

IN THE MATTERS OF

BRISTOL-MYERS COMPANY, ET AL. D. 8917

AMERICAN HOME PRODUCTS CORPORATION, ET AL.
D. 8918

STERLING DRUG INC., ET AL. D. 8919

Dockets 8917, 8918, 8919. Interlocutory Order, Aug. 11, 1977

Denial of motion by complaint counsel for extension of time in which to file application for interlocutory appeal.

ORDER DENYING MOTION FOR EXTENSION OF TIME

Complaint counsel in these three related proceedings jointly move for an extension of time for filing with the Commission an application for interlocutory review under Section 3.23(a)(1) of our Rules of Practice. Applications for review under this provision are required to be filed "within five (5) days after notice of the Administrative Law Judge's ruling." The order from which counsel intend to appeal would grant respondents access to what are described as "two non-contemporaneous interview reports prepared by a staff attorney."

An extension of time is sought, in complaint counsel's words, "in order to seek appeal alternatively under Section 3.23(b) of the Rules," evidently because of counsel's view that the Administrative Law Judge would be inclined to rule that the question presented was suitable for interlocutory appeal. Delaying their filing under subsection (a)(1) until the filing under subsection (b) is due would assertedly "avoid the needless duplication in filing essentially identical motions before both the Commission and the Administrative Law Judge."

We have great difficulty in following complaint counsel's reasoning in this matter. An application for review under Section 3.23(a)(1) addresses itself directly to the Commission's discretion, without the necessity for a ruling by the Administrative Law Judge. On the other hand, no application may be filed with the Commission under Section 3.23(b) in the absence of:

a determination by the Administrative Law Judge in writing, with justification in support thereof, that the ruling involves a controlling question of law or policy as to which there is substantial ground for difference of opinion and that an immediate appeal from the ruling may materially advance the ultimate termination of the litigation or subsequent review will be an inadequate remedy.

Even if such a determination is made, the decision whether or not to entertain an appeal would still be committed to the Commission's

discretion; that is, the posture of the appeal would in no way have been advanced by the additional time and effort involved in pursuing subsection (b) procedures.

Moreover, the granting of complaint counsel's request would make a nullity of the 5-day time limit contained in subsection (a). Similarly situated applicants could always seek subsection (b) certification as well as a subsection (a) appeal, thereby avoiding the time constraint. Because the time limitation serves the important purpose of reinforcing the ALJ's control over the orderly progress of adjudicative hearings, we cannot countenance such a result.

It is therefore ordered, That the motion is denied.

Complaint

90 F.T.C.

IN THE MATTER OF

TRW INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT AND SECTION 8 OF THE
CLAYTON ACT*Docket 9084. Complaint, June 17, 1976 — Decision, Aug. 11, 1977*

This consent order, among other things, requires a Shaker Heights, Ohio firm, Addressograph-Multigraph Corporation, to cease interlocking directorates by seating on its board of directors any person who is simultaneously serving on the board of directors of any competitive company.

Appearances

For the Commission: *John Mendenhall* and *Paul Eyre*.

For the respondents: *Brent L. Henry* and *Robert H. Lawson, Jr.*, *Jones, Day, Reavis & Pogue*, Cleveland, Ohio for TRW Inc. *Joseph D. McGrath*, Shaker Heights, Ohio for Addressograph-Multigraph Corporation.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondents have been and are in violation of the provisions of Section 8 of the Clayton Act, as amended, and Section 5(a)(1) of the Federal Trade Commission Act, as amended, and that a proceeding in respect thereof would be in the public interest, issues this complaint, stating its charges as follows:

PARAGRAPH 1. Respondent TRW Inc. (hereinafter TRW), is an Ohio corporation and maintains its principal office at 23555 Euclid Ave., Cleveland, Ohio. TRW has capital, surplus, and undivided profits aggregating more than One Million Dollars (\$1,000,000). TRW is engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, and is engaged in or its business affects commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PAR. 2. Respondent Addressograph—Multigraph Corporation (hereinafter Addressograph) is a Delaware corporation and maintains its principal office at 20600 Chagrin Boulevard, Shaker Heights, Ohio. Addressograph has capital, surplus, and undivided profits aggregating more than One Million Dollars (\$1,000,000). Addressograph is engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, and is engaged in or its business affects commerce, as