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REMARKS OF

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FEDERAL TRADE COMMISSION

Before the

NATIONAL TIRE DEALERS AND

RETREADERS ASSOCIATION, INC.

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THE FEDERAL TRADE COMMISSION AND THE TIRE INDUSTRY

Mr. Chairman, Members of the National Tire Dealers and Retreaders Association, Inc., and Honored Guests: My assigned subject "The Federal Trade Commission and the Tire Industry" is indeed a broad one and affords wide latitude. However, out of sympathy for such a fine, robust looking group of typical American businessmen who have spent already too much of their life spans being bored at luncheon meetings, I have decided not to take undue advantage. Rather will I briefly introduce the Federal Trade Commission to you in order that you may better understand us and appreciate the reason for our existence and, I hope, the necessity for our continued existence, and then conclude with a statement about some of our own more pressing needs and problems. After all, this industry, this group and its officials have recently been given the best efforts of our staff in connection with your pressing problems, so I think it fair that you should listen for a few moments to some of ours.

Approximately 44 years ago, or, to be precise, on September 26, 1914, President Woodrow Wilson signed the Federal Trade Commission Act. In approving this Act President Wilson said, "We have created in the Federal Trade Commission a means of inquiry and of accommodation in the field of commerce which ought to both coordinate the enterprises of our traders and manufacturers and to remove the interpretative barriers of misunderstanding and of a too technical interpretation of the law. * * * The Trade Commission substitutes counsel and accommodation for the harsher processes of legal restraint. * * * A Trade Commission has been created with powers of guidance and accommodation which have relieved businessmen of unfounded fears and set them upon the road of helpful and confident enterprise."

When the Federal Trade Commission was in swaddling clothes your industry, from the point of view of size at least, could hardly be considered as being more than an adolescent. In consequence it presented few problems to the new Commission. In 1915 the industry produced about 13 million pneumatic tires having a sales value of a little more than one hundred million dollars. At that time the average life of a pneumatic tire was about nine months or 3500 miles. In that year the total surfaced road mileage in the United States was a mere 257,000 miles.

By 1957 tire sales at retail accounted for approximately 2 billion dollars. We are told that there are in excess of 300 thousand outlets where tires can be purchased by consumers. This figure includes establishments such as department stores

and gasoline stations. There are approximately 17,000 tire dealers, so classified because more than half of their sales volume was in tires. We are further told that in 1957 there were almost 33 million tires sold for original equipment and approximately 56 million sold on the replacement market, or a total of 89 million tires. Compare this with the 13 million sold in 1915. We shall see that with this increase in the size and importance of the industry have come many collisions with the Commission.

The work of the Commission falls into the various categories of the Congressional Acts which it administers. As of today these are the Federal Trade Commission Act of 1914, as amended by the Wheeler-Lea Act of 1938 and the Oleomargarine Act of 1950; Section 2 of the Clayton Act, as amended by the Robinson-Patman Act of 1936; Sections 3 and 8 of the Clayton Act; Section 7 of the Clayton Act as amended; the Export Trade Act known as the Webb-Pomerene Act; the Wool Products Labeling Act of 1939; the Lanham Trade-Mark Act of 1946; the Fur Products Labeling Act of 1951; the Flammable Fabrics Act of 1953; and most recently the Textile Fiber Products Identification Act passed by the last Congress.

The sum and substance of all this legislation is a Congressional mandate to the Commission to prevent unfair methods of competition and other unfair trade practices, to correct and prevent deception of the American public, and to keep the channels of commerce free from the types of undue restraints and tendencies to monopoly condemned by these various statutes: a broad mandate indeed.

In the field of false and misleading advertising alone we are faced with what would appear to be a task of gigantic proportions. I am informed that the national gross volume of business in 1957 was over 433 billion dollars and that the amount spent for advertising in that year approximated over 10 billion dollars.

To give you a concrete idea of the magnitude of our enforcement responsibilities, let us consider the last piece of legislation entrusted to our care, the Textile Fiber Products Identification Act. In general, this piece of legislation is designed to cover the field of textile fiber content labeling and advertising, except as already covered by the Wool Products Labeling Act. Although the Act primarily benefits the consumer in providing truthful disclosure of fiber content, other objectives are to provide protection to textile producers, manufacturers and distributors from the unrevealed presence of

substitutes and mixtures in "textile fiber products." The scope of this new legislation is broader than the combined scope of the other three pieces of consumer legislation administered by the Commission. Manufacturers of textile fiber products subject to the requirements of the Act number approximately 75,000, while approximately 500,000 distributors of textile fiber products are also subject to its requirements. The Act covers all transactions involving the marketing of textile fiber products throughout the entire United States and its Territories. Sales of textile fiber products subject to the Act amount to billions of dollars annually, and every person throughout the country -- from the manufacturer to the consumer -- who manufactures or purchases a textile fiber product is either directly or indirectly affected by its terms.

Let us look for a moment at the tools which Congress has given us to accomplish this colossal job. In point of size we find that the Commission is one of the smallest of the Federal agencies, having an annual appropriation of slightly less than $6,000,000 and a staff of about 750 employees. A very substantial number of these are professional people, being lawyers, economists, accountants, statisticians, and a few doctors. In addition to our principal offices in Washington we maintain 9 branch offices through which most of our field investigational work is accomplished. We also have several smaller field offices for inspection work under the Wool, Fur, and Flammable Fabrics Acts.

It may be because of bias and prejudice as a result of having been a trial attorney in the Bureau of Litigation for some fifteen years, but, in my considered judgment, from the early days of our agency up to the present time the Commission's principal and most effective means of fulfilling our statutory responsibilities is the so-called mandatory process of formal complaint. Whenever the Commission has reason to believe that action by it is warranted, it is authorized to issue a formal complaint wherein it states its charges. The respondent is served with a copy of the complaint and is afforded an opportunity to answer. The evidence taken on the issues thus joined constitutes the formal record on which the Commission bases its findings and order. This may result in the issuance against the offender of a cease and desist order if the facts and circumstances so require, which order can be appealed to the courts. Violations of a final order subject the offender to civil penalties up to $5,000 for each violation.

A second method which the Commission utilizes in preventing the use of unfair trade practices is known as the consent method whereby one charged with a violation of our organic act may avail himself of the stipulation procedure if he agrees

voluntarily to discontinue the practice complained of. It is the policy of the Commission to extend the stipulation privilege "only in cases where the Commission believes that disposition of the case by this method will effect prompt correction and will fully protect and satisfy the public interest."

A third procedure employed by the Commission is the co-operative or consultative method under the trade practice rule procedure or more recently the Guide procedure. Before your convention sessions are over I am sure that you will be thoroughly educated as to this procedure so I shall not bother about further details now.

Now let us inquire how we have employed these various procedures in relation to the tire industry. A while ago I indicated that as your industry grew it has had frequent collisions with the Commission in connection with its enforcement responsibilities. This got off to a flying start by the Commission's issuance of a cease and desist order on March 26, 1919, against the Ironclad Tire Company which had advertised as "new", old repaired automobile tires which had been coated with a thin coating of rubber or composition. This case was closely followed by the issuance of an order which directed a respondent to cease and desist from selling as "new", tires which they produced by cementing and sewing together two used tires. Incidentally, that respondent described the end products as "double-tread". Altogether, the Commission has issued over 20 cease and desist orders against members of the various segments of the tire industry and in addition has accepted nearly a like number of stipulations to cease and desist.

From the birth of our agency to the period immediately preceding World War II, your industry grew by leaps and bounds. A huge road building program virtually put America on wheels, and these wheels had to be equipped with tires. During the depression we naturally had a buyers' market and competition for the tire purchaser's dollar became quite keen. Under such circumstances, claims for tires included not only truthful representations, but also exaggerated and often false statements. Nineteen forty-one was a banner year as far as the Commission's work in the tire industry is concerned. Six cease and desist orders were issued against the larger marketers of tires. Most of these orders related to some form of fictitious pricing.

Another landmark year during this period of litigation was 1939 when the Commission issued its cease and desist order against the United States Rubber Company and the United States Tire Dealers Corporation. This case resulted from months of investigation and accumulation of data and tedious evaluation of all the evidence received. The Commission concluded that

U. S. Rubber Company had been discriminating in price between different purchasers of tires of like grade and quality and had violated the Clayton Act as amended and ordered the respondents to cease and desist from such unlawful discriminatory practices. It may be of interest to you to know that the question of existing compliance with this important order of the Commission is presently under active surveillance by the Commission's Division of Compliance.

The period of litigation has not yet ended, as is evidenced by the fact that the Commission has pending before it several matters the issues of which have yet to be resolved.

These matters include a false and misleading advertising case brought under Section 5 of the Federal Trade Commission Act, a price discrimination case involving Section 2(a) of the Clayton Act as amended, three important cases involving various types of alleged trade restraints brought under Section 5 of the Federal Trade Commission Act, all involving manufacturers in the tire industry, and a case under Section 2(f) of the Clayton Act as amended for allegedly inducing unlawful price discriminations involving a large tire wholesaler. You will appreciate, of course, that I am not at liberty to discuss these pending matters. Moreover several orders have recently been issued against large tire distributors growing out of false and misleading advertising claims. In short, gentlemen, the record discloses the constant action of the Federal Trade Commission through the past twenty-five years attempting to assist you to bring law and order into the tire industry. I know of no other agency in the Federal Government which has given the constant attention to the major problems facing the independent trade which has been given to the rubber tire industry by the Commission, and while I do not say this out of bitterness or in recrimination, candor compels me to state that in the past I do not believe the members of your industry have given us their due support. There are, however, wholesome signs on the horizon that such support may at long last be forthcoming. This meeting today, I hope, may at least in small measure influence such a course of action.

As you know, we have consistently endeavored to employ cooperative techniques. Indeed as early as 1935 the National Tire Dealers Association -- by which name I understand your association was known at that time -- applied for a trade practice conference proceeding, which the Commission authorized. After conferences and public hearings, trade practice rules were promulgated for the Rubber Tire Industry on October 17, 1936. The next step looking towards an effort to apply voluntary

cooperative efforts resulted from conferences between Bill Marsh and me concerning the wide spread use of false and misleading advertising within your industry. We felt that the 1936 rules were inadequate principally because they did not reflect advances in the law due to intervening legislation and Commission and court decisions. I understand that a motto of your association is "supplying leadership and service to a great industry." In view of the active part you have played evidenced by events leading up to the adoption of the Tire Advertising Guides in May, 1958, I feel that you have indeed supplied leadership and service to your industry. Other independent business groups and associations likewise have made important contributions to the adoption of the Tire Guides.

The principles delineating what constitutes bad advertising or labeling, or even bad non-labeling, under federal law are quite well blocked out in the decisions handed down by the Commission and the courts over the years. Your association and your individual members are in an excellent position to advise American tire buyers of the pitfalls to be avoided in shopping for tires. We, on the other hand, by our press releases and public pronouncements can help alleviate the confusion. In my opinion an intensive campaign to educate the public on how to spot phony tire advertising will produce at least two benefits: many prospective purchasers will save money, and much business will be diverted from advertising racketeers to reputable merchants.

In my opinion, the future of our relationship depends to a large extent on certain contingencies. First of all you must accept one of the economic facts of life -- government regulation. Conditions in the American market place today are such that laws to prevent monopoly and to protect the consumer are essential to our economic health. There is no place today in our national life for the 19th Century type of rugged individualist who, supported by the doctrine of laissez faire and uninhibited by either moral or legal restraints, ran rough-shod over competition with complete disregard for the consequent disastrous results. If we recognize that our national economic well being depends largely on our acceptance of and adherence to legislative rules of conduct, then I believe more than half the battle is won. I have sufficient faith in American businessmen to believe that the great majority of them earnestly desire to conduct their businesses, including their advertising, on a high moral plain. To these businessmen I can give assurance that we will always try to approach the problems that arise with a complete willingness to listen to all viewpoints with a sympathetic and sincere desire to adjust

as many problems as possible cooperatively and to be of real service to all the public, including consumers and industry, both large and small. You can appreciate, of course, that as public officials we are under an irrevocable duty to enforce the laws laid down by the Congress. But perhaps we can both avoid the necessity of employing our formal complaint processes by the utilization of voluntary cooperative techniques.

With this in mind we have, through the adoption of the Tire Advertising Guides, embarked upon a program to establish road signs for members of your industry by which you are alerted as to the advertising curves and dangerous intersections which should be avoided. We have not attempted to impose any additional burdens upon you for to do so would be beyond our authority. To be sure, there are always advertising "hot rodders" who with complete indifference and disregard for others, will ignore these road signs. Just as driving "hot rodders" are dangerous on the highways, so are advertising "hot rodders" dangerous in a free and fair competitive economy. They must be dealt with severely. I assure you that I shall make every effort to see that the "book is thrown" at them.

And now that I have discussed with you the Federal Trade Commission and how it has been and now is interested in the problems of your industry, let me say a word -- and I think a very important word -- about some of the current problems confronting the Federal Trade Commission.

Under the oft repeated premise that we are an arm of the Congress, it becomes necessary to review our relationship with that distinguished body, from which stem our vigor and efficiency, our sustenance, our very existence.

I must confess that in the main we have failed to persuade the Congress to embark upon any really constructive legislative program to strengthen our powers conferred by primary legislation. We have for the past few years sponsored a modest legislative program. For example, in the anti-merger field we asked for strengthening legislation. By way of further example, in connection with one of the more important statutes preserving the rights of small business, we asked that our cease and desist orders under the Clayton Act be made automatically final, as indeed they are under the Federal Trade Commission Act, thereby avoiding protracted appellate proceedings and thereby making the Clayton Act a workable weapon in the arsenal of anti-trust legislation. Incidentally this last request has been made of the Congress for approximately the last twenty years. None

of these recommendations were favorably considered so I am certain that one of our pressing current problems is to persuade the Congress to sharpen the legislative tools heretofore given us for our task.

But even these adequate legislative tools must be implemented by adequate personnel, and in our case in large measure that means skilled professional personnel. This brings up the subject of appropriations. I recognize I am talking to taxpayers, most of whom regard the Government as a swollen bureaucracy. But you have already heard of the overwhelming responsibilities placed upon the Federal Trade Commission. I am sure even to you it comes as a shock to know that we have been expected to fulfil those responsibilities on an annual budget of less than $6,000,000, perhaps the cost of one large bomber, and with a staff of about 750. Yet not only have we failed to have any bouquets tossed in our direction because of doing a magnificent job under most trying conditions and circumstances; instead we have recently been criticized for alleged delays and inefficiency in our false and misleading advertising work. In the face of the record, this criticism is totally unfounded.

Indeed a recent statistical summary and comparison prepared by our Bureau of Litigation indicates quite the contrary in all areas of the Commission's responsibilities. The following statistical information taken from this study, all of which was prepared from matters which are of public record, furnishes convincing evidence that the Commission is functioning more efficiently today than at any other period in its history:

STATISTICAL SUMMARY AND COMPARISON

	1955	1956	1957	1958	% increase 1958 over 1957
Antimonopoly Cases					
Complaints issued	36	42	55	86	56%
Orders to cease and desist	30	37	31	45	45%
Formal complaints pending	71	73	90	128	42%
Antideceptive Practice Cases					
Complaints issued	125	150	187	268	43%
Orders to cease and desist	82	132	148	228	54%
Formal complaints pending	127	143	182	214	17%
All Cases					
Complaints issued	161	192	242	354	46%
Orders to cease and desist	112	169	179	273	52%
Formal complaints pending	198	216	272	342	25%

In short, in the antimonopoly field we have an increase in complaints issued of 56% in 1958 over 1957; in the false and misleading advertising field a corresponding increase of 43%. With respect to cease and desist orders entered we have an increase in the antimonopoly field of 45% for a similar period and in the false and misleading advertising field 54% for a similar period. A complete demonstration of our steadily increased activity in the false and misleading advertising field is that the complaints issued jumped from 125 in 1955 to 268 in 1958, and orders to cease and desist jumped from 82 in 1955 to 228 in 1958. In the light of these illuminating statistics I can't help but recall a sign appearing in a bar room of the old West, "Don't shoot the piano player, he is doing the best he can."

In all seriousness -- and this is not a subject of jest either to me or to the many dedicated staff members who have accomplished this magnificent record -- in all seriousness I believe that a more ready recognition should prevail with respect to the great work the Commission with the help of its staff has done under trying and difficult circumstances. After all, we are all working toward the same end in Washington -- both the Congress and the Commission -- namely, the preservation of the public interest. I should like to see this work accomplished in an atmosphere of greater amity and understanding. Such a clearing atmosphere would be like a freshening breeze blowing across the waters of the polluted Potomac and would, I am certain, conduce to even greater effort and accomplishment. The tremendous accomplishments in the false and misleading advertising field as well as other areas which I have just pointed out to you come, not from a large increase in staff personnel, but from the dedicated and conscientious efforts of a limited and devoted staff. It is little short of tragedy to destroy or impair the high morale of these men. It seems a wry anomaly that we find it necessary to turn to trade publications for some commendation of our activities. Thus in Drug Trade News, issue of September 8, 1958, we find the following under the title "FTC Has Done Well":

> "The criticism that the Commission has fallen down on its job doesn't click with us. Any fair minded view of this matter will show that, by and large, the Commission has exerted a most salutary effect upon the drug and medical advertising subject to its jurisdiction."

Again in Advertising Age, issue of August 18, 1958, the following appears:

> "... Many people believe that FTC has, on the whole, performed well and ably in the public interest, and that the agency has, generally, acted sensibly and moderately in an area in which sense and moderation are sometimes difficult to come by."

I think that I should know something about the protection of the public interest since I have dedicated my life to that goal. I have been in Government service about twenty years as a career employee, most of which was with the Federal Trade Commission. To use a hackneyed phrase, I have given it the best years of my life. I know of no more dedicated group or staff in government than we have at the Federal Trade Commission. They have faithfully and honestly and devotedly done a magnificent job in implementing the activities of the Commission in the fulfilment of its statutory responsibilities. It would be indeed heartening to me, and I am sure to all of us within the Commission, if there would be more widespread recognition of this fact by those who are under obligation to acquaint themselves with the truth.

And so in conclusion it is my earnest hope that a more sympathetic atmosphere may develop around our work. The idea is not novel -- it is as old as time honored Christian precepts. These precepts, I feel, deserve more than lip service. Man on the local level, the national level, the international level and perhaps even the inter-planetary level can and must act, if he is to survive, with more humanity to man. Who knows but from such an attitude there might even come expressions of appreciation and gratitude for a job well done. But am I thinking of the millennium? When this comes about I feel confident that I shall be far away on some cloud -- a cloud uninhabited by kings, commissars, Congressmen, bureaucrats, office holders, office seekers, taxpayers or even tire dealers -- and on this lovely, lonely cloud I shall stop playing my harp for a moment and look down with calm detachment on this strange twist in worldly relationships.

And now my friends I have bored you long enough. Thanks for the privilege of being with you today.