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ADDRESS BY
COMMISSIONER ROBERT E. FREER, OF THE FEDERAL TRADE COMMISSION,
BEFORE CHILLICOTHE CLUB OF KIWANIS INTERNATIONAL
TUESDAY NOON, OCTOBER 12, 1937,
CHILLICOTHE, OHIO.

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THE FEDERAL TRADE COMMISSION AND THE CONSUMER.

It is a source of real pleasure to me, as a neighbor Ohian, to partake of your hospitality and to be given this opportunity of talking to you briefly and informally on the work of the Federal Trade Commission.

Inasmuch as the Commission has investigated and considered at one time or another almost every line of business activity in the country, it is manifest that even a bare recitation of the types of cases it handles would consume all of the time allotted to me. I am sure that your organization is a fairly representative cross-section of the business life in your community. While certain phases of the Commission's work would be of particular interest to some of you in one line and others in other lines, I would like to address you today, not as retailers, not as middlemen, and not as manufacturers, but as consumers, and to outline for you some of the ways in which the Commission endeavors to protect you in that capacity.

While it has important duties under other laws and under certain other sections of its organic act, the largest part of the Commission's work is done under Section 5 of the Federal Trade Commission Act, which makes unfair methods of competition in commerce illegal. One of the most prevalent methods of unfair competition working to the prejudice of consumers is the use of false and misleading advertising. Unscrupulous and unethical business men often misrepresent the nature, quality, and source of the products they sell. Under the old common law, an action of fraud would lie against anyone making false representations in connection with the sale of goods where the representations were relied on and caused damage to the buyer. The common law, of course, developed prior to the high-pressure national advertising which characterizes the business world today. The principles of the common law fraud action, and of the expression "buyer beware", were largely developed in a period when the buyer and seller dealt face-to-face. In such dealings, the buyer usually had an opportunity closely to question the seller as to quality and suitability of the goods. If the seller "puffed" his horse, the buyer could find out for himself whether it had spavins or the heaves.

National advertising has been part and parcel with a tremendous change in our methods of doing business. Where, for example, a few decades ago the corner grocer sold corn meal, rolled oats, and middlings in bulk, the purchaser had an opportunity to inspect the goods and supplement the storekeeper's representations as to origin and quality by his own senses; now many commodities are sold in packages. Others are synthetic products, of whose composition the ordinary buyer cannot be certain even after he inspects them. Many such articles are highly advertised and sold under brands and trade-marks upon which hundreds of thousands of dollars have been spent. The whole aim of most of this advertising is to build up in the mind of the consumer the idea that such goods are different from others on the market, that they possess qualities setting them off, and that the differences in price over comparable articles are more than offset by these considerations. Manufacturers advertise such products widely in periodicals and in radio broadcasts, but the purchaser is not able to deal face-to-face with the one who makes the representations -- the manufacturer. The storekeeper is often in no better position than the consumer and physical comparison of the packaged goods is not possible.

This change in method of selling carries with it a much higher degree of responsibility on the part of the national advertiser, not only to be absolutely truthful in all representations, but to make such adequate disclosure of the relevant facts as is necessary to prevent deception. Under its powers to prevent unfair methods of competition, the Commission requires higher ethical standards in advertising than were possible under the common law.

The magnitude of our task in protecting you from fraudulent and misleading advertising in connection with goods sold in interstate commerce will be readily apparent from the fact that, in addition to investigations of advertisers initiated through complaints of consumers and competitors received directly, the Commission's staff read over, in the period from July 1, 1936 to June 30, 1937, four hundred sixty thousand broadcasts of nine hundred sixty thousand pages, and one hundred thirty-seven thousand advertisements in twenty-four hundred issues of eight hundred different magazines and newspapers. As a result of this, well over one thousand investigations of advertisers were made by the Commission in spite of its rather limited funds.

In the prevention of false and misleading advertising, it is, of course, easy to see the direct benefit derived both by legitimate competitors and by the public. Their interest in the matter is identical.

Another phase of the Commission's work is of primary benefit to the consumer and only secondarily helpful to competitors. I speak now of the artificial price-fixing combinations which the Commission is proceeding against as unfair methods of competition.

It will no doubt surprise you to learn that since January 1, 1937, the Commission has proceeded formally against combinations in restraint of trade and for price fixing by concerns engaged in the following industries: rice, scientific and technical apparatus and supplies, canned oysters, tubular rivets, electrical turbine-generators and condensers, concrete pipe, watergate valves, hydrants and fittings, men's and women's hats and caps, wooden butter tubs, cast iron soil pipe, cement, window glass, covered buttons and buckles, rayon yarn, paper fasteners and golf balls. As will be apparent from this list, the activities of the Commission in the field of illegal price fixing cover a wide variety of commodities and I venture to say that all of you have been in the market for at least one of them recently.

What I am about to say about price fixing schemes in general is not intended to apply particularly to any one of the above industries, as the facts vary in each case and many of the issues have not been formally tried. Nor is the above list anything like a comprehensive one. It does not include dozens of industries whose practices are in the same category.

It is very encouraging to the Commission to find Mr. Average Citizen reawakening to a realization of the hardships attendant upon high fixed prices. The law of the land has generally been designed to prevent private persons without public responsibility from fixing prices; during the depression, however, the faith of some people in this policy was weakened. These folks wanted the general recovery of prices from low levels which accompanies the return of prosperity; they failed to see that an era of high prices fixed by certain groups at the expense of the community at large is not true prosperity. This temporary confusion of prosperous monopolies with a prosperous nation must not be permitted to lead to an acceptance of the specious idea that nothing can be done about the monopolistic and bureaucratic control of many segments of our economy by gigantic corporations and collusive trade associations.

You gentlemen gathered here and in other Kiwanis and service clubs are fairly typical of the individuals who really make democracy run. You represent the individual in business and the professional men. At times you may feel very acutely the strain of competition and may grumble that you should be allowed to get together with competitors and fix prices which will yield what you believe to be a fair return on the capital and energy you expend. But if you pause and follow through logically to the inevitable result of such activities you will readily realize how dangerous they must necessarily be. When any industry group gets together and fixes the prices at which its products must be sold, it is a part of human nature that such prices will be set higher than would be the case under normal competitive conditions. The tendency will be to get what the traffic will bear. In certain industries, the traffic will not bear much because substitute products will take away the market if prices are too high. In other industries where satisfactory substitute products are not available, prices may soar unchecked, to the injury of the consumer. The small producer, too, is often injured; for, instead of being sheltered by a high fixed price, he finds himself a helpless follower of the policies of the dominant concerns, forced to maintain their prices without being able to match their prestige. Thus he is deprived of his chief means of survival. This much can be accurately predicted -- privately fixed prices lead the way inevitably to Government control of the actions of the price-fixers. Price-fixing power in the hands of private individuals can never long be unconnected with responsibility to the State, which is, after all, the representative of the public. Industrial self-management, which is posed as a substitute for natural regulation of the competitive system, can never last long in the United States because the abuses of its privileges will, of necessity, lead to Government regulation of the actual management and execution of business policies.

It may seem strange to you that a government official should decry a business policy on the ground that it will lead inevitably to an expansion of the powers of government -- but I am doing so in the conviction that no small group of men, be they government officials acting in the public interest or corporation managers serving their own ends, can effectively "manage" American industry and trade. It is just impossible for any group of men to substitute their discretion and judgment for the checks and balances of the competitive system; but if private individuals insist upon attempting it the government will necessarily have to supervise their actions more and more closely to see that they are properly expressive of the interests of the public at large.

The fact that many industries maintain artificial and rigid price structures, not affected by competitive conditions, was one of the most serious problems of the recent depression. When most prices were dropping to ridiculous levels, these industries chose to keep up their prices rather than their volume of sales. The effect of this choice upon the public is easy to see. It resulted in wholesale unemployment because consumers could no longer buy. It resulted in lowering the standard of living because these industry products were withdrawn from use. The President's committee which reported upon the experience of N R A concluded that, "In general, those industries which were most successful in maintaining prices were least successful in maintaining a satisfactory level of production and employment." The agricultural implement industry has been cited as an example. A report transmitted to Congress by the Secretary of Agriculture in 1935, indicated that while prices of agricultural implements dropped only 6 per cent during the depression, production dropped 80 per cent. Farmers, whose products had dropped 63 per cent in price, could not afford to buy farm implements, even though their production had dropped only 6 per cent. The Commission's inquiry concerning farm machinery now in progress, was directed by the Congress partly because of such reports.

The economy and efficiency of government buying have been reduced by artificial price structures. In carrying out its reemployment program the government purchased large amounts of building materials and supplies. The law requires that these purchases be made as the result of open competitive bidding, on the theory that only in this way may the taxpayers' money be spread out to its fullest use. When a large purchase is contemplated, an elaborate procedure is gone through. Specifications and details are circulated to everyone who may be interested, with an invitation to submit bids. When these bids are received, in sealed containers, they are carefully locked away in a large safe, free from prying eyes. On the appointed hour they are just as carefully removed and opened before a select assemblage. What is found? Well, twenty different bidders, widely separated, all bid exactly one hundred and eleven thousand, two hundred and eight dollars and seventy-five cents on insulated cable delivered at the Boulder Dam project. Ten bidders, hundreds of miles apart, all offered to deliver six hundred thousand barrels of cement to the Fort Peck Project at exactly $2.7053 per barrel.
Secretary Ickes once made the statement that exactly identical bids are received on thirty-nine different commodities purchased by his department. You can appreciate the task of government agencies, required by law to accept the lowest bid, when they are confronted with this situation. Several sets of these bids were rejected a number of times, and, when this failed to dent the united front, the only recourse was to select the successful bid by drawing it out of a hat.

I hope that I am not oversimplifying this matter of monopoly, or "stabilization" or whatever you wish to call it. In reality it is much easier to point out its evils than to do something about it. To break up a monopoly after it has become entrenched is often comparable to making an omelet into a dozen eggs again. The Federal Trade Commission was designed to prevent monopolies -- not to punish them -- by catching them at their source. Nor is the Commission interested in running any man's business. It is not concerned with the principles of management nor with executive decisions. Our problem is to keep the rules as clean as possible and to prevent men from taking unfair advantage of competitors and the public. We know that if competition is truly fair it will tend to supply in itself the necessary regulation of management.

In conclusion let me say that it is a great pleasure to talk to you on this subject. The Kiwanis and the Commission have many things in common -- we are both interested in improving ethical standards in the business community, and it is to your type of organization that the Commission looks first for cooperation and support. Without your support, and that of other similarly representative groups, our work can never be truly effective.

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