BECTON, DICKINSON & COMPANY

Docket 8493. Order, July 9, 1963

Order denying respondent's request for a conference for a settlement of this proceeding.

Order Denying Motion

Respondent, by motion filed June 24, 1963, having joined in the applications of respondents in certain related matters requesting a conference for the settlement of this proceeding or alternative relief, and counsel supporting the complaint having filed an answer in opposition thereto; and

The Commission having previously considered such a request in *White Laboratories, Inc.*, Docket No. 8500, and having issued the attached order denying said request; and

The Commission being of the opinion that the grounds stated in its order in Docket No. 8500 [62 F.T.C. 1538] for denial of that respondent's request are applicable in substance to the request herein and that therefore this motion must likewise be denied:

It is ordered, That respondent's motion of June 24, 1963, be, and it hereby is, denied.

Commissioner Elman concurring.

MAGNAFLO COMPANY, INC., ET AL.

Docket 8422. Order, July 12, 1963

Interlocutory order ruling on request for permission to file interlocutory appeal and defining the manner in which the case should be processed under the order of remand.

Order Ruling on Request for Permission To File Interlocutory Appeal

This matter having come before the Commission upon the request of counsel supporting the complaint to file an interlocutory appeal from certain rulings of the hearing examiner as set forth in an Order of

Directions After Pre-Hearing Conference, April 30, 1963, issued by the hearing examiner subsequent to the Commission's remand of this proceeding; and

It appearing that the purpose of said remand was to determine whether respondents' trade name, "Lifetime Charge," could be qualified so as to relieve any tendency to deceive or whether complete excision of said name is required, and that the hearing examiner was directed to receive such additional evidence as may be required for a finding on the issue of whether or not respondents' product will preserve an existing charge in a battery to the extent necessary to give a purposeful and truthful meaning to the word "Lifetime" in said trade name; and

It further appearing that the aforesaid Order of Directions of the hearing examiner would require, *inter alia*, that counsel for each side should present evidence on the issue of whether or not respondents' product will preserve an existing charge in a battery and that said evidence should be based on formal scientific tests of respondents' product; and

It further appearing that counsel supporting the complaint has averred that tests required by the aforesaid Order of Directions could not be completed in less than one year and that counsel for respondents has stated of record that respondents are not now in a position to present any test data in support of the contention that their product will preserve an existing charge in a battery and has estimated that respondents will require up to three years to conduct the necessary tests; and

The Commission having determined that the request of counsel supporting the complaint for permission to file an interlocutory appeal from said rulings of the hearing examiner should be granted and that, in view of an apparent misinterpretation of its order of remand, filing of the interlocutory appeal should be waived and the issues presented in said request should be considered on the merits; and

The Commission having previously determined that respondents' use of the trade name "Lifetime Charge" was deceptive and illegal, the burden rests upon respondents to show that a remedy short of excision would suffice to protect the public against deception; and

The Commission having further determined that the evidence to be received by the hearing examiner pursuant to the Commission's order of remand should be limited to that presently available to respondents to show that the aforesaid trade name may be qualified to relieve its capacity to deceive, and to rebuttal evidence, and that in the absence of a satisfactory showing by respondents, an order requiring complete excision of said trade name should be entered:

It is ordered, That the hearing examiner's Order of Directions After Pre-Hearing Conference be, and it hereby is, vacated and set aside.

It is further ordered, That the case be remanded to the hearing examiner for further proceedings in conformity with the views expressed herein.

GEORGE FROST COMPANY*

Docket C-229. Modified Order, July 17, 1963

Order reopening case and striking from order the last paragraph and substituting an order staying the effective date.

Order Reopening Proceeding and Modifying Order To Cease and Desist

Respondents having requested that the final order to cease and desist outstanding against them be modified by making the compliance provision thereof inoperative until the Commission has instituted action to correct certain alleged industry-wide practices; and

The Commission having concluded that a temporary cessation of respondents' duty to comply with the order to cease and desist will not be incompatible with the public interest and that respondents, by requesting reopening, have waived notice and opportunity for hearing thereon:

It is ordered, That this proceeding be, and it hereby is, reopened.

It is further ordered, That the decision and order of the Commission issued September 11, 1962 [61 F.T.C. 517], be, and it hereby is, modified by striking therefrom the entire last paragraph of the order and substituting therefor the following:

It is further ordered, That this order shall not become effective until further order of the Commission.

TOPPS CHEWING GUM, INC.

Docket 8463. Order, August 1, 1963

Order Denying Motion To Dismiss Complaint

Respondent has filed on July 23, 1963, a motion requesting the Com-