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REMARKS

*on*

TRUTH IN ADVERTISING

(WITH SPECIFIC RELATION TO THE BROADCASTING INDUSTRY)

BEFORE THE

RADIO EXECUTIVES CLUB OF NEW YORK

HOTEL ROOSEVELT, NEW YORK, NEW YORK

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*by*

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## FEDERAL TRADE COMMISSION'S DUTIES

The Federal Trade Commission was set up by Congress in 1914. It is an independent agency with quasi-judicial duties. Congress gave it the task of preventing unfair methods of competition and unfair or deceptive acts and practices through compulsory proceedings where necessary and through voluntary effort where possible.

Sometimes I wonder why the Federal Trade Commission should be so closely associated in the public mind with the advertising industry, or even why it should occupy the wide horizon it seems to fill in the outlook of broadcasting. The Commission has manifold duties beyond the prevention of unfair methods of competition and unfair and deceptive acts and practices in commerce and the making of general investigations of business conduct under the organic act. Under the Robinson-Patman amendment, it deals with price discriminations and under other sections of the Clayton Act with tying and exclusive-dealing contracts, acquisitions of capital stock and interlocking directorates in competing corporations. It administers also the Webb-Pomerene Export Trade Act - now of growing importance in connection with the promotion of postwar foreign trade. And it administers the Wool Products Labeling Act designed to protect industry, trade and the consumer against the unrevealed presence of substitutes and mixtures in wool products.

## ADVERTISING REPORT

In the course of some remarks before the Advertising Club of New York about four years ago, I stated that the Commission had announced that advertising had been selected as one of several specific phases of distribution deemed appropriate to a factual study of Methods and Costs of Distribution. Because of apprehension expressed by some that the study might smear advertising, I offered the opinion that advertising had nothing to fear from a fair inquiry into its place in the distributive system. The Commission's report, essentially a study of peacetime advertising methods and costs, was sent to Congress - and a summary thereof published - on October 30th. I invite your reading of this report, which speaks for itself.

Among other things the report contains an analysis, by media, of advertising expenditures totaling \$71,498,607 of 548 corporations in 17 industries for the year 1939. The proportional amount spent on radio advertising, 18.3% of the total, exceeded that for any other media, although only one company out of four used radio.

By way of a commercial on behalf of the Superintendent of Documents, Government Printing Office, I can tell you that the full text of this report will be off the press about December 15, 1944.

## FEDERAL TRADE COMMISSION SCOPE

The Commission is no copy censor and has no desire to become one. It has no authority to proceed against an advertiser unless his commercials are deceptive or misleading. Therefore, with those who prefer the old extravagant and happy days, I view with no alarm the prospective

return of automobile advertising stressing the red horn button on the 1948 models distinguishing them from the preceding year's green horn button jobs.

#### THE TOPIC ASSIGNED

Truth in Advertising, the topic I was assigned, is quite appropriate as chief point of contact at which the Federal Trade Commission touches your great industry. In view of your tremendous scope; your almost miraculous achievements in war and peace; and your almost limitless future, my subject is paradoxically both relatively small and yet all comprehensive. For confidence begets friendship and with both all things are possible.

A few years back I spoke before the Advertising Club of New York on virtually the same topic and I commented then that "anyone who insists that the truth must be varnished, distorted or abandoned in order to advertise effectively is slandering your profession, and \* \* \* the Federal Trade Commission has never required the abandonment of an advertising claim on any other ground than that it is deceptive or misleading in some particular. \* \* \* The only censor that advertising need seriously consider is public opinion."

While no person or group recalls with exactitude what they have listened to, impressions of what they have heard have been recorded; and, while I am no expert, I do venture to assert that your reputation depends upon truthful character of the air-wave impressions recorded on the public mind.

Public opinion polls and research groups have so sounded the public's listening, reading and buying habits, that most any business can buy a reasonable facsimile of a dissected consumer. Probably on the theory that turn about is fair play, consumers today are showing quite an interest in the merchandising habits of business.

For example, the October 9, 1944, issue of Drug Trade News, in reporting a "definitely skeptical attitude" toward advertising claims reflected in a Health Teaching Syllabus circulated by the New York State Education Department, quoted therefrom the following criteria and procedure for judging the soundness of advertising claims:

"Are the statements absolute outright facts? Are the statements of such a nature that the advertiser wants you to think they are facts, and worded in such a way that the facts are not stated but intimated? Checking of packaged goods to compare radio commercials with actual labeling is advocated."

Radio advertising, as shown by the recent report of the Commission, now is at a most advantageous position, as to both profits and prestige. Networks and independent stations share in this prosperity. Isn't this a good time to consider whether proper safeguards may not be indicated to protect the whole industry from loss of face through practices of an unethical minority?

Applications for complaints to the Commission come from many sources and in accordance with its policy, remain anonymous. Probably

a large majority originate with competitors and deal with a wide variety of practices but it would be both novel and pleasing to the Commission to receive a considerable volume of those relating to advertising from the advertising industry. That is where a majority of such applications should originate.

#### FEDERAL TRADE COMMISSION ADVERTISING SURVEYS

A majority of the matters considered by the Commission involve charges of false or misleading advertising. Although a large number of the proceedings instituted by the Commission originate from complaints by a competitor or a consumer, others are initiated on the Commission's own motion and as the result of a constant survey of advertising maintained by its Radio and Periodical Division. Begun in 1929, the survey was at first limited to magazines and newspapers. It was expanded in 1934 to cover radio commercials. Since 1939 it has included also mail order catalogs, almanacs and foreign language newspapers.

During the year ending June 30, 1944, the Commission's Radio and Periodical Division examined 298,970 advertisements contained in 1792 editions of representative newspapers and 967 issues of magazines and journals. It examined also 627,719 broadcast continuities consisting of network and individual station scripts and scripts representing the built-in advertising portions of transcription recording productions. From these scripts 19,512 advertising broadcasts were marked for further study as containing representations which might be false or misleading.

The purpose and effect of this scrutiny is twofold. First advertising representations appearing open to question are promptly challenged. Secondly representations modified as a result of Commission action are checked for possible violation of the Commission's order or the advertiser's stipulation to discontinue or modify his previous claims.

In securing the materials with which to do this job the Commission has received the cooperation of the four major network chains, 19 regional network groups and transcription producers; also 850 commercial radio stations, 504 newspaper publishers and 458 publishers of magazines, farm journals and trade publications. This cooperation was of real aid in the elimination of false and misleading advertising and deserves the public's commendation as well as the Commission's appreciation.

#### WHEELER-LEA POLICIES

The Wheeler-Lea amendments to the Federal Trade Commission Act make mandatory a high standard of truth in connection with the advertising of foods, drugs, therapeutic devices and cosmetics. Advertising marked for legal review by the Radio and Periodical Division during the fiscal year related to 1902 commodities. Of these 55.9% were classed as drugs, 15.4% as cosmetics and 11.3% as food designed for human or animal consumption. Since these percentages add up to 82.6%, commodities other than those within the special Wheeler-Lea provisions accounted for only 17.4% of the total.

The law empowers the Commission to require to appear in each and every advertisement of a food, drug, curative device or cosmetic full and comprehensive warning as to potential injury which may result from conditions prescribed in the advertisement or under conditions which are customary or usual. As a concession to the advertiser - although one not deemed inconsistent with the Commission's duty to the public - the Commission has adopted a policy of permitting the brief but significant admonition, "Caution: Use Only As Directed," to represent the full warning if it observes that full textual cautionary language is set forth in the labeling or on the label.

On programs containing more than one commercial, each separated by a program of entertainment, the Commission has required that the cautionary statement be repeated with each commercial, applying thereby the same requirement as it imposes on magazine and newspaper advertisers who elect to insert more than one advertisement in the same issue of a publication.

The Radio and Periodical Division makes spot checks from time to time to determine whether the warning statement, "Caution: Use Only As Directed," appearing in stipulations and orders relating to potentially injurious drug or cosmetic preparations, is being slurred or de-emphasized in commercials; and whether in programs containing several commercials separated by entertainment the required caution is repeated. Respondents who have omitted the "Caution" from any commercial or who in substance have said, "Caution, take only as directed in a glass of water," or, "You are cautioned to take only as directed for the best results," have been informed that such omission or variance is not recognized as compliance.

It is "unlawful" (Section 12) merely "to disseminate, or cause to be disseminated, any false advertisement" of a food, drug, curative device or cosmetic; and, although, under certain conditions, (Section 14) they are exempt from criminal liability, advertising agencies and radio broadcast licensees have no exemption from civil proceedings. Advertising agencies frequently have been joined as parties to Commission proceedings. So far, however, the Commission has not undertaken to so join either any agencies or radio stations where they were deemed to have done no more than serve as "disseminating media." Where advertising agencies have been joined it has been because of participation in the preparation of the offending advertising. Likewise, a station has been so joined only where it appeared that station personnel had largely participated in the preparation of the false advertising. Radio stations thus acting in the capacity of advertising agents may be joined as parties to any proceedings arising out of the falsity of advertising, in the preparation of which they so participate.

#### BASIC ACCORD

We meet today on common ground and in full accord with the principle that false and misleading advertising is indefensible, harmful not only to the public at large but also to business -- particularly the business of advertising.

In spite of our agreement upon the basic principles, differences of opinion occasionally arise over their application to specific cases -

particularly to so-called border-line cases where the deception flows from distortion, ambiguity or half-truth aiding the aura of deceptive impression. No doubt, such cases will continue in the future to confront the Commission - their number in somewhat direct ratio with the pressure to write new and startling copy designed to pep up the limping sales of old products whose properties have been rather thoroughly explained to the public in the past.

Unfortunately there is no rule of thumb for determining in advance whether border-line advertising copy will get by or be branded as false and misleading. Neither the Commission, nor the courts in reviewing Commission cases, have been able to supply the script writer with a simple and magic formula sure to keep his commercials free from criticism. The Supreme Court once described the process of individual case-by-case determination utilized by the Commission to be one of "judicial inclusion and exclusion."1/

#### MISLEADING IMPRESSIONS

The most potent effect of the spoken - as well as of the written - word is an over-all general impression. "Impression," in the language of the court, "itself is a stamping in upon the mind."2/ Let's call it a notion which may be held, made or formed by inference with or without adequate grounds. Now then let's see what the court says concerning misleading impressions:

"\* \* \* the buying public does not ordinarily carefully study or weigh each word in an advertisement. The ultimate impression upon the mind \* \* \* arises from the sum total of not only what is said, but also of all that is reasonably implied. \* \* \* such representations are made to the public, who, we assume, are not, as a whole, experts in grammatical construction. Their education in parsing a sentence has either been neglected or forgotten. \* \* \* The law is not made for experts but to protect the public -- that vast multitude which includes the ignorant, the unthinking, and the credulous, who, in making purchases, do not stop to analyze but too often are governed by appearances and general impressions. \* \* \* Advertisements are intended not 'to be carefully dissected with a dictionary at hand, but rather to produce an impression upon' prospective purchasers."3/

Another Federal Court warns us that "Words and sentences may be literally and technically true and yet be framed in such a setting as to mislead or deceive."4/

Some of you may be interested in concrete examples of interpretations the Commission has placed on specific advertising. Here are a couple:5/

(1) "Look 10-15 years younger, the way the stars do. Why worry because you have wrinkles, lines, baggy eyes, double chin, sagging muscles or other age signs. Be amazed! Send \$1.00 \* \* \*."

1/283 U.S. 643 at 648  
2/141 Col. 548; 75 p. 188

3/132 F. (2d) 165 at 167  
4/134 F. (2d) 369 at 371

5/36 F.T.C. 875 and 905

None of you, I am sure, will be amazed that, the respondent having readily admitted, in answer to complaint, that its face cream would not remove or eradicate such facial age signs, the Commission's order ran against representing "directly or through inference" that it would.

(2) "\* \* \* This stomachio-digestive should be on the table during every meal so that every member of the family can take it according to how he feels \* \* \* avoid all common ailments by taking regularly."

The Commission's order in part required the advertiser to desist from representing "directly or through inference" that through regular use of this product - containing alcohol and a laxative - "all common ailments may be avoided" or that it has any therapeutic value for other ailments in excess of its laxative properties and those of a "bitter appetizer."

#### FACTUALLY INFORMATIVE ADVERTISING

Somewhat broader than "truth in advertising," and somewhat more precise definitively, is the phrase "factually informative advertising." Truth in radio advertising contemplates that the announcer adhere to the principles of veracity in extolling the virtues of his sponsor's product. Factually informative radio advertising contemplates that the announcer not only make truthful statements imputing that product's meritorious attributes, but also, that he affirmatively disclose any dangerous potentialities that may attend its use. This accords with the act which requires the revelation of potential injury to health which may flow from use of a medical preparation under conditions which are customary or usual or are otherwise recommended in the advertising continuity. Beyond this, however, good sportsmanship appears to condemn the use of "verbal decoys" enticing "human geese" into range of concealed "quack shots." After all, also, too many gun-shy "wounded geese" spoil the hunting, and, of course, a "gone goose" lays no "golden eggs."

If you ever feel that the Commission is being unduly restrictive in some particular case, I hope you will remember that it is doing its best to apply principles with which you are in accord and, by the application of such principles against non-conformists, to make it easier for advertising generally to maintain scrupulously ethical standards. I hope you will remember, too, that, while the Commission may proceed only in the interest of the public, a very large number of its cases originate in complaints of - and result in advantage to - business men who were being injured by the practices of unscrupulous competitors. Moreover, a misleading advertisement curbed by Commission action is a temptation removed from the path of all who might resort to similar deception for reasons of competitive expediency.

#### PROGRESS AND PREDICTION

Admittedly strict truth in advertising on the part of all remains a theoretical goal. The general trend is upward and the Commission at times may seek to curb types of deception which have hitherto gone unchallenged just as you may in the future come to regard many current shows to be unworthy.

"Scare stuff" today is generally considered a relic of the medicine show. The "pull" of "fancy stuff" and "pressure stuff" today is considered to have been overrated. Ambiguous and deceptive advertising today is considered "sissy" continuity, in that it has been found so often to represent an effort to by-pass the expenditure of mental effort necessary to write factually informative advertising which today is generally accepted as the most effective.

The "horse trading," "buyer beware" standards antedating the Federal Trade Commission Act of 1914 were rejected by the middle 1920's. Much deceptive concealment antedating the Wheeler-Lea Act of 1938 and the Wool Products Labeling Act of 1939 is being discarded in the early 1940's. I venture to predict that a goodly share of present day "trifling with the truth" will be outmoded in the late 1940's, with or without the enactment of additional legislation.

#### COOPERATIVE EFFORT

And I want to make a disclaimer -- the Federal Trade Commission does not seek to enter the field in which the Federal Communications Commission and other Government agencies exercise jurisdiction, nor the sphere of the Better Business Bureaus; sufficient unto us is the large field of commercial advertising which is particularly our province.

A very large proportion of newspapers in the smaller cities of our country; virtually all metropolitan journals and the better class of magazines scrutinize their advertising meticulously. They try to anticipate and avoid warnings by Better Business Bureaus or proceedings by the Commission by rejecting any suspicious or shady advertising. There are more than rumors to the effect that many radio executives are as farseeing in this respect as their newspaper competitors.

Chiselers we will always have with us, but they are easily recognized and appropriately restrained. So with the frankly dishonest. But the unethical and the merely careless elements - disliked, but tolerated in pre-war days - should be straightened out also - and by you. You are executives. That is your job.

#### CONCLUSION

Happily, there exists today a spread between the minimum requirements of law and your own self-imposed standards. I have no doubt that both will be raised in the future as they have been in the past; and I hope that the spread not only will remain, but will widen, through elevation of your own voluntary standards of what is best in advertising at an even more rapid rate than any future raising of the minimum requirements of the law.

In conclusion, I want to reiterate that national advertising generally has improved greatly from the standpoint of ethical responsibility and self-restraint. Of course, there are exceptions, as may be attested by Commission stipulations and orders - but the voluntary standards of advertising in general - particularly as to what constitutes the best in advertising - have been raised just as definitely as were the minimum requirements of the law raised by Congress in supplementing the Commission's Organic Act of 1914.