

the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
CHOCK FULL O'NUTS CORPORATION, INC.

Docket 8884. Interlocutory Order, March 2, 1973.

Order placing on the Commission's docket for review a subpoena directed to the Secretary of the Commission and issued pursuant to an order of the administrative law judge.

ORDER PLACING ON THE COMMISSION'S DOCKET FOR REVIEW
SUBPOENA ISSUED PURSUANT TO AN ORDER OF THE
ADMINISTRATIVE LAW JUDGE

On its own motion pursuant to Section 3.23(a) of the Commission's Procedures and Rules of Practice, the Commission has determined to place on its docket for review a subpoena *duces tecum* served October 16, 1972, upon Charles A. Tobin, Secretary, Federal Trade Commission, pursuant to an order, dated October 12, 1972, of the administrative law judge. The Commission has further determined that no briefs be filed; that the review be limited to respondent's motion, dated September 28, 1972, complaint counsel's answer thereto, filed October 6, 1972, respondent's reply of October 11, 1972, to complaint counsel's answer, the order of the administrative law judge, dated October 12, 1972, and the subpoena served upon Mr. Tobin on October 16, 1972; and that the issue to be considered is whether the October 16, 1972 subpoena should be quashed; therefore

It is ordered, That the subpoena issued October 16, 1972, by the administrative law judge upon Mr. Tobin, be, and it hereby is, placed on the Commission's docket for review.

Commissioner MacIntyre abstaining.

Order

IN THE MATTER OF
CHOCK FULL O'NUTS CORPORATION, INC.*Docket 8884. Interlocutory order, March 2, 1973.*

Order quashing a subpoena directed to the Secretary of the Commission on the grounds that respondent's failed to comply with the provisions of Rule 3.36 and in view of the traditionally privileged character of the documents which the subpoena demands.

ORDER QUASHING SUBPOENA DUCES TECUM

This matter is before the Commission on its own motion. Respondent applied to the administrative law judge, pursuant to Section 3.36 of the Commission's Rules of Practice, for a subpoena *decus tecum* directed to Charles A. Tobin, Secretary, Federal Trade Commission, to produce certain documents from the Commission's records. The administrative law judge, on October 12, 1972, granted the motion and on October 16, 1972 issued the subpoena. By order of October 25, 1972, the Commission, on its own motion, stayed the return date of the subpoena, and, by order of this date, placed the subpoena on its docket for review pursuant to Section 3.23(a) of the Commission's rules.

The subpoena demands:

All charts, graphs, tables, written descriptions or summaries relating in whole or in part, to exclusive buying, quality control and pricing practices in franchise operations, prepared by or for the Commission or staff members in conjunction with the Report of the Ad Hoc Committee on Franchising, June 2, 1969, and in conjunction with any subsequent investigation of the franchise industry or any part thereof, pursuant to paragraph (1) of the attached Order.

Respondent alleges that the information sought above may be relevant to a showing that its challenged practices are not "unfair methods of competition or unfair acts or practices" stating:

* * * When complaint counsel depart from the more conventional guidelines afforded by the antitrust laws and invoke the "unfairness" provisions of Section 5, they necessarily implicate not only the practices of a particular respondent, but also similar trade practices generally. It obviously is relevant to the question whether a practice of Chock's is an unfair method of competition, whether or not the same practice is widely relied upon by other franchisors and its proscription would substantially interfere with business arrangements that enable thousands of small businessmen to become successful entrepreneurs. ("Reply to Answer in Opposition to Respondent's Motions to Produce Documents," October 11, 1972, p. 2).

The administrative law judge has determined that the infor-