

Remarks of

CHAIRMAN MEAD

of

FEDERAL TRADE COMMISSION

Before

NATIONAL CONFECTIONERS' ASSOCIATION CONVENTION

WALDORF-ASTORIA HOTEL

NEW YORK CITY

Tuesday, June 6, 1950

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Ladies and Gentlemen: It was with a great deal of pleasure that I accepted your invitation to be here today because, first of all, in talking to members of the Candy Industry, I feel that I am among friends of the Federal Trade Commission, and secondly, because I believe the subject I desire to discuss holds considerable interest for you. This combination usually makes for a sympathetic audience, and I am going to make the most of it.

As a member of one of the Federal Agencies dealing directly with business I want to tell you something about the Commission, its objectives, and how it operates to accomplish results.

Commission in General:

The general purpose of the Commission, as expressed in the Federal Trade Commission Act (38 Stat. 717; 15 U.S.C.A., Sec. 41; 52 Stat. 111), is to "prevent -- unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce." The proponents of the Federal Trade Commission apparently believed in the old adage that an ounce of prevention is worth a pound of cure. They emphasized the prevention of unfair trade acts and practices rather than curative remedies.

That the objective of the Commission is preventive in nature has been repeatedly emphasized by the courts in a number of cases. In one Supreme Court case (*F.T.C. v. Radam*, 316 U.S. 149), it was stated that "one of the objects of the Act creating the Federal Trade Commission was to prevent potential injury by stopping unfair methods of competition in their incipiency."

Methodology:

Over a period of years the Commission has developed several methods directed toward the prevention of unfair trade practices and other unlawful methods of competition. These preventive methods may be divided into three general classifications: one, the formal litigated cases, two, the informal cooperative proceedings, and, three, the economic investigations and reports.

Formal Litigated Cases:

The litigated cases constitute an important phase of the Commission's work. This method involves the issuance of a complaint. If the complaint is sustained by the evidence, an order to cease and desist is issued requiring the parties to discontinue the particular illegal practices. A recent amendment to the Federal Trade Commission Act makes parties violating such orders subject to a civil penalty up to \$5,000 for each day of continuing violation. This amendment puts more effective teeth into our legal, formal machinery.

Economic Work:

Our economic investigations and reports constitute another important segment of the Commission's activities. This activity of the Commission is concerned largely with the collection and compilation of information with respect to the organization, business, conduct, practices and management of corporations engaged in commerce. Banks and common carriers however are not subject to the jurisdiction of the Commission. By exposing various trade practices, deemed injurious to a healthy competition, to the light of public opinion and to Congress with recommendation for corrective legislation, much good can be done to insure a strong economy under our free enterprise system. Through this methodology many situations requiring correction have been brought to light. It was an investigation made by the Commission of the meat packing industry and the report to Congress thereon, that was largely responsible for the enactment of the Packers and Stockyards Act by Congress. The utility investigation by the Commission and report to Congress figured substantially in the enactment of the Securities and Exchange Act.

Trade Practice Conferences:

I have covered our procedures concerned with litigated formal cases and economic investigations very briefly. I intend to place special emphasis upon our cooperative, preventive procedures. Under our Bureau of Industry Cooperation, these procedures result in trade practice rules or informal stipulations to cease and desist. The later method is a case method of handling unfair practices. It may be used by the Commission when the party complained against is willing to enter an agreement with the Commission to cease and desist from engaging in the matters complained against. This agreement is referred to as a Stipulation. The Commission allows matters to be settled by stipulation only in those cases where, under all the circumstances, such a disposition is in the public interest and will effect a prompt correction. The privilege of disposing of matters by such informal stipulations is not applied to monopoly or restraint of trade cases. It is not extended in matters involving deliberate fraud or involving products inherently dangerous to purchasers.

Trade practice rules comprise the other part of our informal, cooperative procedure. In contrast to our stipulations, which is our cooperative method of disposing of individual cases, trade practice rules have as their purpose the prevention and elimination of unfair acts and practices on an industry-wide basis.

I might explain at this time that trade practice rules promulgated by the Commission are classified as either Group I or Group II. Group I rules are expressive of legal requirements of the type coming within the enforcing powers of the Commission. Group II rules are expressions of an industry recommending industry members to follow or discontinue certain practices on a voluntary basis. What I have to say today on trade practice rules is directed largely to the Group I rules which are explanatory of existing legal inhibitions.

Candy Rules:

You of the candy industry know something about our trade practice conference procedure because you had rules promulgated for your industry last

January. Although they have been in effect only a short time, I understand they are operating very effectively. The continuation of this success can be assured just so long as your industry desires it and puts forth the necessary effort in cooperating with us in obtaining compliance with the rules.

History of T.P.C.:

Some people think of our conference procedure as a new thing. Actually it is almost as old as the Commission itself. Under our democratic form of Government, it was only natural to find that shortly after enactment of the Federal Trade Commission Act, the Commission was petitioned by industry to issue trade practice rules for guidance in their business operations.

First T.P.C.:

The first conference proceeding undertaken by the Commission was in 1918 and was concerned with gold plated finger rings. The Commission had received a number of complaints with respect to improper marking of such rings in regard to their gold content. It appeared that the alleged misbranding was followed as a common practice in the industry. Rather than issue complaints against a large number of manufacturers of these rings, a conference proceeding was called by the Commission with a view to establishing proper standards and methods for marking these rings. After obtaining the views of that industry and other pertinent data, a rule was worked out and approved by the Commission that set forth acceptable markings for finger rings. Acceptance of the rule by the industry and its subsequent action in observing requirements of the rule corrected the situation for the entire industry. This avoided the necessity of the Commission initiating individual cases against a large number of finger ring manufacturers.

Development of T.P.C.:

From these beginnings, the value of correcting unfair competitive practices through industry-wide conferences and voluntary cooperative effort became increasingly recognized. It was also tried in other industries. During the next few years the Commission received applications from many industry groups to have the conference procedure applied to them for establishment of trade practice rules. Within a few years (April, 1926) the work became so popular that the demands upon the Commission necessitated its organizing a special division to handle the work. This division is today known as the Division of Trade Practice Conferences.

The idea of conference proceedings has continued to develop over the years and its usefulness has been greatly expanded. Trade practice rules have been issued for scores of industries. Some of these have undergone revision and extension. In some instances, rules for certain industry groups have been consolidated and brought up to date to give wider coverage than was possible in the early rules. Today, there are over 160 industries operating under individual sets of trade practice rules promulgated by the Commission.

Scope of T.P.C.:

Trade practice conference proceedings may cover many practices which come within the scope of the Commission's corrective authority. This opens a large field to industry for cooperation with the Commission to serve the common good. Competition, which is the life blood of our free enterprise system, may flourish and develop on the basis of trade practices which are fair and equitable to all concerned. A major purpose of the procedure is to utilize the best thoughts and voluntary cooperation of all concerned in the wholesome solution of unfair competitive problems.

T.P.C. Procedure:

Conference proceedings may be initiated on the Commission's own motion. For the most part, however, they are authorized by the Commission on application of members of the particular industry involved. I might say at this time that the Commission has the "welcome mat" out for any industry group interested in elevating the plane of competitive methods in its business, and in eliminating bad practices. The principal guide to the Commission in initiating or authorizing conference proceedings is whether it will be in the public interest and a constructive force for good in the industry.

After preliminary discussion with the industry, the Commission schedules a trade practice conference and invites all members of the industry to participate. Members of the industry may submit proposed rules and other pertinent information and take part in the discussions. Upon conclusion of this conference, all proposals are reviewed by staff members of the Commission out of which grows a draft of proposed rules. When this is accomplished the draft is recommended to the Commission for release to all industry members and persons concerned and for hearing. With or without modification, as may be deemed necessary under the law, the Commission releases the proposed rules and schedules public hearings on them. All interested or affected parties are invited to send in their suggestions and views and to attend the hearing and present their views orally. It is only through this procedure upon public hearing and after the Commission has considered all suggestions and comments submitted, that the rules are brought to final form and receive approval by the Commission for promulgation for the industry.

Objectives of T.P.C.:

Formulation of the final rules is accomplished with the objective that they must be in accord with the law and the public interest. They must be directed toward the elimination and prevention of unfair or illegal competitive methods or practices, the maintenance of free and wholesome competition in the interests of the industry, the trade, and the consuming public. Particular attention is given to the possible effect of such rules on the small independent businessman and the purchasing public.

Enforcement of T.P.C. Rules:

When finally approved, trade practice rules become effective on a specified day, usually 30 days after promulgation. Copy of the rules is supplied to members of the industry. Opportunity is extended to all to record their willingness to follow them in the conduct of their business. Upon promulgation, the rules are referred to one of our staff members for enforcement. Effective compliance is in large measure dependent upon close liaison and cooperation between the industry and the Commission. This is undertaken by our rule administration staff. Where there is a willingness to play the game of competition actively and fairly, the matter of compliance with the rules is relatively simple. Alleged violations are often cleared up without resort to formal litigation of cases.

Advantages of T.P.C. Rules:

Accomplishments under trade practice rules have been numerous and, more important, enduring. Unaccompanied by any fanfare or great controversy, they have corrected and eliminated many former trade evils. Based on cooperation between industry and the Commission, they operate with remarkable smoothness and are quite effective.

Proper cooperative action on rules to end trade abuses lends itself to the treatment of problems in a manner which is often more effective than is possible through litigation or compulsory statutory remedies. In this regard I like to quote what Chief Justice Hughes said in the Sugar Institute case when it was before the Supreme Court. He used these words:

"Voluntary action to end abuses and to foster fair competitive opportunities in the public interest may be more effective than legal processes. And cooperative endeavor may appropriately have wider objectives than merely the removal of evils which are infractions of positive law." (297 U.S. 553, 598)

One of the great advantages in having a set of rules for an industry is that each member then knows what the requirements are. All in the industry have the same rules to guide them from the pitfalls of unfair methods of competition which are inimical to good business. The value of having such a set of rules has proven highly beneficial to those industries for which rules have been promulgated. The fact that approved trade practice rules tend to prevent unfair competitive methods and to stop them in their incipiency is of far reaching value. It effectuates the avowed objectives of the Federal Trade Commission Act to apply preventive measures.

Another advantage of trade practice rules is that they go into effect on a specified date. All members of an industry may simultaneously turn over a new leaf and make a fresh start on the same basis of fair competition. In many instances business concerns would like to discontinue certain unfair methods of competition if they could be assured that their competitors would do likewise. Trade practice rules afford a means through which this may be accomplished.

In addition to aiding industry and the trade, benefits also accrue to the consumer. A number of trade practice rules specify informative labeling so that the consumer will know what he is purchasing. Disclosure of the residual shrinkage of preshrunk cotton goods, was developed through trade practice rules. The requirement for disclosing the fiber content of wool products through informative labels, although required by legislation, patterned the idea of trade practice proceedings. Trade practice rules for other types of fabrics were established, calling for a disclosure of the rayon, silk, linen, and nylon content, as well as other fiber content in textile products sold to the consumer.

Now you may naturally ask what are the disadvantages of having trade practice rules. The answer is none, if one is disposed to follow the laws enacted by the Congress. The inhibitions of trade practice rules are confined to matters which fall within the framework of the law. They do not impose upon industry members any new or additional legal requirement. In agreeing to a set of rules an industry member does not give up any of his rights. In the event that a formal complaint were to be issued by the Commission for violation of a rule, the complaint is filed on the basis of a violation of the law concerned. In this formal adversary proceeding the industry member has all the rights to litigate the case that any other person, not under rules, possesses. He has forfeited nothing.

The need of testimonials in support of conference proceedings is unnecessary. It has been spoken of in glowing terms by members of Congress, the courts, businessmen, and consumer groups. It has been "glamourized" in many news articles. Its many advantages in accomplishing the desired results speak for themselves. In obtaining compliance with the law, trade practice rules are of benefit to all reputable businessmen and the consumer. Through its informal procedure it brings business and Government closer together. Industry problems are satisfactorily worked out at a fraction of the cost that would be involved were formal litigated cases instituted and completed. This saving is realized both by the business firms involved, and the stockholders of the Federal Trade Commission, the taxpayers. Cases are settled more quickly and the good will and cooperation of all concerned is maintained.

Caution Against Improper Use of T.P.C. Rules:

I hope I have not painted too glowing a picture of our conference proceedings. What I have said doesn't mean that the Commission is going soft and has let down the bars. We will continue to use the strong right arm of the Commission through our formal litigated case method wherever necessary. Trade practice rules, however, give an industry the advantage of knowing the requirements of law more clearly than may be the case with respect to industries not under rules.

Sometimes I have heard the complaint that trade practice rules may be used as a shield to cover up law violations. Let me dispel that idea once and for all. No rule will be approved by the Commission if it sanctions any violation of law. The whole procedure must be, and is, directed toward law observance. Only a false and distorted interpretation of any Commission rule could possibly be construed as sanctioning any illegal act. Should the Commission find any industry attempting such a practice, I can assure you that the full weight of the Commission's formal corrective powers would be speedily brought to bear against the guilty parties and the rules for that industry would be rescinded.

Democratic Way:

The reason that I am so enthused over the trade practice conference methodology is because it appeals to me as the democratic way (and I use the word "democratic" in its primary meaning as distinguished from its partisan one) of obtaining compliance with the laws established by the representatives of the people. It furnishes the industry considerable opportunity for self-regulation as should be the case in our democratic country of free people.

As you know, democracy was described by one of our great Presidents as "Government of the people, by the people, [and] for the people." The corner stone of democracy rests upon the capabilities of the people to govern and regulate themselves in accordance with the law. You have the same corner stone in trade practice rules.

It has been said in the past that "nothing hampers business like uncertainties. Nothing daunts or discourages it like the necessity to take chances, to run the risk of falling under condemnation of the law before it can make sure just what the law is." (In Woodrow Wilson's Message to Congress, January 20, 1914, in support of legislation for a Federal Trade Commission.)

Our policy at the Commission is to be mindful of this fact. We intend to carry out the Commission's functions in a way which will reduce the areas of uncertainty to the fullest extent possible.

In closing I want to express the hope that your operations under trade practice rules will be crowned with unusual and extraordinary success. I trust that you will be able, throughout the years of the future to harken back, with considerable feeling of pride and accomplishment, to the day when proceedings leading up to your rules were initiated. I hope that under these rules the members of your industry, both large and small, will thrive and prosper, and that the rules will always be hailed by the industry as a badge of honor not to be sullied. I trust that we shall prove to the world, not only that democracy can work, but that it is working in our day to day business transactions. Finally, I know that we shall maintain our system of free competitive enterprise and strengthen its bulwarks to such extent that alien isms and philosophies shall never reach our shores. Let me promise you that we at the Federal Trade Commission shall do our utmost in cooperating with industry and others sincerely concerned with these objectives.