brief to participate in the oral argument.

himself. As the presiding member of the Commission stated at the conclusion of oral argument on respondent's appeal, "I think I should say that the Commission is very much impressed by the vigor and the skill with which you have handled yourself not only this afternoon but throughout this entire proceeding. Not being represented by counsel certainly has been no handicap to you. No matter how the case comes out I think you should feel you have not been prejudiced." (Transcript of Oral Argument, p. 56.) Respondent's motion completely fails to demonstrate wherein respondent would have benefited materially from being represented by counsel and how the additional evidence which respondent now seeks to adduce could change the Commission's decision.

Respondent in his motion states that he "did not realize that he should have, or could have, introduced testimony from the manufacturers of his blankets as to the unavailable variation, the exercise of due care, and what would constitute a reasonable manufacturing variance," so as to bring himself within one of the defenses provided in the Wool Products Labeling Act to a charge of misbranding. From our reading of the record we were, and remain, convinced that respondent was well aware of what kind of evidence was required to establish the defense. In any event, since respondent testified that he destroyed all labels placed by suppliers on the blankets sold by him during the period relevant to the charges in the complaint, and since it appears, therefore, that the blankets which the Commission found to be misbranded cannot be traced to particular lots manufactured by particular manufacturers, it does not appear that evidence as to a particular manufacturer's manufacturing processes would excuse respondent's misbranding. Moreover, respondent's blankets were found to be misbranded not only because they misstated the fiber content, but also because they failed to reveal the presence of certain fibers. The defense of unavoidable variations in manufacture would not be pertinent to this phase of respondent's misbranding, and it would not affect the cease and desist order which the Commission has entered.

The second area in which respondent in his present motion seeks leave to adduce additional evidence relates to the finding that respondent's employees removed the suppliers' labels and substituted therefor labels setting forth different fiber amounts. Respondent characterizes such evidence as "highly prejudicial," as a "complete surprise," and as improper rebuttal. On the contrary, it was proper rebuttal. Respondent had testified that he placed the same information that appeared on his suppliers' labels on his own labels. (Transcript of Hearings, pp. 7, 361.) The rebuttal testimony introduced by complaint counsel contradicted respondent's testimony on this point. In his

of Practice (effective August 1, 1963), and Section 5(c) of the Federal Trade Commission Act. In the motion it is alleged that respondent, in representing himself without the aid of legal counsel throughout the entire proceeding before the Commission, was denied a fair trial. On February 19, 1965, complaint counsel filed an answer in opposition to respondent's motion to reopen. The Commission has determined that the motion should be denied.

First. No contention is made that respondent was not aware from the outset of this proceeding of his right to be represented by counsel, or that he was unable for financial or other reasons to retain counsel, or that he was in any way discouraged or prevented by the Commission or by anyone from retaining counsel, or that he was incompetent to decide for himself whether or not he desired the services of counsel. At the outset of the hearings in this matter, respondent stated to the hearing examiner: "Well, if your Honor doesn't mind, I feel I can represent myself." (Transcript of Hearings, p. 2.)

When respondent advised the examiner that he would represent himself, the examiner and the Commission were, of course, bound by his decision. The Commission could not compel respondent, a competent adult, to retain counsel to assist him if he wished to represent himself. All the Commission could do was to take every possible step to ensure that respondent would not be penalized or prejudiced by his lack of counsel but would have every reasonable opportunity to make his defense; and a reading of the record will show that the hearing examiner, complaint counsel, and the Commission, fully mindful that respondent is a layman, made every effort to assist respondent in presenting his defense. Nor does respondent contend otherwise.

In these circumstances, to grant respondent a new trial (which is what, in effect, he requests in the motion to reopen) simply because he has belatedly decided that he could have made a better defense with the aid of counsel would open the door to widespread abuse of the administrative hearing process. A respondent who, like the present respondent, is perfectly free and able to retain counsel to represent him may not, except in extraordinary circumstances not shown here, insist on two successive trials on the same charges before the Commission—the first without, and the second with, counsel. We think the principle of *Colorado Radio Corp.* v. *F.C.C.*, 118 F.2d 24, 26 (D.C. Cir. 1941), is applicable here:

> [W]e cannot allow the applicant to sit back and assume that a decision will be in its favor and then when it isn't to parry with an offer of more evidence. No judging process in any branch of government could operate efficiently or accurately if such a procedure were allowed.

Second. We do not think respondent was, in the circumstances, prejudiced in the presentation of his defense by his choice to represent

WILMINGTON CHEMICAL CORPORATION ET AL.

Docket 8648. Order, Mar. 18, 1965

Order denying leave to file an interlocutory appeal challenging hearing examiner's ruling.

Order Denying Leave To File Interlocutory Appeal

On March 17, 1965, the Commission received a letter from counsel for respondents in the above-captioned proceeding, which letter will be treated as an application for leave to file an interlocutory appeal from the hearing examiner's order of March 16, 1965. By this order the examiner denied respondents' motion for a sixty-day postponement of the hearings in this matter now scheduled to commence on March 18, 1965. The examiner's written ruling upon respondents' motion reflects a full and fair evaluation of all the relevant considerations. The Commission's Rules of Practice and Procedure accord the hearing examiner a considerable discretion in regulating the course of hearing, and respondents have entirely failed to suggest any basis for concluding that the examiner's ruling of March 16, 1965, constitutes an abuse of discretion. Accordingly, it appearing that there are no extraordinary circumstances justifying a review of the examiner's decision by means of interlocutory appeal under Section 3.20 of the Commission's Rules of Practice and Procedure,

It is ordered, That respondents' application for leave to file an interlocutory appeal be, and it hereby is, denied.

LAFAYETTE RADIO ELECTRONICS CORPORATION

Docket C-788. Order, Mar. 24, 1965

Order denying petition to suspend effectiveness of order until similar orders involving three competitors are issued.

Order Denying Petition To Reopen Proceedings

Respondent, by petition filed March 1, 1965, has requested that this proceeding be reopened for the purpose of setting aside or modifying the final order, issued on July 14, 1964 [66 F.T.C. 142], based on an agreement containing a consent order. In substance, respondent requests that the effectiveness of the order be suspended until substantially similar orders are issued and become final against three named competitors.