the time prescribed by the Commission's Rules. Section 3.21(a) of the Commission's Rules provides, however, that the failure of an appellant to file a brief within the prescribed time shall extend for ten days the period within which the Commission may by order stay the effective date of the initial decision or place the case on its own docket for review and so the initial decision has not yet become the decision of the Commission.

Respondents' counsel professes a degree of unfamiliarity with the Commission's Rules of Practice and in the circumstances it appears that the failure to timely file their appeal brief may have been unintentional. The Commission, therefore, at this time will not hold respondents to be in default for failure to file their appeal brief. Rather, we will treat respondents' proposal as in part a request for an extension of time for the filing of their appeal brief, and we will grant such extension so as to preserve for them this opportunity. Also, in the event the Commission should decide to issue a cease and desist order herein, it will then determine whether or not to require compliance or the filing of reports of compliance therewith for a period of one year from the date of this order instead of the usual period of sixty (60) days from the date of the issuance of the cease and desist order. Accordingly,

It is ordered, That respondents be, and they hereby are, granted an extension of time within which to file their appeal brief to and including January 9, 1967.

Commissioner Elman dissented and has filed a statement.

GENERAL TRANSMISSIONS CORPORATION OF WASHINGTON ET AL.

Docket 8713. Order, Dec. 28, 1966

Order denying respondents' request that it be allowed to take depositions and serve subpoenas duces tecum upon certain of its competitors.

ORDER DENYING REQUEST FOR PERMISSION TO FILE INTERLOCUTORY APPEAL

This matter is before the Commission on respondents' request for permission to file an interlocutory appeal from the hearing examiner's order of December 6, 1966, denying respondents' application for orders to take oral depositions of competitors, accompanied by subpoenas *duces tecum*. In support of their request, respondents cite the Commission's order of December 1, 1966 [p. 1833 herein], denying their motion for suspension of pro-

ceedings or, in the alternative, for dismissal of the complaint and in lieu thereof the institution of a trade practice conference proceeding. In that motion respondents contended that their competitors were engaging in the same practices which are the subject of the complaint in this proceeding. Respondents claim that should they be forced to discontinue certain practices while their competitors are not similarly restricted, they would be severely injured and might be forced out of business before the Commission takes action in the case of their rivals.

The Commission, by its order of December 1, denied the motion for suspension, noting that it was not able to pass on the practices of General Transmissions' competitors on the basis of respondents' charges alone. It held that the conclusion that proceedings against respondents' competitors would result in cease and desist orders was premature. The Commission further held there is no evidentiary basis for the inference that respondents would be forced out of business by bringing this case to an expeditious conclusion. For the foregoing reasons, respondents' motion to suspend the proceeding was denied.

On December 5, 1966, respondents filed before the hearing examiner an application to take depositions from, and for subpoenas *duces tecum* against, certain of their competitors. In support of this application respondents argued that the evidence to be obtained through these procedures was relevant since it would show that the practices of respondents' competitors are the same as those of respondents. In addition, respondents argued that the evidence they seek by the deposition procedure is the evidence which the Commission, in its order of December 1, stated is required to pass on respondents' motion to suspend.

The examiner, on December 6, 1966, denied respondents' applications for depositions and subpoenas on the ground that the application did not meet with all the requirements of § 3.10 of the Rules. The examiner found that the specifications on respondents' applications for subpoenas *duces tecum* appear to be unduly burdensome in scope and of doubtful relevance since the purpose of this proceeding is not to investigate the acts and practices of respondents' competitors. The examiner further stated that his ruling was not to be understood as precluding the respondents from applying, under § 3.17 of the Rules, for appropriate subpoenas directed to witnesses whom the respondents intend to present during the further course of the proceeding. The request for permission to file an interlocutory appeal from the ruling complained of will be denied. There is no indi-

cation here that the examiner abused his discretion in making the ruling complained of.

Respondents rely upon the Commission's order of December 1, 1966, as an invitation for them to produce direct evidence as to the practices of their competitors. They have misconstrued the Commission's order. If anything, the language relied upon indicates that the Commission intends to rely upon its own investigation of the matters alleged by respondents. The Commission's order of December 1 made it clear that it would take respondents' allegations under consideration and take whatever action is appropriate. This it intends to do.

Respondents, in their motion to suspend filed November 16, 1966, did not apparently allege that the practices cited by their competitors were a defense against the charge of deceptive advertising; rather, the gist of their motion to suspend seemed to be simply that competitors were engaging in the same practices and General Transmissions would be under a disadvantage if it were put under order and similar restrictions were not taken against its rivals. The Commission therefore construed that motion as a request that in the exercise of its discretion it employ different measures to enforce the law in this industry. Such a request, of course, does not constitute a defense against the charges in the complaint that General Transmissions has misrepresented its services in the advertisements under consideration. In the request for permission to file the interlocutory appeal, respondents, however, now characterize the contention that the practices of their competitors are identical to those of General Transmissions as their "defenses". An unfair trade practice does not cease to be so because competitors engage in identical practices. *Federal Trade Commission* v. *Winsted Hosiery Co.*, 258 U.S. 483, 493–94 (1922). The widespread prevalence of an unfair trade practice neither constitutes a legal defense on the merits to the allegations of a complaint nor provides any reason for the Commission to withhold remedial or corrective action. As previously indicated, the extent to which the allegedly illegal practices are also followed by competitors will be considered by the Commission in exercising its discretionary powers to fashion appropriate relief. We are unable to find, therefore, that the examiner erred in holding that at this stage of the proceeding the data respondents seek in the course of the depositions and related subpoenas *duces tecum* is of doubtful relevance to the proceeding. On questions of this nature the examiner has broad discretion and his rulings on such issues will not be reviewed in the absence of unusual circumstances. See *American Brake Shoe*

Co., Docket No. 8622, Order Denying Appeal from Denial of Applications for Depositions and Subpoenas (September 1, 1965) [68 F.T.C. 1169]. Furthermore, respondents' rights have been preserved, as heretofore noted, in view of the examiner's willingness to consider applications for subpoenas under § 3.17 of the Commission's Rules in the further course of the proceeding. The Commission is unable, in this instance, to find the existence of the extraordinary circumstances requiring an immediate Commission decision in order to prevent detriment to the public interest contemplated by § 3.20 of the Commission's Rules of Practice. Accordingly,

It is ordered, That respondents' request for permission to file an interlocutory appeal from the hearing examiner's order of December 6, 1966, be, and it hereby is, denied.

NED R. BASKIN DOING BUSINESS AS HOLLYWOOD FILM STUDIOS

Docket 4902. Order, Dec. 30, 1966

Order vacating Commissions order of Oct. 28, 1966, p. 1131 herein, and remanding the case to the hearing examiner for receiving additional evidence on the question of whether the public interest requires the modification of the original cease and desist order.

ORDER GRANTING REQUEST FOR RECONSIDERATION, VACATING ORDER REOPENING PROCEEDING, AND DIRECTING HEARING

The Commission, on September 14, 1966, served upon respondent its order to show cause why this proceeding should not be reopened and the order therein modified by adding certain specified paragraphs. On October 28, 1966 [p. 1131 herein], the Commission issued its order reopening the proceeding and modifying the order to cease and desist in the respects so indicated, it then appearing that respondent had not responded to the show cause order within the period provided in the Commission's Rules. Subsequently, disclosure was made that respondent did, in fact, file a timely response to the Commission's order to show cause and that through clerical error such response was not brought to the Commission's attention prior to the issuance of the order of October 28, 1966. Complaint counsel, on December 7, 1966, filed an answer to respondent's response to the Commission's show cause order.

In the circumstances, the Commission will treat respondent's

notice of November 9, 1966, advising the Commission of the filing of his response to the show cause order, as a request for reconsideration of the Commission's order of October 28, 1966, reopening and modifying the order to cease and desist. Such a request will be, and hereby is, granted, and the response filed September 22, 1966 and complaint counsel's answer filed December 8, 1966 will be included in the Commission's reconsideration of the show cause order.

Respondent, in his response, includes samples of his advertising, *i.e.*, a business reply card, a form letter, and a magazine advertisement. His main argument seems to be that his advertising is not deceptive because he does supply an enlargement free of charge as represented, and because the patron can discern from the advertisements that the purchase of a color enlargement, for which there is a charge, is optional.

Complaint counsel bases his argument for the modification of the order on the contention that respondent's advertising has been, and continues to be, misleading in that it fails to reveal that the free offer is a black and white enlargement—not a colored enlargement—and that the purpose of the advertisement is to try to induce the purchase of the coloring services of the respondent.

Under § 3.28(b)(3) of the Commission's Rules of Practice, if an order to show cause is opposed but the pleadings do not raise issues of fact to be resolved, the Commission, in its discretion, may decide the matter on the order to show cause and answer thereto, or it may serve upon the parties a notice of hearing setting forth the date on which the cause will be heard. In such a case the hearing will be limited to the filing of briefs and may include oral argument when deemed necessary by the Commission. When the pleadings raise substantial factual issues, the Commission, under the Rules, will direct such hearings as it deems appropriate.

The first question here is whether this matter can be decided on the initial briefs. We do not believe it can. Complaint counsel, in his answer, has raised certain issues of fact which he has not clearly demonstrated are supported by the record. For instance, he makes such statements as the following: "Since the inception of the Commission's consideration of Mr. Baskin's advertisements the same basic deception remains" and "Our experience in evaluating numerous consumer complaints against respondent over the years indicates that they are based on the reader's misunderstanding of what is being offered in the advertisements and on the belief that patrons will receive color photographic en-

largements free." He elsewhere refers to a "constant volume of consumer complaints received over the years" and consumer letters which in "virtually every instance are concerned with complaints of being deceived about the nature of the offer made in respondent's advertisements"; and to a quoted Compliance Staff statement advising Mr. Baskin as to the likely deceptive nature of his advertising. There are no citations to the record given for these various assertions and, consequently, there is uncertainty as to the extent such are based on evidence in the record in this proceeding.

Complaint counsel, moreover, at one place in his brief, asserts that many of respondent's customers have expressed dissatisfaction over the caliber of respondent's coloring services and that this has been admitted, though the relevance of this, in light of the show cause order, is not explained, nor is it clear where this admission appears.

In the circumstances, it is believed that the Commission's order of October 28, 1966, reopening the proceeding and modifying the order to cease and desist should be vacated and set aside. It is further believed because of the substantial factual issues raised that this matter, in accordance with § 3.28(b)(3) of the Commission's Rules of Practice, should be referred to a hearing examiner for a hearing to receive evidence in support of, and in opposition to, the show cause order. Accordingly,

It is ordered, That the Commission's order of October 28, 1966 [p. 1131 herein], reopening the proceeding and modifying the order to cease and desist be, and it hereby is, vacated and set aside.

It is further ordered, That this matter be, and it hereby is, referred to a hearing examiner for the purpose of receiving evidence in support of, and in opposition to, the question of whether or not the public interest requires that the Commission reopen this proceeding and modify the order to cease and desist contained therein to read the same as the order to cease and desist set forth in the Commission's show cause order issued September 9, 1966.

It is further ordered, That the proceeding be conducted pursuant to the Commission's Rules of Practice For Adjudicative Proceedings insofar as those Rules are applicable; and

It is further ordered, That the hearing examiner, upon the conclusion of the hearings, certify the record, together with a report of his findings, conclusions and recommendations with respect thereto, to the Commission for final disposition.

ADVISORY OPINION DIGESTS*

No. 69. Foreign origin; razor blade dispensers.

The Commission recently rendered an advisory opinion advising an American manufacturer of razor blades that it would not be necessary to disclose the country of origin of imported plastic razor blade dispensers and end clips into which were packed domestically manufactured blades, nor was there any objection to labeling the completed package as made in this country. The Commission was of the view that such a description would be taken as applying to the blades and that the purchaser would have no real concern with the origin of the dispenser which is designed to be thrown away after the blades are used.

The facts were that after the dispenser cases and end clips were received in this country, a spring and the blades would be inserted, a pusher slide added and the end clip put in place. The spring, slide or pusher and the blades would be manufactured in the United States. (File No. 663 7052, released July 6, 1966.)

No. 70. Bargain offers based upon purchase of other merchandise.

The Commission announced today it had rendered an advisory opinion disapproving a retailer's proposal to offer a free sewing machine with the purchase of a cabinet.

Under the terms of the proposed plan, the retailer intends to place one sewing machine on display in various locations, such as bowling alleys, supermarkets, shopping centers, etc. A nearby sign will invite one to fill out a registration card and deposit same in a box. Each month one name will be drawn from the box in each location where the machine is on display and the winner will receive a free sewing machine with cabinet. In addition, 50 names will be drawn from each box and these persons will be sent a letter informing them they can obtain a free sewing machine head simply by purchasing the cabinet. According to

*In conformity with policy of the Commission, advisory opinions are confidential and are not available to the public, only digests of advisory opinions are of public record. Digests of advisory opinions are currently published in the Federal Register.