December 22, 1965, for rehearing of their request to file an interlocutory appeal be, and it hereby is, denied.

Commissioner Elman dissented and has filed a dissenting statement.

DEVCON CORPORATION ET AL.

Docket C–607. Order and Opinion, Jan. 19, 1966

Order denying suspension of show cause proceedings and granting respondents 10 days from date of service to answer the show cause order of October 25, 1965.

OPINION OF THE COMMISSION

BY REILLY, *Commissioner:*

On October 11, 1963 [63 F.T.C. 1034], the Commission issued a consent order to cease and desist against respondents Devcon Corporation, Albert M. Creighton, Jr., and E. Leslie Hall, individually and as officers of said corporation, prohibiting in relevant part, in the sale of certain adhesive compound products, the use of words denoting metallic substances to describe products consisting of non-metallic ingredients and prohibiting the use of words denoting rubber substances to describe products consisting principally of non-rubber ingredients. As to each class of product however the order permits a statement of the percentage of metal or rubber actually present in the product.

As a result of further Commission consideration of the question herein involved and in light of the provisions of the Commission's Guides Against Deceptive Labeling and Advertising of Adhesive Compositions promulgated June 30, 1965, the Commission considered that the public interest would be best served by focussing the proscriptions in its order upon the applied properties of the products in question rather than upon their metal or rubber content.

Accordingly, on October 25, 1965, the Commission issued an order to respondents to show cause why the Commission's order of October 11, 1963, should not be amended to reflect this change in that portion of its order relating to metallic substances because it had been shown that those products lack the applied properties of metal and to set aside that portion of its order directed to rubber substances because there had been no showing that those products lack the properties of rubber.

Prior to the date on which answer to the Commission's order to show cause might have been filed, respondents filed a Motion to Suspend Show Cause Proceedings. We are of the opinion that the motion must be denied.

In support of their motion respondents state in essence that promulgation by the Commission on June 30, 1965, of its Guides Against Deceptive Labeling and Advertising of Adhesive Compositions indicates a Commission intention to deal with the matters involved herein on an industrywide voluntary compliance basis and that it would be inequitable to insist upon placing respondents alone under an order before determining whether the industry guides are successful in procuring compliance by respondents.

Restated, this argument is to the effect that once having decided to cope with industrywide problems by issuance of guides, all members of the industry should be placed on a par by being subject only to the guides and not to the more rigorous strictures of an order to cease and desist.

A short answer to this is that guides and other methods of procuring compliance are not mutually exclusive and are not in any sense a substitute for, but rather a supplement to, the Commission's principal enforcement instrument, the order to cease and desist.

Furthermore, respondent is not alone. Other orders outstanding against members of this industry, while they may not relate to products of the exact description as respondents', nevertheless address themselves to similar practices covering similar products, Docket 8575, *Miracle Adhesives Corporation* [65 F.T.C. 524]; Docket C–610, *Kristee Products Company* [63 F.T.C. 1065]. The fact is that Devcon and others in the industry are under orders while the Commission seeks to further its efforts in this industry through the promulgation of guides.

In discharging its duties in the public interest the Commission would be justified in substituting a less stringent remedy only if it thereby more effectively brings about compliance with the laws it administers. Such is not the case here. The Commission has no reason to believe that respondents would be more responsive to guides than to an order.

Guides are designed to inform. They are persuasive or compulsive only according to the subjective response of industry members. They are not injunctive and are not of themselves an adequate instrument for procuring compliance with the statutes administered by the Commission.

To establish trade practice rules, guides or other methods of voluntary compliance as a total substitute for injunctive remedies would, human nature being what it is, be the end of effective enforcement. To adopt respondents' argument would mean that once guides are issued all orders in that industry should be vacated so that all might have a sporting chance. We do not agree.

Finally, the argument raised in respondents' reply memorandum relating to the applicability of our order to brand names does not call for comment here. This argument more properly belongs in respondents' answer to the order to show cause. Suffice it to say respondents have not offered adequate justification for suspension of show cause proceeding.

An appropriate order will issue.

Commissioner Elman dissented.

Commissioner MacIntyre did not participate.

ORDER DENYING MOTION TO SUSPEND

The Commission on October 11, 1963 [63 F.T.C. 1034], having issued its order to cease and desist against respondents prohibiting words denoting metallic or rubber substances to describe products consisting of non-metallic or non-rubber ingredients but permitting as to each class of product a statement of the percentage of metal or rubber actually present, and

On October 25, 1965, the Commission, being of the opinion that the public interest would be best served by focussing the proscriptions of its order upon the applied properties of the products in question rather than upon their metal or rubber content, having directed to respondents its order to show cause why its order of October 11, 1963, should not be amended to reflect this change, and the respondents having by counsel filed with the Commission on November 24, 1965, a Motion to Suspend Show Cause Proceedings, and,

The Commission having considered respondents' motion, the answer thereto filed by Commission counsel dated December 2, 1965, and the reply of respondents filed December 17, 1965, and for the reasons set forth in the attached opinion, having decided that its order to show cause should not be set aside,

It is ordered, That the motion of respondents to suspend show cause proceedings be, and it hereby is, denied.

It is further ordered, That respondents shall have ten (10) days from the date of service upon them of this order to answer our order to show cause dated October 25, 1965.