

ORDER ESTABLISHING SCHEDULE FOR HEARINGS, BRIEFING
AND ORAL ARGUMENT

The Commission having issued an order on April 17, 1969, ordering respondent to show cause why the Commission should not reopen this proceeding and modify the original order herein in certain respects; and

Respondent having filed answers to the averments in the Order to Show Cause and alternative Motions to Dismiss or to Strike and respondent having further requested alternatively that the matter be set for hearing before a hearing examiner; and

Counsel in support of the order having filed a cross-motion; and

The Commission being of the opinion that briefs should be submitted, and oral argument had, on the existence of factual issues warranting an evidentiary hearing and on all legal issues raised by the papers previously submitted on the Order to Show Cause,

It is hereby ordered, That the parties hereto shall submit briefs on Sept. 15, 1969, on the following subjects:

1. The existence of issues of fact, if any, in the present proceeding requiring an evidentiary hearing.
2. The issues of law raised by the papers filed heretofore in the present proceeding;

Either party may file answering briefs on or before Oct. 1, 1969. Oral argument will be scheduled promptly thereafter.

Commissioner Elman not concurring and Commissioner MacIntyre not participating.

KNOLL ASSOCIATES, INC.

Docket No. 8549. Order, July 25, 1969

Order withdrawing complaints from adjudication due to procedural problems attendant on excising material produced by or obtained through witness Herbert Prosser.

ORDER WITHDRAWING COMPLAINT

This matter is now before us on respondent's motion of June 12, 1969 to withdraw the complaint herein and to accept a new proposed agreement to cease and desist.

The complaint in this matter was issued by the Commission on December 27, 1962. The hearing examiner's opinion finding a violation of Section 2(a) of the Clayton Act was rendered on Febru-

ary 25, 1965, and the Commission's decision upholding the examiner was issued on August 2, 1966 [70 F.T.C. 311].

Respondent appealed to the United States Court of Appeals for the Seventh Circuit. In an opinion dated June 18, 1968 the Court of Appeals for the Seventh Circuit remanded the proceeding to the Commission for reconsideration, the court excepting from the record all evidence or testimony produced by or obtained through the witness Herbert Prosser. *Knoll Associates, Inc. v. Federal Trade Commission*, 397 F.2d 530 (7th Cir. 1968). The Court of Appeals did not pass on any of the substantive Robinson-Patman issues in the case.

Rather than attempt to resolve all the procedural problems attendant of excising the Prosser material, it is the view of the Commission (upon the urging of both the complaint counsel and respondent) that this matter should be withdrawn from adjudication and that complaint counsel should be authorized to execute the agreement in the form annexed to the affidavit submitted in support of respondent's motion.

Accordingly, the motion of respondent will be granted, and

It is ordered, That this matter be, and it hereby is, withdrawn from adjudication.

Commissioner Elman concurring in the result, and Commissioner MacIntyre not participating.

MAREMONT CORPORATION

Docket 8763. Order and Opinion, July 28, 1969

Order denying two of respondent's requests for leave to file interlocutory appeals from adverse rulings pertaining to discovery requests.

ORDER AND OPINION DENYING RESPONDENT'S REQUESTS FOR PERMISSION TO APPEAL

On April 18, 1969, respondent filed its request for leave to appeal from the hearing examiner's order dated April 7, 1969, denying, except as to certain "interrogatories" respondent's motion for discovery filed February 25, 1969. Thereafter, on May 26, 1969, respondent filed another request to file an interlocutory appeal; this second request relating to the hearing examiner's order of April 2, 1969, which allegedly unduly bars respondent's access to certain survey data.

From our review of all the examiner's orders and opinions, respondent's motions, responses thereto, and replies, we find the examiner has carefully weighed the merits of both of respondent's discovery requests and there is no showing, as required by Section 3.23 of the Rules of Practice, that interlocutory review by the Commission before the conclusion of the hearing is essential to serve the interests of justice.

The Commission ordinarily accepts the hearing examiner's determination in such areas unless there is a clear showing of the abuse of his discretion or other unusual circumstances. The examiner has the responsibility and adequate powers to resolve these discovery and procedural issues. Frequently, a great deal can be, and if possible should be, accomplished on discovery by agreement between counsel. Where there is disagreement, however, the resolution of the issues raised is primarily the responsibility of the examiner, and as stated, the Commission ordinarily will not dispute his rulings thereon, and we do not in this instance.

Respondent has already received substantial discovery through informal agreement with complaint counsel and by direction of the examiner. Moreover, the examiner has indicated that he is quite willing upon a proper showing to allow such future discovery as may be necessary. Indeed, as the hearings develop, respondent may be able to make a more substantial showing of necessity for the material covered in its two requests. The examiner, of course, retains full discretion to reconsider such requests and in exercising that discretion he is encouraged to follow the Commission's policy of allowing a respondent maximum discovery. Specifically, the examiner is encouraged to look to our recently revised Section 4.11 of our rules, and the accompanying press release dated June 20, 1969, for guidance. If respondent remains unsatisfied at the conclusion of the hearings, it may include the discovery issue in the Commission's review of this matter on the merits. Accordingly,

It is ordered, That respondent's requests filed April 18, 1969, and May 26, 1969, for leave to file interlocutory appeal be, and they hereby are, denied.

Commissioner MacIntyre concurring only in the result.