

IN THE MATTER OF

BOC INTERNATIONAL, LIMITED, ET AL.
(formerly known as British Oxygen Company, Limited)

Docket 8955. Interlocutory Order, October 9, 1985.

NOTICE OF INTENT TO RELEASE CONFIDENTIAL INFORMATION

This is to advise BOC International, Limited, BOC Financial Corporation, BOC Holdings Limited, British Oxygen Investments, Limited and Airco, Incorporated ("the companies") that, pursuant to the Commission's order in Docket 8955, the Commission intends to place on the public record certain exhibits introduced into evidence in Docket No. 8955 in an *in camera* status. [86 F.T.C. 1241 (1975)]

By order of January 14, 1978, the Commission temporarily reinstated *in camera* treatment for these exhibits, pending receipt of answers to, and resolution of, motions for extension of the *in camera* treatment of these documents by BOC for one year and Airco for three months or until document production was complete in another proceeding. On May 14, 1980, the Commission dismissed the complaint in this matter without resolving the motions, thus leaving the documents in an *in camera* status. [95 F.T.C. 805 (1980)]

On January 5, 1985, access was requested under the Freedom of Information Act, 5 U.S.C. 552 ("FOIA"), for documents submitted during investigation of companies in the industrial gas industry. All responsive documents were examined pursuant to the request to ascertain whether they were protected from mandatory public disclosure by the exemptions contained in the FOIA. That examination included analysis of whether the exhibits described below warranted continuing *in camera* protection. Because, as explained below, the Commission has determined that *in camera* treatment is no longer justified, the documents will become part of the public record in this matter. Accordingly, no FOIA exemptions will apply to them.

The exhibits in question were entered into evidence in the matter of *British Oxygen Company, Limited*, D. 8955, as CX 78, 95, 161, 162, 163, 232, 254, 255, and 301. They consist of business records containing financial information that was sensitive to the parties at the time it was introduced into evidence in 1974 and other information reflecting BOC's interest during the period from 1970 through 1973 in entering the United States industrial gas market. The exhibits also comprise reports of interviews held in 1973 with Airco's two top executives. The latter group of documents includes evaluations made twelve years ago of Airco's top executives and its Board of Directors.

There is a strong public interest in holding all aspects of Commission adjudicative proceedings open to interested persons for public inspection and understanding. Accordingly, the Commission's Rules of Practice provide for issuance of *in camera* orders only in unusual and exceptional circumstances. 16 C.F.R. 3.45(b). Those circumstances occur only on a showing that placing the documents on the public record would result in a clearly defined, serious injury to the corporation submitting the documents. *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184 (1961); *Bristol-Myers Co.*, 90 F.T.C. 455 (1977).

In cases such as these, where the information is old, an even greater burden is placed on the submitter. Even where a clearly defined, serious injury can be demonstrated when close in time, its basis is normally removed by the passage of years. *Columbia Broadcasting System, Inc.*, 72 F.T.C. 27, 334 (1967). Unless the documents can be used to make such a convincing showing of significant insight into current operations that serious competitive injury would result, continued *in camera* treatment is not justified. *General Foods Corp.*, 95 F.T.C. 352 (1980).

The Commission has examined the business records at issue of Airco and BOC to determine whether they presently deserve the *in camera* protection that has been accorded to them. Information contained in these records is at least 12 years old. Although it appears that publication might have caused a clearly defined, serious injury had the records been disclosed in 1974, any sensitivity that had existed has been removed by passage of twelve years. We have studied the records to determine whether the sensitivity of the information may be preserved by virtue of the possibility that the data may be used to make a convincing showing of insight into operations of BOC's current businesses. In this instance, however, the passage of twelve years makes the construction of a current, accurate model impossible. Thus, we cannot find that the business records demonstrate the clearly defined, serious injury necessary for continued *in camera* status.

We have also examined documents containing the evaluations of Airco's officers and directors to determine whether they warrant continued *in camera* status. We have concluded as a result of our examination that public disclosure of the twelve year old comments would create nothing more than a slight embarrassment to the individuals involved, not a clearly defined, serious injury to BOC. Accordingly, in cases such as this, we have held that "the mere embarrassment of the movant should not foreclose public disclosure." *Hood, supra* at 1188-89.

For the reasons expressed above, the Commission will lift the present *in camera* status of the exhibits CX-78, CX-95, CX-161, CX-162, CX-163, CX-232, CX-254, CX-255 and CX-301 entered into evi-

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dence in the course of adjudication in D. 8955. The documents will be placed on the public record no sooner than then (10) calendar days following service of this notice on the companies.

Complaint

106 F.T.C.

IN THE MATTER OF
MICHIGAN OPTOMETRIC ASSOCIATION

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

Docket C-3170. Complaint, Oct. 10, 1985—Decision, Oct. 10, 1985

This consent order requires the Michigan Optometric Association, among other things, to cease prohibiting, restricting or restraining any optometrist from: (1) entering into or affiliating with a corporate practice; (2) practicing in any location; or (3) disseminating truthful, non-deceptive information. Additionally, the Association is required to repeal those Bylaws and Standards of Conduct that conflict with the order. Further, the Association is required to send notice of the order to: (1) all optometrists who resigned or were terminated because they engaged in a corporate practice or practiced in a retail location; (2) all members of the Association; (3) all other optometrists currently licensed in the State of Michigan; and (4) everyone to whom the Association sends an application for membership for the next five years.

Appearances

For the Commission: *Robert P. Weaver.*

For the respondent: *William R. Ralls, Lansing, Mich.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended (15 U.S.C. 41 *et seq.*), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Michigan Optometric Association, a corporation, has violated the provisions of Section 5 of the Federal Trade Commission Act and that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Michigan Optometric Association is a corporation formed pursuant to the laws of the State of Michigan, with its mailing address at 530 West Ionia Street, Suite A, Lansing, Michigan.

PAR. 2. Respondent is a professional association organized in substantial part to represent the interests of optometrists who practice in Michigan as well as the profession of optometry in Michigan. Respondent has approximately six hundred thirty (630) members, constituting approximately two-thirds of the practicing optometrists in Michigan. A significant portion of respondent's activities furthers its