



Federal Trade Commission

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CHAIRMAN

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The views expressed are those of the Chairman and do not necessarily reflect those of the Federal Trade Commission or the other Commissioners.

The National Advertising Review Board ("NARB") plays an important role in ensuring that advertising is truthful, accurate and substantiated. For more than twenty years now, the seriousness and determination demonstrated by the NARB has stood as an important complement to the FTC in protecting consumers. Your success, as reported in the NAD Case Reports, helps to instill public confidence in the truthfulness and accuracy of advertising. This helps assure a competitive marketplace with informed and educated consumers and contributes to the FTC's ability to focus its resources to priority consumer protection matters. At the same time, I believe that a vigorous FTC enforcement program makes your job easier.

When I arrived at the Commission as Chairman, I set three initial goals. The first was to secure public confidence in the Commission as an active law enforcement agency by increasing our scrutiny of national advertising and finding ways to strengthen our effectiveness in the important battle against deceptive practices generally. The second goal was to eliminate the appearance of a confrontational attitude towards the Congress, the states, and other entities, and to ensure a spirit of cooperation and a real working relationship with these and other groups. The third goal was to stop the steady decrease in Commission resources that occurred throughout the previous decade.

Today I would like to discuss how far we have come in reaching these goals and describe that journey as it applies to the Commission's consumer protection mission. Of course, the views I express here are my own and do not necessarily reflect those of the Commission or any other Commissioner.

I am quite proud of the Commission's record during the past three years. As you know, our responsibilities are far-reaching. In the first instance, the Commission enforces the Federal Trade Commission Act, which provides the Commission with broad law enforcement authority over almost every sector in our economy. The Commission has responsibilities under approximately 30 additional statutes, and enforces dozens of trade regulation rules and trade practice rules governing specific industries and practices.

The Commission has a solid list of accomplishments to stand upon. From October 1, 1989 through September 30, 1992, the Commission brought or resolved more than 387 law enforcement actions as part of its consumer protection mission. During that same period, the agency obtained consumer redress orders totaling more than \$216 million and civil penalty judgments totaling more than \$5.8 million. Unfortunately, such court ordered redress is not always fully recoverable because scam artists often spend defrauded consumers' money as soon as they receive it.

Numbers alone do not tell the whole story. It is important to distinguish between the amount of activity and the quality of that activity. During the past three years we worked to fashion

a law enforcement program that shows strong national consumer protection in a changing environment, without unduly interfering with the dynamic and competitive marketplace. We endeavored to create a consumer protection program that was balanced and reasonable both for consumers and legitimate competitors alike.

Let me use the agency's advertising program to illustrate our efforts. When I joined the Commission as Chairman in 1989, the agency -- rightly or wrongly -- was widely perceived to have abandoned its leadership role in the regulation of national advertising. The American Bar Association's "Kirkpatrick Report" on the FTC, published in 1989, probably best summarized the situation. Although the Report noted that its committee members were "divided" as to whether the FTC was sufficiently active, it was "united" in the belief that the FTC could, and should, do more to articulate its advertising law enforcement agenda. "Too rarely," the Report concluded, "has the public received the message that the FTC believes it is important to move aggressively against false and deceptive advertising." Other characterizations were much harsher than the ABA's. Because of this perception, I made a commitment to increase the agency's focus on national advertising.

During the past three years, the Commission brought or settled more than 85 cases as part of our advertising program. These matters included strong but, I believe, sensible orders against leading national advertisers -- including companies whose names are recognizable in most U.S. households and who sell

products as diverse as disposable diapers and ice cream bars and toys and over-the-counter drugs -- as well as the more garden variety "back of the book" scam artists. We have achieved our presence with orders that provide guidance to the public at large as well as respondents about the high standards of truthfulness that consumers expect and we demand.

One of the major areas of emphasis for our advertising program over the past three years has been health and safety claims. The Commission strengthened its food advertising program during this period and demonstrated the importance of working with other federal agencies, such as the FDA, in harmonizing food labelling and advertising approaches. Since early 1991, the Commission has brought or finalized 13 food or food supplement cases. These cases address significant health issues such as important nutrient content information regarding fat, cholesterol, fiber, sodium and percentage fat-free claims and the entire spectrum of health claims.

Similarly, given the health concerns raised by excess weight and the failure to maintain weight loss despite repeated dieting, we have challenged allegedly deceptive claims for various weight loss products and services. Our cases have run the gamut from nationally advertised programs and very low calorie diet plans to pills and gadgets that promise magical results overnight.

Another major emphasis of our advertising program has been environmental -- or "green" -- claims. As the chief federal agency charged with ensuring truthful and non-deceptive

advertising, the FTC has met its responsibility to assert a leadership role in articulating a national advertising policy that can form the basis for a consistent and harmonious regulatory approach among the various state and federal agencies involved in the regulation of advertising.

Last July, the Commission issued its Green Marketing Guides. In formulating the Guides, we built upon the track record of case-by-case enforcement, which provided context and basis. We also relied heavily upon the solid record established through the Commission hearings and the more than 100 written comments. The Commission's Guides provide a good roadmap for reducing consumer confusion and preventing the deceptive use of environmental terms such as "recyclable," "degradable," and "environmentally friendly" in the advertising and labelling of products in the marketplace.

Overwhelming support for the Guides has come from diverse parties. We have heard from sister federal agencies, state officials, industry groups and consumer and environmental groups. Of course, each of these groups may differ on specific features of the Guides, but the fact that all of them were more than willing to give the Commission's efforts a try is a clear signal that the FTC can fill the role of national leader that the ABA urged.

This success was no accident. In large part, acceptance of the Guides stems from the basic principles that underlie the process used in formulating them. We listened to businesses and

consumer groups alike to learn the facts about green marketing. Our aims were both to protect consumers by providing truthful accurate information and to protect competition by recognizing the legitimate desire of advertisers for a level playing field.

The Commission now must focus its attention on an even more demanding task: providing clear guidance for food advertising claims in the post-NLEA era.

As you know, last week the Food and Drug Administration and U.S. Department of Agriculture reached agreement on the massive food labelling regulations. As a result, FDA is expected to publish nearly 4000 pages of final regulations and explanation to implement the requirements of the Nutrition Labelling and Education Act. I applaud everyone who worked to complete this enormous undertaking.

If the FDA and USDA's work is now largely finished, however, the FTC's is beginning. We have promised to review these rules and, in light of their content, fashion a national policy that will harmonize the Commission's enforcement of food advertising with FDA and USDA's regulation of food labelling.

The issues are complex and difficult. Although there are clearly differences between advertising and labelling, as well as differences in the underlying statutory authority under which they are both regulated, I believe that there must be a consistent national approach to food advertising and labelling.

This effort will take more than just the FTC's development of its own enforcement policies. The same questions that

confront the FTC also face a variety of state and local authorities. It must be a priority for all government officials with responsibility for food advertising and labelling to avoid inconsistent standards that will leave consumers confused and marketers frustrated.

Our staff met recently with a group of state officials with responsibility for food labelling and advertising. One of their primary concerns was the question of how the FTC intended to approach food advertising questions after final NLEA regulations were issued. These officials recognize the need for coordinated food enforcement policies at the state and national level and have said that they would look to, and be grateful for, a clearly articulated national policy for guidance in fashioning their own enforcement efforts, even if that policy might be somewhat different from what they themselves might select.

It is clear to me that the FTC must be in the forefront in articulating that national policy. It is also clear to me that a case-by-case approach, without more, is insufficient to deal with issues of the breadth of these presented here.

Thus, I believe the challenge now before the Commission is to develop general guidance on food advertising. I have asked the Commission staff, as soon as the final FDA regulations become available, to develop recommendations addressing:

- (1) the most appropriate mechanism to provide this guidance,
- (2) the issues such guidance must address, and

(3) any statutory limitations to harmonizing the Commission's policies with those of the FDA and USDA labelling regulations.

And, as I have stated before, I hope that the Commission will have the benefit of the views of industry and consumer groups on the best way to resolve these issues. My goal is to continue the role of national leadership we were privileged to play on environmental claims.

In discussing my first goal, I have given you a substantial preview of our efforts on the second one -- working cooperatively with the Congress, the states and others. Obviously, our work in food advertising and environmental marketing has required, and will continue to require, close collaboration with the Food and Drug Administration, the Environmental Protection Agency, the state Attorneys General, and others.

However, the extent to which the FTC is working cooperatively with others extends far beyond these types of advertising matters. Let me give you two examples from other areas of enforcement that show the importance of such cooperation.

The first example is the phenomenon of 900-telephone numbers, where the consumer pays a fee that can range from fifty cents to fifty dollars or more for each call. The use of 900-numbers is an innovative method of distributing information that can, and often does, benefit consumers. Unfortunately, the practices of some unscrupulous pioneers in the 900-number

industry have led to a perception that it is dominated by late-night adult entertainment and job and credit card opportunities. Scam operators have learned that by using the 900-telephone number service, they can make money merely by persuading consumers to place a call, rather than having to get them to send money or authorize a credit card transaction.

As in the case of Green Guides, our collaboration with the state Attorneys General began in 1990, when they invited our Bureau of Consumer Protection staff to participate in hearings in Dallas. At the same time, we worked with the Congress and the Federal Communications Commission to make sure that there would be an efficient and coordinated response to the problem. The joint efforts were crucial because the Federal Trade Commission has authority over information providers and their service bureaus, but exclusive authority over local and long-distance telephone companies (who are "common carriers" by legal definition) resides with the Federal Communications Commission.

The result of all of this work is that the Federal Communications Commission, pursuant to Congressional mandate, has devised rules for common carriers who offer 900-telephone number service. The FTC has issued a number of complaints and settlements involving 900-telephone number services to adults and children, including refunds of up to \$1 million in one case. And the Congress, having had an opportunity to study the problem from the perspective of both agencies, completed legislation this session that will require the FTC to publish rules that will

govern both the advertising of 900-number services and the billing and collection efforts of telephone companies and others.

Without this level of joint effort, there was a real risk, in my view, that regulation of 900-number services might have resulted in restrictions that could hamstring the development of legitimate information providers in the future. When we publish a proposed rule in the coming months, I am hopeful that we will benefit the public interest, through our work with the Congress, the states, and sister federal agencies, by adopting regulatory and law enforcement standards for 900-number services that will give broad protection to consumers, without killing an innovative and potentially important industry in its infancy.

Another area where the working relationship with states and other agencies has been critical and successful is our campaign to deal a serious blow to telemarketing and other frauds. Boilerrooms that routinely interrupt us at home during the early evening or promoters who bombard us with postcards that offer prizes and other benefits for calling a designated telephone number, can sprout up more quickly than we or others could ever expect to shut them down.

The Commission responded by expanding efforts to systematically seek the "root systems" that support these retail fraudulent marketers. We have targeted suppliers, credit card factors, and others who knowingly aid and abet these frauds by closing their eyes while continuing to profit from the boilerroom

activities. In some cases, we have prosecuted companies who allegedly provided "turnkey" operations for as many as 75 different boilerrooms simultaneously.

This work requires the cooperation of state and local consumer protection officials. Typically, boilerrooms are established in one state and make calls into other states, obviously to make law enforcement more difficult. Also, there may be a "root" operation located in one state that is providing all the necessary tools to set up fraudulent telemarketing operations around the country.

In one such case the FTC, working with the Maryland Attorney General, went to court to enjoin an alleged travel scam based in Silver Spring, Maryland. In the course of that investigation, we discovered a larger company, based in Florida, that was providing full services to the Maryland travel operation, along with as many as 75 others. Working with the Florida Attorney General, we brought an action against this major "root" in federal court in Florida, and through that effort, we have learned the identities of many other travel boilerrooms operating in similar fashion around the country.

In the last three years, we have developed joint training programs with the states, improved our information sharing capabilities, and, in some cases, coordinated the actual prosecution of cases.

Increasingly, we are working with our counterparts in other countries as well. As telecommunications makes the world so much

smaller, transactions that cross international lines have created the need for governments to communicate on a regular basis. Several weeks ago, the FTC represented the United States at a meeting that resulted in the formation of a network of countries who will share information on law enforcement techniques and emerging transborder marketing abuses. We also meet regularly with international groups to compare policies and approaches to such issues as comparative advertising and environmental marketing.

As I review the last three years and look forward to the challenges that the FTC will face in the remaining few years of this century, it is clear that there will be few, if any, matters in the future -- involving advertising, fraud, or other types of enforcement -- where the FTC will operate in a vacuum. Working on matters with other Federal agencies, and with our counterparts at the state and local levels in the United States, and with officials in other countries, will become the rule rather than the exception. I am very proud that our efforts in the last three years to reach out throughout the United States and abroad in these collaborative efforts have built a strong foundation that will serve the Commission well for the rest of this decade and beyond.

My third goal, reversing the downward trend in our resources during the last decade, is also one where I can report progress -- although you will quickly recognize that this goal is one that is much more outside the Commission's control than the first two.

We have held our own. In fact, our workyears are up to a small degree. I am very appreciative that Congress has given us even modest increases at a time when the entire government budget requires great scrutiny and restraint. Fortunately, we are working better than ever with the workyears that we do have. Our productivity is at its highest level in many years. In part, I believe that this is due to the cooperation I previously discussed, which has left us and other agencies in a position to work more efficiently by sharing information and enforcement efforts.

As advertising claims are increasingly technical and deal with important health and safety issues, and technology has made the world so much smaller in terms of marketing practices that cross interenational borders, the Commissioin has had to prepare itself for the law enforcement challenges that the remainder of the 1990's will pose. I believe that the Commission at the end of 1992 is well poised to play the central and important role that will be required both within the United States and abroad.