

deal with politics or health. We should not forget that, in both fields, today's heresy may become tomorrow's dogma.

I would dismiss the complaint as an unwarranted intrusion by this Commission into an area from which it is excluded by the Constitution and the statute.

IN THE MATTER OF
KNOLL ASSOCIATES, INC.

Docket 8549. Order, Dec. 15, 1964

Order denying respondent's request that initial decision be filed; complaint counsel shall produce for inspection of respondent's counsel all documents furnished by Herbert Prosser; and hearings shall be heard at the time and place specified by examiner on November 30, 1964.

ORDER RULING ON HEARING EXAMINER'S CERTIFICATION

By order of November 19, 1964 [p. 1577 herein], the Commission directed the hearing examiner to "reopen the above-captioned proceeding for the reception of the testimony of Bernard Turiel, Esq., and Ernest Brod, Esq., and such other evidence as the examiner deems pertinent to resolve the issues raised by the motions of respondent denied by the order of the hearing examiner of March 24, 1964." Thereafter, respondent made certain motions to the examiner which he has certified to the Commission for decision. We shall take up, seriatim, the recommendations made by the examiner in his certification.

"(1) That he [the examiner] be permitted to file his initial decision *instanter*." The hearing examiner's initial decision should be filed "after completion of the reception of evidence in a proceeding." Section 3.21(a), Rules of Practice (effective August 1, 1963). Reception of evidence has not yet been completed in this proceeding, and no use-

²I am mystified by the Commission's present assertion that "the complaint does not allege that the ideas and suggestions set forth in the book are false or of no medical value." Is the Commission now amending the complaint? If so, it would be well to advise the examiner and counsel, who are now engaged in the trial of the case.

ful purpose would be served by the premature filing of an initial decision on the basis of an incomplete record.

"(2) That counsel supporting the complaint be directed by the Federal Trade Commission to return to counsel for respondent all documents which were turned over to said counsel by Herbert Prosser under the circumstances related in the hearing examiner's Ruling of March 24, 1964." It would be premature to direct that these documents be returned to respondent until it has been determined whether they came into the possession of complaint counsel lawfully. Moreover, respondent in the motions before us has made no request that any such documents be returned to it.

"(3) That the Federal Trade Commission order all other papers and documents in its possession relating to the circumstances under which the documents were turned over to counsel supporting the complaint by Herbert Prosser produced at a fixed time and place for inspection and copying by respondent's counsel." Where request pursuant to Section 3.11 of the Rules of Practice is made for production of documents in the confidential files of the Commission, the proper procedure is for the hearing examiner to certify the request to the Commission with his recommendation, *L. G. Balfour Co.*, F.T.C. Docket 8435 (Order of May 10, 1963), pp. 6-7 [62 F.T.C. 1541, 1545], and that procedure was followed here. It was the Commission's expressed intention, in directing further proceedings in this matter, that respondent be given an adequate opportunity to obtain and present evidence pertinent to the issues involved in these further proceedings. The Commission approves this recommendation of the examiner.

"(4) That the hearings directed in the Commission's Order of November 19, 1964, be authorized for January 5, 1965, in Detroit, Michigan." This provision for the time and place of the reception of evidence directed in the Commission's order of November 19 is reasonable. Accordingly,

It is ordered, That:

(1) Permission to file initial decision at this time is denied; the examiner shall file his initial decision after completion of the reception of evidence, in accordance with Section 3.21(a) of the Rules of Practice.

(2) Complaint counsel shall produce for inspection and copying by respondent's counsel all documents relating to the circumstances under which any documents were turned over to complaint counsel by Herbert Prosser, under such reasonable terms and conditions as the hearing examiner may, in accordance with Section 3.11 of the Rules of Practice, prescribe.

(3) Hearings shall be held at the time and place specified in the hearing examiner's certification of November 30, 1964.

Commissioner MacIntyre not concurring.

IN THE MATTER OF
KNOLL ASSOCIATES, INC.

Docket 8549. Order, Dec. 16, 1964

Order clarifying an earlier order requiring that certain documents obtained from Herbert Prosser be made available to respondent's counsel.

ORDER CLARIFYING AND AMENDING ORDER RULING ON HEARING
EXAMINER'S CERTIFICATION

For the purpose of clarifying and avoiding possible ambiguity in the interpretation of its order, issued December 15, 1964 [p. 1585 herein], ruling on the hearing examiner's certification, the Commission has determined to amend such order in the following respect:

It is ordered, That Paragraph (2) of the order of December 15, 1964, be amended to provide as follows:

"(2) Complaint counsel shall produce for inspection and copying by respondent's counsel (1) all documents which were turned over to complaint counsel by Herbert Prosser, and (2) all papers, memoranda, or other documents relating to the circumstances under which the documents were turned over to complaint counsel by Herbert Prosser, under such reasonable terms and conditions as the hearing examiner may, in accordance with Section 3.11 of the Rules of Practice, prescribe."

Commissioner MacIntyre not participating.

IN THE MATTER OF
PERMANENTE CEMENT COMPANY ET AL.

Docket 7939. Order, Dec. 17, 1964

Order denying hearing examiner's request for recessed hearings and respondent's