

therefore be treated as a motion for reconsideration of the Commission's action of April 13, 1971.

For the reasons contained in the motion for reconsideration, the Commission has determined to allow "Standard" ten (10) days from the date of service of this order within which to file a document in support of its motion. Accordingly,

It is ordered, That the request by counsel for respondent Standard Oil Company of California, filed April 19, 1971, for leave to file a reply to the answer filed by counsel for the Commission to respondents' motions for reconsideration and disqualification, be, and it hereby is, treated as a motion for reconsideration in support of which respondent "Standard" is allowed to file a document within ten (10) days from the date of service of this order.

Chairman Kirkpatrick not participating.

THE HEARST CORPORATION, ET AL.

Docket 8832. Order, May 26, 1971

Order denying motion of respondent International Magazine Service to dismiss or stay case because of pending trade regulation rule.

ORDER DENYING MOTION TO DISMISS OR STAY BECAUSE OF PENDING TRADE REGULATION RULE PROCEEDING

The hearing examiner in this matter has certified to the Commission, pursuant to Section 2.33 of the rules, a motion filed by respondent International Magazine Service on April 8, 1971, to dismiss certain paragraphs of the complaint on the ground that the matters therein are also the subject of the Commission's pending trade regulation rule proceeding concerning a cooling-off period for door-to-door sales, notice of which was published September 30, 1970 (35 Fed. Reg. 15164).

In the alternative, respondent moves that as a matter of administrative discretion, this adjudicative proceeding be stayed pending disposition of the rulemaking proceeding. Complaint counsel filed an answer on April 13, 1971, opposing the motion, and on May 4, 1971, respondent filed a reply to complaint counsel's answer. The examiner in certifying the question to the Commission on May 7, 1971, recommends, without stating his reasons, that the alternative motion for stay be granted.

Respondent's argument is that the "proposed trade regulation rule covers many of the alleged practices challenged in this proceeding" and that continuation of portions of this proceeding is unnecessary and unfair to respondent.

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An examination of the respondent's motion reveals, however, that essentially it is only certain provisions of the proposed *order* served with the complaint, not the substantive allegations of the complaint itself, which respondent contends overlap with proposals now pending in the rulemaking proceeding. Thus, among other things, the proposed order would require respondent to cease and desist from representing that they are engaged in any activity other than soliciting business and to affirmatively disclose at the outset of each contact the purpose of the contact. Paragraph 9 of the proposed trade regulation rule, respondent notes, similarly would require (in connection with sales of consumer goods having a purchase price of \$10 or more) salesmen making solicitations at person's homes to reveal the purpose of their call at the outset. Other instances of duplication between the order and the proposed rule are asserted, including provisions which would prohibit misrepresentation of a buyer's right to cancel a contract, requiring the giving of a right to cancel contracts within 3 business days, and a requirement that a copy of the signed contract be left with the buyer with a specific cancellation form.

These provisions in the proposed order are based on allegations in the complaint that respondent has sold magazine subscriptions by unfair and deceptive acts and practices which are specifically set forth and described. See Paragraphs 4, 5, and 6 of the complaint. Remedial provisions similar to those in the proposed order have been adopted by the Commission in previous cases where the adjudicated facts had shown that companies had engaged in false and misleading representations to gain entry and make sales. In *Crowell-Collier Publishing Co.*, FTC Docket 7751 (Feb. 4, 1969), *aff'd sub nom.*, *P. F. Collier & Son Corp. v. FTC*, 427 F. 2d 261 (6th Cir.), *cert. denied*, 400 U.S. 926 (1970), the Commission, on the basis of facts showing misrepresentations to gain entry into the home, required affirmative disclosure at the outset in all future solicitations that the person making the call is a salesman and that the purpose of his call is to sell merchandise. See also *Household Sewing Machine Co.*, FTC Docket 8761 (Final Order, August 6, 1969) [76 F.T.C. 207], where on the showing that the respondent had engaged in bait-and-switch tactics, the Commission required the respondent to grant to all purchasers a 3-day grace period during which all sales transactions negotiated in the consumer's home could be rescinded by the purchaser. The Commission explained its action by stating:

This will serve as a cooling-off period during which any consumer, who may be subjected to the unfair pressures resulting from the deceptions we have discussed or similar deceit, may reevaluate and cancel her purchase. Our order will require the notice of the cooling-off period to be clearly printed in a conspicuous place on the contracts and will also require that respondents provide a separate,

simple and clearly understandable cancellation form. In light of respondent's proclivity for the use of deception in both advertising and in the home, this is appropriate and necessary relief. (p. 10)

The instant complaint contains allegations similar to those in the above cases, namely that respondent's agents have misrepresented the purpose of business calls to gain entry, as well as various types of misrepresentations concerning contracts which customers have been induced to sign. As to the issues raised by respondent, it is important to note, therefore, that these allegations in Paragraphs 4, 5, and 6 of the complaint do not raise new principles or questions of law under Section 5 of the Federal Trade Commission Act.¹ They are the type of acts and practices which, if shown to have occurred, would constitute violations of the Federal Trade Commission Act under settled and long-standing interpretations of that statute. On the other hand, the purpose of the proposed trade regulation rule proceeding is to explore the question of whether the Commission should declare a new category of unfair practice in door-to-door solicitations; a rule which would require, without regard to a showing of misrepresentations in specific cases, sellers to provide buyers with certain information and options, including the right to cancel transactions within a certain period of time.

Whatever decision and order are adopted in this adjudicative matter will depend solely on what evidence is adduced in support of, or in opposition to, the particular allegations in this complaint. Such decision, and any question of appropriate relief in the form of a cease and desist order, will be completely independent of what transpires in the rulemaking proceeding. The rulemaking proceeding is still pending and there is no certainty at this point whether or to what extent the regulation as it was initially proposed will be adopted. Nor is there any way of now determining when the final decision on that question will be made.

In the circumstances, we find that it would not be in the public interest to dismiss portions of this complaint or stay this proceeding on the speculation that in the near future the Commission might issue a

¹ Paragraph 7 of the complaint can be read as alleging in the alternative that gaining access "without prior invitations to solicit" long-term magazine subscriptions, without affording the consumer the right to cancel within 3 days, is itself an unfair practice aside from any misrepresentations of fact. However, we note that according to a pleading filed by respondent on April 12, 1971, complaint counsel stated at a prehearing conference that "the Commission is not claiming that gaining access 'without prior invitation' is itself an unlawful practice." (Motion to Dismiss and/or for Summary Decision, p. 13 n. 3.) It does not appear that complaint counsel has disputed this construction of the complaint attributed to him. In any event, the question of whether it is *per se* an unfair practice to fail to provide a right of cancellation in door-to-door solicitations is a major issue in the trade regulation rule proceeding, which was initiated subsequent to the time that the proposed complaint in this matter was first served on June 1, 1970. To the extent this issue appears to be raised in Paragraph 7, it is hereby withdrawn and Paragraph 7 is modified *pro tanto*.