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TO WALTER RUPERT TUCKERMAN

The April Bulletin is dedicated to Walter Rupert Tuckerman, a member of the Board of Trustees of The George Washington University since 1915. In the years since then, he and his colleagues on the Board have witnessed the development of the University as an institution worthy of its name and of its strategic location in the nation's capital.

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

THE ETHICS OF ADVERTISING

By

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P. T. Barnum in the 19th Century testified to "his most complete faith" in advertising as "the royal road to business." It has been said that the genesis of industry's wide scale adoption of advertising was when it simultaneously dawned on many established concerns that if the charlatan and even the swindler could make advertising pay so well, why wouldn't it be a profitable medium for business men who kept their promises? The chisellers, they felt, would always be with us but as subjects for control. The price of that control has been a measure of regulation of the whole advertising structure exemplified by Better Business Bureaus, by State "Printers' Ink Statutes," by the Postal Fraud Statutes, by the Food and Drug Laws and by the Wheeler-Lea amendments to the Federal Trade Commission Act.

The Federal Trade Commission Act and the Wheeler-Lea amendments, among other things, declared the use in interstate commerce of unfair methods of competition and unfair or deceptive acts and practices to be unlawful. Lawyers characterize this kind of language as flexible language. Justice

Brandeis said:

"Instead of undertaking to define what practices should be deemed unfair * * * the act left the determination to the Commission. Experience with existing laws had taught that definition being necessarily rigid, would prove embarrassing and, if rigorously applied, might involve great hardship * * *. Furthermore, an enumeration, however comprehensive, of existing methods of unfair competition must necessarily prove incomplete, as with new conditions constantly arising novel unfair methods would be devised and developed." ¹

In its administration of the Act, the Federal Trade Commission has encountered the new and the novel especially in the field of false advertising. For example, there was the case in which a motion picture was advertised as "the spectacular, sensational, real adventure film made with untold difficulties in the heart of Equatorial Africa" as portraying "pygmies" and a strange newly discovered beast, the "Tortadillo." The picture had been filmed right around Hollywood; the "savages

and pygmies" all lived in the vicinity of Los Angeles; and the "Tortadillo" was a turtle to which had been glued wings, scales and an arresting tail.²

Nondeceptive Advertising Is Good Business

Deceptive advertising harms customers and scrupulous business. In one famous case the Court said:

"The consumer is prejudiced if, upon giving an order for one thing, he is supplied with something else. * * * In such matters the public is entitled to get what it chooses, though the choice may be dictated by caprice or by fashion or perhaps by ignorance. Nor is the prejudice only to the consumer. Dealers and manufacturers are prejudiced when orders that would have come to them if the lumber has been rightly named, are diverted to others whose methods are less scrupulous. * * * The careless and the unscrupulous must rise to the standards of the scrupulous and the diligent."³

Words and sentences, literally true, may be framed in a confusing setting capable of—if not artfully designed to be—misleading. No magic formula can resolve the implications of such loosely written advertising copy.

No ingenious advertiser or government expert as yet has invented the precise rule of thumb, which will segregate the artful from the "truth unvarnished" variety of advertisement. The Federal Trade Commission has declined to issue advance opinions as to proposed advertising. Such a course might evolve into some species of censorship.

On the basis of past experience and scientific information, the commission regards with suspicion advertising claims of any *temporary relief preparation* offered to cure the symptoms of, or to stop or end, any disease. On the other hand, without comprehensive investigation it cannot know if there is concealment of material facts or if a twist here and a turn there distorts the truth.

These facts are or should be more readily available to the advertiser. The addition of subjective values to selling by means of advertising cannot do away with the need for relevant truth as a competent guide to use. Whether calculated insertion of a restrictive "weasel word" here and a contradicting and subtractive phrase there are sufficient, in a given case, to remedy the deceptive ambiguity often raises a troublesome question. The test of unfairness was made elastic so that regulation might keep pace with new promotional inventions. To evaluate, to the exact degree, the level of improvement to which business morals in general, and advertising in particular, have evolved, is not possible. *The upward trend, though, is plain.*

Many advertising claims, literally true when subjected to cold legal scrutiny, still may be objectionable because of omission or innuendo. The average consumer does not read an advertisement as a legal document. Part of, but not all, these borderline cases are subjects for legal correction. All such copy, however, represents temptations put in the path of others of the border fringe.

The adage "honesty is the best policy" is not just an old saw, but is the cutting edge of really effective advertising copy. Through precept and example, therefore, and by instilling into the minds of the users and producers of advertising the fact that complete candor and good taste in advertising is *good business*, the advertising industry is in a position to accomplish as much as, or more than, the government in discouraging the

unethical. Government agencies may swing the big stick relentlessly against the border fringe without accomplishing much more than a segregation of those sinners whose horns are developed beyond the legal limit. This is the field in which the industry may be most effective, not by "regulation," but simply by educating the business man and the advertising agency to the fact that the cumulative effect of unethical advertising policies must inevitably be loss of confidence in the product or its maker by the purchasing public. The confidence of the public, more than mere recognition or knowledge of a brand or trade name is a pearl without price.

Misleading Impressions

Advertising of the misleading or deluding variety may be the subject of legal correction despite a lack of outright falsity. Here is a concrete example:

"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 * * *."⁴

Nowhere does this advertiser affirmatively state that these hallmarks of experience and wisdom in some, or addiction to the pleasures of the table on the part of others, will disappear. He suggests significantly that we dispense with worry; he invites our amazement.

The courts as well as the Commission are sensitive to misleading impressions, as recorded in the following opinion:

"* * * 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. * * * 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. * * *"⁵

The F.T.C.'s Trade Practice Conferences Aid Upward Trend

The Federal Trade Commission's Trade Practice Conferences afford valuable enlightenment on trends in business ethics. In some instances Conferences have brought cooperative and simultaneous discontinuance in whole industries of twilight zone practices. In such conferences entire industries meet together under government auspices, discuss frankly the trade practices, and undertake to clean up all false and deceptive advertising. The conference procedure recognizes that the average American businessman is no petty pickpocket to be haled into court at every opportunity. Giving him the chance to improve his business "morality" is generally more effective than swinging the big stick. Many industries star witness to this method of house cleaning. Such Conferences result not only in formal rules forbidding practices which are unfair under the law, but also in expressions of policy discouraging practices in the "twilight zone," and encouraging

the interest of both industry and the consumer, the voluntary adoption of ethical standards considerably above the legal minimum.

The Trade Practice Conference is a fine method of wholesale enforcement of the legal minima of fairness. It obviates the necessity of many formal enforcement proceedings against individual concerns, and the attendant temporary competitive advantage of the recalcitrant firm over those more high-minded and tractable. Often, too, more real good can be accomplished on a voluntary basis than in an adversary proceeding, and such higher standards of ethical conduct can be adopted.

It is a hard and basic truth that a business man wants his competitors to advertise truthfully. Upon information or belief that one or more of them is nibbling at truth's edges, he may adopt tomorrow certain practical compromises with those concepts of truth in advertising, which today he enthusiastically endorses. When he shares in making trade practice conference rules for others, he is more apt to see to it that his own business lives up to them.

The history of the rayon industry in this country points a good moral for the advertiser. In the not too distant past, synthetic fibers were considered by the purchasing public to be sleazy substitutes for the real thing. How that impression came to be created may be a matter of debate, since no one ever denied that the best of them were of superior quality to the cheaper natural fibers. As a matter of fact, this superiority was used extensively in the conference which led to adoption of the trade practice rules for the rayon industry⁶ as an argument against adoption of rules requiring an accurate description of rayon to prevent deception of the public.

Justice Holmes once made a statement to the effect that the best test of truth is its ability to get itself accepted at the market place. The synthetic fibers have in the few short years since adoption of these rules demonstrated the truth of their admirable characteristics in the market place, not as substitutes, but as what they really are. They have demonstrated perhaps more dramatically than is usual that the American consumer can be trusted with the real truth if it is given him or her.

Value of Informative Advertising

It is this characteristic of the public, its ability to handle the truth if furnished with it, that some advertisers seem to overlook. Conditions of modern marketing, where the purchaser may no longer rely upon his sense of touch, taste or even sight in appraising the wares offered him in such bewildering profusion, make his need for honest information greater than it was even a few years ago. Numerous proposals have been made by consumer groups and others for some authoritative and official source of consumer information.

The popularity of some private "bureaus," "institutes" and consumer reports suggests public approval of proposals for an authoritative or official source of consumer information. Advertising should concern itself with supplying such information. If it turns a deaf ear, this polite consumer agitation may become a roar for establishment of machinery by-passing advertisers. Advertising itself can do much toward satisfying the consumer's great need, not so much for guidance, as for enough information to make a wise selection. Perhaps it cannot be expected that third rate merchandise would be so described in such bald language in an advertisement for which good money was spent by an advertiser desiring to sell his products. The most visionary reformer would hardly expect human nature to change that much. But the adver-

tising business as a whole should be alert to the public search for more honest information than generally is supplied. It should be the first to supply it.

An issue of "Printer's Ink" referred to a poll of wage earner husbands and wives in which three-fourths said that advertisements help give better products for the money. At the same time over one-half expressed the opinion that advertisements add to the cost of things. Two-thirds expressed some specific criticism of advertising they had recently noted.

At least a segment of the public holds either an emotional grudge or an intellectual spite against advertising as an institution. At times their complaints have bordered on the purple side, especially where the criticism was lack of good taste—the regulation of which is certainly no function of any government agency.

Elaborate aids are now available to test the reactions of the public to copy suspected of bad taste or indelicacy. Every program or piece of copy which offends even a few people harms advertising as an institution. Questionable taste and lack of candor harm advertising before they begin to affect the sales of the advertised product. However fine and constructive advertising may be as a whole, if any considerable portion of the public loses confidence in it for any reason, whether justified or not, the efforts of the best elements in the business will be wasted.

Past and Prospective Self Improvement

Advertising standards have been raised in the past, and will be raised in the future. The most obvious improvement is the conspicuous decline of the fly-by-night, get-rich-quick type of ad. Some still will persist so long as any media will disseminate them, since they have a *one crop harvest* which usually can be got in the barn before the frost of a legal proceeding descends. The really impressive improvement is the rise of the non-deceptive and informative type of advertising for established business.

Such changes do not come easily, nor do they come chiefly as the result of government regulation. If advertisers as a whole were no better than the Government required them to be, the situation would indeed be serious. The Food and Drug Administration, the Post Office Department, the Federal Trade Commission and the Congress, of course, have participated in this change, and many practices which would have been ignored in the 1920's are now clearly within the federal jurisdiction, either by decision or by amendment of the law. *But in this change there is a lag between the minimal legal requirements and the best standards of advertising itself.* By continually raising standards, the advertising industry makes it possible for government regulations to protect more fully the public and ethical business from the depredations of the unscrupulous.

(This article is based on the remarks of Robert E. Freer before the Women's Advertising Club at the Hotel Washington, Washington D. C., February 9, 1949.)

¹ F.T.C. v. Gratz, 253 U. S. 421, 436-7.

² D. 1938 Congo Pictures Ltd. et al, 17 F.T.C. 280, 293.

³ F.T.C. v. Algona Lumber Company, 291 U. S. 67, 78-9.

⁴ D. 4925, M. L. Kay et al. trading as Latta Cream, 36 F.T.C. 905, 906.

⁵ Positive Products Co. v. F.T.C., 132 F.(2d) 165, 167.

⁶ Trade Practice Conference Rules for Rayon Industry, Promulgated by F.T.C., Oct. 26, 1937.

THE FIRST FIFTY-ONE ISSUES

A postcard to the Victory Council at the University will add your name to the mailing list. Copies of previous issues at five cents each are available.

- No. 1—May, 1942—Inflation: The Core of the Problem, by Edward C. Acheson
- *No. 2—July, 1942—America Stands in Line, by Mitchell Dreese
- *No. 3—August, 1942—Patents, The Monopoly Issue and the War, by S. Chesterfield Oppenheim
- *No. 4—September, 1942—The War in Asia—A Balance-Sheet, by William C. Johnstone
- No. 5—November, 1942—Geopolitics, by Elmer L. Kayser
- No. 6—December, 1942—A Pattern for Post-War Europe, by Lowell J. Ragatz
- No. 7—February, 1943—The Beveridge Plan and America, by Arthur E. Burns
- No. 8—March, 1943—The Sulfa Drugs, by Frederick J. Cullen
- *No. 9—May, 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 a 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 in War-Time, by Cloyd H. Marvin
- No. 27—June, 1945—Our Merchant Marine, by Arthur F. 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.
- No. 32—March, 1946—Truth in Radio Advertising, by Robert E. Freer
- No. 33—June, 1946—Restoring International Cooperation in Science, by Edward U. Condon
- No. 34—September, 1946—Can Postwar Crime Be Controlled? by J. Edgar Hoover
- No. 35—November, 1946—The Future of Medicine, by Paul R. Hawley
- No. 36—January, 1947—Unfinished Business in American Education, by Burnice Herman Jarman
- No. 37—March, 1947—Church and State, by John A. Tillema
- No. 38—April, 1947—Our National Policy Regarding Industrial Mergers: A critique, by Robert E. Freer
- No. 39—May, 1947—The Atomic Age of Promise, by Cloyd H. Marvin
- No. 40—August, 1947—These Are the Evidences of an Education, by L. Clark Keating
- No. 41—November, 1947—The Labor Management Relations (Taft-Hartley) Act, 1947. Summary of the opposing Views, by Hector G. Spaulding; Labor's Objections, by Herbert S. Thatcher; As Viewed by Management, by Raymond S. Smethurst; Digest of the Act, by Ralph D. Pittman and James O'Connor Roberts.
- No. 42—January, 1948—The Conversion of Coal to Oil and Gas, by Frank A. Howard
- No. 43—February, 1948—Psychosurgery, by Walter Freeman and James W. Watts
- †No. 44—March, 1948—Planning the Nation's Capital, by Ulysses S. Grant, 3rd
- No. 45—April, 1948—The American Foreign Service, by H. F. Arthur Schoenfeld and Peyton Kerr.
- No. 46—May, 1948—Prices—Fixed or Competitive, by Robert E. Freer.
- No. 47—June, 1948—Communism in the United States, by J. Edgar Hoover
- No. 48—November, 1948—Religion in The George Washington University, a Non-denominational University, by Lawrence Daniel Folkemer.
- No. 49—December, 1948—Anesthesiology, Its Role in Making Surgery Safe, by Donald Harrison Stubbs
- No. 50—January, 1949—Toward a Living Theatre, by Edward Mangum
- No. 51—February, 1949—Medical Schools, Their Role in the Nation's Health, by Walter A. Bloedorn.

The opinions of the writers are their own, not necessarily those of University officials or of other Victory Council members.

* Out of print.

† Revision in preparation.