

UNION BAG-CAMP PAPER CORPORATION

Docket 7946. Order, Sept. 23, 1964

Order ruling that captioned-case be conducted in conformity with Rules of Practice in effect prior to July 21, 1961.

ORDER RULING ON CERTIFIED QUESTION

By certificate filed on September 8, 1964, the hearing examiner in the above-captioned proceeding has requested the Commission to rule on the question whether this proceeding, which was commenced prior to July 21, 1961, and in which reception of evidence has not yet been

completed, is governed by the Commission's Rules of Practice for Adjudicative Proceedings in effect prior to July 21, 1961, or by the Procedures and Rules of Practice (effective August 1, 1963) currently in effect.

There are a few cases which, because of their size and complexity, are still in the hearing stage even though they were commenced prior to the major revision of the Rules of Practice in 1961. As to them, it would be productive of confusion and still further delay if the rules of practice governing such proceedings were changed in the course of the evidentiary hearings. The Commission has therefore determined that all proceedings commenced prior to July 21, 1961, shall be governed by the Rules of Practice in effect immediately prior to that date, to the extent stated in the Commission's statement of July 14, 1961, defining the application of the revised Rules of Practice to pending proceedings. See also *Crowell-Collier Publishing Co.*, F.T.C. Docket 7751 (Order of June 17, 1963). In general, the former rules will govern the conduct of the evidentiary hearings in such proceedings, while the current rules will govern post-hearing procedures, including initial decision by the examiner and appeal to the Commission. Accordingly,

It is ordered, That the above-captioned proceeding shall be conducted in conformity with the Rules of Practice in effect immediately prior to July 21, 1961, to the extent indicated in the Commission's statement of July 14, 1961.

IN THE MATTER OF
MONTGOMERY WARD & CO., INC.

Docket 8617. Order, Sept. 24, 1964

Order striking paragraph (h) of subpoena of July 23, 1964, to Mr. Charles W. Wood, remanding matter to hearing examiner, and dismissing appeal in all other respects.

ORDER RULING ON APPEAL FROM EXAMINER'S DENIAL OF MOTION TO
LIMIT SUBPOENA

On September 1, 1964, respondent in the above-captioned proceeding filed with the Commission an appeal, pursuant to Section 3.17(f) of the Commission's Procedures and Rules of Practice (effective August 1, 1963), from the hearing examiner's denial of its motion to limit a subpoena duces tecum issued on July 23, 1964, to Mr. Charles W. Wood, vice president of respondent. Answer was filed by complaint counsel on September 9, 1964.

Section 3.17(f) provides that such an appeal "will be entertained by the Commission 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." Respondent does not contend that compliance with the subpoena, as issued, would be unduly burdensome, but only that the documents sought are not relevant to the issues in this proceeding as framed by the complaint. Ordinarily, such a question can more adequately be determined after the issues have been fully developed in the evidentiary hearing before the examiner, rather than at a preliminary stage of the proceeding. In the present case, however, the subpoena in question evidences an attempt to broaden the proceeding beyond the original intentions of the Commission in issuing the complaint. Accordingly, the Commission has determined that paragraph (h) of the subpoena should be stricken, and that the hearing examiner should be directed to re-examine the remaining paragraphs of the subpoena in light of the Commission's desire that this proceeding be expedited and kept within manageable proportions.

Respondent also contends in this appeal that the objectives of this proceeding have already been fulfilled, that the entry of a cease and desist order would not serve the public interest, and that further prosecution of the case would serve no useful purpose. The Commission, in dismissing this appeal, does not pass on the merits of such contention, since we do not believe that it is properly presented. An appeal from a ruling of the hearing examiner on a motion to limit a subpoena is not an appropriate vehicle for presenting such considerations, "addressed to the Commission in its administrative capacity, as the complainant in this proceeding." *Drug Research Corp.*, F.T.C. Docket 7179 (October 3, 1963) [63 F.T.C. 998]. Accordingly,

It is ordered. That paragraph (h) of the subpoena duces tecum issued on July 23, 1964, to Mr. Charles W. Wood be, and it hereby is, stricken.

It is further ordered. That, in all other respects, the appeal is dismissed, and the matter remanded to the hearing examiner for further consideration in light of this order.

Commissioner MacIntyre not concurring.

IN THE MATTER OF
STANDARD MOTOR PRODUCTS, INC.

Docket 5721. Order, Oct. 5, 1964

Order granting permission to file briefs and answers on question of respondent's compliance with an outstanding order.

ORDER GRANTING PERMISSION TO FILE BRIEFS

On September 17, 1964, the hearing examiner certified to the Commission the record in the investigational hearings conducted herein to determine whether respondent Standard Motor Products, Inc., is in compliance with an outstanding order to cease and desist. By motion filed September 23, 1964, respondent requests that certain testimony and exhibits in the aforesaid record be stricken. Subsequent thereto, by letter filed September 28, 1964, respondent requests permission to file briefs and for oral argument upon the entire record of this investigational proceeding.

The Commission has considered respondent's requests and has concluded that although not provided for in its Rules of Practice, the submission of briefs by the parties is warranted. The Commission has further determined to hold in abeyance respondent's motion to strike certain testimony and exhibits and its request for oral argument until the briefs have been filed and reviewed. Accordingly,

It is ordered, That on or before November 3, 1964, respondent and Commission counsel each may file with the Secretary of the Commission a brief upon the record of this investigational proceeding, each brief not to exceed sixty (60) pages, including any appendix.

It is further ordered, That within twenty (20) days after service of the respective briefs, respondent and Commission counsel each may file an answering brief not to exceed sixty (60) pages, including any appendix.

IN THE MATTER OF

CROWELL-COLLIER PUBLISHING COMPANY ET AL.