Commission be, and he hereby is, directed to immediately take appropriate steps looking toward the enforcement of said subpoenas.

ROXBURY CARPET COMPANY ET AL.

Docket 7637. Order and Opinion, Mar. 13, 1967

Order denying respondents' motion that the effective date of this cease and desist order be stayed.

OPINION OF THE COMMISSION

This matter is before the Commission upon motion filed by respondents on January 9, 1967, requesting that the effective date of the order issued on February 10, 1964 [64 F.T.C. 787], be stayed. The Director, Bureau of Restraint of Trade, has filed an answer in opposition to the motion.

Respondents are one of a group of ten rug and carpet manufacturers against whom the Commission simultaneously issued complaints on October 28, 1959, charging a violation of Section 2(a) of the Clayton Act. Prior thereto, on February 26, 1959, the Commission had issued complaints charging two other members of this industry with violating Section 2(a). On April 5, 1960, respondents entered into an agreement containing a consent order which was subject to the condition that the initial decision based thereon would not become the decision of the Commission until the Commission disposed of the other eleven related cases by orders to cease and desist in substantially the same form as set forth in the agreement, or by other appropriate order to cease and desist or of dismissal. The Commission issued an order adopting the hearing examiner's initial decision containing the consent order, and on April 2, 1964 [64 F.T.C. 787, 793], it issued an order which,

in effect, stayed the date for filing a report of compliance until January 12, 1967.

In the motion before us, respondents state that they have filed a petition and on information and belief aver that other manufacturers of rugs and carpets have also filed petitions, requesting the Commission to initiate a trade regulation rule proceeding for the rug and carpet industry. The purpose of respondents' present motion is to request the Commission to stay the effective date of the order until the Commission determines whether to initiate the trade regulation rule proceeding and, in the event it decides to proceed, to stay the effective date of the order until conclusion of such proceeding.

As stated by the Supreme Court, the Commission's obligation under the statute is "to develop that enforcement policy best calculated to achieve the ends contemplated by Congress and to allocate its available funds and personnel in such a way as to execute its policy efficiently and economically." *Moog Industries, Inc.* v. *Federal Trade Commission,* 355 U.S. 411 (1958).

It was in recognition of this statutory obligation that the Commission determined to issue complaints against twelve of the largest manufacturers in the rug and carpet industry in 1959. Respondents were well aware of the initiation of the proceedings against eleven of its competitors and in consenting to an order to cease and desist, agreed to be bound by the order even though the proceedings as to their competitors could be dismissed.

There is no contention in the motion before us that the Commission abused its discretion in enforcing the statute by proceeding against twelve manufacturers in the rug and carpet industry. Respondents' request is grounded on the assertion that price competition is extremely keen and that they and the other manufacturers now under order will have to vary prices in order to meet the competition of the more numerous manufacturers not subject to orders. Respondents further assert that in light of the pricing policies pursued by other manufacturers, they are placed at an extreme competitive disadvantage by the order.

Respondents have submitted no information or documentary evidence in support of their assertion concerning the pricing practices of other manufacturers. They do, however, state in their petition for a trade regulation rule accompanying their motion, that the situation with which they are concerned is due in part to the "drastic change in industry technology in recent years."

In the Commission's opinion, respondents' general assertions are not sufficient to warrant a conclusion that the effective date of their order should be stayed. We think it obvious that one of the several

essential preconditions even to consider whether it would be appropriate to exercise our discretion to stay enforcement of the orders would be specific information as to the nature and extent of the alleged pricing practices of other manufacturers and a showing that enforcement of these orders would place respondents at a serious competitive disadvantage. Moreover, it is to be noted that the trade regulation rule proceeding requested by respondents has been available since June 1962. Respondents have been aware for some time that they would be required to comply with their order. Their failure to raise any issue concerning industry pricing practices until this time militates against a conclusion that an immediate stay of the order is required to prevent serious competitive injury.

As previously noted, respondents and other manufacturers under order have filed petitions requesting a trade regulation rule proceeding. These petitions are presently under consideration. In determining whether a trade regulation rule proceeding should be initiated and in the course of such proceeding, if commenced, relevant facts upon which to base a decision as to the likelihood of competitive injury will be developed. On the basis of these facts, the Commission can then determine, in the exercise of its administrative discretion, whether a stay of the order or other relief is warranted.

For the foregoing reasons, respondents' request that the effective date of the order be stayed is denied. An appropriate order will be entered.

Commissioner Elman did not concur.

ORDER DENYING MOTION TO STAY EFFECTIVE DATE OF ORDER

This matter having come before the Commission upon motion by respondents, filed January 9, 1967, requesting that the effective date of the order to cease and desist be stayed, and upon an answer in opposition thereto filed by the Director, Bureau of Restraint of Trade; and

The Commission for the reasons stated in the accompanying opinion, having determined that the motion should be denied:

It is ordered, That respondents' motion, filed January 9, 1967, be, and it hereby is, denied.

Commissioner Elman not concurring.

THE SEEBURG CORPORATION

Docket 8682. Order, Mar. 27, 1967

Order making available to respondent a list of accepted bottle vending machines issued by Coco-Cola, dated March 1, 1965.

ORDER DIRECTING PRODUCTION AND RULING ON REQUEST FOR PLENARY CONSIDERATION OF CERTIFICATION

This matter is before the Commission upon the hearing examiner's certification of complaint counsel's refusal to make certain documents available to respondent, filed February 3, 1967, except as that certification has been withdrawn by a subsequent submittal filed by the examiner February 10, 1967. The certification, as amended by the withdrawal, brings to the Commission the solitary issue of whether or not complaint counsel should produce for respondent a document identified as a list of accepted bottle vending machines issued by Coca-Cola, dated March 1, 1965. The hearing examiner has recommended that this document be made available.

The examiner also, without recommendation, has attached to his submission of February 10, 1967, respondent's request for plenary consideration by the Commission of the certification by the hearing examiner concerning Commission policies as to confidential files. This same request was also filed with the Commission February 6, 1967. Complaint counsel, on February 13, 1967, filed a statement with respect to the hearing examiner's February 3, 1967, certification dealing with both respondent's motion for the production of documents and respondent's request for plenary consideration by the Commission.

The Commission originally considered respondent's demand for production of documents in the Commission's confidential files on the examiner's certification of October 3, 1966, recommending denial thereof for failure to make the showing required by § 1.134 of the Commission's Rules of Practice. The request included documents relating to activities of bottlers, soft drink syrup manufacturers and vending machine manufacturers. The Commission, in an order issued October 25, 1966 [70 F.T.C. 1809], denied respondent's request. Respondent appealed this order, and its action for declaratory judgment and relief in the nature of mandamus was dismissed by the court. *The Seeburg Corporation* v. *The Federal Trade Commission* (U.S.D.C. E.D. Tenn. 1966). Later, on December 15, 1966, respondent filed a renewed motion for the production of documents, which was certified to the Commission