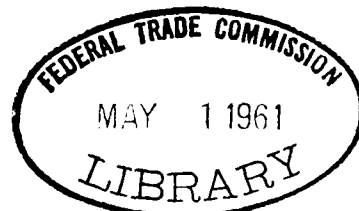


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A SURVIVAL KIT FOR BUSINESS

Statement by Earl W. Kintner of Arent,
Fox, Kintner, Plotkin & Kahn, Washington,
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I.

A cynic can be a delightful company during an interlude of relaxation. Mordant wit often can illuminate the follies of mankind with penetrating accuracy. However, when the time for observation is over and the time for action comes, I find the company of cynics to be less than pleasant. In the realm of action cynicism often becomes an excuse for inaction, a mask for defeatism, a cloak for paralysis of the will.

Now that the scandals unearthed within the communications industry have been exposed to public

view for some time the cynics have been in full cry. No lasting improvements or reforms will be made in the world of advertising, they say. Some of these cynics are the very men who must act if advertising is to operate in an improved moral climate. Other cynics include leading economists who have seized upon advertising's troubles of the past two years to renew their attacks upon the value of advertising to the American economy. Their eyes turn toward a planned economy in which advertising would be a poor relation, if not the enemy. Of greatest moment is the fact that the ranks of the cynics have been augmented by a host of aware and intelligent citizens.

I disagree with all these cynics, in and out of the industry.

Advertising is as susceptible to principled performance as any other form of economic activity. The rewards for ethical conduct are great and the dangers of unethical conduct are very apparent. The first such danger is the smoldering anger of the American public over shoddy advertising. Although this public indignation

is not headline news every day, from my vantage point of the past two years I can assure you that it continues to be strong and deep. A surprising number of people have commented to me about the negative attitude that deceptive or tasteless advertising generates in them. Confronted with an advertisement designed to evoke a favorable attitude toward a product, these people often form a quiet resolve not to buy the product because of the offensive nature of the sales message.

Advertising is not a shell game. Good advertising informs; it does not deceive. These simple observations are truisms. Like many truisms, the great danger is that the truth may be so self-evident that it is ignored. It is almost presumptuous of me to remind this group of creative advertisers of these simple maxims. However, in any area there is a periodic need to re-examine first principles. As I have just indicated, in advertising this re-examination must take place in the context of a new evaluation of the American audience. That audience grows better educated and more sophisticated day by day. The proverbial advertiser who addresses all

of his messages to twelve year olds continues to do so at his peril. A brief backward glance is sufficient to highlight the sharply rising level of taste and sophistication of the American audience.

James Webb Young, a great advertising pioneer, discussed a 1913 advertisement of Postum in a recent article in the Saturday Review. The ad points out the advantages of Postum over Brazilian coffee, attributing the following ills to coffee:

". . .Sallow Complexions; Stomach Trouble;
Bad Liver; Heart Palpitations; Shattered
Nerves; Caffeine, a Drug: Weakness from
Drugging."

Mr. Young then quotes a judgment on the changes that forty years of education bring: "We doubt if the present owners of Postum would OK copy like this today. Even if they did not own Maxwell House." Mr. Young's example is not an isolated one. Any of you that have read the AMA three volume series Nostrums and Quackery, or Skindeep, or Turner's The Shocking History of Advertising! or Holbrook's The Golden Age of Quackery

know that the incredible claims of yesterday would not convince today. Every increase in culture, every advance in education, every exposure to wider experience places an additional seal of doom on shoddy, tasteless and irresponsible advertising. Despite the appearance in recent years of some very sophisticated institutional advertising, I sometimes feel that advertisers are the last to weigh the American audience at its true value. Certain it is that today's consumer is aware, and that he resents being patronized as an unsuspecting boob.

Some of you may say, "Oh well, this storm will blow over like so many others have in the past." This attitude is a mistaken one. The present threat to public confidence in advertising, while considerably abated by the massive self-regulatory efforts made by advertising at all levels during the past two years, is still deep and broad. It would be as dangerous to ignore the indignation of the American audience as it would be to insult its intelligence.

If any of you believe that the storm has now blown over and that advertising no longer suffers ill repute

among our citizenry you will find the current survey of attitudes toward advertising appearing in Advertising Age to be stimulating -- and shocking -- reading.

II.

This cynical attitude among the public can be abated.

Somehow the advertising industry must do as effective a job in explaining the essentiality of advertising in a consumer-oriented economy, its role in the creation of jobs, its role in the establishment of new markets and new products, its role in raising the standard of living, as the industry, through its Advertising Council has done in promoting Smoky the Bear and explaining the necessity of public purchase of savings bonds. This task calls for serious effort. To concentrate on some short-sighted effort to create facile prestige for advertising would be a serious mistake. Prestige does not exist independent of stature. Prestige is only a reflection of the social utility of an individual or institution. Advertising has real social utility, real economic utility, but it is obvious that its utility has not been fully rationalized and communicated in meaningful terms.

One difficulty may be that in attempting to communicate the utility of advertising to the public admen often unconsciously address themselves to other admen. Many addresses, articles and books present telling points that are meaningful to the general public, but these worthy points often are obscured by the inclusion of some of the comfortable shibboleths and familiar jargon of the industry. A fundamental proposition of advocacy is to make the argument meaningful to the people you are seeking to convince. Demonstrating one's orthodoxy as a member of the "in groups" should be reserved for "in group" meetings.

III.

A cynical public attitude toward advertising is dangerous. Cynicism within the advertising industry also constitutes a great danger. A cynic, doubting the honesty of his competitors, is easily tempted to sail as close to the wind as he can. And if one cynic yields to this temptation then many others, including some otherwise well-intentioned and upright men and women will also yield, because it is very difficult

to refrain from fighting fire with fire in a hot competitive battle. Well, fighting fire with fire may wipe out the temporary gains of an unscrupulous competitor, but bear in mind that the competitive struggle then shifts to a lower plane. And people are watching! Those who already had a low opinion of advertising are presented with new evidence to confirm their opinions. And many new recruits enlist in the ranks of the cynics.

And what of the upright advertiser who adheres to his principles and refuses to fight fire with fire? Hopefully, public awareness of deception will be his ally. Hopefully, governmental sanctions will be applied to his amoral competitors before his plight becomes serious. But if the upright advertiser emerges from the crisis bearing scars he may turn bitter when the next crisis arises. If this bitterness is allowed to compound then the level of the industry inevitably will sink. And if the level should sink an aroused public will demand that tighter and tighter controls be imposed upon advertising.

IV.

My interpretation of American economic history is that many devices for governmental regulation of business have been developed only after a protracted demonstration that free entrepreneurs had failed to discharge their responsibilities for the furtherance of the national interest in a given area of concern. The history of our antitrust and trade regulation laws illustrates this point.

The cardinal element in the structure of the American economic system is that economic problems will be resolved by the interplay of free competitive forces and that competition in the market will be conducted fairly. Monopoly and unfair competition war against that principle. A market ceases to be free when predators are able to deny entry to the market to struggling new enterprises, to damage competitors by foul means or to unilaterally set the conditions of trade. In the late 19th century, it became painfully obvious that private efforts could not impede the transfer of market power from diverse and disparate

competitive entities to the trusts. Therefore, the national interest in free enterprise demanded the creation of the antitrust laws and the vigorous enforcement of those laws by the government. Early in the 20th century, it became glaringly obvious that the freedom of a few to engage in shoddy trickery denied the benefits of a free market to honest competitors and trusting consumers. Again, the national interest required the intervention of government, and the Federal Trade Commission was empowered not only to prevent monopoly but also to insure fair competition.

Examples could be multiplied, but this one example teaches us that strictures on the exercise of power by business -- limitations on the freedom of businessmen -- often have been the result of failures by business to discharge its responsibilities for the protection of the public interest without governmental intervention. The lesson is that business cannot operate unrestrained in a free society. Business must either act in self-restraint to further the public interest or have restraints imposed upon it.

The failure of business to discharge its responsibilities is not the sole reason for the rise of Big Government in the 20th century. Doubtless there have been, and now are, many who see absolute values in a statist system. These disguised totalitarians will not wait for a demonstration of irresponsibility by business to press for further governmental controls. At least a part of the rise of Big Government is attributable to them. However, as I attempt to foresee the future of our free economy I do not greatly fear the apostles of statism. The American people are not easily gulled by assertions that Washington is the fount of all wisdom and therefore should be the source of all power. I think that the American people have an abiding faith in the benefits of a free enterprise system. I think the American people will place further limitations on that system only if that faith is badly abused. And the responsibility for justifying that faith rests upon every American businessman.

V.

The plain duty of every businessman to protect the free enterprise system by avoiding shady dealing is reinforced by compelling considerations of self-interest.

I maintain that the keystone of our great system of distribution is reputation. Think for a moment of your daily purchases. I am willing to bet that in the vast majority of your daily purchases the thing that you are really purchasing is a reputation. It may be the reputation of a manufacturer or the reputation of a retailer. It may be the reputation of a person whose advice is valued. But in each case, reputation bulks large in the transaction. Indeed, the brand name concept is based upon reputation. Why would an advertiser spend millions to spread its name and the virtues of its product if not to acquire a reputation that will furnish the basis of a multitude of fruitful continuing business relationships? It would seem beyond dispute that any businessman who seeks to make more than one sale to the same person must value his good name beyond all else.

It is true that in the not so long ago the American hinterlands were full of drummers who descended like lightning upon a community, sold an entire stock of goods and then disappeared over the horizon never to return again, thereby escaping the wrath of infuriated

consumers. It is also true that some of this sort of bilking still exists. But in this day of rapid communication, isolation and ignorance are no longer the potent allies of predators. Means now exist to detect the business crook, and laws now exist to punish him. However, the rapid communication that now helps to foil the trickster presents dangers to the honest businessman as well. Now a momentary lapse from the strictest standards of honesty can imperil a reputation that was many years in the building. Since reputation is so valuable, since so much of our trade depends upon reputation, it behooves every businessman to guard his reputation zealously. Americans defend the profit system on the ground that profit is the legitimate reward for the assumption of risks. Certain it is that the entrepreneur must boldly embrace those risks which promise adequate potential reward, but it is also a part of the duty of the diligent and prudent entrepreneur to shun avoidable risks. The risk of the inconvenience and expense of a legal proceeding, the risk of legal penalties and the risk of loss of good will and reputation

that are the result of a violation of the laws guarding consumers and honest competitors are avoidable risks. The careful businessman can safeguard his enterprise by careful adherence to the requirements of law.

And we must not forget that every businessman has a duty to the free enterprise system itself in addition to the duty that he owes to his stockholders. A demonstration that individual entrepreneurs can safeguard the public interest in the absence of the massive controls of a police state vindicates the cause of freedom.

Those businessmen who operate the distributive phase of our economy -- those who advertise and sell in the consumer market -- must bear a special responsibility of compliance with the law. This is so because the American public has more contact with this phase of our economy than with any other. The average citizen forms his impressions and expectations of our system as he hears and reads the advertisements urging him to buy and as he purchases and uses the abundant goods produced by our complex economy. Judge for yourself how many people wade through dry tomes on economics

in any given year and compare this with your estimate of the number of advertisements the average person is exposed to during the same period and then conclude for yourself what is the major source of most impressions of our system. The awesome power of advertising suggests the awesomeness of advertising's responsibilities.

VI.

A safe course can be steered between the Scylla of an unregulated, low-level competitive brawl and the Charybdis of massive governmental control. To hold that course advertising men and women must accept the responsibilities that inevitably accompany the enjoyment of freedom and regulate themselves in the public interest. In that path lies survival.

The nation's antitrust and trade regulation laws mark the path of responsibility. Those who would accept their responsibilities, and thus earn their freedom, must do two things: First, learn the requirements of the laws guarding our free economy; second, comply with those requirements. Compliance with the spirit as well as the letter of those laws is a necessity.

Fortunately, means to ease the task of education have proliferated in recent months. Any businessman who honestly seeks to develop a working knowledge of the pitfalls of deceptive advertising now has plentiful sources of information close at hand.

I am gratified that the Federal Trade Commission, during the period of my chairmanship, measurably extended its educational efforts. The expanded guides program, the new technique of area-wide business seminars and increased assistance to national and local advertising groups all marked this increased effort.

A tremendous educational effort has been forthcoming from the advertising industry itself. The up-dating and revising of the codes of most of the national associations, the new Advertising Truth Book of the AFA, and the development of codes of ethics by local Better Business Bureaus and advertising clubs have all contributed to a new age of enlightenment in advertising. And the efforts of the media in improving the educational climate deserve special mention. Just last week I received a copy of the new standards of acceptability

of the Detroit News. These standards are emblematic of a nationwide effort by the media to revise standards in the light of changed conditions. The Detroit News standards combine principles from the latest FTC guides and decisions, the Advertising Truth Book, and the latest studies of the Better Business Bureaus. I am proud that I could furnish a small contribution to this outstanding work.

Marked progress in accomplishing the second task facing honest businessmen -- that of complying with the laws denouncing deceptive practices -- has gone forward with remarkable speed and effect during the past eighteen months. No recount of the massive efforts of the great national associations of your industry -- the four A's, the AFA, the ANA, and the Association of Better Business Bureaus -- is necessary here. Their efforts are comparable to the efforts of the advertising industry to gain the passage of the Printers Ink statutes. I am particularly concerned with the efforts of local advertising clubs and Better Business Bureaus to establish thorough-going programs of compliance at the grass roots

level. It seems to me that programs of this character are indispensable if the taint of deception is to be banished from American advertising, and I think that the advertising men and women in a host of American communities have clearly recognized the importance of grass roots compliance. An industry ruled by free imaginations can value freedom well. Advertising groups in communities throughout the nation have clearly recognized that the public's clamor for truth in advertising must be answered, if not by them then by government. In a host of communities, ethics committees and advertising panels have been revitalized or new ones established. Local media, advertising agencies and advertisers have joined together in a common cause to fulfill the responsibilities of a free industry.

VII.

I have mentioned two potent reasons for a strong industry-wide effort to attain voluntary compliance with the law, but I would be remiss as a citizen if I failed to mention a third reason. At this critical juncture in the war of ideologies every American must

be concerned not only with preserving the free enterprise system within our borders, but extending that system throughout the world. I do not think that we can consider too often how much damage to our international influence can be caused by shady dealing in American business.

Far more damage can be caused than the facts in any given case warrant. Our detractors make skillful use of the propaganda trumpet. With a squeaky fact at one end, they can produce a triumphant blast out of the other. It is a blast that can be heard by credulous ears. Our detractors ignore the self-discipline of a thousand law-abiding businessmen while they herald the chicanery of one. And this one, our detractors shout, is free enterprise in action.

Unjust? Of course it is. We become indignant that our competitive system should be so misrepresented. The very strength of our economy should be a refutation that immorality built it. But, in typical American fashion, our indignation searches for a comforting explanation -- preferably one that avoids personal

involvement in any corrective action. With a shrug, we tell ourselves that business since the days of the Phoenicians has never been without its larcenous few and never will be.

To some, this philosophy may be comforting, but not to me -- particularly at a time when individual freedom and state slavery are locked in a battle for the minds of men. We cannot afford to shrug away our weaknesses -- minor though they may be in fact and in proportion to our virtues, they are not minor through the trumpets of our enemies. And the whole world is listening.

The integrity of our business community can be impeached by an amoral element. But the impeachment can be lifted if business will exercise those great privileges of freedom -- self-discipline and acceptance of law.

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