



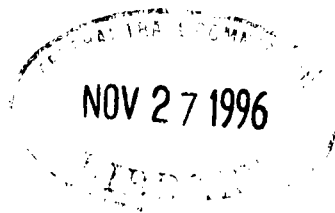
# Federal Trade Commission

January 25, 1996

Prepared remarks of

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<sup>1</sup> Commissioner, Federal Trade Commission. The views expressed are those of the Commissioner and do not necessarily reflect the views of the Federal Trade Commission or any other Commissioner or staff.

Thank you. I am delighted to be here and share my thoughts on some of the FTC's enforcement priorities, and where I see the agency moving in the future. As we shape our policies for the 21st Century, stepping back for a moment to assess our past performance is appropriate. The agency's consumer protection mission -- promoting a well-functioning marketplace by eliminating deceptive and unfair practices that impede consumers' ability to make informed purchase decisions -- remains as vital today as when the agency was first created. But the tools we use to accomplish our mission must evolve to reflect the changing marketplace. The Commission faces the challenge of adapting the basic principles of the Federal Trade Commission Act to the dynamic realities of today's marketplace.

To improve the operation and performance of the agency, we must use creative approaches to effectively protect consumers and competition without unduly burdening business. We will place greater reliance on consumer education, industry self-regulation, expanded public input, and, where appropriate, cooperative working relationships with businesses.

We are continuing to streamline our rules and guides, and we have approved a comprehensive sunset policy for both consumer protection and competition orders that are more than 20 years old. These initiatives ease the regulatory burdens on companies, and, I believe, also yield a tangible benefit for enforcement and compliance. Clearing away regulatory underbrush makes our current guidance more likely to be followed, and companies can focus their compliance activities in the areas of greatest need. These reforms also allow the agency to anticipate and encourage marketplace developments that can benefit consumers.

I understand that representatives from the FDA spoke to you yesterday, so let me just take a few moments to describe the Commission's relationship with the FDA, particularly as it relates to advertising. As many of you know, the two agencies, by statute, have overlapping jurisdiction with respect to the advertising, labeling, and promotion of foods, over-the-counter drugs, cosmetics, and medical devices. Under a longstanding liaison agreement between the two agencies, the FTC has primary responsibility for enforcing laws against the false and misleading **advertising** of these products. The FDA has primary responsibility for preventing **mislabeled** of these products. Although Congress limited a portion of the FTC's statutory authority over prescription drug advertising in 1962, it did not affect the Commission's **basic jurisdiction over advertising**, even including prescription drug advertising, **under our general Section 5 authority**. In fact, a recent federal court decision upheld the Commission's jurisdiction with respect to advertising of restricted medical devices.

The liaison agreement has worked well since its inception some forty years ago. The agreement reaffirms the two agencies' commitment to prevent deception of the public and to coordinate our work to eliminate duplication of effort. It also recognizes the importance of promoting consistency in handling matters of mutual concern.

A consistent and coordinated enforcement policy was, I believe, achieved with respect to food advertising. Although I realize that most of you are not members of the food industry, I think the Commission's approach with respect to food advertising is instructive. The Commission's Food Policy Statement recognizes the important differences between advertising

and labeling, but nonetheless takes an enforcement approach consistent with the FDA's policy.

A coherent consistent federal policy in this area has provided meaningful information for consumers and understandable rules for marketers. As we attempt to work jointly with other federal agencies, our experience in this area can serve as a model to create other workable enforcement schemes.

Beyond our formal agreement with the FDA, both agencies' staffs work extremely well together on a variety of issues. Keeping each other informed early on benefits both agencies. This month, our staff provided comments on two related FDA proposals concerning prescription drug advertising. During recent FDA public hearings regarding direct-to-consumer drug advertising, many participants suggested that the FDA consider adopting an approach similar to our advertising enforcement scheme. Our staff comments to the FDA therefore describe our framework for evaluating advertising claims. This is another example where providing information and sharing agency expertise at all stages in the process can promote consistent regulatory results.

The Commission has also included provisions in its orders against medical device and over-the-counter drug advertisers that incorporate relevant FDA regulations as "safe harbors" for future conduct.

Let me turn now to the Green Guides for a moment. Since CTFA was one of the original petitioners for instituting the Green Guides, I am sure you are aware of our recently concluded workshop to evaluate the Guides. Although staff has not forwarded a final recommendation to us, it is my expectation that there will not be major change to the basic approach. The workshop yielded several basic themes -- that the Guides have worked well, they have imposed little unnecessary burden on industry, they have fostered more uniformity in state regulation, and they should be changed as little as possible. I think our experience with the Guides represents government working as it should in both substance and process. The Guides have provided clear guidance for marketers, but we have not hesitated to bring actions against companies who sought to gain a competitive advantage by ignoring them. They have also helped consumers make sense of environmental claims. Our recent review ensures that the Guides continue to be relevant and workable. The two-day workshop allowed for ample public participation and provided an appropriate forum for reaching a consensus. I should note also that we often turn to the expertise of the EPA in evaluating the scientific aspects of these types of claims.

As our relationship with the FDA and our other sister agencies reveals, I believe that having a coherent and coordinated policy for national advertising is important. I have found that business is willing to play by the rules, provided they know what those rules are, and believe they are sensible and being applied fairly. I am aware of the concern that there is always the possibility for inconsistent state enforcement. I appreciate that concern, and I would note that we do try to coordinate with the states wherever we can to avoid that sort of result. We currently have an excellent working relationship with the State attorneys general.

The Commission continues to focus its law enforcement resources on practices that cause the greatest consumer harm. As a result, most of our national advertising cases will involve health and safety claims. We will be looking to make sure these claims are truthful and substantiated. We regard false health claims as among the most egregious advertisements.

In the past year, the Commission brought several actions alleging false and unsubstantiated advertising claims for various frozen desserts, involving claims of "low-fat" and "low-calorie." We also brought actions involving false advertising claims for nutritional supplements and diet products. This past year, we brought cases to halt the fraudulent marketing of weight-loss and stop-smoking hypnosis seminars, varicose and spider vein treatments, and impotence and fertility "cures." In settling a case with a major advertising agency, we reiterated the Commission's policy of holding advertising agencies liable, along with their clients, when the agencies knew or should have known the claims they helped disseminate were deceptive.

Our advertising enforcement actions in 1996 will continue to reflect this emphasis. With the movement away from traditional physician-centered health care and the rising costs of medical treatment, consumers are relying more on self-care. Consumers are vulnerable to deceptive claims by marketers of drugs and medical devices. As a result, we will be closely monitoring, and where appropriate, bringing cases involving health related claims for over-the-counter products. Staff is also looking into several other areas of interest to your members. For example, staff is reviewing sun protection and efficacy claims for various sunscreen products. Staff is also reviewing health-related claims for soap products, and efficacy claims for

dental products and OTC pain relievers. We will be looking for cases that address issues of real importance to consumers.

In the new year, we will also continue to monitor advertising directed toward children and young adults, and we hope to develop a program to combat deceptive advertising directed to non-English speaking groups.

Also, as in the past, we will continue to support voluntary industry programs that protect consumers and ensure a level playing field for affected businesses. We will encourage greater self-regulation by the media in screening advertising for fraud and deception. By the same token, however, the core of the Commission's advertising program is law enforcement, and we intend to move vigorously against deceptive and unsubstantiated claims. We owe it to both consumers and honest competitors to give advertisers enough general guidance for them to know what we expect. We will then back that guidance with serious enforcement.

Let me mention a recent development that, while not directly applicable to you, represents the type of meaningful self-regulation that I believe can be achieved when industry and government work together. Just last week, the Commission announced its support for two self-regulatory programs to boost compliance with our Funeral Rule. The National Funeral Directors Association developed these creative programs which the NFDA and the FTC will implement jointly. These programs represent a serious commitment to self-regulation that, I believe, will do far more to benefit consumers than our continued case-by-case enforcement as

the sole remedy for Funeral Rule violations.

You will also see the Commission make greater use of workshops and informal forums. Staff intends to create more opportunities for informal discussions with industry and consumer groups on a wide array of initiatives at various stages of their development. In the last year, we have used these workshops successfully to discuss cyberspace issues at our Global Information Infrastructure Conference, and of course in our review of the Green Guides. We will use this forum this spring when we reassess our policy on "Made in the USA" labeling and advertising claims.

These forums are desirable because they allow for much greater public interface with the Commission and its staff. I would also add that, speaking for myself, my door is always open. I know Lee Peeler will be discussing how to handle a case before the Commission, and it is, of course, important to have early and frequent contact with the staff. But I am always happy to meet with any group or individual, whether it is simply an informational visit, or to discuss a pending matter at the appropriate time. Government and business can and should work together where appropriate.

In enforcement, we will look for opportunities to fashion remedies that adequately correct consumer problems caused by deceptive and unfair trade practices. Exploring appropriate and innovative remedies in advertising cases is especially important. Deceptive and unsubstantiated advertising undermines the quality of information available in the marketplace,



and marketers who disseminate false advertising obtain an unfair competitive advantage. Although corrective advertising and other consumer education remedies have been used sparingly in the past, the Commission will not hesitate to use them in appropriate cases. For example, in a recent case settling misrepresentations made by a franchise promotor, we required the respondent to reproduce and distribute copies of our Franchise brochure to attendees at future franchise shows sponsored by the respondent. Requiring parties to distribute consumer education materials can effectively heighten overall consumer knowledge. This is particularly appropriate where a party's course of conduct has contributed to widespread consumer misinformation. Look for other Commission cases that use innovative remedies, with an eye to increased consumer education.

We will also be looking for ways to make our consumer protection orders more effective. Our Enforcement Division staff will focus on increased civil penalty order enforcement cases, while our Service Industry Practices staff will focus on effective compliance monitoring. Where appropriate, they will recommend criminal contempt for parties in violation of our orders. Finally, with respect to redress orders, we plan to invest greater resources into collection efforts, and to better utilize other federal collection resources to increase consumer refunds.

I would describe this Commission as more open than in the past. In the future, I think you will see a real commitment to more clearly communicating our mission to business and consumers in a meaningful way. We will continue to work closely with other federal agencies and the state attorneys general to promote consistency in enforcement. Cooperative

investigations and enforcement actions can leverage our resources to produce a greater impact.

In addition, we will commit greater resources to communicating with trade associations and other groups to highlight areas of special enforcement concern or opportunities for better consumer education. As I mentioned earlier about advertising and media screening, we will continue to support guides, voluntary industry standards, and self-regulatory programs in appropriate areas as effective means to protect consumers. Good government and effective consumer protection demand this type of cooperative approach, particularly in this era of dwindling government resources.