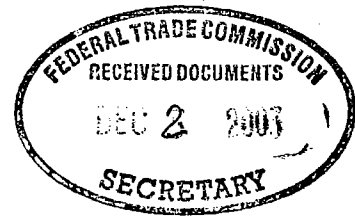


FEDERAL TRADE COMMISSION



In the Matter of)

KENTUCKY HOUSEHOLD)
GOODS CARRIERS)
ASSOCIATION, INC.,)

a corporation.)

Docket No. 9309

COMPLAINT COUNSEL'S RESPONSE TO RESPONDENT'S
FIRST SET OF INTERROGATORIES

Pursuant to Section 3.35 of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.35, Complaint Counsel hereby respond to Respondent's First Set of Interrogatories. Complaint Counsel timely submit these Responses within thirty (30) days after service.

General Objections

The following general objections apply to each of Respondent's Interrogatories:

1. Complaint Counsel object to the Interrogatories on the ground of timeliness. Though
Respondent's counsel has provided the Office of the Secretary with Respondent's First Set

Complaint Council object to the Interrogatories on the grounds that they are vague

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ambiguous, and uncertain. Notwithstanding these objections, Complaint Counsel have

to the Interrogatories and the answers to them. Complaint C

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

discoverable "only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of its case and that the party is unable without hardship to obtain it

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

that the party is unable without hardship to obtain the substantial equivalent of the materials by other means." 16 C.F.R. § 3.31(c)(3). Any information sought in the Interrogatory is equally available to both the Respondent's and Complaint Counsel.

Subject to and without waiving any objections, Complaint Counsel state that members of the Kentucky Association organize, discuss, and agree to a tariff schedule and that the members

1.44. [redacted] interstate moving services and products. This

Without waiving any objections and to the best of Complaint Counsels' knowledge,

[REDACTED] state that they do not know of any claim by any person explicitly alleging

[REDACTED]

agency or subdivision arising out of or in any way connected to the conduct alleged in the

Complaint.

INTERROGATORY #5

State whether you have any evidence that the rates established by KTC for the intrastate transportation of household goods in the Tariff are greater or different than such rates would be in the absence of the Tariff.

RESPONSE:

Complaint Counsel objects to this interrogatory on the basis of relevance. Complaint Counsel has knowledge that the Kentucky Association engages in conduct that constitutes horizontal price fixing. The antitrust laws presume that such activity is inherently harmful to competition and is *per se* illegal. *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 223, 60 S. Ct. 811, 84 L. Ed. 1129 (1940). Any inquiry into whether rates established by KTC would be different in the absence of the Tariff is therefore irrelevant.

Subject to and without waiving any objections, documents received from KTC and the Kentucky Association reveal numerous attempted discounts by members off the rates contained

the Respondent's officials to continue to charge the collective rates contained in Respondent's Tariff. See e.g. KHGCA 4967-4970.

INTERROGATORY #7

State whether you have any evidence that KTC has failed to actively supervise the program of rate regulation which is the subject of the Kentucky Association's State Action defense.

RESPONSE:

The evidence is full of examples of failure to actively supervise tariff regulation. Without limitation, such evidence includes the documents produced by KTC and the Kentucky Association and the deposition testimony of Mr. Debord, Ms. King, and Mr. Mirus. The evidence demonstrates a general lack of supervision including, but not limited to, KTC's failure to hold hearings to consider rate increases, KTC's failure to issue written decisions approving rates or rate increases, KTC's failure to conduct formal economic analyses of the Kentucky

[REDACTED]

Warehousemen's Association that indicate that such notice of hearings was provided. See e.g. ORE Assoc-0000846, ORE Assoc-0000850-51, ORE Assoc-0000818-823.

INTERROGATORY #9

B. ... evidence of the revenues charged or collected by Kentucky

Association members in connection with Kentucky intrastate transportation services which are

listed in and/or subject to the Tariff.

RESPONSE:

3.31(c)(3).

Subject to and without waiving any objections, Complaint Counsel state that they have been in communication with KTC officials in connection with this proceeding. *See e.g.* KTC 1356, depositions of William Debord and Denise King.

INTERROGATORY #11

State whether you have communicated with representatives of the Commonwealth of

Subject to and without waiving any objections, Complaint Counsel have no knowledge of a request by KTC for intervention in this proceeding. Complaint Counsel therefore have no reason to form an opinion favoring or opposing such intervention.

INTERROGATORY #13

State whether you have conducted any investigation of intrastate collective ratemaking by household goods movers in States other than OR, KY, AL, MN, MS, and IA within the last five (5) years.

RESPONSE:

Complaint Counsel object to this interrogatory on the grounds of relevance and work product privilege. The Complaint alleges that the Kentucky Association engages in illegal

conduct by fixing the rates in Kentucky intrastate household goods moving tariffs among

INTERROGATORY #14

State whether you have communicated with any Member of the Kentucky Association on _____

[REDACTED]

_____ associated with any such Member in connection with this proceeding on _____

[REDACTED]

Complaint Counsels' intention regarding relief in this matter is set forth in the Complaint. Specifically, Complaint Counsel seeks the relief outlined on Pages 5 and 6 of the Complaint,

~~and "Notice of Contemplated Relief", Without waiving any part of the relief contemplated in~~

the Complaint, Complaint Counsel state that they seek an order barring collective ratemaking activity in Kentucky by movers, as stated in the first part of the Commission's Notice of Contemplated Relief:

Should the Commission conclude from the record developed in any adjudicative proceedings in this matter that respondent's conduct violated Section 5 of the Federal Trade Commission Act as alleged in the complaint, the Commission may order such relief as is supported by the record and is necessary and appropriate, including but not limited to:

1. ~~Requiring respondent to cease and desist from preparing~~

upon a showing that the party seeking discovery has substantial need of the materials in the

of its case and that the party is unable without hardship to obtain the substantial equivalent of the materials by other means" 16 C.F.R. § 3.31(c)(3).

Complaint Counsel states that they have no

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Docket No. 9309

DECLARATION OF DANA ABRAHAMSEN

I, Dana Abrahamsen, make the following statement:

1. I am an attorney for the Federal Trade Commission. I serve as Complaint Counsel in this


2. The Scheduling Order in this matter set October 31, 2003 as the deadline for issuing document requests, requests for admission, and interrogatories.
3. I did not receive any document requests, requests for admission, or interrogatories on or by October 31, 2003.

recognize and stamp Respondent's First Set of Discovery as formally received on October 31, 2003 because Respondent's counsel did not provide the Administrative Law Judge ("ALJ") with copies of these documents.

8 _____

I declare under penalty of perjury that the foregoing is true and correct. (28 U.S.C. § 1746).

Executed on December 2, 2003



CERTIFICATE OF SERVICE

This is to certify that on December 2, 2003, I caused a copy of the attached Complaint Counsel's Response to Respondent's First Set of Interrogatories to be served upon the following persons by facsimile, U.S. Mail or Hand-Carried:

The Honorable D. Michael Chappell
Federal Trade Commission

James C. McMahon
Brodsky, Altman & McMahon, LLP
60 East 42nd Street, Suite 1540
New York, NY 10165-1544
(212) 986-6905 *facsimile*