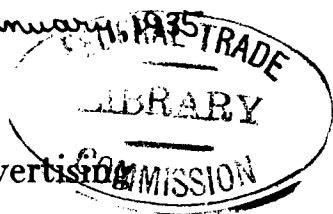


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p. 154-158.



## Regulation of Radio Advertising

By EWIN L. DAVIS

**R**ADIO broadcasting has become a very important factor in our social, political, and economic life. It takes into the remotest homes throughout the land the voices of the great leaders of thought, and a wide variety of music and other forms of entertainment. On occasions a large portion of our population are brought into a single radio audience.

In England and other countries the cost of radio programs is met by charges to the owners of receiving sets. In the United States most programs are paid for by advertising sponsors. I am advised that for the twelve months ending last June the radio advertising bill of the United States exceeded \$65,000,000. Yet the radio art and the radio industry are still in their infancy, and their potentialities are scarcely explored. I mention this to emphasize the importance of the subject.

Before specifically discussing the subject of radio advertising, I wish to call attention to the authority and the duty of the Federal Trade Commission under the law, as well as to outline what the Commission has done to regulate and improve the character of other forms of advertising.

The Federal Trade Commission Act of September 26, 1914, declares "unfair methods of competition in commerce" to be unlawful, and empowers and directs the Federal Trade Commission to prevent such methods.

The courts have uniformly held that false or misleading advertising constitutes such unfair methods within the meaning of this act.

### RESTRAINT OF MISLEADING ADVERTISING

From the time the Commission was organized, it has waged war against advertisers who resort to false or misleading representation to sell their products.

The Commission has published sixteen volumes of its orders. These cover a period from its organization, early in 1915, to July 1932. In these sixteen volumes, 2,781 cases are reported in full, giving the facts found and the orders issued. Of these 2,781 cases, 1,993 related to false and misleading advertising. The remainder, 788, related to commercial bribery, restraint of competition, price fixing, and various other offenses under the Federal Trade Commission Act or the Clayton Act. Of the 1,993 cases relating to false advertising, 456 involved food, drugs, or cosmetics, and 1,537 related to other articles of commerce such as household goods, furniture, lumber, forest products, seeds, clothing, fabrics of all kinds, and so forth.

These reported decisions represent a comparatively small percentage of the cases handled by the Commission. An overwhelming percentage of all advertising cases have been settled amicably, usually by stipulation, without the issuance of formal complaint.

It should be clearly understood that the Federal Trade Commission neither claims the authority to censor advertising, nor has any desire to do so. Its sole purpose is to curb unlawful abuses of the freedom of expression guaranteed by the Constitution. To put it

of speaking. Their salaries are too low.

6. Let the broadcasting companies employ more and better judges for auditions to give new talent a better chance.

7. Let the broadcasting companies use their sustaining periods (those not sold to advertisers) for constructive experimenting instead of filling so much time with the same old orchestras and soloists—always making the same sounds under different names and song titles.

8. Import more British dramatic directors and give them time and money for long rehearsals. Give American directors the same chance. Network profits would easily permit both.

9. Encourage the best writers and composers to realize that radio is a new medium which they must study as earnestly as they had to study sound pictures. Each has a technique which differs from the legitimate stage.

10. Keep popular songs from committing suicide, by restricting them

from being played every night in the week on every station, if not on every program.

11. Let famous conductors realize that they are best developing a taste for good music by arranging their programs to interest a groping public rather than to impress other conductors or to satisfy themselves.

12. Put big names on the air only when and as long as they can do big things with good material.

13. Remove from the air all the horror programs which send children to bed frightened.

14. Let those who like good programs write in about it, and those who do not like bad programs do so too.

15. Let the newspapers stop fighting and virtually ignoring radio (as they do except in the time-tables which their readers demand), and start training intelligent critics who can give full and adult accounts of programs, with constructive suggestions (as a few do now privately) instead of smart remarks and trivial gossip.

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tersely, the Commission does not dictate what an advertiser shall say, but may indicate what he shall not say.

The processes of the Commission are not punitive, but injunctive. How successful this procedure has been is indicated by the fact that during the nearly twenty years since the Commission was established, it has seldom had to appeal to the courts to discipline respondents for disregarding its cease and desist orders.

A few years ago the Commission began a more intensive drive against false advertising. When this campaign was begun, estimates were made that false and misleading advertising was costing the American public \$500,000,000 annually.

#### PUBLISHERS SUPPORT FEDERAL TRADE COMMISSION

Upon request of the publishers, a trade-practice conference was held under the auspices of the Federal Trade Commission in New York, November 12, 1928, with approximately six thousand publishers present. These assembled publishers pledged their support to the Commission in its efforts to eliminate false and misleading advertising.

All the reputable newspapers and magazines have given their hearty cooperation to the Commission in its efforts to prevent false advertising in their publications, and associations of advertisers, advertising agents, and publishers have adopted resolutions in recent years including 1934, condemning false advertising, in line with the position of the Federal Trade Commission. However, there is always a percentage of the people who will not observe fair methods of competition unless forced to do so by the strong arm of the law. Because of this, the Commission must continually exercise its authority against advertisers who resort to false advertising, advertising

agents who write, encourage, and place for publication such advertising, and publishers who continue to publish advertising copy containing false or misleading representations, and such broadcasting stations as permit such violations.

Ethical advertisers—and they include the great majority—require little or no regulation. Their own self-respect and regard for the proprieties prompt them to tell the truth. However, among our vast population, there will probably always be some unscrupulous advertisers, and unless curbed by some authority, they are likely to trespass upon truth and decency.

Not a small part of the mischief lies in the fact that unrestrained, dishonest advertisers have in times past set a pace of gross exaggeration, if not outright falsification, which the advertising agents of more ethical houses felt necessary to follow to some degree, at least, in order to get, or hold, business.

The result of regulation of printed advertising has been that accurate claims are now the rule, not the exception. Readers of reputable publications have come to understand that generally they can safely rely upon what they read.

The National Industrial Recovery Act, Section 3 (b) provides:

After the President shall have approved any such code, the provisions of such code shall be the standards of fair competition for such trade or industry or subdivision thereof. Any violation of such standards in any transaction in or affecting interstate or foreign commerce shall be deemed an unfair method of competition in commerce within the meaning of the Federal Trade Commission Act, as amended; but nothing in this title shall be construed to impair the powers of the Federal Trade Commission under such Act, as amended.

Numerous NRA codes contain provisions against false and misleading advertising.

### PROVISIONS OF RADIO BROADCASTING CODE

A code of fair competition for the radio broadcasting industry was approved by the President November 27, 1933. Among other things this code provides against "the broadcasting of any advertisement of, or information concerning any lottery, gift enterprise, or similar scheme," and so forth.

While the statute directing the Federal Trade Commission to prevent unfair methods of competition in commerce, including false and misleading advertising, applies equally to all forms of misrepresentation, yet until recently the Commission has generally dealt with printed advertising and has had only an occasional radio case. This was due to the fact that radio advertising is a comparatively new development, and also that it was more difficult and expensive to scrutinize and deal with it.

As a matter of fact, the Federal Government is under a higher duty to keep radio broadcasts free from unlawful advertising than to regulate any other form of advertising. No broadcasting station can operate without a license from the Federal Government to do so. Aside from the fact that such licensees are given, without cost, very valuable and much-sought privileges, the Government certainly cannot afford to be placed in the attitude of licensing stations to violate the law or permit others to do so.

The statutory basis for granting a broadcasting license is "public interest, convenience or necessity." In other words, the station is authorized to render a service in the public interest. The primary function of radio is not to sell goods. There is no justification for the Federal Government's maintaining an instrumentality for the benefit of advertisers. The only justification for

radio advertising is that the station or the system may be maintained financially for the purpose of rendering a greater public service. If a station lends its facilities to the dissemination of false, fraudulent, or misleading advertising, it grossly violates the public trust.

When a member of Congress, the writer took occasion to express his views with respect to the quality and the volume of radio advertising, as well as the character of radio programs generally. However, this article deals only with the problem as it relates to advertising continuities which violate the laws under the jurisdiction of the Federal Trade Commission.

### SCRUTINY OF RADIO ADVERTISING

Last spring, the Federal Trade Commission definitely determined to take steps looking to a closer scrutiny and more rigid regulation of the large volume of radio advertising. Conferences were held with leading executives in the industry, who displayed a fine spirit of helpful cooperation. As a result of various conferences and a careful study of the problem, it was decided by the Commission to request the networks, the transcription companies, and the individual broadcasting stations to file with the Commission copies of their advertising continuities. The first call for these advertising continuities was issued on May 16, 1934, the request being made for such continuities to be filed commencing July 1 and until further notice.

In response to the Commission's request, all of the 10 networks and all of the 596 broadcasting stations complied. All of the transcription companies except a few small and unimportant ones responded. The Commission has listed 49 stations as non-commercial, that is, stations which do not accept compensation for broadcasting

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continuities. These are operated principally by educational or religious institutions, and state or municipal agencies.

On July 30 the Commission advised those stations which had complied that they might discontinue forwarding continuities until further notice, although the network and transcription companies will continue sending their continuities. Further calls will be made upon the individual stations from time to time as the Commission is able to handle the continuities.

The Commission received 183,877 separate advertising continuities under this initial call. By October 1 the Commission's staff had completed a preliminary detailed examination of all such continuities, of which 161,466 were found unobjectionable and filed without further action. A total of 22,411 were referred to the Special Board for further study and possible investigation. However, it is probable that only a small percentage of this number will prove to be unlawful.

This scrutiny of radio advertising is being conducted with a minimum of expense to the Government as well as to the industry, by reason of the coöperation of members of the industry and the method of procedure worked out. The broadcasters simply require their advertising patrons to file with them two copies of their continuities, the additional copy being for use of the Commission.

## PROCEDURE OF THE COMMISSION

Reverting to the examination of these continuities, if they appear unobjectionable from a legal standpoint, they are filed without action. If it appears that the advertising is objectionable or of a doubtful character, questionnaires may be forwarded to such advertisers requesting information to aid the Commission in reaching

a conclusion. Generally such questionnaire calls for formula, sample, and follow-up literature. The formulæ and the samples may be submitted by the Commission to other proper agencies of the Government for tests and reports. These follow-up letters and literature frequently contain false or misleading claims not contained in the contact advertisement or announcement.

These radio continuities are being handled primarily by our Special Board of Investigation.

A cease and desist order against an advertiser is entered by the Commission only after the respondent has had full opportunity to justify his claims, and if not able to do so, then to agree in writing to modify his copy to conform with the truth. Otherwise, if the Commission has reason to believe that the advertiser has violated the law, it issues a formal complaint against such advertiser, who has twenty days within which to file an answer, after which proof is taken before a trial examiner; briefs are filed by both sides, and the case heard by the Commission and oral argument granted, if requested. The decision of the Commission is subject to review by the United States Court of Appeals and finally the Supreme Court of the United States. However, a large majority of cases are settled by stipulation, and only a few are ever appealed from the Commission to the courts.

Publishers, radio broadcasting companies, and the advertising agencies involved may, and almost invariably do, avoid being made joint respondents with the advertiser by agreeing in writing that they will observe the terms of any cease and desist order entered by the Commission or any stipulation made by the advertiser in such case. This has become an established procedure with the publishers of news-

papers and periodicals, and such broadcasting companies as have been cited have followed it as a matter of course.

The Commission has been very much gratified by the splendid spirit of coöperation shown by those engaged in the radio broadcasting industry. It is refreshing that such an overwhelming percentage of the industry are so deeply interested and so fully appreciative of the importance of permitting only truthful and honest advertising over the radio—thus not only preventing the violation of the law through that medium, but also preventing advertisers from defrauding the public and thereby causing a loss of listener confidence in radio advertising.

#### SUPPORT FROM NAB

The writer addressed the Annual Convention of the National Association of Broadcasters, September 18, 1934, on "Radio Advertising and the Federal Trade Commission," and his explanation of the efforts of the Commission to eliminate false and misleading advertising from radio met a most sympathetic response and the strongest assurances of coöperation. In fact,

the convention adopted the following resolution:

*Resolved*, that the NAB hereby pledges its full coöperation to the Federal Trade Commission in its efforts to safeguard the people of the United States against all forms of fraudulent, untruthful or willfully misleading advertising, and urges upon every broadcaster the necessity for maintaining a standard of advertising truthfulness which will justify and strengthen the faith of the public in the dependability of radio advertising.

The Federal Communications Commission has shown a fine spirit of helpful coöperation.

The Federal Trade Commission's success in its effort to stamp out false and misleading advertising, having as it does the support and coöperation of advertisers, the press, and broadcasters generally, affords an example of what may be done by the Government to protect legitimate business and the public without recourse to drastic punishment, penalties, and forfeitures. It is largely a case of self-government made effective by the aid of the Federal Government in restraining the comparative few who are unwilling to play the game fairly.

*Honorable Ewin L. Davis is chairman of the Federal Trade Commission. He was judge of the Seventh Judicial Circuit of Tennessee from 1910 to 1918; Representative in the 66th to 72nd Congresses, 1919 to 1933; and chairman of the Committee on Merchant Marine, Radio and Fisheries during the 72nd Congress. During his service in Congress he actively participated in the drafting and enactment of all radio legislation, including the Davis Radio Equalization Amendment, requiring an equitable allocation of radio broadcasting facilities.*