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ADDRESS BY

HONORABLE ROBERT E. FREER, MEMBER OF
FEDERAL TRADE COMMISSION
OPENING THE TRADE PRACTICE CONFERENCE FOR

THE WATCH CASE INDUSTRY,
HOTEL COMMODORE, NEW YORK CITY.

January 18, 1940, 10:00 A. M.

Ladies and Gentlemen:

It is both my privilege and pleasure to be here, upon behalf of the Federal Trade Commission, for the purpose of presiding at your trade practice conference.

This is the fourth such conference sought by your industry and granted by the Commission since the beginning of the Commission's trade practice procedure in 1919. Such continued effort on the part of your industry to see that your rules keep pace with changes in industrial and business methods and practices, is worthy of special commendation. You may be assured that the Commission is appreciative of your cooperation and is desirous of assisting your industry to maintain business activities on a continued sound basis of fair competition, extending protection for legitimate business expansion, and at the same time safeguarding the interests of the consumer whose good will is essential to the progress of all industry.

Many of you here participated in the trade practice conference held in this city in 1930 and all of you have been directly affected by what was done then.

It is a particular pleasure for me to be here for a consideration of fair trade practices and rules which seek advancement, not in the elimination of competition, but in cooperative improvement of your industry's standards for the benefit of consumers as well as yourselves.

In undertaking a discussion of the proposed rules before us, let us keep in mind that a trade practice conference for an industry looks toward the promulgation by the Commission of rules of fair competition designed to protect the ethical in that industry as well as the public. Adoption and promulgation of such rules requires the cooperation of industry members and other interested parties with the Commission, which, under the statutes and in the public interest is directed to prevent the use of all unfair methods of competition and unfair or deceptive acts and practices in interstate commerce.

Let us remember that the Commission, in initiating these conferences years ago, did so as a means whereby the forces working for good in an industry might be effectively organized and directed, to the end that unfair practices employed in a particular industry might

be eliminated without resort to the formal legal proceedings which the laws empower and direct the Commission to use in preventing such practices.

Probably all of you are aware that this procedure of the Commission is based upon the theory that a voluntary elimination of unfair competition and unfair practices in an industry leads not only to fair competition in that industry but is also beneficial to the public interest. If, by such procedure, unfair competitive practices in an industry are eliminated voluntarily and without the delay and expense incident to investigation and trial of many cases against numerous individual members of an industry, it appears to the Commission that such procedure exemplifies the old adage about an ounce of prevention being worth more than a pound of cure.

The purpose of the meeting today is to give an opportunity to all members of your industry to consider any illegal practices existing in the industry and to propose to the Commission for its consideration and approval, rules designed to eliminate such practices. It should be borne in mind, of course, that the antitrust laws prohibit any concerted action looking toward fixing prices or restraint of trade or the creation of a monopoly. It is the duty of the Commission to proceed against any members of industry who so misuse trade practice conference rules as to further practices contrary to these laws against unlawful restraints of trade.

Illegal Deceptive Practices

An important subject of rules for your industry is proper marking of cases as to metal composition and general disclosure of material facts for the benefit of the consumer and in the interest of fair competition. That objective, obviously, militates against misrepresentation, fraud, deceit, and other trade evils of the same category which too often bring demoralization of an entire industry, with especial hardship or casualty to the smaller or weaker members without any benefit to the industry or the consumer. Such a provision particularly affords protection for the public as well as for the honest and ethical members of an industry.

Deceiving a customer as to the grade, quality, quantity, origin, or otherwise, of any product sold, or offered for sale, is unfair both from the moral and legal points of view. Such deception is a violation of statutory law. Trade practice rules, sponsored and approved by the Commission, constitute a restatement or particularization of laws, as enacted by Congress or interpreted by the courts. Thus, by adopting fair trade rules, you serve notice that any over-zealous or unscrupulous member of your industry practicing deception and short-sightedly seeking selfish gains at the expense of an honorable and ethical majority, not only violates the law, but breaks faith with all the law-abiding in the industry.

Disclosure of Content

It may serve a helpful purpose here for me to cite the Commission's authority in the field of proper marking and disclosure of material facts in the interest of fair competition and for the benefit of the consumer. The Commission's authority to enjoin the use of markings which would result in an unwary purchaser securing an article or product which he did not intend to purchase has been affirmed by the courts. This is so, even though there is no actual deception nor intent to deceive. (1) Nor is it necessary that the product misrepresented be inferior or harmful to the public. (2) Quoting judicial interpretations, the Commission's duty is "to discover and make explicit those unexpressed standards of fair dealing which the conscience of the community may progressively develop." (3) "Laws are made to protect the trusting as well as the suspicious," said the Supreme Court in the same case.

Trade Practice Conference Procedure

Fair trade practice rules, as you know, are classified in two groups known as Group I and Group II. Rules in Group I enumerate and forbid as unfair those practices in the particular industry which are violative of the laws administered by the Federal Trade Commission, as those laws have been construed by the Commission and the courts. Group I rules prohibit the use of such practices only as constitute violations of law.

Group II rules, on the other hand, either condemn practices which, while not unlawful, are considered harmful or unethical in the industry, or they encourage practices considered ethical and desirable although not required by law.

Such Group II rules are received and published by the Commission as the expression of the industry rather than as requirements of law. While practices contrary to such rules are not generally violations of the law, and their use does not usually result in action by the Commission, under certain conditions a violation of a Group II rule might be carried on in such way as to constitute an unfair or deceptive practice. In any such cases where a violation of law exists, enforcement proceedings will be instituted as where a Group I rule had been violated.

The Commission retains a cooperative interest in the observance of trade practice rules after their final approval. Complaints of violation of Group I rules or of the use of unfair practices which violate the law, whether or not such practices are covered by either Group I or Group II rules, will receive prompt attention.

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- (1) Federal Trade Commission vs. Balme, 23 F. 2d 615, 277 U. S. 598.
 - (2) Federal Trade Commission vs. Real Products, 90 F. 2d 617.
 - (3) Federal Trade Commission vs. Standard Education Society, 86 F. 2d 692; 302 U. S. 112.

Proceedings by the Commission are not based directly upon violations of the rules, but of the law itself in relation to which fair trade practice rules in Group I supply a concreteness not available in the moral general language of the statute.

Upon complaint of a violation, careful investigation is made, and if the facts warrant further action, proceedings are then instituted to stop unfair practices by members of the industry, whether or not such members take part in the conference or accept such rules for the industry as may be approved by the Commission.

The rules which you may adopt at this conference have no effect until given final approval by the Commission, and before any such final approval, another opportunity will be given interested parties, after fifteen days public notice, to make suggestions or objections in regard to the proposed rules.

It is hoped that the rules you may adopt at this conference will meet with approval and will go a long way toward enabling your industry to maintain its business on a high plane of ethical and fair competition, and that from this meeting both your industry and the consuming public may derive great benefit.