

plaint on the grounds of alleged prejudgment be, and it hereby is, denied.

It is further ordered, That this proceeding be, and it hereby is, remanded to the hearing examiner for hearing.

HOLLYWOOD CREDIT CLOTHING CO., INC., ET AL.

Docket 8796. Order, Oct. 14, 1969

Order denying respondent's motion to dismiss complaint on ground of discrimination.

ORDER RULING ON EXAMINER'S CERTIFICATION OF MOTION TO
DISMISS

This matter is before the Commission upon the examiner's certification of September 30, 1969, of respondents' motion of September 10, 1969, to dismiss the complaint on the ground of discrimination, and complaint counsel's answer in opposition dated September 22, 1969.

The reasons advanced by respondents are threefold:

1. Respondents state that previously they have tendered an assurance of voluntary compliance in disposition of this matter. As part of this assurance respondents had attached a contingent consent agreement, capable of execution by the Commission in case it found that respondents were violating the assurance. In addition, respondents had offered to execute a bond as evidence of their good faith and to insure compliance with the assurance.

2. Respondents contend that the complaint consists for the most part of trivia and does not warrant the expenditure of further time and money on behalf of the United States.

3. Lastly, respondents assert that in the case of *First Buckingham Community, Inc.*, Docket No. 8750, the Commission accepted less positive assurances than those offered in the instant matter. Hence, to deny respondents' request constitutes an uneven application of the law and discriminates against respondents.

With respect to respondents' efforts to dispose of the matter by an assurance of voluntary compliance coupled to a contingent consent order to cease and desist, together with the execution of a bond, it is noted that the Commission's Rules of Practice do not provide for such a procedure. Nor does the Commission have the authority to accept a bond to insure compliance with an assurance.

Respondents' contention that the complaint consists of trivia presents a question of judgment. In deciding to issue this complaint the Commission determined that to do so would be in the public interest and absent changed circumstances of fact or law this determination will not be disturbed.

Finally, the fact that different cases are disposed of in a different manner does not support a request for dismissal of a complaint. The Commission's choice of remedy is discretionary and not subject to the probing of respondents. This is particularly pertinent here, where respondents seek to compare situations involving different facts and different circumstances.

For the foregoing reasons respondents' request will be denied. Accordingly,

It is ordered, That respondents' motion to dismiss the complaint on the ground of discrimination be, and it hereby is, denied.

THE PAPERCRAFT CORPORATION

Docket 8779. Order, Oct. 20, 1969

Order granting complaint counsel's request for a continuance to January 5, 1970, with Commissioners Elman and Nicholson voting in the negative.

ORDER GRANTING CONTINUANCE OF HEARING

This matter is before the Commission on complaint counsel's request of October 8, 1969, for permission to appeal the examiner's order of October 3, 1969, resetting the hearing date from November 3, 1969, to November 18, 1969, in response to complaint counsel's request for a continuance to January 5, 1970. Complaint counsel respectfully urge that this request, if granted, be treated as the substantive appeal. The request and the procedure suggested by complaint counsel are not opposed by respondent.

The examiner is, of course, charged with the conduct of the hearing, including the ruling on requests such as these, and, absent a clear abuse of discretion, the Commission will not disturb his ruling. No such abuse is found in this instance. However, the Commission, in considering this matter, must keep in mind other proceedings presently assigned to complaint counsel. Thus, we note that hearings in the *Allied Chemical Corporation* case, Docket No. 8767, are expected to continue until October 22, 1969, or three days after the October 19, 1969, date set by the examiner

for submission of a list of witnesses and documents in this proceeding. In addition to the *Allied* case, complaint counsel is responsible for the *Kennecott Copper Corporation* case, Docket No. 8765, in which findings were submitted on September 10, 1969, and reply briefs are due on October 9, 1969. The Commission, therefore, feels that adherence to the schedule ordered by the examiner in this proceeding may jeopardize the effective presentation of the *Allied* and *Kennecott* cases, as well as the instant case. In view of the foregoing, and considering the various cases presently in progress, the Commission has concluded to grant the request, consider the request as the substantive appeal and grant the time requested by complaint counsel. Accordingly,

It is ordered, That complaint counsel's request for a continuance to January 5, 1970, be, and it hereby is, granted.

Commissioners Elman and Nicholson voting in the negative for the reason that they do not believe the Commission should interject itself, through interlocutory appeals, in schedules established by the hearing examiner unless there is a clear and substantial abuse of discretion, which they did not find here.

BANTAM BOOKS, INC.

Docket 6802. Opinion and Order, Oct. 31, 1969

Order denying respondent's request for reconsideration of an earlier denial of permission to republish books with new titles if originally published outside U.S.

OPINION OF THE COMMISSION

This matter comes before the Commission upon respondent's request that the Commission reconsider its order and opinion of September 8, 1969. The Bureau of Deceptive Practices has filed an answer to respondent's request for reconsideration.

In its order of September 8, 1969 [1070 herein], the Commission denied respondent's request that the Commission reopen these proceedings and modify the order against respondent; the order requires respondent to disclose "the title under which a book was first published in the English language" whether such publication was in the United States or in a foreign country.¹ In setting forth the reasons for its decision, the Commission stated:

¹ The order also requires respondent to disclose "each and every title under which said book was previously published in the English language in

If the order were modified as Bantam requests, respondent could publish, under a new title, a book originally published outside the United States in an English-speaking country without disclosure of that title. *Those who purchase books by mail from such countries may well be deceived into believing that a retitled reprint is a different work.* Even if not misled into purchasing the same book twice, purchasers of the retitled book may believe they are buying something which they are not, i.e., a new or unfamiliar work by an author whose name is familiar to them rather than a work by that author which they have seen reviewed or otherwise know under a different title.²

Respondent's request for reconsideration focuses upon the italicized portion of the above-quoted statement from the Commission's opinion. Citing the provisions of 17 U.S.C. Sections 16, 107, respondent argues that, in taking this position, the Commission has overlooked the fact that "importation by mail of copyrighted works in the English language which are manufactured abroad is unlawful." Consequently, respondent concludes, the Commission's decision rests upon a ground contrary to the letter and the policy of the copyright laws and ought therefore to be reconsidered.

Respondent's contention is without merit, for it places too broad a construction upon the provisions of the copyright law and too narrow a construction upon the Commission's opinion. The importation into the United States of a book published in the English language and manufactured abroad is not prohibited in all cases. If the author of the work is a foreign national not domiciled in the United States, the book may be lawfully imported into the United States so long as the book bears the appropriate copyright symbol and other provisions of the copyright statute are applicable, 17 U.S.C. Section 9(c). Thus, for example, a book manufactured in England and published by an English author may be lawfully imported into the United States so long as the requirements of 17 U.S.C. Section 9(c) are met. If the same book is reprinted in the United States under a different title than the title under which it was published in England, a purchaser who has obtained the book as originally published may be misled into the belief that the reprinted edition is a new work if the original title under which the book was published in England is not disclosed. The provision of the order challenged by respondent would eliminate this potential deception.

Moreover, as the quoted passage from the Commission's opinion clearly shows, protection of mail order purchasers is not the

*the United States * * ** (emphasis added) but respondent does not question this provision of the order.

² Slip op., p. 3 (emphasis added) [p. 1071 herein].

only purpose for which the provision of the order is deemed necessary. Respondent's request for reconsideration is therefore without merit and must be denied.

ORDER DENYING REQUEST FOR RECONSIDERATION

Respondent, by petition filed October 6, 1969, having requested the Commission to reconsider its opinion and order of September 8, 1969 [p. 1070 herein], in which the Commission denied respondent's petition of August 6, 1969, wherein respondent sought to have this proceeding reopened and the order against respondent modified, and the Bureau of Deceptive Practices having filed an answer in opposition to respondent's request for reconsideration; and

The Commission having considered said petition and, for the reasons stated in the accompanying opinion, having determined that respondent's request should be denied:

It is ordered, That respondent's request for reconsideration be, and it hereby is, denied.

MAREMONT CORPORATION

Docket 8763. Order, Nov. 6, 1969

Order cancelling Commission hearings pending district court's disposition of Commission's motion to dismiss court's order, and pending Commission decisions on interlocutory matters.

ORDER CANCELING HEARINGS

The Commission having been advised that on November 4, 1969, the United States District Court for the Northern District of Illinois, Eastern Division, issued an order in the case of *Maremont Corporation v. Federal Trade Commission*, Civil Action No. 69 C 2266, restraining the Commission from conducting hearings or otherwise going forward with this proceeding until further order of the court.

It is ordered, That the hearings presently scheduled to begin November 12, 1969, be canceled pending the district court's disposition of the Commission's motion to dismiss which will be filed on or before November 25, 1969, and pending the Commission's decisions on the interlocutory matters in this proceeding which are now before the Commission.