O. K. RUBBER WELDERS, INC., ET AL.

Docket 8571. Order, June 4, 1964

Order granting leave to reopen consent order negotiations and present results to Commission by June 11, 1964.

Order Granting Leave To Reopen Consent Order Negotiations

On June 1, 1964, respondents in the above-entitled case filed with the Commission a motion for leave to reopen consent order negotiations. Hearings are now scheduled to commence on June 16, 1964, and respondents request that they be postponed pending the further negotiations. Respondents state that the Commission's recent acceptance of a consent order in *Kaiser Jeep Corporation*, Docket No. C–739 [65 F.T.C. 562] and the Seventh Circuit's affirmance of the Commission orders in *Goodyear Tire and Rubber Company* v. *F.T.C.*, Docket Nos. 13339 and 13340, constitute changed circumstances in the light of which consent negotiations can again be profitably undertaken. Complaint counsel, on June 1, 1964, filed an answer stating that they do not oppose the motion for leave to reopen the consent negotiations but that they do oppose any postponement of the presently fixed hearing date. Complaint counsel urge that respondents' motion be granted only on the condition that the result of any such negotiations be presented to

the Commission on or before June 8, 1964. Upon consideration of respondents' motion and the reply thereto,

It is ordered, That the parties be, and they hereby are, granted leave to reopen consent order negotiations, *provided that*, any agreement resulting from such negotiations shall be presented to the Commission on or before June 11, 1964.

FRITO-LAY, INC.

Docket 8606. Order, June 4, 1964

Order denying respondent's motion to dismiss complaint.

Order Denying Permission To File Interlocutory Appeal

Upon consideration of the request filed by respondent on March 5, 1964, pursuant to Section 3.20 of the Commission's Procedures and Rules of Practice, for permission to file an interlocutory appeal from the order of the hearing examiner denying respondent's motion to dismiss the complaint, and of complaint counsel's statement in opposition to said request, filed on March 11, 1964,

And the Commission being of the opinion that the jurisdictional issues involved in this proceeding can best be determined upon a full record relating to all aspects of the case and that respondent has made no showing that an immediate decision of the jurisdictional issues is clearly necessary to prevent detriment to the public interest as required by Section 3.20,

It is ordered, That permission to file an interlocutory appeal be, and it hereby is, denied.

STANDARD MOTOR PRODUCTS, INC.

Docket 5721. Order, June 17, 1964

Order denying reconsideration of prior denial of access to competitor's compliance reports.

Order Denying Petition for Reconsideration and Amending Order of February 1, 1963

By order of February 1, 1963, the Commission instituted formal investigational hearings to determine whether respondent Standard Motor Products, Inc., is in compliance with the order to cease and desist previously issued in Docket No. 5721 [54 F.T.C. 814]. By order of April 9, 1964, the Commission denied respondent's request that subpoenas duces tecum be issued to certain Commission staff members, in effect requiring them to give respondent access to the reports of com-

pliance filed by a number of other respondents in other Commission proceedings.

Respondent has now filed a petition for reconsideration of that April 9 order. On May 7, 1964, complaint counsel filed an answer in opposition to the petition for reconsideration. In rearguing the relevance of the compliance report filed by Guaranteed Parts Company, respondent in Docket No. 6987, the petition suggests no consideration that was not fully weighed by the Commission at the time it issued the April 9 order. As to this, therefore, respondent's petition should be denied.

The Commission finds it unnecessary to consider respondent's remaining arguments to the effect that the April 9 order was based upon a misunderstanding of the claimed relevance of the compliance reports filed by the six so-called "reorganized buying groups". Since the issuance of that order, the Commission has determined that, in order to deal most effectively with problems of industrywide dimension, priority should be accorded to a direct inquiry into the current organization and operation of the buying groups. In view of this, the Commission concludes that no purpose would now be served by continuing the compliance investigation insofar as it has been concerned with respondent's sales to the buying groups. This action involves no determination of whether or not respondent has complied with the order in its classification of the buying groups, and it is without prejudice to any future action that the Commission may take.

Accordingly, it is ordered by the Commission that the order of February 1, 1963, in this proceeding be, and it hereby is, amended to provide that the investigation to ascertain whether and to what extent respondent has violated the outstanding cease and desist order shall not encompass the question of whether respondent has improperly and unlawfully classified certain purchasers or groups of purchasers as warehouse distributors. To the extent that respondent's petition for reconsideration has not been mooted,

It is further ordered, By the Commission that the petition be, and it hereby is, denied.

Commissioner MacIntyre not concurring.

BRITE MANUFACTURING CO. ET AL.

Docket 8325. Order, June 17, 1964

Order denying application of Manco Watch Strap Co. to intervene in this proceeding.

Order Denying Application To Intervene

Counsel for Manco Watch Strap Co., Inc., having made application dated May 5, 1964, for leave to intervene in this proceeding; and

It appearing that this case is now before the Commission for decision and that petitioner's application for leave to intervene is, therefore, inappropriate:

It is ordered, That the application for leave to intervene in this proceeding be, and it hereby is, denied.

GIANT FOOD INC.

Docket 7773. Order, June 23, 1964

Order reopening and proposing modification of desist order of July 31, 1962, 61 F.T.C. 326, by changing the wording of paragraph 2 of the order in accordance with the Revised Guides Against Deceptive Pricing of January 8, 1964.

ORDER REOPENING PROCEEDING AND PROPOSING MODIFICATION OF ORDER TO CEASE AND DESIST

On April 27, 1964, respondent Giant Food Inc. filed a petition to reopen the proceeding for the purpose of setting aside the order heretofore entered by the Commission and affirmed by the United States Court of Appeals for the District of Columbia Circuit,[1] or, in the alternative, of modifying the order in certain respects. Complaint counsel have filed an answer in opposition to the petition, and respondent has filed a reply. Upon consideration of the foregoing, the Commission concludes that good cause has not been shown for setting aside the order in its entirety or for permitting respondent to introduce additional evidence in an effort to show that no order would be justified under the standards of the Revised Guides Against Deceptive Pricing. *Art National Manufacturers Distributing Co.*, Docket No. 7286, order issued May 8, 1964 [p. 1302 herein].

In considering respondent's alternative request that the order be modified, the Commission is aware that it has previously informed respondent by letter that it would modify paragraph 2 of the order to remove one possible ambiguity, and that, further, it would make "such modifications in the order as are necessary to make the order conform to the newly Revised Guides Against Deceptive Pricing of January 8, 1964". After receipt of this letter respondent withdrew its petition for certiorari with respect to the Court of Appeals' decision that had affirmed the Commission order. Although the Commission has heretofore indicated that all existing pricing orders are to be construed in the light of the Revised Guides and that therefore explicit modification of such orders will not ordinarily be necessary, the unique circumstances of this case justify an exception. Pursuant to Section 5(b) of the Federal Trade Commission Act this proceeding should be reopened for the limited purpose of modifying the provisions of

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[1] *Giant Food Inc.* v. *F.T.C.*, 322 F. 2d 977.

the order to conform with the Revised Guides Against Deceptive Pricing.

The Commission hereby gives notice of its intention to so modify the order that was heretofore entered in this proceeding and that has become final upon affirmance by the Court of Appeals. The following is the order that the Commission now believes should be entered:

It is ordered, That respondent GIANT FOOD INC., a Delaware corporation, and its officers, directors, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of household electrical appliances, kitchen utensils, or any other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "regular price" or words of similar import to refer to any amount which is in excess of the price at which such merchandise has been sold or offered for sale in good faith by the respondent for a reasonably substantial period of time in the recent regular course of its business; or otherwise misrepresenting the price at which such merchandise has been sold or offered for sale by the respondent.

2. Using the words "manufacturer's list price," "suggested list price," "factory suggested retail price," or words of similar import, unless the merchandise so described is regularly offered for sale at this or a higher price by a substantial number of the principal retail outlets in the trade area; provided, however, that this order shall not apply to point-of-sale offering and display of merchandise which is preticketed by the manufacturer or distributor thereof and the obliteration or removal of which preticketed price is impossible or impractical.

3. Representing in any manner that by purchasing any of its merchandise, customers are afforded savings amounting to the difference between respondent's stated price and any other price used for comparison with that price, unless a substantial number of the principal retail outlets in the trade area regularly offer the merchandise for sale at the compared price or some higher price or unless respondent has offered such merchandise for sale at the compared price in good faith for a reasonably substantial period of time in the regular recent course of its business.

Respondent may submit its comments or statement of views on these proposed modifications, if any, within 15 days of service of this order.

Commissioner MacIntyre does not concur with the action of the Commission in this instance. His views on the issues raised by respon-

dent's motion, which have been fully set forth in his statements of nonconcurrence in *Clinton Watch Company, et al.* (Docket 7434, Order On Petition to Reopen Proceeding, February 17, 1964) [64 F.T.C. 1443], *The Regina Corporation* (Docket 8323, Order Reopening Proceeding and Modifying Cease and Desist Order, April 7, 1964)