ADDRESS OF HONORABLE ROBERT E. FREER,
COMMISSIONER, FEDERAL TRADE COMMISSION,
BEFORE THE THIRTIETH ANNUAL BANQUET OF
MUSIC MERCHANTS ASSOCIATION OF OHIO,
HOTEL BREAKERS, CEDAR POINT, OHIO,
JUNE 22, 1941, 8 P. M.

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The opportunity to be with you today, including as it does the privilege of returning to my home State of Ohio, finds me most appreciative. Further, Mr. Chairman, you may be sure that I have been in the past, and I hope to be again in the future, a good customer of the merchants of your Association. If I am able in my brief remarks to impart any information, or to shed any light which may be helpful to your Association and the several other associations represented at this convention in the solution of any of your problems, you may be sure that it is an humble gesture of repayment on my part of the many obligations all of us must feel toward the art of music in general, and toward those in your field in particular who make music performance and music appreciation possible.

As a member of the Federal Trade Commission, it is undoubtedly appropriate and expected that I give you a brief sketch of the Commission's work as a whole. Roughly, this may be divided into three parts -- all directed to the common objective of preserving and fostering free and fair competition in American industry. The first important part of the Commission's work of fostering fair competition consists of legal proceedings to compel the discontinuance of unfair methods of competition and unfair business practices, as well as certain types of price discrimination and monopolistic activities of particular companies or groups.

The second highly important part of the Commission's work on behalf of fair competition is the conduct of general economic investigations into various phases of business and industry and the presenting of reports upon them for the information of the public, the Congress, and the President.

The third important part of the Commission's work in fostering fair and free competition stems from its use of trade practice conference procedure to assist entire industries voluntarily to clean house of objectionable and harmful practices which too often have been foisted upon these industries by unethical competition, despite the wishes of all to rid them of such pests, and to formulate and establish ethical and high standards of competition on a voluntary and cooperative basis.

The Commission must keep ahead of the ingenuity and cleverness of unscrupulous traders who would take advantage of the public and their competitors, and the Congress specifically avoided cataloging definitely the practices which it considered to be unfair methods of competition, leaving that to the Commission and the courts. As a consequence, the Commission's powers are flexible enough to reach the most novel of unfair trade devices. I can recall one case where a group of local retail merchants, troubled by the competition of a well-known mail order house, hit upon a novel and

effective scheme for eliminating the mail order competition. With the cooperation of the local Chamber of Commerce and the owners of the local motion picture house, special matinees for children were conducted, at which the price of admission was one mail order catalog. Needless to say, mail order catalogs were collected rapidly from the surrounding territory and were publicly burned with great pomp and circumstance.

The Commission considered this to be a highly unfair method of competing with mail order concerns and required the local merchants to cease and desist from such practices in the future.

We occasionally have to prevent people from advertising such exotic products as Oriental Love Drops, guaranteed to make a man irresistible to the ladies, or dream books which are said to produce the winning number for lottery players. In this connection the newspaper P. M. recently carried an account of an order issued by the Commission against a Chinese herb doctor's claims of cures of cancer, tuberculosis, ulcers, etc. The newspaper quoted from Fong Poy's method of diagnosis:

> "Many sufferers make a low moaning sound. This is the tone of the Yii and signifies kidney trouble. A loud, cranky, quick-tempered voice indicates an ailment of the heart. A crying, choking voice signifies trouble in the lungs, while a sighing sound directs one to the spleen, etc."

P. M. added that: "The FTC, moaning low, rejected this theory."

Such matters are interesting but, of course, no very substantial portion of the Commission's time is occupied with them, since the bulk of its proceedings involve quite serious questions of public interest.

All of the Commission's authority, whether derived from the Federal Trade Commission Act, the Clayton Act, the Robinson-Patman Act, the Wheeler-Lea Act, the Export Trade Act, etc., has been administered with a keen sense of duty to the consuming public. While it is impossible to encompass within the borders of this brief talk a description of the many types and varieties of unfair practices falling under the Commission's ban, the following are illustrative of the great variety of subjects covered by its decisions and its trade practice conference rules: misbranding; misrepresentation in various forms, including false or misleading advertising; deceptive packaging; defamation of competitors or disparagement of their products; impersonation or misrepresentation to obtain competitor's trade secrets; harassment of competitors by circulation, in bad faith, of threats of infringement suits; price discriminations to injure, prevent, or destroy competition; discriminations and harmful practices in matters of rebates, refunds, discounts, credits, brokerage, commissions, services, promotional allowances, etc.; commercial bribery; inducing breach of competitor's contract; false invoicing; imitation of competitor's trade-marks, trade names, brands, labels, etc.; substitution and "passing off"; deceptive use of so-called "free goods" deals; lottery schemes; use of consignment distribution to close competitors' trade outlets; use of deceptive types of containers simulating standard and generally recognized types; adulteration; use of deceptive depictions (photographs, engravings, cuts, etc.) in

describing products, and many other unfair methods of competition and unfair or deceptive acts or practices in commerce.

Various orders and trade practice rules have provided for disclosure of the fiber content and proper marking of textile merchandise made of rayon or silk, or of two or more fibers containing either rayon or silk, to prevent deception of the purchasing public; disclosure as to remaining or residual shrinkage in so-called preshrunk merchandise; disclosure of fact that apparently new products are not new, but are second-hand, rebuilt, or renovated; disclosure that products are artificial or imitations and not real or genuine; disclosure of country of origin of imported products; prevention of the marketing of sub-standard or imitation products as and for the standard or genuine, and the specification of minimum requirements for standard or genuine products.

Disclosure has also been required as to true composition of paint and varnish brushes; as to use of an adulterant or substitute for linseed oil in respect to putty products; as to presence of metallic weighting in silk or silk products; as to the minimum yardage of ribbons; as to the true functions of radio parts and accessories; and as to the quality, quantity, and size of ripe olives as packed in cans and other opaque containers.

Regarding the trade practice conference work of the Commission, these conferences have as their principal objective the maintenance of free and fair competition in trade and commerce, aid to business, and the protection of the public or consumer interest. This is a cooperative method for preventing unfair methods of competition, monopolistic restraints, and other business practices contrary to laws which the Commission is directed to enforce.

Trade practice conferences are conducted in a spirit of friendly cooperation between members of the Commission's staff and groups representing entire industries or divisions of industries, for the purpose of developing specific rules of competitive conduct applicable to the particular industry involved. When a conference is authorized, notice is dispatched to all who might be interested in a meeting to discuss industry problems and practices. Everyone interested is afforded an opportunity to present proposals, suggestions or comments on proposals, and a draft of proposed trade practice rules is made. The proposed rules are published and notice given of a final hearing upon them after a sufficient time has elapsed for their careful study. Following this procedure, and a final approval by the Commission, the rules serve as "guide posts" to the industry.

Trade practice rules are of two types. Group I rules relate to mandatory requirements embodying approved provisions which proscribe practices as being unfair, and are mandatory because they are expressive of legal principles and requirements. They may, therefore, be said to have the force of law behind them. They cover as "unfair trade practices" types of competitive conduct which fall within the broad inhibitions in Acts of Congress under which the Commission exercises enforcement powers. The party indulging in such inhibited practices, in a manner involving that commerce which is subject to Federal control, renders himself liable to corrective proceedings under such Acts.

This class of rules may include any type of practice which in contemplation of law comes within the broad field of "unfair methods of competition" or of "unfair or deceptive acts or practices in commerce," or which falls within the categories of discriminatory and monopolistic restraints condemned by the various statutes vesting the Commission with authority.

Group I rules usually comprise about 90% of the entire set of rules for an industry. Such rules are of major importance largely because of the fact that they strike directly at the trade evils within an industry. Group I rules being aligned with and detailing legal inhibitions, obedience to their requirements is not a matter of choice. The obligation to observe such requirements in interstate distribution, and to refrain from practices thus prohibited within the scope of the law, is binding upon all, irrespective of the fact that the alleged offender may have refused to take part in the establishment of the rules, or failed or refused to pledge adherence thereto.

Group II rules afford the opportunity to promote and foster desirable trade practices on a purely voluntary basis, with governmental acceptance.

Thus, to sum up, Group I of such rules usually proscribe practices considered by the Commission to violate the law; Group II ordinarily relate either to condemnation of conduct which the industry considers unethical but which may not necessarily involve a violation of law, or to the encouragement of higher ethical standards than the law requires.

Actual experience of the Commission in the formulation, adoption and promulgation of trade practice rules during a twenty-year period has shown conclusively their constructive and wholesome effect upon the country's whole business structure. The substantial good achieved by trade practice conference rules points to the possibilities of future growth of this method of industry self-policing and self-regulation for the benefit of our national economy.

More than 200 conference proceedings for industries have been conducted by the Commission since the inception of the trade practice conference procedure. The industries thus far covered by such rules are quite varied in character of product, number of members or units involved, and extent of operation or volume of business. Typical industries covered include the important textile industries, silk, wool, cotton, rayon, linen and hosiery; vital manufacturing industries, as the rubber tire industry, flat glass, paint and varnish, dresses and frocks; essential food industries, including oleomargarine, preserves, wine, baby chicks; and other industries including the subscription and mail order book publishing industry, wholesale tobacco, wholesale jewelry, etc.

The Federal Trade Commission in fact has had some contact with your industry as a group, in addition to several cases involving individual industry members. The Commission's experience with your industry as a group goes as far back as January 1924. During that year, only five years after the inauguration of the Commission's trade practice procedure, the list of trade submittals, as the procedure then was known, included rules for Standard Sheet Music and Band Instrument Manufacturers.

About ten years later, on April 4, 1934, trade practice conference rules were promulgated by the Commission for the Musical Merchandise Industry. These rules provided against false or deceptive statements concerning the grade, quality, quantity, substance, character, nature, origin, size, or preparation of any product of the industry; false marking or branding of industry products; price discrimination; gratuities and bribes; secret rebates, refunds, commissions, or unearned discounts; sales below cost with the intent or effect of lessening competition or creating a monopoly; defamation of competitors or disparagement of their goods; use of false, misleading, or exaggerated testimonials; false statements as to prominent users of musical instruments; fictitious price marking and false advertising.

Group II expressions were adopted among others against repudiation of contracts and in favor of fair handling of disputes and use of arbitration, protection of agents and their commissions, protection of cash discounts, adoption of accurate methods of cost finding, approval of the function of the retail music merchants and protection of discounts of the bona fide dealer.

Since that conference and the resulting rules which I have described, the Commission declined, for good reason, to accept final rules submitted in 1937 by the Popular Music Publishing Industry. An application for rules submitted in 1937 by the Music Printing and Allied Trades also failed of approval by the Commission because the industry did not proceed with its application. Further, a conference tentatively suggested in 1938 between the Band Instrument Industry and the Commission, as a means of settling charges of unfair acts and practices against nearly all members of that industry, was not found feasible.

The trade practice conference procedure is particularly valuable as a pleasant and inexpensive method of enforcing the law for the benefit of industry and the consumer. Cases prove that most businessmen are inherently honest, and the Commission has found generally that a frank conference between representatives of an industry and the Commission's staff more often than not accomplishes more in a sweeping and wholesale elimination of trade abuses than would a series of formal proceedings against individual companies.

A monograph report before the Temporary National Economic Committee on this subject states:

> "Businessmen are glad, as a rule, to lend their support to voluntary and simultaneous abandonment of bad practices. They welcome the chance to wipe the slate clean. The overwhelming majority are unwilling to stoop to unfair tactics. At times some may feel that they must do so in order to meet in kind the unfair or unethical competition of less scrupulous competitors. It is often the case that various concerns would like to abandon their use of unfair or unethical methods if they can but be assured that their competitors will likewise stop and not take advantage of the situation. The trade practice conference procedure affords a means whereby this can be accomplished in a substantial and gratifying

degree, by having the rules placed in effect on a day certain, when by simultaneous action each may turn over a new leaf and make a fresh start on the same fair basis of competition."

One important trade group, after adopting trade practice conference rules, advised the Commission of their effect as follows:

"Trade practice rules have a double influence. In the first place it gives an industry a set of regulations to guide them in their business activities. In the second place it causes the companies in an industry to scrutinize their practices more carefully."

The Temporary National Economic Committee monograph summed up a study of the Commission's work with this observation:

"Its achievements show it to be effective as a means whereby industry can be afforded guidance respecting the requirements of the law; as an aid to law enforcement and as a means for effectuating more uniform observance of the laws against monopolistic practices and unfair competitive methods; as economical machinery for affording a fuller protection of the public interest therein. The tried and proven experiences under this procedure afford a reliable basis for building effectively in the matter of control of monopoly and unfair trade practices."

I close with the official assurance that the Federal Trade Commission will render you every assistance possible in eliminating all unfair and harmful competitive practices which may have crept into your industry, to the end that both you and your consumers may enjoy the benefits of free and fair competition.

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on a petition to review and set aside one of the Commission's orders 1/, and made some very pertinent observations upon the Raladam case, the case I mentioned to you above, and subsequent developments. I would like to read you a portion of the Court's opinion:

> ". . . The procedure in the Federal Trade Commission Act is prescribed in the public interest as distinguished from provisions intended to afford remedies to private persons. As enacted, Section 5 provided: 'Unfair methods of competition in commerce are declared unlawful'. This expression, new in the law, was intended to have a broader meaning than 'unfair competition' and it was to be determined in particular instances upon evidence in the light of particular competitive conditions and of what is found to be specific and substantial public interest. When the Supreme Court was required to pass thereon in Federal Trade Commission v. Raladam Co., it emphasized competition and minimized public interest, by holding there must be a finding or evidence from which the conclusion legitimately can be drawn, that the unfair methods of competition substantially injure or tend to injure the business of a competitor or of competitors generally whether legitimate or not. It is said the decision provoked serious criticism in many quarters because it left the consumer virtually unprotected by weakening if not actually nullifying the powers expressly delegated to the Commission for the protection of the public and the consumer."

After mentioning several other cases along a contrary line, the Court went on:

> "This recognition of public interest was approved by Congress in 1938 with the enactment of the Wheeler-Lea Act, the pertinent part of which reads: 'Unfair methods of competition in

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1/ Pep Boys--Manny, Moe and Jack, Inc. v. F.T.C.