OXWALL TOOL COMPANY, LTD., ET AL.

Docket 7491. Order, Jan. 18, 1963

Order reopening proceedings to consider modifying cease and desist order dated December 26, 1961, 59 F.T.C. 1408.

Respondents having moved the Commission to reopen this proceeding and modify the final order to cease and desist entered herein on December 26, 1961 [59 F.T.C. 1408]; and

The Commission having considered said motion and the opposition thereto filed by complaint counsel, and having determined that the public interest would best be served by reopening this matter for the purpose of considering the merits of respondents' motion:

It is ordered, That this proceeding be, and it hereby is, reopened for reconsideration by the Commission of the terms of the order to cease and desist and if additional briefing or argument is deemed necessary, the parties will be notified by appropriate order.

BRISTOL-MYERS COMPANY

Docket 8319. Order, Jan. 23, 1963

Interlocutory order denying motion to take oral depositions and for subpoenae duces tecum.

This matter having come on to be heard upon respondent's motion filed January 7, 1963, requesting the hearing examiner to order the taking of the oral depositions of certain physicians and others who aided in, or who have custody of papers and other data relating to, a study reported in an article entitled "A Comparative Study of Five Proprietary Analgesic Compounds," published in The Journal of the American Medical Association, December 29, 1962, at pages 1315–1318, and for subpoenae duces tecum commanding each of those persons to produce all documents, records, and other written, printed, or graphic materials relating thereto; and

It appearing that respondent has stated as grounds for said motion that the reported study, which was sponsored by the Commission, is relevant to the subject matter of the proceeding commenced by the issuance of the Commission's complaint in the instant case, and that complete details as to the procedures followed, and data gathered, in that study are now needed to permit respondent to prepare for trial, to conduct its cross-examinations at trial, and to preserve the evidence; and

The Commission having placed this matter on its suspense calendar by order of June 25, 1962, thereby staying all proceedings therein until further notice, and thus relieving the hearing examiner to whom the matter had been previously referred of responsibility therein, the reason for such suspension being the Commission's belief that an investigation should be conducted to determine whether other firms in the industry might be falsely advertising their analgesic preparations, and whether simultaneous action against all such firms might be warranted; and

The Commission being of the opinion that its order placing the instant matter on its suspense calendar is the administrative equivalent of a court's order staying a proceeding before it, and that, while such an order is in effect, the taking of depositions is unwarranted where, as here, there has been no showing that the perpetuation of the testimony in question is necessary in order to assure its availability if and when the case is restored to the adjudicative docket:

It is ordered, That respondent's motion be, and it hereby is, denied.