

interests of justice." A careful review and consideration of the examiner's ruling and the appeal convince us that these criteria have not been met. The appeal will therefore be denied. Accordingly,

*It is ordered,* That respondents' appeal to the Commission from rulings on objections to requests for admission will be, and it hereby is, denied.

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OKC CORP., ET AL.

*Docket 8802. Order, June 16, 1970*

Order directing General Counsel to apply to the Court of Appeals, Fifth Circuit, for injunction preventing respondent from disposing of certain assets and changing structure pending trial of this case.

ORDER

Complaint counsel on June 2, 1970, in answer to respondents' notification of intended sale of certain assets of Jahneke Service, Incorporated, renewed their motion requesting the Commission to seek injunctive relief under the All Writs Act in the above-entitled matter.

Having considered again the matter in its present posture,

*It is ordered,* That the General Counsel is hereby delegated, pursuant to Reorganization Plan No. 4 of 1961 (15 U.S.C. § 41 at 2620 (1964)), the authority to apply under the All Writs Act (28 U.S.C. § 1651(a)) to the United States Court of Appeals for the Fifth Circuit [8 S. & D. 1220] for injunctive relief preventing OKC Corp. from disposing of any of the assets of Jahneke Service, Incorporated, and from restructuring the corporation pending the final order of the Commission disposing of the adjudicative proceeding now pending in this matter.

Commissioner MacIntyre not participating.

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ZALE CORP., ET AL.

*Docket 8810, Order and Opinion, June 17, 1970*

Order remanding case to hearing examiner for further consideration of his granting the motion of complaint counsel to amend complaint.

OPINION OF THE COMMISSION

This matter is before the Commission upon respondents' request, filed June 4, 1970, for permission to file an interlocutory appeal from an order of the hearing examiner, and for a stay of the proceedings pending resolution of such an appeal. Section 3.23(a) of the Com-

mission's Rules of Practice provides that permission to file an interlocutory appeal will not be granted except upon a showing that the ruling complained of involves substantial rights and will materially affect the final decision, and that a determination of its correctness before conclusion of the hearing is essential to serve the interests of justice.

The hearing examiner's order, issued on June 3, 1970, granted a motion by complaint counsel to amend the complaint in this proceeding. Respondents contend that the amendments to the complaint introduce a new and distinct issue into the proceedings and that such action is beyond the authority of the examiner. Section 3.15 of the Commission's Rules of Practice provides that a motion for amendment of a complaint may be allowed by the hearing examiner only if the amendment is reasonably within the scope of the original complaint.

It appears that the purpose of the amendments to the complaint was to clarify the complaint so as to permit the introduction of evidence which would provide a basis for an effective cease-and-desist order. It is clear, however, that evidence as to an appropriate remedy may always be received, regardless of the allegations of the complaint. The selection of an appropriate remedy, and the admissibility of evidence with regard thereto, are governed by the unlawful practices actually found to exist, and not by the allegations of the complaint. *Cf. Federal Trade Commission v. National Lead Co., et al.*, 352 U.S. 419, 427 (1957). An appropriate remedy is one which bears a reasonable relation to the unlawful practices found to exist. *Jacob Siegel Co. v. Federal Trade Commission*, 327 U.S. 608 (1946). Thus, the examiner need not have amended the complaint to admit evidence bearing on a remedy. Whatever the examiner's intent, the actual effect of the amendments appears to have been to enlarge the scope of the original complaint. For this reason, the examiner should reconsider the necessity for the amendments. It is possible, however, that the amendments were in fact designed to accomplish more than merely permit the introduction of evidence as to an appropriate remedy. If this be the case, the basis for such action, its intended scope, and its conformity with Section 3.15 of the Commission's Rules of Practice, should be more clearly delineated.

The Commission is, thus, unable, at this juncture, to determine whether an interlocutory appeal is warranted. This matter will be remanded to the hearing examiner for consideration of the necessity for, or a justification for, the amendments to the complaint. The hearings will not be stayed. An appropriate order has been issued and accompanies this opinion.