



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

June 19, 2002

Robert A. Skitol
Kathleen S. O'Neill
Drinker Biddle & Reath LLP
1500 K Street, N.W.
Suite 1100
Washington, D.C. 20005

Dear Mr. Skitol and Ms. O'Neill:

On April 14, 2000, the Independent Bakers Association, the Tortilla Industry Association, and the National Association of Chewing Gum Manufacturers filed a petition asking the Commission to issue guidelines governing the use of slotting allowances in the grocery industry.¹

Each year the Commission receives many requests and must weigh a number of factors in deciding how best to employ its finite resources. Although the issues raised by the Petition are of considerable interest, the Commission has determined that they can more appropriately be pursued through avenues other than the development of guidelines.

The Petition was a significant focus of attention at a Workshop on Slotting Allowances and Other Marketing Practices in the Grocery Industry held by the Commission on May 31 and

¹ See Petition to the Federal Trade Commission on behalf of the Independent Bakers Association, the Tortilla Industry Association, and the National Association of Chewing Gum Manufacturers for the Issuance and Enforcement of Guidelines on Slotting Allowances in the Grocery Industry ("the Petition").

June 1, 2000.² The Petition was included in the workshop record, and one of you – Mr. Skitol – addressed it in your remarks as a panelist.³ Robert Pyle, President of the Independent Bakers Association, and two participants associated with the Tortilla Industry Association, Pamela Mills and Irwin Steinberg, also served as panelists.

After considering the transcripts and written materials submitted in conjunction with the workshop, the staff of the Federal Trade Commission issued a report on the workshop in February 2001.⁴ One of the Staff Report's recommendations dealt specifically with the Petition's request for guidelines: "The staff recommends that the agency refrain from issuing slotting allowance guidelines at the present time."⁵ The staff explained:

Such guidelines had been requested in a petition filed by the Independent Bakers Association and two other groups. An advocate of the guidelines noted that they could be useful if they were able to identify some broad areas of legality, some narrow areas that are open to serious question, and perhaps an uncertain middle ground. Others questioned the need for, and the likely benefits of, such guidelines. Some observed that desirable guidance might best be provided in a more flexible format, and the staff believes that publications such as this Report are the most appropriate means for providing guidance at this time, when much remains to be learned about slotting allowances.⁶

We agree with staff's conclusion. Development of guidelines often is highly resource-intensive, and the Commission believes, in this instance, that other steps better serve the public interest. The workshop and Staff Report provided significant public discussion and guidance on

² Slotting Allowances Workshop, Transcript of Proceedings ("Tr.") 445-76; *see generally* Tr. 270, 304, 306-07.

³ Tr. 446-51; 468-69.

⁴ Report on the Federal Trade Commission Workshop on Slotting Allowances and Other Marketing Practices in the Grocery Industry (February 2001) ("the Staff Report").

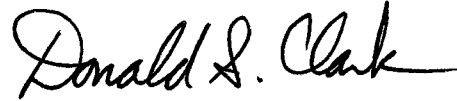
⁵ Staff Report at 66.

⁶ *Id.* at 66-67 (footnotes omitted). *See, e.g.* Tr. 469 (remarks of Robert Skitol) (urging that the Commission staff and the Commission prepare and issue "a public report setting forth some findings and conclusions and perspectives that have come out of this workshop" and stating that such a report "in and of itself will be an important form of public guidance that the industry will appreciate"). The staff also noted testimony that questioned "whether guidelines could be flexible and 'nimble' enough to cover all the business techniques that could function as alternatives to slotting allowances." *Id.* at 67 n.219.

these issues. The Commission and its staff are continuing to study slotting allowances and related grocery marketing practices,⁷ and further guidance on these subjects may be warranted as more is learned.

Based upon the foregoing considerations, we are denying Petitioners' request at this time.

By direction of the Commission.



Donald S. Clark
Secretary

⁷ The Staff Report noted that “the lack of specific and complete information limited the [panelists’] ability to fully identify problems or formulate solutions,” and its first recommendation stressed the importance of conducting additional research that could “serve as a foundation for additional business guidance.” Staff Report at 63-64. *See, e.g.* Tr. 473 (remarks of Gregory Gundlach) (“I think it’s in a sense premature to talk about guidelines until we know what we’re talking about, and in that respect, research is needed.”).