

Interlocutory Order

92 F.T.C.

IN THE MATTER OF

ADVERTISING FOR OVER-THE-COUNTER ANTACIDS

TRR 215-56. Interlocutory Order, Nov. 30, 1978

ORDER AFFIRMING THE PRESIDING OFFICER'S FINAL NOTICE

The Commission, having received pursuant to Rule 1.13(c) (2)(ii) a petition from the Proprietary Association appealing from the designation of issues in the presiding officer's final notice of proposed rulemaking, hereby affirms the decision of the presiding officer. In the final notice, 43 F.R. 38849 (August 31, 1978), the presiding officer declined to designate any issues for cross-examination pursuant to Rule 1.13(d)(1). Instead, he propounded seven questions to which the attention of all interested persons was directed.

The Commission agrees that none of the issues proposed for designation meets the standard of Rule 1.13(d)(1)(i) because they are not disputed issues of material fact that are necessary to resolve, within the meaning of 15 U.S.C. 57a(c)(1)(B). Nevertheless, as an exercise of its discretion and in an attempt to create as complete a record as possible, the Commission has directed the presiding officer to afford ample opportunity for cross-examination on the important issues raised in this proceeding.

IN THE MATTER OF

KELLOGG COMPANY, ET AL.

Docket 8883. Interlocutory Order, Nov. 30, 1978

ORDER DENYING MOTION TO DISQUALIFY

Respondents Kellogg Company and General Mills, Inc., have moved that Chairman Pertschuk disqualify himself, or alternatively, that the Commission determine that he is disqualified from participating in any proceeding in this matter. In response, Chairman Pertschuk has filed a memorandum declining to disqualify himself from the proceedings and setting forth the reasons therefor.

Upon consideration of respondents' motions and the Chairman's memorandum, the Commission has determined that no grounds exist for granting the requested relief. Accordingly,

It is ordered, That respondents' motions to disqualify be, and the same hereby are, denied.

Chairman Pertschuk and Commissioner Pitofsky did not participate.

MEMORANDUM OF CHAIRMAN PERTSCHUK IN RESPONSE TO
MOTION TO DISQUALIFY HIM FROM PARTICIPATION IN THIS
PROCEEDING

Respondents Kellogg Company ("Kellogg") and General Mills, Inc. ("General Mills") have filed motions asking that I disqualify myself, or that the Commission determine that I am disqualified, from further participation in this proceeding. For the reasons stated below I believe my participation in this case is proper, and decline to disqualify myself.

In support of their contention that I have made statements creating the appearance of partiality and prejudgment in this matter, Kellogg and General Mills rely on a quote from the Battle Creek Enquirer and News, June 24, 1977, at B1, col.1 (Connelly Aff. ¶2; Savarese Aff. ¶3). There, in an article published under the byline of the Gannett News Service, I am reported to have said:

[W]inning the cereal case would "be an enormous help. . . It just depends how you win it, what you win, what kind of remedy you fashion."