mission Building, Washington, D.C., with each side alloted 45 minutes to present its views.

TOPPS CHEWING GUM, INC.

Docket 8463. Order, April 5, 1965

Order reopening proceeding to admit into the record additional documentary evidence.

Order Ruling on Petitions to Reopen

Respondent has filed two motions pursuant to Section 3.27 of the Commission's Rules of Practice for a reopening of the record for the reception of additional evidence. The first of these motions, filed February 24, 1965, seeks the reopening "for the purpose of introducing into evidence the attached player agreement and Exhibits A and B attached to its reply brief." Complaint counsel did not oppose this petition, but requested that a document attached to their answer be similarly accepted into the record. On March 17, 1965, respondent filed an answer thereto stating that it did not oppose complaint counsel's petition, but went on to "answer the additional comments" in complaint counsel's papers.

We cannot say, at least at this point, that the three (3) documents offered by respondent and the one (1) document offered by complaint counsel, all of which apparently concern matters that arose after the

As grounds for its request, respondent states that the practices proscribed by the final order are industrywide and, in particular, are engaged in by its principal competitors, and that it agreed to a consent order, in large part, because of its understanding that its principal competitors were under investigation and that that meant comparable orders would be issued against them in due course.

The order in this case, in principal part, prohibits respondent from misrepresenting prices and the savings available to consumers in the sale of radios, phonograph equipment, radio electronic equipment or any other articles of merchandise. Additionally, the order requires respondent to cease misrepresenting the terms of its guarantees as to such merchandise and prohibits certain claims as to the quality of respondent's phonograph needles. In view of the general nature of these practices and the broad range of products sold by respondent, the Commission, in the exercise of its administrative discretion, determined that the public interest did not warrant suspension of formal action against this respondent pending an investigation of its competitors. Respondent has alleged no facts in support of its present motion which would justify the Commission in revoking the earlier determination. Respondent, while requesting the Commission to take "judicial notice" that its business will suffer by compliance with the order, has made no factual showing whatever of present or prospective business injury as a result of compliance. Indeed, respondent assures the Commission that it will continue to comply with the order even if the Commission grants its request to suspend the effectiveness thereof.

Respondent contends that it agreed to accept a consent order in part because it understood that comparable orders would be issued against its competitors. In support of this contention respondent states only that it was advised that the practices of its competitors were under investigation. But respondent is surely aware that formal proceedings could not be instituted against its competitors unless the Commission, after appropriate investigations, found sufficient evidence of unlawful conduct by the firms under investigation to justify the issuance of complaints.

We conclude that respondent has failed to establish that changed conditions of fact or law, or the public interest, require any change in the order. Accordingly,

It is ordered, That respondent's petition filed March 1, 1965, be, and it hereby is, denied.

REPORT OF THE FEDERAL TRADE COMMISSION UPON ITS INVESTIGATION OF ALLEGED VIOLATIONS OF ITS ORDER TO CEASE AND DESIST

APRIL 12, 1965

The Proceedings

On July 22, 1964, the Commission having reason to believe that Jantzen, Inc., may have violated the provisions of the order to cease and desist issued herein on January 16, 1959, and modified on March 26, 1959 [55 F.T.C. 1065, 1068], directed that an investigational hearing be conducted pursuant to § 1.35 and related rules of the Commission's Rules of Practice to ascertain the extent to which such violations may have occurred. A hearing examiner of the Commission was duly designated to preside at hearings to be conducted for that purpose and it was directed that he, in lieu of rendering an initial decision upon completion of the hearing, certify the record to the Commission, together with his report upon the investigation.

Pursuant to and in accordance with the foregoing, a hearing was set by the hearing examiner for November 30, 1964, in Portland, Oregon, for the purpose of taking testimony in evidence concerning the nature and extent of compliance by Jantzen, Inc., with the said order to cease and desist. Prior to said hearing a prehearing conference was ordered herein for Washington, D.C., on November 23, 1964. During the course of this conference a stipulation signed by counsel for the Commission and for respondent, Jantzen, Inc., and a motion, agreed upon by counsel to close the proceedings before the hearing examiner, were submitted to the hearing examiner and incorporated into the record. On November 23, 1964, the hearing examiner issued his order, as requested by counsel for both respondent and the Commission, cancelling the investigational hearing set for Portland, Oregon, quashing the subpoenas directed to the respondent's officials, excusing their appearance, and closing the record in this proceeding. On January 14, 1965, the hearing examiner's "Report and Certification to the Commission of Record of Investigational Hearing" was duly recorded and filed in the office of the Commisson. The Commission having duly considered the report filed by the hearing examiner and the record herein and being now fully advised in the premises, and having accepted the said stipulation entered into by counsel for the respondent and the Commission, makes this its report upon the investigation of the alleged violations of the order to cease and desist.

closing of this record, are irrelevant to any of the issues. They will be received.

Respondent's second motion to reopen was filed on March 29, 1965, almost on the eve of the scheduled oral argument of the case before the Commission (April 6, 1965). Merely to give complaint counsel the usual 10 days to answer this petition would thus compel a postponement of the argument. Respondent presents nothing here to warrant such further delay in an already protracted proceeding. It proffers an affidavit of respondent's president, together with a tabulation and several photographs. The substance of this material is that respondent has discovered new "competition" from a variety of sources, particularly from firms selling cards bearing the likenesses of persons other than baseball players. It indicates, for example, that another bubble gum seller has, within the last few weeks, commenced selling a set of picture cards called "The Addams Family" (picturing the persons and objects depicted in the current television program by that name). This material seems to us to be clearly cumulative; the hearing examiner received voluminous evidence of this character during the course of the hearing (initial decision, pp. 754–760 herein) and later denied a motion by respondent to reopen the case and receive more (*id.*, p. 758). This proceeding could be prolonged interminably if it must be halted and the record reopened each time the television networks create a new personality or subject that can be copied on picture cards and offered for sale to children.

It is ordered, Therefore, that respondent's petition filed on February 24, 1965, and the petition of complaint counsel contained in their answer thereto filed March 8, 1965, be, and they hereby are, granted to the extent herein indicated; that the record be, and it hereby is, reopened for the limited purpose of receiving into evidence the three (3) documents described in respondent's petition and the one (1) document described in complaint counsel's answer thereto; that those documents be, and they hereby are, received in evidence as respondent's and the Commission's exhibits, respectively; and that the record be, and it hereby is, thereafter closed.

It is further ordered, That respondent's petition for reopening filed March 29, 1965, be, and it hereby is, denied.

JANTZEN, INC.

Docket 7247. Order and Report, Apr. 9, 1965

Order denying respondent's request for informal disposition of the case under Section 1.21 of the Rules of Practice.