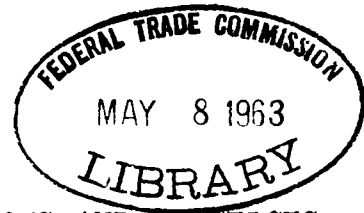


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STATEMENT BY
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COMMISSIONER, FEDERAL TRADE COMMISSION
AT A SPECIAL MEETING OF
REPRESENTATIVES OF BUSINESS AND THE PUBLIC
REGARDING THE FEDERAL TRADE COMMISSION
LOS ANGELES OFFICE

LOS ANGELES, CALIFORNIA
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FTC PROTECTS THE PUBLIC FROM UNFAIR ACTS AND PRACTICES

Introduction

It is indeed a pleasure to attend and participate in this meeting. This is especially true since it is to mark and celebrate an important event, namely, the establishment of the Federal Trade Commission Field Office in Los Angeles with the full status of a Federal Trade Commission Branch Office. Heretofore Federal Trade Commission representation in Los Angeles has been by staff members acting through the Federal Trade Commission Branch Office in San Francisco. Their contacts with the business community and the public here were made by traveling from San Francisco or through operations out of its sub-branch office located here. Now the Federal Trade Commission is represented in Los Angeles directly through its field office located on the 12th floor of 215 West Seventh Street, Los Angeles, Phone Richmond 9-4711. Members of the business community here who may

wish to make any contact with the Commission at any time may do so by either writing, telephoning or visiting the Commission's headquarters in Washington or its branch office at the location I have noted. If we are to know your wishes, you must act to communicate them to us.

It is especially appropriate that the Better Business Bureau, the American Association of Advertising Agencies, the Advertising Association of the West and the Sales and Marketing Executives Association have joined with the Federal Trade Commission in sponsoring this meeting. These organizations in their announcements from time to time have made clear that they stand for fair advertising and for fairness in other acts and practices in trade and commerce. The Better Business Bureaus throughout the United States have been of great assistance to the Federal Trade Commission in its efforts to curb unfair acts and practices.

The need for the establishment of a Federal Trade Commission field office in Los Angeles with full status as a Federal Trade Commission branch, has been apparent for some time. Much of the Federal Trade Commission field work was being done in Los Angeles by investigators who were assigned to the official station in San Francisco. Therefore, their work here required considerable travel and expense. The

establishment of an office here as a sub-branch of the San Francisco office did not fully meet the need of the public and the business community for direct representation here. It was clear that a field office with full status as a Federal Trade Commission branch was needed.

This important and populous cultural, commercial, and industrial center is entitled to full recognition as one of the leading metropolitan areas of our great country. The members of this business community and the public of this important area are entitled to the opportunity to talk face to face with Commission's representatives about questionable trade practices. The Commission's new field office here will be serving some 11 million people in Southern California and in parts of Nevada, Arizona and New Mexico, as far east as the Rio Grande River, and as far north as the 36th degree of latitude, which includes Bakersfield and San Luis Obispo in California.

Fifteen of the counties within the territory of this field office had population increases of 50% or more during the decade from 1950 to 1960. This Los Angeles area, along with New York, Philadelphia and Chicago, now ranks among the four trading areas which account for approximately 20%

of total retail sales in this country; and the Los Angeles area ranks with New York and Chicago as the three areas accounting for approximately 20% of U.S. total value added by manufacture.

Also, as I have stated, from the taxpayers' standpoint, the establishment of this field office will save a considerable amount of expense of travel by Commission personnel between its field office in San Francisco and the new office at Los Angeles.

What service may the public and the business community here expect from the Federal Trade Commission through its field office in Los Angeles and otherwise? It is the responsibility and duty of the Federal Trade Commission to help protect business and the public from unfair acts and practices.

Protection from Unfair Acts and Practices

The Federal Trade Commission's authority to protect businessmen, consumers and other members of the public from unfair acts and practices is derived from the Federal Trade Commission Act, as approved in 1914, and as amended in 1938.

The most important part of the Federal Trade Commission Act is set out in Section 5(a)(1) of said Act and contains only 19 words. Those words are: "Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful."

Under this statute the Commission has from the outset had clear authority to prevent acts and practices which are opposed to good morals because characterized by deception, bad faith, fraud or oppression, or which are against public policy because of their dangerous tendency unduly to hinder competition or create monopoly.

The jurisdiction of the Commission originally was based upon injury to competition, actual or potential, and injury to or deception of the public was not of itself sufficient to constitute an offense under the statute. The defect became apparent in the 1930's when the courts set aside a Commission order against false advertising because there had been no showing of competitive injury. This imperfection was remedied by the 1938 amendment which declared "unfair and deceptive acts and practices in commerce", to be in the same unlawful category as "unfair methods of competition." Since then the Commission has been able to proceed directly to protect consumers and other members of the public while at the same time eradicating competitive methods which unfairly divert trade from the honest to the unscrupulous members of the business community. We should therefore keep in mind, then, that the purpose of the Federal Trade Commission is to protect the public by protecting

competition. Through its performance of that function the Federal Trade Commission serves as a guardian of our free and competitive enterprise system. We are all familiar with the fact that the concept underlying our free and competitive enterprise system calls for free and fair competition.

False and Deceptive Acts and Practices

False advertising, as well as misbranding and other misrepresentation of consumer products, has always been of major concern to the Commission. The first two cease and desist orders entered by the Commission after its establishment in 1915 prohibited claims that sewing thread and textile fabric were silk, when actually they were cotton. The first cease and desist order to be reviewed by the courts was affirmed to prohibit misrepresentation of food products, sugar, coffee and tea, by one of the nation's largest retailers.

Realizing the tremendous impact of advertising as a competitive force and a persuader of the purchasing public, the Commission since 1929 has maintained a continuing surveillance to detect any claims which may be questionable. With radio advertising having been included in the surveys since 1934, and television advertising since 1948, this

monitoring of advertising continues as an important part of the Commission's activity to protect the public from unfair acts and practices.

Stronger remedies for enforcement were provided by the 1938 amendments to the Federal Trade Commission Act. Cease and desist orders entered by the Commission, unless set aside by a court, now become final 60 days after their issuance whereupon civil penalties of up to \$5,000 for each violation may be collected in suit brought on behalf of the United States. Last year more than \$100,000 of civil penalties were collected under that provision of the law, the largest amount which has been collected in any single year.

The 1938 amendments also gave the Commission additional authority to deal with false advertising of food, drugs, therapeutic devices, and cosmetics. Not only could such advertising be attacked through a conventional cease and desist proceeding, but issuance of injunction by a U.S. District Court could be sought, to stop use of the challenged advertisement until the cease and desist proceeding had been brought to conclusion. And if the advertisement was published with fraudulent intent or if the advertised commodity would be dangerous to health, then a criminal action could be brought to impose a fine up to \$5,000 or imprisonment up to six months, or both.

A significant development under the 1938 amendments has been the evolution of affirmative disclosure requirements in the advertising and labeling of products.

In one of the first of these cases, the Commission's order as affirmed by a court of appeals required affirmative labeling of true composition on food serving trays which were made of paper that had been treated to imitate the appearance of wood. The court commented that without some warning, the trays were indistinguishable from real wooden trays, and would be almost certain to deceive the buying public.

A Commission order requiring that because of consumer preference for domestic products, imported products must be labeled to disclose clearly their country of origin, was affirmed. The court stated that the Commission may require affirmative disclosures where necessary to prevent deception, because failure to disclose by mark or label material facts concerning merchandise, which, if known to prospective purchasers, would influence their decisions of whether or not to purchase, constitutes unfair practice.

The Commission has similarly required affirmative disclosures with regard to hidden dangers in use of products, used or second-hand character of merchandise which appeared to be new, abridgment of books, reprinting of books or stories under new titles, and composition of aluminum

cases which had been treated to imitate the appearance of gold.

Thus the Commission's general authority to prevent unfair acts and practices has been extended to protecting consumers not only from positive misrepresentation but also from deception through omission or nondisclosure. When the omission or nondisclosure involves a fact material to the consumers decision of whether or not to engage in commercial dealings, the Commission may act to protect him. In so doing, the Commission has no desire to dictate what goods or services the consumer shall or shall not purchase. Rather, the purpose is to aid him by making sure that he gets what he thinks he is getting.

The Commission's orders requiring affirmative disclosures in the advertising of food, drugs, therapeutic devices and cosmetics similarly have been upheld by the courts. For example, a 1959 order was affirmed to prohibit advertising of a product as a hair grower or baldness preventive unless the advertisement revealed that the product would be of no value in most cases of baldness or falling hair. By similar action, advertisements of mineral and vitamin preparations for tiredness and nervousness have been required to disclose that in the great majority of persons these symptoms would

be due to conditions other than vitamin or mineral deficiency, and that in such cases the product would be of no benefit.

The Commission recently accepted a consent order requiring that vitamin-mineral preparations designated "Super Hadacol" not be advertised for iron deficiency anemia unless disclosure be made that in women beyond the child-bearing age and in men of all ages, iron deficiency anemia is almost invariably due to bleeding from some serious disease or disorder and in the absence of adequate treatment of the underlying cause of the bleeding, the use of the preparation may mask the signs and symptoms and thereby permit the progression of such disease or disorder. A formal complaint has been issued in another matter of that type, involving "Geritol". As that matter is in process of being adjudicated by the Commission, no conclusion has been reached on whether the advertising is deceptive.

The Commission's jurisdiction to prevent unfair and deceptive acts and practices extends to all types of products and practices excepting those which by specific legislation are the responsibility of some other agency. And with those other agencies, such as the Food and Drug Administration, which has jurisdiction over the labeling of food, drugs,

therapeutic devices, cosmetics, and hazardous substances, and the Post Office Department, which prevents fraudulent use of the mails, the Commission cooperates closely to avoid any duplication or conflict of effort and to give fullest protection to the public.

The Commission also cooperates closely with state authorities by referring to them matters which are found to be of intrastate character and appear possibly to involve violation of state laws against unfair acts and practices. We have noticed with interest and appreciation the efforts of Attorney General Stanley Mosk and Consumer Counsel Helen Nelson of California to further such protection in this State.

The Commission's authority extends only to transactions which cross state lines, in interstate commerce, and it proceeds only in matters which involve the public interest. It does not undertake to resolve matters of private controversy or to obtain refunds or adjustments on behalf of individual complainants.

Other types of unfair acts and practices recently prohibited by the Commission include the use of deceptive demonstrations in television advertising, misrepresentation of correspondence courses, false claims with respect to

usual price of household appliances, deceptive guarantees of numerous types, and bait and switch tactics in the sale of home improvement products. The Commission has also issued a formal complaint for trial on the merits, charging use of false advertising in the sale of homesites by Great Southwestern Land Company, Inc., of Albuquerque, New Mexico.

Utilization of schemes involving false and deceptive representations about business opportunities have occupied some of the Commission's time. Indeed, it has been quite active in curbing methods and practices relating to these schemes. As you know, the advertising of many of these schemes is directed to the aged, the crippled, the retired or part time workers. Some of these unfair schemes involving alleged business opportunities that are advertised and offered read and sound most alluring and before the "customer" is aware of the true nature of the business opportunity, he or she has already been victimized. It is indeed a cruel perpetration of fraud practices upon persons who are so badly in need, but that is of no moment to the sharp operator who is interested in deception and a quick sale.

The unfair and fraudulent advance fee scheme is in less use now than previously because the Federal Trade Commission, the Department of Justice, and the Post Office Department moved vigorously against the practice. Briefly, the

advance fee scheme may be described as follows: Where a person has real estate to sell, he or she is approached by representatives of a reputed national real estate firm that promises to make quick and ready sales of real estate. As the contract is entered into, it is explained by these representatives that it will be necessary to have a portion of the commission or the selling fee paid in advance. The fraudulent aspects of the scheme come into focus when the victim hears no more about the sale or the fee.

Many persons seeking to advance themselves take correspondence courses. There are many fine correspondence schools in the United States. But there are also many correspondence schools whose courses are of little, if any, value. It is tragic that young people or those with limited means should invest their money and their time in a correspondence course that is valueless and sometimes indeed a downright fraud. In this connection, the Commission has taken action against correspondence schools offering valueless and falsely advertised courses.

Advertising and Labeling of Textile and Fur Products

In addition to its general authority to prevent false advertising and other unfair acts and practices, the Commission administers statutes dealing specifically with the advertising

and labeling of textile and fur products. These statutes are the Wool Products Labeling Act of 1939, the Fur Products Labeling Act of 1951, the Flammable Fabrics Act of 1953, and the Textile Fiber Products Identification Act of 1958. These statutes are of particular importance to this part of the country, since the Los Angeles area has become second only to New York in the manufacture of women's wearing apparel and is an important center of other textile activity. The Commission accordingly maintains at Los Angeles a staff of textile and fur investigators second only to its staff of such investigators in New York City.

The Commission has maintained resident textile and fur investigators in the Los Angeles area since 1951. As the result of their efforts, especially their counselling of industry members with regard to advertising and labeling requirements under the law, much good has been accomplished to improve the labeling and advertising of such products.

The Wool, Textile and Fur Acts require content disclosure on labels, along with other factual information. In addition, the Fur Act requires truthful invoicing, and it, and the Textile Act, require truthful disclosures in the advertising of products subject to their terms. The Flammable Fabrics Act prohibits the marketing of dangerously flammable wearing apparel and fabrics sold or intended for use in such apparel. Because of the Federal Trade

Commission's efforts in prosecuting fictitious, deceptive and misleading advertising of furs and fur garments, the citizens of Los Angeles today are more certain of obtaining what they believe they are buying than they were ten years ago.

The Commission's efforts to promote fair advertising practices by eliminating the unfair advertising not only helps and protects the public, but business also. Businessmen using honest and fair advertising are entitled to protection from the unscrupulous operator and dishonest advertiser. It is beyond dispute that advertising is a powerful factor in making sales. Advertising Age of January 15, 1963, featured an article by the Honorable Luther M. Hodges, United States Secretary of Commerce, in which he said:

"Advertising and marketing men have never been more important to the future of the United States and the world than they are today.

"Advertising is a major tool which must be used vigorously if we are to quicken the pulse and expand the scope of our economy."

As of 1962, more than \$12.5 billion were being spent on advertising in the United States, with the prospect of that reaching \$20 billion by the early 1970's. In 1961 three separate firms in three different industries each spent more than \$100 million on advertising.

The Commission devotes a substantial percentage of its total budget and other resources to the prevention of deceptive, false and fraudulent acts and practices of the types I have been discussing.

FTC Antimonopoly Activities

A substantial portion of the total effort of the Federal Trade Commission is devoted toward curbing acts and practices which have a dangerous tendency unduly to hinder competition or create a monopoly. These include such acts and practices as restraints of trade, discriminatory pricing, and mergers which may substantially lessen competition.

The Commission's authority to prevent these acts and practices which have a dangerous tendency unduly to hinder competition or create monopolies is derived from the prohibition against unfair methods of competition in the original Federal Trade Commission Act of 1914. The Commission prevents the granting of discriminatory prices or allowances which would injure competition. The Commission action is pursuant to Section 2 of the Clayton Act as originally enacted in 1914 and amended in 1936. Also, the Commission acts with respect to corporate mergers which tend to lessen competition or create monopoly under Section 7 of the Clayton

Act, as amended in 1950. I mention these responsibilities but briefly, to round out a picture of the Commission's activities.

Considering this body of law collectively, it has these two objectives:

- (1) To protect and preserve competition, and
- (2) To require that competition preserved is conducted in a reasonably fair manner, without recourse to unfair acts and practices.

There is no inconsistency in these two objectives, although some say at times that to require fairness in competition is to restrain competition. To our friends who present such arguments, we are able to point out that our citizens are accorded constitutional guarantees to be free but not so free as to kill their fellow men at will without penalty. We permit automobile driving but not recklessness with resultant manslaughter on our highways. It is the job of the Federal Trade Commission to keep open the avenue of free and fair competition so that all contestants will have a fair opportunity to fight fairly for his business.

Conclusion

Business enterprises, large and small, as well as the public, are entitled to have rules by which it can be

determined whether competition is conducted fairly. They are entitled to fair but full and firm enforcement of such rules. Without rules for fair competition and their enforcement, the public and business would suffer.

Finally, I wish to repeat that it has been a pleasure to visit with you and participate in this meeting to celebrate the establishment of the Federal Trade Commission Field Office in Los Angeles, California.

Thank you.