

Interlocutory Order

92 F.T.C.

IN THE MATTER OF

FORD MOTOR COMPANY

Docket 9105. Interlocutory Order, Nov. 16, 1978

ORDER DIRECTING ADMINISTRATIVE LAW JUDGE TO FILE
RECOMMENDATION AND SETTING DATE FOR RESPONDENT'S
ANSWER

On November 7, 1978, complaint counsel filed with the administrative law judge (ALJ) a Motion Requesting the Commission To Seek Injunctive Relief Under Section 13(b) Of The Federal Trade Commission Act. By order dated the same day, the ALJ certified the motion to the Commission because he lacked authority to rule on the request. However, the ALJ did not include the recommendation referred to in Rule 3.22(a). By motion of November 13, 1978, respondent Ford Motor Company seeks a referral of complaint counsel's motion to the ALJ or, alternatively, an extension of Ford's time to respond to the motion to and until December 1, 1978.

While recommendations have not invariably accompanied certifications in the past, and we have not insisted on receiving them, the Commission believes that the law judge in the great majority of certified motions has a unique and valuable perspective which would assist the Commission in its consideration of such motions.

In directing the ALJ to file a recommendation, we do not mean to require that he duplicate the inquiry which the Commission itself must conduct before initiating suit under Section 13(b). Rather, our intention is to afford the ALJ an opportunity to facilitate the Commission's disposition of the motion by sharing any relevant observations he might possess on the basis of the proceedings to date. Where hearings have not yet commenced, as in this case, the ALJ's assistance to the Commission may be limited to a forecast of the duration of the administrative proceeding, enabling the Commission to weigh the need for interim relief. Thus, the scope of the ALJ's consideration of the certified motion will necessarily be a function of the extent to which he is familiar with the issues and any evidence bearing upon the motion.

Because a motion for a preliminary injunction is clearly beyond the ALJ's authority we see no need for the ALJ to afford respondent an opportunity to comment on the motion to certify. However, we will extend Ford's time for filing an answer to the motion for a preliminary injunction.

It is ordered, That the administrative law judge file his recommen-

dation with respect to the motion for a preliminary injunction with the Commission by November 27, 1978.

It is further ordered, That respondent's time for filing an answer to the motion for a preliminary injunction with the Commission be extended to and until November 27, 1978.

IN THE MATTER OF
NATIONAL COMMISSION ON EGG NUTRITION, ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SECS.
5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket 8987. Decision, July 20, 1976 — Modifying Order, Nov. 17, 1978

This modified order to cease and desist replaces the order issued on July 20, 1976, 41 FR 34939, 88 F.T.C. 89. In accordance with the November 29, 1977 decision and judgment of the Court of Appeals for the 9th Circuit, as amended on December 6, 1977 (570 F.2d 157 (1977)), the instant order mandates disclosure of controversy among medical experts as to the relationship of dietary cholesterol, including that in eggs, to heart and circulatory disease only when NCEN chooses to make a representation regarding the state of the available evidence or information concerning the controversy.

MODIFIED ORDER TO CEASE AND DESIST

Respondents, having filed in the United States Court of Appeals for the Seventh Circuit petition for review of the Commission's cease and desist order issued herein on July 20, 1976; and the Court having rendered its decision modifying the Commission's order and, as so modified, affirming and enforcing the order; and the Supreme Court of the United States having denied on October 2, 1978, a petition for writ of certiorari filed by the National Commission on Egg Nutrition:

Now, therefore, it is hereby ordered, That the aforesaid order to cease and desist be, and it hereby is, modified in accordance with the decision and judgment of the Court of Appeals to read as follows:

It is ordered, That respondents National Commission on Egg Nutrition and Richard Weiner, Inc., corporations, their successors and assigns, either jointly or individually, and respondents' officers, agents, representatives, and employees directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of eggs for human consumption do forthwith cease and desist from:

A. Disseminating or causing the dissemination of any advertisement by means of the United States mail or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which directly or indirectly

1. Represents that there is no scientific evidence that eating eggs increases the risk of heart attacks, heart disease, atherosclerosis, arteriosclerosis, or any attendant condition;

2. Represents that there is scientific evidence that dietary cholesterol, including that in eggs, decreases the risk of heart