

FOR RELEASE
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STATEMENT BY EVERETTE MacINTYRE
MEMBER OF THE FEDERAL TRADE COMMISSION
BEFORE A MEETING OF THE
SALESMEN'S ASSOCIATION OF THE PAPER INDUSTRY
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ON
SOME RECENT DEVELOPMENTS AT THE FEDERAL TRADE COMMISSION



It is indeed a pleasure to visit and talk with you today. It is pleasing to see our good friend Bob Canfield here with you. However, I must acknowledge that I envy you who are members of this group. I know of no one who has anything to sell who would not wish that his merchandise be so obviously needed as the merchandise you dispense. Indeed, products made of paper are becoming more needed in the conduct of our lives with each passing day. Those of us at the Federal Trade Commission envy you because the products we dispense are not so obviously and universally desired as the products you vend.

Bob Canfield has not added to the sales efforts of your products, but I, for one, can vouch for the fact that he has rendered valuable assistance to various segments of the paper industry. He has argued your causes before the Federal Trade Commission and the Courts. His success in selling your point of view has been significant. I, as Thomas E. Dewey, Esq., well will

remember November 3, 1948. On that morning not only Mr. Dewey received reports reversing the results of earlier reports, but also that same morning Bob Canfield successfully argued against me and my associate, Walter B. Wooden, to the United States Court of Appeals for the First Circuit in Boston that a decision by the Federal Trade Commission against the Tag Institute should be reversed. Bob won the decision of the Court in that case reversing an earlier decision of the Federal Trade Commission. On that and other occasions he proved himself to be an able lawyer.

I have informed your Chairman, Mr. Eldridge, and Mr. Canfield, that the subject of my discussion would be "Some Recent Developments at the Federal Trade Commission." Some of these recent developments portend important events for you in the future.

First, before discussing these developments, I shall mention just two or three of the most outstanding among them. As you have probably noted, the Commission has just announced that it will put into effect on June 1, 1962, new procedures providing for advisory opinions and for a new rule-making process. These two steps will expand vastly the Commission's program for extending guidance to businessmen regarding their responsibility

under the law and thereby assist them in avoiding the pitfalls inherent in law violations.

Upon taking the oath as a member of the Federal Trade Commission September 26, 1961, I urged that the Commission undertake to expand its program and activities to provide for more effective treatment of destructive industry-wide practices and guidance to businessmen about their responsibilities in the use of such practices. At that time I referred to the fact that the Commission was conceived as a body trained in the application of trade laws to business practices and that one of its fundamental purposes was to provide guidance to business about how to abide by the laws entrusted to the Commission. I suggested that businessmen desired guidance from the Commission before, rather than after, illegal practices had grown to such proportions that they could be dealt with only through adversary proceedings in case by case litigation.

Subsequently, in an address that I made to the Winter Conference of the American Marketing Association here in New York December 27, 1961, I stressed the urgent need for the Commission to give early consideration to the suggestion I had made. Again, when I spoke to the

National Account Managers Association here in New York, emphasis was placed upon the importance of the Commission's guidance to businessmen through programs providing for the treatment of destructive industry-wide practices and for exchanging views with leaders of business. I pointed out that communication is necessary to an understanding between and among government and business, and that without a common understanding of our mutual problems, we are handicapped in our efforts to find solutions.

These references to a part of the background of the Commission's action putting into effect on June 1 expanded programs for industry guidance should serve to indicate to you that I am pleased with some of these recent developments at the Federal Trade Commission. Moreover, I wish to take advantage of this opportunity to assure you that my efforts are not concluded. I shall continue my effort to help the Federal Trade Commission bring about more effective results for maintaining a fair and free competitive enterprise system in this country.

Briefly, I shall undertake to discuss the Commission's new policy and procedures for advisory opinions and for its new rule-making process.

Chairman Dixon has been proposing that the Commission assist businessmen through advisory opinions for some time.

Now that the Commission has taken these important steps long advocated by businessmen, it is clearer that the Commission is pro-business.

Effective as of June 1, 1962, it will be the policy of the Commission to afford businessmen assistance in determining, in advance, whether a proposed course of action, if pursued, may violate any of the laws administered by the Commission and, where practicable, they be given the benefit of the Commission's views. Any person, partnership or corporation may request advice from the Commission concerning the applicability of laws administered by it to a particular proposed course of action by addressing a request to the Secretary and submitting, with the request, full and complete information. On the basis of the facts submitted by the requesting party, as well as other information available to the Commission, and where practicable, the Commission will advise the requesting party whether or not the proposed course of action, if pursued, would be likely to result in further action by the Commission. Any advice thus given would be without prejudice to the right of the Commission to reconsider the questions involved and, where the public interest requires, to rescind or revoke the advice. But the party who had submitted the information would not

have the evidence he had submitted used against him as the basis for a proceeding without prior notice and an opportunity to discontinue the course of action pursued in good faith in reliance upon the Commission's advice.

The new rule-making process adopted by the Commission to become effective June 1, 1962 provides for the promulgation of rules and regulations applicable to unlawful trade practices. These rules and regulations will be somewhat different in nature and in effect from the Trade Practice Conference Rules heretofore promulgated by the Commission. However, they do not replace the Trade Practice Conference Program the Commission has had in effect for many years.

Previously, I have noted that while Trade Practice Conference Rules have served and will continue to serve a useful purpose, something more has been needed.

An abundance of information has been brought to our attention showing that in a number of very important areas industry-wide practices adverse to the trade generally, and apparently inconsistent with law, have been continued despite full publicity given to interpretations by the Commission through its Trade Practice Rules and guides. Thus, it has been made clear that what has been needed is some supplementary mechanism to enforce, on an industry-wide

basis, a compliance with the law against unwholesome and destructive trade practices. This is particularly true in those instances where the use of the unfair trade practice involves large numbers, perhaps hundreds, in a given industry. Obviously, it is impractical and perhaps unfair to proceed against one or two in such litigation and leave the others free to continue the questionable practices. It is against that backdrop that I, on September 26, 1961, upon entering office as a Member of the Federal Trade Commission, suggested that a policy and procedure be adopted somewhat along the lines of the new rule-making process the Commission has adopted to be effective June 1, 1962.

Under this new procedure the Commission will promulgate rules expressing its experience and judgment, based upon facts of which it has knowledge derived from studies, reports, investigations, hearings, and other proceedings, or within official notice, concerning the substantive requirements of the statutes it administers. The rules thus developed and issued by the Commission may cover all applications of a particular statutory provision and may be nation-wide in effect, or they may be limited to particular areas or industries or to particular products or geographical markets as may

be appropriate. Following its promulgation and issuance, and where any such rule is relevant to any issue involved in an adjudicative proceeding thereafter instituted, the Commission may rely upon such rule, provided that the respondent shall have been given a fair hearing on the legality and propriety of applying the rule to the issue in his particular case. That is to say that the effective rule would be to take it as the basis for the establishment of a prima facie case with opportunity for the respondent charged with the violation of the rule to defend on the contention and showing that the rule should not be regarded as legally binding and appropriately applicable to the practices of his which have been challenged as being in violation of the rule.

Of course before the Commission would promulgate and issue rules of this kind under its new rule-making process, it would give proper notice and afford hearings to all interested parties on any proposed rule. The proceedings may be initiated by the Commission upon its own motion or pursuant to a petition therefor filed by any interested party. Following notice and hearings, the Commission, after due consideration of all relevant matters of fact, law, policy and discretion, would proceed to promulgate and issue the rule with a brief general statement

of its basis and purpose. It would not become effective until after published in the Federal Register.

In this dynamic and space age it is anticipated that changing conditions are likely to bring about need for revision or repeal of rules. Therefore, the Commission's policy and procedure will provide for amendment, suspension, and repeal of any such rule. In that way the administrative process will serve the needs of the public interest and businessmen from day to day. Rapidly changing conditions emphasize that those needs can be served in no other way.

In taking these forward steps the Federal Trade Commission has moved to fulfill one of the most important roles for which it was created. President Wilson, who had asked the Congress to create the Commission, made it clear that he wanted the agency to assist businessmen in securing a better understanding of their responsibility under the law.

On September 2, 1916, in his speech of acceptance on renomination to the Presidency, Wilson restated his view of the function of the Commission in the following terms:

". . . a Trade Commission has been created with powers of guidance and accomodation which have relieved businessmen of unfounded fears and set them upon the road of hopeful and confident enterprise.

". . . We have created, in the Federal Trade Commission, a means of inquiry and of accomodation in the field of commerce which ought both to co-ordinate the enterprises of our traders and manufacturers and to remove the barriers of misunderstanding and of a too technical interpretation of the law . . . The Trade Commission substitutes counsel and accomodation for the harsher processes of legal restraint . . .".

It is clear that it was intended by Wilson that with the establishment of the Federal Trade Commission we would have an agency which would apply the law against unfair trade practices on a broad basis in an effort to eradicate harmful practices in their incipiency. It was thought this would be done by specifying harmful trade practices item by item. In this way, it was thought, businessmen would be assisted in avoiding the continuation of practices which would make them liable as criminals under the Sherman Antitrust Act.

In addition to these major policy-making steps being taken by the Commission, it has amended its Rules of Practice to give priority to a new method for the informal disposition of cases. This new method provides that the Commission will notify a respondent of its intention to issue a complaint. Specifically, a copy of a proposed complaint and order are forwarded to the respondent. He is offered the opportunity of settling the contested issues without a formal hearing by negotiating a **consent**

agreement with the Commission's new Office of Consent Orders. He must, however, evidence his desire to settle within ten days after receipt of the proposed complaint and order. And within 30 days thereafter the agreement must be entered or else the complaint will be formally issued.

These recent developments at the Federal Trade Commission provide you and other businessmen with opportunities never before available. Now, you and other representatives of businessmen are enabled to get together with representatives of your Government for the purpose of exchanging views and eliminating troublesome problems. If you and other businessmen cooperate willingly in such undertakings, the opportunities are for you to become partners, rather than antagonists, in the development of fundamental policies and relationships between Government and business. In this way you are provided a voice in the development of sound trade regulation policies. If you and other businessmen evidence statesmanship in taking advantage of these opportunities, pitfalls may be avoided and you may escape the interminable legal processes inherent in the case by case approach of adversary litigation in the resolution of trade regulation problems.