

Interlocutory Order

92 F.T.C.

IN THE MATTER OF
FORD MOTOR COMPANY

Docket 9105. Interlocutory Order, Dec. 4, 1978

ORDER REQUESTING FILING OF ADDITIONAL BRIEFS

By motion of November 7, 1978, complaint counsel has requested that the Commission seek a preliminary injunction compelling Ford Motor Company to disclose certain facts concerning 1974-78 model year four-cylinder vehicles which complaint counsel alleges are afflicted with a latent defect resulting in premature camshaft/rocker arm wear. Ford subsequently filed an opposition to that motion and, in a supplement thereto filed on November 29, 1978, informed the Commission of certain steps it was taking to notify affected owners of the problem. Ford alleges that this action further supports Ford's position that the proposed injunction action would not be in the public interest. Ford further described its intended notification and adjustment program in a motion filed on November 30, 1978, in which it reiterated certain concerns regarding the possible occurrence of *ex parte* communications in violation of Section 4.7 of the Commission's Rules of Practice.

Before any action is taken with respect to complaint counsel's motion, and in order to assess Ford's contention that its intended notification and adjustment program indicates that the proposed injunction action is not in the public interest, the Commission would like to receive further information regarding the precise parameters of respondent's program including the existence of any conditions attached to that program.¹ The Commission particularly requests respondent to submit the text of the letter which Ford proposes to send to vehicle owners, indicating when such letter will be mailed. Ford should describe with specificity the categories of individuals to whom the letter will be sent, indicating whether prospective purchasers of new and used vehicles from Ford dealers will be notified. If respondent's intended rocker arm/camshaft notification and adjustment program differs from the program instituted in 1977 with respect to piston scuffing, the reason for such differences should be provided. The Commission also requests a copy of any instructions sent to Ford dealers advising them of the adjustment program, in addition to the mailgram attached to respondent's filing of November 3, 1978. Accordingly,

¹ While an oral hearing before the Commission would suffice to inform the Commission of the details of Ford's program without raising *ex parte* difficulties, it is the Commission's view that the requisite information can be obtained through additional briefs and that a hearing is unwarranted at this time.

It is ordered, That respondent is requested to file a supplemental brief on or before December 11, 1978, and that complaint counsel may file a response thereto on or before three days following service of respondent's supplemental brief.

Interlocutory Order

92 F.T.C.

IN THE MATTER OF

KELLOGG COMPANY, ET AL.

Docket 8883. Interlocutory Order, Dec. 8, 1978

This order remands this matter for appointment of a substitute ALJ to preside over further proceedings; directs the filing of briefs by all parties; dismisses as moot motions for disqualification of the Chairman from participation and the motion for evidentiary hearing or oral argument; denies motion for issuance of subpoenas; and terminates a stay of proceedings entered October 20, 1978.

ORDER

At the present time, the Commission has before it respondents' motions to disqualify the administrative law judge, Kellogg's motion for an evidentiary hearing, or, alternatively, for oral argument on its disqualification motion, Kellogg's motion (joined by General Mills) for the issuance of subpoenas *duces tecum*, complaint counsel's motion seeking the appointment of a substitute administrative law judge and an order directing that the proceedings be resumed "from the point at which Administrative Law Judge Harry R. Hinkes retired," and a motion for dismissal or other alternative relief filed by General Mills.

I.

After a careful review of the submissions of the parties and the pertinent legal authorities, the Commission has concluded that Judge Hinkes became "unavailable" within the meaning of 5 U.S.C. 554(d) upon his retirement on September 8, 1978. Because his reappointment on a contractual basis was not approved by the Civil Service Commission, see 5 U.S.C. 1305 and 3105, and Civil Service Commission regulations adopted pursuant thereto, his service subsequent to September 8, 1978, once objected to by respondents, *cf. United States v. L. A. Tucker Truck Lines, Inc.*, 344 U.S. 33, 37-38 (1952), was of questionable validity. Accordingly, and in view of the Chairman's determination not to seek Civil Service Commission approval of the existing contractual arrangement or any other employment arrangement with Judge Hinkes, the matter must be remanded for the appointment of a substitute ALJ to preside over further proceedings. Therefore, respondents' motions requesting Judge Hinkes' disqualification are dismissed as moot. Kellogg's motion for an evidentiary hearing, or, in the alternative, for oral argument is also dismissed as moot.

Complaint counsel have requested the Commission to include a