

and different examiner for reasons which closely parallel those here advanced. At that time the Commission commented that the examiner was carefully observing the instructions contained in prior Commission opinions and was attempting to conduct the proceedings in accordance therewith. Hence, the Commission did not regard respondent's contention as deserving of further consideration.

While acknowledging that it had made the prior request for a new and different examiner, respondent now gives scant attention to the language used by the Commission and justifies what is in essence the same motion in different form by apparently relying upon the fact that the request was previously made as a part of an application to file an interlocutory appeal on other grounds and hence the Commission has not had an opportunity to consider this request standing alone.

Whether that is the reason or not, the Commission has again considered the motion on its merits, together with all the matters cited in support thereof, and concluded that no reasonable grounds have been advanced to support the action proposed. In a most trying situation, the examiner appears to be exerting every effort to the expedition of these hearings in a fair and reasonable manner and it would seem to behoove the parties to exert all their efforts at cooperating to this end rather than into the filing of repetitive motions.

ORDER DENYING MOTION TO DISQUALIFY HEARING EXAMINER

Upon consideration of the Motion To Disqualify The Hearing Examiner, filed by respondent March 5, 1969, and for the reasons stated in the accompanying opinion,

It is ordered, That the motion of respondent be, and it hereby is, denied.

MAREMONT CORPORATION

Docket 8763. Order and Opinion, March 24, 1969

Order and opinion denying application to appeal (treated as an appeal) from hearing examiner's order denying motion to quash subpoena duces tecum.

ORDER AND OPINION DENYING APPLICATION TO APPEAL (TREATED AS AN APPEAL) FROM HEARING EXAMINER'S ORDER DENYING MOTION TO QUASH SUBPOENA DUCES TECUM

This matter is before the Commission upon the application of Genuine Parts Company, filed March 5, 1969, for leave to file an

interlocutory appeal from the order of the hearing examiner denying its motion to quash a subpoena *duces tecum* directed to it and upon complaint counsel's response thereto, filed March 13, 1969.¹

Genuine Parts Company challenges the subpoena issued against it on two points: (1) that the description of the documents set forth therein does not define the phrase "automotive parts, accessories, and equipment," and (2) that complaint counsel is not entitled to the documents sought since these assertedly are the subject matter of litigation between the Genuine Parts Company and the Commission in a separate action pending in the United States District Court for the Northern District of Georgia, Atlanta Division, Civil Action No. 12030.

On the first point, the examiner ruled that the term "automotive parts, accessories, and equipment" is sufficiently clear to be understood by Genuine Parts Company. The examiner is vested with a broad discretion on such details as this in the conduct of the proceeding. There has been no showing here of an abuse of discretion. Moreover, Genuine Parts Company has presented no convincing grounds to support its claim that the term is vague and indefinite. We agree with and sustain the examiner in his determination on this issue.

On the other point, Genuine Parts Company refers to its complaint for a declaratory judgment and other relief in the federal district court identified above, challenging an order to file a special report issued by the Commission pursuant to Section 6 of the Federal Trade Commission Act. Its claim is that complaint counsel should not be able to obtain by subpoena documents which are partly the subject of the federal district court litigation. The examiner stated, and this was not disputed by Genuine Parts Company, that the grounds for the Federal District Court action concern relevancy, burdensomeness and the claim that the Commission already has access to some of such information. In this case the examiner held that the two items sought by the subpoena are clearly relevant to the present ad-

¹ Genuine Parts Company, contesting the examiner's ruling on its motion to quash a subpoena *duces tecum*, could have directly appealed under Section 3.35(b) of the Commission's Rules of Practice, rather than to proceed as it did and file a request for permission to file an interlocutory appeal under Section 3.23 of such rules. However, complaint counsel have filed a response to the request, and it appears that Genuine Parts Company has fully presented its arguments on the issue; thus, we will treat the matter as though it were on appeal to the Commission under Section 3.35(b) of the Commission's rules.