Interlocutory order granting respondent's counsel permission to examine special reports from some 180 competing food chains used by complaint counsel as the basis for statistical tabulations offered in evidence, and establishing conditions and safeguards upon such disclosure.

ORDER FOR EXAMINATION OF DOCUMENTS

Complaint counsel offered in evidence in this proceeding certain statistical tabulations based upon special reports filed by twenty food chains in response to Commission orders issued under Section 6(b) of the Federal Trade Commission Act. The hearing examiner refused to admit these exhibits in evidence unless counsel for respondent were first permitted to examine the special reports and other underlying information obtained from approximately 180 food chains who filed such reports with the Commission. The Commission, by its order of July 23, 1962, denied complaint counsel's interlocutory appeal from this ruling.

Complaint counsel subsequently applied to the Commission for permission to disclose to counsel for the respondent the special reports and other underlying information which were the subject of the examiner's ruling. Considering this request as a matter of internal administration, the Commission granted complaint counsel's request informally and accordingly, by order dated January 15, 1963, dismissed complaint counsel's motion requesting permission for such disclosure.

It now appears that complaint counsel and counsel for the respondent have been unable to agree upon the terms and conditions of the disclosure of the special reports and other underlying information received from the approximately 180 food chains, which were the subject of the examiner's ruling.

The Commission has considered this matter and has determined that the respondent's interest in examining these documents for the purpose of making its defense in this proceeding, and the Commission's interest in preventing the unnecessary or improper disclosure of information concerning the operations of the approximately 180 food chains, including competitors of respondent, which have filed special reports pursuant to Commission orders, can best be accommodated and satisfied by establishing certain conditions and safeguards upon the disclosure of these documents to counsel for the respondent. The Commission has further determined that these provisions should be specified in this order for the guidance of counsel and hearing examiners in this and other proceedings. Accordingly,

It is ordered, That counsel for respondent be, and they hereby are, granted permission to examine the special reports and other underlying information received by the Commission from approximately 180 food chains, which documents were the subject of the examiner's initial ruling in this matter, upon the following conditions:

1. Counsel for respondent who have filed an appearance and are actually engaged in the defense of this proceeding may ex-

amine the aforesaid documents on the Commission's premises, and may have made at their own expense and may remove from the Commission's premises one photocopy of each such document, or may make and remove summaries of the information contained in these documents, provided copies thereof are furnished to complaint counsel.

2. Except as expressly permitted by the hearing examiner, no additional copies may be made of the photocopies or summaries which are removed from the Commission's premises.

3. Except as provided in paragraph 4, the copies or summaries removed from the Commission's premises may be examined only by counsel for respondent who have filed an appearance and are actually engaged in the defense of this proceeding, and only for the purpose of preparing such defense; and no information contained in such copies or summaries shall be disclosed to any other person, including any officer or employees of respondent.

4. Counsel for respondent may make application to the hearing examiner for permission to disclose the copies or summaries removed from the Commission's premises, or any information contained therein, to other specified persons for use in the defense of this proceeding. Application for such permission shall identify the names and positions of the persons to whom the copies, summaries or information would be disclosed and the purposes for which they would be examined or used by those persons. Permission may be granted by the hearing examiner only upon a showing that such disclosure is necessary for the respondent's defense in this proceeding.

5. All copies or summaries removed from the Commission's premises, together with all notes, memoranda or other papers containing information obtained from such copies or summaries, must be returned to the Commission upon the termination of this proceeding.

By the Commission, Commissioners Anderson and MacIntyre dissenting on the ground that in their opinion it would be manifestly unfair to subject the materials furnished by the various people not parties to this action to examination by their competitors, Grand Union representatives.

Commissioner MacIntyre dissented, in addition, for the reason that the Commission's action provides for more than is required in order to accord due process, and even to the extent due process is afforded, it could be afforded in other ways than the manner provided for in the order.

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CAMPBELL TAGGART ASSOCIATED BAKERIES, INC.

Docket 7938. Orders and Opinions

ORDER ESTABLISHING PROCEDURE ON INTERLOCUTORY APPEAL, FEBRUARY 19, 1963

The Commission, by its order of January 30, 1963, granted the request of complaint counsel for permission to file an interlocutory appeal from the ruling of the hearing examiner refusing to admit in evidence in this proceeding certain special reports obtained by the Commission pursuant to Section 6(b) of the Federal Trade Commission Act. On January 29, 1963, respondent filed an answer to complaint counsel's request which did not oppose the consideration of this appeal by the Commission, but which requested that: (1) the Commission disclose to respondent certain documents in its files which set forth or refer to clearance procedures or arrangements with the Bureau of the Budget with respect to the Federal Reports Act of 1942; (2) complete legal memoranda be filed by both parties on the basis of the official transcript containing the examiner's ruling; (3) respondent be permitted to file its answering brief within fifteen days after service of complaint counsel's brief; and (4) the Commission hear oral argument on the interlocutory appeal.

The Commission has considered respondent's motions and the reply thereto filed by complaint counsel, and has determined that a procedure should be established for the orderly presentation of this appeal to the Commission whereby: (1) the proceeding now pending before the hearing examiner will not be unnecessarily delayed; (2) both parties will have available to them, prior to the briefing on this appeal, a statement of the issues to be considered, the transcript of the proceeding before the hearing examiner containing the ruling from which this appeal is taken, and the relevant materials reflecting the Commission's previously-expressed administrative interpretation of the applicability of the Federal Reports Act of 1942 to the obtaining of special reports pursuant to Section 6(b) of the Federal Trade Commission Act; and (3) both parties will have full opportunity to present argument on this interlocutory appeal to the Commission. Accordingly,

It is ordered:

1. That to the extent that the hearing examiner's refusal to admit in evidence in this proceeding the special reports offered by complaint counsel was based on the Commission's alleged failure to secure clearance by the Bureau of the Budget for the obtaining of these reports, the hearing examiner shall set aside his previous ruling and shall admit said special reports in evidence, subject however to being stricken later if it should ultimately be determined that the