

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

"commerce" is defined in Section 4 of the Federal Trade Commission Act.

PAR. 3. Respondent Horace A. Shepard is an individual. His business address is the same as that of TRW.

PAR. 4. On or about April 29, 1969, respondent Horace A. Shepard was elected director and chief executive officer of TRW and has served in such capacities with TRW from on or about April 29, 1969, until the present. On or about November 4, 1971, respondent Horace A. Shepard was elected director of Addressograph and has served in such capacity with Addressograph from on or about November 4, 1971, until on or about November 6, 1975.

PAR. 5. During all or part of the period January 1, 1973 through and including November 6, 1975, the business of TRW and Addressograph included, but was not limited to, the manufacture, sale and distribution in commerce of point-of-sale credit authorization equipment and teller-operated bank transaction equipment, and other such equipment used for credit validation, check cashing validation, recording of deposits and withdrawals from financial institutions, and inventory recordkeeping.

PAR. 6. By the nature of their business as hereinabove described and location of operations with respect thereto, Addressograph and TRW were competitors, concurrent with respondent Horace A. Shepard's membership on the Boards of Directors of TRW and Addressograph, during part or all of the period January 1, 1973 through and including November 6, 1975, so that the elimination of competition by agreement between them would constitute a violation of the antitrust laws.

PAR. 7. The simultaneous membership of respondent Horace A. Shepard on the Boards of Directors of respondents TRW and Addressograph constitutes a violation of Section 8 of the Clayton Act, 15 U.S.C. 19, and Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having heretofore issued its complaint charging the respondent, Addressograph-Multigraph Corporation, named in the caption hereto, with violation of Section 8 of the Clayton Act, as amended, and Section 5(a)(1) of the Federal Trade Commission Act, as amended, and the respondent, Addressograph-Multigraph Corporation, having been served with a copy of the complaint and with a copy of the notice of contemplated relief accompanying said complaint; and

The respondent and counsel for the Commission having thereafter

executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter issued an order withdrawing the matter described in the caption hereto from adjudication for the purpose of considering the proposed consent agreement pursuant to Section 3.25 of its Rules; and

The Commission, having considered the agreement and having provisionally accepted same, and the agreement containing a consent order having thereupon been placed on the public record for a period of sixty (60) days and no comments having been received by the Commission, now in further conformity with the procedure prescribed in Section 3.25 of its Rules, the Commission hereby issues its decision in disposition of the proceeding against the above-named respondent, makes the following jurisdictional findings, and enters the following order:

1. Respondent Addressograph-Multigraph Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, maintaining an office at 20600 Chagrin Boulevard, Shaker Heights, Ohio.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding, and of the respondent, and the proceeding is in the public interest.

ORDER

I

It is ordered, That Addressograph-Multigraph Corporation, its successors and assigns, shall forthwith cease and desist from having, and in the future shall not have, on its board of directors any individual who serves as a director of any other corporation if Addressograph-Multigraph Corporation and such other corporation are, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the antitrust laws.

II

It is further ordered, That within thirty (30) days of the date of

service of this order Addressograph-Multigraph Corporation shall review and retain, as to each member of its board of directors, a descriptive listing of all products and services produced or sold by each corporation of which such director serves, or has been nominated to serve, as a director. Such listing shall include the name and address of each corporation.

III

It is further ordered, That Addressograph-Multigraph Corporation, prior to each election of directors or to the solicitation of proxies for such election, shall review and retain, as to each member of its board of directors (except directors whose terms expire at the next election and who are not standing for re-election) and each nominee for a directorship (who is not then a director), a descriptive listing of all products and services produced or sold by each corporation of which such director or nominee serves, or has been nominated to serve, as a director. Such listing shall include the name and address of each corporation.

IV

It is further ordered, That Addressograph-Multigraph Corporation notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

V

It is further ordered, That Addressograph-Multigraph Corporation shall, within sixty (60) days after service upon it of this order, file with the Commission a written report setting forth in detail the manner and form in which it has complied with this order.

Interlocutory Order

90 F.T.C.

IN THE MATTER OF

AMERICAN HOME PRODUCTS CORPORATION, ET AL.

Docket 8918. Interlocutory Order, Aug. 18, 1977

Denial of complaint counsel's application for review of ALJ's order denying reconsideration of prior order which disallowed request for substitution of witnesses on previously submitted list.

ORDER DENYING APPLICATION FOR REVIEW

Complaint counsel here seek interlocutory review of a July 13, 1977 order by Administrative Law Judge Hyun, denying reconsideration of his June 14, 1977 order, which, in essence, disallowed a request for substitution of witnesses on a previously submitted list. Complaint counsel's application is filed notwithstanding the Administrative Law Judge's denial, by order of July 20, 1977, of a requested determination under Rules of Practice Section 3.23(b) which would have allowed interlocutory appeal.

Section 3.23 of our Rules, by its terms, exhausts the available avenues for interlocutory appeal to the Commission. Since no contention is or could be made that an appeal will lie in this case under subsection (a) of this section, and the requisite determination under subsection (b) was denied, there would appear to be no basis for entertaining the present application.

Complaint counsel nonetheless urge that the assertedly grave impact of the Administrative Law Judge's ruling invokes our "inherent power to review a ruling by an administrative law judge" even where the requirements of Section 3.23 are not met. As authority for the existence of such a power, they cite two rulings in *Kellogg Co., et al.*, reported at 83 F.T.C. 1756 (1974) and 86 F.T.C. 650 (1975). Both of these rulings dealt with applications, like the present one, premised upon our inherent power to review interlocutory rulings. In both instances the applications were denied. To be sure, there is language in both rulings indicating that review might be granted on a showing of clear abuse of discretion on the part of the Administrative Law Judge. 83 F.T.C. at 1758; 86 F.T.C. at 651. Another ruling in the same matter, reported at 86 F.T.C. 318, may be read as suggesting that a showing of irreparable harm to the appealing party is also requisite to its exercise. See 86 F.T.C. at 319, n. 1.

These tests are not met here. Moreover, the decision we are asked to review is peculiarly of the sort best left to the discretion of the Administrative Law Judge. Far from being an issue of "law or policy"