Address

on

FEDERAL TRADE COMMISSION ACTIVITIES

Before the Business-Consumer Relations
Conference on Advertising and Selling
Practices of the National Association
of Better Business Bureaus, Inc.,
Hotel Statler, Buffalo, New York,
June 6, 1939.

By

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FEDERAL TRADE COMMISSION ACTIVITIES

The Federal Trade Commission is proceeding along many different lines of aid to the consumer. Avoiding as much as possible the technicalities of law and procedure which apply to its activities, I should like to tell you briefly what the Commission has accomplished in the past few years.

The most conspicuous recent development in Commission activities affecting consumers has been the passage and the subsequent administration of the Wheeler-Lea Act. This statute represents the first direct amendment to the Federal Trade Commission Act since the Commission was created in 1914, and its underlying legislative purpose is to equip the Commission with additional and more definite power to protect consumers. As background, in 1930 the Commission asked the courts to enforce an order directing a concern to cease and desist from advertising that a widely sold reducing compound could be safely used. This proceeding was brought under Section 5 of the Federal Trade Commission Act, which directed the Commission to prevent the use of "unfair methods of competition in commerce". Both the Circuit and Supreme Courts rejected the Commission's petition for enforcement of its order against this concern, and, in an opinion, which was focused upon competitors rather than customers of the seller, the Supreme Court questioned the Commission's power to issue such an order without a showing that legitimate competitors were likely to be injured in their business as a result of the false advertising.

The recent amendments empower and direct the Commission to prevent not only unfair methods of competition, but also unfair or deceptive acts or practices in commerce. Now the Commission may proceed against practices which are inherently unfair or deceptive to the public, without emphasizing or proving their effect upon competitors. This amounts to a direct legislative authorization to protect the consumer as well as the ethical business rival.

The Commission was also vested with supplementary and specific authority over the advertising of food, drugs, curative devices and cosmetics. It had long proceeded against false advertisements of these products where the advertising could be shown to amount to an unfair method of competition. Now, however, the law specifically forbids false advertising of these products and defines false advertisement to include misrepresentation and deception, either directly or through failure to reveal facts which are material. In other words, this definition in the amended Act establishes the explicit duty of the advertiser of food, drugs, devices and cosmetics to do more than merely avoid statements that are directly false.

An additional important method of protecting the public is provided, in that the Commission may, in proper cases, apply to a District Court of the United States for a preliminary restraining order when it has reason to believe that a party is engaged in, or is about to engage in, the false advertising of food, drugs, devices and cosmetics. Thus, when the Commission discovers an advertisement for one of these products which may be fraudulent, or which may fail to reveal dangers of indiscriminate use by consumers, it need no longer wait until formal complaint, hearings, final argument, order to cease and desist, and court review are completed before insuring protection to the public. This restraining order prevents use of the false advertisement during the pendency of the Commission's formal administrative procedure. Several applications for restraining orders have been made by the Commission, in cases involving dangerous drugs, and in each instance the Commission's showing has been such that the court has granted the injunction.

The Wheeler-Lea Act also contains a drastic penalty for certain false advertising of food, drugs, devices and cosmetics. Where it is apparent that an advertiser intends to defraud or mislead, or if use of the commodity advertised may be injurious to health, such advertising is made a misdemeanor punishable by fine and imprisonment. The Commission is directed to certify the facts in such cases to the Attorney General, who is to institute the necessary proceedings. Such a case is now pending in a United States District Court in Illinois.

Another important change which was made relates to the Commission's machinery for enforcement of orders. Hitherto an order to cease and desist from unfair methods of competition could only be enforced through one of the Circuit Courts of Appeal of the United States as a contempt of the court's order directing compliance with the Commission's order - necessitating three separate proceedings, one before the Commission leading to its order, one before the court to secure an affirmance and an order commanding obedience, and a third also before the court to prove a violation of the court's order. Similar privileges of court review of Commission's orders are retained in the amended Act, but it is now provided that orders to cease and desist become final and binding at the expiration of sixty days, if no appeal is taken. A civil penalty of up to $5,000 attaches to each violation of a final order of the Commission. A number of these suits brought by the Attorney General for civil penalty are now pending in the federal courts.

I don't know any better way of bringing you the scope, variety, and nature of the Commission's formal legal proceedings under Section 5 of the Federal Trade Commission Act than to describe some of the cases handled during a typical period. In March and April 1939, the latest months for which this information has been assembled and tabulated, the Commission instituted field investigations into 329 matters. Formal complaints charging a violation of law were

docketed against 50 respondents, and reopened against one other. Also 61 cease and desist orders were issued in these months.

Complaints charging combinations to fix prices or to restrain trade were issued against parties marketing Chilean nitrate, book paper and leather and shoe findings; and against the wholesale dry goods institute and its members. Orders directing concerns to cease and desist from price fixing or combinations in restraint of trade involved marketing of tobacco, candy, sponges and fittings for waterworks and gas systems.

In this connection, the Commission regards its work to prevent price fixing combinations and other combinations which restrain trade as highly important to the consumer, and it has proceeded in the past few years against such combinations as unfair methods of competition in dozens of important industries involving food, clothing, building materials, and a host of miscellaneous commodities.

A great many of the Commission's proceedings are directed toward prevention of false advertising and misrepresentations which deceive consumers.

During March and April, two respondents were ordered to cease representing that they were affiliated with the United States Government, one in connection with the sale of goods as a surplus army merchandise, and the other in the solicitation of students for correspondence schools.

One very interesting order to cease and desist involved a concern marketing boxes for medicine, upon which were printed labels extolling the virtues of the medicines within. These boxes were then sold empty by the manufacturer to be filled with whatever sort of drug their purchasers wished to sell the public.

Five complaints docketed during March and April and one order to cease and desist, involved failure to disclose the harmful potentialities of drug products.

Nineteen different concerns were ordered to cease and desist from selling miscellaneous merchandise by means of punch boards and other lottery devices.

Two concerns were directed to cease and desist from misrepresenting the fiber content of hosiery, only partly composed of silk, by failing to disclose the other fibers therein; and one of them was also directed to discontinue misrepresenting that its stockings customarily sold at prices higher than those at which they were in fact offered. Another concern was directed to discontinue misrepresenting the wool content of its products and from using the word "wool" to describe cloth containing other fibers unless such other fibers were conspicuously listed.

Another respondent was ordered to discontinue use of the term "pure dye" to describe fabrics not made wholly of unweighted silk, as well as the unqualified terms "satin" or "taffeta" to describe rayon.

Two concerns were directed to discontinue using the word "free" to designate merchandise regularly sold in connection with other goods in combination offers; one of them was further ordered to discontinue misrepresenting that its water heaters had been approved by Underwriters' Laboratories; and the other that its burial vaults are air-tight.

Two respondents were directed to discontinue misrepresentations in connection with solicitation of orders from the public for photographic enlargements, described by salesmen as "portraits" and "paintings", and from failing to disclose to purchasers the true nature of the proffered transaction. These two cases are of a type which I am sure is familiar to Better Business Bureaus.

Two other respondents, not connected with the manufacturers of William A. Rogers silverware, were directed to cease and desist from holding themselves out as representatives of the manufacturer in connection with sales to retail merchants of "business booster" or premium schemes.

Two sellers of encyclopedias and reference works were ordered to discontinue misrepresentations concerning their business status and the full nature of their offer of books to consumers.

Four respondents were directed to discontinue representing themselves to the public as manufacturers when in fact they were distributors.

One concern was directed to discontinue representing Japanese-made bicycle frames as made in America; another from describing domestic cosmetics as of foreign origin; and still another from obliterating or otherwise concealing marks of foreign origin on gloves, tacks, etc.

A number of orders and complaints involved misrepresentation of the composition or value of drugs, soap, textiles, welding machines, etc.

One concern was directed to discontinue misrepresentations in connection with a so-called "puzzle" contest for use by retail stores.

One hundred and eleven stipulations, or informal agreements to cease from use of unfair practices, were made public during March and April. These stipulations covered such varied products and activities as cosmetics; rubber bands; chick brooders; glue; candy;

drawing instruments; surgical supplies; flour; luck charms; food flavorings and color; chemical compounds; men's clothing; money making plans; hair bleaches; cattle and poultry feeds; lubricants; a device to save gasoline on motor cars; hosiery; correspondence courses in psychology, dietetics, radio codes, healing and landscaping; handkerchiefs; sunglasses; stationery; radios; jewelry; textiles; mattresses; stamps; cooking utensils; burial vaults; wedding invitations; citrus fruits; electric fans; lanterns; electric razors; medicines of various sorts; lye; sales promotion devices; and a matrimonial bureau.

Beyond its enforcement of specific statutes about business practices, the Commission has a duty of research and publicity which is important to the consumer. In establishing the Commission, Congress believed that many abuses could be corrected by public report of the facts, and that the need for further legislation could be discovered in the same way.

For twenty-four years, the Commission has been continuously engaged in economic investigation, as a result of which it has submitted many reports to the Congress and the President. From time to time, it has investigated the prices of bread and flour, coal, meat, fruits and vegetables, raisins, sugar, peanuts, milk, tobacco, shoes, house furnishings, textiles, and gasoline. It has reported upon the operations of particular types of business enterprise, such as chain stores and utility holding companies, and upon particular practices such as resale price maintenance, price filing, and basing point systems. As a result of recommendations included in its reports, legislation of major significance to the consumer has been enacted.

In June 1938, the Commission completed a study of farm machinery, a product of immediate concern to the whole rural population. A study of the distribution of automobiles has been completed and the Commission has just reported its findings and recommendations to the Congress. At present, the Commission is embarking upon an investigation of resale price maintenance, and, principally, the effect of the practice upon the consuming public.

Closely allied with the Commission's orders against unfair competition, are its trade practice conferences, in which it attempts to stop unfair competition by cooperative means. These conferences were begun more than ten years ago as informal ways of bringing all members of an entire industry to abandon unfair trade practices simultaneously. By the use of the conferences, voluntary compliance with the law has often taken the place of compulsory proceedings. Recently, the conferences have proved particularly useful in preventing misrepresentations by developing an understanding of the meaning of trade terms and of the circumstances under which a seller has a duty to avoid deception by disclosing the facts concerning his product.

The rules promulgated after a trade practice conference are divided into two groups. One group sets forth the meaning of the law as applied to conditions in a particular industry, specifying as unfair those practices which fall within the scope of statutory inhibitions. The second expresses further standards of business conduct which are proposed by the industry and accepted by the Commission as desirable. Concerns engaged in unfair practices in violation of rules in the first group are subject to formal proceedings by the Commission. The effectiveness of rules in the second group usually depends upon voluntary compliance.

The use of the trade practice conference to protect the consumer against misrepresentation by silence is illustrated by the rules adopted last June for the fur industry. These rules require that the seller disclose the true name of dyed furs and the presence of furs which come from cross-bred rather than pure-bred animals or furs which have been tipped, blended, pointed, or dyed. They also require disclosure of the facts if a garment is made of pieces, tails, paws, throats, and similar scraps, rather than of full skins.

Similarly, rules, approved in July 1938, for the macaroni industry require the disclosure of any unusual ingredients in macaroni and noodles, and forbid the use of a yellow color or a yellow wrapper in a way which falsely implies the presence of more eggs than are actually there. The rules for the wholesale jewelry industry, approved in March 1938, prohibit the sale of rebuilt watches without disclosing that they are not new, as well as various other forms of misrepresentation, express or implied. The rules for the rayon industry, approved over a year ago, require the disclosure of the fiber content of fabrics containing rayon, and prohibit the description of rayon fabrics by such silk terms as "chiffon", "taffeta", "crepe", unless these terms are qualified by the word "rayon".

The meaning of trade terms is also made clear by trade practice conference rules. The term "rayon" is defined in the rules for the rayon industry. "Macaroni", "egg macaroni", "plain noodles" and "egg noodles" are defined in the rules for the macaroni industry. In rules concerning the shrinkage of woven cotton yard goods, approved last June, the meaning of terms such as "pre-shrunk" is made clear. The possibility of deception in the use of such terms lies in the fact that a fabric which has been shrunk may be capable of shrinking still further. These rules make clear that when a term such as pre-shrunk is used without qualification, it means that there is no residual shrinkage and that if further shrinkage is possible the term should be accompanied by a statement to that effect.

By the development of such rules, the honest merchant and the buyer are informed as to the meaning of terms which they use in their dealings with each other, and the concern which seeks to benefit from the consumer's ignorance is put on warning as to what it must not do.

Group II rules of the trade practice conference are being received which propose to develop information for the consumer greater than that which is clearly required by law. Thus, the rules for the rayon industry approve the practice of disclosing not only the presence of fibers in mixed goods but the percentage of each. The rules for the house dress and wash frock manufacturing industry recommend that the manufacturer label his garments to warn the public against such deodorants and depilatories as will injure the fabric, and that he give accurate descriptions of the washability, colorfastness, and shrinkage properties of the fabric.

In November 1938, the Commission approved and promulgated a revision of trade practice rules applying to the silk industry. The revised rules require positive disclosure of fiber content of fabrics and the disclosure in a prescribed form of the presence and percentage content of metallic weighting and excess finishing material.

It is our hope that these conferences can be made increasingly useful as instruments by which consumers and business men may jointly reach an understanding as to the information needed in the market place.

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