

Interlocutory Order

95 F.T.C.

IN THE MATTER OF
AMREP CORPORATION

Docket 9018. Interlocutory Order, Feb. 19, 1980

ORDER DENYING MOTION FOR A HEARING TO INTRODUCE EVIDENCE,
COMMENT AND ARGUMENT CONCERNING *EX PARTE* COMMUNICATIONS

By motion dated January 23, 1980, respondent AMREP Corporation requests an opportunity for comment and an evidentiary hearing on *ex parte* communications between the investigative and prosecutorial staff and the Commission in this proceeding. The respondents' motion also requests leave to introduce evidence as to whether all *ex parte* communications concerning matters litigated in this case have been disclosed to the respondent. Finally, AMREP seeks to place into evidence communications that are not part of the record.

The respondent argues that its motion for comment and a hearing on *ex parte* matters finds support both in *AMREP v. Pertschuk*, No. 79-0491 (D.D.C., filed April 6, 1979), *appeal docketed*, No. 79-1592 (D.C.Cir. 1979) and in the Commission's order of July 12, 1979. We agree that the court's opinion and our order affirmed the respondents' right to comment on *ex parte* communications. Nevertheless, it was apparent in both instances that such comments were to be made in the course of the Commission's normal appellate procedure. The respondent should thus have been well aware that its opportunity to address *ex parte* matters was in its appeal brief and, to the extent full discussion would have required, in its answer and reply briefs. *See* Rule 3.52. Furthermore, while the court's opinion and our order noted that the Commission was empowered to take evidence on appeal, they did not indicate the respondent had any right to an evidentiary hearing. Rule 3.54 makes it clear, in fact, that such hearings are to be held only if the Commission deems them necessary.

Here, AMREP has evidently decided to forego its right to address *ex parte* matters in the context of normal appellate procedures. It has instead raised the issue in a motion filed eleven days after its answer brief. The motion does not explain what the nature of its comments on *ex parte* communications might be, why it feels any evidentiary hearing is required, or even why it waited until the eleventh hour to seek such relief. At this late stage in the proceedings, the Commission is not prepared to grant the respondents' requests on such an insubstantial showing.

We are similarly unprepared to grant AMREP's request to introduce evidence as to whether it has been fully informed of all *ex parte* communications concerning matters in litigation before the agency.

The respondent has already received assurances from counsel representing the Commission in *AMREP v. Pertschuk* that all such communications have been disclosed. Indeed, in his opinion disposing of the case, Judge Gasch concluded that "all existing *ex parte* communications even remotely related to [AMREP] have been disclosed and placed on the public record."

The final aspect of AMREP's motion is its request to place into evidence all *ex parte* communications not previously made part of the record. The communications involved in this request are few in number and unrelated to the facts at issue in the matter before us on appeal.¹ Therefore, nothing in the Commission's rules would require us to place the communications on the record. AMREP has, moreover, offered us no indication as to the purpose or the significance of its request. However, while we do not believe that the communications should be introduced into evidence, we have no objection to the communications being placed on the record.² Accordingly,

It is ordered, That all *ex parte* communications not previously placed on the record be placed on the record, and

It is further ordered, That in all other respects the respondents' motion be, and hereby is, denied.

¹ Illustrative of the communications involved are a Commission minute of May 17, 1978 authorizing the Bureau of Consumer Protection to submit comments to Federal District Court Judge Lasker on civil cases involving AMREP, and a March 13, 1979 affidavit by John F. Dugan to the effect that specific land sales cases were not discussed at a Commission budget meeting.

² Rule 4.7(c) requires *ex parte* communications to be placed in the docket binder of the proceeding, but prohibits the Commission from considering them for purposes of its decision. Because all other *ex parte* communications are in this category, we deem it appropriate for those documents to be located in the same place.

Complaint

95 F.T.C.

IN THE MATTER OF
AMF INCORPORATED

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

Docket C-3011. Complaint, Feb. 21, 1980—Decision, Feb. 21, 1980

This consent order requires, among other things, a White Plains, N.Y. manufacturer and seller of bicycles, tricycles and other two- or three-wheeled non-motorized vehicles to cease, in connection with the advertising and sale of its products, from representing young children or others riding or operating such vehicles in an improper, unsafe or unlawful manner. The firm is also prohibited from representing any person riding a minibike in traffic unless such operation is permitted by applicable traffic laws and regulations. The order further requires the firm to timely produce two or more versions of a bicycle safety message with the advice, assistance and approval of three independent individuals experienced or knowledgeable in bicycle safety, children's advertising and children's television programming; provide a film of such message to specified television broadcasting stations throughout the country; and monitor the message for four months to ensure that it reaches a designated number of children. Should the message fail to reach the specified audience level, respondent is required to distribute the film for airing by a second group of T.V. stations.

Appearances

For the Commission: *Louise R. Jung* and *John G. Siracusa*.

For the respondent: *Hugh Latimer, Bergson, Borkland, Margolis & Adler*, Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that AMF Incorporated, a corporation, hereinafter 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:

PAR. 1. Respondent AMF Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its office and principal place of business located at 777 Westchester Ave., White Plains, New York.

Respondent's Wheel Goods Division is principally responsible for the