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ADDRESS ON

THE PURPOSES AND ACTIVITIES OF  
THE FEDERAL TRADE COMMISSION

DELIVERED BY

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## THE PURPOSES AND ACTIVITIES OF THE FEDERAL TRADE COMMISSION

Attuned to what I hope represents the appropriate tempo for a post-luncheon discussion, I will preface these remarks with some brief vital statistics on the Federal Trade Commission. The Commission is an independent quasi-judicial and bi-partisan agency created by the Congress in 1914. The five Commissioners are appointed for seven-year terms by the President, by and with the advice and consent of the Senate. Not more than three of the Commissioners may be members of the same political party.

### WORK OF THE COMMISSION

The Commission's work falls into categories defined by the Congressional Acts which it administers. These are the Federal Trade Commission Act, the Clayton Act as amended, the Export Trade Act, and the Wool Products Labeling Act of 1939. I have used the expression "falls into" in lieu of divides because one general theme runs through all these laws, namely, a legislative design to protect the public and business from unwholesome conditions in commerce and trade. The Commission's work therefore is directed toward the elimination of monopolistic, unfair and unscrupulous business practices on the one hand, and on the other, toward encouraging the conduct of business upon a higher ethical plane.

The Federal Trade Commission Act and the amendments thereto enacted in 1938, among other things, declared the use in interstate commerce of unfair methods of competition and unfair and deceptive acts and practices to be unlawful. Lawyers characterize this kind of language as flexible language. So did Justice Brandeis when he declared:

"Instead of undertaking to define what practices should be deemed unfair \* \* \* the act left the determination to the Commission. Experience with existing laws had taught that definition, being necessarily rigid, would prove embarrassing and, if rigorously applied, might involve great hardship. \* \* \* Furthermore, an enumeration, however comprehensive, of existing methods of unfair competition must necessarily prove incomplete, as with new conditions constantly arising novel unfair methods would be devised and developed."<sup>1</sup>/

In its administration of the act the Commission has encountered the new and the novel. Quantitatively speaking the greatest proportion of the Commission's work has been carried on under this statute ranging from complex cases involving whole industries to more simple matters of false advertisement. They range from matters involving the entire Portland cement industry on a charge of restraining trade and suppressing competition to a case against an individual marketing what he called "Oriental Love Drops," a perfume guaranteed to make a man irresistible to his lady love; and some years ago we proceeded against a motion picture concern in Hollywood for advertising a picture as "an authentic, uncontested celluloid document"; "an authentic record of African adventure"; "the spectacular, sensational, real adventure film made with

<sup>1</sup>/Federal Trade Commission v. Gratz, et al., 253 U. S. 421, 436, 437 (1920).

untold difficulties in the heart of Equatorial Africa." Among the claims made by the film company was the statement that a strange new beast, the "Tortadillo," had been discovered.

The Commission found on investigation that the picture had been filmed in and around Hollywood and that the "savage tribes" all lived in the vicinity of Los Angeles. The "Tortadillo" was a turtle to which had been glued wings, scales and a tail. This latter type of case is cited as an illustration of the extremes to which advertisers may go. Please do not assume that our time at the Commission is taken up with matters of this type in substantial measure.

At pages 45 through 51 of the Commission's Annual Report for the fiscal year ending June 30, 1945, there is listed a bare outline of unfair or deceptive practices discontinuance of which have been directed in the Commission's orders to cease and desist. In continuing to adhere to the exigencies of a post-luncheon tempo, I am not going to make the whole roll call. In passing, though, I can tell you that they include misrepresentation of commodities, respecting ingredients, quality, purity, origin, attributes or properties, or nature of manufacture. In this category is misrepresentation of the therapeutic and corrective properties of medicinal preparations and devices and cosmetics, and false representation through failure to disclose their potential harmfulness. Others involve false and disparaging statements respecting competitors' products and business, in some cases under the guise of ostensibly disinterested and specially informed sources or through purported scientific but in fact misleading demonstrations or tests; conspiring to maintain uniform selling prices, terms or conditions of sale; boycotts; methods creating the impression that the customer is being offered an opportunity to make purchases under unusually favorable conditions when such is not the case; devices of this nature include false representations as to reduction in price and misrepresenting the interest rate or carrying charge on deferred payments; and obtaining agents or representatives to distribute products through false promises respecting guarantees, exclusive territories or overstatement as to earnings or opportunities which the employment may offer.

Deceptive or predatory trade practices which harm customers, hurt scrupulous business. The courts have adopted this view, too, in affirming Commission orders to cease and desist, as typified by the opinion in one famous case -

"The consumer is prejudiced if upon giving an order for one thing, he is supplied with something else. In such matters, the public is entitled to get what it chooses, though the choice may be dictated by caprice or by fashion or perhaps by ignorance. Nor is the prejudice only to the consumer. Dealers and manufacturers are prejudiced when orders that would have come to them if the lumber had been rightly named, are diverted to others whose methods are less scrupulous. \* \* \* The careless and the unscrupulous must rise to the standards of the scrupulous and diligent. The Commission was not organized to drag the standards down."<sup>2/</sup>

<sup>2/</sup>Federal Trade Commission v. Algoma Lumber Co., et al., 291 U. S. 67, 68 (1933).

## CONSUMER PROTECTION

Misrepresentation, quackery and false advertising come high. The monetary savings to consumers which flow from the Commission's policing of the channels of trade have been tremendous. Of peculiar financial interest to consumers, too, is the Commission's effort to stop artificial price fixing combinations. Coercive restraints of trade violate the rules of the game, legally they constitute "unfair acts," and the Commission has proceeded against such restraints in the sale of many commodities important to the consumer. It has found price fixing upon the food the consumer eats. Some years ago it ordered the California rice industry to stop fixing prices on rice both in interstate sales and in shipments to the Hawaiian Islands. It ordered various confectionery associations in New York State to cease conspiring to fix prices and to cut off supplies from competitors, and wholesale grocers in Fall River to cease their efforts to prevent the direct distribution of groceries by manufacturers to retailers.

The Commission has also found price fixing upon the clothes the consumer wears. It ordered eight companies to cease agreeing upon the price at which they would sell skirts, and makers of covered buttons and buckles to terminate a price conspiracy which they were carrying on under the pretense that it had been sanctioned by the Commission, and ordered the makers of rubber heels and rubber soles to cease their efforts to boycott manufacturers who sell such products to 5 and 10 cent stores.

The Commission has acted against efforts to fix the prices of materials which go into the houses consumers live in. It found that manufacturers of metal windows were fixing prices and discounts and were clearing their bids upon building contracts through a central agency. It found that window glass manufacturers and distributors were in agreement to control the channels through which glass was distributed and the amount of mark-up which a distributor adds to a manufacturer's price. It found that members of an association of manufacturers were conspiring to fix the price of rubber-covered building wire. It found that various associations of building material dealers, united in a national federation, were attempting to confine the distribution of building materials to so-called regular channels, to prevent sales to irregular dealers or direct to consumers, and to fix uniform prices. The Commission has proceeded against price fixing upon many varieties of products, automobile parts, cement, lumber, surgical dressings, sponges, and school supplies.

Mr. Average Citizen is awake to the hardships attendant upon high, fixed prices. The law of the land has generally been designed to prevent private persons without public responsibility from fixing prices. Some few business men will feel very acutely the strain of postwar competition and may grumble that they should be allowed to get together with competitors and fix prices which will yield a fair return on the capital and energy expended. Should they pause and follow through logically to the inevitable result, they will readily realize how dangerous this must necessarily be. When any industry group gets together and fixes the prices at which its product must be sold, it is a part of human nature that such prices will be set higher than would be the case under normal competitive conditions. The tendency rather will be to exact what the traffic will bear. The public has the inherent right to

competition by manufacturers, distributors and retailers of commodities. Furthermore, privately fixed prices lead the way inevitably to Government control as distinguished from bare regulation.

#### MISLEADING IMPRESSIONS

Now more about advertising, i.e., advertising of the misleading or deluding variety as distinguished from outright falsity. Here is a concrete example:

"Look 10-15 years younger, the way the stars do. Why worry because you have wrinkles, lines, baggy eyes, double chin, sagging muscles or other age signs. Be amazed! Send \$1.00 \* \* \*."

Nowhere does this advertiser affirmatively state that these hallmarks of experience and wisdom in some, or addiction to the pleasure of the table on the part of others, will disappear. He merely suggests significantly that we dispense with worry, he invites our amazement. None of you, I am sure, will be amazed that, the respondent having readily admitted, in answer to complaint, that his face cream would not remove or eradicate such facial age signs, the Commission's order ran against representing "directly or through inference" that it would.

The courts as well as the Commission are sensitive to misleading impressions, as recorded in the following opinion:

"\* \* \* the buying public does not ordinarily carefully study or weigh each word in an advertisement. The ultimate impression upon the mind \* \* \* arises from the sum total of not only what is said, but also of all that is reasonably implied. \* \* \* such representations are made to the public, who, we assume, are not, as a whole, experts in grammatical construction. Their education in parsing a sentence has either been neglected or forgotten. \* \* \* The law is not made for experts but to protect the public -- that vast multitude which includes the ignorant, the unthinking, and the credulous, who, in making purchases, do not stop to analyze but too often are governed by appearances and general impressions. \* \* \* Advertisements are intended not 'to be carefully dissected with a dictionary at hand, but rather to produce an impression upon' prospective purchasers."<sup>3/</sup>

#### LABELING OF WOOL PRODUCTS

The labeling of foods, drugs, devices and cosmetics as distinguished from the advertising thereof, is primarily committed to the Food and Drug Administration. Informative labeling of other commodities is an important objective of the Commission's work. It is also the primary objective of the Wool Products Labeling Act of 1939 which became effective July 14, 1941, the administration and enforcement of which is committed to the Commission. This Congressional enactment, often referred to as the "Truth in Fabrics Law," requires that a label, tag or other means of identification be attached to all products purporting to or represented as containing wool; and that such tag in addition to other required information, disclose the kind and percentage

<sup>3/</sup>Aronberg, et al. v. Federal Trade Commission, 132 F. (2d) 165, 167 (1942).

of each different fiber contained therein, including the respective percentages of wool, reprocessed wool, and reused wool.

Certain exemptions are specified in the act, such as upholsteries, rugs, mats and carpets. Among products to which it applies are those so essential to our health and well-being, including clothing, blankets, and even the yarns going into them.

#### TRADE PRACTICE CONFERENCES

Early in my remarks I stressed that the Commission's work in addition to the elimination of the unfair or the deceptive as legally defined, is directed to encouraging a higher ethical plane in the conduct of business. Both objectives are promoted through trade practice conferences in which the Commission attempts to stop unfair competition by cooperative means. These conferences were begun more than 15 years ago as informal ways of bringing members of an industry to abandon unfair trade practices simultaneously. By use of the conferences, voluntary compliance with the law has often taken the place of compulsory proceedings.

The conferences have proved particularly useful in preventing unfair representations by developing an understanding of the meaning of trade terms and of the circumstances under which a seller has a duty to avoid deception by disclosing the facts concerning his product. The rules promulgated after a trade practice conference are divided into two groups. One group sets forth the meaning of the law as applied to conditions in a particular industry, specifying as unfair those practices which fall within the scope of statutory inhibitions. The second expresses further standards of business conduct which are proposed by the industry and accepted by the Commission as desirable. Concerns engaged in unfair practices in violation of the rules in the first group are subject to formal proceedings by the Commission. The effectiveness of rules in the second group usually depends upon voluntary compliance, but under certain circumstances they too, if violated, may represent an actionable transgression of law. One example of trade practice conference rules designed to aid the consumer is illustrated by those promulgated for and accepted by many members of the fur industry. These rules require that the seller disclose the true name of furs which have been dyed to resemble other fur peltries, together with information as to whether the furs have been tipped, blended or pointed, if such be the case. They also require disclosure of the facts if a garment is made of pieces, tails, paws or scraps rather than of full skins.

By the development of such rules the honest merchant and the consumer are informed as to the meanings of terms which they use in their dealings with each other, and the concern which would seek to benefit from consumer ignorance is put on warning as to what it should not do.

Group 2 rules are usually designed to develop information for the consumer greater than that which the law clearly requires. Some of the industries for which rules were recently promulgated are wood cased pencils, razor and razor blades, water heaters, hearing aids, musical instruments and catalog jewelry and giftware. Rules are in effect for

more than 150 industries. We at the Commission hope that these conferences can be increasingly useful as instruments by which the public and business men may jointly reach an understanding as to the information needed in the market place.

#### GENERAL INVESTIGATIONS

In addition to the enforcement of specific statutes relating to business practices, the Commission has a duty of research and publicity which is important to the consumer. In establishing the Commission Congress believed that many abuses could be corrected by public report of the facts and that the need for further legislation could be discovered in the same way. For more than 31 years the Commission has continuously engaged in economic investigations and submitted many reports respecting these investigations to Congress and to the President. It has investigated the prices of bread and flour, coal, meat, fruits and vegetables, raisins, sugar, peanuts, milk, tobacco, shoes, home 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 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 and State policy toward the rates and financial practices of electrical utility companies.

The Commission more recently published and sent to Congress reports on its inquiry into Distribution Methods and Costs; Part I, entitled Important Food Products, covers 13 food processing industries and 10 important fruits and vegetables which are sold to the consuming public unprocessed. Other titles are, Part III, Building Materials - Lumber, Paints and Varnishes, and Portland Cement; Part IV, Petroleum Products, Automobiles, Rubber Tires and Tubes, Electrical Household Appliances, and Agricultural Implements; Part V, Advertising as a Factor in Distribution; Part VI, Milk Distribution, Prices, Spreads and Profits; Part VII, Cost of Production and Distribution of Fish in the Great Lakes Area; and Part VIII, Cost of Production and Distribution of Fish in New England. Highly publicized in recent weeks was the Commission's latest report to Congress (January 25, 1946) entitled Report of the Federal Trade Commission on Resale Price Maintenance, copies of which are available at the Superintendent of Documents, Government Printing Office.

#### CONCLUSION

The development of a postwar economic system which will function smoothly in the interest of the entire commonwealth is a slow and laborious process. It calls for the energy and initiative of a population engaged in industry, for the shaping of many statutes, for the refinement of administrative processes, and for general adoption of the best elements of trade customs. The Government's part in this development is the joint contribution of many agencies.

Among the essentials will always be fearless and impartial re-  
search into industrial conditions and practices, such as the Commission  
has undertaken under the general investigatory powers of its act; the  
preservation of the maximum freedom of initiative which is consistent  
with the protection of the public, such as the Commission has sought in  
its formal proceedings against restraint of trade; and the improvement  
of standards of business honesty and informative candor, such as the  
Commission has furthered by its trade practice conferences and its work  
against misrepresentation and deception. The performance of these vital  
peacetime tasks is fundamental in making the economic system serve the  
consumer and the public interest.

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