

The George Washington University Presents

"Confidential— from Washington"

THE GEORGE WASHINGTON VICTORY COUNCIL

WASHINGTON, D. C.



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THE GEORGE WASHINGTON UNIVERSITY

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The George Washington University as it prepares to celebrate its one hundred and twenty-fifth anniversary sends cordial greetings to the alumni and other friends throughout the world.

The University has sought always to serve our nation as a whole recalling the name and ideals of General George Washington, who during his public life urged the establishment of a university located in the Capital of the Nation "to which the youth of fortune and talents from all parts thereof might be sent for the completion of their Education in all branches of polite literature;—in Arts and Sciences,—in acquiring knowledge in the principles of Politics and good Government".

CLOYD H. MARVIN, *President,*
The George Washington University.

Truth In Radio Advertising

By

ROBERT E. FREER

Commissioner, Federal Trade Commission
Chairman, The George Washington Victory Council
Trustee, The George Washington University

The Federal Trade Commission is an independent agency with quasi-judicial duties, among which is the task of preventing unfair methods of competition and unfair or deceptive acts and practices through compulsory proceedings where necessary, and through voluntary efforts where possible.

About five years ago, advertising was selected as one of several specific phases of distribution deemed appropriate to a factual study of Methods and Costs of Distribution. Although apprehension was expressed by some that the study might smear advertising, advertising has nothing to fear from a fair inquiry into its place in the distributive system. The Commission's report, essentially a study of peacetime advertising methods and costs, was published in 1944.

Among other things, this report contains an analysis, by media, of advertising expenditures totaling \$71,498,607 of 8 corporations in 17 industries for the year 1939. The proportional amount spent on radio advertising, 18% of the total, exceeded that for any other medium, although only 5% of advertisers bought radio time.

THE SCOPE OF GOVERNMENT REGULATION

The Commission is no copy censor and has no desire to become one. It has no authority to proceed against any advertiser unless his commercials are deceptive or misleading.

Therefore, with those who prefer the old extravagant and happy days, I view with no alarm the return of automobile advertising stressing the red horn button on the 1947 models distinguishing them from the preceding year's green horn button jobs.

Anyone who insists that the truth must be varnished, distorted, or abandoned in order to advertise effectively is slandering advertising. The Federal Trade Commission has never required the abandonment of an advertising claim on any other ground than that it is deceptive or misleading in some particular. The only censor that advertising need seriously consider is public opinion.

While no person or group recalls with exactitude what they have listened to, impressions of what they have heard have been recorded; and I venture to assert that the reputation of radio advertising depends upon the truthful character of the air-wave impressions recorded on the public mind.

Public opinion polls and research groups have so sounded the public's listening, reading and buying habits that most any business can buy a reasonable facsimile of a dissected consumer. Probably on the theory that turn about is fair play, consumers today are showing quite an interest in the merchandising habits of business.

For example, the October 9, 1944, issue of *Drug Trade News*, in reporting a "definitely skeptical attitude" toward advertising claims reflected in a Health Teaching Syllabus circulated by the New York State Education Department, listed the following criteria and procedure for judging the soundness of advertising claims:

"Are the statements absolute outright facts? And are the statements of such a nature that the advertiser wants you to think they are facts, and worded in such a way that the facts are not stated but intimated? Checking of packaged goods to compare radio commercials with actual labeling is advocated."

Radio advertising now is at a most advantageous position, as to both profits and prestige. Networks and independent stations share in this prosperity. There is no better time to consider whether proper safeguards may not be indicated to protect the whole industry from loss of face through practices of an unethical minority.

ADVERTISING SURVEYS

A majority of the complaints made to the Commission involve charges of false or misleading advertising. Although a large number of the proceedings originate from complaints by a competitor or a consumer, others are initiated on the Commission's own motion and as the result of a constant survey of advertising maintained by its Radio and Periodical Division. Begun in 1929, the survey was at first limited to magazines and newspapers. It was expanded in 1934 to cover radio commercials, and in 1939 to include mail order catalogs, almanacs and foreign language newspapers.

During the year ending June 30, 1944, the Radio and Periodical Division examined 298,970 advertisements contained in 1792 editions of representative newspapers and 967 issues of magazines and journals. It examined also 627,719 broadcast continuities consisting of network and individual station scripts and scripts representing the built-in advertising portions of transcription recording productions. From these scripts 19,512 advertising broadcasts were marked for further study as containing representations which might be false or misleading.

The purpose and effect of this scrutiny is twofold. First advertising representations appearing open to question are promptly challenged. Secondly representations modified as a result of Commission action are checked for possible violation of the Commission's order or the advertiser's stipulation to discontinue or modify his previous claims.

In securing the materials with which to do this job cooperation was received from the four major network chains, 19 regional network groups and transcription producers; also 850 commercial radio stations, 504 newspaper publishers and 458 publishers of magazines, farm journals and trade publications. This cooperation was of real aid in the elimination of false and misleading advertising and deserves the public's commendation.

"WHEELER-LEA POLICIES"

The Wheeler-Lea amendments to the Federal Trade Commission Act make mandatory a high standard of truth in connection with the advertising of foods, drugs, therapeutic devices and cosmetics. Advertising marked for legal review by the Radio and Periodical Division during the fiscal year related to 1902 commodities. Of these 55% were classed as drugs, 15% as cosmetics and 11% as food designed for human or animal consumption. Since these percentages add up to 81%, commodities other than those within the special Wheeler-Lea provisions accounted for only 18% of the total.

The law empowers the Commission to require to appear in each and every advertisement of a food, drug, curative device or cosmetic, full and comprehensive warning as to potential injury which may result from conditions prescribed in the advertisement or under conditions which are customary or usual. As a concession to the advertiser—although one not deemed inconsistent with duty to the public—the Commission has adopted a policy of permitting the brief but significant admonition, "Caution: Use Only as Directed," to represent the full warning if full textual cautionary language is set forth in the labeling or on the label.

On programs containing more than one commercial, each separated by a program of entertainment, the cautionary statement must be repeated with each commercial, the same requirement as is imposed on magazine and newspaper advertisers who elect to insert more than one advertisement in the same issue of a publication.

Checks are made from time to time to determine whether the warning statement, "Caution: Use Only As Directed," appearing in stipulations and orders relating to potentially injurious drug or cosmetic preparations, is being slurred or de-emphasized in commercials; and whether in programs containing several commercials separated by entertainment the required caution is repeated. Respondents who have omitted the "Caution" from any commercial or who in substance have said, "Caution, take only as directed in a glass of water," or, "You are cautioned to take only as directed for the best results," have been informed that such omission or variance is not recognized as compliance.

It is "unlawful" (Section 12) merely "to disseminate, or cause to be disseminated any false advertisement" of a food, drug, curative device or cosmetic, and, although, under certain conditions, (Section 14) they are exempt from *criminal liability*, advertising agencies and radio broadcast licensees have no exemption from *civil proceedings*. Advertising agencies frequently have been joined as parties to Commission proceedings because of participation in the preparation of the offending advertising. Radio stations have been joined where it appeared that their personnel had participated largely in the preparation of the false advertising. Stations acting in the capacity of advertising agents may be joined as parties to any proceedings arising out of the falsity of advertising in the preparation of which they participate.

BASIC ACCORD

False and misleading advertising is indefensible, harmful not only to the public at large but also to business—particularly the business of advertising.

In spite of general agreement upon this basic principle differences of opinion arise over application to specific cases—particularly to so-called border-line cases where the deception flows from distortion, ambiguity or half-truth aiding the aura of deceptive impression. No doubt, such cases will continue in the future—their number in somewhat direct ratio with the pressure to write new and startling copy designed to increase the sales of products whose properties have been rather thoroughly explained to the public in the past.

Unfortunately there is no rule of thumb for determining in advance whether border-line advertising copy will go by or be branded as false and misleading. Neither the Federal Trade Commission, nor the courts have been able to supply the script writer with a simple and magic formula sure to keep his commercials free from criticism. The Supreme Court once described the process of individual case-by-case determination utilized to be one of "judicial inclusion and exclusion."

MISLEADING IMPRESSIONS

The most potent effect of the spoken—as well as of the written—word is an over-all general impression. "Impression," in the language of the court, "itself is a stamping in upon the mind." It is a notion which may be held, made or formed by inference with or without adequate grounds. The courts have made these comments on misleading impressions:

(1) " * * * the buying public does not ordinarily carefully study or weigh each word in an advertisement. The ultimate impression upon the mind * * * arises from the sum total of not only what is said, but also of all that is reasonably implied. * * * such representations are made to the public, who, we assume, are not, as a whole, experts in grammatical construction. Their education in parsing a sentence has either been neglected or forgotten. * * * The law is not made for experts but to protect the public—that vast multitude which includes the ignorant, the unthinking, and the credulous, who, in making purchases, do not stop to analyze but too often are governed by appearances and general impressions. * * * Advertisements are intended not 'to be carefully dissected with a dictionary at hand, but rather to produce an impression upon' prospective purchasers. . . ."

(2) "Words and sentences may be literally and technically true and yet be framed in such a setting as to mislead or deceive."

It is helpful to cite concrete examples of interpretation based on specific advertising.

(1) "Look 10-15 years younger, the way the stars do. Why worry because you have wrinkles, lines, baggy eyes, double chin, sagging muscles or other age signs. Be amazed! Send \$1.00 * * *"

The respondent having readily admitted, in answer to complaint, that its face cream would not remove or eradicate facial age signs, the Commission's order ran against representing "directly or through inference" that it would.

(2) " * * * This stomachio-digestive should be on the table during every meal so that every member of the family can take it according to how he feels * * * avoid all common ailments by taking regularly."

The advertiser was required to desist from representing "directly or through inference" that through regular use of its product—containing alcohol and a laxative—"all common ailments may be avoided" or that it has any therapeutic value for other ailments in excess of its laxative properties and those of a "bitter appetizer."

FACTUALLY INFORMATIVE ADVERTISING

Somewhat broader than "truth in advertising," and somewhat more precise definitively, is the phrase "factually informative advertising." Truth in radio advertising contemplates that the announcer adhere to the principles of veracity extolling the virtue of his sponsor's product. Factually informative radio advertising contemplates that the announcer not only make truthful statements imputing that product's meritorious attributes, but also, that he affirmatively disclose

any dangerous potentialities that may attend its use. This accords with the act which requires the revelation of potential injury to health which may flow from use of a medical preparation under conditions which are customary or usual or are otherwise recommended in the advertising continuity.

Those who feel that the Commission is being unduly restrictive in some particular case, should remember that it is doing its best to apply accepted principles and, by the application of such principles against non-conformists, to make it easier for advertising generally to maintain scrupulously ethical standards. While the Commission may proceed only in the interest of the public, a very large number of cases originate in complaints of—and result in advantage to—business men who were being injured by the practices of unscrupulous competitors. Moreover, a misleading advertisement curbed is a temptation removed from the path of all who might resort to similar deception for reasons of competitive expediency.

PROGRESS AND PREDICTION

Admittedly, strict truth in advertising on the part of all remains a theoretical goal. The general trend is upward and the Commission at times may seek to curb types of deception which have hitherto gone unchallenged.

"Scare stuff" is a relic of the medicine show. The value of "pressure stuff" today is considered to have been overrated. Ambiguous and deceptive advertising is weak continuity, in that it represents an effort to by-pass the expenditure of mental effort necessary to write factually informative advertising which today is generally accepted as the most effective.

The "horse trading," "buyer beware" standards antedating the Federal Trade Commission Act of 1914 were rejected by the middle 1920's. Much deceptive concealment antedating the Wheeler-Lea Act of 1938 and the Wool Products Labeling Act of 1939 is being discarded in the early 1940's. It may be predicted that a goodly share of the present day "trifling with the truth" will be outmoded in this decade, with or without the enactment of additional legislation.

A large proportion of daily newspapers and the better class of magazines scrutinize their advertising meticulously. They try to anticipate and avoid warning by Better Business Bureaus or legal proceedings, by rejecting any suspicious advertisements. Radio executives should be as farseeing in this respect as their newspaper competitors.

Chisellers we will always have with us, but they are easily recognized and appropriately restrained. So with the frankly dishonest. But the unethical and the merely careless elements—disliked, but tolerated in pre-war days—should be straightened out also.

Happily there exists today a spread between the minimum requirements of the law and the self-imposed standards of the radio advertising industry. It is to be hoped that both will be raised in the future as they have been in the past, and that the spread not only will remain but will widen, through elevation of voluntary standards of what is *best* in advertising at an even more rapid rate than any future raising of the minimum requirements of the law.

(Adapted from an address before the Radio Executives Club of New York, November 20, 1944.)

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Published by

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PREVIOUS ISSUES

No. 1—May 22, 1942—Inflation: The Core of the Problem, by Edward C. Acheson

No. 2—July 1, 1942—America Stands in Line, by Mitchell Dreese

No. 3—Aug. 1, 1942—Patents, The Monopoly Issue and the War, by S. Chesterfield Oppenheim

No. 4—Sept. 1, 1942—The War in Asia—A Balance-Sheet, by William C. Johnstone

No. 5—Nov. 2, 1942—Geopolitics, by Elmer L. Kayser

No. 6—Dec. 12, 1942—A Pattern for Post-War Europe, by Lowell J. Ragatz

No. 7—Feb. 1, 1943—The Beveridge Plan and America, by Arthur E. Burns

No. 8—Mar. 15, 1943—The Sulfa Drugs, by Frederick J. Cullen

No. 9—May 28, 1943—Science Shapes the Post-War World, by Watson Davis

No. 10—July, 1943—Juvenile or Adult Delinquency? by J. Edgar Hoover; The Armed Forces and College Education, by William C. Johnstone

No. 11—August, 1943—Blood Plasma Transfusions and Plasma Banks, by Roger M. Choisser

No. 12—October, 1943—Anniversary Issue (Supplements to Nos. 3, 4, 5, 6, 8, 10 and 11)

No. 13—November, 1943—Clypton, by Lowell B. Mason; Physical Fitness of American Women, by Jenny E. Turnbull

No. 14—January, 1944—Security of War Information, by Robert E. Freer; The Sinus Problem, by Jeter C. Bradley

No. 15—February, 1944—Nutrition: A Weapon for War and a Peace-Time Safeguard, by Joseph H. Roe

No. 16—April, 1944—Bases for Peace in the Far East, by William C. Johnstone

No. 17—May, 1944—Will American Free Government and Free Enterprise Survive? by Hector M. Aring

No. 18—June, 1944—Some Premises of Peace, by Wiley Rutledge

No. 19—July, 1944—Full Employment and Fiscal Policy, by Arthur E. Burns

No. 20—August, 1944—Who Shall Speak for America in Making Peace?—Executive Agreements as an Alternative to Treaty or Treaties, by John A. Tillema

No. 21—October, 1944—Cost of Distribution for Essential Products, by Robert E. Freer

No. 22—December, 1944—Penicillin, by Frederick J. Cullen

No. 23—January, 1945—International Justice—Proposals for the Organization of an Adequate System of International Courts, by James Oliver Murdock

No. 24—February, 1945—Transportation in the War and After, by Charles S. Morgan

No. 25—March, 1945—Congress and the President, by W. Reed West.

No. 26—April, 1945—The George Washington University War-Time, by Cloyd H. Marvin.

No. 27—June, 1945—Our Merchant Marine, by Arthur Johnson.

No. 28—July, 1945—Law Enforcement Reaches Professional Status, by J. Edgar Hoover

No. 29—August, 1945—War Time Washington, New Wonder of the Western World, by Jessie Fant Evans

No. 30—November, 1945—The Road Toward Peace, by Elmer L. Kayser

No. 31—January, 1946—The Release of Atomic Energy, by Watson Davis.