

IN THE MATTER OF
GEORGE M. VOSS TRADING AS VOSS HAIR EXPERTS
OF GEORGIA

Docket 6498. Order and opinion, June 7, 1956

Order granting respondent's appeal from hearing examiner's *ex parte* ruling on complaint counsel's motion to amend complaint.

Before *Mr. James A. Purcell*, hearing examiner.

Mr. Harold A. Kennedy for the Commission.

Frank E. & Arthur Gettleman, of Chicago, Ill., for respondent.

ORDER RULING ON INTERLOCUTORY APPEAL OF RESPONDENT

Counsel for respondent having filed an interlocutory appeal May 3, 1956, from the order of the hearing examiner, filed April 19, 1956, among other things, denying respondent's motion to vacate an order amending the complaint; and

The Commission, for the reasons stated in the accompanying opinion, having concluded that the appeal should be granted in part and denied in part as there noted:

It is ordered, That the orders of the hearing examiner filed March 13, 1956, and April 19, 1956, respectively, be, and they hereby are, vacated and set aside.

It is further ordered, That respondent's request that the hearing examiner be required to rule on its motion of April 11, 1956, be, and it hereby is, denied.

OPINION OF THE COMMISSION

Per Curiam:

This case has come on for hearing before the Commission upon the interlocutory appeal filed May 3, 1956, by respondent, through counsel, from the order of the hearing examiner filed April 19, 1956, among other things, denying respondent's motion to vacate an order amending the complaint. No hearings have been held.

A motion was filed, by counsel supporting the complaint, March 6, 1956, requesting that the complaint be amended. Respondent filed an answer to this motion on March 14, 1956, but the hearing examiner had on March 13, 1956, ruling *ex parte*, filed his order granting the motion and allowing respondent thirty days after service of the order within which to file its answer. Subsequently, on March 29, 1956, respondent, through counsel, filed a motion to vacate the order amending the complaint. Counsel supporting the complaint filed an answer

to this motion on April 9, 1956. Respondent, by its counsel, it appears, also addressed an informal motion to the hearing examiner, dated April 11, 1956, requesting permission to reply to said answer of counsel supporting complaint and an extension of ten days within which to file the reply.

The hearing examiner in his order of April 19, 1956, ruling on respondent's motion to vacate the order amending complaint, stated he was of the opinion that the application for amendment was not an arguable matter and, hence, it was not necessary to consider the respondent's opposition thereto. He ordered that the answer of counsel supporting the complaint be stricken and further ordered that respondent's motion be denied. Respondent, through counsel, in its appeal, specifically requests relief as follows:

(a) The ruling of the hearing examiner of April 19, 1956, be reversed.

(b) That hearing examiner be required directly on respondent's motion filed March 14, 1956, to vacate his *ex parte* order of March 13, 1956.

(c) The hearing examiner be required to rule on respondent's motion of April 11, 1956.

Counsel supporting the complaint filed an answer opposing the appeal.

The provisions of the Rules of Practice directly pertinent to the matter under appeal are as follows:

§ 3.8. (c) "Within ten days after service of any written motion, or within such longer or shorter time as may be designated by the hearing examiner or the Commission, the opposing party shall answer or be taken to have consented to the granting of the relief asked for in the motion. The moving party shall have no right to reply, except as permitted by the hearing examiner or the Commission."

§ 3.9. (a) (1) "If and whenever determination of a controversy on the merits will be facilitated thereby, the hearing examiner may, upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties, allow appropriate amendments to pleadings; provided, however, that an application for amendment of a complaint may be allowed only if the amendment is reasonably within the scope of the proceeding initiated by the original complaint."

The hearing examiner incorrectly interpreted these provisions as authorizing him to rule *ex parte* on a motion to amend the complaint. While § 3.9 (a) (1) refers to a move for amendment of complaint as an "application for amendment," it is nevertheless a motion within the meaning of § 3.8 (c) and subject to the provisions thereof.

Furthermore, the plain language of § 3.9 (a) (1), itself, provides that in allowing amendments they are to be made upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties. It seems clear that an informed determination of whether an amendment will or may prejudice the rights of the parties would require due consideration by the hearing examiner of respondent's answer containing such arguments or reasoning it may have relative to possible prejudice of its rights.

Moreover, since the authority of the hearing examiner under § 3.9 (a) (1) is limited specifically to the allowance of amendments to complaints reasonably within the scope of the proceeding initiated by the original complaint, he must decide in each instance whether the provision authorizes the particular amendment. Respondent, obviously, could have arguments that the amendment does not fall within the scope of the proceeding originally initiated. There is, at least, the implication in the provision, therefore, that to resolve a question of this nature, the hearing examiner should consider the views of respondent.

We are of the opinion that, pursuant to the Rules of Practice, the hearing examiner should not have granted the motion to amend the complaint without first receiving and considering respondent's timely filed answer to the motion. The respondent's appeal, therefore, is granted to the extent that the examiner's orders of March 13, 1956, and April 19, 1956, respectively, will be vacated and set aside. Since no ruling on respondent's request that the hearing examiner be required to rule on its motion of April 11, 1956, is necessary in view of the relief herein provided, this request will be denied.

Complaint

IN THE MATTER OF

JOSEPH JIMENEZ ET AL. DOING BUSINESS AS
CREDIT TV SERVICE

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

Docket 6531. Complaint, Mar. 21, 1956—Decision, June 9, 1956

Consent order requiring two individuals in Washington, D. C., to cease misrepresenting their charges for servicing and repairing TV sets in the home, and misrepresenting shop estimates as free.

Before *Mr. Robert L. Piper*, hearing examiner.

Mr. Michael J. Vitale for the Commission.

Bradshaw, Shearin, Redding & Thomas, of Silver Spring, Md., for respondents.

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 Joseph Jimenez and Catherine Jimenez, individuals, trading and doing business as Credit TV Service, hereinafter referred to as respondents, have 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 in that respect as follows:

PARAGRAPH 1. Respondents Joseph Jimenez and Catherine Jimenez are individuals trading and doing business as Credit TV Service. Said respondents cooperate and act together in performing the acts and practices hereinafter set forth. Their office and principal place of business is located at 1361 H Street, N.E., Washington, D. C.

PAR. 2. Respondents, for more than one year last past, have been engaged in the sale and distribution of television replacement parts. An essential and integral part of respondents' said business is the furnishing of television repair services. In connection with their television repair service respondents remove television sets from the homes of owners located in the District of Columbia and in the State of Maryland, and transport said television sets to their repair shop, which is located in the District of Columbia, for servicing and replacement of parts, said parts being furnished and sold by respondents after which the television sets are delivered to the owners at their places of residence.