

IN THE MATTER OF  
KELLOGG COMPANY, ET AL.

*Docket 8883. Order, July 25, 1975*

Denial of application of respondent General Mills, Inc., for stay of commencement of  
complaint counsel's deposition program pending appeal.

*Appearances*

For the Commission: *Anthony L. Joseph.*

For the respondents: *Bierbower & Rockefeller, Howrey, Simon, Baker & Murchison and Clifford, Warnke, Glass, McIlwain & Finney, Wash., D.C. Sullivan & Cromwell and Cravath, Swaine & Moore, New York City. Chadwell, Kayser, Ruggles, McGee & Hastings and Barnett P. Ruthenberg, Chicago, Ill. C. L. Whitehill, J. J. Jenko, R. R. Heer, J. F. Finn and Robert J. Fulgency, Minneapolis, Minn. Peter J. Deluca and Bruce L. Bozeman, White Plains, N.Y.*

ORDER DENYING APPLICATION OF RESPONDENT GENERAL MILLS,  
INC., FOR STAY OF COMMENCEMENT OF COMPLAINT COUNSEL'S  
DEPOSITION PROGRAM PENDING APPEAL

This matter is before us on the application of respondent General Mills, Inc., for a stay of the commencement of complaint counsel's deposition program pending appeal.

The administrative law judge, by order dated July 15, 1975, denied respondents' joint motion to nullify the law judge's order of June 19, 1975, granting complaint counsel's application for the taking of depositions. On July 18, 1975, respondents filed a joint request under Section 3.23(b) of the Commission's Rules of Practice, 16 C.F.R. §3.23(b), and on the same day, the law judge denied the application of respondent General Mills for a stay of the taking of depositions pending appeal.

The administrative law judge's order denying respondents' motion to

nullify his previous order granting complaint counsel's application for the taking of depositions will be subject to interlocutory review by the Commission only if the order is certified by the judge and the Commission, in its discretion, permits the appeal. Rules of Practice Section 3.23(b), 16 C.F.R. Section 3.23(b), *Missouri Portland Cement Co.*, 80 F.T.C. 1035 (1972).

Even if the order was subject to interlocutory review under Section 3.23(b), it would be reversible only if there was a clear abuse of discretion, *e.g.*, *Kellogg Co.*, Docket No. 8883, Order of May 29, 1974 Denying Applications for Review at 3, and respondent General Mills has failed to make the necessary showing.<sup>1</sup>

*It is ordered*, That the aforesaid application for a stay is denied.

---