

in this adjudicative matter pending consideration of the petition. Accordingly, the request for stay is denied.

It is so ordered.

IN THE MATTER OF
ENCYCLOPAEDIA BRITANNICA, INC., ET AL.

Docket 8908. Interlocutory Order, Oct. 24, 1973.

Order denying respondents' motion for interim suspension of adjudicatory proceeding, pending Commission ruling on their petition for initiation of proceedings for adoption of trade regulation rule governing business of selling encyclopedia and other educational books through in-home sales presentations.

Appearances

For the Commission: *Irvin D. Steinman, Donald L. Bachman, Paul L. Chassy and Lemuel W. Dowdy.*

For the respondent: *Mayer, Brown & Platt, Chicago, Ill.*

ORDER DENYING MOTION FOR INTERIM SUSPENSION OF
ADJUDICATORY HEARING

By motion filed October 12, 1973, and certified to the Commission by the administrative law judge on October 18, 1973, respondents have requested an interim suspension of the adjudicatory proceedings in this matter. The basis for the motion is a petition filed by Encyclopaedia Britannica, Inc., with the Commission under Section 1.15 of the Commission's Procedures and Rules of Practice for initiation of proceedings for the adoption of a trade regulation rule governing the business of selling encyclope-

¹ Section 3.22 provides "(a) *Presentation and Disposition*.—During the time a proceeding is before an administrative law judge, all motions therein, except those filed under § 3.42(g) [disqualification of law judge], shall be addressed to the administrative law judge, and if within his authority shall be ruled upon by him. Any motion upon which the administrative law judge has no authority to rule shall be certified by him to the Commission with his recommendation * * *."

Order

dias and other educational books through in-home sales presentations. Respondents request an interim suspension of this adjudicatory proceeding pending a ruling by the Commission on the aforesaid petition.

Upon consideration of the motion, the Commission has determined that it should be denied. Accordingly, *It is ordered*, That respondents' motion for an interim suspension of this adjudicatory proceeding be, and it hereby is, denied.

IN THE MATTER OF
LONGINES-WITNAUER INC., ET AL.

*Docket C-2120. Complaint, Dec. 21, 1971—Modified Order, Oct. 30, 1973.**
Order modifying Paragraphs 1A(1) and 1B(4) of cease and desist order issued Dec. 21, 1973,** by deleting the requirement to disclose the odds of winning each prize in a promotional sweepstakes or game of chance, or the number of individuals to whom the promotional device is being disseminated where odds cannot be accurately determined.

Appearances

For the Commission: Joan Bernstein, acting director, Bureau of Consumer Protection.
For the respondents: Lawler, Sterling & Kent, New York, N.Y. and Wilmer, Cutler & Pickering, Wash., D.C.

COMMISSIONER DENNISON, WITH WHOM COMMISSIONER JONES
JOINS, DISSENTING IN PART:

The Commission's order grants Longines' request in part by reopening the consent order and deleting the requirement in that order that requires Longines to disclose either (1) the odds of winning each prize in a promotional sweepstake or other game of chance, or (2) where odds cannot be determined accurately, the number of individuals to whom the promotional device is disseminated. The Commission does this on the premise that its recent decision in *D. L. Blair*, Docket No. 8837 [82 F.T.C. 234], constituted "a change in the law" such that Longines should be relieved of this order provision.

I cannot agree. The Commission's majority opinion in that case made it quite clear that the dismissal of a similar charge in that case (that the McDonald's Sweepstake offer had represented that participants were afforded a "reasonable opportunity" to win a

* Reported as corrected by Commission order of Dec. 11, 1973.
** For complaint and order see 79 F.T.C. 964.

Statement

83 F.T.C.

prize) was based on the facts in that case, not on a general rule of law. Among other things, the Commission noted that the entire promotional offer appeared in one issue of the *Reader's Digest* magazine with coupons bearing the winning numbers seeded among copies of that issue. There was no affirmative claim that the offer was limited to a relatively select group. The Commission believed that most participants would be acquainted with the fact that the *Reader's Digest* is a widely selling magazine with millions of readers.* This, the Commission reasoned, "should have dispelled any notion * * * that the participant had been 'selected out' to receive an entry coupon or that the sweepstake was confined to a small geographical area" (Slip Opinion, p. 10) [82 F.T.C. 234, 259].

In contrast, according to the complaint against Longines, that company's sweepstake promotion was sent through the mail headed with the bold-print representation: "SPECIAL LIMITED SWEEPSTAKES * * * BECAUSE YOU HAVE BEEN SELECTED FOR THIS INVITATION" (Complaint, p. 5) [79 F.T.C. 964, 967]. The complaint alleges, however, that in truth respondent distributed the advertising material and sweepstake offer to millions of individuals and that it did not disclose that its sweepstakes were often conducted over a period of one year or more, thereby further lessening the opportunity to win.

In my opinion, it is certainly within the realm of possibility that had the Longines' complaint been adjudicated, the Commission might have found that Longines falsely represented or suggested that participants in its promotion had a "reasonable opportunity" to win a prize as alleged in Paragraph 6(g) of the complaint. Furthermore, the Commission might have decided that it would not be sufficient simply to prohibit Longines from stating that the number of participants was limited, but that disclosure of odds or number of participants was also necessary to safeguard against future innuendo or abuses. "[T]hose caught violating the Act must expect some fencing in." *Federal Trade Commission v. National Lead*, 352 U.S. 419, 431 (1957).

In any event, in passing on this petition we are entitled to presume that such could have been the outcome, and I find nothing in the *D. L. Blair* decision which would be inconsistent with such result. Therefore, I do not concur in the Commission's decision to modify the order against Longines.

* The fact that there were some 20 million copies distributed was also shown on the front cover of all *Reader's Digest* magazines.