolfson, Caton & Moguel, of New York City, for Book-of-the-Month Club, Inc., *amicus curiae*.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act (15 U.S.C.A. 45) and of the Clayton Act as amended by the Robinson-Patman Act (15 U.S.C.A. 13), the Federal Trade Commission on June 29, 1951, issued its complaint in this proceeding and duly served same upon respondent, a corporation under the laws of the State of New York, with its principal office and place of business located at 49 East 33rd Street, New York, New York. Said complaint was issued simultaneously with five other similar complaints against other publishing firms, one of which was against Doubleday & Company, Inc., Docket 5897. Counts I and II of the complaint herein are substantially the same as Counts I and II of the Doubleday complaint. Counsel in all of these proceedings agreed that since the issues were substantially the same in Counts I and II of the six complaints, that the proceeding against Doubleday & Company, Inc., Docket 5897, would be fully tried first, and after the taking of evidence in that case was closed, counsel in the other cases,

¹ *Doubleday & Co., Inc.*, D. 5897, Aug. 31, 1955. See p. 169 of this volume.