

ADDRESS BY
COMMISSIONER ROBERT E. FREER, OF THE FEDERAL TRADE COMMISSION,
BEFORE THE PRIVATE HOME STUDY SCHOOLS INDUSTRY,
LA SALLE HOTEL, CHICAGO
WEDNESDAY, JUNE 24, 1936, 2 P.M., CENTRAL STANDARD TIME.

Ladies and Gentlemen of the Private Home Study Schools:

It cannot be said that members of the private home study school industry and the Federal Trade Commission are meeting today in the role of strangers. Many of you participated actively in the deliberations of the Pittsburgh Trade Practice conference in 1927, and all of you, I assume, have knowledge of the rules adopted at that time and subsequently approved by the Commission.

I welcome the opportunity to preside at this gathering. It is gratifying that you have again called upon the Commission to assist in an effort to raise the standards of your business. If your industry had not derived substantial benefits from the existing rules, and if it were not firmly resolved to make further progress in the elimination of unfair methods of competition, you would not have requested this second conference.

Results of the 1927 Conference

You may be interested in knowing that prior to July, 1927, when you adopted your rules, the Commission had issued only ten complaints against the alleged unfair practices of what were then referred to as correspondence schools, and had entered cease and desist orders in seven of those cases.

From July, 1927, to the present, the Commission has issued 53 such complaints and ordered 30 schools to cease and desist from unfair trade practices. Also, there now are pending before the Commission 19 cases in which the Commission has not completed the investigational work which precedes the issuance of any complaint.

These figures may be subject to various interpretations. To me they do not, from any standpoint, call for an admission of failure, nor do they indicate that your rules have been ineffective. On the contrary, they indicate that having tasted the fruits of higher standards of competition, members of your industry, since 1927, have actively cooperated with the Commission to compel the discontinuance of wrongful practices. These figures also indicate to me that the Commission has been active in the enforcement of your rules.

The Unfairness of Misleading Advertisements

Because that form of unfair competition most frequently charged against members of your industry seems to be misrepresentation, the language of the court in Florence Manufacturing Company vs J. C. Dowd and Company (178 Fed.73) seems appropriate:

"The law is not made for the protection of experts, but for the public - that vast multitude which includes the ignorant, the unthinking and the credulous, who, in making purchases, do not stop to analyze, but are governed by appearances and general impressions."

The Commission is vested with authority to stop misrepresentation as an unfair method of competition under the Federal Trade Commission Act. In Federal Trade Commission vs. Balme (23 Fed. (2d) 615), the court said:

"False and misleading advertising is a dishonest practice, and amounts to unfair competition, of public interest, with which the Federal Trade Commission may deal."

The authorities are persuasive that a seller is using an unfair method of competition when he employs false and misleading advertising to make his contact with a prospective buyer. The unfairness of such method is not removed by a subsequent disclosure of the truth to the purchaser even if made before consummation of the sale. (Holland Furnace Co. v. New Holland Mach. Co. 24 Fed. (2d) 751) Disclosure of the truth at that time comes too late, because when the contact is made by means of false and misleading advertising, the advertiser has already gained an unfair advantage over his competitors, and the false or misleading advertising has already served its full purpose.

That a concealment of the truth may be equivalent to a direct misrepresentation was determined as early as 1888 in Steward v. Wyoming Rancho Co., (128 U.S. 383) wherein the Supreme Court stated:

***"if, with intent to deceive, either party to a contract of sale conceals or suppresses a material fact, which he is in good faith bound to disclose, this is *** equivalent to a false representation, because the concealment or suppression is in effect a representation that what is disclosed is the whole truth. The gist of the action is fraudulently producing a false impression upon the mind of the other party; and if this result is accomplished, it is unimportant whether the means of accomplishing it are words or acts of the defendant, or his concealment or suppression of material facts not equally within the knowledge or reach of the plaintiff."

Common Sense Law and Cooperative Enforcement

In Sears, Roebuck & Co. vs Federal Trade Commission, (258 Fed. 307) the Court directed that a common sense viewpoint be taken of alleged unfairness, saying:

"The Commissioners, * * *, are to exercise their common sense, as informed by their knowledge of the general idea of unfair trade at common law, and stop all those trade practices that have a capacity or a tendency to injure competitors directly or through deception of purchasers, quite irrespective of whether the specific practices in question have yet been denounced in common-law cases."

Common sense and experience dictate that society should not permit deceptive, fraudulent or even tricky business methods. At common law, practices ordinarily "regarded as opposed to good morals because characterized by deception, bad faith, fraud or oppression, or as against public policy

because of their dangerous tendency unduly to hinder competition or create monopoly", were illegal. (Gratz Case, 253 U.S. 421) Long prior to the enactment of the Federal Trade Commission Act there was strong public sentiment against practices which, today, are declared by the Commission and the courts to be unfair methods of competition.

At common law, the unethical competitor could continue to use an unfair practice unless and until an equity court would issue an injunction on the plea of a competitor whose property rights were being irreparably injured. There was need of a governmental body to stamp out unfair practices in their incipiency, and it was to fill this need that the Federal Trade Commission was created, with the specific duty of issuing a complaint, whenever the public interest requires it, against any person, partnership or corporation whom it has reason to believe has been or is using any unfair method of competition.

The full purpose of the Act can be best achieved through the voluntary cooperation of those for whom its benefits were intended. Each industry should lend a hand in the task of curbing the reckless and heedless on its own business street and by asking for this conference you have emphasized your desire to do your part.

The Trade Practice Conference Procedure

Advertising again to the particular object of your meeting here today, and for fear that some among you may not be familiar with them, I wish to say a few words about the Commission's Trade Practice Conference Rules and Procedure.

Rules approved and promulgated by the Commission, after their adoption at a trade practice conference, are classified into two groups. In Group I are placed those rules and provisions which condemn as illegal, practices already constituting unfair methods of competition in violation of the laws administered by the Commission. Violators of approved Group I rules may be proceeded against by the Commission through its formal complaint method, even though they did not take part in the conference or agree to be bound by the rules.

Since the Commission is charged by law with the duty of proceeding, whenever the public interest requires, by issuing complaints against any person, partnership or corporation whom it has reason to believe is using any unfair method of competition, I can assure you that you will find us ready to enforce any of your Group I rules which we may approve and promulgate.

In Group II are placed such rules as the industry voluntarily proposes and adopts in the interest of fair and ethical conduct, but which do not involve practices necessarily violative of law. The observance of such rules depends upon, and can be accomplished through, the cooperation of the members of the industry subscribing to them.

Conclusion

The many thousand prospective students who answer your advertisements or welcome the visits of your salesmen are not thinking solely in terms of text books, printed lecture courses, and the other tangible material you have to sell. What they have in mind and seek to buy are those intangible but more essential commodities, knowledge and education.

It is my sincere hope that when the deliberations of this conference are at an end, you will have drafted a set of rules acceptable to the Commission and that the observance of these rules will weld you into a group strongly determined to preserve the ideal of fair competition, to protect the public and yourselves from the practices of dishonest competitors, and to give fullest recognition to those responsibilities which are inherent in your unexcelled opportunity for advancing the national welfare through the educational development of our adult and adolescent population.

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