UNFAIR PRACTICES AND THE COMMISSION'S CONFERENCE PROCEDURE

Remarks of

HON. R. E. FREER, CHAIRMAN
FEDERAL TRADE COMMISSION

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It is always a pleasure to me to discuss the trade practice conference work of the Federal Trade Commission. Basically, the conference procedure represents machinery within Government under which Government and business can cooperatively evaluate and discuss commercial practices. The objective is to promote law observance. The conference procedure invites industrial statesmanship and affords 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 forces for good 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.

When Congress created the Federal Trade Commission in 1914, 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.

The language of the statute is broad and flexible. This is another way of saying that Congress did not attempt to detail specific unlawful practices. 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. These volumes now number forty-one. The trade practice conference procedure was established in 1926, and was designed to comply with expressions of preference for more certainty of standards and for a ready reference point to concrete guides.

Complaints of a violation of law on the part of an individual concern are handled by the Commission's Bureau of Legal Investigation. If during the course of investigation, 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. In such event, formal corrective action might necessitate a multiplicity of time-consuming separate proceedings. In lieu of this, 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. But the conferences 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 an application will be granted is the possibility for real good in advancing the best interests of industry and the public. As you doubtless are aware the conference for your industry was initiated at the request of industry members. The result was the issuance of rules in September 1941 designed to eliminate and prevent such unfair trade practices as existed at that time, and I feel sure that the rules have always been and will continue to be a powerful force for good in the industry.

Rules have been promulgated for over 160 industries. Administration, after their promulgation, has as its object the maintenance of continuing cooperation between the Commission and the industry to promote law observance. The rules for some industries create a committee on trade practices to cooperate with the Commission and to perform such acts as may be legal and proper to put the rules into effect.

Plans for increased utilization of this cooperative compliance procedure under rules are high on our agenda, and deserve the great emphasis now being accorded them. Our goal is to bring about the maximum voluntary observance of approved trade practice rules, and the maintenance of a close liaison with industries under rules in order to ascertain rule violations in their inception and stop them promptly. Surveys of industry practices from the standpoint of rule observance are also made and the interpretation and clarification of industry rules are undertaken so as to facilitate prompt and effective compliance.

In the event an industry member is engaged in an unfair trade practice contrary to the provisions of the Group I rules, the matter may be brought by letter to the attention of the Rule Administration Division, Bureau of Trade Practice Conferences and Wool Act Administration for immediate consideration and correction. If correction cannot be had appropriately and immediately through voluntary means, the matter is reported to the Commission with recommendation for appropriate corrective action.

It might be interesting to note some of the alleged infractions of your industry rules which have received the Commission's attention. In some instances persons engaged only in selling industry products have represented falsely that they were manufacturers. Others have offered for sale industry products at "reductions" from what were in fact fictitious prices. Some occasionally have represented split leather and substitute products containing no leather as made of genuine leather. In addition, there have been instances in which sheepskin products have been represented as cowhide, imitation brass locks as brass and part cardboard frames as wooden.

A rather interesting matter called to our attention involved the use in billfolds of zippers made in Japan which were marked "Made in USA." Inquiry developed that in view of customs laws and the prejudice in this country against Japanese goods, a town in Japan had been named "USA."

I feel reasonably sure that most of you are familiar with the provisions of the rules for your industry. However, it might be interesting in passing to note some of their more important provisions.

The important matter of "split leather" is covered in Rule 2. If an article contains so-called split leather, or leather other than the top grain, an appropriate stamp, tag, or label should show that such leather is split or cut from the underside of the hide and is not top grain leather, as for example, "Split Cowhide." If an article is made in major portion of top grain leather with the exception of certain distinct sections or parts, such as partitions or gussets, which are made of a different kind of leather, the stamp, tag or label should show that the leather in the product is all top grain of a designated kind with certain other kind of leather or material in designated parts, as for example, "Top Grain Cowhide with Split Cowhide Gussets and Partitions."

Rule 3 covers deceptive practices as to animal designations, aniline finish, graining, embossing, processing, buffing, hardware, etc. For instance, this rule inhibits representing that a product is made of a certain kind or type of leather, when it is in fact composed of leather of a different kind or type; or that any leather is from the hide or skin of a certain animal when in fact it is from a different animal, as for example, "Walrus Grained" on leather which is not walrus, or "Calf Finish Leather" on leather which is not calf.

The misuse of the terms "Genuine," "Real," "Natural," "Selected," "Warranted," etc., are prohibited by Rule 4. Such expressions or representations of similar import may not be used as descriptive of split leather or of leather which has been embossed or processed to simulate a different kind, grade, type or quality of leather, or of any simulative, imitative or substitute material, where deceptive tendencies or effects are involved. If time permitted we could make a very interesting and possibly profitable analysis of other rules.

Actual 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. An important industrial group, after adopting a set of trade practice rules, advised the Commission of a double effect observed:

> "In the first place, it gives an industry a set of regulations to guide them in their business activities. In the second place, it causes the companies in an industry to scrutinize their practices more carefully."

Turning now to general policies which guide the Commission and its staff in originally framing rules before promulgation, those of you who participated in your own industry conferences 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 always 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.

In the last analysis, 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 of capitalistic economy.

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