

IN THE MATTER OF
ATD CATALOGS, INC., ET AL.

Docket 8100. Order, July 31, 1964

Order setting aside the consent order of April 3, 1964, and dismissing the complaint as to James V. Cariddi on the ground that he was not a stockholder of ATD Catalogs, Inc.

ORDER SETTING ASIDE CONSENT ORDER AND DISMISSING COMPLAINT
AS TO JAMES V. CARIDDI

On June 5, 1964, respondent James V. Cariddi filed a motion to set aside the consent order and dismiss the complaint as to him on the ground that he was not a stockholder of ATD Catalogs, Inc., and that none of his firm's officers, directors or representatives held stock in ATD. Respondent further alleged that he had no representative acting as director, officer or employee of ATD. The Commission's order of June 29, 1964 [65 F.T.C. 71, 129], suspended enforcement of the consent order as to respondent Cariddi and gave him the opportunity to file a properly sworn affidavit to substantiate the factual statements in his motion of June 5, 1964.

On July 15, 1964, two affidavits were filed in support of the motion to dismiss, one by Cariddi, the second by Sylvia Kahn, Secretary of ATD Catalogs, Inc. Complaint counsel has stated he has no reason to question the factual statements contained therein. Therefore, the complaint will be dismissed and the consent order set aside as to respondent James V. Cariddi. Accordingly,

It is ordered, That the consent order of respondent James V. Cariddi be, and it hereby is, set aside and that the complaint as to the aforesaid respondent be, and it hereby is, dismissed.

Commissioner Reilly not participating.

IN THE MATTER OF
STATE PAINT MANUFACTURING COMPANY ET AL.

Docket 8367. Order, July 31, 1964

Order denying petition to reopen, without prejudice to respondents' right to renew same if and when the decision of the Court of Appeals in Docket No. 8290 is affirmed by the Supreme Court.

ORDER DENYING RESPONDENTS' PETITION TO REOPEN

This matter having come before the Commission upon respondents' petition filed July 15, 1964, requesting that this proceeding, Docket No. 8367, be reopened and the order to cease and desist entered February 7, 1964 [64 F.T.C. 660], be vacated; and

The respondents having alleged in support of their petition that the Commission's decision herein, including its order to cease and desist, was based on its decision and order in *Mary Carter Paint Co. et al.*, Docket No. 8290, entered June 28, 1962 [60 F.T.C. 1827]; that on June 19, 1964, the United States Court of Appeals for the Fifth Circuit rendered its decision in *Mary Carter Paint Co. et al. v. Federal Trade Commission*, Case No. 19982, in which the court directed the Commission to enter an order dismissing the complaint in said Docket No. 8290; and that as a result of this ruling by the Court of Appeals conditions of law have so changed since issuance of the order in Docket No. 8367 as to require the relief requested; and

It appearing that the aforesaid decision of the Court of Appeals is subject to review by the Supreme Court of the United States by writ of certiorari if granted upon petition therefor filed within ninety (90) days after entry of judgment by the Court of Appeals implementing its decision, or within such further period of time, not exceeding sixty (60) days, as may be allowed by a justice of the Supreme Court; and

It further appearing that the time within which such petition may be filed in Docket No. 8290 has not yet expired and, thus, that respondents' request in Docket No. 8367 is premature:

It is ordered, That respondents' petition filed July 15, 1964, be, and it hereby is, denied, without prejudice, however, to respondents' right to renew the same if and when the decision of the Court of Appeals in Docket No. 8290 is affirmed by the Supreme Court, or after expiration of the time within which a petition for a writ of certiorari may be filed in that case if no such petition is filed within such time.

Commissioner Elman dissenting.