

IN THE MATTER OF
SEARS, ROEBUCK AND CO., ET AL.

Docket 9104. Interlocutory Order, Nov. 22, 1978

ORDER REJECTING CERTIFICATION AND DENYING MOTION TO
STAY PROCEEDING

Respondent Sears, Roebuck and Co. (Sears) on September 25, 1978 moved before the administrative law judge (ALJ) for an order certifying a consent agreement executed by Sears but not agreed to by complaint counsel. By order of November 7, 1978, the ALJ certified the consent agreement to the Commission expressing the belief that the proposed consent order should be brought to the attention of the Commission because it raised a "law enforcement policy matter beyond the province of the law judge which only the Commission can properly evaluate." Although complaint counsel asserts that this language fails to meet the mandate of Rule 3.25(b), requiring that the law judge find a likelihood of settlement before certifying such orders to the Commission, we believe that a fair reading of the certification as a whole reflects the ALJ's conclusion that resolution of the proceeding on the basis of the proffered order is likely.¹

Respondent's settlement proposal differs from the notice order attached to the complaint in that it is limited in coverage to dishwashers, the performance of which was allegedly misrepresented by respondent. By contrast, the notice order applies to "major home appliances" which "includes (but is not limited to) air conditioning units (room or built-in); clothes washers; clothes dryers; disposers; dishwashers; trash compactors; refrigerators; refrigerator/freezers; freezers; ranges, stoves, and ovens, stereophonic consoles and nonportable stereophonic sound systems and components; television receivers; and room humidifiers and dehumidifiers." [Notice Order, Part II, 5.] Additionally, the proposed agreement filed by Sears requires the Commission to act on a motion to modify the consent order within certain time periods if the Commission promulgates a trade regulation rule or guide concerning the practices covered by the order and where the rule or guide is less restrictive than the order.

¹ We would point out, however, that the law judge is within his authority to comment on the adequacy of any proposed settlement in light of the evidence presented in the case as well as outstanding orders of a similar nature involving other respondents. The ALJ's analysis of particular order provisions in the context of a certification under Rule 3.25(d) (irrespective of whether those provisions are addressed to specific violations of record or offered as "fencing-in" provisions) is not dramatically different from the analysis which the ALJ must perform when he considers the issue of relief in the course of his initial decision.

Given the significance of effective relief, the Commission is unwilling to conclude that the circumstances of this matter, which is now in the midst of trial, warrant no relief beyond the "single product" order proposed by Sears.² While respondent, of course, has not been adjudicated in violation of Section 5, we believe it is important to reiterate the prevailing standard for relief, as noted in *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 394 (1965), a case in which the Court declined to modify an "all products" order:

[t]he propriety of a broad order depends upon the circumstances of the case, but the courts will not interfere except where the remedy selected has no reasonable relation to the unlawful practices found to exist. . . . Having been caught violating the Act, respondents "must expect some fencing in." (Citation omitted.)

Since this matter will not be withdrawn from adjudication, there is no need to delay conclusion of the administrative proceeding. Accordingly,

It is ordered, That the certification is rejected and that respondent's motion for a stay of the proceedings is denied.

² The Commission disagrees with respondent's reading of the consent order entered in *General Electric Co.*, Dkt. 9049. Part I of that order requires respondent, *inter alia*, to have a reasonable basis with respect to certain performance representations when utilized in connection with the advertising of some twelve different categories of household products, including dishwashers. Yet, the complaint in that matter challenged these practices only in the context of advertising for color television sets. Similarly, Part II of the consent agreement accepted on October 20, 1978, in *Norris Industries*, File 782 3065, [Decision and Order, 92 F.T.C. 989] contains a "reasonable basis" requirement for representations relating to the performance of major home appliances, as defined in the order to include dishwashers, garbage disposers, trash compactors, and microwave ovens, despite the fact that the complaint recites alleged unfair and deceptive practices associated only with the advertising and sale of dishwashers.

IN THE MATTER OF
CORNING GLASS WORKS, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-2937. Complaint, Nov. 27, 1978 — Decision, Nov. 27, 1978

This consent order, among other things, requires a Corning, N.Y. manufacturer and distributor of disposable glass culture tubes to make a bona fide effort to identify and provide proper restitution to eligible end-user customers who had failed to receive the amount of disposable glass tubes specified on packaging.

Appearances

For the Commission: *David C. Cameron.*

For the respondent: *Stephen C. Taylor, Los Angeles, Calif.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Corning Glass Works, a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Corning Glass Works is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at Houghton Park, Corning, New York.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the manufacture, distribution, and sale of disposable glass culture tubes.

PAR. 3. In the course and conduct of its business as aforesaid, respondent now maintains, and at all times mentioned herein has maintained, a substantial course of trade in its aforesaid products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of its aforesaid products, respondent has made, and is now making, various statements and representations on boxes, cartons, or packages containing such products and on invoices relating to the delivery or sale of such products to purchasers or prospective purchasers with respect to the