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"INTERLOCUTORY APPEALS"

Remarks By

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Federal Trade Commissioner

Before The

SECTION OF ANTITRUST LAW

AMERICAN BAR ASSOCIATION

Washington, D. C.

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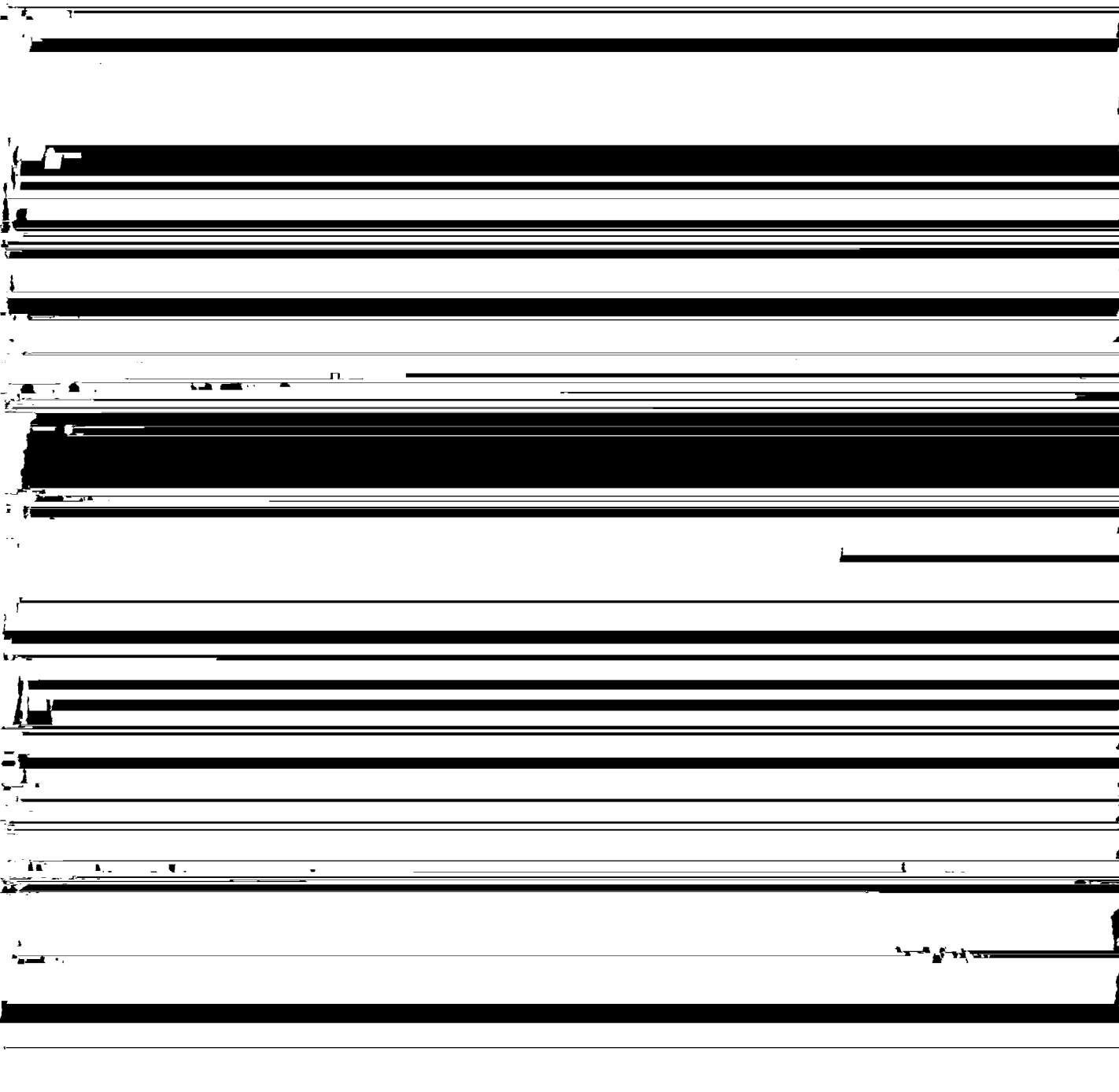
I am very glad to have this opportunity to discuss interlocutory appeals at the Federal Trade Commission. Too often formalistic opinions, orders and rules of practice leave much to be desired. They often fail to provide insight into the Commission's general thinking with respect to interlocutory matters.

Interlocutory appeals, of course, are appeals to the Commission from rulings of the hearing examiner during the course of a proceeding pending before him. To begin with, it will be helpful to have a basic



the structure outlined by Congress in the Administrative

latitude in judgment and discretion now accorded the

hearing examiner.

When an interlocutory appeal, which must be in

the form of a brief, is filed with the Federal Trade Commission, copies are served upon all parties of

of a motion to issue, limit or quash a subpoena; or a [redacted]

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an examiner's action barring or suspending an attorney from participation in a proceeding.

Otherwise, the specific grounds for an interlocu- [redacted]

of the hearing examiner. In these matters the Commission has shown steadfast reluctance to entertain

[redacted]

Matters of this nature wherein the Commission

the issues. In these circumstances, the examiner considered that the course taken by him would expedite the proceedings and be of material aid in rendering a sound decision on the merits.

The Commission made it clear that counsel supporting the complaint could except to adverse rulings on subsequently filed motions to strike, irrespective of the examiner's disposition of any motion to reopen filed as a result of rulings striking evidence.

Both the Commission and the hearing examiner recognized that it is more equitable to give parties equal time, running concurrently, for the submission of suggested findings. This has been our customary practice. It is a practice to be departed from only in unusual circumstances.

The Commission had further occasion to emphasize the hearing examiner's discretion in the Gulf case, supra. Alleging undue delay, respondent requested

leave to amend answer to complaint, National Dairy Products Corporation, D. 7018 (1958).

It is believed that the foregoing decisions illustrate a policy which will speed up litigation and better serve the public interest. Obviously, some interlocutory decisions demand detailed consideration of the trial record. More often than not, the questions raised fade into background matters of minor import through subsequent development of the issues. A policy of routinely entertaining such appeals only encourages fragmentary submission of cases and inevitably results in delay. Such would be the price of agency over-the-shoulder supervision of the hearing examiner.

I also hope that the decisions which I have mentioned this afternoon may serve as signposts along the way. No magic formula has as yet been devised for swift and unerring determinations as to whether our Rules' tests for entertaining interlocutory appeals on their merits have been met. Nor have we pinpointed the metes and bounds of the hearing examiner's discretion. Even so, this represents no sound reason for abolishing interlocutory appeals in toto. I assure you that the Commission is striving hard to fashion appropriate touchstones.