

Interlocutory Order

IN THE MATTER OF

SUNKIST GROWERS, INC.

Docket 9100. Interlocutory Order, Nov. 17, 1978

ORDER DENYING REQUEST FOR REIMBURSEMENT OF
REPRODUCTION EXPENSES

The administrative law judge has certified to the Commission respondent's request for payment of costs incurred pursuant to reproduction of documents produced in response to a subpoena *duces tecum* issued on February 17, 1978. That subpoena called for production of certain documents in Sunkist's possession for inspection and copying by complaint counsel. Return of the subpoena was ordered to be made in Los Angeles and Sunkist apparently offered to undertake the photocopying of those documents identified by complaint counsel. There is some dispute, however, over whether or not complaint counsel offered to reimburse respondent for its efforts. Sunkist contends that complaint counsel agreed that Sunkist was to be reimbursed for the copying and that \$.10 per page was a reasonable charge.¹ Complaint counsel affies that he agreed only that it was reasonable for Sunkist to request reimbursement of reproduction expenses from the Commission, and that he made clear to Sunkist's counsel that only the Commission could authorize reimbursement.

The Commission Rules make no provision for payment of reproduction expenses incurred by a respondent in connection with a Commission proceeding. Moreover, service contracts involving the expenditure of agency funds must be executed by an individual possessing authority to enter into a contract on behalf of the Commission.² Thus, assuming *arguendo* that complaint counsel did enter into an otherwise proper contract with respondent's counsel, the law is clear that the Commission is not bound by the unauthorized acts of its employees.³ Accordingly,

It is ordered, That respondent's motion is denied.

¹ It appears from the affidavit filed by respondent's counsel that Sunkist first suggested that the copying be done on its facilities and that complaint counsel agreed with this suggestion.

² Under Federal Procurement Regulation § 1.404-2, 41 C.F.R. 1.404-2 (1977), each agency designates its contracting officials. See *The Federal Trade Commission Procurement and Contracting Guidelines*, June, 1978.

³ *Federal Crop Ins. Corp. v. Merrill*, 332 U.S. 380, 384 (1947) ("Whatever the form in which the Government functions, anyone entering into an arrangement with the Government takes the risk of having accurately ascertained that he who purports to act for the Government stays within the bounds of his authority."); *Albrechtsen v. Andrus*, 570 F.2d 906 (10th Cir. 1978).

Interlocutory Order

92 F.T.C.

IN THE MATTER OF

16 CFR 461; CHILDREN'S ADVERTISING. 43 FR 17967
(1978)

TRR 215-60. Interlocutory Order, Nov. 17, 1978

ORDER DENYING PETITIONS TO RECONSIDER

The Commission has before it, upon certification by the presiding officer, three petitions¹ urging that it suspend proceedings in this matter and reconsider all actions previously taken by the Commission herein. A fourth petition requests that the proceedings be delayed and that the presiding officer step aside or be removed by the Commission.² The petitions have been filed in light of the decision of the District Court in *Association of National Advertisers, Inc., et al. v. Federal Trade Commission, et al.*, No. 78-1421 (November 3, 1978), ordering that Chairman Pertschuk cease further participation in this proceeding.

Except to the extent noted herein, the petitions are denied for the following reasons:

1. As a preliminary matter, we note that the District Court did not order that the Commission take the action requested by petitioners in order to eliminate the "taint" believed by the Court and petitioners to result from the Chairman's participation, nor does it appear to the Commission that the Court was of the view that action of this sort might be necessary. In ordering that the Chairman withdraw from further participation, the Court concluded that its immediate intervention was required because "*continued* participation of the Chairman would render the proceedings void and so irrevocably tainted that any final determinations which might flow from such proceedings would be invalid" (Opinion, p.5, emphasis added.) In resolving only to order disqualification of the Chairman, the Court had before it plaintiffs' prayer that it suspend and order reconsideration of the entire proceeding. Complaint Prayer ¶4, p.7. The Court did not grant the requested relief. Accordingly, we reject any suggestion that reconsideration of our decision or modification of

¹ "The Chocolate Manufacturers Association's Petition to Reconsider the Proposal and Procedures Previously Announced for this Proceeding in Light of the Disqualification of the Chairman;" "Petition for Reconsideration and Redetermination of the Decision to Commence the Children's Advertising Trade Regulation Rule Proceeding and of All Decisions Made Subsequent Thereto in Which the Chairman Participated and for Postponement of Proceedings," filed by American Association of Advertising Agencies, Association of National Advertisers, Inc., American Advertising Federation, Toy Manufacturers of America, Inc., Association of Independent Television Stations, Inc., and National Association of Broadcasters; "Kellogg Company's Petition to Rescind and Withdraw the Initial Notice of Proposed Rulemaking, and to Reconsider All Matters Which the Commission has Previously Decided in Connection with this Proceeding, in Light of the Disqualification of the Chairman."

² "GMA Motion for Extension of Deadline and Notice of Cause to Believe that Grounds Exist for Disqualification of Presiding Officer."