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Remarks

on

THE FEDERAL TRADE COMMISSION,
ITS POWERS AND DUTIES

Before the

National Association of Credit Jewelers,

Waldorf-Astoria Hotel, New York City,

August 27, 1940, 2:30 p. m.

By

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Member of the Federal Trade Commission

THE FEDERAL TRADE COMMISSION,
ITS POWERS AND DUTIES.

I am pleased to have the privilege of appearing before the National Retail Credit Jewelers Association in convention assembled. The Commission welcomes the opportunity of describing its work to groups of businessmen organized to improve the distributive system. To give "credit" where credit is due, it is only through the real cooperation of such groups as yours that the Commission's work may be truly successful.

In the time allotted to me I shall give you a rough thumbnail sketch of the Commission's activities.

The Federal Trade Commission is an agency of the United States Government, created in 1914 to fill a long-felt need on the part both of business and of the general public for an organization with authority to eliminate unfair competitive practices. The creation of the Commission was a natural result of the rapid industrial development which had occurred during the latter half of the Nineteenth Century, but had not been accompanied by adequate safeguards against abuse by the unscrupulous.

Congress provided specifically in the Federal Trade Commission Act for two methods of solution of the problem of maintaining fair competition. The first approach had already been through the experimental stages with the Bureau of Corporations, the Commission's immediate predecessor, whose activities were largely devoted to the conduct of general investigations into business control and practices and to giving publicity to its reports upon the theory that such publicity itself acts as a deterrent to monopoly and monopolistic practices. The functions and personnel of the Bureau were transferred to the Commission, which also was given additional duties. Thus, the Commission is empowered to require general or special reports from corporations, and to obtain information from corporations in the course of general investigations into any industry, conducted either on The Commission's own motion, at the request of the President or the Attorney General of the United States, as well as at the direction of the Congress.

During the first World War the Commission utilized these powers to ascertain alien ownership of property in the United States, to discover profiteering, and to determine the cost of producing various goods. Recently the Commission published the results of general investigations of the automobile industry, of the agricultural implement and machinery industry, and of the distribution of agricultural commodities. Perhaps the largest single task of this kind was the Commission's investigation of the public utilities, extending over a period of several years and resulting in the passage of the Federal Public Utility Act, the strengthening of many State public utility laws, and the reducing of many local utility rates.

In addition to these general powers of investigation, in other parts of the Federal Trade Commission Act, the Congress empowered and directed the Commission to prevent unfair methods of competition, and, in the Clayton Act, certain types of price discrimination, exclusive dealing contracts and stock acquisition of competing corporations. In enforcing these provisions of law, the Commission acts much in the manner of a court. It is independent of any of the Executive Departments of Government and its decisions are reviewable only by the United States Circuit Courts of Appeal and the Supreme Court of the United States. By its procedure, those charged with violations of the law are given an opportunity of presenting their testimony and evidence before trial examiners of the Commission, and of arguing the case in brief and in oral argument to the Commission. The Commission's orders to cease and desist are uniformly accompanied by its findings of fact, upon which findings appeal may be taken to the courts to obtain a review of the Commission's order.

Two supplemental procedures have been developed by the Commission in aid of its work in preventing violations of the law. When a violation is found which does not involve fraud, dissemination of advertising of a product which may be dangerous to the health of the public, or a practice which is distinctly monopolistic in tendency, the Commission will usually offer the privilege of disposing of the matter by what is known as a stipulation, which is an agreement whereby the offending party admits the acts complained of and binds himself not to repeat any such violations of law.

The stipulation procedure is appropriate for disposing of by far the greater number of cases of law which come to the Commission's attention, since in many instances the parties involved have no intention of engaging in unlawful conduct and are entirely willing to abandon the practices when the illegality is called to their attention. Furthermore, by avoiding the time and expense necessary to formal hearing of a case, a saving is made both to the Government and the public.

The other "supplemental" method which the Commission has worked out to eliminate unfair practices is known as the trade practice conference procedure. It has for its purpose the voluntary cooperation between entire industries and the Commission in the formulating of trade practice rules for the guidance of businessmen in avoiding unfair practices. When an industry feels that abuses exist, an application may be made to the Commission and all members may sit down with the Commission's staff and thoroughly air their problems. Proposed rules are drawn up, published by the Commission and made available to everyone who might be affected thereby. After sufficient time has elapsed for careful study of the proposed rules, a final hearing is had at which anyone interested, either from a standpoint of the industry, a competing industry or of the general public, may be heard. Following this, the Commission revises the proposed rules in the light of the hearings and promulgates the final rules. Individual members of the industry are then requested to accept them and signify their intention to be guided by them in the future.

In this connection, the rules are divided into two groups. In the Group One rules, the Commission seeks to implement the broad provisions of the statutes it administers, on the basis of decisions of the Commission and courts in prior cases, making them specific and applicable to the problems of the industry in question. In the Group Two rules, the Commission accepts expressions of the industry as to conduct which is commendable or accepts rules which proscribe conduct which may be unethical but which is not necessarily considered to violate the law.

To illustrate: Group I trade practice rules for the Wholesale Jewelry Industry, promulgated on March 13, 1938, prohibit, among other things, the sale of watches which have been rebuilt or are second-hand without disclosing that fact; misuse of the words "perfect", "perfect cut", or "blue white" in describing gems; use of the words "real", "genuine", or "natural" when applied to pearls which have been cultivated or other gems which are synthetic; use of fictitious price tags on merchandise or false invoicing of goods; and various price discriminations which would be a violation of the Robinson-Patman Act.

Proposed new rules for the Watch Case Industry are pending before the members of that group and the Commission for study as result of a conference held in January, 1940. This conference is the fourth conference we have had for that industry and each one has found it possible to raise a little higher the standards of competition. The presently proposed rules contain definitions and standards governing such marks as solid gold, karat gold, gold filled, etc.

The Commission does not proceed against parties directly for violation of any of its trade practice rules, since anyone who does violate any group one rule in the course of interstate commerce is engaging contrary to law in an unfair method of competition, and is proceeded against for violation of the law itself.

Perhaps I can give you the clearest idea of the nature of the Commission's work by describing what we do in a typical month. During the month of June, 1940 (which is the last month for which the statistics have been compiled and made available), the Commission promulgated final trade practice rules for the Ripe Olive Industry, and published proposed rules for the Resistance Welder Manufacturing Industry. Twenty-five complaints were issued charging various corporations with violations of the law. Three of these complaints alleged combinations in restraint of trade and for the purpose of fixing prices on the part of national trade associations. Five of them charged misrepresentation of the efficacy of drug products. Five of them involved use of lottery devices in the sale of goods. One involved use of fictitious prices, and the others false advertising of one sort or another. These cases will be tried in the future, and the Commission will either enter orders to cease and desist or dismiss them on the basis of the pleadings or the facts developed in hearings before a trial examiner.

Thirty-two orders to cease and desist from unfair methods of competition were issued and served during the month, one of them prohibiting the passing off of hats or caps, renovated from old materials, as composed of

new materials; another prohibiting the sale, as new, of spark plugs which had been reconditioned. Five of the orders prohibit misrepresentation of drug products and devices; one order prohibits the false disparagement of the products of a competitor; eleven orders prohibit the use of lotteries to dispose of various merchandise, from candy, cosmetics, food and other products to watches; two concerns were prohibited from further representations that their products will dissolve the carbon in automobile motors or decrease oil and gas consumption; one concern was ordered to cease representing that certain stationery business forms sold by it had been approved by the Federal Government; an association of manufacturers of sewer pipe was ordered to cease conspiring and combining to restrain competition and fix prices; one concern was ordered to cease representing that the grave markers distributed by it had been produced in its own quarries when, in fact, they had been purchased from others; and in individual was ordered to cease misrepresenting the properties of a gadget called "Jacob's Rod," and a booklet, said to contain the directions followed by Jacob and the other ancient patriarchs, for enabling the reader to ascertain his psychic powers and locate hidden treasure, and from representing that he had for sale crystal balls, which will answer any question concerning either the past, present or future.

Fifty-two stipulations were accepted and approved during the month, involving numerous different practices and such varied articles and products as shirts, greeting cards, correspondence courses in cartooning, sleeping bags, aluminum kitchen utensils, coffee, bed linen, rugs, fur coats, photographs, mattresses, candid cameras, ribbons, hosiery, lace, feather quilts, drygoods, locks, permanent wave sets, insecticides, dentifrices, books, and bulletins on winning prizes in commercial contests, cleaning devices, radio sets, root beer, plant spray, chewing gum, as well as numerous different drug products.

As you can see from this description of its work, the Commission is organized to enforce certain basic rules of fair play and to see that competition is conducted upon a fair and honest basis. In no sense does the Commission interfere in the managerial functions of business — such regulation is left, under the theory of the antitrust laws, to the natural forces of fair competition.

At the present time, we are apparently in a period of transition. The emergency national defense activities are requiring a much greater degree of cooperation within industry and between industry and the Federal Government than has been necessary in more normal times. I hope that business men generally will realize that this cooperation requires a great deal of statesmanship upon their part to the end that the realization of the effective cooperation for defense of political and economic democracy shall not destroy the competitive system, which is the foundation stone of our economic democracy.