THE MENTHOLATUM COMPANY

Docket 8644. Order and Opinion, June 8, 1966

Order rejecting stipulation of respondent pursuant to order of April 26, 1966, and remanding case to hearing examiner for trial unless, within 10 days, respondent submits a new stipulation.

OPINION OF THE COMMISSION

This matter is before the Commission on the certification to the Commission on May 27, 1966, by the hearing examiner of a stipulation entered into by counsel supporting the complaint and counsel for respondent pursuant to the Commission's order dated April 26, 1966, which provided that the hearing examiner was to proceed with the hearing in the case forthwith unless a stipulation was filed within 30 days of service of said order containing the provisions set forth in said order.

Paragraph 2(b) of the Commission's order of April 26, 1966, stated that to comply with its terms the stipulation entered into by counsel must provide that:

> The facts applicable to the case support the stipulation that the effect of the use of respondent's preparation is not significantly different from the use of American Home Products' preparations.

Paragraph 2(b) of the stipulation submitted by counsel provides as follows:

> The effect of the use of respondent's preparation is not significantly different from the use of the preparation of American Home Products *other than as set forth in advertisements hereto attached which show that the Mentholatum product contains benzocaine, technically Ethyl p-Aminobenzoate, as listed in official compendia (U.S. Pharmacopeia, U.S. Formulary) as a local anesthetic and hexachlorophene listed in the U.S. Pharmacopeia as a local anti-infective.* (Emphasis added.)

The qualified agreement entered into by counsel clearly does not comply with the requirements set forth in Paragraph 2(b) of the Commission's order and would seemingly require the Commission to make a scientific evaluation of the merits of respondent's alleged ingredients "Benzocaine" and "Hexachlorophene." Since the stipulation contains no agreement among counsel concerning the significance and effects of these alleged ingredients, the Commission would be unable to determine the effect, if any, of the presence of these ingredients in respondent's preparation on the issues in the case.

Paragraph 3 of the stipulation provides:

> That the Commission in its order disposing of the case may include appropriate provisions and take into consideration such differences as the inclusion of the anesthetic and local anti-infective.

This language does not state directly that it is designed to encompass differences in advertising as well as in the product. It is, therefore, not in direct conformity with the requirements of Paragraph 3 of the Commission's order of April 26, 1966, which states:

> To the extent that a respondent's advertisements differ significantly from those in *American Home Products*, the Commission may, in its order disposing of the proceeding, include appropriate provisions to take into consideration such differences.

It would appear, therefore, that the stipulation submitted by counsel does not fully comply with the requirements of the Commission's order of April 26, 1966, and that it contains some omissions and ambiguities which should be clarified before it can be accepted. It is accordingly rejected for these reasons and

counsel are granted an additional 10 days within which to resubmit an amended stipulation.

ORDER ON STIPULATION CERTIFIED BY HEARING EXAMINER

The Commission in an order dated April 26, 1966 [p. 1179 herein], having directed the hearing examiner to proceed with the hearing in the case forthwith unless the parties entered into a stipulation in accordance with the provisions set forth in said order, in which event the hearing examiner was ordered to certify the record to the Commission; and counsel supporting the complaint and counsel for respondent having on May 20, 1966, entered into a stipulation purportedly complying with the provisions of said Commission order dated April 26, 1966; and the matter having been certified to the Commission by the hearing examiner on May 27, 1966; and the Commission having determined that said stipulation does not comply with the requirements set forth in its order of April 26, 1966:

It is ordered, That the stipulation submitted by counsel be and hereby is rejected and the matter returned to the hearing examiner who shall proceed with the hearing in this case forthwith unless, within 10 days after the service of this order upon respondent, a stipulation is filed with the hearing examiner complying with the requirements set forth in the Commission's order of April 26, 1966, whereupon the hearing examiner shall again certify the record in this case to the Commission without further action.

MISSISSIPPI RIVER FUEL CORPORATION

Docket 8657. Order, June 8, 1966

Order denying motions to quash several subpoenas duces tecum directed to officials of ready-mix concrete companies, and further providing that the subpoenaed documents be turned over to an accounting firm selected