ORDER GRANTING LEAVE TO HOLD HEARINGS IN MORE THAN ONE PLACE AND DENYING RESPONDENT'S REQUEST FOR ACCESS TO DOCUMENTS

This matter is before the Commission upon two certifications of the hearing examiner. The first is a certification of necessity filed October 4, 1966, submitting to the Commission the respondents' request for hearings to be held in Washington, D.C. in addition to those scheduled for Roanoke, Virginia. This request will be granted.

The second certification, filed October 7, 1966, presents to the Commission respondents' motion for the production and disclosure of documents. Respondents have requested that complaint counsel be ordered to submit for examination and copying "all interviews and responses to questionnaires which were procured in the course of the investigation of the respondents." The hearing examiner, in certifying this motion, states that he interprets the request as embracing only persons other than witnesses scheduled to testify in this proceeding. He additionally points out that to the extent the request may be construed as relating to individuals who will testify in the proceeding the motion has been mooted by complaint counsel's action (1) in turning over to the respondents at the prehearing conference on October 8, 1966, questionnaire responses submitted by such persons and (2) in producing to the examiner, on an *in camera* basis, the interview reports relating to such witnesses, with the understanding that these would be examined by the examiner for a determination as to whether or not they are producible under the Commission's pertinent rulings.

The examiner, having considered the matter, concluded, *inter alia,* that the respondents are simply seeking the right to explore the files of complaint counsel for the purpose of finding out what evidence such files may contain and that they have made no showing that the failure to grant access to the documents and information requested will deprive them of their right to a full and fair hearing or that the granting of the application would be in the public interest. He recommends that their motion be denied.

The request herein for the production of documents is one to be resolved under § 1.134 of the Commission's Rules of Practice relating to the release of confidential information, which rule requires a showing of good cause. This means there must be a showing of real or actual need. *Viviano Macaroni Company,* Docket No. 8666 (order issued March 9, 1966) [69 F.T.C. 1104].

See also *Graber Manufacturing Company, Inc.*, Docket No. 8038 (order issued December 13, 1965) [68 F.T.C. 1235].

Respondents, as we understand their motion, seek access to the documents requested for the purpose of determining whether or not some would be favorable to them. Their main interest appears to be with evidence, if any, as to satisfied customers. However, if misrepresentations in certain instances are proved, the fact that there are satisfied customers in other instances would be entirely irrelevant. *Basic Foods, Inc.* v. *Federal Trade Commission*, 276 F. 2d 718–721 (7th Cir. 1960). Clearly, this is not a sufficient justification and respondents have not otherwise made a showing of good cause as § 1.134 requires. Their request for the production of documents will be denied. Accordingly,

It is ordered, That the request to hold hearings in Roanoke, Virginia and Washington, D.C. be, and it hereby is, granted, subject to the conditions set forth in the certificate of necessity.

It is further ordered, That respondents' request for access to confidential documents in the Commission's files be, and it hereby is, denied.

Commissioner Elman not concurring.

DEVCON CORPORATION ET AL.

Docket C–607. Order and Statements, Oct. 17, 1966