

final trade regulation in the form it was proposed. And even if we were to assume that such a regulation would be adopted, we are not prepared, in the absence of what the record facts will show as to the respondent's practices, to assume that the public interest would be adequately protected without the need of placing respondent under the constraint of a cease and desist order.

Although we acknowledge that uniformity in treatment of members of the same industry is usually desirable, we have a primary obligation in these matters to see that the consuming public is adequately protected. Thus, in *P. F. Collier, supra*, the court rejected an argument by the respondents that by forcing their agents to affirmatively disclose the nature of their business when they approach a prospective customer, the order unfairly put them at a competitive disadvantage with other door-to-door sellers. The court stated: "Such a situation would afford the basis for an argument that Collier's competitors should have been dealt with likewise, not that petitioners should escape * * * The purpose of Commission orders is not to put those employing deceptive acts or practices in *pari delicto* with each other." (427 F.2d at 276.) Accordingly,

It is ordered, That the motion of respondent International Magazine Service to dismiss or stay because of a pending trade regulation rule proceeding be, and it hereby is, denied.

Chairman Kirkpatrick not participating.

COWLES COMMUNICATIONS, INC., ET AL.

Docket 8831. Order, June 11, 1971

Order denying respondents' appeals which challenged examiner's order as requiring admissions on alleged irrelevant information and as denying or nullifying respondents' assertions of privilege against self-incrimination under the Fifth Amendment.

ORDER DENYING INTERLOCUTORY APPEALS

This matter is before the Commission upon two appeals, pursuant to Section 3.35(b) of the Commission's Rules of Practice, both filed May 19, 1971, the one by respondent Cowles Communications, Inc., and the other by the remaining respondents, from the order of the hearing examiner filed May 12, 1971, denying objections by respondents to complaint counsel's requests for admissions. The appeals are virtually identical, challenging the examiner's order as requiring admissions on alleged irrelevant information and as denying or nullifying respondents' assertions of privilege against self-incrimination under the Fifth

Amendment of the United States Constitution. Complaint counsel, on May 26, 1971, filed an answer in opposition to the appeals.

The record shows as background that complaint counsel, on March 17, 1971, filed requests for admissions for each of the respondents individually and that thereafter such requests were served on the respective respondents. Each such request is directed to the entity named as a respondent in the complaint, that is, Cowles Communications, Inc.; Civic Reading Club, Inc.; Educational Book Club, Inc.; Home Reader Service, Inc.; Home Reference Library, Inc.; and Mutual Readers League, Inc. For example, that directed to Cowles Communications, Inc., begins as follows:

COME NOW counsel supporting the complaint and, pursuant to the provisions of Section 3.31 of the Commission's Rules of Practice, request respondent COWLES COMMUNICATIONS, INC., (sometimes hereinafter "Cowles" or "the Company") to admit the truth of the matters hereinafter set forth.

No individual persons such as officers, directors or custodians are named therein. The requests are directed solely to named respondents, which appear to be corporate entities.¹

According to the hearing examiner, the "admissions sought by complaint counsel call for background information with respect to the issue of the authority and control of respondent Cowles Communications, Inc. over its subsidiaries, the other corporate respondents herein, * * *" (Hearing examiner's order filed May 12, 1971.) The various requests are similar and seek admissions to such facts as the date and place of incorporation, names of officers and directors for a specified time period, ownership information and other corporate data.

Respondents filed objections with the hearing examiner, contending (1) that the requests seek admissions of facts for a time period allegedly irrelevant, and (2) that the requests require responses within the constitutional privilege against self-incrimination. Respondents asserted privilege not only with respect to respondents "as corporations" or "as a corporation," but also "with respect to their [its] individual officers or directors who would be compelled to sign such admissions under oath and thereby may tend to incriminate themselves." They argued that in the circumstances the provisions of the Organized Crime Control Act of 1970 (Public Law 91-452), amending Title 18 of the United States Code by adding new Sections 6001 through 6005, are applicable and that the procedure for granting immunity thereunder must be followed before respondents can be required to answer requests for admissions.

¹ In their answers to the complaint, all respondents denied the allegations in the complaint that they are corporations, except Cowles Communications, Inc., which respondent answered this allegation ambiguously.

The hearing examiner, on May 12, 1971, denied the objections made by the respondents, and respondents have made these appeals requesting "an order affirming all the objections" which they made to the hearing examiner and further relief that is just. They make the same arguments as they advanced to the hearing examiner.

The immunity provisions contained in Title 18 U.S.C. Sections 6001 through 6005, so far as they are relevant to this agency proceeding, require that in the case of any individual who has been or who may be called to testify or provide other information, the agency may, with the approval of the Attorney General and upon making certain specific determinations as to public interest and the refusal to testify on the basis of privilege, issue an order requiring the individual to give testimony or provide other information "which he refuses to give or provide on the basis of his privilege against self-incrimination," such order to become effective as provided in the statute granting the witness the immunity as therein set forth (emphasis supplied). Thus, the immunity statute requires that certain procedures be followed for an individual asserting his constitutional privilege. If the individual has no privilege to assert, the statute, as we construe it, does not apply. It is settled that a corporation is not protected by the constitutional privilege against self-incrimination. *Curcio v. United States*, 354 U.S. 118, 122 (1957). Accordingly, if respondents are incorporated, and for the purpose of this holding we assume they are corporations since they have asserted privilege as corporations, then they have no constitutional privilege against self-incrimination to assert and the immunity provisions of the new law do not apply to them.²

Respondents, in their objections to the examiner, also claimed such privilege for their officers or directors who would "sign such admissions under oath," a point not specifically pressed in their appeals here before us. In making this contention respondents cited no supporting authority. The United States Supreme Court precedents unquestionably establish that the privilege against self-incrimination is purely a personal privilege of the witness and cannot be asserted by the witness on the ground that some third person might be incriminated by his testimony. *Hale v. Henkel*, 201 U.S. 43, 69-70 (1906); *U.S. v. White*, 322 U.S. 694, 704 (1944). Thus, there would appear to be no

² While we believe the plain language of the statute excludes corporations which do not have any basis to assert privilege against self-incrimination, we note that the parties have cited no legislative references suggesting otherwise.

To the extent the committee reports touch on the subject they plainly suggest the exclusion of corporations. For instance, the Senate Judiciary Report on S. 30, the related crime bill before the Senate, outlines in general the constitutional privilege against self-incrimination in part in the following words:

"The privilege is personal; it may not be claimed to protect another. In addition it protects only natural persons; corporations or unions may not claim its protection." S. Rep. No. 91-617, 91st Cong., 1st Sess. 51 (1969).

grounds whatsoever for the respondents in this proceeding to assert privilege on behalf of their employees or agents, particularly where such are unspecified and unnamed. It appears that respondents, by asserting generally the privilege of some unnamed custodians or officers, whoever they may be, are in effect thereby claiming a privilege against self-incrimination for themselves as corporations. This they cannot do.

In any event, even if certain directors or officers of the respondents who would be asked to sign the admissions are in a position to assert a personal privilege against self-incrimination, the respondents then have the obligation to designate other agents who could sign such admissions without fear of self-incrimination.³ The holding in *United States v. Kordel*, 397 U.S. 1 (1970), appears to us to be directly in point on this question. There, in connection with requests for information by interrogatories, the Court held the officer of the corporation was not barred from asserting his privilege simply because the corporation had no privilege of its own or because the proceeding in which the government sought information was civil rather than criminal in character, but the court made clear that the corporation could not satisfy its obligation (under Rule 33 of the Federal Rules of Civil Procedure) simply by pointing to an agent about to invoke his constitutional privilege. Quoting in part from an earlier decision the Court stated:

"It would indeed be incongruous to permit a corporation to select an individual to verify the corporation's answers, who because *he* fears self-incrimination may thus secure for the corporation the benefits of a privilege it does not have." Such a result would effectively permit the corporation to assert on its own behalf the personal privilege of its individual agents [footnotes omitted; Court emphasis]. (397 U.S. 8.)

We conclude as to the assertion of privilege against self-incrimination for officers and directors that no proper grounds have been shown to require the application of the immunity procedures of Title 18 U.S.C. § 6001 *et seq.*

The appeals, so far as they raise the point of alleged irrelevancy, are also denied on the basis that no showing has been made that the ruling complained of involves substantial rights and will materially effect the final decision and that a determination of its correctness before the conclusion of the hearing is essential to serve the interests of justice. Accordingly,

³ The admissions here sought apply, so far as it appears, only to corporate data, and there is no indication that the admissions would implicate or incriminate any person such as an officer or director of corporations. Thus, on this issue there is little resemblance to cases cited by respondents involving self-incrimination of officials, such as *Curcio v. United States*, 354 U.S. 118 (1957), and *United States v. Daisart Sportswear*, 169 F.2d 856 (2d Cir. 1948).