## 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.

## STANDARD MOTOR PRODUCTS, INC.

*Docket 5721. Order, Feb. 1, 1963*

**Order directing appointment of hearing examiner to conduct public hearings on alleged violations of a cease and desist order of the Commission issued Dec. 27, 1957, 54 F.T.C. 814.**

WHEREAS, the Federal Trade Commission adopted as its own on December 27, 1957 the findings and conclusions of the hearing examiner filed May 29, 1957 that certain acts and practices of Standard Motor Products, Inc., violated Section 2(a) of the Clayton Act, as amended (15 U.S.C. 13), and on December 27, 1957 ordered that

> "respondent Standard Motor Products, Inc., a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in or in connection with the sale, for replacement purposes, of automotive products and supplies in commerce, as 'commerce' is defined in the Clayton Act, do forthwith cease and desist from:
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> Discriminating, directly or indirectly, in the price of such products and supplies of like grade and quality:
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> 1. By selling to any one purchaser at net prices higher than the net prices charged to any other purchaser who, in fact, competes with the purchaser paying the higher price in the resale and distribution of respondent's products"; and

WHEREAS, such order was affirmed on April 15, 1959 by the United States Court of Appeals for the Second Circuit; and

WHEREAS, certiorari applied for by respondent Standard Motor Products, Inc., was denied on October 12, 1959 by the Supreme Court of the United States; and

WHEREAS, such order has continued in effect, not having been modified or set aside, and is in effect now; and

WHEREAS, the Commission has reason to believe that Standard Motor Products, Inc., may have violated the provisions of said order; and

WHEREAS, it is deemed by the Commission to be in the public interest to ascertain the extent to which such violation may have occurred:

*Now, therefore, it is ordered*, That public hearings be conducted in respect to compliance with the aforesaid order pursuant to § 1.34 and related provisions of the Commission's published Rules (16 CFR Chapter I, Subchapter A).

*It is further ordered*, That the Director of Hearing Examiners shall designate the hearing examiner to preside at and conduct such public hearings with all the powers and duties provided in the Com-