

PROTECTING CONSUMERS FROM FALSE AND MISLEADING ADVERTISING

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I am happy to be invited to speak to you tonight. I have great admiration for the work of the Council on Consumer Information. To speak to you is an honor and I hope to rise to the occasion by telling you about some aspects of my work which relate to yours and may be of some interest to you.

Senator Estes Kefauver recently referred to the American consumer as "the forgotten man in our governmental structure." In introducing his excellent new bill, known as the Consumer Act of 1959, Senator Kefauver pointed to the fact that the "American consumer is losing the battle to inflation." Tonight I want to talk to you about another enemy of the consumer - false and misleading advertising.

I want to make it clear at the outset that I am not a foe of advertising or its media. I am convinced of the useful role of advertising in our society and to our economy. The creation of new and better tools and comforts gives employment to our workers, and the publicity educates them as consumers as well.

As a Congressman, I have to inform the voters from time to time about my ideas, my plans and about the work in progress. For this I use several of the advertising media. So you can see that I am in no position to condemn advertising as a whole. But just as I try to be truthful and candid I expect advertisers to be frank in theirs. Since none of us is an angel, we all will make mistakes -- if I make them, my opposition will point them out. If a commercial campaigner makes mistakes, it is the job of the Federal Trade Commission to hold him to the truth. The Commission has its hands full with that, and labors under many handicaps which can be summed up in one word: money, or the lack of same. But even with the available funds they do not always do as well as they might, and my subcommittee was there to point out these deficiencies.

So please keep in mind that our responsibility was the efficiency of the FTC -- and of that efficiency the deeds and misdeeds of advertisers are the measure. We were not equipped, and did not claim to be able, to evaluate products as such; we could only call on experts to do so for us, and while they may have disagreed, we were able to compare the advertising with their evaluation of the product.

When my Subcommittee on Legal and Monetary Affairs of the House Committee on Government Operations recently examined into four areas of FTC activities, it found the FTC wanting in all four.

My Subcommittee concerned itself with FTC efficiency in the field of false and misleading advertising for weight-reducing preparations, dentrifices, prescription tranquilizing drugs, and filter-tip cigarettes. This evening I want to briefly discuss our findings with respect to certain of the products which typify the over-all problem of false and misleading advertising.

Cigarette Filters:

When the sale of cigarettes dropped a few years ago for the first time in over a decade, cigarette manufactures attempted to counteract the trend by the wholesale adoption of the filtertip, supposed to remove the elements in tobacco smoke that seem to be a danger to health.

The stiff competition between the various cigarette brands to reclaim their share of the falling market resulted in extreme claims for the effectiveness of the filter, claims that seem to have reassured the smoker, if rising sales are a criterion. But are these claims true?

Nicotine and tar are believed to be the elements in tobacco smoke which are dangerous to health. But many of the filtertipped cigarettes of today actually contain more of these elements than they did when they first came on the market. Yet in June 1958 six prominent brands of cigarettes were all advertising "lowest tar content."

What is the consumer to believe? And what are the standards for measuring and controlling the potentially harmful elements in tobacco, and the truthful advertising of this information, of such vital concern to so many millions of citizens?

The power of the Federal Trade Commission is limited in controlling tobacco advertising because it does not have the power to ask a court injunction in this field, as it does in foods, drugs, cosmetics, and devices. In my opinion, the health problem of cigarettes has reached such a point that I believe it imperative to enact legislation empowering the FTC to request an injunction when it deems this action necessary. I have already introduced such legislation and plan to reintroduce it this year.

Weight-Reducing:

To weigh less, you must eat less. Overweight stems primarily from over-eating, or from eating fattening foods. To lose weight, we must reduce our food intake in terms of calories. Drugs and other methods may be an aid, but the primary method is diet. As the old gag has it: The only sure reducing exercise is that which consists of a firm grip on the table -- pushing back our chair when the second helping is passed.

This was the opinion of private and Government doctors appearing before our Subcommittee -- yet for several years the advertising media have resounded with claims of "no-diet reducing," and not until after our hearings did the FTC bestir itself to halt some of these deceptions.

When our hearings were held, the FTC had not proceeded against any falsely advertised weight-reducing preparations in over 12 years! In 1946, a U. S. Court of Appeals had decided against the FTC in a proceeding concerning AYDS, a caramel candy which is still widely advertised. Although the FTC itself criticized the case as "so very poorly tried," the decision deterred the FTC from further efforts to police this field until after our hearings.

While the FTC has not been protecting consumers against these unwarranted claims, a limited consumer protection has been furnished by the Post Office Department which can proceed only against fraudulent mail solicitation of money. The Post Office has successfully proceeded against over 40 phony weight reducers since 1955. The FTC, on the other hand, has jurisdiction over deceptive advertising through the mails (and elsewhere) regardless of money solicitation.

This division of jurisdiction provides some very anomalous situations. In 1957, the Post Office successfully barred Regimen from using the mails for its solicitation, but could do nothing about newspaper ads featuring the copy found objectionable in the Post Office proceeding, since no solicitation of money through the mails was involved. Similarly, the company could have utilized third class mails for its advertising with the objectionable copy, and the Post Office, in the absence of money solicitation, would have been powerless.

Since spring of last year FTC has instituted proceedings involving weight reducing products: "Pounds-Off" made by the General Products Corporation, "Hungrex" by the Alleghany Pharmacal Corp., "K-12" by the Practical Research Company, "Du-Sol" made by the Anderson Pharmacal Corporation, and "Regimen", by the Drug Research Corporation. In the action against "Regimen" the company's advertising agency was also joined as a respondent.

The Post Office Department in 1940 barred "Ayds" from mail solicitation and in July 1957 had successfully proceeded against both "Hungrex" and "Regimen." This is all the more significant in that the Post Office Department in its proceedings must not only prove that the advertising is misleading, but (unlike FTC) in addition, must prove the intent to defraud.

Besides being useless, weight reducers, especially those containing drugs, may be dangerous to the health of many stout people who suffer from other ailments without being aware of them.

Medical experts told the Subcommittee of a study of 6,000 overweight people which showed that 72% suffered from anemia, 18% from diabetes, 22% from heart disease, 37% from nervous or psychogenic disorders, and 7% from gall bladder disease. Each of these ills requires a special diet and medical attention; the self-medication and diet recommended by the weight-reducing nostrums, not specifically designed for the particular need, is an unnecessary risk to them.

The Government and the medical profession disagree as to over-the-counter sale of weight reducing remedies. The doctors claim that no one should take drugs to assist in weight reduction without medical supervision. The Food and Drug Administration contends that weight reducing drugs released for over-the-counter sale are safe provided the warning statements in fine print ("don't use if you have heart disease, kidney trouble," etc.) are observed.

The sale of phony weight reducers is big business, grossing an estimated \$100 million yearly - money taken from the pockets of consumers just as surely as by inflation or downright theft!

Dentifrices:

In 1957, over \$25 million was spent to advertise 12 top toothpaste "best sellers." The American Dental Association contends that much of this advertising has discouraged proper dental hygiene and that many of the advertising claims for dentifrices are misleading and may be detrimental to dental and general health.

Dr. Harry Lyons, Past Association President and Dean of the School of Dentistry of the Medical College of Virginia, told us that the "patient contributes to his or her mouth cleanliness chiefly by the skillful and judicious use of a suitable toothbrush, with or without a dentifrice..."

The assurance of elimination of bad breath by use of a dentifrice therefore creates a false sense of security and may be misleading.

Brushing the teeth after each meal is a prime requisite for good oral hygiene; advertising to the contrary, it was said, can only lead to poor dental health.

FTC Chairman Gwynne cited 34 cease and desist orders and 27 stipulations to discontinue objectionable dentifrice advertising. However, upon interrogation it developed that the most recent of these orders was handed down in 1951 and the most recent stipulation executed in 1947.

Chairman Gwynne after citing difficulties of proof referred to the lack of funds for testing facilities:

"We have never attempted to obtain an actual estimate of the cost that would be involved in such a study because of our budgetary limitations for such purposes, but we can easily envision the expenditure of \$25,000 to \$50,000 in the testing 1 or 2 dentifrices.

"These are the basic problems which the Commission faces in formal action against manufacturers of dental products. Solution of these problems is a matter of fundamental economics. If the Congress desires to buy for the public adequate protection in the dental product advertising field, it has it in its power to do so. The Commission ready to carry out the required testing program, but lacks resources to do so."

WHAT'S WRONG WITH THE FTC?

CAVEAT EMPTOR ATTITUDE: One FTC Commissioner told my Subcommittee that "it takes a person who is really gullible to believe many of these ads." If this typifies the FTC position on deceptive advertising, then we are at the mercy of every unscrupulous huckster. "Let the buyer beware" should hardly be the attitude of the government agency charged with protecting the consumer.

APATHY: FTC has stood idly by for 20 years while a provision of its "charter" has remained unclear and unused. Physicians in general are trained to diagnose and treat illness, but testimony before my Subcommittee casts serious doubt whether they are so sophisticated as to be advertising-resistant, or whether all have the time to analyze ethical drug advertising found in trusted sources. Certainly this is not a field to be completely ignored by the FTC.

PROCRASTINATION: Even where it has taken action against deceptive advertising, the FTC's enforcement record has been one of incredible delays. The average FTC enforcement process requires two years, in contrast to 6-7 months at the Post Office Department. Such a delay is much longer than the sales effect of the incriminated advertising, and a much more summary action is necessary to stop deceptive advertising. The Commission must streamline the various steps in its procedures if it is to have impact in this field.

LACK OF FUNDS: The FTC simply has not had the funds, and therefore not the facilities or the personnel necessary to meet the admitted difficulties of proof involved in FTC proceedings, as in every trial of an issue of fact. Additional money will be needed to enable the FTC to carry out a vigorous enforcement program against false and misleading advertising, especially in the advertising of medical products.

While insufficient appropriations appear to be primarily the fault of the Congress, we depend in fact on the federal agencies to apprise us of their operating difficulties and growing responsibilities. Unless they do so, we cannot intelligently provide additional funds.

WHAT'S TO BE DONE?

Our hearings on cigarette advertising have stimulated the FTC to require from the tobacco manufacturers scientific proof of their technical claims. This encouraging development could well be extended to dentifrices, tranquilizers or any product where advertising is capable of scientific proof.

A similar requirement could be the subject of a legislative change: to require food and drug advertisers to prove in FTC proceedings the truth of their advertised claims. Such a burden of proof is comparable to the proof required by the Food and Drug Administration before a new drug may be released and is preferable to the present burden of proof on the FTC to prove the falsity of a claim. It could result in a much needed infusion of vigor into the enforcement program against false and misleading advertising. In an area of business so intimately affected with the public welfare the privilege of doing business and advertising could well carry with it the obligations to sustain the truth of the advertising.

Another legislative change might make mail fraud orders issued by the Post Office Department binding in FTC proceedings, so as to avoid a retrial of the same issues.

Other areas of legislative change might include:

(1) Transferring to the Food and Drug Administration FTC jurisdiction over all food and drug advertising.

(2) Extension of Post Office powers to all fraudulent uses of the mails -- not only those involving money solicitation.

(3) Enjoining advertising media from carrying any advertising which has been the subject of an FTC order, once they have been notified of such an order.

While my Subcommittee was investigative in scope and had no authority to initiate legislation, I am hopeful that legislative committees of the 86th Congress will consider some of the problems pointed up in our hearings. The suggested legislative changes should give an effective degree of protection to consumers. I think they are entitled to it.