



the necessity of a subpoena, and its senior vice president of sales testified at length in an investigational hearing.

4. Although the Commission proceeded to a full hearing on the charges raised in its complaint against TRU, LEGO was never made a respondent, nor was any LEGO representative called to testify as a trial witness.

5. Nonetheless, to LEGO's complete surprise, when the ALJ issued his Initial Decision, he included as Finding No. 334 ("Finding 334") the statement that "Lego, other toy manufacturers and TRU had a common design or understanding to restrict sales to the clubs."

6. Nothing in the voluminous evidence submitted by Complaint Counsel to the ALJ supported a finding that LEGO had joined TRU and/or other toy manufacturers in a common design or understanding to restrict toy sales to warehouse clubs or to anyone else.

7. In the months following the issuance of the Initial Decision, LEGO has been named a defendant in at least twenty Sherman Act § 1 class action lawsuits filed around the country by plaintiffs' counsel who have seized upon the conclusory language of Finding 334.

8. These class action lawsuits have already harmed LEGO's reputation and caused it significant financial expense. These already appreciable damages will increase substantially if LEGO remains as a defendant in these cases through years of time-consuming and expensive litigation; the situation will only worsen as new cases are filed against LEGO.

9. For the purposes of this motion, LEGO is not challenging any of the predicate factual findings in the Initial Decision, nor is it disputing the legal argument generally advanced by Complaint Counsel. LEGO asserts only that Finding 334 is not supported by the findings in the Initial Decision and by the evidence cited in support of those findings. The Commission will not be required to substitute its fact-finding for

that of the ALJ to conclude that the ALJ's findings do not support the legal conclusion stated in Finding 334.

10. Granting LEGO the relief that it seeks in this motion will not have any adverse impact on the Complaint Counsel's case in chief against TRU, as Complaint Counsel's Answering Brief expressly acknowledges that LEGO's presence or absence is not essential to Complaint Counsel's case against TRU. Nor will TRU's defense in this case be prejudiced in any manner by granting LEGO the relief being sought.

11. The timing of this motion will not prejudice either party. FTC Rules of Practice § 3.14(a) contains no time limitation, but affords the Commission broad authority to allow intervention in the interests of justice. Granting this motion will not disrupt the Commission's proceedings because relief can be granted in any manner that the Commission deems appropriate. Moreover, this motion has been filed well in advance of oral argument in TRU's appeal, which is presently scheduled for February 19, 1998.

The reasons for this motion are more fully discussed in the accompanying memorandum.

WHEREFORE, LEGO moves the Commission: (1) to permit LEGO to intervene in this case for the limited purpose of requesting the Commission to strike or correct Finding 334; or, in the alternative, without LEGO's intervention, (2) to strike, Finding 334 in its entirety, or to correct Finding 334 to reflect that there was insufficient evidence in the record to support a finding that LEGO had a common design or understanding with TRU and other toy manufacturers to restrict toy sales to the warehouse clubs.

Dated: February 5, 1998

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I have served the foregoing Motion To Intervene Or, In The Alternative, To Strike Or Correct Finding 334 upon the following counsel of record via U.S. mail, postage prepaid, first-class, on February 5, 1998:

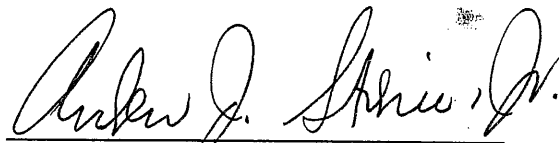
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