500

ADDRESS OF COMMISSIONER R. E. FREER
BEFORE THE THIRTIETH ANNUAL CONVENTION OF
THE INTERNATIONAL ASSOCIATION OF GARMENT MANUFACTURERS
HOTEL STEVENS, CHICAGO, MAY 26, 1938,
8:00 P. M., C. S. T.

The Federal Trade Commission - An Impartial Tribunal For Business and The Consumer

It is a matter of real pleasure for me to address the thirtieth annual convention of the International Association of Garment Manufacturers, particularly since your Association is vitally interested in the movement for fair treatment of consumers.

I want to congratulate you upon your interest and activity in this movement, and to assure you that the Federal Trade Commission is willing and anxious to fully cooperate in any effort to guarantee consumer-protection.

I presume that your primary interest is in the activities of the Commission as they affect the textile and related industries. In this connection, after the textile industries' labor difficulties of 1934, and upon the recommendation of a special cabinet textile committee, the President, by executive order, directed the Federal Trade Commission to collect and report in consolidated form the labor costs, profits, and investments of companies in the textile industries in order to furnish a basis for determining whether wage increases based upon reduction in hours or otherwise could be sustained under the economic conditions then prevailing.

As a result of that executive order and subsequent Congressional appropriations for a continuation of the work, the Commission presented detailed reports for the period from January 1, 1933, through June, 1936, covering a total of more than a thousand companies in the cotton textile, woolen and worsted, silk and rayon, and thread, cordage and twine industries. Thus the Commission has looked very closely at some of the problems of the industries which make or buy textile fabrics.

The excellent cooperation of the textile industries with the Commission during this inquiry illustrated the fact that business groups and Government agencies can work together in good faith and harmony. The good will thus established between the Commission and the makers and users of textile products is, I hope, a permanent national asset. I need not tell you, that the Commission was gratified to receive letters from many members of these groups urging continuation of its reports which were abandoned late in 1936 because of a lack of appropriations.

The last two years have seen a rapid growth of interest in the improvement of standards of competition in the sale of textile goods. No doubt, you have observed this interest spreading among your customers. More and more, consumers are trying to buy intelligently, and are seeking greater information about the products they buy. To help them make their choices, they seek

to know whether dyes are sunfast and tubfast, whether fabrics will shrink, whether garment sizes are accurate, and of what fibers a fabric is composed. Through women's clubs, they have urged their requests upon individual merchants, organized industries, the Federal Trade Commission, and the Congress itself.

Retailers have shown a similar interest. Many of them have increased the amount of information given in advertising and on price tags. Through the Consumer-Retailer Relations Council, they have launched a cooperative program of action jointly with consumers to make more knowledge available about the goods people buy, and particularly about textiles. They are asking the textile manufacturer to give more information about his product than ever before.

Nor is this a buyers' movement alone. Within the last year the manufacturers of rayon filed application to have the Federal Trade Commission hold a trade practice conference for rayon producers. Rules requiring the informative labeling of rayon products have been developed and approved by the Commission, and are in effect. The Commission is now considering proposals by the wool textile manufacturers for the development of similar labeling rules for wool products. The Commission recently held a hearing upon proposed rules relating to woven cotton yard goods and designed to govern the use of such terms as "shrink-proof" and "pre-shrunk", and it is now considering the final approval of a draft of such rules.

In testimony before a Congressional committee considering a bill to specifically define and in part to enlarge the Commission's present powers to require the identification of fibers in woolen products, not only spokesmen for the consumer, but also spokesmen for retailers, woolen manufacturers, and wool growers supported most of the provisions of the bill.

This widespread interest in the labeling of textile products is a logical result of the rapid technical changes in the textile industries in recent years. Rayon has been developed to the point at which rayon fabrics can be made indistinguishable from silk, cotton, or wool. The reclaiming of used wool has been so systematically worked out that the amount of reclaimed wool used each year in textiles is approximately half the amount of the scoured new wool crop. The arts of blending cotton with other fibers for use in garments have been so perfected that such mixed fabrics are often more handsome than unmixed ones. Special processes of finishing, weighting, and pre-shrinking fabrics have been worked out.

No doubt, a part of these innovations has come from unscrupulous producers who see a chance to sell an inferior product under false pretenses. Much of the development, however, reflects the versatility of the makers of fabrics and garments in providing a variety of uses for a textile fiber and a variety of appearances and qualities in textile fabrics.

Unfortunately, however, even the best of the new products have tended to make the consumer's buying skill obsolete, and thus to create a condition in the market which has been the despair of the intelligent buyer and of the scrupulous seller.

It is still basically true that cotton, wool, silk, and synthetic fibers have different properties, are best applied to different uses, and require different types of care if they are to give satisfactory service. Because of this fact, the product which is bought without proper knowledge is likely to be found unsatisfactory, no matter how good it may be of its kind. At the extreme, an occasional owner of a synthetic fiber dress may have it cleaned by a process which dissolves everything but the buttons. Much more frequent, however, are the cases in which an improperly washed fabric shrinks, an improperly dyed fabric crocks, a garment which is bought for hard service wears out too soon, and the like.

The returned goods departments of retail stores are the most tangible evidence of the economic waste involved in this process; but they cannot measure the extent of the disappointments among consumers, nor of the ill-will and distrust engendered toward those who make the goods and sell them.

But in addition to the problem created by the inappropriate purchase or treatment of good merchandise, there has been a serious problem of competition by the unscrupulous. When the buyer cannot tell the difference between one fiber and another, it is easy for the dishonest seller to supply a fabric which is cheap to make, regardless of whether it is appropriate to its intended use, and to sell that fabric by flagrant misrepresentation of its character.

A few such concerns are enough to throw a whole industry into confusion. They can destroy the good will which attaches to a fiber or a type of cloth. They can establish prices on the basis of a skimped product, and thereby offer their more scrupulous rivals the option of losing money or of vying with them in the degradation of quality and the use of deceptive sales tactics. They can subject a market to unpredictable shifts of demand, as consumers turn from one type of product which has been insufferably degraded to another in which they still have confidence.

The extent to which sales are made on the basis of the buyer's lack of knowledge is strikingly illustrated in the testimony of a woolen manufacturer before a Senate committee recently. He stated that of 12 specimens of fabrics purchased as all wool at three New York stores, at prices ranging from 89¢ to $1.44 per yard, actually only one was all wool. He further testified that the others contained 30 per cent or more of other fibers; that in four, wool was less than half the total fiber content; and that in one, there was no wool whatsoever — only rayon and cotton.

The buyers of fabrics misdescribed as these were said to be, do not get what they expected and paid for. The sellers have no basis for intelligent competition, since the character of the competition they have to meet depends upon how cheap a product the consumer can be persuaded by some unscrupulous competitor to believe is wool.

Business men and consumers alike suffer from this kind of competition. It is not surprising that they have been glad to use the Commission as a tribunal through which to improve competitive methods.

The Commission has been proceeding against misrepresentation of textiles for about two decades. Early in its history, it proceeded against concerns which misbranded as silk, materials containing little, if any, of the product of the silk worm. In fact, its jurisdiction in cases of misrepresentation and misbranding was first confirmed by the Supreme Court in 1922, in a textile case — Federal Trade Commission v. Winsted Hosiery Company.

In this case, the Supreme Court discussed the unfairness to competitors of a deception of the consumer, saying:

> "* * * A method inherently unfair does not cease to be so because those competed against have become aware of the wrongful practice. Nor does it cease to be unfair because the falsity of the manufacturer's representation has become so well known to the trade that dealers, as distinguished from consumers, are no longer deceived. The honest manufacturer's business may suffer, not merely through a competitor's deceiving his direct customer, the retailer, but also through the competitor's putting into the hands of the retailer an unlawful instrument, which enables the retailer to increase his own sales of the dishonest goods, thereby lessening the market for the honest product. That a person is a wrongdoer who so furnishes another with the means of consummating a fraud has long been a part of the law of unfair competition. * * *" (F. T. C. v. Winsted Hosiery Company, 258 U. S. 483, 494).

In later decisions involving other products, the Supreme Court has further upheld the Commission's view that the consumer has a right to know what he is buying and the honest business man has a right to be protected against deception of his customers by his less ethical competitors.

In 1934, that Court greatly strengthened the Commission's hand by its opinion in the Algoma Lumber case, in which it said:

> "Fair competition is not attained by balancing a gain in money against a misrepresentation of the thing supplied. The courts must set their faces against a conception of business standards so corrupting in its tendency. The consumer is prejudiced if upon giving an order for one thing, he is supplied with something else. . . In such matters, the public is entitled to get what it chooses, though the choice may be dictated by caprice or by fashion or perhaps by ignorance." (F. T. C. v. Algoma Lumber Co., 291 U. S. 67, 78).

And in November of last year, the Supreme Court again stated the legal requirement of complete honesty, saying:

> "The fact that a false statement may be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced. There is no duty resting upon a citizen to suspect the honesty of those with whom he transacts business. Laws are made to protect the trusting as well as the suspicious. The best element of business has long since decided that honesty should govern competitive enterprises, and

that the rule of caveat emptor should not be relied upon to reward fraud and deception." (F. T. C. v. Standard Education Society, 301 U. S. 674).

These principles are further crystallized in the law by the recent amendments to the Federal Trade Commission Act.

Prior to these amendments, the Commission had jurisdiction to prevent unfair methods of competition, but respondents in cases involving misrepresentation often sought to defend themselves by arguing that, regardless of whether their acts or practices were unfair, they were not in competition with anyone, or were not thereby injuring their competitors. Under the amended act, the Commission is directed to prevent not only unfair methods of competition, but also unfair or deceptive acts or practices. Thus, there can no longer be doubt, if indeed there ever was, that in dealing with deception, the Commission has the duty of protecting the consumer as well as honest business.

Within the last year, the Commission has proceeded in a considerable number of cases, of which the following are illustrative: A garment manufacturer was ordered not to describe as silk, dresses composed of other materials. A similar order was issued against a prominent New York City retailer. A hosiery manufacturer was ordered to discontinue using the word "silk" to describe his hose, unless they contained a substantial percentage of silk, and unless words such as "and rayon", which described the other fibers used, were made equally conspicuous. An upholstery jobber was ordered to cease describing himself as a mill. A manufacturer of ready-made garments was ordered to cease representing that garments sold by him are tailor-made. A manufacturer of women's cloth coats was ordered to cease representing as genuine camel's hair, garments which contained a negligible amount of camel's hair, and were made of a mixture of rayon and wool with cotton warp.

By the use of trade practice conference procedure, there has been brought about within the last year a far-reaching improvement of the methods of labeling rayon. Because rayon and silk often look alike, and many well-known manufacturers of silk goods are also making rayon fabrics, confusion in this field was peculiarly great.

This confusion had been augmented by the facts that rayon fabrics were often described by manufacturers' trade names, without the use of the word "rayon", and that these trade names were coupled with such traditional silk terms as crepe, satin, taffeta, and pure dye. Rules designed, among other things, to establish proper identification and terminology were approved by the Commission last October.

Like all of the Commission's trade practice conference rules, they are divided into two groups. Group I is a restatement of the existing law concerning unfair competition, and violators of the rules in this group are subject to corrective action instituted by the Commission under authority of the laws committed to it for administration. The rules in Group II are regarded by the industry, and received by the Commission, as conducive to sound business methods. Their observance must be promoted by the members of the industry individually, or through lawful voluntary cooperation, since, for the most part, their non-observance does not constitute a violation of law.

Group I rules for rayon define the fiber and declare that it is an unfair trade practice to sell it as something other than rayon, or without a clear and unequivocal disclosure of the fact that it is rayon. They forbid representation of rayon as having been made by a different process from that actually used. They also declare that when the seller uses distinctive terms such as chiffon, velvet, georgette, and the like, which are associated in the public mind with silk, he is guilty of an unfair trade practice, if he does not disclose their identity, by designating them as "rayon chiffon", "rayon velvet", "rayon georgette," or the like.

In the case of mixed goods containing rayon, they declare that it is an unfair trade practice not to disclose the presence of any constituent fiber; and that the names of the fibers shall appear in the order of their predominance by weight.

Finally, they forbid the advertisement or sale of rayon under conditions which will tend to make the buyer believe that it is something else; for example, its sale at silk counters or under the name of a well known silk producer, without full disclosure that it is rayon.

The Group II rules recommend the identification of the percentages of each fiber in mixed goods and the practice of including on the label of rayon products accurate information as to their appropriate care and treatment in cleaning.

The practical significance of the Group I rules as declarations of the law is illustrated by three stipulations recently entered into by two New York department stores and a New York manufacturer of underwear in which they agree to discontinue certain misleading representations in the sale of women's wearing apparel. All three concerns have agreed to cease using the words "silk", "satin", "crepe", and "pure dye" as descriptive of products not composed of silk. One department store has also agreed to cease using the word "celanese" or "acetate" without adding the word "rayon" in equally conspicuous type in its offering of products composed of rayon. It has likewise agreed to stop using the words "metal cloth" in describing fabrics of which no substantial part is metal thread. The manufacturer has agreed not to offer or sell rayon fabrics without clear disclosure that they are rayon.

The results of these rules have been striking. It is rapidly becoming standard practice in many leading stores of the country to feature the rayon label upon rayon garments such as blouses and slips. Evidently the stores are welcoming their present opportunity to sell garments composed in whole or in part of these synthetic fibers to a public which now values such fibers for what they are. Learning to accept rayon as such, the public no longer distrusts a rayon garment as something which pretends to be silk and isn't. The merchandising of both silk and rayon is healthier for the change.

The tendency to supply the consumer with more accurate and complete information is apparent throughout the entire textile field. A recent issue of the "Department Store Economist" noted the increase of such information in the spring mail order catalogs. Fibers of textile products were described in such ways as these:

"Sixty per cent fine quality lively wool, balance cotton."

"Eleven per cent wool, eighty-nine per cent spun rayon."

"Silk, ten per cent weighted."

"All cotton fabric, linen-like weave."

Increased amounts of information were being offered concerning other characteristics of the fabrics. Towels were being described in terms of their loop count, their weight test, and their absorbency rating. For sheets the thread count, the tensile strength, and the weight were given. Draperies were described as being sunfast and tubfast.

The movement initiated by the rayon rules is being carried further in proposals for other trade practice conference rules now pending before the Commission.

Since the trade practice rules for the wool industry are still under consideration, I must speak of them in less detail. It is noteworthy, however, that two drafts of suggested rules submitted to the Commission agree in requiring the full and non-deceptive disclosure of the presence of wool and of any other fibers contained in mixed goods; in requiring that products which are sold as virgin wool must actually be so; in requiring the disclosure of the presence of substantial amounts of non-fibrous material other than ordinary dyeing and finishing materials; in proposing rules to prevent the deceptive use of trade marks or trade names implying the presence of wool when the wool content is insufficient; and in forbidding untrue representations of grade or quality.

In addition, both proposals included a provision that members of the industry should maintain records as to the fiber content of products manufactured by them and should make these records available to the Commission in corrective proceedings. This proposal to simplify the process of obtaining evidence as to the actual character of a product is a significant illustration of the cooperative spirit in which the problem of truth in fabric is being approached.

I must be equally brief in dealing with the shrinkage rules, which likewise are not yet finally approved. A preliminary draft, upon which the Commission invited comment, forbids absolutely the use of such terms as "non-shrinkable", and proscribes also such terms as "pre-shrunk" and "shrunk", unless the fabrics are shrunk, and unless such terms are accompanied by a specific statement as to the limits within which residual shrinkage may be expected to occur. A Group II rule recommends standard shrinkage tests for use in the interpretation of this shrinkage provision.

The character of the Commission's authority is expressed in the rules I have just summarized. It may define and prevent false or misleading representations, and it may define situations in which a failure to disclose the material facts amounts to deception and is therefore unlawful. Under the present law, however, it is open to question whether it may require information to be given the buyer because the buyer would find it helpful but where the mere failure to supply the desired information does not amount to deception.

Believing that in the case of mixed woolen goods, the percentages of each fiber should be made available to the consumer, various groups testified recently before a Senate sub-committee in favor of the Schwartz "Truth in Fabric" bill which would give the Commission specific authority to require the inclusion of such information on labels. Except on the question of how far reworked wool should be identified, those who testified about the bill were in general agreement in its support. The bill was favorably reported by the Senate Committee on Interstate Commerce and is now pending on the Senate calendar. Hearings have also been held on a companion bill introduced in the House by Representative Martin of Colorado.

From the cooperative spirit which has been evident in the recent approach of business and the consumer to this problem of quality labeling I feel that great progress can be made, and that the Commission will be increasingly effective as an impartial tribunal through which misrepresentation and ignorance may be eradicated from the market.

Already we have made marked progress toward a situation in which the consumer may buy what he wants, the merchant may decrease his losses on returned goods, the producers of well-known fabrics may suffer less from imitations, and the producers of novel fabrics may establish good will for these fabrics as contributions to the developing art of producing textiles.

In closing, may I leave this thought with you: Probably no segment of our industrial enterprise has undergone such radical changes over the past three decades as advertising and selling. Not so many years ago most articles were sold under conditions in which there was slight latitude for deception. Today buyers retain little of their former opportunity of supplementing the seller's representations by determining for themselves with their own senses, the quality of proffered merchandise. In selecting textiles, purchasers no longer can tell for themselves what is wool, what is cotton, what is rayon, and what is silk. The average consumer is almost entirely at the mercy of the original manufacturer, since even careful merchants and their expert buyers are nearly as much in the dark as their customers.

Is it not unlikely that the consumer will continue to be satisfied with the good will attaching to a brand or trade mark, unless it is accompanied by disclosure of facts adequate to make up for his former opportunity to apply the test of personal knowledge? More and more I believe that merchandisers generally will come to realize that giving the consumer an opportunity to know exactly what he is buying is just every day sound business, apart from any question of abstract morality.

——oOo——