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REMARKS OF HONORABLE ROBERT E. FREER, MEMBER
FEDERAL TRADE COMMISSION
OPENING THE TRADE PRACTICE CONFERENCE
FOR THE
COSMETICS AND TOILET PREPARATIONS INDUSTRY
WALDORF-ASTORIA HOTEL, NEW YORK CITY
MAY 12, 1947, 10:30 A. M.

It is both a privilege and a pleasure to be here on behalf of the Federal Trade Commission for the purpose of presiding at your trade practice conference. It is especially pleasing to see so many friends whom I had the good fortune to meet when I presided at your trade practice conference in 1936, which, due to unfortunate circumstances, did not result in rules for your industry.

Your industry is very large, especially from the standpoint of dollar volume of your products. I have been informed that the retail sales volume of perfumes, cosmetics and toiletries reached a new high of almost seven hundred millions of dollars in 1946, which is nearly double the sales volume of 1937. The industry gives direct employment to many thousands of workers and is an important pillar of our economic structure.

It is not uncommon in an important industry marked by keen competition that there tends to develop widespread use of unfair practices harmful to the scrupulous members of the industry and to the consuming public. The institution of formal proceedings against all members of an industry engaged in unfair competitive practices is both expensive and time-consuming not only for the Commission but also for the individual respondents.

Obviously the speedy and practical method for the elimination and prevention of such practices is by some cooperative procedure whereby under the guidance of the Commission all members of an industry simultaneously abandon the use of any and all unlawful practices. The trade practice conference procedure, with which most of you are familiar, provides the machinery for such action.

Under this plan it is possible to eliminate unfair trade practices in an industry on a wholesale scale by industry-wide cooperation with the Commission and collaboration of all interested groups in the formulation, establishment and observance of fair trade practice rules governing the conduct of the industry.

Another important advantage in having such rules established for an industry lies in the fact that they afford definite guidance so that industry members are not compelled to guess whether or not their activities comply with the requirements of law. The rules clarify the application to the industry of existing laws and interpretations thereof by the Commission and the courts; they lend concreteness and meaning to such comprehensive terms found in the statutes as "unfair methods of competition" and "unfair or deceptive acts or practices."

So well have the Commission's trade practice rules worked out in past instances that their voluntary observance has been sufficient to bring about general correction throughout entire industries. Where a willful few do not choose to voluntarily abandon the unfair practices prohibited by the rules, compulsory proceedings can be resorted to with a minimum of delay. By reason of the existence of the rules, such steps become more effective because the Commission is able to concentrate its attention on the unscrupulous few and is not compelled to scatter the process of law among a larger group, many of whom strayed from the path through ignorance of the law or were forced off the road by a few unscrupulous competitive road hogs.

At this conference, which is the initial step in the proceedings for establishment of trade practice rules for your industry, all industry members will be afforded an opportunity to suggest for consideration by the Commission proposed rules specifying illegal practices or unfair methods to be avoided as well as rules recommending ethical practices to be followed. Anyone in the industry may participate and no one is legally obligated by anything that is said or done here today.

There are two classes of trade practice rules, namely, Group I and Group II. Group I rules cover methods and practices which are illegal under laws administered by the Commission, and the Commission will, in the public interest, proceed against all parties employing such methods or practices in commerce. They are often referred to as "mandatory" rules, as distinguished from Group II rules which are voluntary expressions recommending against use of practices which the industry considers harmful or unethical, or recommending use of ethical practices which the industry considers beneficial to itself or the public.

In undertaking a discussion and formulation of rules, it is well that you keep in mind that the purpose of this proceeding is the promotion of law observance and that no rules will be approved by the Commission which do not meet the test of law; that is to say, Group I rules must be correctly interpretative of legal requirements, and Group II rules must neither sanction practices contrary to the law or be opposed to the public interest.

One of the principal purposes of your meeting here today is to help formulate for the consideration of the Commission rules which will give guidance as to the meaning of "proportionally equal terms" as such phrase appears in subsections (d) and (e) of section 2 of the Clayton Act as amended by the Robinson-Patman Act. In this connection I wish to say that the Commission recognizes the sound economic value of point-of-sale advertising, display, and sales effort. I wish to point out, however, that the Commission is not vested with any authority to modify, ignore or repeal any of the provisions of the laws the Congress has entrusted to its administration, and that no rule can or will be approved on the subject of "proportionally equal terms" which does violence to the intended meaning of Congress. It can serve no purpose for us to here consider rules which would evade or change the Congressional enactment. This does not mean that the Commission is disposed to give a narrow, distorted or unreasonable construction of any of the provisions of the Robinson-Patman Act. The courts have gone far to remove doubts as to the constitutionality of various provisions of the Act and decisions by the Commission and the courts have removed many matters from controversy and speculation.

After this conference the Commission's staff will study all rules proposed or adopted at this conference, and in the light of your discussion thereof and the requirements of law, will then, in due course, publish a draft of proposed rules in appropriate form and schedule a time and place for a public hearing thereon at which time and place any interested or affected party - consumers as well as industry members - may voice objections and suggestions pertaining to the proposed rules or any of their provisions or requirements. After consideration of all such objections or suggestions, and upon final approval and promulgation, a copy of the rules will be sent to each member of the industry, accompanied by a form which he may sign as an indication of willingness to comply therewith in the conduct of his business.

The Commission's aim is to aid honest business and to afford protection by preventing and correcting the continuance of harmful or unfair methods which are destructive of free and fair competition. The effect of the use of unfair methods and practices is to stifle and suppress development and expansion of trade and commerce; to destroy or curtail freedom of economic opportunity; to make it more difficult, if not impossible, for business generally to render honest and efficient service to the public and to be rewarded with a fair profit on a sound competitive basis.

I wish to assure you that the Commission desires to be of every assistance possible in this conference to the end that your industry may be enabled to elevate the plane of its competition to a level where it is fair to all industry members whether large or small and at the same time serve the best interests of the public whose patronage is necessary to your success.