

IN THE MATTER OF
GENERAL FOODS CORPORATION

Docket 9085. Interlocutory Order, March 28, 1980

ORDER REMANDING MOTION FOR COURT ENFORCEMENT OF SUBPOENA

The administrative law judge has certified to the Commission a motion by General Foods for court enforcement of a subpoena *duces tecum* issued jointly to Jorge Wolney Atalla, as Chairman of the Board of Hills Bros. Coffee, Inc., and to Copersucar, c/o Jorge Wolney Atalla. The administrative law judge recommends that court enforcement be limited to Specifications 4 and 5, since he believes the other specifications are either duplicative or call for nonessential material. In brief, Specifications 4 and 5 request documents concerning the reasons for Copersucar's acquisition of Hills Bros. and the changes made in Hill Bros.' operations by Mr. Atalla or Copersucar.

Copersucar and Hills Bros. have raised two issues concerning the enforceability of this subpoena. First, Copersucar contends that, insofar as the subpoena seeks documents located in Brazil, it exceeds the Commission's statutory authority under Section 9 of the Federal Trade Commission Act, which provides that "the production of . . . documentary evidence may be required from any place in the United States." Copersucar's interpretation notwithstanding, Section 9 authorizes the Commission to subpoena documents located abroad, as well as documents located anywhere within the United States. *FTC v. Compagnie de Saint-Gobain-Pont-A-Mousson*, Misc. No. 78-0194 (D.D.C., filed Feb. 14, 1980); cf. *CAB v. Deutsche Lufthansa Aktiengesellschaft*, 591 F.2d 951 (D.C. Cir. 1979); *FMC v. DeSmedt*, 336 F.2d 464 (2d Cir.), cert. denied, 385 U.S. 974 (1966). Thus, nothing in Section 9 would preclude enforcement of the subpoena.

Second, Hills Bros., acting on Mr. Atalla's behalf, has objected that the subpoena was not served in compliance with Rule 4.4(a)(1)(i) of the Commission's Rules of Practice, which require that service by mail of complaints, orders and other process under Section 5 be made to a person or corporation at his, her, or its residence or "principal office or place of business." The ALJ has read the rule to authorize service either at the principal office or *any* place of business of the party to be served. Hills Bros. contends that the word "principal" qualifies both "office" and "place of business," and that Hills Bros.' headquarters do not constitute Copersucar's or Mr. Atalla's principal place of business. We agree with Hills Bros.' interpretation of the rule.¹ This conclusion

¹ Rule 4.4(a)(1)(i) is derived from Section 5(f) of the Federal Trade Commission Act. While we have found no cases directly on point and the legislative history is silent, there are persuasive grounds to infer that our interpretation of

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does not settle the question of service, however, since it might also be argued (1) that Rule 4.4(a)(1)(i) is satisfied by service on a foreign corporation's principal place of business in the United States, and that Hills Bros. constitutes Copersucar's principal place of business in the United States; or (2) that the more lenient provisions of Rule 4.4(a)(2) govern service in this instance.

We do not reach these issues, which have not been fully briefed by the parties, because we find it necessary to remand the matter to the ALJ for further proceedings on the more basic issue of personal jurisdiction. While the Commission's subpoena authority may reach beyond the borders of the United States, it is not without limits. At a minimum, the enforceability of Commission subpoenas is circumscribed by the authority of an enforcement court, under Section 9, to exercise personal jurisdiction over the subpoena recipient. It would be a hollow gesture for us to authorize enforcement of a subpoena without even a threshold showing that the subpoenaed party is likely to be amenable to the jurisdiction of the enforcement court. Moreover, the fact that the assertion of enforcement jurisdiction over companies and documents located abroad may affect the interests and policies of foreign governments and raise questions of international comity warrants at least a threshold jurisdictional inquiry.

The information we have been given here is too sketchy to inspire confidence that even a colorable claim of jurisdiction over Copersucar can be maintained. The company is located in Brazil and purports to have no holdings in the United States other than Hills Bros. It is true that Hills Bros. is wholly owned by Copersucar and that Mr. Atalla, evidently one of Copersucar's principal investors, is the Chairman of the Board of Hills Bros. However, we are also told that, according to a "formal interview," Hills Bros. is "fairly autonomous" of Copersucar and that Mr. Atalla comes to San Francisco but once a year, staying only briefly before returning home to Brazil. These few facts are insufficient by themselves to warrant the assertion of enforcement jurisdiction over Copersucar where, as here, it is neither the target of a Commission investigation, nor charged with a violation of Section 5 of the Federal Trade Commission Act or any other statute administered by the Commission.

the language in the rule and statute is in accord with congressional intent. The terms "principal office" and "principal place of business" are used commonly in corporation codes, bankruptcy laws, and jurisdictional statutes. However, in some contexts, what qualifies as a principal office may not necessarily be a principal place of business. See *1 Moore's Federal Practice*, §0.77[2-1]. It thus seems reasonable to assume that Congress combined the two formulations in Section 5(f) to ensure that service would be upheld regardless of the category into which the place of delivery was deemed to fall. This interpretation ensures both that service is proper and that process is delivered to responsible employees of the business concerned. If, on the other hand, the ALJ's interpretation were to be accepted, service would be upheld when made at any place of business, no matter how ill-equipped it might be to process a subpoena or transmit it quickly to appropriate company officials.

Since the jurisdictional issue was not squarely presented below, we remand to the ALJ for further proceedings on this question. As the party that seeks documents from Copersucar, General Foods will have the burden of establishing a reasonable basis for the Commission to invoke the exercise of a district court's enforcement jurisdiction. In cases involving nonresident corporations, the appropriate test is whether the party concerned has sufficient contacts with the forum that the exercise of personal jurisdiction "does not offend traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945), quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940); *Honeywell, Inc. v. Metz Apparatewerke*, 509 F.2d 1137, 1143-44 (7th Cir. 1975); see also *Restatement (Second) of Conflict of Laws* §§10, 50, 52 (1969). General Foods may be able to demonstrate that personal jurisdiction over Copersucar is reasonable because that company is, in effect, itself doing business in this country through its operation and control of Hills Bros. See, e.g., *SCM Corp. v. Brother Int'l Corp.*, 316 F.Supp. 1328 (S.D.N.Y. 1970); *Flank Oil Co. v. Continental Oil Co.*, 277 F.Supp. 357 (D. Colo. 1957); *S.M. Stein Enterprises v. Irish Int'l Air Lines*, 236 F.Supp. 71 (1964). Even if there are insufficient grounds for establishing jurisdiction on that basis, the exercise of jurisdiction over Copersucar may still be reasonable in view of all of that company's contacts with interstate commerce and its relationship to the case at hand. *Cryomedics, Inc. v. Spemby, Ltd.*, 397 F.Supp. 287 (D.Conn. 1975); *SCM Corp.*, *supra*; see also *Kulko v. Superior Court*, 436 U.S. 84 (1978); *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).

In outlining how General Foods might meet its burden of justifying the exercise of enforcement jurisdiction, we do not suggest that the issue can be resolved through application of one or two mechanical tests. Unfortunately, there are no hard and fast rules for determining when a foreign corporation's contacts with a forum are such that it may reasonably fall under that forum's jurisdiction; decisions in this area can be made only on the relevant facts of each particular case. Moreover, the problem of determining jurisdiction is especially difficult in this instance because Copersucar is not a respondent in the administrative proceeding, but is merely a party from whom General Foods seeks discovery. Accordingly, we suggest that the ALJ invite Hills Bros., Copersucar, and the parties to the proceeding to brief the relevant criteria that should be considered in determining whether jurisdiction may be exercised over Copersucar.

Given the intricacy of the jurisdictional issue, it warrants noting that the subpoena at issue here appears to have been properly served on Hills Bros., since it was addressed to Mr. Atalla as Hills Bros.' Chairman of the Board. See *FTC v. Anderson*, 442 F.Supp. 1118 (D.D.C.

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1977), *aff'd*. CCH 1979-2 Trade Cas. ¶62837 (D.C.Cir. 1979). General Foods may therefore be entitled to production of whatever documents Hills Bros. has in its possession that respond to Specifications 4 and 5 of the subpoena. As the ALJ noted in his circulation, it seems likely that Hills Bros. will have responsive documents in its San Francisco office; if so, they may provide sufficient information to meet the needs of General Foods in this case. We will not order that court enforcement be sought against Hills Bros. at this time, however, because General Foods has apparently failed to request such action. Nevertheless, enforcement would seem to be appropriate if the ALJ certifies such a motion to us in the future. Accordingly,

It is ordered, That General Foods' motion that the Commission seek court enforcement of the subpoena *duces tecum* issued to Jorge Wolney Atalla and Copersucar be, and hereby is, remanded to the administrative law judge for proceedings to determine whether there is a reasonable basis for the Commission to invoke an enforcement court's jurisdiction over Copersucar.

Complaint

IN THE MATTER OF

S. KLEIN, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
THE FEDERAL TRADE COMMISSION AND TRUTH IN LENDING ACTS

Docket C-3015. Complaint, April 4, 1980—Decision, April 4, 1980

This consent order requires, among other things, a Washington, D.C. retailer of consumer goods to cease entering into layaway agreements which fail to clearly and conspicuously advise customers of their right to revoke transactions and receive refunds of money paid toward the cost of their purchases. Additionally, the order requires the firm to honor cancellations; furnish credit customers with cost disclosures required by Federal Reserve Systems regulations; and refund to eligible customers all monies known to have been forfeited under layaway transactions since August 1, 1975.

Appearances

For the Commission: *Bernard Rowitz and Irvin E. Abrams.*

For the respondent: *Joel P. Bennet and Jacob A. Stein, Wash., D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and the Truth In Lending Act, as amended, and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that S. Klein, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Acts and the implementing regulation promulgated under the Truth In Lending 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 S. Klein, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 1227 F St., N.W., Washington, D.C.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the offering for sale, sale and distribution of women's ready-to-wear clothing and accessories and other consumer goods and products to the general public at retail.