

IN THE MATTER OF
THE COCA-COLA COMPANY

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

Docket D. 8824. Decision, Oct. 26, 1976—Modifying Order, June 4, 1981

This order reopens the proceeding and modifies the order issued by the Commission on October 26, 1976, 88 F.T.C. 666, 41 FR 53653, by deleting certain language from Paragraph 1(c) which required respondent to maintain *all* entry forms submitted in games or contests and by adding language limiting the applicability of the recorded retention requirement to games of skill.

ORDER REOPENING THE PROCEEDING AND MODIFYING CEASE AND
DESIST ORDER

Petitioner, The Coca-Cola Company, seeks the modification of a record-keeping provision of the Order to Cease and Desist issued by the Commission on October 26, 1976.

The Order Paragraph in question currently prohibits petitioner from:

Engaging in, promoting the use of, or participating in any . . . promotional game, contest, sweepstake or similar device, by means of any announcement, notice or advertisement, unless:

* * * * *

(c) There are maintained by respondent or its designee for a period of at least two years after the closing of each such promotional game or contest and the awarding of all prizes in connection therewith, full and adequate records *including all entry forms submitted by participants therein*, which clearly disclose the operation of such promotional game or contest, the basis or method used to determine entitlement to prizes, and the facts as to the receipt of such prizes by participants entitled thereto; which said records and documents shall be open for inspection during normal business hours by each contest participant or his duly authorized representative. (Emphasis supplied.)

Petitioner is required by this provision to retain all entry forms submitted in all contests—including games of chance and games of skill—in which it engages. Petitioner requests that the Commission modify the Order by limiting the applicability of this requirement to games of skill. Specifically, petitioner proposes that the Commission delete the underscored language, requiring the maintenance of entry forms, from Paragraph (c), and add a new paragraph requiring the retention of entry forms in connection with games of skill.

The purpose of the requirement that petitioner keep entry forms

submitted in contests in which it engages is to enable the Commission to determine whether contest winners were properly selected and, if not, to identify persons to whom prizes should have been awarded. Thus, the Commission could, at the conclusion of a skill contest, examine the contest entries and evaluate whether petitioner had fairly conducted the promotion and, if not, determine the proper winners of the contest. In the case of a game of chance, however, examination of the entry forms would not provide the Commission with any useful information in determining whether the contest was properly administered or the identity of any injured parties. This is because all entry forms are identical, and winners are chosen at random rather than based on whether the information contained on their entry forms is correct. The maintenance of entry forms submitted in connection with games of chance does not, therefore, serve any useful function. It does, however, impose costs upon petitioner.

The Commission, having considered the Petition, determines that petitioner has made a satisfactory showing that the public interest requires that the Order be reopened and modified as requested. This determination is consistent with the Commission's Order of February 24, 1981, modifying the Order against Glendinning Companies, Inc., in Docket No. 8824 in the same manner as the Commission hereby directs in the instant case.

It is therefore ordered, That the proceeding is hereby reopened and the Decision and Order issued on October 26, 1976, against The Coca-Cola Company shall be modified by making the following additions (indicated by underscoring the added language) and deletions (indicated by placing dashes over the deleted language) to the Order:

ORDER

It is ordered, That respondent The Coca-Cola Company, a corporation, its successors and assigns, officers, agents, representatives and employees, directly or through any corporation or other device, in connection with the advertising, offering for sale, sale or distribution of Coca-Cola, Tab, or any food or other product, or in connection with the sale or distribution of "Big Name Bingo", or any other promotional game, contest, sweepstake or similar device which involves or offers the awarding of a prize or anything of value to participants therein, by any means, in commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from:

1. Engaging in, promoting the use of, or participating in any such

promotional game, contest, sweepstake or similar device, by means of any announcement, notice or advertisement, unless:

(a) All of the requirements, terms and conditions for participating therein and for entitlement of such prizes are clearly and conspicuously set forth in each advertisement or notice which purports to explain or illustrate the operation of, manner of participation in, or the basis for or prospects of becoming entitled to or receiving a prize in connection with, any such contest or promotional game.

(b) All such prizes are in fact awarded to all participants therein whose entries conform to the stated requirements, terms and conditions for entitlement to and receipt of such prizes.

(c) There are maintained by respondent or its designee for a period of at least two years after the closing of each such promotional game or contest and the awarding of all prizes in connection therewith, full and adequate records including all entry forms submitted by participants therein, which clearly disclose the operation of such promotional game or contest, the basis or method used to determine entitlement to prizes, and the facts as to the receipt of such prizes by participants entitled thereto; which said records and documents shall be open for inspection during normal business hours by each contest participant or his duly authorized representative.

2. Engaging in, promoting the use of or participating in the development or operation of any skill contest unless respondent or its designee maintains for at least two years after the closing of each skill contest and the awarding of all prizes in connection therewith, in addition to the records required by Paragraph 1(c), all entry forms submitted by participants in such skill contests.

It is further ordered, That respondent shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That respondent notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

It is further ordered, That this modification shall become effective upon service of this Order.

IN THE MATTER OF

KELLOGG COMPANY, ET AL.*Docket 8883. Interlocutory Order, June 8, 1981*

Denial of respondents' motions to reconsider order of May 15, 1981.

ORDER

Kellogg and General Mills have filed objections to our Order of May 15, 1981. We have reviewed these objections and we find them to be without merit.

Kellogg argues that the statutory requirement for the Office of Personnel Management ("OPM") to appoint an Administrative Law Judge ("ALJ")—that is, that the Commission be "occasionally or temporarily * * * insufficiently staffed with administrative law judges," see 5 U.S.C. 3344—has not been met. Kellogg does not specify the relief it seeks based upon this objection. After ALJ Berman withdrew from the supplementary proceedings on November 21, 1979, then-Chief Judge Hanscom, in lieu of appointing another ALJ under Rules of Practice Section 3.42(b), filed a "Certification to Commission of Matter of Appointment of Official to Conduct Proceeding to Supplement Record" on November 27, 1979. Chief Judge Hanscom recited that Judge Berman withdrew because he "concluded that his impartiality might reasonably be questioned and that rulings, findings or conclusions he might make could be subject to the contention that they were influenced by the relative degree of his friendship with [Judge Hanscom], Judge Barnes and Judge Hinkes." Judge Hanscom further reported that, although ordinarily he would appoint a substitute ALJ, "in this instance the factors cited by Judge Berman motivating his withdrawal apply to all the remaining law judges in this office." Kellogg would apparently have us go behind this assertion of the Chief Law Judge and canvass each ALJ individually. We believe, however, that Judge Hanscom's certification is an entirely sufficient record basis for the Commission's conclusion that it is "occasionally or temporarily * * * insufficiently staffed" with ALJ's.

Moreover, Kellogg itself urged the course of action it now challenges. It contended

Additionally, for the reasons stated in Chief Judge Hanscom's memorandum of November 26, 1979, Kellogg contends that no ALJ currently employed by the Commission can properly preside over any further proceedings to supplement the record.