denied.

BAKERS FRANCHISE CORPORATION ET AL.

Docket 7472. Order and Opinion, Sept. 14, 1959

Interlocutory order denying respondents' application for release of questionnaires and investigators' reports of interviews in the Commission's files.

By the COMMISSION:

Respondents have made application under §1.134 of the Commission's Rules of Practice for the release of certain documents allegedly contained in the files of the Federal Trade Commission. Alternatively, they request the Commission to declare that such documents do not constitute or contain confidential materials.

The documents sought, it appears, are (1) the printed forms, questionnaires and written instructions to an investigating attorney of the Commission, relating to interviews to be conducted by him with members of the public in this case, and (2) the written reports of said attorney upon his interviews with said members of the public. Respondents, while indicating that they desire the documents in connection with their defense, do not state precisely how they propose to use them. The inference is, however, that they hope to show that

the testimony of the members of the public who appeared as witnesses in support of the complaint may have been influenced by the kind and sequence of questions they were asked during the previous interviews.

Under the Commission's Rules of Practice (§1.333), adopted for the protection of material and information coming into the possession of the Commission, or within the knowledge of any of its officers or employees in the performance of their official duties, the documents in question are clearly confidential. Moreover, and more importantly, such documents consist of questionnaires prepared and reports of interviews recorded by Commission attorneys in the preparation of this case for trial. The documents thus constitute the "work-product of the lawyer" and as such are privileged. (*Hickman* v. *Taylor*, 329 U.S. 495 (1947)).

Respondents' application for release of the documents in question was filed on August 3, 1959, after the case in support of the complaint had been closed. The public witnesses whose interview statements respondents desire had appeared and testified at hearings held on June 24 and 25, 1959. These witnesses at that time testified under oath as to their understanding and interpretation of certain of respondents' advertisements. Each of them was subjected to such cross-examination as respondents' counsel cared to make. No contention was then made, and none is now asserted, that the cross-examination was impaired in any way by the absence of the interview reports. On June 25, also, pursuant to a request of counsel for respondents, said counsel was given the name of the investigating attorney who had interviewed these witnesses, and over the objection of counsel in support of the complaint, the attorney was called as a witness for respondents. In response to questions by respondents' counsel this witness described in full his interviews, including the substance of the questions asked of the interviewees and the answers he received.

In the circumstances, it is difficult to understand what more respondents could hope to accomplish by an examination of the interview reports. In any event, the public policy underlying the privacy of the attorney's files and work papers precludes their production.

An appropriate order denying respondents' application will be entered.

ORDER

Respondents having made application for the release of certain documents allegedly contained in the files of the Federal Trade Commission and having further requested as an alternative that the Commission declare that any such documents do not constitute or contain confidential materials; and

The Commission, for the reasons stated in the accompanying opinion, having directed that an appropriate order denying respondents' application for the release of the aforesaid documents be entered: