

vided by § 2.4(d) of the Rules of Practice, would not constitute an appropriate disposition of this proceeding. Accordingly,
It is ordered, That respondents' motion, filed July 6, 1964, be, and it hereby is, denied.

IN THE MATTER OF

JANTZEN, INC.

Docket 7247. Resolution and Order, July 22, 1964

Resolution and order that a nonpublic investigational hearing be conducted to determine whether or not respondent has violated provisions of cease and desist order.

RESOLUTION AND ORDER DIRECTING AN INVESTIGATION AS TO WHETHER
JANTZEN, INC., HAS COMPLIED WITH ORDER TO CEASE AND DESIST

Whereas, pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," 38 Stat. 730 (1914), as amended by the Robinson-Patman Act, 49 Stat. 1526 (1936), 15 U.S.C. Sec. 13, the Federal Trade Commission on January 16, 1959 [55 F.T.C. 1065], after due process and proceedings of record herein and in accordance therewith, issued and served upon the respondent named in the caption hereof, an order to cease and desist under subsection (d) of Section 2, thereof; and

Whereas, by the said order to cease and desist the respondents Jantzen, Inc., and its officers, representatives, agents and employees, directly or through any corporate or other device in, or in connection with, the sale of clothing in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from—

[P]aying or contracting for the payment of anything of value to, or for the benefit of, any customer of respondent as compensation, or in consideration, for any services or facilities furnished by or through such customer in connection with the offering for sale, sale or distribution of any of respondent's products, unless such payment or consideration is made available on proportionally equal terms to all other customers competing in the distribution of such products; and

Whereas, the said order to cease and desist, as modified on March 26, 1959, has not at any time thereafter been modified or set aside and is now, and has at all times since March 26, 1959, been in full force and effect; and

Whereas, the Commission has reason to believe that respondent, its officers, representatives, agents and employees, while engaged in the sale and distribution of clothing in commerce, may have violated the provisions of the said order to cease and desist; and

Whereas, it is deemed by the Commission to be in the public interest to ascertain whether or not and the extent to which respondent, while engaged in commerce, may have violated the provisions of the said order to cease and desist;

Now, therefore, it is resolved and ordered. That a nonpublic investigational hearing be conducted for that purpose pursuant to Section 1.35 and related sections of the Commission's Rules of Practice.

It is further resolved and ordered. That the Chief Hearing Examiner hereby appoint and designate a hearing examiner to preside at such hearing with all the powers and duties as provided by Section 3.15 of the Commission's Rules of Practice, except that of making and filing an initial decision; and upon completion of the hearing, that the hearing examiner shall certify the record to the Commission with his report on the investigation; and that respondent shall have the right of due notice, of cross-examination, of production of evidence in rebuttal, and that the hearing shall be conducted in accordance with the Commission's Rules of Practice for adjudicative proceedings insofar as such rules are applicable.

It is further resolved and ordered. That the hearings shall be held at such time and at such places as may be necessary, the initial hearing to be held at a place to be fixed by the said hearing examiner on a day occurring at least thirty (30) days after the service of notice thereof upon respondent.

It is further resolved and ordered. That the Secretary shall cause service of this resolution and order to be made on respondent.

IN THE MATTER OF

FRITO-LAY, INC.

Docket 8606. Order, July 30, 1964

Order denying respondent's application to have a special survey by the Commission of the "snack food" industry.

ORDER DENYING RESPONDENT'S APPLICATION TO HAVE THE COMMISSION
CONDUCT A SPECIAL SURVEY

By motion filed July 8, 1964, respondent seeks to have the Commission issue orders for the filing of special reports, pursuant to Section 6(b) of the Federal Trade Commission Act, upon the manufacturers and sellers of a large number of food products that respondent categorizes as "snack foods". Respondent contends that the information that such a special survey would yield is necessary to its defense and cannot practically be obtained in any other manner. Complaint counsel on July 17, 1964, filed an answer in opposition to respondent's motion. Acting pursuant to Section 3.6(a) of the Commission's Procedures and Rules of Practice, the examiner has certified respondent's motion to the Commission with the recommendation that it be denied. The examiner offers the following reasons for his recommendation:

1. Similar requests have been denied by the Commission. *Union Bag-Camp Paper Corporation*, Docket 7946. (Order of Certification, February 23, 1962, Commission Order denying application dated July 30, 1962, Order dated March 6, 1963, and Commission Order dated April 5, 1963 denying appeal.)

2. This motion is untimely. The case has been set for hearing August 18, 1964 since February 28, 1964. Respondent, asserting the Commission's decision in *Campbell Taggart*, Docket 7938, required the Commission to reissue its survey because of a technical defect—failure to secure prior approval of the Bureau of the Budget before its original survey was conducted. Respondent should not be permitted to wait until after a second survey was conducted and then seek a third survey from the same concerns. Respondent was presumably cognizant, at the time of the first prehearing conference, of its desire for additional information and it could very well have sought the inclusion by the Commission of questions designed to elicit the information now sought at that time. It made no motion to do so. A further survey by the Commission of the several hundred small businessmen involved seems hardly consistent with the public interest.

3. Respondent's motion is defective in form in that it is based on unsupported conclusions and fails to set forth facts concerning its ability or lack of ability to secure such information as it desires. Respondent, with its own personnel, has apparently conducted surveys