

IN THE MATTER OF

KELLOGG COMPANY, ET AL.

Docket 8883. Interlocutory Order, Sept. 13, 1978

Affirmance of ALJ's order denying intervention and allowing filing of amicus curiae brief.

ORDER AFFIRMING ORDERS OF THE ADMINISTRATIVE LAW
JUDGE

On July 10, 1978, having been granted an extension of time, the American Federation of Grain Millers (AFL-CIO) ("International Union") filed an Application for Review from the Administrative Law Judge's denial of their Motion to Intervene. The Application was filed pursuant to Rule 3.23(a) of the Commission's Rules of Practice.

The complaint in this matter was filed over six years ago on April 26, 1972. As part of the relief, should a violation be found, it has been proposed that five corporate entities be divested or "spun-off" from the various respondents. Because the newly created entities would not be legally bound to hire the employees currently working for the respondents, nor be bound to adopt, preserve or maintain the level of benefits in the collective bargaining agreements, the International Union requests intervention.

Section 5(b) of the Federal Trade Commission Act and Rule 3.14 of the Commission's Rules of Practice provide for the intervention by any person, partnership, or corporation "upon good cause shown." Both provisions "clearly reflect the fact that intervention in Commission adjudications is a matter of privilege, and that its grant or denial is a discretionary matter, to be decided on the basis of the particular facts and circumstances involved in each case in which intervention is sought." *Firestone Tire & Rubber Co.*, 77 F.T.C. 1666, 1668 (1970).

As was noted by Judge Hinkes, the issue before us is similar to that in *Heublein, Inc.*, 82 F.T.C. 1826 (1973), in which the Allied Grape Growers sought to intervene for purposes of protecting their interests in a joint venture agreement with Heublein. Though we noted that Allied's contractual relations might be adversely affected by the outcome of the Commission's proceeding, we held there that Allied's concerns dealt primarily with the issue of relief rather than the issue of liability, and so limited their participation. Insofar as Allied's interests related to the competitive questions at stake in the

proceeding, we concluded that its interests would be adequately represented.

We see no reason for different treatment here. Indeed, depending on the outcome of the litigation, the International Union's concerns may prove to be premature. Rather than delay a proceeding which has been in progress for six years, Judge Hinkes has correctly provided for the filing of an amicus brief. In this way he and the Commission can have the benefit of the International Union's views, if the need arises, without complicating or delaying the proceedings.

The International Union also argues that under Rule 24 of the Federal Rules of Civil Procedure and *PepsiCo v. Federal Trade Commission*, 472 F.2d 179 (2d Cir. 1972), there is an absolute right to intervene. However, even assuming the applicability of the principle underlying Rule 24 to our proceedings, we see no basis for reaching a result different from that which obtains under the Commission's rules.

While the Commission recognizes the importance of the matters raised by the International Union, the interest which the International Union seeks to assert, *i.e.*, that of employment rights and benefits under the collective bargaining agreement, is in no way related to the alleged antitrust liability of respondents and is therefore not the proper subject for intervention. Accordingly,

It is ordered, That the Administrative Law Judge's Order Denying Motion to Intervene and Allowing the Filing of an Amicus Curiae Brief be, and the same hereby is, affirmed.

Commissioner Pitofsky did not participate.

IN THE MATTER OF
USLIFE CREDIT CORP., ET AL.

MODIFYING ORDER AND OPINION IN REGARD TO ALLEGED
VIOLATION OF THE FEDERAL TRADE COMMISSION AND TRUTH IN
LENDING ACTS

Docket 9057. Decision, May 23, 1978 — Modifying Order, Sept. 14, 1978

This order, granting and denying in part respondents' petition for reconsideration, modifies the cease and desist order issued on May 23, 1978, 43 FR 34124, 91 F.T.C. 985, by deleting from the first line of paragraph 2 the word "Failing," and inserting the word "Failing" as the first word of subparagraph (a) of paragraph 2.

ORDER GRANTING IN PART, AND DENYING IN PART,
RESPONDENTS' PETITION FOR RECONSIDERATION

An opinion and final order in this matter having been issued on May 23, 1978; respondents having been served by mail with the said opinion and order on July 19, 1978; respondents having petitioned for reconsideration of said opinion and order on August 10, 1978; and the Commission, for the reasons stated in the accompanying opinion, having determined to grant in part, and deny in part, respondents' petition for reconsideration;

It is ordered, That the final order to cease and desist be, and hereby is, modified as follows:

From the first line of paragraph 2 of the Order, delete the word "Failing."

In subparagraph (a) of paragraph 2 of the Order, insert as the first word thereof the word "Failing."

Commissioner Pitofsky did not participate.

OPINION OF THE COMMISSION

BY CLANTON, *Commissioner*:

Respondents have petitioned for reconsideration of our recent opinion and order in which we held that certain of their practices in connection with the sale of credit life and credit disability insurance violated the Truth in Lending Act ("TILA") (15 U.S.C. 1601, *et seq.*), Regulation Z (12 C.F.R. 226) and the Federal Trade Commission Act ("FTC Act") (15 U.S.C. 41, *et seq.*),

Respondents urge (1) that our interpretation of the pertinent provisions of the TILA and Regulation Z is novel and unsupportable, and that our decision rests upon supposed practices neither alleged