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Remarks By

EDWARD T. TAIT  
Federal Trade Commissioner

Before the

NATIONAL ASSOCIATION OF DENTAL LABORATORIES

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It has now been more than 2½ years since we of the Commission have had occasion to meet with the members of your Association as a group. It is appropriate that we review briefly and in general terms the record of our joint accomplishment since the birth of our acquaintanceship in the Spring of 1954. As some of you will no doubt recall, your Executive Secretary, Mr. Paul A. Slone, at the direction of your Association, approached the Commission to request our assistance in the establishment of trade practice rules for the Commercial Dental Laboratory Industry. Thereafter, with your active cooperation, a trade practice conference was held in conjunction with your 1954 convention. The fact that about 250 of the members of your Association attended the conference was a source of substantial gratification as well as amazement, and thereafter an excellent representation of your membership attended the public hearing in Washington, D. C., on June 24, 1955. The original trade practice rules for your industry were promulgated November 4, 1955.

Many of you here present, and certainly those actively connected with the trade practice conference proceeding, will recall that in the early Summer of 1956 the American Dental Association and others expressed dissatisfaction with certain of the rules. Proposals were advanced by certain of the interested parties that the rules be revoked or rescinded or be modified in some degree. A hearing was held in February 1957--again before an alert and keenly interested group comprised of members of your Association, of the American Dental Association, and of other groups whose interests were likely to be affected. In view of the satisfaction expressed by all concerned then and since, I will not now go into the amendments. I do understand, however, and this is a widespread belief, that the rules have had a salutary effect, a beneficial and substantial educational value and, if I am correctly advised, have materially served to cement the friendly relationship between your Association and the American Dental Association. Further, I believe that you will agree that they have been of assistance in the furtherance of the educational and certification programs instituted by your Association for the general enlightenment of your membership and your employees.

For those of you who have become members of the National Association of Dental Laboratories since the proceedings described above, let me for a moment briefly

describe the Federal Trade Commission, its basic Acts and the duties and obligations of your Association under trade practice rules. The Commission, now some 45 years old, administers the Federal Trade Commission Act, by which it was created and which now, and insofar as it is of present interest to you, authorizes the Commission to stop all those business practices which the law classifies as "unfair methods of competition in commerce" or "unfair or deceptive acts or practices in commerce." Also we administer the Clayton Act of 1914, as modified by the Robinson-Patman Act of 1936, which prohibits the practice of selling in commerce at discriminatory prices where the effect may be substantially to lessen competition, tend to create a monopoly, or to injure, destroy or prevent competition.

The statutes above cited, as well as others of more recent vintage, are all directed toward the maintenance of free and fair competition; to the elimination of methods which are harmful to industry, trade and the public; to the cessation of practices which obstruct or interfere with the free flow of merchandise.

In the execution of its duties the Commission follows three well-defined courses of procedure. One is the mandatory process, leading to cease and desist orders; and the second is the stipulation procedure which, under certain conditions, permits an offender to agree voluntarily to discontinue the unfair practice complained of and enter into an agreement called a stipulation to cease and desist the practice. The third procedure, the trade practice conference procedure, is that with which, speaking collectively, we are here concerned. It has for its purpose the wholesale elimination of unfair trade practices by industry-wide cooperation with the Commission. Such proceedings are conducted on the basis of voluntary participation. Parties in interest are at all times free to consult with the Commission's representatives, or to arrange informal meetings necessary to an exchange of ideas and a clear understanding of the problems involved. The Commission solicits the assistance of the industry in such a proceeding. In

attending to those unfair trade practices recognized by the industry as affecting its economic growth and well being, the Commission must be guided in large measure by the industry.

Perhaps we should talk for a moment about the position of your Association insofar as its members are affected by the rules. In the normal course of business an industry member naturally becomes acquainted with the practices of his competitors and may, in his own mind, and with reference to the rules, become convinced that a competitor is violating the trade practice rules for your industry. Inasmuch as the rules which we have prepared for your industry are in essence a restatement of the basic laws administered by the Commission as interpreted by its decisions, and those of the courts, it is the duty of the Commission to make inquiry into and correct, if need be, those violations brought to its attention. Properly then, one making a complaint may direct such complaint with all known data to the Commission or, if he wishes, to the Commission through the Association's Executive Secretary. It is not, however, the function of the Executive Secretary himself to act to correct the violation. The corrective function lies only in the Commission and therefore the complaint should ultimately be transmitted to us for attention.

It should be clearly understood, however, that no industry association or group can safely undertake action which attempts to, or does stabilize, fix or maintain industry prices under the guise of industry education, nor can the industry safely undertake its own corrective action against what it may consider to be violations of law by any member. In other words, an industry cannot set itself up as "a little Federal Trade Commission." The industry should, however, keep its members fully advised of the decisions of the courts and the Commission, and inform the Commission promptly and in detail of any violations of the laws administered by the Commission. By assuming some responsibility for the elimination of illegal practices, you are taking the most effective means to avoid piecemeal legislative solutions restricting free business activity. We not only welcome, but need your cooperation in this endeavor.

Some of you are employers; many are not, but you have in common the moral obligation to please your customer--the dentist--and the concurrent desire for growth and profits--in essence, business success. Your certification and educational programs are illustrative of your forward viewpoint, for these are designed to provide a reservoir of competent personnel sufficient for both the present needs and the future requirements of the profession of dentistry. Information available indicates a constantly and rapidly expanding population, and an increase in the national longevity to an average age of nearly seventy. The majority of this latter class are those who will require and use the oral devices produced by your industry, and presumably new generations also will require dental care. However, I am advised that dentists are increasing at the rate of only about 800 per year, a number which strikes me as shockingly small, but hardly your problem. But I am pleased to note that your own activities will qualify a backlog of skilled technicians to supply the dentists of the future.

I have been informally advised of the interest of certain of the members of your Association in the sales of industry products to state hospitals, usually, as I understand it, on a bid basis. Insofar as you sell your products to charitable institutions for their own use, the Robinson-Patman Act does not apply, and this would be true whether the sales are on a bid basis or as the result of an ordinary open market purchase. Your amended Rule 12 in Section 1 (a) states the full substance of the pertinent section of the Act.

As you watched the last Congress, particularly as it affected your industry, you, no doubt, were alert to the legislative efforts of special interest groups which, however motivated and presented, must be considered in the light of their long range impact.

I should like to call to your attention certain legislation which was introduced in the last Congress, designed to set up a new Consumers Bureau. This Bureau would conduct tests of consumer goods to determine, among other things, their relative quality and to make this information known to the consuming public. Superficially this idea is plausible. Perhaps the products of your industry might fall within the purview of such a Bureau.

As you well know, producers of consumer goods are engaged in open and sometimes violent competition to obtain

customer acceptance of their products. If this bill should be enacted, pronouncements by the new Bureau on the relative quality and utility of competing items could be a dominant factor in the marketing process. Producers, such as yourselves, might thus be forced into primary competition with each other for favorable recognition by the government's Consumers Advisory Bureau. The prestige of a government endorsement of one product as being better than another would afford to the successful producer of such a product an advantage that his competitors could not meet and perhaps could not question even though the endorsement were based on an ex parte determination.

Unintentionally, I'm sure, the bill would tend to force the consumer goods market into a pattern formed by a government bureau. This would represent a significant departure from presently accepted principles. The Federal Trade Commission is opposing this proposed legislation.

Up to now, government intervention respecting the quality or utility of consumer goods has been limited to regulatory measures, such as those intended to prevent adulteration or misbranding of foods or drugs, and to prevent false and misleading claims being made for products offered to the public.

This type of governmental intervention applies to all producers alike, and does not throw the weight of the government to the advantage of one producer as against others. On the contrary, it leaves competitive advantage to be determined by the judgment of the marketplace according to the ability, skill and ingenuity of producers.

Be alert to new legislation, federal or state, whether it affects you directly or indirectly. Be wary of attempts to erode your antitrust laws by creating exemptions for special groups. And when you find out that something is going on which you don't like, stand up and let your voice be heard.