

THE TRADE PRACTICE CONFERENCE WORK
OF THE
FEDERAL TRADE COMMISSION

Remarks of

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It is a pleasure to me to be with you at this meeting. I welcome this opportunity to discuss with you the trade practice conference work of the Federal Trade Commission. Under this Governmental procedure Government and business can cooperatively evaluate and discuss commercial practices with the objective of promoting law observance. The conference procedure invites industrial statesmanship by affording a forum to those working in the enlightened self-interest of the industry. It has been aptly stated that the rules themselves afford a focal point around which the best elements in industry may rally. Because it looks to simultaneous elimination of unfair practices by voluntary and cooperative means rather than by invoking the mandatory processes of the statutes, this part of our work is of deep interest to me and to my colleagues in the Commission.

In 1914, when Congress created the Federal Trade Commission, it in effect directed the Commission to eliminate unfair or deceptive methods in commerce. High on the list of legislative targets were certain unfair practices recognized as detrimental to our national welfare which had developed early in our transition from agrarian economy to industrial power. Rather than punitive or advisory, the Commission's role was to be preventive. Sponsors of the legislation visualized the Commission as a powerful potential in helping scrupulous business to stay in the race and to retain its competitive integrity. To preserve our American system of free enterprise, they sought to promote keen competition and at the same time to create an atmosphere encouraging evolutionary improvement in business ethics, in relation not only to competitors but also to customers. For the long pull it was believed the interest of consumers and those of the great body of businessmen were closely parallel. The trade practice conference procedure has been largely contributing to these aspirations.

In this Act, Congress did not attempt to detail specific unlawful practices, but made the language of the statute broad and flexible. Hence the decisions of the Commission and of the courts which have reviewed Commission orders to cease and desist on appeal have been the principal authoritative guideposts as to what acts have been held to be unfair or deceptive and to warrant a requirement for their cessation. Published volumes containing these decisions now number forty-one. The trade practice conference procedure has now been in existence for more than a quarter of a century. It was designed to comply with expressions of preference for more certainty of standards and for a ready reference point to concrete guides.

The Commission receives many complaints of violation of law on the part of individual concerns. If, during the course of investigation of such a complaint, the information secured indicates that similar practices are being followed by competitors of the party complained against, the inquiry may be expanded to industry-wide proportions. Thereafter, if simultaneous uniform cooperative action appears appropriate to the accomplishment of mass correction, and practicable of execution, the trade practice conference procedure may be invoked upon the Commission's own motion in lieu of a multiplicity of time-consuming separate proceedings. Conferences, however, usually have originated upon voluntary application of an interested party or group in the manner prescribed in Rule XXVIII of the Commission's published rules of

practice. A controlling consideration in determining whether such an application will be granted is the possibility for real good in advancing the best interests of industry and the public.

From 1926 to the present, rules have been promulgated for more than 160 industries. Administration, after the promulgation of rules, has as its object the promotion of law observance through the maintenance of continuing cooperation between the Commission and the industry. Where there is an industry committee on trade practices, cooperation with the Commission is facilitated.

High on the Commission's agenda are plans for increased utilization of this cooperative conference procedure. The goal is to bring about maximum voluntary observance of approved trade practice rules. The maintenance of a close liaison with industries having such rules affords opportunity to ascertain rule violations in their inception and to stop them promptly. It affords also opportunity to facilitate prompt and effective rule observance through interpretation and clarification of industry rules.

Any member of an industry for which trade practice rules have been promulgated should feel free to complain to the Commission of any practice contrary to the provisions of the Group I rules. The Rule Administration Division, of the Commission's Bureau of Trade Practice Conferences and Wool Act Administration, will give his complaint immediate consideration. If that Division cannot appropriately and promptly adjust the complaint through voluntary means, the matter is reported to the Commission for appropriate corrective action.

The experience of the Commission in the promulgation and observance 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.

Those of you who participated in your own industry conference will not be astounded when I state that the Commission does not approve provisions sanctioning or aiding or abetting practices contrary to law. The same goes for proposals which would evade or change a Congressional enactment. Conversely, we want to stay clear of narrow, distorted and unreasonable constructions ourselves. Moreover, I wish to make it clear that trade practice rules once promulgated are not sacred cows. If changed economic and trade conditions or evolution in applicable basic law engender new industry problems, the door is open to industry members for submission of proposals looking to amendment or extension of rules. I can assure you that the Commission will welcome such proposals and give them careful consideration.

It was my privilege to preside at the trade practice conference for your industry held in Cincinnati during the war years. Perhaps some of you have been wondering why proposed rules have not been heretofore issued by the Commission.

The answer is that the war materially retarded the trade practice conference work of the Commission. A very considerable proportion of the

Commission's legal and technical staffs, including those in this work, served in the armed services during the war. So much of the Commission's staff not in uniform was so directly and indirectly engaged in emergency war work that the Commission was classified officially as a "war agency." Scarcity of stenographers and cramped quarters also slowed down the work during this period.

Members of the Commission's trade practice conference staff, having been released from active duty only gradually after the cessation of hostilities, it is only recently that the Commission has been able to come anywhere near catching up with its backlog of this work. And speaking of the war, I sincerely congratulate your industry upon your very substantial and important contributions to the war, both in men and material. Of importance in peace as well as war, is your industry's great contribution to improvement in methods of treating fabric to render it more resistant to fire, water, mildew, and effects of the weather.

Last week the Commission authorized the Rule Making Division to release, for comment and hearing, proposed trade practice rules for your industry, and I believe I can say with a fair degree of confidence that they will be off the press and in your hands in the very near future.

In closing, I wish to say that the usefulness of the Commission's trade practice work has been demonstrated by actual experience. It has been proved to be unsurpassed for developing widespread understanding of trade term meanings and of the circumstances under which a seller has a duty to avoid deception by disclosing the material facts concerning his product. Encouragement of simultaneous and wholesale abandonment of unethical practices accords with the policy of the law. It is good business, too. Both uniform law observance and flagrant disregard of its concepts are chain reaction phenomena. It stands to reason, therefore, that the conferences can contribute significantly to the preservation of fair competition as the primary regulatory force of our free enterprise system.