OPINION OF THE COMMISSION

By the COMMISSION:

This matter is before the Commission on a Motion To Amend Complaint filed by counsel supporting the complaint. Such motion, in effect, requests the hearing examiner (1) to permit the substition of James Lees and Sons Company, a Delaware corporation, as party respondent in this proceeding in the place of James Lees and Sons Company, a Pennsylvania corporation, and (2) to issue and direct service of an amended complaint on the latter corporation. The hearing examiner, being of the opinion that he had no authority to entertain the motion, certified it to the Commission for determination.

The complaint in this proceeding charges that the respondent Pennsylvania corporation has discriminated in price in violation of Section 2(a) of the Clayton Act, as amended. The motion states that the assets of that corporation were purchased by another corporation on March 25, 1960, that such assets were transferred to a newly organized Delaware corporation of the same name, and that the Pennsylvania corporation is now in the process of being dissolved. The motion further states that the pricing practices of the new corporation are in all respects identical to those formerly used by the original concern and that many of the officials responsible for the latter's management at the time the complaint issued continue in similar managerial positions with the Delaware corporation.

The same acts and practices are challenged under the motion's proposed amendment as in the complaint, and no change in the circumstances leading the Commission to issue that complaint in the first instance is presented. The proposed amendment would merely redesignate the respondent to correctly identify the party engaged currently in the activities dealt with in the complaint. Amendment in that respect clearly would effectuate the Commission's purpose in issuing the complaint. Hence, the amendment appears to be within the purview of §3.9 of the Commission's Rules which authorizes hearing examiners to allow appropriate amendments under conditions there designated if "reasonably within the scope of the proceeding initiated by the original complaint."

Although the hearing examiner was correct in concluding that he had no authority to issue and direct the service of an amended complaint, he erred in further ruling in effect that he lacked authority to allow amendment of the complaint itself. Cf. *Capitol Records Distributing Corp.*, Docket No. 8029, Order Remanding Record to Hearing Examiner (March 1, 1961). The hearing examiner should have construed the motion as a request to amend the complaint by substituting certain of the allegations of the proffered draft of

amended complaint which identify the respondent and the hearing examiner should have ruled on the motion.

The motion for amendment will be remanded to the hearing examiner for consideration and appropriate action.

ORDER REMANDING MOTION TO HEARING EXAMINER

The hearing examiner, by order dated July 19, 1960, having certified to the Commission a motion to amend complaint theretofore filed by counsel supporting the complaint; and

The Commission, for reasons stated in its accompanying opinion, having determined that said motion should have been considered and ruled upon by the hearing examiner:

It is ordered, That the aforesaid motion be, and it hereby is, re-