

We see no reason why proceeding with the hearings should be considered in any way a discourtesy to the district court nor why this should interfere with any determination the court may make on respondent's complaint. While the extension requested would only result in unnecessary delay in this agency action, the Commission is of the opinion that a limited extension may facilitate the expeditious conclusion of the collateral suit in the district court. Accordingly,

It is ordered, That respondent's request for leave to file an interlocutory appeal from the hearing examiner's order filed April 14, 1971, is denied;

It is further ordered, That the trial date for evidentiary hearings in this proceeding is rescheduled for May 24, 1971.

NATIONAL ASSOCIATION OF WOMEN'S AND CHILDREN'S
APPAREL SALESMEN, INC., ET AL.

Docket 8691. Order, April 29, 1971

Order denying respondents' petition for and oral argument on their appeal for reconsideration of the decision and order.

ORDER DENYING PETITION FOR RECONSIDERATION

This matter is before the Commission upon respondents' petition filed April 2, 1971, requesting the Commission, pursuant to Section 3.55 of its Rules of Practice, to reconsider its decision and order in this proceeding; and upon the answer of complaint counsel in opposition thereto filed April 14, 1971.

Respondents raise four points. Their first is an objection to the Commission's statement in its opinion issued July 30, 1970 [77 F.T.C. 988, at 1087] as follows:

Respondents do not challenge the examiner's findings that they agreed and combined to restrict the times, places and conditions under which clothing manufacturers may show and sell their merchandise, and that the NAWCAS affiliates and their individual members, as well as individual salesmen, have been similarly restricted. Nor do respondents challenge the conclusion that these practices standing alone constitute antitrust violations in contravention of the Federal Trade Commission Act. * * *

They assert that by reason of the breadth and scope of the final order they believe the Commission placed "undue weight upon their alleged concessions." (Pgs. 8-9, petition.) Respondents' position is that they did not intend to concede the illegality of the acts and practices enumerated in the complaint or abandon their claim that several of such are reasonable and unobjectionable.

Respondents, it seems, mainly take exception to the part of the statement averring they had not challenged that the practices were antitrust violations standing alone. The Commission, however, found and concluded, on the basis of the entire record, that the acts and practices alleged in the complaint violated the law as charged, discussing and explaining its reasons in the opinion in some detail. Therefore, respondents' contention on this point forms no basis for the requested reconsideration.

Respondents, secondly, take exception to Paragraph I (17) of the final order [78 F.T.C. 446, 451]. This prohibits them from:

Refusing to accept as an exhibitor at any trade show any salesman who may also be a manufacturer, importer, wholesaler, or jobber, or officers or employees thereof, whose line or lines of women's and children's apparel are not exhibited at that trade show by a member of NAWCAS or a member of any of its affiliates.

This provision, according to respondents, is so broad as to "permit manufacturers to fire or otherwise terminate their regular salesmen, or to refuse to use commission salesmen, to show lines at trade shows, and rather to use other employees, officers or non-salesmen of the company to avoid paying commissions on orders written at the show, to traveling salesmen." (Pg. 9, petition.) Respondents object to the whole provision but argue that if it is to be used it should be amended by inserting the phrase "bona fide" just prior to the word "salesman" in the second line, by inserting the phrase "and who travels the territory in which the trade show is held" after the word "jobber," and, finally, by inserting the phrase "who are also salesmen regularly traveling such territory and" after the word "thereof." The insertions of these words and phrases would, so far as this paragraph is concerned, limit the trade show to exhibitors falling within the meaning of the qualifying terms used and thus be restrictive in nature.

This is hardly a new question. Complaint counsel, in their recommended order, included a provision almost identical to that adopted by the Commission. Respondents, at the oral argument, dealt with the terms of the order, protesting that regulations and restrictions proposed would be harmful to the operation of a trade show (see, for instance, such parts of the transcript of oral argument on February 2, 1971, as pages 19, 22-24 and others), a position which the Commission, as a general proposition, rejected.

We believe that respondents' objections to this particular provision in the order amounts to unfounded speculation as to its possible future effects. One of the principal purposes of the order was to eliminate unreasonable restrictions and open up the shows to competition. To now amend the order as sought by respondents would amount to an authorization of certain restrictions inimical to that purpose with-

out any adequate demonstration of necessity. Also, we believe that the modifications urged upon us by the respondents would result in confusion as to the meaning and scope of the provision. In all the circumstances, we conclude that respondents' request on this point should be denied. Of course, respondents, on the basis of future experience under the order or otherwise, are not prejudiced, after this order becomes final, from seeking a modification of such paragraph pursuant to Commission Rule Section 3.72.

Respondents' third point has to do with I (2) and (3) of the final order [78 F.T.C. 449-50]. These paragraphs may be summarized as concerning agreements and other listed relationships or arrangements with any other party for the purpose or with the effect of preventing or interfering with a manufacturer from displaying, offering or selling his merchandise or with his efforts to do so in or from any space not contracted for and used by a representative who is a member of NAWCAS and others respectively listed. They deal with space availability to outsiders and not with other restrictive practices. These paragraphs contain certain prohibitions, but the prohibitions are stated in such a way as not to interfere with ordinary and proper agreements made for the sale and use of space. On the other hand, these paragraphs in no way modify other paragraphs in Part I of the order, which contain various other express prohibitions. There is nothing in the language of Paragraphs I (2) and (3) even remotely suggesting that respondents may impose restrictions otherwise prohibited by the order on those listed who contract for and use space.

Consequently, respondents' position, set out on page 10 of their petition, interpreting Paragraphs I (2) and (3) as providing that they "may impose restrictions upon the showing of line or lines of manufacturers in space actually contracted for *and used* * * * by respondent NAWCAS or its affiliates for the purpose of a trade show," is entirely unwarranted. We will not grant respondents' request for an order modification in this respect because it would be contrary to one of the purposes of the order. Furthermore, we don't believe any amendment is necessary because the order states the prohibitions in accordance with the Commission's intentions in the matter and does so clearly.

Finally, respondents submit that the petition should be granted because of alleged drastic changes in the industry and in the mode of operation of the respondents. They apparently seek further hearings so that asserted new facts may be presented to the Commission. Again, this subject is not new. It was raised at the oral argument before the Commission (see transcript dated February 2, 1971, pg. 8 *et seq.*). Respondents, in their brief filed September 4, 1970, discussed