

REMARKS OF HONORABLE ROBERT E. FREER,
CHAIRMAN, FEDERAL TRADE COMMISSION, BEFORE THE
ANNUAL CONVENTION OF THE NATIONAL WHOLESALE
DRUGGISTS' ASSOCIATION, WHITE SULPHUR
SPRINGS, W. VA., WEDNESDAY MORNING,
SEPTEMBER 27, 1939.

"RECENT ACTIVITIES OF THE FEDERAL TRADE COMMISSION"

I am very happy to have this opportunity of meeting with your association and briefly and informally saying a few words to you.

Many of your activities fall within the Commission's jurisdiction and I hope that out of this meeting something of mutual benefit may be derived.

The activities of the Federal Trade Commission in the past year certainly have not been without interest to those connected with the drug industry.

Looking back on the year from the Commission's viewpoint, it has been a period of gradual clarification of the more controversial provisions of the Robinson-Patman Act, and a period of first contact with the administrative problems raised by the Wheeler-Lea Act.

The courts, in the Biddle and Oliver Brothers cases, went far to remove doubts either as to the constitutionality of the brokerage section of the Robinson-Patman Act, or the Commission's interpretation of it. Last Friday the Circuit Court, in a unanimous opinion, affirmed the Commission's order against A. & P. under Paragraph (a) of the Act. These decisions should do much to end uncertainty on the part of business men over the meaning of the Robinson-Patman Act.

As you no doubt know, a number of administrative changes were made by the Commission in order to more effectively enforce the Wheeler-Lea Act. The old Special Board of Investigation has been superseded by the Radio and Periodical Division, which scrutinizes advertising material as published in newspapers, magazines, radio broadcasts and mail order catalogues. A tremendous volume of such material is examined each year and preliminary check is made into thousands of advertisements which appear questionable. Over half the advertisements originally questioned involve drugs and cosmetics.

In addition, the Commission has set up a medical advisory section to aid it in determining the truth or falsity of advertisements for drugs and cosmetics.

Considerable progress has been made in carrying out the additional duties laid upon the Commission with respect to advertising of food, drugs, devices and cosmetics by the Wheeler-Lea Act. Eleven temporary injunctions have been obtained to date restraining the advertisement of dangerous drug products until the conclusion of proceedings before the Commission. Nine of the products were emmenagogues, one a weight-reducing preparation, and another a treatment for alcoholism. Orders to cease and desist have been

issued in several of these cases, and in several other cases, requiring the positive disclosure of the harm which may result from use of the products advertised.

Both this right to seek a temporary injunction in the Federal courts, and the right to require positive disclosure of harmful characteristics are new powers set out in the Wheeler-Lea Act. Further, there is some doubt that the Commission could have proceeded at all in some of these cases, had not its jurisdiction been extended under the Wheeler-Lea Act to include deceptive practices as well as unfair methods of competition.

In addition, a great many stipulations and orders have been issued, prohibiting the dissemination of false or misleading advertising of food, drugs, devices and cosmetics, as an unfair and deceptive practice. In fact, such cases constitute numerically the largest part of our work, and during the past year the Commission has handled more of these cases than in any other year in its history.

While there has been a great deal of progress in formal legal proceedings under the procedure set up in the Wheeler-Lea Act to stop false advertising, I have been pleased to observe, ever since passage of the Act, the widespread interest among advertisers in purely voluntary analysis of copy in the light of the new requirements of truth and honesty. While the Commission now has a larger staff, and is able to expand its enforcement activities, it can never hope to scrutinize every piece of published advertising material, and the objectives of the Act can never be reached through legal proceedings alone. Both the Wheeler-Lea Act and the new Food and Drug Act have awakened advertisers to a realization of the force and extent of consumer interest in honest representations regarding food and drug products. These acts themselves are manifestations of that consumer interest in advertising policy, and it is entirely possible that many marketers who have read the handwriting on the wall and acted to make their copy thoroughly reliable will reap the benefits of consumer distrust of competitors' products which are misrepresented.

This whole field is one where friendly cooperation and individual initiative is infinitely superior to any "crack-down" form of Government regulation, and one in which your association can make a real contribution to the already apparent voluntary movement to make real truth in advertising the order of the day.

The past year has also been important to the Commission because of the number and scope of proceedings involving combination to fix prices and restrain competition, in addition to the Robinson-Patman and Wheeler-Lea Act activities. During the fiscal year, sixteen complaints were issued charging combinations and conspiracies to fix prices or eliminate competition. These complaints involve producers of calcium chloride, corn cribs and silos, malt, fruit and vegetable containers, lime, wood-cased lead pencils, hardwood charcoal, power mowers, valve and waterwork fittings, book paper, and women's dresses. One complaint was directed against glaziers and dealers in glass, and another against dealers in building materials. Three complaints were directed against organizations of wholesalers, in the grocery, dry goods and leather shoe findings industries.

Orders to cease and desist were entered against the respondents in a number of these cases, and others are still pending for disposition. Additional orders to cease and desist from price-fixing or combining to restrain trade were entered against an association of lumber producers, an association of snow fence manufacturers, a group of manufacturers of concrete pipe, and several groups engaged in the manufacture and distribution of candy through vending machines.

The Commission regards these restraint of trade cases as a highly important part of its work. They represent an effort on its part to enforce both the letter and spirit of the law, which is that of free and open competition. Over the centuries, the courts have built up a body of doctrine intended to thwart organized restraints of trade and monopoly. Under the Sherman Act the Federal government was directed to stop them. More recently, the courts have held that many such practices are unfair methods of competition within the meaning of Section 5 of the Federal Trade Commission Act. Most state constitutions and statutes contain provisions making them unlawful.

In addition to the private monopolistic devices, the municipal and state statute books now bristle with so many restrictive ordinances and laws that it is almost impossible for those engaged in many far-flung interstate enterprises to conduct their business without consulting a lawyer before each and every transaction. Fortunately, state and municipal barriers to trade have caused such repercussions that a healthy reaction has sprung up against them in every quarter.

One thought I would like to leave with you is this: Good old-fashioned competition may, like the good old army iodine, sting in the application; but it nevertheless constitutes your best preventive for any possible infection of paternalistic governmental regulation.