Commissioner Kern not participating.

SNAP-ON TOOLS CORPORATION

Docket 7116. Order and Opinion, Apr. 4, 1960

Order denying respondent's petition for rehearing on decision vacating hearing examiner's dismissal in part and remanding case with direction to deny motion to dismiss *in toto*.

ON PETITION FOR REHEARING

By the COMMISSION:

In our decision of January 21, 1960, we granted an interlocutory appeal by counsel supporting the complaint, vacated the hearing examiner's order insofar as it granted in part the respondent's motion to dismiss for failure to establish a *prima facie* case, and remanded the case with the direction that he deny such motion *in toto*. Respondent's petition for rehearing requests that our decision be withdrawn and that the appeal be reheard and decided on the specific issues deemed controlling by opposing counsel and duly argued in their briefs.

Respondent contends in its petition that the Commission improperly decided something not before it on appeal. When considering such appeal however, the Commission made its own independent analysis of the issue basically presented and controlling

to decision in the then posture of the case; and it thereupon decided the appeal on the basis of applicable legal principles. Moreover, the petition makes no showing as to the Commission's aforementioned analysis being erroneous or of invalidity respecting legal standards applied by it.

The petition's additional argument that substantive law relating to formal appellate procedures forecloses the Commission from deciding appeals on issues other than those deemed governing by counsel also is rejected. Such principle has no application whatsoever to interlocutory appeals in administrative proceedings wherein no final dispositions of cases are being made.

Nor is it necessary to grant a rehearing because the *per se* illegality of respondent's contract provisions may ultimately become the prime issue in this proceeding. The petition's allegations on this score are in part based on assumptions that the hearing examiner subsequently may find that all issues except that relating to the exclusive territory provision are rendered moot by reason of certain revisions and modifications by respondent in its dealer contracts. However, our prior decision duly recognized that the question of maintenance of exclusive territories, including the extent to which activities in that respect may have contributed to illegality inhering in the respondent's dealer arrangements, was one more appropriately to be considered upon final disposition of the case. The issuance during adversary proceedings of advisory opinions in the nature contemplated in the petition would encourage fragmentary submission of cases for decision, make for piecemeal decisions and inevitably result in unjustifiable delays in the disposition of Commission proceedings.

Respondent also claims prejudicial or reversable error attending the Commission's failure to hear its counsel on oral argument in opposition to the appeal. Because the record and briefs afforded adequate basis for informed decision on the merits of the appeal, the Commission exercised its sound discretion and determined that oral argument should not be granted. The same holds true respecting the petition's instant request for oral hearing and it is likewise denied.

The petition for rehearing is denied accordingly.

Commissioner Kern did not participate in the decision herein.

ORDER

The Commission having determined, for reasons stated in the accompanying opinion, that the respondent's petition for rehearing on the Commission's decision of January 21, 1960, should be denied:

It is ordered, That said petition be, and it hereby is, denied.

Commissioner Kern not participating.

EDWIN M. FREEMAN ET AL. TRADING AS FREEMAN & FREEMAN

Docket 4735. Order, Apr. 7, 1960

Order denying respondents' request for modification of desist order because of change in formula of product.

This proceeding having been reopened and the matter referred to a hearing examiner for the purpose of receiving evidence in support of and in opposition to the respondents' request for modification of the order to cease and desist entered herein on May 2, 1945; and

The Commission having considered the evidence received and having determined therefrom that the changes alleged to have been made in the formula and composition of the respondents' product since the date of the order to cease and desist do not require any change in the terms of said order to cease and desist:

It is ordered, That the respondents' request, made in their motion of July 30, 1958, for modification of the order to cease and desist be, and it hereby is, denied.

SIMPSON TIMBER COMPANY ET AL.

Docket 7713. Order and Opinion, Apr. 20, 1960

Interlocutory order upholding denial of respondent's motion to quash subpoena duces tecum requesting trade data submitted by members to redwood association.

OPINION OF THE COMMISSION

By KERN, *Commissioner:*

This matter is before the Commission upon appeal of Philip T. Farnsworth, executive vice president and general manager, California Redwood Association, from a ruling by the hearing examiner denying a motion to quash a subpoena duces tecum issued at the request of counsel supporting the complaint. The requested data include, for a specified period of time, documents identifying members, subscribers and other companies which have submitted data to the Association relating to the production and shipment of redwood; originals or true copies of all reports submitted to the Association by said companies relating to the production or shipment of redwood; all worksheets and tabulations used by the Association in the preparation of statistical reports to its members which relate to the production or shipment of redwood; and all additional documents used by the Association in computing aggregate annual production and annual aggregate shipment of redwood by all companies.