

Federal Trade Commission

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EXECUTIVE OFFICES OF THE FEDERAL TRADE COMMISSION

Pennsylvania Avenue at Sixth Street Northwest,
Washington, D.C. 20580

Field Offices

30 Church St., New York, N.Y., 10007	Room 10511, U.S. Courthouse and Federal Building, 515 Rusk Avenue, Houston, Tex., 77002
Room 1310, 226 West Jackson Boulevard, Chicago, Ill., 60606	Room 811, U.S. Courthouse, Seattle, Wash., 98104
Room 306, Pacific Building, San Francisco, Calif., 94103	Room 1128, Standard Building, Cleveland, Ohio, 44113
Room 1212, 215 West Seventh Street, Los Angeles, Calif., 90014	Room 2806, Federal Office Building, Kansas City, Mo., 64106
Room 1001, 131 State Street, Boston, Mass, 02109	Room 915, Forsyth Building, Atlanta, Ga., 30303
Room 1000, Masonic Temple Building, New Orleans, La., 70130	Anderson Building, 450 West Broad St., Falls Church, Va., 22046

Field Stations for Textiles and Furs in Addition to the
Above Branch Offices

Room 1003-c, U.S. Court and Custom House, St. Louis, Mo., 63101	53 Long Lane, Upper Darby, Pa., 19082
Room 405, Thomas Building, 1314 Wood St., Dallas, Tex., 75202	Room 647, Equitable Building, 730 17th Street, Denver, Colo., 80202
Room 204, 327 North Tryon Street, Charlotte, N.C., 28202	Room 918, Metropolitan Bank Building, 117 N.E. First Avenue, Miami, Fla., 33132

Letter of Transmittal

FEDERAL TRADE COMMISSION,
Washington, D.C.

To the Congress of the United States:

It is a pleasure to transmit herewith the Forty-ninth Annual Report of the Federal Trade Commission, covering its accomplishments during the fiscal year ended June 30, 1963.

By direction of the Commission.

PAUL RAND DIXON,
Chairman.

THE PRESIDENT OF THE SENATE.
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

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INTRODUCTION

Two principal achievements highlighted the work of the Federal Trade Commission during the fiscal year 1963. It halted more illegal business practices than ever before in its 49-year history, and it expanded to an unprecedented degree its program for encouraging businessmen to abide voluntarily by the trade practice laws.

In hitting hard with formal orders where necessary and proffering guidance where the public interest could be protected without litigation, the Commission made a determined effort to fill the role for which it was created — to help reputable businessmen maintain a free, fair, and honest marketplace for the ultimate benefit of consumers.

To do this called for using both old and new tools. In many cases there was no acceptable alternative to halting a predator with an order to cease and desist; in others, the Commission had reason to believe the public interest would be adequately protected by explicit assurances that the illegal acts would be discontinued. In still other cases, where competition exerted heavy pressures, the eradication of an evil demanded simultaneous orders prohibiting at least the key members of the industry from engaging in it. On the other hand, where ignorance or misunderstanding of the law's requirements played an important part in undermining fair

by litigation, the new advisory opinions appraise with certainty the legality of any proposed course of action as it relates to the laws enforced by the FTC.

From the businessman's standpoint, an advisory opinion not only removes doubt as to FTC's position on whether his proposed action is legal, but his identity as an interested person is kept confidential. Unfortunately, this element of confidentiality has resulted in so little publicity for advisory opinions that very few businessmen—particularly small businessmen—are yet aware of their availability. Steps to publicize this new service are being taken.

Another innovation in the

tuting lawful cooperative advertising plans providing for proportionate payments to all competing customers.

Just as the foregoing problem resulted in a large number of formal orders, another situation—involving deceptive labeling of shoes—produced none at all during the year thanks to the Commission's decision to handle the difficulty during 14.

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tice), the Commission generates a great many actions itself. The reason for this is that too many law violations are not isolated but are engaged in by several competitors if not a great many. Thus, minimum good is accomplished by halting the illegal practices of the particular firm singled out by an application for complaint. The problem may well demand broader treatment, with the Commission initiating action against equally culpable competing firms.

Here the limiting factor is the money allocated to the Commission for law enforcement. Its appropriation for fiscal 1963 was \$11,472,500. With this, the Commission, aided by a staff of only 1,178, including clerks and stenographers, had immense statutory responsibilities. To illustrate, one of its duties is to prohibit all unfair methods of competition in commerce and all unfair or deceptive acts or practices in commerce in the United States.

Small wonder the Commission made a concerted effort during the year to encourage more voluntary law observance by business. By offering guidance and assistance to that vast majority of businessmen who prefer fair competition to the cut-throat variety and who share the public's indignation for all forms of deceit in selling, the Commission was better able to isolate willful violators of the law and proceed against them. Indeed, such isolation unquestionably prompted many violators to seek less conspicuous and less vulnerable positions within the law.

THE INDUSTRY GUIDANCE PROGRAM

Heretofore, there was no way in which a businessman could obtain a binding opinion from the FTC on whether his proposed course of action would violate the laws it enforces. He could consult with the Commission's staff, get the advice of his own lawyer, or study the laws himself, and still he could only guess as to what the Commission might or might not do. This is no longer true. The Advisory Opinion procedure, adopted June 1, 1962, was given its test this

the Commission and reputable business in attacking deception and anticompetitive business problems.

Under the program for obtaining voluntary compliance with trade practice rules and guides already promulgated, a total of 1,100 matters involving alleged violations were dealt with. Of these, 347 were disposed of by assurances that they would be stopped permanently. Many involved several unlawful practices, all of which were stopped voluntarily without the expense of investigation and litigation. At the fiscal year's close, there remained 276 matters

COMBATTING DECEPTION OF THE CONSUMER

About \$4 million of FTC's \$11 ½ million appropriation was spent during fiscal 1963 to halt the cheating of

In other actions affecting public health, FTC's scientific and medical staff was probing hard into what appears to be widespread false advertising of devices intended to filter or otherwise purify the air (frequently extolled as preventers of disease) ; of pesticide preparations, particularly advertising that might lead to misuse of the products with resultant danger to health; of preparations offered for the treatment of hemorrhoids; and of that far flung category of products that promise "cure" or "quick relief" from the common cold.

It might be pointed out that to lay the groundwork for such industrywide projects, a great deal of study, of conferring with medical specialists, and of clinical testing is necessary for the FTC to determine whether corrective action is warranted and to cope successfully with the elaborate defenses that respondents can be expected to erect.

Another major investigation on a nationwide basis was initiated by FTC to halt exaggerations by the mail order sellers of real estate, particularly for land in the winter-free areas of the South and Southwest. Fifteen investigations were undertaken, and by the year's end, two complaints had been issued.

Mail order sale of insurance also was tackled on a broad scale, with 13 investigations under-way at the year end.

A successful effort was made to ~~make~~ (Tj 2.52 0 TD (ationwide')

Another sales scheme which appeared to be mushrooming during the year involved nationwide operations by a number of retailers of radios and other consumer goods who falsely represent that they are engaged in liquidating or otherwise disposing of surplus merchandise. After halting one company with a cease and desist order, the FTC launched investigations of other such companies on the west coast and in the South.

To these broad-scale enforcement efforts were added the never ending miscellany of deceptive practices which the Commission has been attempting to control with scattered fire throughout the years. High on the list, of course, is fictitious pricing. In this area, a concentrated effort was directed at the practice of wholesalers to furnish their retailer customers with advertising materials carrying fictitiously high prices in order to make regular prices appear to be bargains. Five such wholesalers accepted orders to cease and desist from the practice. Also, four major watch companies were ordered to stop preticketing watches with fictitiously high prices and failing to disclose foreign origin of parts.

Still another group of orders was issued to halt seven manufacturers of plastic metal mending compounds from failing to disclose that their products were not safe to use near heat or flame and might be injurious to the skin on prolonged contact.

The variety of chicanery investigated and stopped either by assurance of discontinuance or orders to cease and desist is too voluminous for discussion here. Sufficient to say the Commission's Bureau of Deceptive Practices had its hands full selecting from 4,562 applications for complaint those that warranted FTC action.

The Commission's own advertising monitoring efforts added grist for the mill. During the fiscal year, 516,352 radio and TV scripts of commercials and 302,572 pages of print material were reviewed. From this total, 61,300 advertisements were forwarded for examination and possible corrective action by the legal staff. The continuities and newspaper and periodical advertising thus reviewed were submitted by every radio and TV station in the country and a broadly representative number of newspapers and periodicals.

Nor was the Commission's antideceptive Nor () dw (No6 0 TD s3hus) continu ad itspo

THE FIGHT TO PROTECT SMALL BUSINESS

Because restraints on trade have only an indirect effect on the consuming public, they are little publicized; yet, their abatement presents the Commission with its most difficult and frightening responsibility. Their effect is insidious; preferential treatment to favored customers in one form or another--perhaps only pennies in product costs or a few dollars in services--can put small businesses at a fatal disadvantage. The eventual result, of course, is to throttle competition and deprive the public of a competitive marketplace.

During the fiscal year, difficult and

areas from Denver to New York. The results of this broad look were under study at the year's end.

Meanwhile, cease and desist orders were issued against Foremost Dairies, Inc. (Docket 7475) prohibiting it from discriminating in the price of fluid milk to favored customers, and against the Borden Co. (Docket 7129) prohibiting it from discriminating in price between purchasers of its Borden label and private label evaporated initial decision found that the company sold fluid milk and other dairy products to competing customers at illegally different prices. Similar charges were being weighed by a hearing examiner in a case against National Dairy Products Corp.

In its industrywide attack against the giving of discriminatory allowances in the book and magazine business, the FTC brought effective action against 31 publishers with orders prohibiting them from illegally favoring chain retail news stands. One other such case is still pending.

In contested cases against producers of toys, the Commission found that 16 manufacturers had violated section 2(d) of the Clayton Act, as amended, by making "payments to certain toy catalog companies which were owned or partly owned by jobber customers as compensation for advertising and illustrating the manufacturers' products in the catalogs which were sold and distributed to retailers for redistribution to the publi1 (had) Tj 18Tj 2.88 0 TD 0.00

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nente Cement Co., et al. (Docket 7939) a complaint was issued against Diamond Alkali Co. (Docket 8572) challenging the merger of two cement companies. Concurrently with this action, a longstanding case against Martin-Marietta (Docket 8280), which company had acquired cement plants and several concrete pipe companies, was settled by consent with an order of divestiture.

As a further step to meet the merger trend in this industry, a complaint challenging the acquisition of two ready-mix concrete and aggregate companies by the Lone Star Cement Corp. (Docket 8585) was forwarded to the Commission with recommendation for issuance. Other cases in this field also are being developed.

A problem of grave proportions exists in the policing of compliance with outstanding orders, particularly those directed against trade restraints. Unlike orders halting deceptive practices, violations of antitrust orders are not as readily apparent to competitors and are rarely discernible to the public; consequently, compliance with

WOOL, FUR AND TEXTILE ACTS ENFORCEMENT

Both businessmen and consumers need protection against the ever improving artistry of more than a few unscrupulous sellers of textiles and furs to make their product appear to be of a higher quality or more desirable than it is. Nearly gone are the days of clumsy misrepresentations when rabbit fur was passed off as mink, or when plainly inferior textiles were advertised as all virgin wool. Instead the problem today is to halt the far more subtle operators who tipdye furs and who take advantage of percentage points to increase the quantity of cheaper fibers in those of mixed weaves.

Sacks Woolen Co., et al. (Docket 8436) and Vikingo, Ltd., et al. (Docket 8479) on grounds that they had understated the amount of woolen fibers in their products and consequently overstated on labels the amount of other fibers. The Commission said that to err either through overstatement or understatement of the woolen content was a violation of the law.

In the labeling of furs, 18 orders halted deceptive comparative prices and fictitious prices, 8 stopped misbranding dyed furs as "natural," and 5 attacked the failure to disclose the fact that furs were "used." Also, a concerted effort was made to insure proper record keeping on the part of all firms inspected.

An interesting sidelight in the enforcement of the Fur Act concerns the mislabeling of broadtail-processed lamb as merely "Broadtail," thus implying that the fur in the product is entitled to the designation "Broadtail Lamb" (which is from two to four times as expensive!). Four orders were issued to stop this.

A campaign was undertaken to inform manufacturers and marketers of fur-trimmed garments that they, too, are subject to requirements of the Fur Act and its rules.

And, of course, the

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are on the compliance staff. Nevertheless 40 cases were reopened during the year for compliance checks, 3 civil penalty cases were certified to the Attorney General charging violations of orders, and 1 case was certified for criminal prosecution.

In bringing about compliance with specific orders under the four acts in this area, technical and complicated as the acts and regulations are, the compliance staff has devoted considerable effort toward educating respondents to the end that they may avoid other violations and possible corrective action.

FOLLOW-THROUGH IN LAW ENFORCEMENT

Any person, partnership, or corporation against which the FTC has issued an order to cease and desist may petition a U.S. court of appeals to review and set aside the order. Disobedience of a court's decree enforcing a Commission order or subpoena may be punished by the court as a contempt.

Thus, it behooves the FTC to follow through with vigor in all cases where its decisions are challenged in the courts. Indeed, the Commission's effectiveness in curbing law violations—particularly in its role of deterring powerful corporations from engaging in predatory tactics—would be seriously undermined were the Commission's orders to be reversed by the courts too frequently. Therefore, the Commission cannot afford to do less than defend its decisions with all the competence at its command.

This job falls to the General Counsel's Office, and in fiscal 1963 the 19 attorneys assigned to appellate work, by dint of much unpaid night and week-end

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in numbers the great majority of FTC enforcement proceedings, thereby saving a great deal of time in presenting cases as well as the expense of their trial and other adversary litigation. A total of 199 executed agreements containing consent orders to cease and desist were forwarded to the Commission during the year.

The General Counsel's Office also took over direction of the Division of Export Trade during fiscal 1963 in a move to give closer attention to its function, which is to supervise export trade associations that have been established under the provisions of the Webb-Pomerene Export Trade Act. Members of these associations are permitted certain exemptions from the antitrust laws in joint export trade ventures. FTC supervision of the associations involves careful coordination with other Government agencies dealing with the promotion and advancement of our foreign trade. Thus, the purpose of FTC's new Export Trade Division is to promote the utilization of the authority of the act in furthering our international commerce. Such stepped-up coordination in the field of foreign marketing is expected to advance American exports in considerable measure.

LEGISLATION NEEDED

The Commission continued to urge the enactment of laws which would:

1. Amend section 7 of the Clayton Act (15 U.S.C. 18) to require proper notice to the FTC and other appropriate agencies of proposed mergers of corporations of significant size which are engaged in interstate commerce.
2. Amend section 5 of the FTC Act so as to empower the Commission to issue a temporary restraining or cease and desist order, pending completion of proceedings by the Commission in all cases in which the Commission is authorized to issue a complaint and final order to cease and desist thereunder, when the Commission has reason to believe that its action would be in the public interest and would prevent irreparable harm.
3. Amend the FTC Act so as to make it clear that the Commission has jurisdiction to prevent the continuance of sales over which it has jurisdiction, where such sales are below cost and have an

THE ROLE OF ECONOMIC STUDIES AND EVIDENCE

Each year the competitive structure of the American economy becomes more complex, and to protect our system of free enterprise demands an understanding of what is happening. Reliable economic information is vital to this understanding. For this reason the FTC placed increased emphasis on its economic reporting function during the year.

It completed Part II of its Inquiry into Food Marketing, The Frozen Fruit, Juice and Vegetable Industry and transmitted it to Congress. The report was developed from information required from 270 freezers and 675 wholesale distributors in this industry on their operations in 1959.

The report reveals, among other things, that sales in the "packer-label" market were highly concentrated where the 4, 8, and 20 largest packer-label sellers accounted for 52, 66, and 82 percent of the total sales.

ported net losses during 1959 with the bulk of these having sales of less than \$1 million.

The increasing influence of corporate chains and the high degree of concentration in the packer-label market, together with the experience of new firms in the 1950's suggest that entry of new firms is unlikely to have any significant competitive effect in the immediate future.

Another study in the food industry is nearing completion: Part III of the Inquiry into Food Marketing, The Fruit and Vegetable Canning Industry. It examines the structure of that industry, the extent of concentration and integration, and the marketing patterns of over 750 canners of fruits and vegetables.

Also in progress is an extensive economic inquiry of the rapidly growing polyethylene and polypropylene resin and film industry. The firms in this highly important segment of the plastics industry have engaged in a number of mergers in recent years which may have had significant effect on the structure of the industry. This study, covering the period 1955-62, examines the present patent situation in the industry, overall industry integration, and the extent of the foreign operations of industry members.

The Commission's economic work is by no means confined to the making of reports; fully as important is its contribution to the development and support of legal casework, particularly economic and statistical analyses needed in antitrust actions.

During the year, FTC economists rendered assistance on 70 investigations and 30 formal cases, of which 63 and 24 respectively dealt with suspected illegal mergers. In addition, FTC's Division of Economic Evidence reviews every merger reported by the press and trade sources and screens out those that might be illegal. This study reveals a rapid increase in the rate of mergers among businesses subject to FTC's jurisdiction--from 703 in 1951 to 1,260 in 1962.

A major accomplishment of the Commission, in which economic work played a significant role, is in the great reduction in recent years in the number of dairy acquisitions by the major dairy corporations. As late as 1950, the year when the Celler-Kefauver amendment to the Clayton Act was passed, the 4 largest national dairies reported 62 acquisitions of dairy firms. The number continued at about this level through 1955, when there were 60 such acquisi-

tions. Between 1950 and 1956, the 4 largest dairies made 373 dairy acquisitions. However, a fairly sharp decline occurred in 1956, the year in which the Commission issued its complaints against the four largest dairies. But, notwithstanding this decline, there was an average of about 18 acquisitions per year by the 4 largest dairies during the 6-year period 1956 through 1961, inclusive. The effect of the Commission's program became most noticeable after the Commission rendered its decision on April 30, 1962, in the Matter of Foremost Dairies, Inc. (Docket 6495.) In 1962 the four largest dairies acquired only two other dairies. Data for the current year indicate that acquisitions of other dairies by the four largest are virtually nil in this field. This decline may be attributed in large measure to the antimerger complaints filed by the Commission against the four large dairy companies.

The Division of Economic Evidence also made surveys of the paper, vending machine, dairy products, bakery products, and the potato chip, corn chip, and pretzel industries.

Toward further fulfillment of its role of providing economic evidence to the legal bureaus, the Division of Economic Evidence assisted in a case involving a major manufacturer charged with price discrimination and monopolization in the oat flour industry. In addition, the Division assisted attorneys in analyzing a number of false and deceptive claims based on data collected by use of a sample. It was by testing the reliability of the generalizations drawn from data collected by sampling methods relative to the techniques and methods used in developing the sample, that FTC economists and statisticians were able to be of most assistance.

During the year, the important statistical work of the Division of Financial Statistics continued. This was the summarizing each calendar quarter of uniform, confidential financial statements collected from a probability sample of manufacturing corporations. Here the purpose is to produce an income statement and balance sheet for all manufacturing corporations, classified by industry and asset size.

Four issues of the offer

APPROPRIATIONS AND
FINANCIAL OBLIGATIONS

FUNDS AVAILABLE FOR THE COMMISSION FOR THE
FISCAL YEAR 1963

Funds available to the Commission for the fiscal year 1963 amounted to \$11,471,973.
Public Law 87-741, 87th Congress, approved October 3, 1962,

APPENDIX (A) FTC Cases in the Courts

Following is a summary of the principal FTC cases before the courts during fiscal 1963, together with a brief discussion of what is involved in each case or group of cases.

RESTRAINT OF TRADE CASES

Perhaps the most significant restraint of trade case decided during the fiscal year was the Supreme Court's decision in Sun Oil Co. (FTC Docket 6641) involving the activities of a "major" refiner-supplier of gasoline during a "price war" in Jacksonville, Fla. A gasoline station operated by a "nonmajor" chain-retailer named Super Test was engaged in competitive "price cutting" across the street from an independently-owned Sun station. To enable its station to meet this price competition, Sun sold certain supplies of gasoline to it at a lower price than it sold to its other independently-owned retail gas stations in the area. The Commission challenged Sun's lower prices to this one station as being unlawful price discriminations under § 2(a) of the Robinson-Patman Act. Sun defended on the ground that its lower prices were given "in good faith to meet an equally an independent by itself TTDCTC of

Another important decision

"Fictitious pricing" is another important facet of the Commission's deceptive practices activity. Probably the year's leading decision in this field was rendered by the District of Columbia Circuit in *Giant Food, Inc.* (FTC Docket 7773). This case involved the use of the term "manufacturer's list price" by a retailer of housewares, electrical appliances, and other merchandise. The Commission held, and the court affirmed, that the use of this term was false and deceptive where the "manufacturer's list price" was not the regular and usual trade area retail price of the merchandise. In *Rayex Corp.* (FTC Docket 7346), the particular method of fictitious pricing under scrutiny in the Second Circuit

In Damar Products, Inc. (FTC

for

APPENDIX (B)

Statutes Pertaining to the Federal Trade Commission

The authority and powers of the Federal Trade Commission in the main are drawn from the following statutes:

1. Federal Trade Commission Act, approved September 26, 1914 (38 Stat. 717), and subsequently amended as indicated below.
2. Clayton Act, sections 2, 3, 7, 8 and 11, approved October 15, 1914 (38 Stat. 730, 731, 732), amended as indicated below.
3. Webb-Pomerene Export Trade Act, approved April 10, 1918 (40 Stat. 516).
4. Wheeler-Lea Act, approved March 21, 1938 (52 Stat. 111), amending the Federal Trade Commission Act.
5. Robinson-Patman Act, approved June 19, 1936, and amendment thereto approved May 26, 1938 (49 Stat. 1526; 52 Stat. 446), revising and extending section 2 of the Clayton Act.
6. Wool Products Labeling Act of 1939, approved October 14, 1940 (54 Stat. 1128).
7. Public Law 15, 79th Congress, approved March 9, 1945, "An Act to express the intent of the Congress with reference to the regulation of the business of insurance" (59 Stat. 33).
8. Lanham Trade Mark Act, approved July 5, 1946 (60 Stat. 427).
9. Oleomargarine Act, approved March 16, 1950, amending Section 5 of the Federal Trade Commission Act respecting civil penalties, and section 15 respecting misleading advertisement of oleomargarine or margarine (64 Stat. 20).
10. Public Law 899, 81st Congress, approved December 29, 1950, the so-called antimerger legislation, amending and extending section 7 of the Clayton Act (64 Stat. 1125).
11. Fur Products Labeling Act, approved August 8, 1951 (65 Stat. 175).
12. Flammable Fabrics Act, approved June 30, 1953, and amendment thereto approved August 23, 1954 (67 Stat. 111; 68 Stat. 770).
13. Packers and Stockyards Act Public Law 85-909, 85th Congress, approved September 2, 1958 (72 Stat. 1749).

14. Textile Fiber Products Identification Act, approved September 2, 1958 (72 Stat. 1717).
15. Public Law 86-107, 86th Congress, approved July 23, 1959 (73 Stat. 1749).

[Single copies of any of the above statutes are available without charge, upon request to the Federal Trade Commission, Washington, D.C., 20580.]