

IN THE MATTER OF

THE ECHLIN MANUFACTURING COMPANY, INC., ET AL.

Docket 9157. Interlocutory Order, Sept. 13, 1983

ORDER

By motion dated September 1, 1983, respondent Echlin Manufacturing Co., Inc. requested that the Honorable Montgomery K. Hyun, an administrative law judge of this Commission, disqualify and remove himself from this proceeding pursuant to Section 3.42(g)(2) of the Commission's Rules of Practice in Adjudicative Proceedings. On September 2, 1983, Judge Hyun declined to disqualify himself and certified Echlin's motion to the Commission together with a statement of the reasons for his decision not to disqualify himself.

Respondent's motion to disqualify fails to state any legally cognizable basis for the disqualification of Judge Hyun or to identify any reason why Judge Hyun would be unable to afford all parties a fair and unbiased hearing in this matter.

The real concern underlying respondents' motion is the pretrial substitution of the administrative law judge assigned to this matter. Respondents' challenge to this interlocutory decision of the Chief Administrative Law Judge has not been certified to the Commission and is, therefore, not properly before us for review. Nevertheless, we note that the Chief Administrative Law Judge is authorized by Section 3.43(b) of the Commission's Rules to assign the presiding administrative law judge to each proceeding. Judge Barnes has stated that he reassigned Judge Hyun in this case to assure the effective and efficient operation of the Office of Administrative Law Judges. This is a permissible reason for the exercise of the ALJ's discretion. *See Tractor Training Service v. FTC*, 227 F.2d 420 (9th Cir. 1955) (substitution of hearing examiners after trial commenced approved in the interests of economy).

Accordingly, respondent Echlin's motion to disqualify is hereby denied.

It is so ordered.

IN THE MATTER OF

BORDEN, INC.

MODIFIED FINAL ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 8978. Final Order, Nov. 7, 1978—Modified Final Order, Sept. 16, 1983

In settlement of judicial review proceedings resulting from the entry of a Commission cease and desist order after full adjudicatory proceedings, this agreed-to modification requires a producer of processed lemon juice to refrain, for a period of seven years, from pricing its product below its variable costs for the product in any sales district. "Variable costs" are defined as all costs which the firm could have chosen not to incur during the relevant time period. The relevant time period consists of all consecutive fiscal quarters in which the firm's prices failed to cover its total costs, and thus vary with the duration of any price reduction. The firm is also required to file annual compliance reports detailing its market share, costs and net revenues. The Modified Final Order takes the place of an order previously entered by the Commission (92 F.T.C. 669), which was affirmed by a court of appeals in a judgment that was the subject of a petition for a writ of certiorari in the Supreme Court. *Borden, Inc. v. FTC*, 674 F.2d 498 (1982).

MODIFIED FINAL ORDER

The Commission having considered the proposal of Borden, Inc., to terminate the proceedings for judicial review of the order to cease and desist entered herein on November 7, 1978; the Commission and Borden, after receiving public comments on a proposed order, having agreed upon the provisions of a final order modifying the order of November 7; and the Court of Appeals for the Sixth Circuit, in accordance with an order of the Supreme Court, having remanded the case to the Commission for entry of the order to which the parties agreed; accordingly,

It is hereby ordered, That the Commission's Order in this matter, dated November 7, 1978, is hereby revised to read as follows:

ORDER

It is ordered, that Respondent, in connection with the production, marketing and sale of processed lemon juice in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

Selling ReaLemon brand reconstituted lemon juice at a price or prices so that Respondent's net revenue during any fiscal quarter for