

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

of the field but has failed to indicate any reason why expert testimony based on such surveys will not be adequate for proof of its defense; or why testimony of persons expert in the business cannot supply evidence concerning respondent's defense. In addition, no information has been supplied concerning the practicality of conducting a survey through independent research organizations skilled in the art.

The Commission agrees with the examiner, substantially for the reasons stated by him in paragraphs 2 and 3 quoted above, that no persuasive showing of the appropriateness of, or need for, the requested action has been made by respondent here. Accordingly,

It is ordered by the Commission, That respondent's motion be, and