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Address

on

THE FEDERAL TRADE COMMISSION AND  
CONSUMER PROTECTION

Before the  
Educational Buyers Association,  
Miami University, Oxford, Ohio,  
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By

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Member of the Federal Trade Commission.

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THE FEDERAL TRADE COMMISSION AND  
CONSUMER PROTECTION

I am very happy to have this opportunity of coming home to Ohio to meet with your association. As a parliamentary inquiry, Mr. Chairman, I might ask if, as a one-time buyer of education in considerable quantities, I am not eligible for membership in the Educational Buyers Association? Recalling my own status as a purchaser of education I seem to remember also that I had in that status a personal consumer problem, and if your association aims to solve this consumer problem for present and future generations of purchasers of education, you can be assured of my support.

Seriously speaking, America is a land of education and educational institutions, and you who go to market for them have a large stake in the marketing game and more than a passing interest in the work of the Federal Trade Commission.

For purposes of description, the Commission's work may be divided into three parts -- all directed to the common objective of preserving and fostering free and fair competition in American industry. The bulk of the Commission's work consists of legal proceedings to end unfair methods of competition and unfair business practices as well as certain types of price discrimination and monopolistic activities by particular companies or groups. Another highly important part is the conduct of general economic investigations into various phases of business and industry and presenting reports upon them to Congress or to the President. The third "division" of the Commission's work is the use of its trade practice conference procedure to assist entire industries to formulate the highest standards of competition on a voluntary and cooperative basis.

While I have "divided" these functions, they cannot be considered separate and distinct from each other -- all are complementary and directed toward both the ending of unfair or unscrupulous business practices and the encouragement of conduct at the other end of the ethical scale.

As a group engaged in purchasing you are undoubtedly most interested in a presentation of the Commission's work from the standpoint of the consumer. "Consumer" is a word which does not appear in Section 5 of the Federal Trade Commission Act, from which the Commission derives the principal part of its jurisdiction. However, the Commission has always considered itself to be, in a very real sense, an agency with a duty to the consuming public and it has endeavored in every way to see that the consumer gets a square deal. This theory, which the Commission has always followed, has recently been revitalized by the Congress, and reemphasized in the law, after it had suffered a setback in the courts.

Several years ago the Commission issued a complaint against the vendor of a patent medicine advertised to reduce weight safely. The Commission found that the product involved contained an ingredient, dangerous to health in many instances, the presence of which was not only undisclosed, but deliberately concealed from the purchaser. An order to cease and desist was issued against the concern, which carried an appeal to the Courts. The United States Circuit Court, affirmed by the Supreme Court of the United States, ruled that the Commission, in order to support an order to cease and desist from unfair methods of competition, must show the practice involved to be injurious to competitors, actual or potential, irrespective of harm and injury to the general public.

For several years thereafter, the Commission recommended to Congress that the language of the act as interpreted by these Courts in reaching this decision be amended to make it clear that business practices, unfair or deceptive to consumers and the public generally, could be made subject to the Commission's jurisdiction, whether or not injury to a competitor could be shown. In March, 1938, Congress enacted the Wheeler-Lea Act, amending the Federal Trade Commission Act as recommended, and adding a whole series of new sections giving to the Commission greater powers and added duties specifically designed to afford maximum protection to consumers against false advertising of food, drugs, curative devices and cosmetics.

Under the amendments, the Commission need no longer prove injury to a competitor in order to end an unfair business practice. In addition, specific penalties are provided for violation of final orders to cease and desist which reduce considerably the former uncertainties of enforcement, and in cases of advertising of food, drugs, curative devices and cosmetics, the Commission is enabled to secure temporary injunctions and restraining orders in the United States District Courts to prevent the dissemination of certain types of advertising of these products during the pendency of regular proceedings before the Commission. On the latter point, twenty-three such injunctions have been issued by the courts in a space of less than two years, protecting the public from the dangers of unscrupulous practices while the cases were being tried under its regular procedure before the Commission.

A good many cases involving false advertising originate in the Commission through complaints of competitors, consumers, civic organizations and others. However, the Commission has a staff in its Radio and Periodical Division which continuously surveys current newspapers, magazines and radio broadcast continuities in great volume for the purpose of weeding out false advertising claims which might not otherwise come to the attention of the Commission.

A great many cases of misleading advertising are handled informally by what is known as the stipulation method, whereby the advertiser, admitting the tendency or capacity of his claims to deceive the public, executes a formal agreement with the Commission to refrain from their use in the future. Where there is a difference of opinion

between the Commission and the advertiser over the facts or the law or where the product involved may be dangerous to the public or the claims are of a fraudulent nature, the full statutory procedure is employed beginning with a formal complaint, including the taking of evidence before a trial examiner, the filing of briefs and the holding of an oral argument before the Commission, and culminating in a ruling of the Commission.

During the last fiscal year the Commission issued complaints charging misrepresentations of many different sorts, running from slack filling of containers and packages through use of samples superior to goods furnished on order, deceptive puzzle contests to sell goods, misrepresentation by jobbers that they were manufacturers, use of fictitious prices to create the false impression of greater value, "passing off" of goods as those of competitors, sales of used and old materials as new, shipment of goods without order and subsequent attempts to force purchase, to claims by a concern engaged in business for profit that it is a consumers research and educational organization.

While the cases involving misrepresentation and false advertising are large in number, the Commission considers of primary and fundamental importance its work to end combinations, agreements and conspiracies which restrain free competition and directly raise prices to the consumer. There have been a significant number of proceedings over the past few years resulting in orders requiring the abandonment of monopolistic practices in many fields, involving the clothes the consumer wears, the food he eats and the materials with which his home is constructed.

Thus, the Commission has issued orders within the past few years against agreements restraining trade and competition by producers of garments starting at the top with women's hats, dresses and skirts, and all the way down to and including their rubber heels. An order was issued against certain producers of rayon yarn, to end an agreement fixing uniform prices on the raw materials which enter into many clothing products, and against producers of leather and shoe findings.

In 1938, an order was issued directing the California Rice Industry to cease fixing prices on shipments of that commodity in interstate commerce and to the Hawaiian Islands. In 1939 and 1940, orders were issued requiring abandonment of price-fixing devices and restraints of competition in the distribution of candy, beans and other farm products, and of bread and bakery products. Complaints are now pending charging maintenance of price-fixing devices by distributors of cheese, as well as an agreement to monopolize the American distribution of imported dates.

Another pending complaint alleges the maintenance of a price-fixing device among producers of paper cups and paper containers for food products. Orders issued in 1940 require abandonment of price-fixing by two different groups of producers of wooden containers for packaging citrus fruits and vegetables.

In the field of building materials, the Commission found and prohibited a central agency through which manufacturers of metal windows were fixing prices and discounts and clearing bids upon building contracts. It found that window glass manufacturers were in agreement to control channels through which glass was distributed and the amount of mark-up which the distributors added to the manufacturer's price. It required members of the National Electrical Manufacturers Association to cease a conspiracy to fix the price of rubber-covered building wire, and required a group of associations of building material dealers to cease attempting by boycott to confine the distribution of building materials and to prevent sales to so-called "irregular" dealers or direct consumers. A retail furniture dealers association in St. Louis was ordered to cease fixing discounts and attempting to prevent the direct sale of furniture by manufacturers to consumers, educational institutions, hospitals and the like. Complaints are still pending alleging maintenance of price-fixing combinations in the production and sale of Portland cement and clay sewer pipe.

Of particular interest to your group are, no doubt, the Commission's orders against the manufacturers of steel office furniture and of wood-cased lead pencils, requiring abandonment of price-fixing agreements.

These illustrations by no means cover the entire range of recent Commission cases involving restraints of trade and monopolistic practices, all of which directly affect the cost of goods to consumers.\*

Still another type of case that deals directly with consumer costs is that involving violation of Section 2 of the Clayton Act, which prohibits various types of price discrimination. Since passage of the Robinson-Patman Act in 1936, the Commission has had a great number of such cases covering the entire range of commodities. By this means, many injustices have been righted in favor of buyers and consumers who had been discriminated against in favor of other buyers. In one case involving medical books, the Commission found discounts to similar purchasers in the same area running from 20 to 35 percent, and entered an order prohibiting such discriminations, except where based upon actual differences in cost of doing business with different customers. As you probably know, an amendment was made to the Robinson-Patman Act in 1938, making the law inapplicable to the purchase of supplies for their own use by schools, colleges, universities, libraries, churches, hospitals and other charitable institutions.

Earlier I mentioned the trade practice conference work of the Commission. Briefly, trade practice conferences are conducted in a

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\* For a more complete coverage of Commission cases in this period see Hearings Before the Temporary National Economic Committee, Part 5-A, March 2, 1939; Annual Report of the Federal Trade Commission, 1939; Monthly Summaries of Work, F. T. C., January, 1939-April, 1940.

spirit of friendly cooperation between members of the Commission's staff and groups representing entire industries or divisions of industries for the purpose of developing specific rules of competitive conduct applicable to the particular industry involved. When a conference is authorized, notice is dispatched to all who might be interested in a meeting to discuss industry problems and practices. Everyone interested is afforded an opportunity to present proposals, suggestions or comments on proposals, and a draft of proposed trade practice rules is made. The proposed rules are published and notice given of a final hearing upon them after sufficient time has elapsed for their careful study. Following this procedure, and a final approval by the Commission, the rules serve as "guide posts" to the industry.

Trade practice rules are of two types. Those falling into what we call Group I usually proscribe practices considered by the Commission to violate the law; those in Group II ordinarily relate either to condemnation of conduct which the industry considers unethical but which may not necessarily involve a violation of law, or to the encouragement of higher ethical standards than the law requires.

By way of illustration, the rules for the School Supplies and Equipment Distributing Industry contain provisions in the Group I rules making it an unfair trade practice to offer for sale merchandise packed in odd sized or shaped containers simulating the size or shape of standard containers with the tendency to mislead prospective purchasers as to the contents. Another rule makes it an unfair practice to give anything of value to an employee of a buyer, as to an instructor, purchaser, agent, supervisor or school official, without the knowledge of the employer and upon the understanding that the person in trust will give precedence to the goods of the giver. Another rule prohibits the offering for sale of merchandise at prices said to be reduced from marked up or fictitious prices.

The Commission has conducted more than a hundred conferences and aided many industries in eliminating trade abuses, to the benefit of consumers and businessmen generally. The following list includes products used extensively by educational institutions, for which rules have been published: Books; brick; crayons and water color materials; electrical cord, outlet boxes and conduit fittings; flat glass; clay floor and wall tile; furnaces; furnace pipe and fittings; furniture; golf, baseball and athletic goods; grass seed; metal lath; lime; metal clad doors; mill work; mop sticks; paint, varnish and lacquer; paint and varnish brushes; paper and paper products; plumbing and heating; printing, engraved and embossed effects; public seating; putty; school supplies and equipment; rebuilt typewriters; wall paper; wood cased lead pencils.

The trade practice conference procedure is particularly valuable as a pleasant and inexpensive method of enforcing the law. Most businessmen are inherently honest, and the Commission has found generally that a frank conference between representatives of an industry and the Commission's staff often accomplishes more in the wholesale elimination of trade abuses than would a series of formal proceedings against individual companies.

In addition to its enforcement of specific statutes concerning business practices, the Commission has the duty of research and publicity, which is important to the consumer. One of the earliest theories of effectively enforcing the anti-trust laws was based on the premise that adequate publicity given to monopolistic practices would itself serve as a deterrent. The Commission's immediate predecessor, the Bureau of Corporations, was engaged almost entirely in conducting investigations and making public reports. These functions were preserved in the Federal Trade Commission.

For twenty-five years, the Commission has been continuously engaged in economic investigation, as a result of which it has submitted many reports to the Congress and the President. When prices have increased sharply, or when the margin between the cost of raw materials and the price of finished products has seemed too wide, the Commission has often been called upon to find the explanation. It called a conference on the high cost of living in 1917. From time to time, it has investigated the prices of bread and flour, coal, meat, fruits and vegetables, raisins, sugar, peanuts, milk, tobacco, shoes, house furnishings, textiles, and gasoline. It has reported upon the operations of particular types of business enterprise, such as chain stores and utility holding companies, and upon particular practices such as resale price maintenance, price fixing, and basing point systems. As a result of recommendations included in its reports, legislation of major significance to the consumer has been enacted. Thus, the meat investigation was directly responsible for the Packers and Stockyards Act which brought the great meat packers under Federal regulation. Similarly, the utility investigation played a major part in the development of Federal policy toward the rates and financial practices of electrical utility companies.

Over the period from 1934 to 1937 the Commission submitted to Congress a series of reports on the milk industry bringing to light abuses in certain areas where dealers and producing organizations had united to fix prices of milk to the consumer, and covering the activities of the large milk companies in lessening competition through acquisition of independent milk distributors and other methods.

In 1937, the Commission submitted reports to Congress showing a high degree of concentration of control over the processing of many major farm products and fruits and vegetables achieved largely through the merger of competing corporations as well as the existence of rackets in the terminal markets. The proposals of these reports were partly responsible for the amendments of the Perishable Agricultural Commodities Act. In June, 1938, the Commission reported on a study of farm machinery and, in 1939, on a study of the distribution of automobiles, in addition, the Commission has taken a large part in the broad study of monopoly being conducted by the Temporary National Economic Committee. A study of resale price maintenance as a factor in distribution is now in progress, and the Commission has laid plans for a general study of the methods and costs of distribution for the coming year.

May I close by stating that buyers have a distinct responsibility in these days to resist monopolistic pricing schemes in American industry. The Commission sometimes finds methods of pricing which involve artificial freight charges, uniform delivered prices or artificial price zones imposed on complacent markets whose buyers actually support and encourage these forms of monopolistic pricing. Some industries, shot through with what is called "monopolistic competition," in fact, contend that their buyers are interested only in knowing that no other buyer "does better" or that artificial pricing on a delivered basis saves their buyers the trouble of calculating for themselves transportation and other delivery charges. Needless to say, a government agency charged with encouraging competition and preventing monopolistic practices must have the support and assistance of buyers generally if it is to be truly effective.