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RECENT ACTIVITIES OF THE FEDERAL TRADE COMMISSION
IN THE FIELD OF DISTRIBUTION

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REMARKS OF COMMISSIONER R. E. FREER,
MEMBER OF THE FEDERAL TRADE COMMISSION,
TO THE NATIONAL RETAIL DRY GOODS ASSOCIATION,
JANUARY 17, 1940, 12:45 P.M., HOTEL PENNSYLVANIA,
NEW YORK CITY.

Ladies and Gentlemen:

It is a pleasure and a privilege for me to appear before you today. I appreciate your invitation to do so; and, particularly, I am pleased to talk to you about some of the work of the Federal Trade Commission in the field of distribution. But first, I want to compliment the National Retail Dry Goods Association and its officers and members on the fine record of achievement which has been made over the years. You have contributed much to improving the operation of the private competitive system. Your efforts have not been expended in furthering your own interests at the expense of the general public or of other groups engaged in business, but rather in vitalizing competition and in finding improvements in methods of distribution. It has been said that there is great diversity of interest and viewpoint among your membership, and this truly representative character has, perhaps, discouraged emphasis upon selfish objectives and stimulated your efforts to improve competitive relationships to the benefit of the public as a whole. Whatever the reason, the result has been good and I say, "More power to you."

My topic today is one of such wide scope that it can hardly be treated with any degree of thoroughness in a few minutes. Practically all of the activities of the Federal Trade Commission are today of direct interest to retailers, and the past year has been a fruitful one for the Commission along a number of different lines.

First of all, the Commission's enforcement of the provisions of the Wheeler-Lea Act relating to false and misleading advertising of food, drugs, devices and cosmetics, included an even dozen injunctions in the Federal District Courts to prevent false advertisement of dangerous drug products pending Commission proceedings, and a number of complaints and orders to cease and desist based on deception through failure to reveal material facts. Commission proceedings covered almost every sort of drug and cosmetic, from "Sweet Georgia Brown Magic Lovin' Cream" to many of the well advertised brands.

In its work to prevent price discrimination the Commission continued to make progress during the year. Three orders to cease and desist under Section 2(c) of the Clayton Act were disposed of by the U. S. Circuit Courts of Appeals, on appeals by the respondents, and the Commission was upheld in every respect in its interpretation of the Act.

An order to cease and desist was issued and another complaint is still pending under 2(c) covering payment of brokerage to employees and officials of department stores acting as resident buyers.

An order to cease and desist was entered against a large manufacturer of mattresses and allied products prohibiting payment of certain volume discounts in violation of Section 2(a), to some purchasers, among whom were department stores. Another complaint is pending under Section 2(e) of the Clayton Act, charging disproportionate extension of services and facilities in making 10¢ sizes of cosmetics available to some, and refusing them to other customers.

Several sets of trade practice rules of importance were promulgated during the year, including one for the Radio Receiving Set Manufacturers, which prohibits, among other things, enumeration of "dummy" and non-essential tubes in descriptions of sets, and others for the Cotton Converting, Mirror Manufacturing, Ribbon Manufacturing and Wine Industries. In addition, a large number of stipulations, and several formal complaints have involved the use of unfair practices in violation of the trade practice rules for the Rayon and Silk Industries. The Commission feels itself bound to proceed promptly to stop such practices, so that those concerns which abide by trade practice rules will not find themselves at a competitive disadvantage through continued non-observance by others.

Quite recently published is the Commission's report on competitive practices in the millinery industry, which I have no doubt is of great interest to most of the members of your Association, tracing as it does the growth and place in the system of distribution of the millinery syndicates and leased millinery departments in retail stores.

In its general work to prevent unfair methods of competition and unfair and deceptive acts and practices under Section 5, the Commission accepted stipulations, and issued orders to cease and desist covering a wide variety of products and practices -- the products ranging from snore eliminators to essential building materials, tires, tobacco and petroleum products; the practices ranging from misrepresentation of the wealth and beauty of the potential spouses available from a matrimonial agency to nationwide price-fixing conspiracies affecting the people of every community. Several proceedings have been of particular interest to retailers.

The Commission issued an order, with which many of you are familiar, against Fashion Originators Guild, which is presently pending in the U. S. Circuit Court, on appeal. The Commission also issued complaints, which have not yet been decided on the merits, regarding use of hidden demonstrators in department stores. Two complaints were issued during 1939, which have not yet been presented to the Commission for final disposition, alleging misrepresentation of consumer services and the testing of consumer goods. One order to cease and desist was issued against the practice of publishing favorable laboratory tests for consumer goods by a concern which represented itself as independent and unbiased, but which in fact had been subsidized by the distributor of the favorably reported product.

This brings up the subject of that peculiar animal, the consumer, who goes about his business for the most part blissfully unaware that he is now the center of a number of storms of controversy, that his habits and mental reactions are matters of grave concern and that he is continually in a test tube or being dissected for observation of his innards. And while he is often pictured as one of a flock of sheep, easily hoodwinked and herded at

will, I imagine that you retailers, who deal with him all day long, have a somewhat different opinion of his nature, disposition and biological classification.

But seriously, you know better than anyone else that it is unwise to suppose that the present so-called consumer movement is confined to the activity of a few consumer organizations. It seems much more probable that the average consumer, on the theory that turn about is fair play, is becoming more interested than ever before in the habits of those who ply him with merchandise. So great have been the technological strides in fabrication, finishing and packaging of many products that no longer may the buyer rely upon his own inspection to determine value, composition or suitability of goods. These and other factors operate to confuse the consumer and to make his task of selection enormously complicated. Accompanying this increased confusion there has come about an elevation of the minimum legal standards of fair dealing. For example, the Supreme Court, in 1937, said:

"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 [buyer beware] should not be relied upon to reward fraud and deception."

May I suggest that your organization and its membership should not be interested in meeting merely the minimum standards, however much these standards have been improved? Your objective should be the employment of the highest possible standards of fair dealing with, and the furnishing of adequate information to, your best friend, the customer. Many of you already realize that the changes in the character of merchandise and its distribution which have operated to confuse the consumer have also opened up a wide vista of opportunity to cultivate an invaluable type of trust relationship between the retailer and his customers. And I think you will find that active development of consumer confidence is a good business proposition, irrespective of any abstract theories of ethics or morality. To discern the thirst of the consumer for adequate information and impartial advice one need only refer to the success of various consumer service organizations.

I realize, of course, that the retailer is often in no better position than the ultimate consumer as far as securing essential information about many products, and that he may be just as confused in many instances in selecting his stock. But certainly the retailer is in a position to remedy the situation to a greater extent than is the ultimate purchaser. And it seems to me that cooperative efforts by retailers to so help the customer dispel his confusion, not only will develop more fully a relationship of mutual trust and confidence, but also will pay large dividends in good-will.

I want to conclude with this thought — no group in our economy is more directly affected by consumer problems than yours, and no group stands to gain or lose so much. In the last analysis, it is you who must bear the brunt of any consumer disfavor for short-sightedness, either on your own part or on the part of those whose goods you sell. To my mind the retailer could

make no greater mistake than to consider consumer inquisitiveness with distrust, or to regard the present situation as a controversy in which he must take sides against the consumer. In the long run, what is of benefit to your customer in aiding him to purchase more wisely is also of benefit to you. Particularly is this true if you have had a part in aiding him to earn a penny by supplying him with the increased information necessary to save that penny in his buying.

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