THE HEARST CORPORATION, ET AL.

Docket 8832. Order and Opinion, Sept. 23, 1971

Order denying the request of two of the respondents for an interlocutory appeal from hearing examiner's order denying their motion for an order dismissing Paragraph Seven of the complaint.

Opinion and Order Denying Request for Leave To File an Interlocutory Appeal

Respondents, the Hearst Corporation and Periodical Publishers' Service Bureau, Inc., have requested leave to file an interlocutory appeal from the hearing examiner's August 10, 1971 order denying their motion for an order dismissing Paragraph Seven of the complaint.

On April 8, 1971, respondent International Magazine Service of the Mid-Atlantic, Inc. (IMS), filed with the examiner a motion to dismiss Paragraphs 4, 5, 6, and 7 of the complaint on the ground that the "matters covered therein are also the subject of an active, pending proceeding looking to the adoption of a trade regulation rule" concerning a cooling-off period in door-to-door sales, notice of which was published September 30, 1970 (35 Fed. Reg. 15164). The examiner certified this motion to the Commission pursuant to Section 2.33 of our Procedures and Rules of Practice. In the alternative, IMS moved that the adjudicative proceeding be stayed as a matter of administrative discretion pending disposition of the rulemaking proceeding.

We denied this motion to dismiss or stay by order issued May 26, 1971, pointing out *inter alia* that there was no overlap between Paragraphs 4, 5, and 6 of the instant complaint and the pending trade regulation rule. As to Paragraph 7, we noted that complaint counsel had made it quite clear during pretrial proceedings that this paragraph did not charge that gaining access to a potential customer's residence without prior invitation was itself an unlawful practice (Commission Opinion, May 26, 1971, Note p. 3 [78 F.T.C. 1588, 1590]). We also noted that the question of whether it is *per se* an unfair practice to fail to provide a right of cancellation in door-to-door sales is a major issue in the trade regulation rule proceeding and, therefore, to the extent this issue might be encompassed within the allegations of Paragraph 7, this issue was withdrawn from the complaint and Paragraph 7 modified *pro tanto*.

Respondents Hearst and Periodical have now also filed a motion seeking a dismissal of Paragraph 7 of the complaint. The hearing examiner denied this motion and respondents have requested leave to file an interlocutory appeal.

We believe that the examiner correctly denied this motion of respondents.

Respondents contend that the Commission, by its May 26 order modifying *pro tanto* Paragraph 7 of the complaint, withdrew from this adjudicative proceeding "all issues pertaining to the 72-hour cancellation right." We find no basis for respondents' contention. It is obvious that our May 26 order did not delete the entire paragraph but merely made clear that Paragraph 7 does not charge that failure to provide a cancellation right constitutes a *per se* violation of Section 5. It is also quite clear that the deceptive acts and practices which Paragraph 7 alleges respondents engaged in are not limited to this single issue of non-cancellable door-to-door sales transactions.

Respondents further contend that if the Commission does not dismiss Paragraph 7, they will be denied due process of law because the 72-hour cancellation right contained therein is the subject of trade regulation proceedings. A similar contention was considered and rejected by the Commission in its denial of IMS's April motion to dismiss, and respondents in the instant motion have presented no new contentions which would cause us to depart from our prior holding.

Accordingly, we find no basis for granting respondents' request for an interlocutory appeal from the examiner's denial of the instant motion and their request is, therefore, denied.

Chairman Kirkpatrick not participating.

THE HEARST CORPORATION, ET AL.

Docket 8832. Order and Opinion, Oct. 29, 1971

Order denying the appeal of two respondents from hearing examiner's order denying their motion to dismiss the complaint.

Opinion of the Commission

By Jones, *Commissioner*:

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Respondents filed a motion with the hearing examiner seeking a dismissal of this complaint. The hearing examiner denied the motion