Proceedings of
THE NATIONAL AGRICULTURAL MARKETING CONFERENCE
Denver, Colorado
April 27-29, 1971

Sponsored by:
Consumer and Marketing Service, USDA
USDA and State Extension Services
Experiment Station Committee on Organization and Policy
Foreign Agricultural Service, USDA
National Association of Marketing Officials
National Association of State Departments of Agriculture
USDA and Cooperative USDA-State Research Service
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FOREWORD

The sponsoring agencies and the Program Committee express their appreciation to the speakers; the individuals who served as Steering Committee--Discussion Leaders for the various work groups; the Secretary--Consultants; and to those individuals who served as Chairmen of the various sessions. The smooth functioning of the Conference was due to work of many groups and individuals but particularly to the Colorado Department of Agriculture, the Colorado Extension Service, and the Colorado Experiment Station.

Copies of these proceedings may be obtained from the Matching Fund Program Staff, Consumer and Marketing Service, USDA, Washington, D. C. 20250.
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SOME FTC VIEWS OF CONSUMER CONCERNS
IN FOOD AND THE FOOD INDUSTRY

Jeannette M. Lynch
Consumer Education Specialist
Federal Trade Commission

It's a pleasure to be "back with you" after several year's absence--
I haven't been to one of your annual meetings before, but both at Cornell
University in New York and at Colorado State University, my work in consumer
aspects of food marketing brought me in close contact with some of you in
State Departments of Markets. Since that time I have taken note of at
least some of the ways you have been innovative and imaginative in trying to
be more responsive to consumer concerns in your food marketing work. I
applaud your interest in drawing up guidelines, drafting model laws and
otherwise upgrading professional performance in marketing and enforcement
work in the states. I applaud your interest in consumer choice and satis-
faction--indeed in asking someone from the Federal Trade Commission to
speak on a subject such as this today. At this point let me remind you
that my remarks are reflections of my own and do not necessarily represent
the views of the Commission.

As you may have noticed about two years ago applauds for the Federal
Trade Commission were noticeably scarce. Some said it was because the
Commission had lost touch with the consumer, with his concerns, his needs
and wants, his frustrations. In recent months the restructuring of the
Commission and adoption of some new approaches have resulted, in part, from
our deliberate effort to listen more intently for concerns of consumers and
to act to alleviate them.

I should like to share with you some of the "voices" we are hearing and
some of the ways the Commission is taking action.

Before detailing specific marketplace problems brought to the attention
of the Commission by various means, I'd like to suggest four large areas of
concern--four challenges to which the Commission is addressing itself--four
large areas of problems and concerns your Association might weigh carefully
in deciding upon directions.

First is the need for adequate grievance mechanisms. President Nixon
recognized this need in his consumer message to Congress this year. He is
setting up and naming individuals to serve on a National Institute for Con-
sumer Justice. The Institute is charged with looking into the adequacy of
existing procedures for resolving disputes arising out of consumer
transactions.

The second large area of concern includes the need for adequate consumer
representation, or advocacy, the need for adequate channels to seek redress.
Consumer representation in decision-making is inadequate, not only in
business, but frequently in government. The imbalance of buyer-seller
legal rights is the rule rather than the exception in today's consumer transactions. The average consumer cannot spend $200 out of his own pocket to get an adjustment or settlement on a $150 claim. Ways must be figured out to allow the buyer a fighting chance to be restored economically to the position he was in before he bought the product or service that fails to meet his reasonable expectations. For too long the consumer has traveled second class and has had to deal across the counter on a "take it or leave it" basis with the rules of the game built on a commercial code which at one time in the Western World permitted imprisonment for debt. (Leslie V. Dix, FTC, speaking on "Consumerism: Some Issues and Selected Remedies").

The third large area of concern is the need for informative, truthful, complete information--full and affirmative disclosure in advertising, in labeling, packaging, at point of sale.

The fourth area is the need for competitive pricing--price-quality relationships not controlled by monopoly or oligopoly--the need for a free, competitive marketplace for consumer goods and services.

Now for some specific concerns, particularly in regard to food and the food industry--concerns brought to the Commission by various means. I encourage you to classify them into one or more of the large categories just mentioned.

Voices echoed recently from Cleveland where 109 witnesses drawn from Cleveland's Spanish-speaking, white-Appalachian, white-ethnic and black communities testified at hearings set up by the Cleveland FTC office. Food and credit matters, according to the hearing, give Cleveland's low-income, inner-city citizen the most trouble in the marketplace.

Food led the complaints. Retail food operations topped all other types of business, receiving 23 percent of complaints. In second place were auto dealers, with 13 percent. The most common business practices complained about were deceptive sales practices and food pricing. Each received 13.5 percent of total complaints. Food quality received 10 percent.

Food complaints centered around: 1) inferior quality meats and produce sold in the inner city food stores; 2) increases in prices on "Mother's Day"--the day welfare checks are received; 3) price variations between stores in inner-city neighborhoods and white suburbia and 4) advertised specials not being available in inner-city food outlets.

The Cleveland hearings were an experiment. The Commission is experimenting with additional ways to keep its ear to the ground.

A computerized complaint collecting system is underway now in six of the largest cities. Pooling of complaints by all government enforcement agencies in those cities allows print-outs that can be analyzed and used to guide enforcement program emphasis, consumer education direction and efforts to fill the gaps in basic legal framework.

You may find some comfort in the fact that complaints about food and the food industry have been less conspicuous in the print-outs than such complaints
as failure to deliver merchandise that has been paid for, truth in lending violations, defective work or service, inferior merchandise, false advertising, refusal to grant referrals without prior notice such claims would not be honored. Lest you become too comfortable, however, I must point out that from correlating with zip code areas we know that very few of these complaints are coming in from areas with concentrations of low income and disadvantaged consumers.

The Commission continues to listen for "voices" through letters received by it and other Federal agencies and through the newspapers and other print media nationwide. I'm sure I need not remind you of the cereal controversy a few months ago before the Senate Commerce Consumer Subcommittee. It and other activities, including follow-up work on recommendations from the White House Conference on Food and Nutrition highlight the matter of providing adequate, useable information for the consumer. What is the nutritionally illiterate consumer to believe? How is he supposed to know which cereals, which bread, which meat product, which drink is most likely to keep the family fit? What about shelf life? Dating of perishables is high in concern of consumers in many market areas. Unit pricing as a step toward information adequacy has captured the concern of thousands upon thousands.

Twenty years ago Adelle Davis wrote "The number of refined and health-destroying foods on the market is appalling, and almost every radio and television program blares at your children to eat them" (Adelle Davis, Let's Have Healthy Children, Harcourt, Brace & Co., N.Y., Revised 1959, p. 271). Thus Miss Davis pointed out what has become a common cry--dismay over the "edibility gap"--the anachronism of the nutritional inadequacies in a nation of agricultural plenty--dismay over the "credibility gap"--the anachronism of informational inadequacies in a half century of the most rapid explosion of scientific knowledge in the history of man.

It's a pitiable state when a five year old responds to advertising as I heard described recently on a television show originating in one of our Washington stations which broadcasts primarily for District of Columbia residents, A father told how his five year old daughter, upon seeing the virtues of a doll extolled on a television program, turned away with this comment: "That's a pack 'a lies". The previous week, under persistence from his daughter, the father had bought one of the dolls. After one day's use it had stopped performing as the little girl had been led to believe that it would through the t.v. advertisement.

"What can you believe?" With multitudes of consumers skeptical now, the Commission is asking itself what steps it can take to restore confidence by seeing that full and adequate disclosure is made in advertisements, in promotional schemes.

Many of you work in guiding promotional programs for farmers and agriculture marketing groups. Are you as concerned as the Commission (and I might add the more progressive leaders in the advertising industry itself) about the way young consumers are questioning the role of advertising? They are concerned lest monopolies be created by advertising, concerned lest persuasion replace information, concerned with vulgarity and poor taste, with invasion of the right of privacy, with pressures to reduce consumer choice.
These sorts of concerns were raised at still another experiment the Commission has launched, an effort to build channels of communication with consumer organizations. In January representatives of such organizations were invited to a Consumer Dialog at the Commission headquarters in Washington. Knowledgeable leaders in the consumer organizations asked how the consumer interest best can be represented in government agency proceedings. At the Consumer Assembly the day following the Dialog, the Consumer Federation of America leadership spoke of the need for consumer organizations to follow through all the way with legislation passed in the name of protecting the consumer—from authorization to appropriation, and on to assure that so-called consumer representatives on boards and commissions and advisory groups truly represent the consumer interest. The outcry was against putting business advocates in charge of consumer protection.

Loud and frequent at both meetings were voices repeating this question: "How can we help individual consumers get their money back when clearly they have been victims of unfair and unjust marketplace practices?" Concern was expressed about industry concentration as it relates to effects of certain kings and degrees of advertising. "How much extra are consumers paying for basic food staples because of noncompetitive pricing?" was voiced.

More Federal Trade Commission involvement in the area of food was suggested by a Philadelphia-based consumer group which cried out against alleged price-fixing conspiracies in Philadelphia and New Orleans in bread and milk. The Consumers Education and Protective Association spelled out reform measures it believes the FTC should undertake. (The group's position paper was inserted in the daily record of Congressional proceedings by Sen. William Proxmire.) The CEPA organization urged the FTC to reclaim its key role as the Nation's major economic investigator.

The group accused the Agriculture Department of having "a plain conflict-of-interest in serving the public at large" as well as representing the nation's farmers. "Monopolies and cartels thrive under Agriculture Department supervision in such vital industries as milk, orange juice, etc." the group said.

Another recommendation sought more involvement of the FTC in problems of poor people and their buying staple products like milk, bread, cereals, soup, soft drinks, etc.—areas which the group said "are thoroughly monopolized either at the national level or in most of the major metropolitan areas."

From these sorts of voiced specific concerns, from the four large areas of concern are flowing actions on the part of the Commission which are following some distinguishable patterns. Let's now turn to such actions and I encourage you to watch for patterns which may prove to be significant to you.

In recent speeches, for example, Commissioners and FTC staff have upheld the theory that consumers can best be helped by providing a healthy, non-concentrated industry climate of strong competition which will result in lower
prices and better products. Chairman Kirkpatrick seemed to lean toward this philosophy when he stated that it should be apparent that "consumer relations problems are not unrelated to problems of market structure." In arguing for the retention of the FTC as it essentially is now structured, the Chairman said consumer welfare requires two "prevailing conditions within each segment of the market economy: 1) A highly competitive structure, with a large number of sellers and easy entry and exit; 2) Wide dissemination of truthful and adequate product information," (as reported in the Washington Evening Star 4/2/71).

Among ways the Commission is taking action to resolve marketplace problems and quiet consumer concerns are some new approaches in the area of full, truthful, adequate, complete information. Those actions I should think you will find especially significant to your work. But first I will review a few other actions although you may be familiar with them through your trade and professional publications. For example, such monopoly probes into industries as the probe into the retail food industry in Washington, D. C. You no doubt are aware of the consent orders against such firms as the grocery chain recently moved against for soliciting and receiving preferential payments and services from suppliers. Fixing prices, imposing restraints on distributors, demanding exclusive sales have all been moved against. In regard to the investigation of concentration in the cereal industry, FTC General Counsel Joseph Martin has indicated that if studies establish that firms in such concentrated industries tend to compete through advertising gimmicks in a way that is anti-competitive, then the FTC will move to seek appropriate remedies against such industrial concentrations. There seems little doubt that deceptive and misleading advertising on the part of an aggressive advertiser can take market shares from competitors, resulting in concentration and less price competition.

In commenting on the Commission's action against Wonder Bread, Ralph Nader voiced the concern that the Wonder Bread advertisements tend "to exploit children's aspirations for rapid and healthy growth and for parents' concern for their children's growth and development." As you know, the FTC has issued a proposed complaint and order against the nation's largest independent baker for allegedly making false nutritional claims for Wonder Bread and Hostess Snack Cakes and false weight loss claims for Profile Bread. The proposed order also would prohibit advertising claims of uniqueness if the product is really about the same as competing brands unless both the distinctions and the similarities are specifically disclosed. The order also would require that ads claiming that cakes or pies are nutritious for children must disclose the product's sugar content by percentage.

There are other straws in the wind--actions involving affirmative disclosure on information, from which those of you most on your toes will be able to make applications and extrapolations as you advise and guide agricultural marketers in their promotion efforts: The Borden case, in which the company accepted a consent order banning the ad in which they rated coffee acidity on a meter. The FTC said a small difference was represented by a wide swing of the needle on the t.v. screen.
There have been several case by case attacks on sweepstakes for their failure to award more than a small percentage of prizes, for failure to disclose the slim chance of winning.

Some pending cases involve charges that anti-pollution merits of a product were misrepresented. One involves safety. Several involve nutrition, including two which complain that consumers were told specific products were the economical way to get necessary food values, when, in fact, other foods, which cost less, are more nourishing.

According to the Los Angeles Herald Examiner, spokesmen of the FTC and the Food and Drug Administration said they were checking whether scientific knowledge backed up claims that exclusive feeding of all-meat dog foods provides a "complete" or "balanced" diet for pets. (Some are voicing demands that advertisers provide scientific proof prior to airing ads that make such sorts of claims.)

FTC action has been taken against a large manufacturer of baby foods because their advertising claimed that the baby food product would prevent colds, sharpen appetites and help babies sleep. The Commission alleged that the food was not pure meat, as advertised, and not as important as milk in a baby's diet. As you see FTC is on the move in the area of nutritional claims.

Not infrequently these days newspaper items and columns are carrying such observations as Stanley Cohen's column in the March 1 issue of Advertising Age: "FTC's stock is at an all-time high, largely because of widespread admiration of its willingness to get tough with advertising." An indication of such willingness became evident in California a few months ago when the FTC issued an order against a company for misrepresenting fire-safety and anti-explosive features of television sets. The company accepted the order to stop the ads and, as required by the FTC, published an ad of the same size and prominence as the original ad, in the same paper, same day of the week, retracting the earlier claims.

Recently the Commission has begun to attempt to enlarge its "corrective authority" in the area of advertising. In the case of advertisers found to have made false or misleading claims, the Commission is attempting to apply "corrective orders" which contain a provision governing the contents of the company's advertising for one year. Under the provision, the advertiser would be required to devote fully 25 percent of its advertising space for one year to alerting consumers that previous ads run by the company contained misleading statements. Cases involving this "corrective advertising" doctrine are the Chevron gasoline case, the Hi-C and the Ocean Spray cases. These corrective ad cases are all currently in litigation.

It can be argued that corrective ads help restore market shares to competitors who were victims of deception by an aggressive advertiser. It seems likely also that a strong case can be made for corrective advertising to counteract residual effects of ads that were misleading or deceptive. Would anyone here question the residual effects of advertising? Who among you, over 30, would not confess that when he thirsts for a cola drink he has a brand memory flash that recalls "pause that refreshes" or "hits the spot"?
It may be that a recent editorial in the Commercial Appeal of Memphis will prove an omen to advertisers and promoters: Commenting on the need for the housewife to know the nutritional value of the food she buys, they remarked as to the timeliness of the Trade Commission's concern about food advertising. They then went on to say "Advertising could play a major role in helping the consumer make judicious choices within his budget. This could be done by simple honesty and frankness."

So much for some of the FTC actions that reflect out interpretations of consumer concerns. Now just a word about techniques.

It may be worth noting that in the last half of 1970 no fewer than seventeen advertising agencies were named along with their clients in cases brought by the FTC. As the New York Times recently observed, "Since agencies are finding themselves under the gun along with their clients--resisting clients that are out to stretch the truth with 'fudged claims', 'weasel words' and puffery has become a little easier"--a little higher priority.

Of high priority at the Commission these days is quicker action. Recently a preliminary court injunction was served against a California hair replacement company. The company was required to disclose that its product involves a surgical procedure resulting in implanting of wires, risk of discomfort, pain, infection, etc. You can expect more and faster action in matters involving health and safety especially.

The Commission plans to file court cases and propose trade regulation rules shortly to give consumers greater assurance of product safety and reliability. There are likely to be fewer rules. A further indication of priorities at the Commission is the likelihood that fewer rules will deal with such matters as the sizes of sleeping bags and more will deal with matters of the magnitude of octane ratings and auto-pricing disclosures.

Re-ordering of priorities at the Commission is in process with a number of sophisticated evaluative techniques to be in operation within the year.

To summarize, the Federal Trade Commission is making a real effort to listen to the various concerns of heterogeneous consumers--the various marketplace "crimes". The Commission is working at shaping the punishment to fit the "crime". As Mr. Pitofsky recently said "The old sin-no-more remedies just don't work". Future orders hopefully will be designed "to take away the fruits reaped from deceptive tactics". And for the long range the Federal Trade Commission sees antitrust action to increase competition as its heavy artillery for the defense of the consumer.

To deal with today's changed marketing practices--to deal with changed consumer attitudes, behavior and expectations, the Commission is at work on new approaches in fulfilling its role in enforcement work, its role in coming up with novel regulatory measures and its role in proposing legislation.
As former Chairman Weinberger used to say, "The Commission has a tremendous task—a task which it cannot accomplish alone. We welcome all agencies, whether public or private, who will join us in creating and keeping a marketplace which is both fair and free. Specifically, we bespeak your help and cooperation."
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James K. Wilson, Alabama
R. B. Wilson, Indiana
Erwyn Witte, Colorado
Marsha Witte, Colorado
William Wood, California
Bruce H. Wright, Washington, D. C.
Clayton Yeutter, Washington, D. C.
J. G. Youde, Oregon
John Young, Colorado