
Remarks

of

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THE WORK OF THE FEDERAL TRADE COMMISSION
IN RELATION TO ADVERTISING

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My subject is "The Work of the Federal Trade Commission in Relation to Advertising," and before I begin, may I say that any seeming or apparent resemblance or reference in these remarks to cases pending before the Commission, to advertisers, or to advertising agencies, living or dead, is purely coincidental.

At the very outset, two points merit emphasis. The Federal Trade Commission is neither attempting, nor contemplating any attempt, either to discredit advertising, or to restrict advertising copy to such an extent that it will no longer be able to "sell."

Treating these points in order: Some weeks ago the Commission outlined to the Appropriations Committee of the House of Representatives a project which it plans to undertake next July through its Economic Division. The project was called a study of "Methods and Costs of Distribution." Three phases of general interest were mentioned, dealing with legislation affecting consumers, and legislation fostered for protection of particular groups engaged in distribution. Six specific phases of distribution were then listed as being appropriate for study. One of these was advertising, whose place in distribution was said to be of great importance and general interest. Two questions were posed, relating to the cost of advertising and the service it renders to the consumer. And, wishfully perhaps, the Commission's Economic Division suggested that its proposed inquiry might find an answer to these questions.

This proposal did not go unnoticed. From some quarters a hue and cry was raised that the Commission is out to smear advertising. Generally, however, and after time for reflection, the reaction on the part of advertisers and advertising men was not one of alarm, and there was much sober comment to the effect that nothing is to be feared by advertising from a fair inquiry into its place in the distributive system. But in view of the original misunderstanding the Commission felt it advisable to clarify the matter, and made a public announcement last month in which it was stated in part (and I am quoting now):

"The purpose of the inquiry is to ascertain and assemble pertinent facts concerning the whole subject of distribution in a number of industries. * * * There is no purpose or intention of singling out advertising any more than any other item of the cost of distribution and no more emphasis will be placed on advertising costs in this inquiry than was done in (other) recent inquiries. ***

"In the numerous general inquiries conducted by the Commission and in the many thousands of cases in which it has taken

corrective action the Commission has never taken any position against advertising as such. Furthermore, no such action is contemplated."

This statement clearly explains the Commission's purpose and its position that no inquiry into distribution would be complete without consideration of advertising, which is without doubt a most potent factor in present day distribution.

I make it a point to keep up with the advertising "trade journals" and I have some idea of the regard in which advertising men hold their profession, and of their sincere belief, in which they have no monopoly, that advertising is the mainspring of the private competitive system and a source of wide-spread social benefit. Feeling as you do, it is difficult to understand why you should think you have anything to fear from a fair survey of the place of advertising in the distributive system. The Federal Trade Commission has conducted more than a hundred general economic inquiries, similar to the one recently proposed, into almost every phase of business activity in the United States. I can recall no instance where it has been seriously charged with muck-raking or smearing and I know of nothing that should change this picture in the future.

Turning to the second point: Any thought that the Commission, through unduly restrictive decisions, is removing the "sell" from copy, is one which I am sure has never received any serious consideration from advertising men. And the reason it hasn't is obvious. No one of you would contend for an instant that copy must be deceptive in order to sell goods. Anyone who insists that the truth must be varnished, distorted or abandoned in order to advertise effectively is slandering your profession. And the Federal Trade Commission has never required abandonment of an advertising claim on any other ground than that it is deceptive or misleading in some particular. The Commission may not like an advertiser's copy, or feel it to be in bad taste, but it has no authority to proceed against him unless his copy is deceptive; and in such a case it is only the deception which is in issue. The Commission is no copy censor, and has no desire to be set up as one. The only censor that advertising need seriously consider is public opinion.

I am sure that no one is in disagreement with the Commission over the general principle that false and misleading advertising is indefensible, and that it is harmful not only to the public at large, but also to business - particularly the business of advertising. "Truth in Advertising" has long been more than just a slogan of leaders in advertising. Honesty in advertising has equally been one of the chief objectives of the Federal Trade Commission. On that common ground we meet and are in accord. The primary purpose of the copy you prepare is to sell goods, not only today and tomorrow but over the years, and it is this long term selling job, no doubt, which has been back of your great strides in the voluntary avoidance of dishonest copy. The Commission is under a duty to prevent such false advertising as is within its jurisdiction in order to protect the public and

competitors. You are under a duty to avoid false advertising to protect your own clients. We may come in at different doors, but we wind up in the same hall.

In spite of our agreement upon the basic principles, differences of opinion will no doubt always arise over the application of the principles to specific cases. Not, I am sure, over such flagrant but trivial misrepresentations as those of one advertiser to the effect that a perfume called "Love Drops" is modestly guaranteed to make any man irresistible to his lady love; or claims by a matrimonial agency that a penny post card will bring a beautiful, sweet-dispositioned and rich wife by return mail. Difficulties will arise, no doubt, over application of the agreed principles to those border-line cases where the falsity or deception comes from distortion, half truth or deceptive impression. Thus, an advertiser may seize upon an abstruse bit of medical research, add a few more ingredients to a product whose sales have been limping and thereafter herald it as a boon and a delight in the treatment of a fearful and hitherto unheard of affliction, whose every gruesome symptom is fearlessly exposed complete with the impression that a substantial segment of the citizenry is suffering severely therefrom. There is no need to elaborate. You are only too familiar with the dozens of difficult situations which will continue in the future to be presented to the Commission, stemming no doubt from the pressure to write new and startling copy for 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 is false and misleading. Neither the Commission, nor the courts in reviewing Commission cases, have been able to supply the copy writer with a simple and magic formula sure to keep him free from criticism. The Supreme Court once described the process of individual case-by-case determination utilized by the Commission to be one of "judicial inclusion and exclusion."

If you should feel that the Commission is being unduly restrictive in some particular case, remember that we are doing our best to apply principles with which we are all in accord and to make it easier, by our enforcement of the law against the nonconformists, for your profession to maintain its ethical standards. As a matter of fact, while the Commission must act solely in the interest of the public, by far the largest number of its cases originate in complaints of business men who find themselves injured by unscrupulous competitors. The Commission hopes to remove, by means of cases involving false advertising, any burden on the honest advertiser, and to help him avoid the temptation of resorting to deception for reasons of competitive expediency.

The Commission may at times seek to curb types of deception which have hitherto gone unchallenged, just as you may in the future come to regard many current types of copy to be unworthy. I have no doubt that the period through which we are passing will become noted for the progress made in raising all business standards. Just as the "horse trading," "buyer beware" standards had been rejected by the middle 1920's, so have many of the advertising practices of the latter time

been discarded. And, no doubt, a goodly share of present day "trifling with the truth" will be outgrown by 1950.

In a case decided in 1937, involving a Commission order, the Supreme Court emphasized the point that business itself had discarded many old "tricks of the trade" in favor of more enlightened "rules of the game." The Court said:

"The fact that a false statement may be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced. There is no duty resting upon a citizen to suspect the honesty of those with whom he transacts business. Laws are made to protect the trusting as well as the suspicious. The best element of business has long since decided that honesty should govern competitive enterprises, and that the rule of caveat emptor (buyer beware) should not be relied upon to reward fraud and deception."1/

And in another such case in 1933 the court stated:

"The careless and unscrupulous must rise to the standards of the scrupulous and diligent. The Commission was not organized to drag the standards down."2/

This is recognition by the court that the test of business practices -- whether they are unfair or deceptive -- is an elastic one, under which the Commission may keep pace with, and encourage, the natural development of "business morals."

Among the first Commission cases to reach the courts were some involving false or misleading advertising. The Commission is justly proud of its batting average in the courts, where, with rare exceptions, its orders have been sustained, especially those directed against false advertising. If you feel that the Commission or the court is wrong in some particular case, it is well to remember that to err is human - a descriptive term which I am reliably informed includes copy writers, whose errors have engaged a portion of the Commission's time and attention.

In conclusion I want to say that national advertising generally has improved greatly, from the standpoint of ethical responsibility and self restraint. Of course, there are exceptions, as may be attested by Commission stipulations and orders. But your standards of what constitute the best in advertising have been raised, just as the applicable minimum requirements of the law have been raised by Congress in passing the Wheeler-Lea Act, and, in enforcement work, by the Commission and the courts. Happily, there exists today a spread between those minimum requirements of law and your own self-imposed standards.

1/F. T. C. vs. Standard Education Society, 302 U. S. 112.

2/F. T. C. vs. Algoma Lumber Co., 291 U. S. 67, at p. 79.

I have no doubt that both of them will be raised in the future as they have been in the past, and I hope that this spread will not only remain, but widen, so that your own voluntary standards of what is best in advertising will be elevated at an even more rapid rate than are the minimum requirements of the law.