



II.

The Commission's rules of practice do not specifically provide for motions to strike, but it has held that under appropriate circumstances such motions may be granted. See *Warner-Jamaica Co.*, 82 F.T.R. 749 (1972); *Kroger Co.*, 1977 FTC LEXIS 70 (Oct. 19, 1977). Motions to strike are generally disfavored. *Home Shopping Network, Inc. et al.*, 1995 (July 24, 1995); *Volkswagen of America, Inc., et al.*, No. 9154, slip op. at 2 (July 8, 1981) (Mathias, J.).

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Without a doubt, the Commission has granted motions to strike, others have sought guidance from the Commission in cases where they have considered the propriety of such a motion. Commission precedent varies greatly on the appropriate standard for granting a motion to strike. Some cases have been on narrow issues of fact which are immaterial to the Commission's jurisdiction to regulate interstate commerce. *Home Shopping Network, Inc. et al.*, 1995 (July 24, 1995); *Volkswagen of America, Inc., et al.*, No. 9154, slip op. at 2 (July 8, 1981) (Mathias, J.). Other cases have been on broader issues of law, such as the Commission's jurisdiction to regulate interstate commerce, and as insufficient as a matter of law, and *Volkswagen of America, Inc., et al.*, No. 9154, slip op. at 2 (July 8, 1981) (Mathias, J.). Some cases have been on issues of fact which are immaterial to the Commission's jurisdiction to regulate interstate commerce, and as insufficient as a matter of law, and *Volkswagen of America, Inc., et al.*, No. 9154, slip op. at 2 (July 8, 1981) (Mathias, J.).

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be stricken;

or defense (1) is unmistakably
(2) prejudices Complaint Counsel by
reasoning an undue encroachment on issues or by imposing a burden on Complaint Counsel. It is
difficult to foresee any harm to Complaint Counsel when both prongs of this analysis are not met.
tested defenses, at this stage of the proceedings, I do not find that the
er meet both requirements.

defenses or portions of an answer will be granted when the answer is
unrelated or so immaterial as to have no bearing on the issues and (2)

Applying this standard to the com
challenged portions of the Answer

Although I have let stand

therefore:

Respondents' Memorandum in Opposition to Complaint Counsel's Motion to Strike,
DENIED

IT IS SO ORDERED.

D. M. S.
[Signature]

Judge

[Signature]

Administrative Law

Dated: August 31, 1999