

REMARKS OF
HON. R. E. FREER, COMMISSIONER,
FEDERAL TRADE COMMISSION,
OPENING THE TRADE PRACTICE CONFERENCE
FOR THE
SUN GLASS INDUSTRY,
PENNSYLVANIA HOTEL, NEW YORK CITY,
OCTOBER 18, 1940, 10 A. M.

Ladies and gentlemen:

It is both my privilege and pleasure to be here on behalf of the Federal Trade Commission for the purpose of presiding at your trade practice conference. It is probable that most of you are attending a trade practice conference for the first time. It may be well, at this time, therefore, to explain briefly the objectives and procedure of a trade practice conference.

Section 5 of the Federal Trade Commission Act declares unfair methods of competition and unfair and deceptive acts and practices in commerce to be unlawful and directs the Commission to prevent their use.

Formal enforcement procedure is described in the Act, which provides for service of formal complaint, hearings for the taking of testimony, the making of findings of fact upon the evidence, the issuance of a cease and desist order and review by the courts.

Nearly every important industry marked by keen competition tends to develop certain customs or practices harmful to the consuming public and to the scrupulous members of the industry because tainted with misrepresentations or unfairness -- practices which in most instances are distasteful to reputable industry members and who excuse their resort to them as based upon competitive necessity or exigency. The institution of formal proceedings against all members of an industry engaged in such practices is both expensive and time-consuming not only for the Commission but also for the respondents. On the other hand, it might seem prejudicial to single out only a few industry members for complaint procedure and fail to take similar action against the many others known to be engaging in similar unlawful practices.

Obviously, the speedy and practical method for the elimination of such practices is by some cooperative procedure whereby all members of an industry voluntarily act at the same time and simultaneously abandon any and all unlawful practices. The trade practice conference procedure provides the machinery for such cooperative action.

The Federal Trade Commission Act is general in its terms, declaring unlawful unfair methods of competition and unfair and deceptive acts and practices. It does not enumerate the practices to be stopped. The question of what practices and methods violate the statute is for the Commission and

the courts to decide. Hundreds of business practices have been held by the Commission and the courts to be unlawful under this general language of the legislative standard.

As to these practices which are clearly illegal, the Commission will assist in the formulation of rules reciting their use as constituting "unfair trade practices". To illustrate, rules are generally adopted prohibiting misrepresentation, disparagement of competitors or their products, commercial bribery, etc. These practices, and many others, have all been judicially declared to be "unfair" within the meaning of the Act. Rules condemning such practices are classified in Group I and the Commission will proceed against all parties employing such methods in interstate commerce for a violation of the law.

There are other practices which do not fall within the formal category of "unfair or deceptive acts or practices" or "unfair methods of competition", but which the industry finds burdensome and uneconomic. At such a conference as this, the industry may express its condemnation, or may approve the ethical converse of such practices. These condemnations or approvals, if they relate to matters upon which such an agreement is lawful, and in the public interest, will be received by the Commission as expressions of industry policy. Such expressions of policy are separately classified in Group II to distinguish them from the Group I rules which paraphrase decisions that proscribe practices which are a violation of law.

The purpose of this conference is to enable you to suggest to the Commission what illegal or unethical practices exist in your industry, to propose and discuss rules which you believe will eliminate such practices. Any one in the industry may participate and no one is legally obligated by anything that is said or done here today. You are not under any charges of unfair competition but are meeting here to help formulate a constructive policy for the future conduct of the Sun Glass business.

Following the conference, a draft of proposed rules and expressions of policy will be published with notice to all interested parties of a 15-day period during which any suggestions or objections may be made. Thereafter, a hearing for the voicing of these matters will be had and all suggestions and objections will be considered by the Commission before the rules are promulgated and approved. A copy of all rules thus finally promulgated is furnished every member of the industry, accompanied by a form inviting individual acceptance.

After the promulgation of the finally approved rules and accepted expressions of policy, the Commission retains its interest in their observance by the industry and will act promptly to investigate and stop the use of any unfair or deceptive acts or practices or unfair methods of competition in interstate commerce, coming to its attention. Any formal complaint proceeding found necessary will not charge violation of the rules as such, but violation of the law, since a violation of law is inherent in a violation of any Group I rule.

The full purpose of the Federal Trade Commission Act can best be achieved through voluntary cooperation of those for whom its benefits were intended and I hope that this meeting may result in great good to the industry, as well as to the purchasing public, which you serve.

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