

ministrative complaints issued in the above docketed matters, stating as grounds therefor that the deciding vote to issue said complaints was cast upon the erroneous assumption that the Commission was bound to issue the complaints whether or not the public interest was served thereby; and

The District Court, on January 21, 1971, having extended to May 15, 1971, the time within which response to the motion for summary judgment may be filed and having ordered that during the pendency of said motion the Commission may reconsider its decision to issue the aforesaid complaints but that it shall give respondents an opportunity to be heard in connection therewith; and

The Commission having determined to reconsider its decision to issue the complaints and having afforded respondents an opportunity to be heard on briefs and oral argument, and on the basis of such hearing, having further determined that the complaint in each of the above docketed matters states a cause of action; and

The Commission although being of the opinion that neither Section 2(c) nor Section 11 of the Clayton Act requires a finding that issuance of a complaint is in the public interest,¹ nevertheless, upon the complaints, briefs and oral argument, specifically finds that issuance of a complaint in each of the above docketed matters is in the public interest and it reaffirms its decision to issue said complaints:

Accordingly, it is ordered, That the General Counsel be, and he hereby is, directed to file in the District Court for the Northern District of Illinois appropriate documents advising the court that the Commission has found that issuance of the complaints herein is in the public interest and that it has reaffirmed its decision to issue said complaints.

Commissioner MacIntyre filed a separate statement.

STANDARD OIL COMPANY OF CALIFORNIA, ET AL.

Docket 8827. Order, Apr. 13, 1971

Order denying motions of respondents that Commission reconsider the issuance of complaint against them and that Chairman be disqualified.

ORDER DENYING MOTIONS FOR RECONSIDERATION AND DISQUALIFICATION

This matter is before the Commission upon the motion of respondent Standard Oil Company of California (Standard) filed with the

¹ *Jewell Companies, Inc. v. Federal Trade Commission*, 432 F.2d 1155, 1160 (7th Cir. 1970).

hearing examiner March 16, 1971, and the motion of respondent Batten, Barton, Durstine & Osborn, Inc. (B.B.D. & O.) filed with the hearing examiner March 17, 1971, for reconsideration and disqualification, certified to the Commission on March 29, 1971. Respondent B.B.D. & O. has, in effect, joined in Standard's motion. It filed an identical motion to that filed by Standard and in support thereof states it "adopts and relies upon the material and arguments set forth by the Respondent STANDARD in its motion papers." Specifically, Standard and B.B.D. & O. have moved the Commission "(1) to reconsider its order of December 29, 1970, issuing the complaint herein, (2) to cancel and rescind the order and withdraw the complaint, and (3) to disqualify Chairman Kirkpatrick from further participation in any proceedings involving [respondents] and F-310, or in the alternative that Chairman Kirkpatrick disqualify himself." They also request an opportunity to appear and to argue their position orally before the full Commission.

Chairman Kirkpatrick, on April 8, 1971, filed for the record a memorandum in response to respondents' respective motions (which he considered as a single motion), stating among other things that he declines to disqualify himself and that he shall not be present and shall not participate in any deliberation or decision by the Commission concerning their motion that he be disqualified from further participation by the Commission.

The Commission thereafter met without the presence of Chairman Kirkpatrick and considered the above-referred-to motions.

On the point of Chairman Kirkpatrick's participation herein, under the Commission's practice a disqualification is treated as a matter primarily for determination by the individual concerned, resting within the exercise of his sound and responsible discretion. This practice, the Commission believes, is proper and consistent with the law, and in the instant case no basis for departing therefrom has been shown. Accordingly, the requests on this point will be denied.

Standard's grounds generally for its motion (which are also those of B.B.D. & O. by adoption) are as follows:

(a) that the Commission has violated Standard's constitutional and statutory rights, assertedly by prejudging the issues, thus foreclosing it from a fair trial, and by bringing this proceeding as a test case; and

(b) that the Commission had no "reason to believe" Standard's advertisements were false or deceptive and in violation of law and through its procedures assertedly published unfounded accusations against Standard; that the Commission was not informed, or misinformed, on the facts; and, finally, that the proceeding is assertedly contrary to the public interest and violates