Order denying respondent's motion to dismiss the complaint or suspend the proceeding pending a trade-practice hearing.

ORDER DENYING REQUEST TO FILE INTERLOCUTORY APPEAL, AND DENYING MOTION TO DISMISS COMPLAINT OR SUSPEND PROCEEDING

The Commission has before it a request by respondent Fred Astaire Dance Studios Corporation, under Section 3.20 of the Commission's

Rules of Practice, for permission to file an interlocutory appeal, and a motion by said respondent to dismiss the complaint or alternatively to suspend the proceeding.

Respondent seeks an interlocutory review of an order of the hearing examiner, made under Section 3.11 of the Rules, for the production of certain documents in respondent's possession. Such review will be granted only "in extraordinary circumstances where an immediate decision by the Commission is clearly necessary to prevent detriment to the public interest". Cf. the test contained in Section 3.17(f), which governs immediate appeals to the Commission from rulings granting or denying applications to issue, or motions to limit or quash, any subpoena or order requiring access; such an appeal will be entertained "only upon a showing that the ruling complained of involves substantial rights and will materially affect the final decision and that a determination of its correctness before conclusion of the hearing will better serve the interests of justice". Under neither test has respondent established grounds for an immediate appeal to the Commission. Responsibility for the protection of parties and witnesses from unjustified demands for documents is primarily the hearing examiner's, and respondent's application discloses no abuse of discretion by the examiner of such nature as to warrant, under the standards governing interlocutory appeals set forth in the Rules, the Commission's intervention at this time. In so ruling, the Commission expresses no view on the merits of respondent's objections to the examiner's order.

Respondent's motion to dismiss the complaint or suspend the proceeding while a trade practice rule-making proceeding is convened (see Sections 1.66–.67 of the Rules) must be denied for essentially the reasons stated in the Commission's recent order in *Topps Chewing Gum, Inc.*, F.T.C. Docket 8463, issued August 1, 1963, p. 2203 herein.

It is ordered, That respondent's request for leave to file an interlocutory appeal and its motion to dismiss the complaint or suspend the proceeding be, and they hereby are, denied.

ART NATIONAL MANUFACTURERS DISTRIBUTING CO. ET AL.

Docket 7286. Order, Oct. 7, 1963

Order denying respondent's request to modify a cease and desist order entered May 10, 1961, 58 F.T.C. 719, on the ground of alleged change of law.

Order Denying Petition To Reopen

Counsel for respondents having petitioned the Commission to reopen this proceeding for the purpose of determining whether or not

the final order to cease and desist entered May 10, 1961 [58 F.T.C. 719], should be modified, alleging as grounds therefor that the Commission on July 15, 1963, dismissed its complaint against *National-Porges Co., et al.*, Docket No. 8428 [p. 163 herein]; and

It appearing that dismissal of the complaint in Docket No. 8428 was based solely on an application of the law to the facts of record in that case, having no connection with the facts of record in this proceeding, and that contrary to respondents' counsel's contention, dismissal of said complaint does not represent a change in law applicable to the acts and practices prohibited by the order to cease and desist herein; and

The Commission, therefore, having concluded that respondents' counsel has failed to allege sufficient and proper grounds for a reopening of this proceeding:

It is ordered, That respondents' petition for reopening of this proceeding be, and it hereby is, denied.

CROWN CENTRAL PETROLEUM CORP.

Docket 8539. Order, Oct. 9, 1963