

F.T.C. AND THE ADVERTISER

Remarks

by

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before

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F.T.C. AND THE ADVERTISER

At the outset, may I explain that I do not propose to pass out cards on which to pledge your antipathy to untruthful advertising. Membership in The Advertisers' Club of Cincinnati, I have been pointedly informed, is incontrovertible evidence that each of you has long since hit the sawdust trail leading to truth in advertising. As all of you are "agin" sin in advertising, you may all settle back comfortably confident that my remarks will pertain to nonmember advertisers, agencies and media.

Your kind invitation to me to come home to Cincinnati to participate in this meeting is appreciated. Your invitation evidences your interest in Advertising's program to achieve higher standards through continuous self-examination, self-correction and self-discipline.

As early as 1905 many men were making their living creating advertising. One of their first acts of self-discipline was to set up an agency to check and confirm media circulation statements. This attested an increasing respect for facts. It also marked your profession as discerning buyers. Then followed various declarations of principles by groups associated with advertising; the voluntary adoption by some media of standards designed to serve as a guide to self-imposed censorship; and the establishment of Better Business Bureaus;- successive answers to the challenge of the ever increasing social and economic responsibility imposed by Advertising's growth.

It has been said that the genesis of industry's wide-scale adoption of advertising was when it simultaneously dawned on any number of established concerns that if the charlatan and the swindler could make advertising pay so well, why couldn't it be a profitable medium for business men who kept their promises? The chiselers, they felt, would always be with us but as subjects for control. The price of that control has been a measure of regulation of the whole advertising structure exemplified by Better Business Bureaus, by State "Printer's Ink Statutes," by the Food and Drug Laws and by the Wheeler-Lea Amendments to the Federal Trade Commission Act. Here is the picture today. Chiselers we shall have with us always but they are easily recognized and appropriately restrained. So also with the frankly dishonest. There remain, however, for present and future consideration another minority - the unethical and the careless.

Many of the unethical are to be found in the ranks of those selling nostrums suggested as safeguards against nonexistent dangers. To them, in the language of the police court, unspent consumer dollars are vagrants, to be forthwith corralled from the prototypes of the terrified gentlemen and agonized ladies whose innards may be depicted in the lurid copy. Part of, but not all, these cases are subjects for legal correction. As such copy disseminates, it represents just one more temptation put in the path of others of the border fringe. Through precept and example, and by instilling into the minds of the users and producers of advertising the hard fact that

complete candor and good taste in advertising is good business, you are in a position to accomplish as much as, or more than, the government in discouraging the unethical.

The Commission and the advertising industry see eye to eye on the proposition that false or misleading advertisements are harmful both to the consumer and to business. Agreed as we are on the intellectual level of forthright condemnation of outright falsity, differences of opinion sometimes arise on the level of practical application to borderline situations. Words and sentences literally true, may be framed in a confusing setting capable of, - if not artfully designed to be, - misleading. It is just our hard luck -- yours, the Commission's and the courts' -- that no magic formula can resolve the implications of such loosely written advertising copy. Whether calculated insertion of a restrictive weasel word here and a contradicting and subtractive phrase there are sufficient in a given case to remedy the deceptive ambiguity often presents a troublesome question. The test of unfairness is an elastic one and the Commission's duty is to keep pace with new promotional inventions. To evaluate, and to calibrate to the exact degree, the level of improvement to which business morals have evolved is not possible. The upward trend, though, is plain and the Commission sincerely hopes that its action in resolving such matters will never run counter thereto or drag your standards down.

Because no ingenious advertiser or government expert as yet has invented the precise rule of thumb which will segregate the "falsey" from the "truth unvarnished" variety of advertisement, the Commission has declined to issue advance opinions or to otherwise evaluate or criticize proposed advertising. Such a course, it is felt, would gradually evolve into some species of censorship, the attendant evils of which I need not discuss. On the basis of its experience and the scientific information to which it has access, the Commission has come to regard with suspicion advertising claims of any temporary relief preparation offered to cure the symptoms of or to stop or end any disease. The suspicion holds for the advertising of any simple emollient cosmetic offered as a rejuvenative or restorative of ladies' beauty. On the other hand, without comprehensive investigation the Commission cannot know if there is concealment of material facts or if a twist here and a turn there distorts the truth. These facts are or should be more readily available to the advertiser. What has been characterized as the addition of subjective values to selling by means of advertising cannot do away with the need for relevant truth as a competent guide to use.

The Commission's Trade Practice Conference procedure gives valuable enlightenment on trends in business ethics and in some instances has brought cooperative and simultaneous discontinuance in whole industries of twilight zone practices. By this procedure entire industries meet together under Commission auspices, discuss frankly their trade practices, and undertake to clean up all deceptive advertising and other unfair practices. The Commission recognizes that the average American Businessman is no petty pickpocket, to be haled into court at every opportunity. Giving him this chance to cooperate with his competitors and the Commission, with the

objective of improving his business "morality" is generally more effective than swinging the big stick. Many industries formerly numbered among the Better Business Bureaus' Augean Stables stand witness to this method of house cleaning. Such conferences result not only in formal rules forbidding practices which are unfair under the law, but also in expressions of policy discouraging practices in the "twilight zone," and encouraging in the interest of both industry and the consumer the voluntary adoption of ethical standards considerably above the legal minimum.

The Commission has found the Trade Practice Conference to be an unusually fine method of wholesale enforcement of the legal minima in many industries, obviating the necessity of countless formal enforcement proceedings against individual concerns, and the attendant temporary competitive advantage of the recalcitrant firm over those more high-minded or tractable. But principally the advantage lies in the fact that more real good can be accomplished on a voluntary basis than in an adversary proceeding, and much higher standards of ethical conduct adopted.

It is a hard and basic truth that a business man wants his competitors to advertise truthfully. Upon information or belief that one or more of them is nibbling at truth's edges, he may adopt tomorrow at his office desk certain practical compromises with those concepts of truth in advertising which he today enthusiastically endorses when he hears them expressed at a luncheon of his advertising club. When he shares in making trade practice conference rules for others, he is more apt to see to it that his business lives up to them.

A recent issue of *Printers' Ink* refers to a poll of wage earner husbands and wives in which three-fourths of the pollees said that advertisements help give better products for the money. At the same time over one-half expressed the opinion that advertisements add to the cost of things. Two-thirds expressed some specific criticism of advertising recently noted. The general tenor of some complaints coming in to the Commission indicates that at least a segment of the public holds either an emotional grudge or an intellectual spite against advertising as an institution. At times their observations border on the purple side, especially where the charge is lack of good taste, the regulation of which is certainly no function of the Commission or of any government agency. Criticism may fairly be levelled at the taste of an advertisement dealing with various bodily functions, religious beliefs, loyalties or prejudices in such manner as to offend a substantial part of the public. Some radio listeners have complained of bad taste appearing in the so-called entertainment part of a program, the commercial portions of which are above reproach.

Elaborate aids are now available to test the reactions of the public to copy suspected of transgressing on the side of bad taste or indelicacy. Every program or piece of copy which offends even a few people harms advertising as an institution. Questionable taste and lack of candor harm advertising before they begin to affect sales of the advertised product. It is such an elemental truth that I hesitate to express it, that however fine

and constructive advertising may be as a whole, if any considerable portion of the public loses confidence in it for any reason, whether justified or not, the efforts of the best elements in the business will be wasted.

Like other consumers I keep looking for signs that the trend observed today in many industries toward more informative advertising, is a general one. Advertising can not be considered as a substitute for honest market information. I imply no blanket condemnation of advertisements or commercials solely because they stress the subjective or emotional values; but as the scope of these values is enlarged in a particular advertisement, the greater becomes the need for relevant truth as a competent guide to use of the products. As packaging becomes more general, for example, consumers are less and less able to confirm their impressions by presale use of their senses of touch, taste or sight.

The popularity of some private "bureaus," "institutes" and consumer reports suggests some public approval of proposals for an authoritative or official source of consumer information. Advertising should concern itself with supplying such information. If it turns a deaf ear who knows but that this polite consumer agitation may become a roar for establishment of machinery bypassing advertisers.

The Commission feels keenly its statutory responsibility to eliminate false and deceptive advertising. Not all of the matters considered by it originate from complaints by a competitor or consumer. The Commission's Radio and Periodical Division maintains a survey of advertisements appearing in magazines, newspapers, radio broadcasts and mail order catalogs. This prompts earlier investigation of advertisements questionable on their face. Secondly, representations previously the subject of Commission action are checked to ascertain whether the advertisers are living up to Commission orders to cease and desist therefrom or their own voluntary agreements to discontinue or modify them.

To do this, current magazines and newspapers are secured on a staggered monthly rate of three times yearly on the average, depending on the character of circulation and advertising. For the last fiscal year the representative newspapers scrutinized totaled 1,667 editions; magazines (including farm journals and trade journals) 1,033 editions; mail order catalogs, 82 (including those of five mail order concerns with combined annual sales in excess of one and three-quarters billion dollars); and the commercial portions of 518,161 radio broadcast continuities.

For this job much credit is due the nationwide network chains, regional network groups, transcription producers engaged in preparing commercial radio recordings, radio stations and publishers who cooperated with the Commission.

In instances where advertising agencies or radio station personnel have prepared or participated in the preparation of advertisements subsequently found to be false and misleading, the agency or station is included with the

advertiser as a party to any resulting corrective action. To date the Commission has not found it necessary in ending particular instances of false advertising, to join agencies, radio stations or publications which have done no more than serve as dissemination media. Pertinent to this policy is the fact that it is "unlawful" (Sec. 12 of the Federal Trade Commission Act, as amended by the Wheeler-Lea Act) merely to "disseminate, or cause to be disseminated, any false advertisement" of a food, drug, curative device or cosmetic. Under certain conditions (Sec. 14) such mere disseminators are exempt from criminal liability, but not from civil proceedings.

The Commission recently re-examined its own procedures and the methods of handling ^{its} ~~our~~ work. This resulted in a reorganization of personnel and functions, adoption of a program designed to expand the cooperative phases of our work, and revision of some of the rules of practice in formal cases. One criticism of the traditional case-by-case procedure, viz, investigation, complaint, hearing and order, was that competitors of the party so proceeded against were left free to follow the identical illegal practice until such time as the Commission issued orders to cease and desist against each separate offender in turn. Where appropriate, simultaneous uniform corrective measures on an industry-wide basis ~~is now pro-~~ ^{are} ~~posed~~ rather than directing action solely against the concern to which the complaining finger first pointed. I say where appropriate, because, application of such simultaneous uniform corrective action must appear not only to be warranted in the public interest, but also to be practicable of execution.

Not only will the Commission expand its work in establishing trade practice conference rules but also will it give greater emphasis to the elimination of unfair trade practices through stipulations to cease and desist. To the greatest possible extent consistent with the public interest will the aim be to avoid the necessity of a multiplicity of full-dress formal proceedings. This cooperative method of handling the less important matters will implement a broader program of formal proceedings to prevent monopoly. We hope the results will inspire further confidence on the part of the public in the Commission's effectiveness in both fields.

I have no doubt that advertising standards will be raised in the future as they have been in the past. Only by digging back into media of 10, 20 and 30 and more years ago can the great strides of past advancement be fully appreciated. Of course, the most obvious improvement is the conspicuous decline of the fly-by-night, get-rich-quick type of ad. Some are still with us. Like the poor they, no doubt, always will be with us. Certainly they will be so long as any media will disseminate them, since they have a one crop harvest which can usually be gotten in the barn before the frost of a legal proceeding descends. And, like the modern farmer, this type of advertiser is a devotee of crop and field rotation. But to me the really impressive improvement is the rise of the informative and truthful type of advertising for established business, - those of you who expect to be in the same business tomorrow, next year, and for years to come.

Such changes do not come easily, nor do they come chiefly as the result of government regulation. As a matter of fact, if advertisers as a whole

were no better than the Federal Trade Commission could order them to be, the situation would indeed be serious. The Commission and the Congress, of course, have participated in this change, and many practices which would have been ignored in the 1920's are now clearly within our jurisdiction, either by decision or by amendment of the law. But in this change there is a lag between the minimal legal requirements and the best standards of business itself. By continually raising your standards, you make it possible for our regulation to protect more fully the public and ethical business from the depredations of the unscrupulous.

