

tion and promulgation of industry guides relating to packaging of toy craft and hobby products. Petition is being taken under advisement as though filed pursuant to Sections 1.6 and 1.15 of Commission's rules.

Order

Appearances

For the Commission: *Herbert S. Forsmith, Alan Rubinstein and Armando Labrada.*

For the respondent: *Aberman, Greene & Locker, New York, N.Y.*

ORDER DENYING STAY OF PROCEEDINGS PENDING CONSIDERATION
OF PETITION FOR INDUSTRY GUIDES

By letter dated September 6, 1973, counsel for Avalon Industries, Inc., addressed to the Office of the Secretary a letter designated "Petition for Industry Guides" in which a request is made that "the Commission investigate and promulgate industry guides relating to the packaging of toy craft and hobby products and that, pending such determination, it stay all pending proceedings." Apparently, because the letter requested a stay of this proceeding, the Office of the Secretary referred the letter to the administrative law judge presiding in the above-captioned adjudicative matter. Complaint counsel filed an "Argument in Opposition."

The administrative law judge treated the letter as a motion and has certified it to the Commission, concluding that it is one upon which he has no authority to rule "since the action requested is addressed to the administrative discretion of the Commission and does not involve the exercise of the adjudicative fact-finding function delegated by the Commission to the administrative law judge." In view of this determination he made no recommendation on the merits of the petition, but did recommend against any stay of hearings now set for the week of November 12, 1973.

For the benefit of respondent's counsel as well as others who practice before the Commission we think it is appropriate to call attention to the proper procedure to be followed in situations like the instant one. Petitions for Industry Guides or Trade Regulation Rules are filed with the Commission pursuant to Part I of the Commission's Procedures and Rules of Practice (Sections 1.6 and 1.15) and consideration of such petitions is made by the Commission under "Nonadjudicative Procedures" (Part II) of the Commission's Procedures and Rules of Practice. However, since a stay of an adjudicative proceeding pending Commission action on such petition would directly and immediately affect that matter, a request for such stay should be filed as a separate motion in that proceeding with the administrative law judge pursuant to Section

Order

83 F.T.C.

3.22(a) of the Commission's Rules of Practice.¹ As the law judge here properly observed, such a motion for stay is within the sole prerogative of the Commission and should then be certified by the law judge to the Commission. See *In the Matter of Philip Morris, Inc.*, Docket 8838, Order of December 6, 1971 [79 F.T.C. 1023].

In the instant matter, the Commission will take under advisement Avalon Industries' Petition for Industry Guides as though it were filed with the Commission pursuant to Section 1.6 of the Commission's Procedures and Rules of Practice. However, the Commission finds insufficient reason to stay further proceedings in this adjudicative matter pending consideration of the petition. Accordingly, the request for stay is denied.

It is so ordered.