

IN THE MATTER OF
HASTINGS MANUFACTURING COMPANY

Docket 4437. Interlocutory Order, Oct. 22, 1979

ORDER DENYING RESPONDENT'S REQUEST FOR CONFIDENTIAL
TREATMENT OF ITS PETITION TO REOPEN AND RELATED
FILINGS

At the close of its Reply filed on July 31, 1979, respondent Hastings Manufacturing Company requested that its petition to reopen this proceeding and related filings be kept confidential. It argued that the filings "outline areas of vulnerability in Hastings' ability to compete, i.e., the inability to offer a stock lift," and that such information, if made public, could be used by Hastings' competitors to "seriously injure" the firm. The Commission immediately placed the documents *in camera* pending consideration of Hastings' request. On September 6, 1979, the Commission ordered the parties to rebrief the question, *inter alia*, of what legal or factual basis might exist for granting the confidentiality request. Hastings filed additional briefs pursuant to this order on October 1 and 15, 1979, but in them declined to elaborate on the conclusory rationale for confidential treatment that it had advanced earlier.

The Commission's Rules of Practice and the case law establish a strong presumption in favor of opening adjudicative proceedings to the public and making pleadings, exhibits, and other papers in such proceedings available for public inspection. 16 C.F.R. 3.41(a), 4.9(b)(4); *E. Griffiths Hughes, Inc. v. FTC*, 63 F.2d 362, 363-64 (D.C. Cir. 1933); *H. P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1186 (1961). The presumption can be overcome, and information placed *in camera*, "only in those unusual and exceptional circumstances when good cause is found on the record." 16 C.F.R. 3.45(b).

Respondent Hastings has failed to establish the presence of such circumstances here. The information that Hastings seeks to protect — namely, references to its inability to offer stock lifts to its customers — has long been a matter of public record. Hastings' inability to offer stock lifts is the direct result of a Commission cease-and-desist order specifically prohibiting the practice. The public has continuously had access to that order for over 30 years through the official published reports of the Commission and the Court of Appeals. *Hastings Manufacturing Co.*, 39 F.T.C. 498 (1944), *aff'd*, 153 F.2d 253 (6th Cir. 1946). Indeed, Hastings has not even attempted to argue that placing the petition and related filings on the public record would disclose a theretofore confidential fact. Instead, Hast-

ings has asserted that such an action would unfairly spotlight and "further emphasize" the fact.

The Commission is aware of no precedent or legal authority for placing adjudicative filings *in camera* in such circumstances, and respondent has pointed to none in its briefs. In fact, since the petition and related filings appear to contain no information that would fall within any of the exemptions to the Freedom of Information Act (5 U.S.C. 552(b)), the Commission would be obliged to produce them to any member of the public who requested access to them.

For the above reasons, the Commission hereby denies respondent's request for confidential treatment of the petition and related filings. Accordingly,

It is ordered, That five days from the date of this order, the Secretary shall place on the public record this order, respondent's petition to reopen this proceeding and all subsequently filed briefs, orders, and other papers relating to the petition.

It is further ordered, That immediately upon issuance of this order, the Secretary shall telephone respondent's counsel and read the order to such counsel.

IN THE MATTER OF
TRANS WORLD ACCOUNTS, INC., ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 9059. Final Order, Oct. 25, 1977 — Modifying Order, Oct. 25, 1979

This order further modifies the Commission's July 25, 1979 "Modified Order to Cease and Desist," 44 FR 49650, 94 F.T.C. 141, by inserting paragraph 3 which had been omitted pending its reformulation in accordance with the March 29, 1979 mandate of the Court of Appeals for the 9th Circuit.

ORDER ON REMAND

This matter is before the Commission upon remand from the Ninth Circuit Court of Appeals, which affirmed the Commission's findings of violation and enforced the order entered by the Commission save for paragraph 3 thereof. As to that paragraph, the Court remanded to the Commission for reformulation.

The Commission found, *inter alia*, that Trans World Accounts has misrepresented the imminency of legal action in its form collection letters, implying therein that legal action would be taken within very short periods of time following refusal by the alleged debtor to pay a debt, when, in fact, the only response to nonpayment by Trans World would be to send another letter in its form series.

Paragraph 3 of the Commission's order prohibited both misrepresentations of the imminency of legal action, *and* of its likelihood. This was intended to eliminate misrepresentations of the imminency of legal action, and to "fence-in" related misrepresentations of the *likelihood* of legal action. In remanding this order provision, the Court of Appeals applied the terms "vagueness and overbreadth" to that portion of the order fencing-in misrepresentations of the likelihood of legal action. Respondents argue that the Court held that a showing of misrepresentations of the imminency of legal action was insufficient to justify any fencing-in order as to the likelihood of legal action. Complaint counsel argue that the Court made clear that the Commission was not powerless to fence-in misrepresentations of the likelihood of legal action, but merely objected to the manner in which the Commission had done so.

From the Court's opinion, we are not entirely sure what is the source of its objection to the breadth of the Commission's order. Both sides have offered plausible interpretations. For the reasons noted