

INTERLOCUTORY ORDERS, ETC. 1961

The Solicitor General of the United States has authorized me to say that, while he wishes to present the *Texaco* and *Atlantic* cases to the Supreme Court on the substantive questions alone, without the encumbrance of the subsidiary, disqualification issue, he is of the opinion, as his petition for *certiorari* in the *Texaco* case notes, that the court of appeals erred in finding disqualifying bias in the speech in question.

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

Docket 8617. Order, Nov. 6, 1964

Order denying complaint counsel's request for issuance of amended complaint, and dismissing request to file an interlocutory appeal.

ORDER DENYING MOTION TO AMEND COMPLAINT AND DISMISSING
REQUEST FOR PERMISSION TO FILE INTERLOCUTORY APPEAL

By order of September 24, 1964 [p. 1543 herein], the Commission ordered stricken that part of a subpoena duces tecum procured by complaint counsel relating to respondent's advertising representation, "Satisfaction Guaranteed or Your Money Back", as being "beyond the original intentions of the Commission in issuing the complaint." On October 5, 1964, complaint counsel moved before the hearing examiner that the complaint be amended to include a specific challenge to that representation. The examiner, by order of October 7, 1964, denied this motion and refused to certify it to the Commission. On October 13, 1964, complaint counsel filed a "Request for Permission to File Interlocutory Appeal or for Issuance of Amended Complaint". On October 18, respondent filed a statement in opposition to complaint counsel's request.

Section 3.7(a)(1) of the Commission's Procedures and Rules of Practice (effective August 1, 1963) provides that a motion to amend the complaint shall be certified to the Commission by the hearing examiner "if the amendment is [not] reasonably within the scope of the proceeding initiated by the original complaint," and that is the procedure that should have been followed here. However, the Commission has considered complaint counsel's motion to amend the complaint as if it had been properly certified to the Commission, and has determined that the public interest does not, in the circumstances, warrant amending the complaint as requested by complaint counsel. As the Commission stated in its Order Ruling on Appeal from Examiner's Denial of Motion to Limit Subpoena (September 24, 1964)

[p. 1543 herein], and again in its Order Denying Permission to File Interlocutory Appeal (October 15, 1964) [p. 1549 herein], it is the Commission's desire that this proceeding be expedited and kept within manageable proportions. Complaint counsel's request to broaden the complaint by adding a charge unrelated to those contained in the original complaint is inconsistent with the Commission's previous rulings limiting the scope of this proceeding and with its continuing desire that this proceeding not be unduly broadened and protracted. Accordingly,

It is ordered, That complaint counsel's request for issuance of an amended complaint be, and it hereby is, denied; and that complaint counsel's request for permission to file an interlocutory appeal be, and it hereby is, dismissed.

Commissioner MacIntyre not concurring.
