hearing examiner filed October 25, 1967 [73 F.T.C. 3], be, and it hereby is, stayed until further order of the Commission.

It is further ordered, That this order is not to be construed as extending the time provided under Section 3.52 of the Commission's Rules of Practice for filing notice of intention to appeal from the initial decision by any party to this proceeding.

BROWN & WILLIAMSON TOBACCO CORPORATION ET AL.

Docket 7688. Order, Dec. 1, 1967

Order reopening proceeding and proposing modification of paragraph 3 of the cease and desist order. See 73 F.T.C. 439 for modified order.

ORDER REOPENING PROCEEDING AND PROPOSING MODIFICATION OF ORDER TO CEASE AND DESIST

On September 28, 1967, respondents, Brown & Williamson Tobacco Corporation and Ted Bates & Company, Inc., filed a petition to reopen the proceeding for the purpose of modifying the order entered by the Commission on February 24, 1960 [56 F.T.C. 956]. In substance, respondents request that Paragraph 3 of the order be modified so as to permit representations of government findings concerning the tar and nicotine content of Brown & Williamson's filter cigarettes as compared with the smoke of other filter cigarettes. Complaint counsel has filed an answer not opposing the petition.

Upon consideration, the Commission has concluded that good cause has been shown for modifying the order, but not in the precise language proposed by respondents. Accordingly,

It is ordered, That this proceeding be reopened and that, within thirty (30) days after service of this order, respondents Brown & Williamson Tobacco Corporation and Ted Bates & Company, Inc., shall show cause why Paragraph 3 of the order to cease and desist heretofore entered in this proceeding should not be modified to read as follows:

> "3. Representing, directly or by implication, that the United States Government, or any agency thereof, has found that the smoke of Life cigarettes, or any other filter cigarette, is lower in tar or nicotine content when compared with the smoke of other filter cigarettes, unless such Government or agency thereof in fact has so found, and such findings are presented in a manner that is fair and not misleading and the basis for comparison is fully and fairly stated."

CURTISS-WRIGHT CORPORATION

Docket 8703. Order and Opinion, Dec. 1, 1967

Order denying respondent's and Martin A. Sherry's appeals from hearing examiner's denial of their motions to quash subpoenas duces tecum and remanding case to hearing examiner for further proceedings.

OPINION OF THE COMMISSION

This matter is before the Commission upon the hearing examiner's certification, filed November 3, 1967, of Martin A. Sherry's and respondent's motion to quash subpoena duces tecum, filed October 26, 1967, which he denied in part, and respondent's additional motion to quash the same subpoena duces tecum; and upon respondent's and Martin A. Sherry's interlocutory appeal, filed November 15, 1967, from the hearing examiner's order denying motion to quash subpoena duces tecum. Complaint counsel, on November 21, 1967, filed an answer in opposition to respondent's and Martin A. Sherry's appeal, and respondent, on November 28, 1967, filed a reply to such answer.

In this matter, the hearing examiner, on June 12, 1967, issued an order against respondent to produce documents covering certain of respondent's cost and profit data on aircraft engine parts for the years 1960 through 1963. Upon respondent's refusal to comply therewith the matter was certified to the Commission on September 25, 1967. The Commission, on October 2, 1967, issued an order directing the hearing examiner to withdraw the order to produce documents and to consider, upon application and in lieu of the order to produce, the issuance of a subpoena duces tecum pursuant to § 3.34 of the Commission's Rules of Practice "to the extent that the production may be justified under such rule." Thereafter, upon application by complaint counsel, a subpoena duces tecum was issued, directed to Martin A. Sherry, Curtiss-Wright Corporation, One Passaic Street, Wood-Ridge, New Jersey 07075. This subpoena required the appearance of Martin A Sherry and the production of documents pursuant to specifications which are, except as to certain modifications in form, the same as the specifications in the earlier order to produce. It is in connection with such subpoena duces tecum that respondent (and in the one case, Martin A. Sherry) has made its motions to quash and to certify to the Commission. It is also from such subpoena that respondent and Martin A. Sherry have filed interlocutory appeal.[1]

The contentions of respondent and Martin A. Sherry in the

[1] Complaint counsel, on November 2, filed answer in opposition to the motions to quash. Respondent, on November 7, 1967, filed a reply to the answer in opposition to respondent's motion to quash and request to certify.