

THE CONSUMER LOOKS AT ADVERTISING

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At the outset, I would like to preface my remarks with the statement that the views I express today are my individual opinions and are not necessarily the views of the Federal Trade Commission.

In order that you may understand our Agency's interest in advertising, let me tell you something about its origin and its responsibilities.

After the Sherman Antitrust Act was passed in 1890, it soon became apparent that its powers could be used only after an illegal restraint of trade had occurred. Obviously, a need still existed to halt trade evils in their incipience. This led to the passage of the Federal Trade Commission Act in 1914, which created the Agency and gave it a fundamental mandate to prevent as well as stop abuses of fair competition in interstate commerce.

Despite the fact that the Commission was thus closely tied to the enforcement laws against monopolistic practices, it moved into the advertising business early. Thus, the first Court case in which the Commission was a party was a false advertising case. The Commission in this case and all other false advertising or misrepresentation cases until 1938 acted under its power to prevent unfair methods of competition. In other words, the legislation at this time was directed toward protection of competitors rather than consumers. In 1938, the law was amended to authorize the Commission to prevent "unfair or deceptive acts or practices in commerce" so that the consumer's interest was recognized by statute.

This Congressional recognition of consumer interest appeared in another 1938 amendment to the Federal Trade Commission Act which made the dissemination of false advertising in commerce for the purpose of inducing the purchase of food, drugs, devices or cosmetics an unfair or deceptive act under the Act.

Likewise the Wool Products Labeling Act, the Fur Products Labeling Act and the Flammable Fabrics Act recognize the consumer's interest in truthful advertising or labeling of goods. The Wool and Fur Acts and rules under them prescribe requirements for labeling, advertisements, and other representations concerning wool and fur products. The Flammable Fabrics Act is the torch sweater act -- it authorizes the Commission to prohibit the introduction into interstate commerce of wearing apparel which is flammable within the meaning of the law.

These are the laws. The body charged with their enforcement is the Federal Trade Commission.

The Federal Trade Commission

The Commission is a bi-partisan agency. Not more than three of its five members can be of the same party. Its members are appointed by the President, subject to Senate confirmation, for seven-year staggered terms. The President also names one Commissioner as Chairman. The Chairman has the added responsibility for directing the Commission's staff.

The Federal Trade Commission is empowered to move against unfair methods of competition and unfair or deceptive acts or practices in interstate commerce. The Act also empowers the FTC to make antitrust investigations and to bring necessary corrective action. Under this act the Commission can issue a complaint. Thereafter hearings are conducted, and, if the facts warrant, the Commission can order the complained-of practice stopped.

The Federal Trade Commission Act is of broad coverage. Unlike the Clayton Act, which is directed at specific practices, the words "unfair methods of competition" and "unfair or deceptive acts or practices" in the Federal Trade Commission Act have been construed by the Courts to cover a wide variety of activities, ranging from price fixing, allocation of territories, and other monopolistic practices, to false advertising, disparagement, and other types of misrepresentation.

The Commission has the broadest jurisdiction of any federal regulatory agency. Its work affects the business like of practically all of American industry engaged in interstate commerce. The success of its procedures will have a very definite bearing upon the business health of America.

When one pauses to consider that our national income has increased from \$36 billion at the time of the formation of the Commission to last year's all-time high of \$387 billion in national production, and that total expenditure for advertising when the Commission was created was \$250 million annually, whereas it now has reached approximately \$8 billion, the magnitude of the task which has been given to the Commission by the Congress becomes readily apparent.

This summation is not in the nature of an alibi. It is but an effort to show something of the nature of the problem confronting the Commission.

Other Limitations on Commission's Work

The consumer should know, I believe, something more of the limitations on the scope of the authority of the Federal Trade Commission.

The Commission was created under the power of Congress to regulate interstate commerce. There, therefore, must be interstate commerce before the Commission has authority to act. Generally, this means that purely local transactions and advertisements concerning them are not within Commission jurisdiction.

The Commission's remedy is an order requiring the respondent to cease and desist from the practice in violation of law. It cannot collect money damages on behalf of a person injured by the practice or for the Government. The cease and desist order can be obtained only after it is proved that the law has been violated. The burden of proving the deceptiveness of the advertising rests on the Commission.

The law also provides that the Commission must find that there is public interest in its acting. In other words, there must be some substance to the practice.

These limitations mean that the consumer is not insulated from false advertising. They mean that he is not entirely protected from his own foolhardiness or credulousness either before or after the act by the Federal Trade Commission. This, I think, is as it should be. We are not a paternalistic state. Advertising is a tremendous force in the development of our country, our standards of living. Very little of it is deceptive. To hamper the whole to control the few would be, I feel, disastrous.

This does not leave the consumer without guidance. The advertising we have dealt with falls into patterns. It is repetitious and past actions are of educational value. It indicates some guide posts.

I. Don't buy the switch. Don't be taken in by "bait advertising."

We can cite the recent case of a New Jersey widow baited by a \$29.50 sewing machine. She reasoned that she could eke out this amount from her \$80-a-month income, and, in the long run, pay for it by making her own clothes.

Seeing the machine advertised in a local paper, she telephoned the appliance store selling it. A salesman arrived at her home, without the "bargain" machine -- the store was out of them at the moment -- but he asked for and got a \$10 deposit. Several days later, he brought her the advertised machine. The widow tried to sew on it, but she testified she couldn't use it because "it jumped all over the table."

The salesman, of course, had another machine with him for \$169 and the down payment would, by happy coincidence, amount to just \$29.50. Cheap at the price, too, he confided, because there was a scratch on it. Bewildered she paid the remaining \$19.50.

The ensuing payments were too steep for her and her machine was taken away. There was no refund of the money she had paid, and no home made clothes to repay her over the long run. Bait advertising had claimed another victim.

The firm, however, had reckoned without the Federal Trade Commission and the widow's testimony --- and that of other victims. Today, the store is bound by a permanent cease and desist order by the Federal Trade Commission to stop bait advertising under threat of a \$5,000 per day penalty.

Essentially, bait advertising is the practice of offering at a spectacularly low price a product or a service the seller is determined not to sell if he possibly can avoid it. His purpose is to establish direct contact with people who want or need the product or the service, then sell quality products at regular and much higher prices. He will go to great lengths to avoid selling the "bait", always disparaging it, sometimes sabotaging it, and even flatly refusing to sell it.

Bait advertising, the FTC has found, is most prevalent in the sale of sewing machines, vacuum cleaners, furniture, electrical appliances and in radio and TV sets. It also exists in repair services, particularly for radio and TV, in which the advertisement offers cheap servicing simply as bait to get names and addresses of customers for expensive repairs.

While no single warning sign on bait advertising is evidence that it exists, the following facts should alert a buyer to be on guard against high pressure salesmanship.

- (1) A product priced at a startlingly lower price than that charged for the same kind of product at other stores.
- (2) Reluctance on the part of salesmen to show the advertised product.
- (3) Disparagement of the advertised product and insistence by salesman on showing more expensive types.
- (4) Explanations that the advertised product on hand is only a floor sample ("nailed to the floor") and that long delay will be encountered in getting others like it.
- (5) A sell-out of the "bargain" in a suspiciously short time, "but let me show you something else even better"

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II. Bargain hunters, beware.

Look askance at bargain prices far below the "regular" prices, the value of the product or the price on the merchandise.

This practice operates in many ways but its basis is the fabulous reduction from the regular price. Manufacturers may pre-ticket their merchandise at prices far above the normal markup from their sale price and put in the hands of the retailer the tools for misleading the consumer. Our orders cover almost 100 different commodities ranging from tombstones to toothpaste and I don't mean alphabetically.

Bargains are indicated by advertising that sales are distress, bankruptcy or close-out; that prices are special, reduced, introductory, factory or wholesale.

The perfumes marketed under fancy French names but actually American made were, generally, in these sales schemes advertised in a summer issue of a leading fashion magazine at \$20 an ounce or a similar price. Reprints of this advertisement were then furnished to pitch men who peddled the perfume at very low prices. It has been common that bargain perfume is sold to businessmen for Christmas gifts to their employees. Much also found its way to the counters of retail stores where it was displayed in conjunction with prints of the ad.

III. "Look before you leap" -- this, of course, is a generally wise maxim but I have several Commission cases uppermost in my mind.

First, there are the Easy-to-Learn Big-Pay assurances of high pressure schools.

Principal offenders are official sounding civil service training schools that "guarantee" government jobs to graduates, home handicraft schools that promise exciting profits for easy-to-learn skills, and mechanical training schools that claim diploma holders need only say "yes" to the impatient employer waiting in line for their graduation day. In addition, spellbinders exaggerate the learning ease and riches of motel management, nursing, horticulture, and even medicine -- all out of a mailbox; and, of course, others are the "professors" who with a mimeograph machine and enough tuition can develop your latent musical genius.

Favorite fast talk by salesmen also includes such assurances as that graduates will be exempt from military service, that "only selected persons" are being given the chance to enroll, that tuition is so cheap because "your record entitles you to a partial scholarship," and that this opportunity to enroll must be acted upon immediately or lost forever. The hungry salesman sees genius in all youths too young to sign a contract and so informs the parents.

It is true that a selected list is often used, but the selectivity is on the generous side, such as war veterans and high school graduates. The partial scholarship gimmick is a method of glamorizing regular tuition, and the act-now-or-lose-the-chance warning is the salesman's way of saying he's short on pocket money and could use a down payment. This he gets when the contract is signed. The collection of the rest of the tuition is not his worry. Indeed, a common practice is for the spurious correspondence school to sell the contract to a third party, then shrug its shoulders when the disillusioned student demands his money back.

In addition to the salesman's pitch, deception is employed in advertising, both directly and indirectly. A one-man faculty "college" in Oklahoma City recently

Second, the Commission issued trade practice rules interpreting the law as it applied to advertising of health and accident insurance policies. In addition, the National Association of State Insurance working with responsible elements in the insurance field, wrote a standard set of rules governing health and accident ads. This now has been adopted in many States. As a result of all of this, there has been, we feel, a great change for the better in this advertising.

The advertising that was questioned fell into several typical categories. Not all of these categories applied to each company sued.

One question was whether a buyer could keep the policy as long as he wished. Ads sometimes said, "You are covered indefinitely!" "Protection to age 65." "No reduction in benefits regardless of age." All of these phrases have been used to describe policies that are cancelable at the option of the company.

Although most health and accident policies exclude any illness "traceable to a condition existing" when the policy took effect, ads often said, "We accept your statement on your present health" or "No medical exam required."

Advertising such as "\$100 a month when you are sick and unable to work" was issued for policies that contained all kinds of exceptions covering many types of sickness which prevented the policy holder from working.

Similar exclusions as to various types of accidents were applicable to policies which were advertised with phrases like - "Every accident," "Benefits when you are injured."

Statements such as "We pay up to \$1000 for surgical bills, up to \$1500 for hospital expenses" were found generally not to mean that the full amounts of bills for lesser sums would be paid. Instead policies, more often than not, contain schedules of amounts payable for specified operations and provisions for certain maximum daily and total hospital charges.

All of this does not mean health and accident insurance is a fraud. It means simply that the consumer cannot rely on an advertisement or a part of an ad to find out what he's getting. He should read the policy and determine whether it affords the coverage that he needs.

IV. Beware of Nostrums

In 1914, when the Commission was created, newspapers and magazines were full of advertisements promoting patent medicines that cured all. Today this type of advertising has greatly decreased in those media.

However, a new medium has been found - television. It's in the house without the problem of getting through the front door.

At all hours of the day, men in white coats -- looking like physicians, dentist, pharmacists -- tell you that you need no longer suffer from arthritis and its effects. You're told that this product rubbed on the body over the afflicted joints and it penetrates into the joint and lubricates it. Following investigation which developed information indicating that it was questionable whether the salve acted as advertised, complaints were issued. This is, however, the type of representation that requires scientific tests to prove its falsity. Of necessity, the tests are not performed in a day and the advertising continues in the meantime.

The consumer, of course, can best protect himself by consulting his physician. This pictorial advertising is new. With its vast audience, it has been most effective and is a vital part of business today. To its potentialities, we owe a debt for our television entertainment.

We at the Commission appreciate this. However, we have also noted the excesses of some advertisers as above. This extends far beyond arthritis cures into bait advertising, fictitious pricing, etc. The use of pictures and ad libs had made the sampling of scripts used by us previously an ineffective method in this area. We, therefore, have initiated a nationwide program of spot monitoring and recording of advertising. The arthritis matters, that I mentioned are an outgrowth of this program. We are sure that others will be forthcoming.

There are, I should emphasize, several things the FTC will not do to TV advertising. We will not censor it for good taste; we will not control the volume of advertising; we won't prevent the honest, high-pressure sales talk.

In conclusion, I doubt that a consumer can be fully insulated. If he uses commonsense, learns what he can about what he is buying and whom he buys from, he has done his best.

If he finds false advertising, whether he is a victim or not, he should report it to his Better Business Bureau or to the Federal Trade Commission.