respondent's motion to hold the complaint and all proceedings thereunder in abeyance, and respondent's request for oral argument, be, and they hereby are, denied.

BURKLEIGH CO., ET AL.

Docket 6270. Order and Opinion, Oct. 9, 1957

Order denying—for lack of the requisite preliminary showing—motion to reopen proceeding and modify desist order.

OPINION OF THE COMMISSION

By ANDERSON, Commissioner:

By letter dated August 22, 1957, signed by respondent Edgar Kirby, apparently on his own behalf and in the interest of respondent Foreign Products Corp., it was requested that the Commission consider an accompanying sworn report of Dr. Reginald Milton as to the results of tests conducted by him for possible enhancement of bacterial activity and of nitrogen fixation in soil by reason of the addition of a product designated Actumus. The request seeks modification of the order to cease and desist heretofore entered in this proceeding through the setting aside of all but 3 of 14 inhibitory paragraphs of the order which has become final. The letter and report were treated as a motion to reopen the proceeding and to modify the order in the particulars indicated. Counsel supporting the complaint has filed an answer in opposition to the motion.

Respondents, by the order in question, were required to stop misrepresenting the qualities of Actumus as humus or as a soil conditioner. The order is based upon the hearing examiner's findings that respondents have claimed falsely that Actumus is humus; that it activates bacteria which create nitrogen; that it creates fertility in the soil; and that it is entirely natural and 100 percent organic. These findings are based upon contested issues fully tried and resolved by the hearing examiner. The 10 additional related prohibitions of the order are based upon an agreement containing a consent order to cease and desist executed by all parties to the proceeding.

Under section 5 of the Federal Trade Commission Act, any order of the Commission which has become final may be reopened and altered, modified or set aside, in whole or in part, whenever in the opinion of the Commission conditions of fact or of law have so changed as to require such action, or if the public interest shall so require. Ordinarily, an informed determination on these premises is arrived at by the introduction of evidence before a hearing examiner. As a prerequisite for such proceeding there must, of course, be a preliminary showing that the conditions for modification may be present. Any motion for

reopening, modification or the setting aside of an order, therefore, should set forth facts which, when assumed to be true, would justify the relief sought.

Respondents' letter of August 22, 1957, together with the accompanying sworn report of Dr. Reginald Milton, does not make the requisite preliminary showing. Respondent Kirby makes no contention that any condition of fact or of law has changed since entry of the order so as to require its modification. Moreover, his letter and the accompanying report of tests performed by Dr. Milton furnish no information from which it might be concluded that the public interest otherwise requires the modification. On the contrary, Dr. Milton has shown that the difference, if any, in nitrogen between the treated and untreated samples of soil tested is too small to have any practical agricultural value. The report, if anything, tends to justify the inhibitions of the order sought to be set aside. It adds nothing significant to the scientific record made in this case on the basis of which the order to cease and desist was entered. The Commission, accordingly, has concluded that respondents' motion provides no ground for reopening the proceeding and it must, therefore, be denied.

ORDER DENYING MOTION TO REOPEN PROCEEDING AND MODIFY ORDER TO CEASE AND DESIST

This matter having come on to be heard by the Commission upon the respondents' request for modification of the order to cease and desist contained in the hearing examiner's initial decision, as adopted by the Commission on February 8, 1957, and upon answer in opposition to the request filed by counsel supporting the complaint; and

The Commission having concluded, for the reasons stated in its accompanying opinion, that respondents' submittal does not constitute a sufficient showing, as contemplated under section 5 of the Federal Trade Commission Act, that conditions of fact or law may have so changed so as to justify the action requested, or that the public interest so requires:

It is ordered, That respondents' request dated August 22, 1957, to reopen this proceeding and to modify the order to cease and desist previously entered herein be, and it hereby is, denied.

BANTAM BOOKS, INC.

Docket 6802. Order and Opinion, Oct. 11, 1957

Interlocutory order granting complaint counsel's appeal from hearing examiner's denial of request for hearing to introduce expert testimony that an exhibit tendered was an abridged edition, as having a direct bearing on the allegations of the complaint.