

Interlocutory Order

92 F.T.C.

IN THE MATTER OF

AIRCO, INC.

Docket 9098. Interlocutory Order, July 20, 1978

This order grants complaint counsel's motion seeking court enforcement of a subpoena duces tecum issued to a third-party.

ORDER GRANTING COMPLAINT COUNSEL'S MOTION SEEKING
COURT ENFORCEMENT OF SUBPOENA DUCES TECUM ISSUED TO
AIR PRODUCTS AND CHEMICALS, INC.

The administrative law judge has certified to the Commission, pursuant to Rule 3.38(b), Complaint Counsel's Motion Seeking Court Enforcement of Subpoena Duces Tecum Issued to Air Products and Chemicals, Inc. ("Air Products"), a third party to these proceedings, on September 22, 1977. The specifications as to which there is disagreement are 1(a), (b), 2, 3(b), 3(c), and 7.¹ Air Products contends that these specifications relate to information which is so confidential that it should be made available only to respondent's outside counsel. The administrative law judge, on the other hand, has determined that in addition to outside counsel, Airco's Vice President-Law, Mr. DeWahl, should have access to the information.

The ALJ's position is based on his belief that "a firm facing serious restraint of trade charges was entitled to the assistance of its house counsel familiar with its business and operations, provided he played no role in corporate affairs other than legal counsel." Certification at 3. Moreover, Airco's Vice President-Law has submitted a signed affidavit, at the ALJ's request, which provides that his duties within Airco be limited to the giving of legal advice, and that he not, in any way, participate or make decisions in the operational area. Additionally, Mr. DeWahl would be prohibited from making any notes or copies of the confidential documents.

It is the view of the Commission that the restrictions imposed by the ALJ upon respondent's house counsel represent a reasonable exercise of the law judge's discretion and provide an adequate

¹ 1. Documents sufficient to show:

(a). total net sales for each year from January 1, 1970 to date, in dollars and in units, of each relevant industrial gas sold by your company to distributors;

(b). for each year, those sales included in the response to specification 1(a) that represent sales to company-owned distributors;

2. Documents sufficient to show total net sales for each year from January 1, 1970 to date, in dollars and in units, of medical or therapy oxygen or other medical gases sold by your company.

3. Documents sufficient to show:

(a). facility fees included in the sales figures;

(b). transportation charges not included in the sales figures;

4. Documents sufficient to show all your company's prices in effect for each relevant industrial gas and the calendar period in which such prices were in effect, stated separately, to each distributor.

safeguard against use of this data in connection with the sale or marketing of Airco's products. Although cases cited by Air Products do draw a distinction between disclosure of confidential information to house counsel as opposed to outside counsel, we find those cases inapposite here in view of the restrictions imposed upon the activities of Mr. DeWahl pursuant to his affidavit. Accordingly,

It is ordered, That Complaint Counsel's Motion Seeking Court Enforcement of Subpoena Duces Tecum Issued to Air Products and Chemicals, Inc., be, and the same hereby is, granted.

Initial Decision

92 F.T.C.

IN THE MATTER OF

GOLD BULLION INTERNATIONAL, LTD., ET AL.

ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND HOBBY PROTECTION ACTS*Docket 9094. Complaint,¹ Jan. 17, 1977 — Final Order, July 25, 1978*

This order, among other things, requires a Syracuse, N.Y. importer of numismatic items and its corporate officers to cease importing, manufacturing, or distributing any numismatic item that is not plainly and permanently marked "Copy", as required by federal regulations.

Appearances

For the Commission: *Justin Dingfelder* and *Ronald G. Issac*.

For the respondent: *James R. Michal, Jackson, Campbell & Parkinson*, Washington, D.C.

INITIAL DECISION BY LEWIS F. PARKER, ADMINISTRATIVE LAW
JUDGE

FEBRUARY 13, 1978

I. SUMMARY OF PROCEEDINGS

On January 17, 1977, the Federal Trade Commission issued a complaint alleging that Gold Bullion International, Ltd. ("Gold Bullion") and its officers H. Kenneth Costello, [2] Walter N. Thompson, and William H. Bogart violated Section 2(b) of the Hobby Protection Act and Section 5 of the Federal Trade Commission Act. The complaint also named as respondents B.H. Mayer's Kunstprageanstalt of Pforzheim, West Germany, a corporation, and Bernhard H. Mayer, an officer of both Gold Bullion and B.H. Mayer's Kunstprageanstalt.

The complaint alleges that respondents, subsequent to November 29, 1973, imported into the United States for distribution in commerce privately minted copies of German 5, 10 and 20 Reichmark gold coins, Mexican 50 Peso gold coins, Austrian 100 Corona gold coins, and other gold coins. The complaint further alleges that the coins are imitation numismatic items as defined in Section 7 of the Hobby Protection Act and that the coins were not marked "copy" as required by Section 2(b) of the Act.

A prehearing conference was held on March 31, 1977 at the

¹ Complaint previously published at 90 F.T.C. 411.