

§ 3.39

16 CFR Ch. I (1–13 Edition)

§ 3.39 Orders requiring witnesses to testify or provide other information and granting immunity.

(a) Where Commission complaint counsel desire the issuance of an order requiring a witness or deponent to testify or provide other information and granting immunity under 18 U.S.C. 6002, Directors and Assistant Directors of Bureaus and Regional Directors and Assistant Regional Directors of Commission Regional Offices who supervise complaint counsel responsible for presenting evidence in support of the complaint are authorized to determine:

(1) That the testimony or other information sought from a witness or deponent, or prospective witness or deponent, may be necessary to the public interest, and

(2) That such individual has refused or is likely to refuse to testify or provide such information on the basis of his or her privilege against self-incrimination; and to request, through the Commission's liaison officer, approval by the Attorney General for the issuance of such order. Upon receipt of approval by the Attorney General (or his or her designee), the Administrative Law Judge is authorized to issue an order requiring the witness or deponent to testify or provide other information and granting immunity when the witness or deponent has invoked his or her privilege against self-incrimination and it cannot be determined that such privilege was improperly invoked.

(b) Requests by counsel other than Commission complaint counsel for an order requiring a witness to testify or provide other information and granting immunity under 18 U.S.C. 6002 may be made to the Administrative Law Judge and may be made *ex parte*. When such requests are made, the Administrative Law Judge is authorized to determine:

(1) That the testimony or other information sought from a witness or deponent, or prospective witness or deponent, may be necessary to the public interest, and

(2) That such individual has refused or is likely to refuse to testify or provide such information on the basis of his or her privilege against self-incrimination; and, upon making such determinations, to request, through

the Commission's liaison officer, approval by the Attorney General for the issuance of an order requiring a witness to testify or provide other information and granting immunity; and, after the Attorney General (or his or her designee) has granted such approval, to issue such order when the witness or deponent has invoked his or her privilege against self-incrimination and it cannot be determined that such privilege was improperly invoked.

(18 U.S.C. 6002, 6004)

[74 FR 1830, Jan. 13, 2009]

§ 3.40 Admissibility of evidence in advertising substantiation cases.

(a) If a person, partnership, or corporation is required through compulsory process under section 6, 9 or 20 of the Act issued after October 26, 1977 to submit to the Commission substantiation in support of an express or an implied representation contained in an advertisement, such person, partnership or corporation shall not thereafter be allowed, in any adjudicative proceeding in which it is alleged that the person, partnership, or corporation lacked a reasonable basis for the representation, and for any purpose relating to the defense of such allegation, to introduce into the record, whether directly or indirectly through references contained in documents or oral testimony, any material of any type whatsoever that was required to be but was not timely submitted in response to said compulsory process. *Provided, however*, that a person, partnership, or corporation is not, within the meaning of this section, required through compulsory process to submit substantiation with respect to those portions of said compulsory process to which such person, partnership, or corporation has raised good faith legal objections in a timely motion pursuant to the Commission's Rules of Practice and Procedure, until the Commission denies such motion; or if the person, partnership, or corporation thereafter continues to refuse to comply, until such process has been judicially enforced.

(b) The Administrative Law Judge shall, upon motion, at any stage exclude all material that was required to be but was not timely submitted in response to compulsory process described