

Order

88 F.T.C.

IN THE MATTER OF

TRW, INC., ET AL.

Docket 9084. Interlocutory Order, Oct. 13, 1976

Order denying respondents' request that the Commission reconsider its decision to issue the complaint in this matter.

Appearances

For the Commission: *John M. Mendenhall.*

For the respondents: *Richard W. Pogue, Robert H. Rawson, Jr., Jones, Day, Reavis & Pogue, Cleveland, Ohio, and Joseph D. McGrath, Shaker Heights, Ohio.*

ORDER

This matter is before us upon the administrative law judge's limited certification of various motions filed by respondents requesting that the Commission reconsider its decision to issue a complaint. According to the certification, the Commission's staff failed to honor a commitment that respondents' counsel would be notified if the staff decided to recommend to the Commission that a complaint issue so that counsel could immediately seek to make a presentation to the Commission as to why a complaint should not issue. According to the ALJ,

Although it is clear that respondents have no right to such an opportunity, the fact that the staff made such a commitment places the matter in a different light. At the least, * * * the various motions, memoranda, affidavits, and related papers [which respondents assert they would have submitted to the Commission had the alleged commitment been honored] should now be certified to the Commission so that it may give consideration to them for the limited purpose of deciding whether they would have affected the decision to issue a complaint* * *.¹

The Commission has repeatedly held that once a complaint issues, only in the most extraordinary circumstances will it review its determinations that it has reason to believe a person has violated the law and that a proceeding would be in the public interest. *E.g., General Motors Corp., Dkt. 9074 (July 7, 1976); Pepsico, Inc., 83 F.T.C. 1716 (1974).* We do not believe that such extraordinary circumstances are present here since there has been no showing of prejudice to any of respondents' rights resulting from the staff's alleged failure to notify respondents. Neither the Commission's Rules nor its practice provide for precomplaint presentations to the Commission, except for consent orders. The staff cannot create such a right by agreement with a

¹ Certification to the Commission for a Limited Purpose of Respondents' Motion of August 19, 1976, to Renew Motion for Reconsideration and Related Relief and Various Other Motions and Related Papers at 3.

respondent. Each Commissioner, in the exercise of discretion, determines whether to afford proposed respondents an opportunity to be heard before voting whether to issue a complaint.

Although we have found no prejudice to respondents' rights resulting from staff's alleged breach, we wish to emphasize that Commission counsel and all other attorneys practicing before this agency are under an ethical obligation to honor all valid commitments made.

It is ordered, That respondents' request that the Commission reconsider its decision to issue the complaint in this matter be, and it hereby is, denied.

Commissioner Dole did not participate by reason of absence.

Order

88 F.T.C.

IN THE MATTER OF

LEONARD F. PORTER, INC., ET AL. — DOCKET 8964

INDIAN ARTS & CRAFTS, INC., ET AL. — DOCKET 8965

J.L. HOUSTON, INC., ET AL. — DOCKET 8966

WESTERN NOVELTY CO., ET AL. — DOCKET 8967

HERMAN KRUPP T/A OCEANIC TRADING COMPANY —
DOCKET 8968HEINZ LANGE T/A NORTHWEST ARTS AND CRAFTS —
DOCKET 8969DISMISSAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED
VIOLATION OF THE FEDERAL TRADE COMMISSION ACT*Complaints* Mar. 6, 1974 — Order, Oct. 19, 1976*

Order dismissing complaints, issued against six Seattle, Wash., and/or Portland, Ore., manufacturers and distributors of crafts and souvenir-type articles, alleging respondents misrepresented their products as being handmade in Alaska by Alaskan natives, rather than machine-made elsewhere by non-Alaskans. The Commission held that there was no adequate basis for warranting entry of orders prohibiting the alleged practices, and that the State of Alaska was in a far better position to gauge the extent of any harm and provide effective solutions.

Appearances

For the Commission: *David R. Pender, Thornton P. Percival, Thomas C. Armitage* and *Michael A. Katz*.

For the respondents: *Benjamin S. Asia, Franco, Asia, Bensussen & Coe*, Seattle, Washington, for Leonard F. Porter, Inc., et al. and Heinz Lange. *Carl Pruzan, Casey, Pruzan, Kovarik & Shulkin*, Seattle, Washington, for Indian Arts & Crafts, Inc., et al. *William K. McInerney, Jr., Short, Cressman & Cable*, Seattle, Washington, for J.L. Houston, Inc., et al. *Gary J. LeKas*, Portland, Oregon, for Western Novelty Co., et al. *Geoffrey P. Knudsen, Jones, Grey & Bayley*, Seattle, Washington, for Herman Krupp. *David Shimek, Matthews, Dunn & Baily*, Anchorage, Alaska, for Intervenor Alaska Gift Retailers' Association.

* Complaints reported as amended by administrative law judge's order dated September 5, 1974, which added the words "wood, beads, argillite" to subparagraph 6 of Paragraph 2; and added subparagraph 7 which defines the terms "etch and/or etching."