76th Congress
3d Session } SENATE COMMITTEE PRINT

INVESTIGATION OF CONCENTRATION OF ECONOMIC POWER

TEMPORARY NATIONAL ECONOMIC COMMITTEE

A STUDY MADE UNDER THE AUSPICES OF THE FEDERAL TRADE COMMISSION FOR THE TEMPORARY NATIONAL ECONOMIC COMMITTEE, SEVENTY-SIXTH CONGRESS, THIRD SESSION, PURSUANT TO PUBLIC RESOLUTION NO. 113 (SEVENTY-FIFTH CONGRESS), AUTHORIZING AND DIRECTING A SELECT COMMITTEE TO MAKE A FULL AND COMPLETE STUDY AND INVESTIGATION WITH RESPECT TO THE CONCENTRATION OF ECONOMIC POWER IN, AND FINANCIAL CONTROL OVER, PRODUCTION AND DISTRIBUTION OF GOODS AND SERVICES

MONOGRAPH No. 34

CONTROL OF UNFAIR COMPETITIVE PRACTICES THROUGH TRADE PRACTICE CONFERENCE PROCEDURE OF THE FEDERAL TRADE COMMISSION

Printed for the use of the
Temporary National Economic Committee

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1941

TEMPORARY NATIONAL ECONOMIC COMMITTEE

JOSEPH C. O'MAHONEY, *Senator from Wyoming*, Chairman
HATTON W. SUMNERS, *Representative from Texas*, Vice Chairman
WILLIAM H. KING, *Senator from Utah*
WALLACE H. WHITE, JR., *Senator from Maine*
CLYDE WILLIAMS, *Representative from Missouri*
B. CARROLL REECE, *Representative from Tennessee*
THURMAN W. ARNOLD, *Assistant Attorney General*,
*WENDELL BERGE, *Special Assistant to the Attorney General*,
Representing the Department of Justice
JEROME N. FRANK, *Chairman*
*SUMNER T. PIKE, *Commissioner*,
Representing the Securities and Exchange Commission
GARLAND S. FERGUSON, *Commissioner*.
*EWIN L. DAVIS, *Chairman*,
Representing the Federal Trade Commission
ISADOR LUBIN, *Commissioner of Labor Statistics*,
*A. FORD HINRICHS, *Chief Economist, Bureau of Labor Statistics*,
Representing the Department of Labor
JOSEPH J. O'CONNELL, JR., *Special Assistant to the General Counsel*,
*CHARLES L. KADES, *Special Assistant to the General Counsel*,
Representing the Department of the Treasury
* * *
Representing the Department of Commerce
LEON HENDERSON, Economic Coordinator
DEWEY ANDERSON, Executive Secretary
THEODORE J. KREPS, Economic Adviser

*Alternates

MONOGRAPH NO. 34

FEDERAL TRADE COMMISSION

ACKNOWLEDGMENT

The Temporary National Economic Committee is greatly indebted to the Federal Trade Commission for this contribution to the literature of the subject under review.

The status of the materials in this volume is precisely the same as that of other carefully prepared testimony when given by individual witnesses; it is information submitted for Committee deliberation. No matter what the official capacity of the witness or author may be, the publication of his testimony, report, or monograph by the Committee in no way signifies nor implies assent to, or approval of, any of the facts, opinions, or recommendations, nor acceptance thereof in whole or in part by the members of the Temporary National Economic Committee, individually or collectively. Sole and undivided responsibility for every statement in such testimony, reports, or monographs rests entirely upon the respective authors.

JOSEPH C. O'MAHONEY,
Chairman, Temporary National Economic Committee.

TABLE OF CONTENTS

LETTER OF TRANSMITTAL

SEPTEMBER 18, 1940.

DR. H. DEWEY ANDERSON,
Executive Secretary to the Temporary National Economic Committee, Federal Trade Commission Building, Washington, D. C.

DEAR DR. ANDERSON: I am transmitting herewith for consideration by the Temporary National Economic Committee a report of the Federal Trade Commission entitled "Control of Unfair Competitive Practices Through Trade Practice Conference Procedure of the Federal Trade Commission."

This report has been read and approved by the Commission.

Very truly yours,

WILLIS J. BALLINGER,
Director of Temporary National Economic Committee Studies for the Federal Trade Commission.

CONTROL OF UNFAIR COMPETITIVE PRACTICES THROUGH TRADE PRACTICE CONFERENCE PROCEDURE OF THE FEDERAL TRADE COMMISSION

INTRODUCTION

To maintain free and fair competition in trade and commerce, to aid business, and to protect the public interest, rules of fair trade practices are established by the Commission for respective industries, under what is known as the trade practice conference procedure. This is a cooperative method for preventing unfair methods of competition, monopolistic restraints, and other business practices that are contrary to the laws which the Commission is directed to enforce.

The procedure involves the holding of trade practice conferences in industries and the voluntary participation of industry groups and affected parties with the Commission in joint undertaking to formulate the rules and to carry them into effect. The rules are passed upon and approved by the Commission, and are promulgated as competitive standards for the respective industries to which they apply. Trade practices in the industry which are harmful and unfair are defined and cataloged, and provision is made for the elimination of such evils. Voluntary cooperation is utilized as a primary means to this end.

In addition to providing such detailed specifications as to unfair or harmful practices to be avoided, provision may also be made, and often is, whereby certain positive trade methods in the particular industry are defined and sanctioned as being proper and promotive of sound business methods in keeping with the policy of the law and the public interest.

The organization and encouragement of voluntary cooperative effort to end trade abuses, the creation of officially recognized standards of fair competition with consequent guidance to industry as to what may or may not be done under the law, and the exercise of a substantial measure of self-regulation in business under supervision of the Commission, are distinctive features of the plan.

Legal objectives.—Under the organic act creating the Federal Trade Commission,[1] that body was set up as an agency to deal with competitive conditions in industry, and to act in prevention of unfair methods of competition and other unfair practices in interstate commerce. Subsequently, by the Clayton Act and amendments thereto, other practices of a monopolistic character were more specifically brought within the orbit of the Commission's correctional functions. To effectuate observance of these laws by industry-wide cooperative action under rules is, in legal contemplation, the immediate objective of the trade practice conference procedure.

Actual operation extends through 20 years.—The trade practice conference plan has been in operation for some 20 years, and rules have

[1] Federal Trade Commission Act, passed September 26, 1914, amended March 21, 1938 (15 U.S.C.A. 41-58).

283999—41—No. 34——2

been established thereunder for many industries. The inception of the idea goes as far back as 1918. In an early report of the Commission, the procedure was referred to, in part, as follows:

> The trade practice conference was the logical development of the efforts of the Commission, cooperating with industry, to protect the public against unfair methods of competition and to raise the standards of business practices. As early as the year 1919 the Commission established the procedure of holding conferences with industry for the purpose of eliminating unfair methods of competition as well as trade abuses existing therein.[2]

Since the early beginnings in 1918 and 1919, there has been a steadily increasing application of the plan. It has become progressively popular as a needful and effective method for treating the complicated questions in the elevation of standards of business practices and the removal of obstructions from the channels of distribution and commerce. Through demonstrated results its various advantages have received recognition on the part of industry and the public, and this has led to widening demands for the help such conference method affords in the solution of competitive problems. Growth has taken place not only in number of industries covered, but also in scope of usefulness and subject matter treated. In addition to the numerous industries which are now operating under established trade practice conference rules, applications from other industries are being received by the Commission in sustained volume.

PROCEDURE

The Commission's rules of procedure applicable to its trade practice conference work are set forth in appendix A (p. 27). These point out that the plan affords opportunity for voluntary participation by industry groups and that any interested party or group desiring to do so may file application for trade practice conference rules for an industry. Proceedings are usually initiated upon application coming from the industry itself. It was in this way generally that the proceedings for those industries for which rules have heretofore been established had their inception. Such appendix A also sets out the applicable provisions as to form and content of the application, and as to opportunity for informal meetings and discussions with the Commission's staff, the holding of the industry conference, the subsequent public notice to and hearing of interested or affected parties, and the final approval and promulgation of rules.

Public interest of primary concern.—The Commission acts in the public interest and trade practice conference proceedings are not authorized by the Commission, either upon application or otherwise, unless it appears that they would substantially serve such interest of the public. On the question of public interest in authorizing proceedings for a particular industry, the Commission may consider whether under the circumstances existing in the case the undertaking is feasible and shows substantial possibilities of constructively advancing the best interests of industry on sound competitive principles in consonance with public policy, and of bringing about more adequate and equitable observance of the laws under which the Commission has jurisdiction. The public interest extends to the welfare of both the purchaser and the seller, and all facts which constructively support their legitimate interests are pertinent. Consumer protection is, of course, a matter of major concern (cf. p. 17).

[2] Annual report of the Federal Trade Commission for fiscal year 1933.

Industry conference.—When proceedings for an industry are directed to be undertaken, a trade practice conference of all members of the industry is called by the Commission to consider and submit suggestions and proposed rules for the elimination of unfair trade practices and the improvement of competitive conditions in the industry. Public notice of the time and place of such conference is issued and all members are invited to attend and participate in the proceedings. Each is encouraged to contribute his views and best thought on the subject, in joint effort to arrive at constructive results within the law.

Members of the industry and interested parties are afforded every assistance by the Commission. Preliminary meetings and discussions by members of the Commission's staff are had with industry committees, members, or parties in interest, to afford guidance and assistance in fully understanding the proceeding and its objectives, in preparing applications and drafts of proposed rules, and in working out solutions of competitive problems in a manner which will avoid hardships and be constructive.

A transcript is made of the general industry conference, recording all proposed rules, resolutions, amendments, and other matters offered, and the discussion concerning the same. Such record, the proposals and suggestions developed at the conference, and the industry problems involved, are submitted to the Commission. They are examined and studied by the Commission's staff, to the end that the rules finally approved may cover adequately and constructively the unfair competitive practices and trade abuses affecting the industry and be within the boundaries of legal propriety.

Public hearing.—As part of the Commission's collaboration with all parties in interest and before final action is taken, a draft of proposed rules, based upon a study of the various problems and suggestions made and the requirements of law and the public interest involved, is prepared and made available by the Commission to all concerned. Public notice is also issued in connection therewith, affording the members of the industry and all interested or affected parties opportunity to consider the proposals in concrete form, to submit such pertinent information, views, suggestions, amendments, or objections as they desire to present for consideration of the Commission, and to be heard at public hearing held for the purpose. Thus all parties concerned in the matter, whether members of the industry or not, are invited to collaborate with the Commission, to present their views and suggestions, and to be heard.

Approval and promulgation of rules.—After due consideration of the entire matter the Commission proceeds to final action in the premises, and the rules as thereupon approved and received by the Commission are promulgated and put into effect as rules for the industry. Such promulgation is made officially through the Federal Register. Copies of the rules are supplied to all members of the industry, and each is afforded opportunity to record his intention to observe the rules in the conduct of his business by signing an acceptance form which is filed with the Commission.

REQUIREMENTS FOR APPROVAL OF RULES

In passing upon the rules proposed for approval and acceptance, the Commission applies the test of law. The rules must not sanction practices which are contrary to law, or which when put into effect

may bring about a result that is illegal or opposed to the public interest. The possibilities of inequities or of undue advantage of one group over another are also guarded against. The rules must be such as are well calculated to elevate the standards of competitive practices in the industry and to promote law observance, to the end that business may be liberated fr the waste and fetters of unfair practices and the rights of the public may be protected.

CLASSIFICATION OF RULES AND ENFORCEABILITY

Rules under Trade Commission procedure are divided into two classes—"Group I" and "Group II." Group I rules contain the mandatory requirements, and Group II the advisory or voluntary provisions.

Group I. Mandatory requirements.—Approved provisions which proscribe practices as being unfair are placed in Group I and are mandatory because they are expressive of legal requirements. They may therefore be said to have the force of law behind them. They cover as "unfair trade practices" types of competitive conduct which fall within the broad inhibitions in acts of Congress under which the Commission exercises enforcement powers. The offender or party indulging in such inhibited practices, in a manner involving that commerce which is subject to Federal control, renders himself liable to corrective proceedings under such acts. These statutes are the Federal Trade Commission Act, the Webb-Pomerene Export Trade Act, certain sections of the Clayton Act, and the Robinson-Patman Antidiscrimination Act. The Group I rules may include any type of practice which in contemplation of law comes within the broad field of "unfair methods of competition" or of "unfair or deceptive acts or practices in commerce," [3] or which falls within the categories of discriminatory and monopolistic restraints condemned by the Robinson-Patman Antidiscrimination Act,[4] the Clayton Act,[5] or the Federal Trade Commission Act.[1]

There are many volumes of court and Commission decisions construing such statutes, and these decisions, as well as the provisions of the laws themselves and their legislative histories, supply a large body of source material which is drawn upon in determining whether a given rule is eligible for Group I.

As indicated elsewhere, the Group I rules comprise about 90 percent of the entire set for an industry. They are of major importance, largely because of the fact that they strike directly at the trade evils in the industry. Group I rules being aligned with and detailing legal inhibitions, obedience to their requirements is not a matter of choice. The obligation to observe such requirements in interstate distribution, and to refrain from practices thus prohibited within the scope of the law, is binding upon all, quite irrespective of the fact that the alleged offender may have refused to take part in the establishment of the rules, or refused or failed to pledge obedience thereto. Voluntary adherence is general under approved trade practice rules, and usually resort to the compulsory processes becomes necessary only in comparatively few cases which may arise from a recalcitrant minority.

[3] Section 5, Federal Trade Commission Act, 15 U. S. C. A. 45, as amended, and section 4 of the Webb-Pomerene Export Trade Act, 15 U. S. C. A. 64.
[4] 15 U. S. C. A. 13, and 13a and b; 49 Stat. 1526; amended 52 Stat. 446.
[5] 15 U. S. C. A. 14, 18, 19, 21.

Group I rules as promulgated by the Commission carry a headnote in which their enforceability is described as follows:

> Unfair trade practices which are embraced in these Group I rules are considered to be unfair methods of competition, unfair or deceptive acts or practices, or other illegal practices, prohibited under laws administered by the Federal Trade Commission, as construed in the decisions of the Commission or the courts; and appropriate proceedings in the public interest will be taken by the Commission to prevent the use, by any person, partnership, corporation, or other organization subject to its jurisdiction, of such unlawful practices in or directly affecting interstate commerce.

When cases of alleged violation come to the attention of the Commission by way of complaint or otherwise, inquiry into the facts is made by the Commission, and if such infraction as may be found is not corrected through voluntary action, compulsory process is brought into play to effect the needed correction and bring the offender's practices into harmony with the law as expressed in the rules. This process is prescribed by the statutes mentioned. Under these statutes and the rules of the Commission, all legal and constitutional rights are accorded the accused. He has the right to file answer to formal charges, the right to have a trial, to cross-examine witnesses, introduce evidence on his own behalf, file briefs, and be heard; also to seek court review.

The members of the industry, through their trade association or in direct contact, assist the Commission in seeing that the rules are equitably observed, to the end that infractions are avoided or corrected. In some industries a trade practice committee is established under the rules to cooperate with the Commission in the compliance work. An important point is that such trade practice committee is not authorized to exercise any governmental powers, but serves as a medium for keeping the Commission informed as to activities in the industry in relation to the rules and to supply the Commission with other information and helpful service.

Group II Rules. Advisory and optional provisions.—While the Group I rules express compulsory requirements, in Group II are placed the permissive practices and recommended voluntary restrictions, which are to be promoted and followed on an optional basis. This status is likewise explained in a headnote to such rules, which reads as follows:

> Compliance with the trade practice provisions embraced in the Group II rules is considered to be conducive to sound business methods and is to be encouraged and promoted individually or through voluntary cooperation exercised in accordance with existing law. Nonobservance of such rules does not, *per se*, constitute violation of law. Where, however, the practice of not complying with any such Group II rules is followed in such manner as to result in unfair methods of competition, or unfair or deceptive acts or practices, corrective proceedings may be instituted by the Commission as in the case of a violation of Group I rules.

Frequently there are instances in which the industry desires to promote and foster certain practices on a purely voluntary basis, with governmental acceptance. The opportunity to do so and to go on record in support of such rules is afforded under the Group II classification. Although not necessarily compulsory, provisions of this class are those which are found to be within the law and are considered desirable in the interests of good business and the promotion of fair competitive conditions.

Adherence to Group II rules, on a voluntary basis and without compulsion, is in general sufficiently adequate and effective. This may be accounted for by the fact that ordinarily the Group II rules

are such that members of the industry are only too glad to abide by them once they are assured through Commission acceptance that it is proper to follow them and to cooperate with others in doing so.

Representative practices covered in the Group II and also in the Group I rules are listed on pp. 8–10.

INDUSTRIES AND TYPES OF TRADE PRACTICES COVERED

Over 200 conference proceedings for industries have been conducted by the Commission since the inception of this phase of its work. The following are representative of these industries and of the established rules:

Subscription and mail order book publishing industry.
Tuna industry.
Resistance welder manufacturing industry.
Ripe olive industry.
Uniform industry
Folding paper box industry.
Umbrella industry.
Sardine industry.
Curled hair industry.
Public seating industry.
Marking devices industry.
Cotton converting industry.
Radio receiving set manufacturing industry.
Mirror manufacturing industry.
Putty manufacturing industry.
Wine industry.
Ribbon industry.
Infants' and children's knitted outerwear industry.
Paint and varnish brush manufacturing industry.
Baby chick industry.
Silk industry.
Oleomargarine manufacturing industry.
Tomato paste manufacturing industry.
Macaroni, noodles, and related products industry.
Shrinkage of woven cotton yard goods.
Fur industry.
Carbon dioxide manufacturing industry.
Wholesale jewelry industry.
Metal clad door and accessories manufacturing industry.
Toilet brush manufacturing industry.
Popular priced dress manufacturing industry.
House dress and wash frock manufacfacturing industry.
Rayon industry.
Concrete burial vault manufacturing industry.
Wet ground mica industry.
Tubular pipings and trimmings manufacturing industry.
Covered button and buckle manufacturing industry.
School supplies and equipment distributing industry.
Private home study schools.
Rubber tire industry.
Preserve manufacturing industry.
Ladies' handbag manufacturing industry.
Juvenile wheel goods manufacturing industry.
Flat glass manufacturing industry.
Buff and polishing wheel manufacturing industry.
Paper drinking straw manufacturing industry.
Vegetable ivory button industry.
Fire extinguishing appliance manufacturing industry.
Wholesale tobacco trade.

Rules established for various other industries have been published in the form of pamphlets and small volumes issued by the Commission.[6] Codifications of Group I rules are also published in the Code of Federal Regulations of the United States of America (title 16, subchapter B, pp. 1 to 175, inclusive, and supplements thereto).

Size and type of industries.—The industries covered are quite varied in character of product, number of members or units involved, and extent of operation or volume of business. To illustrate, the radio receiving set manufacturing industry is reported as having annual sales of $460,000,000, consisting of between 7,000,000 and 8,000,000 sets, exclusive of parts, accessories, etc. Ladies' handbag manufacturing industry was reported, at the time, as having an annual sales

[6] Trade Practice Submittals, July 6, 1925, Government Printing Office, 1925.
Trade Practice Conferences, July 1, 1929, Government Printing Office, 1929.
Trade Practice Conferences, June 30, 1933, Government Printing Office, 1933.
Trade Practice Conferences, September 1, 1935, to August 31, 1939, Government Printing Office, 1940.

volume of $33,000,000 wholesale; flat glass industry, an estimated annual volume of business of about $200,000,000, invested capital $125,000,000; preserve manufacturing industry, producing over $30,000,000 of preserves, annually; rubber tire industry, $2,000,000,000 invested capital, $750,000,000 annual sales volume, with manufacturers, distributors, and dealers numbering 100,000; cotton converting industry, annual sales volume over $500,000,000; rayon industry, annual production of the raw fiber amounting to nearly 400,000,000 pounds, affecting processors, manufacturers, distributors, and dealers of textile merchandise throughout the United States; silk industry, annual sales volume of articles converted by American mills equaling approximately $600,000,000, and employing 250,000 persons; popular priced dress, house and wash frock manufacturing industries, combined annual sales volume of approximately $285,000,000; fur industry, annual sales volume $150,000,000 involving 10,000 stores besides trappers, fur farmers, processors, manufacturers, and others.

In addition to these and other industries of considerable size, the trade practice conference procedure has also been made available to smaller industries, such as, for example, the metal clad door and accessories manufacturing industry, total invested capital estimated at $2,000,000 and annual sales volume between eight and ten million dollars; paper drinking straw manufacturing industry, sales volume around a million dollars, with total employment of about 500 persons; wet ground mica industry, annual sales volume of about $300,000 and capital investment aggregating about $1,000,000.

In addition to those listed on p. 6, other industries, for which conferences were held in prior years, embraced a large variety of products including the following:

Creamery products.
Rebuilt typewriters.
Pyroxylin plastics.
Oil (other than petroleum).
Silver-plated hollowware.
Gold-mounted knives.
Watch cases.
Sheet music.
Antihog cholera serum and virus.
Mending cotton.
Furniture.
Castile soap.
Woven furniture (includes baby and doll carriages).
Golf balls and athletic goods.
Hickory handles (striking tools).
Knit underwear.
Hardware.
Steel office furniture.
Kraft paper.
Milk and ice cream cans.
Paper bags.
Common bricks.
Fabricated structural steel.
Bituminous coal.
Mixed feeds.
Steel window sash.
Vulcanized fibre.
Fertilizer.
Crushed stone.
Face brick.
Cut stone.
Reinforcing steel for concrete.
Wall paper.
Range boilers.
Greeting cards.
Wool stock.
Concrete mixers and pavers.
Medical gas.
Ingot brass and bronze.
Roll and machine tickets.
Millwork.
Spices.
Solvents.
Structural clay tile.
Edible oils.
Machine embroidery.
Cut nails, tacks, and staples.
Common or toilet pins.
Interior marble.
Walnut woods.
China recess accessories.
Lightning rods.
Lime.
Bank and commercial stationery.
Paper bottle caps.
Beauty and barber supplies.
Insecticides and disinfectants.
Feldspar.
Sleds.
Educational jewelry (school jewelry).
Transparent and translucent printed materials.
Waxed paper.
Groceries.
Household furniture and furnishings.

Scrap iron and steel.
Feathers and down.
Upholstery materials.
Metal burial vaults.
Waste paper.
Warm air furnaces.
Furnace pipe and fittings.
Fabricated ornamental iron, bronze, and wire.
Sanitary napkins.
Saws and blades.
Ice cream.
Mopsticks.
Woodworking machinery.
Cedar chests.
Barre granite.
Musical merchandise.
Rabbits and cavies.
Drugs, and other industry products.

Typical practices covered by promulgated rules.—Practices covered in the promulgated rules are of wide variety, depending largely upon the peculiar problems of the respective industry. An authoritative writer on the general subject has stated in respect to this point:

> An examination of the approved rules reveals a wide diversity of provisions, some primarily concerned with maintaining competition between business rivals upon a desired plane, others oriented more directly toward the protection of the consumer, and still others showing concern with both these objectives.[7]

The forty some industries listed above as representative of the whole have a total of 834 rules. On the average, about 90 percent consists of Group I rules. In various instances individual rules cover a group of related practices. Analysis made by another writer in 1936 resulted in his listing a total of 291 different trade practices as being covered by the rules promulgated for industries up to December 1934.[8] Many more have, of course, been added since then.

Various types of unfair methods, monopolistic restraints, and other practices are illustrated in the following partial list of subjects covered in rules heretofore promulgated:

(Group I rules) Inducing breach of competitors' contracts; bribing competitors' employees or agents; procuring competitors' confidential information by unfair means; interfering with competitors' right of purchase or sale; coercing purchase of one product as prerequisite to purchase of another; defaming competitors or disparaging their products, services, etc.; harassing competitors by circulating in bad faith threats of infringement suits; imitating or simulating trademarks, trade names, etc.; selling below cost with intent of injuring competitors and effect of unreasonably restraining trade, tending to create a monopoly, or substantially lessening competition; combining or conspiring to fix prices, uppress competition, or restrain trade; paying or receiving discriminatory prices, discounts, rebates, refunds, credits, etc., which injure, prevent, or destroy competition; granting or accepting of discriminatory advertising or promotional allowances, services, or facilities; use of inhibited brokerages or commissions or allowances in lieu thereof; bribing customers' employees, agents, or representatives; substituting products without consent of purchasers; using lottery schemes in connection with sale of products; falsifying invoices; using consignment distribution to close competitors' trade outlets; representing domestic products as imported or imported products as domestic; using deceptive types of containers simulating standard and generally recognized types; misrepresenting color fastness of product; using deceptive depictions (photographs, engravings, cuts, etc.) in describing industry products; using "loss leaders" as a deceptive or monopolistic practice; deception as to kind of glass in

[7] Saul Nelson, economist, in Trade Practice Conference Rules and the Consumer, p. 452, The George Washington Law Review, January–February 1940.
[8] S. P. Kaidanovsky, Trade-Practice Conference Rules of the Federal Trade Commission (1919–1936).

mirrors; using misleading guaranties, price quotations, price lists, terms of sale, etc.; misrepresenting possible earnings or opportunities afforded on completion of correspondence school courses; misrepresenting government connection with or endorsement of correspondence schools, or misrepresenting any training or services offered by such schools; falsely representing offers as "special" or "limited"; misrepresenting regular lines as "close outs" or "bankrupt stock"; representing products as conforming to recognized industry standards when such is not the fact; misusing such words or terms as "perfect," "genuine," "natural," etc., in describing precious stones or their imitations; misrepresenting geographical or zoological origin of furs; misusing terms relating to types of construction or weave of textiles; misrepresenting yardage of ribbon fabrics; deceptively inflating prices to cover trade-in allowances; circulating false or misleading reports as to transportation costs; representing retail prices as wholesale; using false or deceptive testimonials; misrepresenting character, extent, or type of business; making false representations respecting tube capacity of radio sets or the range or receptivity thereof; misusing the terms "all wave," "world wave," "world-wide wave," etc.; misusing the words or terms "bristle," "pure bristle," etc., in describing brushes; deceptively using "help wanted" or other employment columns; and various other forms of misrepresentation, including false or misleading advertising and deceptive labeling in respect to the quantity, quality, grade, size, material, content, composition, origin, use, manufacture, preparation, or distribution of any industry product; aiding or abetting another in the use of an unfair trade practice.

Other Group I provisions provide for disclosure of the fiber content and proper marking of textile merchandise made of rayon or silk, or of two or more fibers containing either rayon or silk; disclosure and marking of loading or adulterating materials in textile merchandise; disclosure as to remaining shrinkage in so-called preshrunk merchandise; disclosure and marking of fact that apparently new products are secondhand, rebuilt, or renovated; disclosure and marking that products are artificial or imitations and not real or genuine; disclosure and marking of country of origin of imported products; disclosure and marking as to the true composition of paint and varnish brushes containing material simulating bristle; disclosure and marking as to defective merchandise; disclosure and marking as to adulterants or substitutes for linseed oil in putty products, and as to metallic weighting in silk or silk products; disclosure as to quality, quantity, and size of products in opaque containers; proper marking of automobile tires as being recapped or rebuilt and not new, of mirrors as being window and plate glass.

(Group II rules) Included in the Group II provisions are those encouraging the use of American agricultural products in the manufacture of oleomargarine; the arbitration of disputes between industry members and their customers; the maintenance of accurate records for determining costs; the distribution of credit information; the publication of price lists by industry members acting individually and independently; compliance with safety requirements; the supervision of sales representatives to prevent misrepresentation; the filing of trade-marks, trade names, labels, and brands with an agency designated by the industry; the dissemination of information concerning treatment, care, and cleaning of product; differentiation, in

invoices, between width, thread count, and weight of cotton goods in the greige and in the finished state; the uniform closing of business offices on Saturdays and Sundays; and other affirmative practices promotive of fair competition. Certain Group II provisions condemn the return of merchandise without just cause; the repudiation of contracts; the failure to give notice of the change of shipping schedules; and other practices deemed to be inconsistent with sound and ethical business methods.

ILLUSTRATIONS OF EFFECTIVE TREATMENT OF DIFFICULT INDUSTRY PROBLEMS

On a broad scale the operation of trade practice rules since their inception, as a principal part of the Federal Trade Commission's activities in the field of fair trade and consumer protection, has had a constructive and wholesome effect upon the whole business structure. In the report of a recent review of the subject, the authors said, "the trade practice conference procedure has performed for industry and the public a great educational service, the value of which in eliminating unethical practices, and cutting the cost of law enforcement, cannot be overestimated."[9]

The substantial good achieved by trade practice conference rules points to the possibilities of future growth for the benefit of our national economy. The following are illustrative situations in which rules have been employed in effective treatment of difficult competitive problems:

Textiles.—In the textile field aggravated conditions of confusion, misrepresentation, and deceptive concealment in the merchandising of fabrics, and clothing and other products made therefrom, have been immeasurably improved by trade practice rules promulgated by the Commission in respect to rayon and rayon mixtures, shrinkage of woven cotton merchandise, silks and silk mixtures; also rules for dress industries, fur industry, cotton converting industry, infants' and children's knitted outerwear industry, and the ribbon industry. Further rules are in process of formulation for other branches of textiles.

Action was taken by the Commission in these important lines at the request of industry and consumer groups beset by many types of unfair and destructive trade practices, including deceptive concealment, false and misleading representations in labels and advertisements, and other forms of dishonest methods.

The development of new fibers and new types of fabrics, and advances in the art of manipulating fabrics and of combining different fibers, have been such that the eye and sense of touch are no longer reliable guides to a purchaser as to what the fabrics are composed of. For example, simulations of silk, wool, and linen in fabrics containing no silk or no wool or no linen were developed to such an extent as to deceive even the experts. Complaints coming to the Commission from businessmen and from the public increased. The unfair competition made it difficult for the honest competitors to survive or to maintain high quality of their products. Deception of the buying public was rapidly undermining consumer confidence, so essential to a sound and prosperous business. A chaotic competitive condition ensued.

[9] A Review of the Trade Practice Conferences of the Federal Trade Commission, by Sumner S. Kittelle and Elmer Mostow, The George Washington Law Review, January-February 1940, p. 450.

Examination of the problems in respect to clothing, household textiles, and similar articles showed that the evil was due basically to the concealment or nondisclosure of fiber content or composition of the goods, and to lack of guiding specifications as to the type of nomenclature and designations considered proper for the several kinds of products or goods involved. The remedy required comprehensive rules for adequate marking and disclosure at the source, to effect correction of the confusion and misunderstanding palpably harmful to the buying public and to business as a whole. Such rules were accordingly established to be followed with confidence as a guide for proper labeling and marking for the benefit of industry and consumers alike. The rules issued likewise cover various other unfair trade practices which it is necessary to curb in order that a high plane of competitive fairness may be maintained. (See appendix B.)

In an editorial in "Retailing," July 25, 1938, this action of the Federal Trade Commission was referred to as follows:

NEW STANDARDS

With consumers, retailers, and producers working for the same general end and with the help of the Federal Trade Commission there is slowly but surely being developed a precise and accurate manual of advertising and labeling for different types of merchandise. The Commission's rules for rayon, fur, silk, and shrinkage set a new high standard. They are the foundation, furthermore, for the building of a more satisfactory relationship all along the line from producer to consumer.

This development, fought by some groups at first, is now being accepted as necessary and valuable. It marks a step forward in commercial relations which is probably without parallel in the world today.

Rubber tire industry.—This is one of the largest industries in the country, having capital investment of over $2,000,000,000. It suffered in the main from widespread discriminatory practices and from confusion and deception as to various types and classes of tires. Rules were established by which these problems were attacked with much success.

The different types of discrimination were proscribed by a comprehensive rule on the subject. Provision was made against confusion and deception in regard to so-called "first line" tires, "standard" makes, "change over" tires, "rebuilt," "recapped," and "retreaded" tires, with provision for the proper marking of such rebuilt, recapped, or retreaded tires that the public may not be deceived into believing them to be new when such is not the fact. The use of guaranties, warranties, and adjustment policies which are not lived up to in good faith, or which otherwise are detrimental to the best interests of the buying public, was proscribed. False advertising and misbranding as to the grade, size, life, durability, and other properties of the respective brands or makes of tires or tubes offered to the public were likewise covered. Other objectionable marketing methods were included in the list of practices inhibited, and the industry has thus been afforded comprehensive specifications as the basis of fair competition. Trade practice rules promulgated by the Commission apply to this entire industry, including manufacturers, wholesalers, retailers, and processors. For expressions from members, see page 21.

Mirror industry.—These trade practice rules treat a most important problem from the standpoint of protecting the public and ethical business elements by, among other things, providing for proper labeling of mirrors to inform the purchaser whether the mirror offered

for sale is made of plate glass or window glass. The qualities of and differences between the two types of glass are very material, yet it is impossible for a layman to know whether he is getting plate or window glass in his purchase unless the information is reliably transmitted to him from original sources. The confusion and deception stemming from this situation produced a chaotic competitive condition wherein the scrupulous businessman and the public suffered. As a corrective the rules made provision for a system of labeling mirrors as to the kind of glass. Provision also was made against various other related practices and unfair methods, thus affording the industry an officially recognized standard of fair competition under which the business can be operated with freedom and fairness for all (cf. p. 20).

Baby chick industry.—This industry, producing the young for the Nation's poultry, is of tremendous public importance, to the farmer as well as to business and the consuming public. It is estimated that the industry hatches about 1,250,000,000 eggs a year. Its annual sales volume of baby chicks is about $60,000,000. The industry had as its principal problem the matter of bringing order out of chaos in respect to a multiplicity of selling claims which were confusing, misleading, and deceptive. In attacking these problems for the industry, the need was for development of rules which would not only cover specifically each of the numerous types of objectionable claims, but also the variations and subterfuges likely to be resorted to if not included.

The rules established embrace comprehensive provisions which were immediately productive of improvements in the industry. They contain specific inhibitions to control unethical selling methods based upon false claims and deceptive representations relating to egg yield or egg-producing qualities, blood testing, sexing, vaccination, inoculation, pullorum testing, freedom from disease, purported bargain prices, trap nesting of flocks, livability and stamina of chicks. Also proscribed are such practices as the use of testimonials which are fictitious or misleading; unfairly assessing transportation costs in c. o. d. charges against purchasers; palming off cockerels as straight-run chicks; offering superior stock but shipping substituted chicks of inferior quality; failure to live up to guaranties, or the use of fake guaranties; advertising fictitious prices; and many other forms of unethical selling practices injurious to the public and to scrupulous competitors. For expressions as to benefits derived see page 20.

Preserve, macaroni, and tomato paste industries.—Rules promulgated by the Commission, applicable to these industries, relate to the advertising, sale, and distribution of fruit preserves, jams, jellies; of macaroni, spaghetti, noodles, and related products; and of tomato paste products. Such rules were promulgated in the interest of maintaining fair competition and protecting the public interest. These industries were troubled with many competitive problems, involving a particularly aggravated situation due to lack of officially recognized minimum standards of product content, such as, for example, minimum percentages of fruit in genuine preserves, jams, and jellies; minimum amount of egg for genuine egg noodles; minimum concentration of solids in tomato paste; etc. The rules provide definite specifications of such minimum standards, which were worked out in cooperation with the industry. Provision was made against the passing off of substandard or imitation products deficient in required ingredients, as, for example, deficient in fruit content in the case of preserves, jams, jellies; or

deficient in egg or semolina or farina flour content in the case of macaroni and related products; or lacking in sufficient concentration of solids in the case of tomato paste products. Adulteration, use of artificial color to mask inferiority, use of false price quotations, false invoicing, unfair discrimination in prices and discounts, and many forms of selling practices are also covered in the program of placing the industry on a high plane of competitive fairness for its own good and for protection of the buying public (cf. pp. 20–22).

Private home study schools.—The exploitation of great masses of home study students throughout the country who are dependent for educational advancement upon self-help through correspondence schools was gaining wide proportions, with drastic effect upon the public. Because of the widespread character of the evils, wholesale attack became necessary. This was successfully undertaken by the establishment of trade practice rules to cover the sale and distribution of courses of instruction by correspondence schools.

At the time the rules were promulgated there were approximately 400 such private schools and institutions, with an annual enrollment of about 600,000 students or purchasers of courses of instruction. The various types of abuses in the nature of unfair trade practices which have been or may be resorted to, with the effect of deceiving or unethically exploiting the public, are dealt with specifically in these rules, and provision is made for the eradication of such bad practices. To illustrate, some of the deceptive practices specifically proscribed are the use of confusing and misleading representations as to the scope of the course and educational services offered, actual or probable earnings or opportunities for employment of students who complete such courses, effectiveness of job-getting or employment service held out by the school, and the standing or character of the faculty. Specific provision is also made against presentation of so-called special offers or limited offers which are fictitious or unsupported by fact; against use of money-back guaranty or refund agreements which are of little or no value in protecting the student; against use of certificates or diplomas which misrepresent the course of study; against improper use of papers simulating or counterfeiting court documents in collection of tuition fees; improper use of "help wanted" and blind advertisements; enrolling students and charging them tuition fees for courses in vocations for which they are manifestly unfit by reason of educational or physical disqualifications.

Under the rules ethical schools and the public are protected from the harmful effects of these and other sharp practices (cf. p. 22).

Paint and varnish brush industry.—This is an important industry and the quality or value of its product is dependent largely upon a type of hog bristle which is obtainable only in the Orient. In respect to this subject the trade practice rules promulgated for the industry contain comprehensive provisions for labeling paint and varnish brushes so as to reveal the type of bristle or hair used in the brush, whether hog bristle, horsehair, fiber, or a mixture thereof. Inasmuch as the quality and value of the brush is largely dependent upon the type or proportion of bristle content, the truthful disclosure of such essential facts to the purchaser closes the door on unfair competition among the members of the industry and on deception and exploitation of the consuming public. Besides providing a solution for this problem, the rules also cover in a comprehensive form various

other types of competitive practices which the general welfare of the industry and the public required be thus brought under control.

Putty industry.—This industry was materially helped by receiving for the first time guiding standards of fair practices in the form of rules promulgated by the Federal Trade Commission. These rules proscribe such practices as misrepresentation as to the oil content, whether the same is linseed oil or substitute oil; the use of adulterants or substitute oils to mislead and deceive; the misrepresentation of the white lead and other pigment content; the use of slack-filled or short-weight containers; the making of false guaranties; false invoicing; deception as to grade, quality, or character of product; and many other forms of unfair methods of competition.

Radio receiving set industry.—This industry, though comparatively new, is one of the largest in the country, having an annual sales volume of more than $460,000,000. The newness of its field of operation and the rapid growth and expansion inevitably gave rise to many difficult competitive problems. Confusion, misunderstanding, and deception existed as to what constituted an "all wave" set, as to what the proper limitations of "standard broadcast" are, etc. The rules provided this young industry with a standard of fair competition which produced immediate improvement. Definite specifications are made as to the proper use of the designations "all wave," "world wave," "standard broadcast," etc. The rules likewise make provision for the proper designations of radio frequencies covered by the respective sets. They also provide against deceptive or unfounded claims as to reception of foreign or distant broadcasts; as to freedom from fading, noise, electrical interference, static, and other phenomena; as to the performance of the receiving set in the locality of the purchaser, its ability to receive transmissions from or to ships at sea, amateur stations, or other types of transmissions. Concealment of defects or deficiencies, misrepresentations as to reception, and similar sharp practices are prohibited. Specific provision is made in respect to the designation of the tube capacity or power of a set and against the use of fake or "dummy" tubes. Also proscribed are the use of so-called reduced prices which represent fake or fictitious reductions; misrepresentation of the model; switching of cabinets to deceive; alteration of brand name to deceive; misrepresentation as to manufacturing sponsor of set; and other forms of unfair selling methods. The hampering or destruction of fair competition through the use of "spiffs," push money, and commercial bribery constituted a serious problem for the industry, and rules to curb these harmful methods were worked out with the industry and promulgated by the Commission.

SOME DISTINCTIVE ADVANTAGES OF THE TRADE PRACTICE CONFERENCE PROCEDURE

Voluntary correction en masse.—An outstanding advantage in this method of regulating business practices lies in the wholesale abandonment and prevention of unfair methods of competition, trade restraints, and abuses by voluntary, cooperative, and simultaneous action. The effect of the use of unfair methods of competition is to stifle and suppress the development and expansion of trade and commerce; to make it more difficult, if not impossible, for business generally to render honest, efficient service to the public and be rewarded with a fair

profit gained on a sound competitive basis. The eradication of such practices is in keeping with the policy of the law and the best interests of everybody.

Under the plan, problems are worked out in friendly, cooperative proceedings, where the best thought of all concerned may be pooled without reservation, in contrast to the compulsory method of dealing with individual concerns in an adversary proceeding.

Businessmen are glad, as a rule, to lend their support to voluntary and simultaneous abandonment of bad practices. They welcome the chance to wipe the slate clean. The overwhelming majority are unwilling to stoop to unfair tactics. At times some may feel that they must do so in order to meet in kind the unfair or unethical competition of less scrupulous competitors. It is often the case that various concerns would like to abandon their use of unfair or unethical methods if they can but be assured that their competitors will likewise stop and not take advantage of the situation. The trade practice conference procedure affords a means whereby this can be accomplished in a substantial and gratifying degree, by having the rules placed in effect on a day certain, when by simultaneous action each may turn over a new leaf and make a fresh start on the same fair basis of competition.

Experience has demonstrated such to be a most important means for achieving equity and even-handed justice among groups of competitors in the application of the corrective principles of law. In the *Algoma Lumber Case* (291 U. S. 67, 79), the Supreme Court said, "The careless and unscrupulous must rise to the standards of the scrupulous and diligent." The Commission's trade practice rules are a vital force in accomplishing and maintaining such elevation. The honest are assisted in their commendable efforts toward practicing their ethics, with a material lessening of the disadvantage of contending meanwhile with the unethical practices of the unscrupulous.

Application of compulsory process against persistent violators facilitated.—Where the willful few do not choose voluntarily to abandon the unfair practices which have been defined and listed in the rules, compulsory proceedings may be resorted to with a minimum of delay and expense. By reason of the existence of the rules, such steps become more effective, because the Commission is able to concentrate its attention on the unscrupulous element and is not compelled to scatter the processes of the law among the many.

Certainty as to application of the law; rallying point for constructive forces in industry; aid to small business.—The trade practice rules also afford a focal point around which the forces for good in industry may rally. Governmental sanction and approval of the rules brings about two most desirable features: (1) It lends to the undertaking a standing and prestige which commands respect for the principles involved and encourages voluntary adherence to them, thereby substantially reducing the need to resort to the more drastic method of excision through litigation. (2) Governmental sanction brings to the businessman reliable assurance of the propriety of the provisions of the rules under the law. In other words, through official approval of the rules the businessman is assured that his observance of the practices specified in the rules and his cooperation with his competitors in jointly upholding their provisions are proper under the law; that he may engage therein without fear of becoming a possible or unwitting transgressor of the law.

The establishment of the rules and their approval likewise constitute, in relation to the practices covered by the rules, a substantial answer to "the businessman's quest for certainty" as to whether a given course of business conduct is or is not within the law. The possibilities for classification, definition, and particularization are substantial and are far greater than is practicable in statutory provisions.

Corrective effect in specifying harmful practices.—Moreover, the rules have a salutary effect flowing from the defining and cataloging, with official sanction, of the practices which are to be avoided as unfair. A convenient and authoritative means is made available for manufacturers, distributors, and buyers to learn what the legal requirements are as they apply to the particular industry or trade. This is especially helpful to the small businessman who generally does not have constantly at his command a legal department familiar with the subject. Codification of rules has an educational value and is an effective deterrent to violations which result from ignorance, carelessness, or even indifference.

Plan tested by actual experience.—The trade practice conference procedure is not new or untried. It has long since passed beyond the experimental stage and has stood the test of experience. From its early beginning more than 20 years ago, it developed rapidly and has become well established within the limits possible under existing law. While expansion and further implementation through amendatory legislation may be considered desirable, the procedure now available is a firm foundation on which to build, and affords opportunity to business for constructive self-help and increased service to the public good. Actual experience is a good teacher, and the conference procedure has profited well as a result of it. The Commission's years of work in this field of activity have made possible many improvements.

Public acceptance and recognition.—The use and popularity of the plan among businessmen is showing a marked increase. Its service to the consumer and to the public interest generally is also being increasingly recognized. Many letters come to the Federal Trade Commission from all sections of our business life, indicative of good results. The trade press, authorities on the subject, and men experienced in the matter, have taken occasion to remark upon the constructive possibilities of the plan. Illustrations of these expressions are given on page 19 *et seq.*

Minimum standards of product.—In some cases it is found that the industry's principal competitive difficulties are, in final analysis, due to the lack of guiding standards for their products. Where minimum standards of content of product are lacking, chaotic competitive conditions often result through the lowering of quality by the concealed substitution of cheapeners or by deficiencies in manufacture. The Commission has found it possible to assist industries in setting up in their rules wholesome standards to clear away the main stumbling block in their competitive problems. Not only is it possible in certain situations, through industry and Commission collaboration, to formulate and establish minimum standards of product content in the trade practice rules, but also to provide the necessary measure of enforcement to make them effective (cf. pp. 12–13).

Flexibility to meet changing conditions.—Besides the guiding certainty which may be brought to business in the form of rules, another advantage lies in their flexibility to keep pace with changing conditions

or new problems as they arise in business. Trade practice rules may readily be amended, enlarged, or supplemented with a facility not possible in the case of rigid statutory specifications. Moreover, proper cooperative action on rules to end trade abuses lends itself to the treatment of problems in a manner which is often more effective and more economical and simpler than is possible through the application of the processes of litigation or compulsory statutory remedies. The Supreme Court of the United States has recognized the efficacy of such voluntary cooperative effort, in the following statement from the opinion of the Court in the *Sugar Institute Case*, by Mr. Chief Justice Hughes:

> Voluntary action to end abuses and to foster fair competitive opportunities in the public interest may be more effective than legal processes. And cooperative endeavor may appropriately have wider objectives than merely the removal of evils which are infractions of positive law. (297 U. S. 553, 598.)

Supervised self-regulation in business afforded.—A fair measure of self-regulation and self-discipline on the part of business in keeping its own house in order is possible in the trade practice conference plan. Through it the forces for good in an industry can be coordinated and implemented. Such available means for self-help and voluntary correction are effective methods for preventing trade evils from increasing to the point where major operations become necessary and correction must be brought about through compulsory processes of existing law or by the imposition of more stringent regulations through additional legislation. The supervision of the Commission and the boundaries of applicable requirements of law provide the necessary safeguards for preventing abuse of power.

Consumer rights, as well as those of sellers, protected.—The trade practice conference procedure takes into account the interest of the consuming public as a matter of primary importance, both legally and economically. Sound treatment of the subject of unfair practices in distribution requires that due consideration be given not only to the rights and requirements of business, but also to the interests and protection of the consumer. The rights of the buyer as well as those of the seller are, of course, entitled to fair consideration.

The consumer has very substantial rights which it is the policy of the law to protect. In making his purchases in the channels of commerce, he has the right to be protected from deception, positive or negative. He has the right to the full benefits which free and fair competition may bring to him in the matter of prices, services, quality of goods, etc. He has the right to be free from those unfair conditions which obstruct or interfere with intelligent buying. No longer should the distributor, the seller, in good conscience rely upon the doctrine of *caveat emptor* [let the buyer beware] to the detriment of the consumer.[10]

Fair treatment of the buying public is essential to lasting and successful business and is fundamental in Federal Trade Commission proceedings. That this principle has been adhered to in established rules is well indicated in the following conclusion expressed in a learned analysis published in The George Washington Law Review:

> In general, therefore, the conference rules deal with the problem of maintaining competitive fair play in a manner showing very real consideration of the consumer's interest.

[10] *Federal Trade Commission* v. *Standard Education Society, et al.*, 302 U. S. 112, 116.

Also that—

Further analysis leads to the strong inference that in formulating these rules the Commission has accorded major and apparently increasing emphasis to the protection of the consumer.[11]

Advantage in economy of operation.—The trade practice conference procedure is perhaps the simplest and most economical method known for the elimination and prevention of trade evils. The savings of time and expense to both the Government and members of industry through avoidance of the necessity of litigation to reach the same results accomplished by cooperative action are most substantial. The simultaneous and voluntary ending of trade abuses under rules often effects immediate correction of competitive situations which would otherwise require the institution and prosecution of a number of protracted suits. The investigation and trial of the type sometimes necessary, in one instance alone of this character, could well equal in expenditure the entire annual budget devoted to the trade practice conference work. Fiscal requirements for this work are extremely modest. The simplicity of the procedure and the economy of its operation are distinctive advantages of the plan, aside from the improvements and savings afforded industry and the public in the general eradication of destructive trade practices.

Administrative agency of quasi-judicial and nonpartisan character.—The Federal Trade Commission is an independent agency of the Government and a quasi-judicial tribunal having not only powers and facilities for administration and investigation, but also procedures for determination of issues by judicial processes, subject to court review. This is an important factor of much assistance in the successful handling of business problems of the type under consideration. It combines the desirable features inherent in the judicial approach with the advantages of administrative investigation and flexibility. The Supreme Court of the United States has explained that the Federal Trade Commission—

was created with the avowed purpose of lodging the administrative functions committed to it in "a body specially competent to deal with them by reason of information, experience, and careful study of the business and economic conditions of the industry affected," and it was organized in such a manner, with respect to the length and expiration of the terms of office of its members, as would "give to them an opportunity to acquire the expertness in dealing with these special questions concerning industry that comes from experience." [12]

In another case the Supreme Court again reviewed the character of the Commission as established by law and said:

The Commission is to be nonpartisan; and it must, from the very nature of its duties, act with entire impartiality. It is charged with the enforcement of no policy except the policy of the law. Its duties are neither political nor executive, but predominantly quasi-judicial and quasi-legislative. Like the Interstate Commerce Commission, its members are called upon to exercise the trained judgment of a body of experts "appointed by law and informed by experience." *Illinois Central R. Co.* v. *Interstate Commerce Commission*, 206 U. S. 441, 454; *Standard Oil Co.* v. *United States*, 283 U. S. 235, 238–239.[13]

Experience supports the conclusion that the advantages with respect to the type of agency for the regulation of trade practices lie with such a tribunal, nonpartisan and expert in its field.

[11] Trade Practice Conference Rules and the Consumer, by Saul Nelson, economist, published at pp. 452 et seq., The George Washington Law Review, January-February 1940.

[12] Mr. Justice Stone, in the opinion of the Supreme Court in the case of *Federal Trade Commission* v. *R. F. Keppel & Bro., Inc.*, 291 U. S. 304.

[13] *Rathbun, Executor* v. *United States*, 295 U. S. 602, 624.

CONSTRUCTIVE ACCOMPLISHMENTS AS INDICATED IN EXPRESSIONS OF MEMBERS OF INDUSTRY, TRADE ORGANIZATIONS, AND FROM AUTHORITATIVE WRITINGS

From members and representatives of industries operating under trade practice rules have come many communications to the Commission indicative of good results flowing from this method of helping industry to maintain free and fair competition in the public interest. Set out below are excerpts from a few of such communications, reflecting the general tenor of the expressions of approval referred to. Similar illuminating expressions by trade organizations and from authoritative studies and other informed sources are also quoted below.

From Individual Members and Representatives of Industry

The rules have reinstated in the silk industry that dignity which this industry formerly enjoyed and results have undoubtedly been most beneficial to the whole silk manufacturing trade.

It is our opinion that the rules have been most beneficial not only to the consuming public but also to the merchants who earnestly believe in the spirit of the rules and who have long suffered from the unscrupulous and unfair practice of certain traders. [Silk industry.]

The work of your Commission has done much toward eliminating many of the unfair practices that existed in the cotton converting industry, and particularly so in your ruling that made it necessary for the converters to show the residual shrinkage where shrunk cotton goods was sold.

---

* * * the trade practice rules for cotton converting industry seem to be functioning perfectly and has certainly eliminated some of the most flagrant violations of fair trade practices.

Trade practice rules have a double influence. In the first place it gives an industry a set of regulations to guide them in their business activities. In the second place it causes the companies in an industry to scrutinize their practices more carefully. * * * [School supplies and equipment distributing industry.]

It is this Association's opinion that these recently passed rulings have been the savior of the retail fur business in this country. Misleading and bait advertising, as a result, has been practically abolished. To the reputable and legitimate retail furrier these rulings have been most welcomed. [Fur industry.]

Most of our members are of the firm conviction that the new fur trade practice rules sponsored by the Federal Trade Commission have had their desired effect upon many of the August fur ads this year, as there is a decided improvement in the tone of the ads this season.

It has been interesting to me to know that since our rules have been issued quite a number of other industries have recognized the value of these rules, and have applied to and received from the Commission rules which are practically identical with those you issued for this industry. On the basis of accomplishment I feel that the Federal Trade Commission has done a great service to industry in general. [Buff and polishing wheel manufacturing industry.]

We wish to take this opportunity to say that we believe the work carried on by the Trade Practice Conference Division * * * is the most constructive work which the Commission has undertaken. We know that the rules adopted for the shirting fabrics industry have resulted in cleaning up some of the trade abuses prevalent in the industry previous to the trade practice conference and we know that these abuses could not have been eliminated in so short a time had it not been for the trade practice conference method. We are heartily in favor of this plan and believe that it will go far toward remedying many of the abuses in the entire industrial and business world.

We believe that these rules have done much to put the poultry industry on a better and higher plane. Many poultrymen and hatcheries have improved their stock very much due to the rules previously laid down. They are for the benefit of all and should be observed by all. The stock offered by hatcheries will keep on being improved upon if these rules are observed and the purchasing and consuming public as well as ourselves will be benefited thereby. Competition is keen but fair methods should be employed to meet this competition. [Baby chick industry.]

The trade practice conference was of value to the concrete mixer and paver industry from more than one angle. For one thing it crystallized definitely in the minds of the manufacturers the specific practices which were bad. For another, it lent the weight of governmental sponsorship to the concerted effort to eradicate these bad practices. And still from another angle the various meetings attended in some instances by officials of the Trade Commission looked toward a better understanding among the various manufacturers and I believe reduced the likelihood of their practicing one or another kind of unfair trade practice on each other.

We further feel that the effects of the rule have gone a long way in correcting the unfair trade practices governed thereby and I believe it has benefited the consuming trade as they can readily see that they are not getting a plate glass mirror when window glass mirrors are being sold to them and nothing mentioned to the consumer as to what kind of mirror they were getting.

We wish to further state that we are convinced that the trade practice rules will benefit the entire mirror industry and also the consuming trade.

It is my opinion that our revised rules have had a most beneficial effect on the industry. Deceptive and misleading advertising, claiming that the mirrors advertised were made of special glass, has been practically eliminated. Observance of the labeling provisions of the rules has been quite generally accepted, particularly by the large manufacturers. * * * I have received many testimonials, both from members of the industry and their customers, as to the good effect of these trade practice rules. Speaking for the industry, or at least the better element of the industry, I can truthfully say that we are pleased with our trade practice rules and appreciate the action of the Federal Trade Commission in promulgating them for the industry. [Mirror industry.]

Whatever we have accomplished in setting high merchandising standards for our industry * * * is chiefly to be credited to the Trade Practice Conference of the industry and the encouragement and backing of the Federal Trade Commission * * * the trade is impressed with the improvement in conditions * * *. [Scrap iron and steel industry.]

Without going into any great detail I am of the opinion that the rules for this industry have had a considerable salutary effect upon the unethical practices employed by certain members of this industry prior to the effective date of the rules for this industry. * * * if the protection afforded by the trade practice rules was withdrawn incalculable harm would be done to this industry. [Macaroni, noodles, and related products industry.]

It is our firm belief that the establishment of these rules has resulted in benefits to the industry as a whole, and we are able to see the effect of these things in various industries as we are engaged in the manufacture of other products aside from metal wheel goods. [Juvenile wheel goods manufacturing industry.]

It is our opinion and also the opinion of the manufacturers that the rules have assisted to a large extent in eliminating certain harmful practices which were prevalent in the past. [Flat glass industry.]

---

* * * it is the writer's opinion that the trade practice rules are being observed in this particular territory, and it is also my personal opinion that the rules of your Commission are decidedly beneficial to the members of the industry I represent. [Flat glass industry.]

We want to take this opportunity to thank the Federal Trade Commission for their help and the interest they have taken in the elimination of monopolies and unfair trade practices. We feel that your department should have the wholehearted support of legitimate business all over the Nation. [Rubber tire industry.]

May we also state that in our opinion the trade practice rules for the rubber tire industry has resulted in fine correction as it affected some of the chaos that has existed in this line for a great many years. We believe it is one of the most beneficial regulations in the best interest of all the trade and sincerely hope the good work started will be continued.

We can assure you that considerable benefit has been derived as a result of the industry's trade practice conference and resulting rules. We fully realize that there is considerably more to be done and have every confidence that your department will continue its efforts in the interest of the smaller independent merchant and the consumer who have had to contend with such unfair trade practices in the past * * *. [Rubber tire industry.]

It is gratifying that the Federal Trade Commission, through its division of trade practice conferences, is stimulating such joint effort on the part of businessmen, and shows itself ready at all times to help the businessmen to understand and to correct their practices of trade abuses. [Jewelry industry.]

As for the benefits accruing to the trade from the observance of such rules we think that they are invaluable in that they tend to strengthen consumer confidence in the branches of the industry as a whole and also tend to minimize destructive practices that legitimate wholesalers had to contend with prior to the promulgation of these rules. [Jewelry industry.]

We feel that these conferences on trade practices are the most vital and worthwhile work any department in Washington can render the commercial interests of the Nation. They are most timely and we are deeply interested in the results to be obtained. [Southern mixed feed industry.]

I have been connected with the preserve business since 1918 and have been a member of the National Preservers Association since that year and I do not think that anything has been done by the association that had done more good than securing the assistance of your Commission in the matter of enforcing definitions and standards and fair trade practices.

The industry as a whole feels that the institution of these trade practice conference rules, with direct and substantial enforcement of them, is the most forward

step that has been taken since the passage of the Pure Food and Drug Act in 1906. The advantage in them lies in the fact that a direct measuring stick is now provided to determine the proper quality and labeling of preserves, jellies, and apple butter. * * * [Preserve manufacturing industry.]

The value of these trade practice rules to the home study industry cannot be estimated in dollars and cents, but believe that they are playing a very important part in helping to clean the field of racketeering and unscrupulous companies and salesmen. Legitimate companies and honest salesmen are profiting greatly by the use of these trade practice rules through respect and confidence shown by the general public in adult education to all schools who employ and use these trade practice rules. [Private home study schools.]

It is the writer's personal opinion that the Federal Trade Commission has done a splendid job in "cleaning up" the advertising and trade practices of the home study school industry. * * *

Above all, it has given all members of the industry a yard-stick for measuring values and therefore definitely established the limitations permissible in the matter of advertising and other printed literature. It is my personal belief that all of the higher grade schools are making a very honest effort to live up to the letter of the code and generally speaking I think they are succeeding most admirably. [Private home study schools.]

PUBLISHED STATEMENTS FROM AUTHORITATIVE SOURCES

Misleading labeling pertaining to shrinkage has brought great hardships to American consumers. * * * The Federal Trade Commission's new rules should end consumers' confusion caused by vague wording of labels. [Miss Lillian Locke, chairman of the textile section of the American Home Economics Association, as quoted in The Clothing Trade Journal, New York, July 1938.]

The consumer deserves the right to know what she is buying. The Federal Trade Commission's rules should put an end to the vague labeling which has made millions of consumers think they were buying pre-shrunk garments only to find that the garments shrank so much they could not be worn. Now the consumer will be able to rely on accurate labels pertaining to shrinkage and thus benefit from scientific methods which assure permanent fit. [Miss Mary Anna Grimes, textile and clothing specialist of the Texas Agricultural Experiment Station, as quoted in The Clothing Trade Journal, New York, July 1938.]

From Daily News Record, New York, July 18, 1938, quoting Mr. John C. Turrell, of Cluett, Peabody & Co., Inc., regarding trade practice rules of the Commission:

It is obvious that the purpose of the Federal Trade Commission's rules for the proper labeling of shrunk fabrics had two objectives, first, that they were promulgated in the consumers' interest and second to eliminate unfair competition.

* * * * * * *

In my opinion the textile industry is to be congratulated on these Federal Trade Commission shrinkage rules, for the reason that it will bring out into the open specific standards which will make for fair competition, and will create in the consumers' minds confidence in the serviceability of woven cotton fabrics.

In my opinion the garment manufacturing industry is to be congratulated on the promulgation of these rules which will enable both manufacturers and retailers to pass on to the public exact factual information as to the serviceability performance of washable cotton textiles with respect to shrinkage. The garment industry now can get goods with known shrinkage specifications, whereas, before, merchandise had been sold under meaningless terms resulting in misrepresentation, deception, and unfair competition.

Consumers will welcome the end of misrepresentations pertaining to shrinkage—misrepresentations which have caused them endless confusion and dissatisfaction.

From radio address of Mrs. Roberta Campbell Lawson, president, General Federation of Women's Clubs, October 26, 1937:

In 1921 the General Federation undertook a program in which "truth in fabrics" played an important part. The first milestone in that program, and perhaps

the most important until today, was the trade practice conference of the silk industry in 1932, in which the terms "pure dye silk" and "weighted silk" were defined and the latter required to be properly labelled. The effects of these rules were far-reaching. And the adulteration of fine silks which was so prevalent at that time presents no real problem to the consumer today.

The second milestone is today's announcement of the Federal Trade Commission's acceptance of rules for the rayon industry. We have long recognized the costliness of lack of information or misinformation about the fiber content of fabrics. These losses are expressed not only through improper care of garments and in the purchase of merchandise unsuitable for the individual need; but also in loss of a long established confidence and good-will between retailer and consumer which is so important to the continuance of existing methods of merchandising.

Today's action of the Commission represents in our opinion an important step in the solution of this tangled textile problem.

From radio address of Miss Julia K. Jaffray, chairman, division of economic adjustment, New York City Federation of Women's Clubs, October 26, 1937:

Our confidence in the Federal Trade Commission is justified by its announcement made public only today of its acceptance and its willingness to promulgate the rules for the rayon industry presented at the October 8th trade practice conference for that industry.

We give to the rules released today our unqualified support. * * * The record of the Commission hearing shows that many women from all over the Nation individually and through their organizations, voiced their approval of those rules as drafted and that many better business bureaus and a substantial proportion of the weavers of both silk and rayon, joined in urging their adoption.

From The Federal Antitrust Law, a lecture delivered at the School of Business, Columbia University, 1929, by Charles Wesley Dunn, M. A.:

The trade practice conference is the most constructive and potentially the most effective procedure used by the Commission. It is the most constructive procedure because it substitutes cooperation with business for what is in effect the prosecution of it; because it encourages and promotes self-regulation by business. By self-regulation alone can the purpose of the act be most effectively realized. It is potentially the most effective procedure because it is directed to secure a general, as distinguished from an individual, discontinuance of unfair methods; because it is used to promote the discontinuance of all uneconomic and unethical methods, whether illegal or not. In short, the trade practice conference procedure presents a practical and safe plan of self-regulation and a preventive of Commission proceeding and Government regulation otherwise required. If and to the extent it fails, the fault is not in the procedure or in the Commission. It is in business itself. The Commission can do no more than to offer business the opportunity and means of self-regulation. And it should do no less. [Pages 42–43.]

From Business Organization and Combination (Prentice-Hall, Inc., 1934), by Richard N. Owens, Ph. D., C. P. A.:

Trade practice conferences have been of much value. Their principal value lies in the elimination of abuses that otherwise would be unknown to the Commission. This is accomplished speedily and without the expense incident to the investigation and trial of complaints. The industry is benefited by the higher standards of business conduct which result and by the closer relationship established between the Commission and industry. [Page 608.]

From Trust and Corporation Problems (Harper & Brothers, 1929), by Henry R. Seager and Charles A. Gulick, Jr.:

There can be no doubt that these conferences are a much more logical method of meeting a dubious practice which has become widespread than a number of complaints against individual organizations. They have usually tended to reduce the combative, resentful attitude which formal complaints too often engender, and in the long run probably secure better results. The trade practice conference has done more in aiding the business community to work out its problems than perhaps any other single activity of the Commission, it is one of the most useful devices which the Commission could have hit upon, and it should continue to be used extensively. [Page 530.]

From Business Organization and Control (D. Van Nostrand Company, Inc., 1932), by Charles S. Tippets, Ph. D., and Shaw Livermore, M. B. A.:

Cleansing the Augean stables was a Herculean task. Stamping out the petty unfair practices of small business firms has threatened to assume similar proportions. A major attack on this problem evolved by the Commission is "the trade practice conference." This device has not only been helpful in holding down the number of actual complaints to be handled, but it has important implications for the whole future problem of regulation * * * . [Page 601.]

From Trade Associations, Their Services to Industry (the Ronald Press Co., 1930), by Joseph Henry Foth, Ph. D.:

Trade practice conferences are comparatively new and their results are difficult to estimate in dollars and cents. But industries which have adopted codes of practice under the auspices of the Federal Trade Commission, and have given the plan a fair trial, are reporting very definite and beneficial results. * * *

Trade practice conference procedure is sound in principle, in that it is based upon the mutual cooperation of industry and the Government, and the mutual interest of all branches and divisions of an industry. It is based upon the principle that business formulate its own rules of business conduct, subject to the sanction of the Government. This plan furnishes a system of control readily adaptable to changing economic conditions, and protects public interest.

The trade practice conference sets up rules for the game of business and points out the best available methods and technique for playing the game successfully. * * * [Pages 124 and 125.]

From Trade Practice Conferences (Corporate Practice Review, June 1930), by Harry C. McCarty:

The trade practice conference marks the beginning of systematic cooperative effort between various progressive industries and the Government to establish and enforce intelligent rules of business conduct. * * * It creates among businessmen a more enlightened sense of their responsibility to the public, and it creates, and should create, in the public a similar sense of its responsibility to permit the business interests of the country to conduct business on sound economic principles of cooperative effort as distinguished from destructive competition * * * . [Page 29.]

From the Chamber of Commerce of the United States:

In one sense, the trade practice conference represents the culmination of efforts extending over a period of many years, to introduce high ethical standards into business operation. * * * Through the setting up of codes of ethics and the gradual acceptance of correct business principles as customs of the trade, much has been accomplished, ethically and from an economic standpoint, in the introduction of good practices in the purchase and sale of commodities within the United States.

* * * * * * *

The value of the trade practice conference as an instrumentality for the promotion of high standards of business conduct is more and more realized. * * * [From the Report of Committee II, Economic Factors Affecting Wholesaling (1929), Chamber of Commerce of the United States.]

American business has achieved noteworthy progress in its efforts to improve the standards of business conduct concerning the relations between competitors and with the public. In carrying out this program, business has in the past received substantial aid and encouragement from the Federal Trade Commission. Reaffirming its belief in the value and importance of real cooperative action between trade and industry and the Federal Trade Commission in bringing about the adoption of better business standards and the voluntary renunciation of unsound competitive practices, the Chamber endorses the principle of the trade practice conference as a useful and proper means of cooperation, which may be expected to promote better standards of business and the elimination of wasteful practices and trade abuses in many fields of industry and commerce. [From resolution adopted at the nineteenth annual meeting of the Chamber of Commerce of the United States at Atlantic City, N. J., May 1, 1931.]

The principle of the trade practice conference procedure of the Federal Trade Commission is endorsed as a useful and proper means of promoting better standards of business and the elimination of unfair competitive practices. There should be a full examination of the possibilities of the trade practice conference procedure by each industry desirous of raising the level of its competitive standards, in order that it may properly evaluate the benefits which this method offers under the conditions confronting the industry involved. [Resolution of the Chamber of Commerce of the United States, adopted at the twenty-fifth annual convention, April 27–29, 1937.]

From address before New England Council by Thurlow M. Gordon, attorney:

It [the Federal Trade Commission] has made a real contribution to the guidance of industry in the trade practice rules approved under its present procedure—which have been welcomed and approved by businessmen throughout the country. [Forty-fourth quarterly meeting of the New England council, September 19, 1936.]

CONCLUSION

The trade practice conference procedure of the Federal Trade Commission has demonstrated its usefulness by actual experience. Much has been accomplished under the plan in the regulation of business practices in the public interest, with a view to having our competitive economy function freely and constructively.

Its achievements show it to be effective as a means whereby industry can be afforded guidance respecting the requirements of the law; as an aid to law enforcement and as a means for effectuating more uniform observance of the laws against monopolistic practices and unfair competitive methods; as economical machinery for affording a fuller protection of the public interest therein. The tried and proven experiences under this procedure afford a reliable basis for building effectively in the matter of control of monopoly and unfair trade practices.

283999--41--No. 34——5

APPENDIX A

RULES OF PROCEDURE RELATING TO THE TRADE PRACTICE CONFERENCE WORK OF THE FEDERAL TRADE COMMISSION

(REPRINT OF RULE XXIV, RULES, POLICY, AND ACTS OF THE FEDERAL TRADE COMMISSION, DATED MAY 21, 1938)

Trade Practice Conference Procedure

(*a*) *Purpose.*—The trade practice conference procedure has for its purpose the establishment, by the Federal Trade Commission, of trade practice rules in the interest of industry and the purchasing public. This procedure affords opportunity for voluntary participation by industry groups or other interested parties in the formulation of rules to provide for elimination or prevention of unfair methods of competition, unfair or deceptive acts or practices, and other illegal trade practices. They may also include provisions to foster and promote fair competitive conditions and to establish standards of ethical business practices in harmony with public policy. No provision or rule, however, may be approved by the Commission which sanctions a practice contrary to law or which may aid or abet a practice contrary to law.

(*b*) *When authorized.*—Trade practice conference proceedings may be authorized by the Commission upon its own motion or upon application therefor whenever such proceedings appear to the Commission to be in the interest of the public. In authorizing proceedings, the Commission may consider whether such proceedings appear to have possibilities (1) of constructively advancing the best interests of industry on sound competitive principles in consonance with public policy, or (2) of bringing about more adequate or equitable observance of laws under which the Commission has jurisdiction, or (3) of otherwise protecting or advancing the public interest.

(*c*) *Application.*—Applications for a trade practice conference may be filed with the Commission by any interested party or group. Such application shall be in writing and be signed by the applicant or the duly authorized representative of the applicant or group desiring such conference. The following information, to the extent known to the applicant, shall be furnished with such application or in a supplement thereto:

(1) A brief description of the industry, trade, or subject to be treated.

(2) The kind and character of the products involved.

(3) The size or extent, and the divisions, of the industry or trade groups concerned.

(4) The estimated total annual volume of production or sales of the commodities involved.

(5) List of membership of the industry or trade groups concerned in the matter.

(6) A brief statement of the acts, practices, methods of competition or other trade practices desired to be considered, or drafts of suggested trade practice rules.

(7) Evidence of authority to so act, where the application is signed by a person or organization acting in behalf of others.

(*d*) *Informal discussions with members of the Commission's staff.*—Any interested party or group may, upon request, be granted opportunity to confer in respect to any proposed trade practice conference with the Commission's trade practice conference division, either prior or subsequent to the filing of any such application. They may also submit any pertinent data or information which they desire to have considered. Such submission shall be made during such period of time as the Commission or its duly authorized official may designate.

(*e*) *Industry conferences.*—Reasonable public notice of the time and place of any such authorized conference shall be issued by the Commission. A member of the Commission or of its staff shall have charge of the conference and shall conduct the conference pursuant to direction of the Commission and in such manner as will facilitate the proceeding and afford appropriate consideration of matters properly coming before the conference. A transcript of the conference proceedings shall be made, which, together with all rules, resolutions, modifications, amendments, or other matters offered, shall be filed in the office of the Commission and submitted for its consideration.

(*f*) *Public hearing on proposed rules.*—Before final approval by the Commission of any rules, and upon such reasonable public notice as to the Commission seems appropriate, further opportunity shall be afforded by the Commission to all interested persons, corporations, or other organizations, including consumers, to submit in writing relevant suggestions or objections and to appear and be heard at a designated time and place.

(*g*) *Promulgation of rules.*—When trade practice rules shall have been finally approved and received by the Commission, they shall be promulgated by official order of the Commission and published, pursuant to law, in the Federal Register. Said rules shall become effective upon such promulgation and publication or thereafter at such time as may be specified. Copies of the final rules shall be made available at the office of the Commission to the public and to the members of the industry. Under the procedure of the Commission a copy of the trade practice rules as promulgated by the Commission is sent to each member of the industry whose name and address is available, together with an acceptance form providing opportunity to such member to signify his intention to observe the rules in the conduct of his business.

(*h*) *Violations.*—Complaints as to the use, by any person, corporation, or other organization, of any act, practice, or method inhibited by the rules may be made to the Commission by anyone having information thereof. Such complaints, if warranted by the facts and the law, will receive the attention of the Commission in accordance with the law. In addition, the Commission may act upon its own motion in proceeding against the use of any act, practice, or method contrary to law.

APPENDIX B

Consisting of the trade practice rules promulgated by the Federal Trade Commission for the following four industries, which are given as specimens of the many sets of trade practice rules now in effect for different industries:

Baby chick industry.
Radio receiving set manufacturing industry.
Rubber tire industry.
Silk industry.

Trade Practice Rules

FOR THE

BABY CHICK INDUSTRY

AS PROMULGATED DECEMBER 31, 1938

Statement by the Commission:

Trade practice rules for the baby chick industry, as herein set forth are promulgated by the Federal Trade Commission under its trade practice conference procedure.

The general purpose of the rules is to foster and promote fair competitive conditions and the protection of the purchasing and consuming public, and to this end to eliminate and prevent misrepresentation, deceptive concealment, and other unfair methods of competition or unfair or deceptive acts or practices.

In the course of the proceedings an industry's conference was held in St. Paul, Minn., under the Commission's auspices, and proposed trade practice rules were submitted by members of the industry. Subsequently, tentative action was taken by the Commission on the rules so submitted and a draft of proposed rules was made available upon public notice of at least 15 days, in pursuance of which all interested and affected parties were afforded opportunity to present such pertinent facts, suggestions, or objections as they desired and to be heard in respect to the proposed rules. At the public hearing held in Washington all matters submitted orally or in writing were received and filed in the proceeding.

Thereafter, and upon consideration of the entire matter, final action was taken and the rules in the form appearing herein under Group I and Group II were respectively approved and received by the Commission.

The rules for the baby chick industry herein promulgated supersede and replace prior rules for the industry as published by the Federal Trade Commission on November 25, 1933.

These rules promulgated by the Commission are designed to foster and promote fair competitive conditions in the interest of the industry

and the public. They are not to be used, directly or indirectly, as part of or in connection with any combination or agreement to fix prices, or for the suppression of competition, or otherwise to unreasonably restrain trade.

GROUP I

The unfair trade practices which are embraced in these Group I rules are considered to be unfair methods of competition, unfair or deceptive acts or practices, or other illegal practices, prohibited, within the purview of the Federal Government, by acts of Congress, as construed in the decisions of the Federal Trade Commission or the courts; and appropriate proceedings in the public interest will be taken by the Commission to prevent the use, by any person, partnership, corporation, or other organization, of such unlawful practices in or directly affecting interstate commerce.

Definition.—The term "baby chicks" as used in these rules shall be understood as including turkey poults, goslings, ducklings, or other live young poultry to be raised for breeding purposes or for the production of eggs and other poultry products.

Rule 1. Misrepresentation of Products.

It is an unfair trade practice, in the course of or in connection with the offering for sale, sale or distribution of baby chicks, to make or publish, or cause to be made or published, directly or indirectly, any false, misleading, or deceptive statement or representation (whether in the form of advertisement, guaranty, warranty, testimonial, endorsement, depiction, illustration, or other form of representation, however disseminated or published):

(*a*) Concerning the grade, quality, quantity, breed, pedigree, type, sex, sexing, quick maturity, uniform development, character, nature, origin, weight, color or size of such baby chicks; or

(*b*) Concerning the production, sale or distribution of any such baby chicks; or

(*c*) Concerning the purported supervision, endorsement or approval of any poultry breeding, hatching, or other operation by Federal, State, or other authority; or

(*d*) Concerning any other matter in relation to such baby chicks.

Rule 2. Deceptive Concealment of Material Facts.

In advertising, offering for sale or selling baby chicks, it is an unfair trade practice for any member of the industry to conceal or fail or refuse to disclose any material facts for the purpose or with the effect of thereby misleading or deceiving purchasers, as for example:

(*a*) Filling baby chick orders with cockerels which have been obtained from sexed chicks or from other sources without having disclosed to the purchaser at the time of sale the fact that the baby chicks delivered are cockerels;

(*b*) Adding surplus cockerel chicks to so-called "straight-run" chicks and offering for sale, selling, or delivering same to customers without informing the respective purchasers of the fact that such surplus or added cockerels have been included and without obtaining such purchasers' consent thereto.

(NOTE.—The above examples are but a few illustrations of the scope of rule 2.)

Rule 3. (*a*) *Misuse of Words "Guaranteed to Live," Etc.*

(*b*) *Use of Deceptive Guaranties as to Livability of Baby Chicks, Etc.*

(*a*) It is an unfair trade practice to advertise, guarantee, describe, or otherwise represent that baby chicks sold or offered for sale are "guaranteed to live," or to make similar statements or representations, with the purpose or with the tendency and capacity or effect of misleading or deceiving purchasers or prospective purchasers into the erroneous belief that the said baby chicks possess extraordinary stamina or other qualities which prevent disease or death.

(*b*) It is an unfair trade practice to make or publish, or cause to be made or published, directly or indirectly, any false, misleading, or deceptive statement, guaranty, warranty or other representation concerning the livability, health, or stamina of baby chicks sold or offered for sale.

Rule 4. Misrepresentation as to Yields of Eggs.

It is an unfair trade practice to advertise, guarantee, describe, or otherwise represent, directly or indirectly, that very high yields of eggs are received from all flocks of a particular seller or producer when such is not the fact, or when such statement or representation is true only as to a small percentage or proportion of his flocks.

Rule 5. Misrepresentation as to Blood Testing, Etc.

(*a*) It is an unfair trade practice to advertise, guarantee, describe, or otherwise represent, directly or indirectly, that all baby chicks or other poultry sold or offered for sale have been blood tested, pullorum tested, vaccinated, inoculated, or otherwise treated for any disease when such is not the fact, or when only a portion of the flocks supplying the eggs have been so treated or tested during the current season.

(*b*) It is an unfair trade practice to use any disease control term such as "pullorum tested," "blood tested," or the like, in advertising or otherwise, in such manner as to have the tendency and capacity or effect of misleading or deceiving purchasers or prospective purchasers into the belief that officially approved methods have been used in making these tests when such is not the fact.

Rule 6. Deceptive Substitution of Inferior Chicks for Those Ordered.

It is an unfair trade practice to advertise, guarantee, describe, or otherwise represent that the flocks of a particular seller or producer possess certain good qualities, such as ability to resist disease or to produce high yields of eggs, or the like, and then upon receipt of customers' orders for baby chicks from the flocks advertised, filling same from flocks of an inferior quality, without informing the purchasers of such substitution.

Rule 7. Deceptive Sale of Chicks at Purported Bargain Prices.

It is an unfair trade practice to sell or offer to sell baby chicks of poor grade or quality at so-called "bargain prices" or at any other prices, through advertisements or otherwise, from a farm or hatchery advertised or bearing a reputation for high grade production, without informing purchasers or prospective purchasers as to the poor grade or quality of such chicks and with the tendency and capacity or effect of thereby misleading or deceiving them into the erroneous belief that they are receiving a bargain when such is not the fact.

Rule 8. Misrepresentation as to Egg Production Qualities of Poultry.

In the case of a producer of baby chicks mating with his flocks a limited number of males having a record for transmitting high egg production qualities while mating therewith other males having no such record, it is an unfair trade practice to offer baby chicks for sale from his flocks, through advertising or otherwise, in such manner as to have the tendency and capacity or effect of misleading or deceiving purchasers or prospective purchasers into the belief that all of such chicks possess the same high egg production qualities as the said males of high pedigree, or that such flocks have been mated exclusively with males having a record for transmitting high egg production qualities, when such is not the fact.

Rule 9. Deceptive Use of "Leaders."

It is an unfair trade practice to offer for sale, advertise or otherwise represent baby chicks as being of a certain high grade or quality, offered at claimed "bargain prices" and under circumstances which have the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers into the belief that an adequate supply of such chicks is available to purchasers at such prices, or that all chicks so offered for sale or sold under such representations and conditions are of the same high grade or quality, when such is not true in fact.

Rule 10. Misuse of Words "Hatchery," "Chickery," "Chick Nursery," "Farm," "Poultry Farm," "Breeding Farm," "Incubators," etc.

(*a*) It is an unfair trade practice for any person, partnership, or corporation, by trade or corporate name, through advertising or otherwise, to hold himself or itself out as owning or operating a hatchery, chickery, chick nursery, farm, poultry farm, breeding farm, incubators, or the like, when such is not the fact.

(*b*) In the sale or offering for sale of baby chicks, through advertising or otherwise, it is an unfair trade practice for any person, partnership or corporation to represent that such chicks have been produced by the said person, partnership, or corporation, or have been produced under certain conditions, when such is not the fact.

Rule 11. Deceptive Guarantees or Representations as to Percentage of Chicks Alive at Buyer's Destination.

It is an unfair trade practice to make false, misleading or deceptive guarantees, warranties, or other representations to the effect that a certain percentage of the chicks shipped will be alive at buyer's destination, and then fail to adjust losses pursuant to representations made, with the purpose or with the tendency and capacity or effect of misleading or deceiving purchasers or prospective purchasers.

Rule 12. Misrepresenting Chicks Sold at Auction, Through Shipment to Fictitious Consignees, Through Agents, Salesmen, or Dealers, etc.

It is an unfair trade practice to cause baby chicks to be sold under deceptive or misleading conditions, at auction sales, through shipment to fictitious consignees, or through agents, salesmen, dealers, or otherwise, whether by means of false, misleading, or deceptive statements or representations or by means of deceptive concealment of material facts.

Rule 13. Deceptive Testimonials.

It is an unfair trade practice for any member of the industry to publish or use misleading or deceptive testimonials regarding exceptional results alleged to have been obtained by buyers of his chicks, which testimonials are so worded as to have the tendency and capacity or effect of inducing purchasers or prospective purchasers to believe that all of such member's chicks may be expected to produce similar results for all buyers when such is not the fact.

Rule 14. Misuse of Word "Free."

The use of the word "free," or the equivalent thereof, where not properly or fairly qualified when the article is in fact not free, with the tendency or capacity to mislead or deceive purchasers or prospective purchasers, is an unfair trade practice.

Rule 15. Misrepresenting Chicks as from Stock Entered in Egg-Laying Contests or Poultry Shows, etc.

It is an unfair trade practice to advertise, guarantee, describe or otherwise represent that baby chicks sold or offered for sale are from, or are closely related to, stock entered in egg-laying contests or poultry shows, or the like, when such is not the fact.

Rule 16. Misuse of Terms "Trapnest," "Trapped," etc.

It is an unfair trade practice to use the terms "trapnest," "trapped," or the like, in such manner as to have the tendency and capacity or effect of misleading or deceiving purchasers or prospective purchasers into the belief that all baby chicks sold or offered for sale are hatched from eggs produced by hens that are actually being trapped, or have been trapped for at least one year, when such is not the fact.

Rule 17. Deceptive Depictions.

It is an unfair trade practice to use photographs, cuts, engravings, illustrations, or pictorial or other depictions or devices, in catalogs, sales literature, or advertisements, or otherwise, in such manner as to have the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers as to the size, importance, or location of the premises occupied by a member of the industry, as to such member's equipment, as to his breeding flocks or poultry products, or as to any phase of his poultry hatching, breeding, or other operations.

Rule 18. Deceptive Representations as to Earnings, etc.

It is an unfair trade practice to make false, misleading, or deceptive statements or representations regarding opportunities for making money or actual or probable earnings of agents or dealers handling hatching eggs, baby chicks, or other poultry, or of purchasers raising baby chicks or other poultry, which products are being offered for sale or sold by a member of the industry.

Rule 19. Deception as to Transportation Charges.

(*a*) It is an unfair trade practice to sell or offer to sell baby chicks, through advertising or otherwise, in such manner as to mislead or deceive purchasers or prospective purchasers into the belief that the prices quoted for such chicks are the prepaid or delivered prices when such is not the fact.

(*b*) It is an unfair trade practice, by failing correctly to inform customers or by other deception, to cause purchasers to believe that transportation costs will not be charged against them in c. o. d. charges or otherwise, when such is not true in fact.

Rule 20. Publishing or Circulating of False or Misleading Price Quotations, Price Lists, etc.

The publishing or circulating by any member of the industry of false or misleading price quotations, price lists, terms or conditions of sale, with the tendency and capacity or effect of misleading or deceiving purchasers or prospective purchasers, is an unfair trade practice.

Rule 21. Misrepresenting Offer as "Special"

It is an unfair trade practice to represent an offer as "special" when it is in fact a "regular" offer.

Rule 22. Fictitious Prices.

Offering baby chicks for sale at prices purported to be reduced from what are in fact fictitious prices, or offering such chicks for sale at a purported reduction in price when such purported reduction is in fact fictitious, with the tendency and capacity or effect of misleading or deceiving purchasers or prospective purchasers, is an unfair trade practice.

Rule 23. Misrepresenting Offer as Limited to Time, etc.

It is an unfair trade practice to represent an offer to be limited as to time or otherwise when such is not the fact.

Rule 24. Bogus Independents.

It is an unfair trade practice to sell or offer to sell industry products through a pretended independent concern in such manner as to mislead or deceive purchasers or prospective purchasers into the erroneous belief that such concern is independent and in competition with that member of the industry owning or controlling such concern.

Rule 25. Schemes Involving Lottery, Misrepresentation, or Fraud.

The offering or giving of prizes, premiums, or gifts in connection with the sale of industry products or as an inducement thereto by any scheme which involves lottery, misrepresentation, or fraud, is an unfair trade practice.

Rule 26. Misuse of Word "Guarantee," Etc.

It is an unfair trade practice to use the word "guarantee," or any other word, expression, or representation of similar import, in such manner as to have the tendency and capacity or effect of misleading or deceiving purchasers or prospective purchasers.

Rule 27. Defamation of Competitors or Disparagement of Their Products.

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, or manufacture of the products of competitors, or of their business methods, selling prices, values, credit terms, policies, or services, is an unfair trade practice.

Rule 28. "Loss Leaders."

The practice of selling any product of the industry below the seller's cost as a "loss leader" to induce the purchase of any other prod-

uct of the industry, the sale of the latter being used to recoup the loss sustained on the "loss leader" product so sold, with the tendency or capacity to mislead or deceive purchasers or prospective purchasers, is an unfair trade practice.

Rule 29. Inducing Breach of Contract.

Inducing or attempting to induce the breach of existing lawful contracts between competitors and their customers or their suppliers by any false or deceptive means whatsoever, or interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

Rule 30. Enticing Away the Employees of Competitors.

Wilfully enticing away the employees of competitors, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

Rule 31. Espionage.

The securing of information from competitors concerning their businesses by false or misleading statements or representations or by false impersonation of one in authority and the wrongful use thereof to unduly hinder or stifle the competition of such competitors is an unfair trade practice.

Rule 32. Coercing Purchase of One Product as a Prerequisite to the Purchase of Other Products.

The practice of coercing the purchase of one or more products as a prerequisite to the purchase of one or more other products where the effect may be to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade is an unfair trade practice.

Rule 33. Consignment Selling.

It is an unfair trade practice for any member of the industry to use the practice of shipping goods to dealers or distributors on consignment or pretended consignment for the purpose and with the effect of artificially clogging trade outlets and unduly restricting competitors' use of said trade outlets in getting their goods to consumers through regular channels of distribution, or with such purpose to entirely close said trade outlets to such competitors so as to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade; *provided, however*, that nothing herein shall be construed or used as restricting or preventing consignment shipping or marketing of commodities in good faith, and without artificial interference with competitors' use of the usual channels of distribution in such manner as thereby to suppress competition or restrain trade.

Rule 34. Selling Below Cost.

The selling or offering for sale of baby chicks or "started chicks" below the seller's cost with the intent and with the effect of injuring a competitor and where the effect may be to substantially lessen competition or tend to create a monopoly or unreasonably restrain trade is an unfair trade practice; all elements recognized by good accounting practice as proper elements of such cost shall be included in determining cost under this rule.

Rule 35.

(*a*) *Prohibited discriminatory prices, or rebates, refunds, discounts, credits, etc.*[1], *which effect unlawful price discrimination.*—It is an unfair trade practice for any member of the industry engaged in commerce,[2] in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, or other form of price differential,[1] where such rebate, refund, discount, credit, or other form of price differential effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce,[2] and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce,[2] or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination or with customers of either of them: *Provided, however*—

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce[2] from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (*a*) the market for the goods concerned, or (*b*) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(*b*) *Prohibited brokerage and commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,[2] in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(*c*) *Prohibited advertising or promotional allowances, etc.*—It is an unfair trade practice for any member of the industry engaged in com-

[1] Par. (*a*) of rule 35 shall not be construed as embracing practices prohibited by pars. (*b*), (*c*), and (*d*) of this rule.

[2] As herein used, the word "commerce" means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or an insular possession or other place under the jurisdiction of the United States: *Provided,* That this shall not apply to the Philippine Islands.

merce [2] to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(*d*) *Prohibited discriminatory services or facilities.*—It is an unfair trade practice for any member of the industry engaged in commerce [2] to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or by furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(*e*) *Illegal price discrimination.*—It is an unfair trade practice for any member of the industry or other person engaged in commerce,[2] in the course of such commerce, to discriminate in price in any other respect contrary to section 2 of the Clayton Act as amended by the act of Congress approved June 19, 1936 (Public, No. 692, 74th Cong.), or knowingly to induce or receive a discrimination in price which is prohibited by such section as amended.

Rule 36. Aiding or Abetting Use of Unfair Trade Practices.

For any member of the industry knowingly to aid or abet another member, or any other person, firm or corporation, in the use of unfair trade practices, is an unfair trade practice.

Group II

The trade practices embraced in Group II rules do not, *per se*, constitute violations of law. They are considered by the industry either to be unethical, uneconomical, or otherwise objectionable; or to be conducive to sound business methods which the industry desires to encourage and promote. Such rules, when they conform to the above specifications and are not violative of law, will be received by the Commission, but the observance of said rules must depend upon and be accomplished through the cooperation of the members of the industry concerned, exercised in accordance with existing law. Where, however, such practices are used in such manner as to become unfair methods of competition in commerce or a violation of any law over which the Commission has jurisdiction, appropriate proceedings will be instituted by the Commission as in the case of violation of Group I rules.

Rule A.

The industry condemns the practice of disposing of baby chicks by shipping them to fictitious consignees or without an order or other consent of the consignee, necessitating the sale of such undeliverable shipments at public auction by agents of the common carrier in order to secure payment for transportation costs. Such practice is deemed

by the industry to be harmful to the chicks and to facilitate the spread of disease.

Rule B.

The industry condemns the practice of failing to give proper notice to purchasers of baby chicks of any change in the shipping schedule of an order thereby causing inconvenience and loss to purchasers.

Rule C.

The industry condemns the practice of failing to ship baby chicks to customers as promptly as has been agreed upon, which practice frequently results in injury to the chicks and inconvenience and loss to customers.

Rule D.

The industry approves the practice of handling business disputes between members of the industry and their customers in a fair and reasonable manner, coupled with a spirit of moderation and good will, and every effort should be made by the disputants themselves to compose their differences. If unable to do so they should, if possible, submit these disputes to arbitration.

Rule E.

Lawful contracts are business obligations which should be performed in letter and in spirit. The repudiation of contracts by sellers on a rising market or by buyers on a declining market is condemned by the industry.

A committee on trade practices is hereby created by the industry to cooperate with the Federal Trade Commission and to perform such acts as may be legal and proper to put these rules into effect.

Promulgated and issued by the Federal Trade Commission as of December 31, 1938.

OTIS B. JOHNSON, *Secretary.*

Trade Practice Rules

FOR THE

RADIO RECEIVING SET MANUFACTURING INDUSTRY

AS PROMULGATED JULY 22, 1939

Statement by the Commission:

Trade practice rules for the radio receiving set manufacturing industry, as herein set forth, are promulgated by the Federal Trade Commission under the trade practice conference procedure.

The rules provide for the elimination and prevention of false advertising, deceptive selling methods, and certain other unfair trade practices, and are issued in the interest of protecting the purchasing public and maintaining fair competitive conditions in the industry. Such rules are applicable to radio receiving sets, radio parts, accessories, and related products of the industry, and to their sale and distribution in commerce by manufacturers, jobbers, distributors, dealers, or other marketers.

Available statistics indicate that for the year 1937, the industry's total sales of radio receiving sets, parts, accessories, etc., amounted to slightly more than $460,000,000, retail value. For the year 1938, radio receiving sets sold by the industry, exclusive of parts, accessories, etc., totaled approximately 7,150,000, with an estimated retail sales value of about $225,000,000. At the present time there is said to be in use in the United States about 41,000,000 radio sets. The industry, as a whole, has a large capital investment and employs many thousands of men and women in its manufacturing operations and in selling, distributing, and servicing its products.

The proceeding for the establishment of rules was instituted upon application of the industry. In the course of the proceeding drafts of rules proposed for the industry were made available upon public notices, issued by the Commission to all interested or affected parties, whereby they were afforded opportunity to present to the Commission their views, including such suggestions or objections as they desired to submit, and to be heard in the premises. Accordingly, public hearings were held at Washington, D. C., and all matters presented at the hearings, or otherwise submitted in pursuance of such notices, were duly received and considered.

Thereafter, and upon consideration of the entire proceeding, the rules appearing herein under Group I were given final approval by the Commission and are herewith promulgated as follows:

The Rules

These rules promulgated by the Commission are designed to foster and promote fair competitive conditions in the interest of the industry

and the public. They are not to be used, directly or indirectly, as part of or in connection with any combination or agreement to fix prices, or for the suppression of competition, or otherwise to unreasonably restrain trade.

GROUP I

The unfair trade practices which are embraced in the Group I rules are considered to be unfair methods of competition, unfair or deceptive acts or practices, or other illegal practices, prohibited, within the purview of the Federal Government, by acts of Congress, as construed in the decisions of the Federal Trade Commission or the courts; and appropriate proceedings in the public interest will be taken by the Commission to prevent the use, by any person, partnership, corporation, or other organization, of such unlawful practices in or directly affecting interstate commerce.

Rule 1. Misbranding, Misrepresentation, and Deceptive Selling Methods.

It is an unfair trade practice for any member of the industry, in the course of or in relation to the marketing or distribution of radio receiving sets, parts or accessories therefor, or other products of the industry, (1) to use, or to cause, promote, or further the use of, any marks, brands, labels, depictions, advertisements, trade promotional descriptions, or representations of any kind which, directly or by implication, are false, misleading, or deceptive to the purchasing or consuming public; or (2) to offer for sale, sell, or distribute, or to cause or promote the sale or distribution of, radio receiving sets, parts or accessories therefor, or other products of the industry, under any other conditions or selling practices which have the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public.

Rule 2. "All-Wave," "Standard Broadcast," etc.

In the application of these rules and for the purpose of avoiding confusion, misunderstanding, and deception:

(*a*) Except as hereinafter provided, the terms "all-wave," "world-wave," "world-wide wave," or words, phrases, or representations of similar import, shall not be used as descriptive of a radio receiving set advertised, offered for sale, sold, or distributed in the American market when such set is not constructed to receive and capable of receiving, with reasonable or adequate consistency, the entire spectrum of radio frequencies in recognized use in the art—namely, all long-wave broadcasts and transmissions; all medium-wave and short-wave broadcasts and transmissions, and all other waves transmitted or broadcast, including both foreign and domestic; excepting, however, that such set so described or represented need not include within its capacity of reception such point-to-point transmissions as are confidential and illegal for general reception and divulgence by members of the public, nor such unchanging signals as emanate from radio beacons or radio lighthouses, when such set is not otherwise falsely or deceptively described or represented, directly or indirectly, as being constructed to receive, or as being capable of receiving, such point-to-point or beacon or lighthouse transmissions.

(*b*) Nothing herein contained shall prohibit the use of the term "limited all-wave," "limited world-wave," "limited world-wide wave," or term or words of similar import, as descriptive of a radio receiving

set advertised, offered for sale, sold, or distributed in the American market when such set is constructed for and capable of consistently receiving at least a continuous spectrum of frequencies from 540 kilocycles to 18000 kilocycles, provided such term or words are immediately accompanied by words, phrases, or terms set forth conspicuously and clearly, unequivocally and truthfully stating the exact wave bands or frequencies which such set is capable of consistently receiving; for example:

"LIMITED ALL-WAVE
From 540 to 18000 Kilocycles"

"LIMITED ALL-WAVE
From 530 to 21000 Kilocycles"

"LIMITED WORLD-WAVE
From 540 to 18000 Kilocycles"

"LIMITED WORLD-WIDE WAVE
From 540 to 18000 Kilocycles"

"LIMITED ALL-WAVE
From 140 to 410 Kilocycles, and
From 540 to 18000 Kilocycles"

"LIMITED WORLD-WAVE
From 540 to 18000 Kilocycles, and
From 19000 to 23500 Kilocycles"

"LIMITED WORLD-WIDE WAVE
From 150 to 400 Kilocycles, and
From 540 to 35000 Kilocycles"

(*c*) Nothing herein contained shall prohibit the use, as descriptive of a radio receiving set, of the term "all waves" as an integral part of a clause, sentence, or statement which truthfully and unequivocally sets forth the bands or radio frequencies such set does not cover, and wherein the words "all waves" are not given greater prominence or conspicuousness than the other parts of such clause, sentence, or statement; provided such set is constructed for and capable of receiving with reasonable or adequate consistency all the waves or bands of frequencies from 540 to 18000 kilocycles and such other bands or frequencies as are represented to be within its receptive capacity. The following are illustrative of such permissible phrases here provided for—

"All waves except for frequencies above 21000 kilocycles and below 540 kilocycles."

"All waves except Asiatic stations."

"All waves except foreign and domestic frequencies above 18000 kilocycles and below 540 kilocycles."

(*d*) The term "standard broadcast" shall not be used as descriptive of a radio receiving set which is not built for or capable of receiving with reasonable or adequate consistency a continuous spectrum of frequencies from 540 to at least 1600 kilocycles.

(*e*) Also, the term "standard broadcast" as descriptive of a radio receiving set shall not be used in such manner as to lead the public to believe (1) that such set is constructed for and capable of receiving with reasonable or adequate consistency a greater number of radio frequency signals than is in fact true of such set; or (2) that the set is

capable of so receiving more than the continuous spectrum of frequencies from 540 to 1600 kilocycles.

(*f*) In the advertisement or sale of radio receiving sets, disclosure of the exact bands of frequencies which such sets are constructed to receive and capable of receiving with reasonable or adequate consistency is deemed desirable in the interest of avoiding confusion, misunderstanding or deception of purchasers. Failure or refusal adequately to make such disclosure of frequencies, in connection with the use of the term "standard broadcast" or otherwise, when the capacity and tendency or effect thereof is to mislead or deceive the purchasing or consuming public, is an unfair trade practice.

(*g*) Nothing in these rules shall prevent the use, in lieu of "kilocycles," of other recognized units of measurement, such as "meters" or "megacycles," when employed in a truthful and nondeceptive manner.

Rule 3. Specific Types of Advertisements or Representations among Those Prohibited.

It is an unfair trade practice for any member of the industry to use, or cause to be used, any of the following-described types of advertisements or representations:

(*a*) Advertisements or representations stating, purporting or implying that any radio receiving set so advertised or represented will receive distant stations or any or all foreign broadcasts or transmissions easily or satisfactorily or as easily or satisfactorily as local or domestic reception, when such is not the fact.

(*b*) Advertisements or representations stating, purporting or implying that any radio receiving set so advertised or represented, or the reception thereof, is not subject to interference or to being interfered with or interrupted by fading, noise, electrical interference, atmospheric conditions, static or any other phenomena or conditions, when such is not the fact.

(*c*) Advertisements or representations, with respect to the receiving capacity or performance of a radio receiving set, which make deceptively exaggerated or misleading claims, or claims which are not justified and supported by the fact or performance of such radio set in the locality in which it is so advertised, represented and sold.

(*d*) Advertisements or representations which directly or by implication lead purchasers to believe that the radio set so advertised or represented is capable of greater or more consistent or satisfactory performance or reception than is in fact true.

(*e*) Advertisements or representations stating, purporting or implying that any radio receiving set so advertised or represented will give world-wide continuous reception or other continuous reception, when such is not the fact; or that the radio receiving set will give such reception or other reception with loud speaker volume, when such is not the fact; or that the radio receiving set will give world-wide reception or other reception regularly or dependably, when such is not the fact.

(*f*) Advertisements or representations which present claims or representations concerning any radio receiving set in such a way as deceptively to cover or conceal defects or deficiencies inherent in such set, or defects or deficiencies inherent in the contempo-

raneous state of the art to which the receiving set is subject but which are not generally known to the purchasing public.

(*g*) Advertisements or representations, of any radio receiving set, stating, purporting or implying that each station or any station, whether nearby or foreign or domestic, can be brought in, or brought in with sharp, clear or distinct reception or with ease, simplicity or regularity, by any radio receiving set so advertised or represented, when such is not the fact.

(*h*) Advertisements or representations stating, purporting or implying that any radio receiving set so advertised or represented, will bring in or receive broadcasts from Europe, Africa, South America, Australia or Asia, or from any other designated locality; or that it will bring in such broadcasts, or any of them, consistently or satisfactorily, when such is not the fact.

(*i*) Advertisements or representations stating, purporting or implying that any radio receiving set so advertised or represented sifts out noise or is free from noise, or brings in far distant stations sharp or clear, when such is not the fact.

(*j*) Advertisements or representations stating, purporting or implying that any radio receiving set so advertised or represented will bring in or receive satisfactorily or consistently foreign stations, police calls, aviation calls, radio transmissions from or to ships at sea, amateur stations or other types of radio transmissions, when such is not the fact, or when only a small part of any such class of radio frequencies transmitted or broadcast is so receivable and such fact, or the fact that others of the same class are not so receivable, is deceptively concealed.

(*k*) Advertisements or representations stating, purporting or implying that any radio receiving set so advertised or represented contains a certain number of tubes or is of a certain tube capacity when one or more of such tubes in the set are dummy or fake tubes, or are tubes which perform no useful function, or are tubes which do not perform or were not placed in the set to perform the recognized and customary function of a radio receiving set tube in the detection, amplification, and reception of radio signals.

(*Note.*—In order to avoid and prevent deceptive or misleading tendencies or results, so-called "ballast tubes", dial or other lamps used for illumination, so-called plug-in resistors, and other accessories or devices not serving the recognized and customary function of a radio receiving set tube, are not to be included as tubes in advertisements or representations of a radio receiving set which describe or refer to the set as having a certain number of tubes or as being of a specified tube capacity. References to rectifier tubes, and to tubes, devices, or accessories which do not serve as signal amplifying or detecting tubes or heterodyne oscillator tubes, should be such as to clearly avoid misunderstanding or deception of purchasers.)

(*l*) Advertisements or representations of any radio receiving set, or of any part or accessory therefor whatsoever, in such a manner as deceptively to conceal the true function of such part or in such manner as otherwise to mislead or deceive the purchasing or consuming public in respect to such set or such part or accessory.

(*m*) Advertisements or representations stating, purporting or implying that the price of radio receiving sets, parts or accessories therefor so advertised or represented have been reduced or are reduced prices, or have been reduced a certain amount, when in fact such purported or represented price reduction is fictitious, or is otherwise misleading or deceptive.

(*n*) Advertisements or representations stating, purporting or implying that radio receiving sets so advertised or represented are of the latest model, when such is not the fact; or advertisements or representations which, directly or indirectly, have the capacity and tendency or effect of leading the purchasing public to believe that the set is of the current year's model or has not been supplanted, superseded or succeeded by a newer or later model, when such is not true in fact; or advertisements or representations which are otherwise deceptive or misleading respecting the model of the set.

(*o*) Advertisements or representations of radio receiving sets or prices therefor which deceptively or misleadingly conceal the fact that the advertised price does not cover necessary or advertised accessories or devices which must be purchased with the set at an additional charge; or which falsely or deceptively state or imply that the advertised price covers such accessories or devices, when such is not the fact.

(*p*) Advertisements or representations of radio receiving sets which present former prices or so-called list prices which are fictitious.

(*q*) Advertisements or representations of purported bona fide trade-in allowances when the price of the new set so offered for sale has been deceptively inflated or marked up to offset the trade-in allowance.

Rule 4. Sponsorship.

It is an unfair trade practice to use, or cause to be used, advertisements or representations, of radio receiving sets, parts or accessories therefor, or of other products of the industry, which have the capacity and tendency or effect of misleading purchasers or the consuming public into the belief that such radio sets, parts, accessories, or products are sponsored or manufactured by, or are otherwise associated with, any person, concern, or organization which is or has been prominent or well known in the electrical or radio industry, or by or with any other person, firm, corporation, or association, when such is not the fact.

Rule 5.

(*a*) *Alteration of brand name.*—The defacement or removal of the correct name plate or brand name of a radio receiving set, or the replacement thereof by another name or mark, when done with the capacity and tendency or effect of thereby misleading or deceiving the purchasing or consuming public in respect to the origin, manufacture, or true name of such set, or in any other material respect, is an unfair trade practice.

(*b*) *Deceptive use or change of cabinets.*—The placing of a radio receiving set or chassis in a cabinet designed or made for a set or chassis of a different manufacturer or for a set or chassis of a different size, type, or model, when done with the capacity and tendency or

effect of thereby misleading or deceiving the purchasing or consuming public as to the origin, size, capacity, make, manufacture, brand, or type of such set or cabinet, or when done to mislead or deceive purchasers in any other respect, is an unfair trade practice.

Rule 6. Imitation of Trade-marks, Trade Names, Etc.

The imitation or simulation of the trade-marks, trade names, labels, or brands of competitors, with the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

Rule 7. Commercial Bribery.

It is an unfair trade practice for a member of the industry directly or indirectly to give, or offer to give, or permit or cause to be given, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase products manufactured or sold by such industry member or the maker of such gift or offer, or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors.

Rule 8. "Spiffs," "Push Money," Etc.

It is an unfair trade practice for any member of the industry, directly or indirectly, to give, pay or contract to pay, to any clerk or salesperson of any customer-dealer handling two or more competitive brands of radio merchandise, "push money," "spiffs," or any other bonus, gratuity, or payment, as an inducement or encouragement to push or promote the sale of such member's product or products over competing products of other members in the industry,

(*a*) with the capacity and tendency or effect of thereby causing the purchasing or consuming public, when making purchases of such products, to be misled or deceived into the erroneous belief that such clerk or sales person is free from any such special interest or influence, or is not so subsidized or paid by such member; or

(*b*) with the capacity and tendency or effect of thereby hampering and unduly restricting the legitimate, free and full use and enjoyment of such retail trade outlets for the distribution to the public of competing products; or

(*c*) with the purpose or effect, directly or indirectly, of otherwise substantially lessening competition or unreasonably restraining trade in the marketing of the products of the industry; or

(*d*) with the effect of thereby bringing about the granting of an illegally discriminatory service, payment or price contrary to section 2 of the Clayton Act as amended by the act of Congress approved June 19, 1936, known as the Robinson-Patman Act.

Promulgated and issued by the Federal Trade Commission as of July 22, 1939.

OTIS B. JOHNSON, *Secretary*.

Trade Practice Rules

FOR THE

RUBBER TIRE INDUSTRY

AS PROMULGATED OCTOBER 17, 1936

Statement by the Federal Trade Commission:

Trade practice rules for the rubber tire industry, as herein set forth, were today promulgated by the Commission under its trade practice conference procedure. A general conference for the entire industry was held, under the auspices of the Commission, at the Stevens Hotel, Chicago, Ill., June 4, 1936. The Honorable Robert E. Freer, member of the Federal Trade Commission, presided, assisted by George McCorkle, director, and Henry Miller, assistant director, of Trade Practice Conferences. At such conference proposed rules were adopted and submitted by the industry to the Federal Trade Commission for its approval.

The proposed rules were then tentatively passed upon by the Commission and released, with certain modifications, for a 15-day period upon public notice whereby opportunity was afforded to all interested or affected parties to present to the Commission their views regarding the same, including suggestions or objections, if any. Thereafter, some further amendments were adopted, and upon full consideration of the matter the rules as amended and herein set forth were approved by the Commission as to Group I, and as to Group II were received by the Commission as expressions of the industry.

The rubber tire industry, for which these rules are promulgated, embraces the manufacturers of automotive tires and tubes and all distributing units and trade outlets, including the independent dealers, jobbers, wholesalers, oil company outlets, factory-owned stores, chain or mass distributors and the mail-order houses.

According to information received, the manufacturers number about 50 companies and the distributing units and trade outlets exceed 100,000. The total capital investment of the industry is said to approximate $2,000,000,000 and the aggregate annual volume of business $750,000,000.

These rules promulgated by the Commission are designed to foster and promote fair competitive conditions in the interest of industry and the public. They are not to be used, directly or indirectly, as part of or in connection with any combination or agreement to fix prices, or for the suppression of competition, or otherwise to unreasonably restrain trade.

Group I

The unfair trade practices which are embraced in Group I rules are considered to be unfair methods of competition or other illegal practices within the decisions of the Federal Trade Commission or the

courts, and appropriate proceedings in the public interest will be taken by the Commission to prevent the use of such unlawful practices in or directly affecting interstate commerce.

Rule 1.

(*a*) *Prohibited discriminatory differentials, rebates, refunds, discounts, credits, and other allowances.*—It is an unfair trade practice for any member of the industry engaged in commerce,[1] in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any price differentials, rebates, refunds, discounts, credits or other allowances which effectuate a discrimination in price between different purchasers of goods of like grade and quality where either or any of the purchases involved therein are in commerce [1] and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce [1] or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination or with customers of either of them: *Provided, however*—

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce [1] from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (*a*) the market for the goods concerned, or (*b*) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(*b*) *Prohibited brokerages and commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,[1] in the course of such commerce, to pay or grant or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(*c*) *Prohibited advertising or promotional allowances, etc.*—It is an unfair trade practice for any member of the industry engaged in commerce [1] to pay or contract for the payment of advertising or promotion allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as

[1] See footnote, p. 49.

compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(*d*) *Prohibited discriminatory services or facilities.*—It is an unfair trade practice for any member of the industry engaged in commerce [1] to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or by furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(*e*) *Illegal price discrimination.*—It is an unfair trade practice for any member of the industry or other person engaged in commerce,[1] in the course of such commerce, to discriminate in price in any other respect contrary to section 2 of the Clayton Act as amended by the act of Congress approved June 19, 1936 (Public, No. 692, 74th Cong.), or knowingly to induce or receive a discrimination in price which is prohibited by such section as amended.

Rule 2.

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing or by other false representations, or the false disparagement of the grade, quality, or manufacture of the products of competitors, or of their business methods, selling prices, values, credit terms, policies, or services, with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers or the consuming public, is an unfair trade practice.

Rule 3.

The practice of selling goods below the seller's cost, with the intent and with the effect of injuring a competitor and where the effect may be to substantially lessen competition or tend to create a monopoly or unreasonably restrain trade, is an unfair trade practice; all elements recognized by good accounting practice as proper elements of such cost shall be included in determining cost under this rule.

Rule 4.

The making, or causing or permitting to be made or published, any false, untrue, or deceptive statement, representation, guaranty, warranty, or adjustment policy, by way of advertisement or otherwise, concerning the grade, quality, quantity, substance, use, character, nature, origin, size, manufacture, or distribution of any product of the industry or concerning the life or service of tires or tubes, or in any other material respect, having the tendency, capacity, or effect

[1] As herein used, the word "commerce" means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: *Provided*, That this shall not apply to the Philippine Islands.

of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

Rule 5.

The false or deceptive marking or branding of products of the industry for the purpose or with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public with respect to the grade, quality, quantity, use, size, material, content, origin, preparation, manufacture, or distribution of such products, or in any other material respect, is an unfair trade practice.

Rule 6.

For any person, firm, or corporation to hold himself or itself out to the public as "an authorized dealer" when such is not the fact, or for any member of the industry to misrepresent the character of his business, with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

Rule 7.

For any member of the industry to represent, by advertising or otherwise, that he handles "all standard makes" of tires or tubes, when such is not the fact, with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers or the consuming public, is an unfair trade practice.

Rule 8.

Falsely representing in the sale or offering for sale of "change over" tires or tubes that such tires or tubes are new or unused when they are in fact not new or unused, with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

Rule 9.

Withholding from or inserting in the invoice or sale ticket, statements which make the invoice or sale ticket a false record, wholly or in part, of the transaction represented on the face thereof, with the purpose or effect of thereby misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

Rule 10.

(*a*) The passing off, selling, or offering for sale of used, rebuilt, recapped, retreaded, or repaired tires as new or unused tires, is an unfair trade practice.

(*b*) The sale or offering for sale of used, rebuilt, recapped, retreaded, or repaired tires which have been dressed or prepared so as to simulate new or unused tires without having durably and conspicuously branded or molded in the rubber thereof the word "*SECONDHAND,*" or the words "*USED TIRE—REBUILT,*" "*USED TIRE—RECAPPED,*" "*USED TIRE—RETREADED,*" or "*USED TIRE—REPAIRED,*" as the case may be, or without otherwise fully and truthfully disclosing to all purchasers and users the fact that such tires are not new but in truth are secondhand tires, or used tires which have been rebuilt, recapped, retreaded, or repaired, respectively, with the purpose or with the effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, or with the purpose

or effect of placing an instrument of fraud or deception in the hands of dealers or in other channels of trade, is an unfair trade practice.

Rule 11.

The direct or indirect misrepresentation of tires as being of a quality or grade higher than in fact they are, or as being of first, second, third, fourth or fifth line or grade when such is not the fact, having the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

Rule 12.

The use in advertisements of illustrations or depictions of tires or tubes of a different brand, style, or size, or of a higher line, grade, or quality than the tires or tubes to which the representations in such advertisements are truthfully applicable, having the capacity, tendency or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

Rule 13.

The use of advertisements or representations of tires or tubes, or of prices thereof, which are in fact applicable only to certain limited sizes, lines, grades, qualities, styles or brands, without in such advertisements and representations truthfully and unequivocally disclosing the fact of such limitations, having the capacity, tendency or effect of misleading or deceiving purchasers. prospective purchasers or the consuming public, is an unfair trade practice.

Group II

The trade practices embraced in Group II rules do not, *per se*, constitute violations of law. They are considered by the industry either to be unethical, uneconomic, or otherwise objectionable; or to be conducive to sound business methods which the industry desires to encourage and promote. Such rules, when they conform to the above specifications and are not violative of law, will be received by the Commission, but the observance of said rules must depend upon and be accomplished through the cooperation of the members of the industry concerned, exercised in accordance with existing law. Where, however, such practices are used in such manner as to become unfair methods of competition in commerce or a violation of any law over which the Commission has jurisdiction, appropriate proceedings will be instituted by the Commission as in the case of violation of Group I rules.

Rule A.

Where merchandise at wholesale and merchandise at retail are sold in the same establishment, the failure on the part of any member of the industry to correctly differentiate between or identify the two types of transactions, where the result may be to create confusion and deception as to the character of the transaction in the mind of purchasers or prospective purchasers, is condemned by the industry.

Rule B.

In the interest of public safety and the protection of purchasers and prospective purchasers from deception, it is the judgment of the

industry that the members thereof manufacturing pneumatic automobile tires should mark or brand such tires with words and figures or phrases, molded on or in the rubber of each side wall of such tires (or otherwise affixed on each such side in some equally permanent manner) which will equivocally, conspicuously and truthfully indicate the number of plies existing in the construction of such tires (ply as herein used meaning fabric running from bead to bead of tire), for example: "4-PLY," or "6-PLY," etc.

The failure or refusal to so mark or brand tires as provided in this rule is condemned by the industry.

By the Commission:

OTIS B. JOHNSON, *Secretary.*

Trade Practice Rules

FOR THE

SILK INDUSTRY

AS PROMULGATED NOVEMBER 4, 1938

Statement by the Commission:

Trade practice rules for the silk industry, as herein set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure. The general purpose of the rules is to foster and promote fair competitive conditions and the protection of the purchasing and consuming public in the interest of both the industry and the public; to this end to provide for proper identification and disclosure of material content of merchandise containing or purporting to contain silk in whole or in part; to make provision for accurate designations and descriptions to be used in marketing such products; and to eliminate and prevent misrepresentation, deceptive concealment and other unfair methods of competition or unfair or deceptive acts or practices.

In the course of the proceedings an industry's conference was held in Washington, D. C., under the Commission's auspices, and proposed trade practice rules were submitted by members of the industry. Thereafter tentative action was taken by the Commission on the rules so submitted and a draft of proposed rules was made available upon public notice of at least 15 days, in pursuance of which all interested and affected parties were afforded opportunity to present such pertinent facts, suggestions or objections as they desired and to be heard in respect to the proposed rules. Such hearing was held in Washington and all matters submitted orally or in writing were received and filed in the proceeding.

Thereafter, and upon consideration of the entire matter, final action was taken and the rules in the form appearing herein under Group I and Group II were respectively approved and received by the Commission.

Information received in the premises indicates that 57,815,573 pounds of raw silk, with a dollar value of $106,594,358, were imported into the United States in 1937. This raw product was converted by American mills and factories into more than 60 varieties of finished goods with a total retail sales value of approximately $600,000,000. Such American industry is reported to have a capital investment of more than $500,000,000 and to afford direct employment in the United States to approximately 250,000 persons.

As promulgated the Group I rules are intended to afford a helpful guide to the industry and the public in respect to the described unfair trade practices, which are considered by the Commission to be harm-

ful and illegal. The requirements of law as expressed in such rules are binding upon all engaged directly or indirectly in promoting the sale or distribution or other marketing of the fiber, yarn, thread, strands, fabric, garments and products specified.

The rules for the silk industry herein promulgated supersede and replace prior rules published by the Federal Trade Commission on June 18, 1932, concerning the subject of silk weighting.

Said new silk rules are as follows:

Group I

The unfair trade practices which are embraced in these Group I rules are considered to be unfair methods of competition, unfair or deceptive acts or practices, or other illegal practices, prohibited, within the purview of the Federal Government, by acts of Congress as construed in the decisions of the Federal Trade Commission or the courts; and appropriate proceedings in the public interest will be taken by the Commission to prevent the use, by any person, partnership, corporation or other organization, of such unlawful practices in or directly affecting interstate commerce.

Such provisions of the rules express requirements which are applicable to all sellers, whether importers, manufacturers, converters, distributors, dealers or other vendors. Each has the definite responsibility of seeing to it that the merchandise as it is advertised by him or as it is introduced by him into the channels of trade or commerce is properly labeled and represented in keeping with the requirements of such Group I rules.

The labeling and other requirements respecting the fiber, yarn, thread, strands, fabric or garment or other product covered by the rules apply to such merchandise in whatever form it may be sold or distributed.

In the case of finished garments or articles manufactured for distribution through the channels of trade to the ultimate consuming public without intermediate processing, it is deemed proper practice for manufacturers thereof not only to label the garment or article with proper disclosure of material content and other disclosure as is required by these rules, but also to cause the labeling (tagging or branding) to be done in such manner as to carry through the ordinary channels of trade to the ultimate consumer and be appropriate in the sale or resale of the garment or article to the consuming public, thereby rendering further or additional labeling as to material content unnecessary so long as the proper label, tag, or brand affixed by the manufacturer remains on the garment or article and the material content of the product has not been changed. This shall not, however, be construed as relieving dealers or other vendors of any of their responsibility under the rules of seeing to it that the garment or article bears a proper and appropriate label, brand, or tag disclosing the information required by these rules to be disclosed and that it is not falsely or deceptively labeled, nor otherwise marked, advertised, represented, or offered for sale in a manner contrary to the provisions of these rules.

Rule 1.

(*a*) *Silk defined.*—Silk is the natural fiber derived from the cocoon of the silkworm.

(*b*) *Deceptive passing off of silk.*—It is an unfair trade practice to cause any silk fiber, yarn, thread, strands, fabric, or garment or other product made therefrom, to be sold, offered for sale, distributed, advertised, described, branded, labeled, or otherwise represented: (1) as not being silk; or (2) as being something other than silk; or (3) without disclosure of the fact that such material or product is silk, made clearly and unequivocally in the invoices, in labels, tags, or brands attached to the merchandise, and in whatever advertising matter, sales promotional descriptions or representations thereof may be used, however disseminated or published, where such nondisclosure has the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public.

(*c*) It is an unfair trade practice to cause any fiber, yarn, thread, strands, fabric, garment, or other product, containing or purporting to contain silk of any kind in whole or in part, to be offered for sale, sold, or distributed under any conditions of deceptive concealment of the fiber content or under any other deceptive or misleading conditions or representations.

Rule 2. Silk Noil.

(*a*) Silk noil is waste silk produced in the operations incident to manufacture of spun silk. The term "silk noil" as used in these rules, however, shall not be construed as including spun silk, except to the extent such spun silk is made of silk noil. For purposes of making disclosure, under these rules, as to content of product, such silk noil may be designated as "silk noil," "noil silk," "silk waste," or "waste silk."

(*b*) In offering for sale, selling or distributing, or promoting the sale or distribution of, any fiber, yarn, thread, strands, fabric, or garment or other product, containing silk noil either in whole or in part, full and nondeceptive disclosure of the presence of such silk noil should be made in labels, tags, or brands affixed to the merchandise and in the invoices and in such advertising matter, sales promotional descriptions or representations as may be used in respect thereof, however disseminated or published; and it is an unfair trade practice to deceptively conceal the presence of such silk noil or to fail or refuse to make said disclosure, having the capacity and tendency or effect of thereby misleading or deceiving the purchasing or consuming public. In the use of the term "silk noil," "noil silk," "silk waste," or "waste silk," the words "noil" and "waste" shall not be misleadingly or deceptively minimized, obscured, remotely placed, or rendered inconspicuous.

Rule 3. Pure Silk.

(*a*) It is an unfair trade practice to use the term or phrase "pure silk," "all silk," "pure dye silk," or the distinctive term or phrase "pure dye" or the unqualified word "silk," or any other word, term, phrase, designation, or representation of similar import, as descriptive of any fiber, yarn, thread, strands, fabric, or garment or other product containing the same, (1) the fiber content of which is not silk exclusively; or (2) which contains any metallic weighting whatsoever; or (3) which contains any loading or adulterating materials, or other foreign or added substance or material (except the necessary dyeing and/or finishing materials required to produce the color and finish of the product). Such necessary dyeing and/or finishing

materials shall, however, in no case exceed 10 percent in the aggregate, except black, which shall not exceed 15 percent in the aggregate. These percentages shall be computed upon the weight of the silk in its finished state. Nothing in this rule shall be construed as permitting the use of dyeing or finishing materials, either within or in excess of such 10 percent and 15 percent limits, for the purpose or with the result of thereby deceptively loading the product with excess or unnecessary dyeing or finishing materials.

(*b*) Nothing in this rule shall prohibit the use of the term or phrase "pure silk," "pure dye silk," or "silk," in a truthful and nondeceptive manner, as descriptive of the silk content of a mixed fabric, *provided* said content meets the requirements of the foregoing paragraph (*a*) of this rule 3 and the requirements of rule 7 as to mixed goods; *and provided, further,* it is accurately and in immediate conjunction disclosed clearly and unequivocally that such term or phrase so employed is used as applying only to the silk content of such mixed fabric—such as, for example:

"Rayon and pure silk"
or
"Rayon and silk"
or
"60 percent rayon, 40 percent pure dye silk"

Rule 4. Weighted Silk.

(*a*) Full and nondeceptive disclosure of the presence of metallic weighting, together with the proportion or percentage thereof, in any silk or silk product of any kind, shall be made in labels, tags, or brands attached to the merchandise and in the invoices and in whatever advertising matter, sales promotional descriptions or representations may be used in respect thereto, however disseminated or published, to the end that misrepresentation of the merchandise or deception of the purchasing or consuming public may be avoided and prevented; and it is an unfair trade practice (1) to fail or refuse to make such full and nondeceptive disclosure through the means stated and in conformity with the requirements of this rule; or (2) otherwise to deceptively conceal the presence of such metallic weighting or the percentage or proportion thereof.

(*b*) The percentage or proportion of such metallic weighting to be disclosed under this rule shall be that proportion or percentage which the total weight of such metallic substance bears to the total weight of the silk in its finished state; subject, however, to the allowance of a tolerance of five points' variation from such stated percentage or proportion to the extent the variation is due to unavoidable variations in processing and not to lack of reasonable effort to state the percentage or proportion accurately. The following are illustrative examples of the disclosure provided for in this rule:

"Silk, weighted 25 percent"
or
"Silk with 25 percent metallic weighting"
or
"Silk (weighted 25 percent) and rayon."

(*c*) Nothing in this rule, however, shall be construed as prohibiting the making of such disclosure as to weighting and the percentage

thereof by truthfully and nondeceptively disclosing that the weighting is not over a certain percentage, or that the weighting in such parts of the product as consist of weighted silk ranges from a certain minimum to a certain maximum figure, such as, for example:

"Silk, weighted up to 50 percent"
"Silk, weighted not over 50 percent"
"Silk, weighted between 25 and 50 percent"
"Silk with 25 to 50 percent weighting"
"Silk, weighted from 25 to 50 percent."

(*d*) In making disclosure under these rules as to weighting, the disclosure of the fact that the product, or respective part thereof, is weighted and of the percentage or proportion of weighting, shall be made plainly and unequivocally, also in immediate conjunction with such representations of content as are used, and shall not be set forth in such manner as to be misleadingly or deceptively minimized, obscured, remotely placed, or rendered inconspicuous.

(*e*) In case any such product so weighted with metallic substance is silk noil, the fact that such is noil shall also be disclosed in accordance with the requirements of rule 2 and in addition to said disclosure as to weighting materials—such as, for example:

"Silk noil, weighted 25 percent"
"Noil silk with 25 percent weighting."

Rule 5. Special Finishing Materials, Excess Finishing Materials, Loading or Adulterating Materials.

(*a*) This rule applies to nonfibrous materials other than metallic weighting provided for in rule 4 and other than the necessary dyeing and/or finishing materials referred to in rule 3.

(*b*) The presence of such nonfibrous materials which have been added to any fiber, yarn, thread, strands, or fabric shall be truthfully and nondeceptively disclosed in accordance with the following requirements of this rule, to the end that misunderstanding, confusion, and deception of the purchasing or consuming public may be avoided and prevented.

(*c*) In the case where such nonfibrous material has been added to the product as special finishing materials, the product shall be designated and described in such manner as will clearly and nondeceptively disclose to the purchasing and consuming public that such added finishing materials are present in the product. The term "special finishing materials" as used in this rule means such finishing materials as are added to the product for the purpose and with the effect of thereby imparting certain useful properties to the product, such as water-repellent qualities, etc.

(*d*) In cases of fiber, yarn, thread, strands, or fabric where nonfibrous materials have been added to or are present in the product as excess dyeing or finishing materials, loading or adulterating materials, full, clear, and nondeceptive disclosure of the presence of such excess dyeing or finishing materials, or loading or adulterating materials, and of the maximum percentage or proportion in which such materials are present shall be made in tags, labels, or brands attached to the product, in the invoices and in whatever advertising or trade promotional descriptions or representations may be used in respect to the product, however disseminated or published.

(*e*) It is an unfair trade practice to fail or refuse to make such disclosure provided for in this rule, such failure or refusal having the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public; and it is an unfair trade practice to omit or fail to take such other steps as may be necessary to avoid the sale or distribution of such products in the channels of trade or to the purchasing or consuming public under false, misleading, or deceptive representations or conditions.

Rule 6. Terms "Silk," "Wool," "Linen," "Flax," "Cotton," etc.

It is an unfair trade practice to use, or cause to be used, as descriptive of any textile merchandise, the word "silk" or word, term, or representation of similar import, either alone or in conjunction with the words "wool,", "linen," "flax," "cotton," "rayon," or other term or representation, such as, for example, "silk rayon," "rayon silk," "silk linen," "linen silk," etc., so as to import or imply that the product is silk or contains silk or has the properties of silk, when such is not the fact. However, nothing in this rule shall prohibit the use of the words "silk," "rayon," "wool,", "linen," "flax," or "cotton" in any truthful and nondeceptive designation or representation made in conformity with the requirements of rule 7 as to disclosure of mixed goods.

Rule 7. Mixed Goods.

In the case of any yarn, thread, strands, fabric, or garment or other product made therefrom, containing a mixture of any kind of silk and other fiber or fibers, full and nondeceptive disclosure of the fiber content of such merchandise should be made in accordance with the hereinafter stated provisions of this rule, to the end that the purchasing and consuming public may be informed as to the contents of such merchandise and that deceptive concealment, misunderstanding, misrepresentation, and unfair practices in the marketing of such merchandise in the channels of trade and to the public may be avoided and prevented. And it is an unfair trade practice to conceal the presence of any fiber constituent of such merchandise, or to fail or refuse to make said disclosure of fiber constituents, having the capacity, tendency, or effect of misleading or deceiving the purchasing or consuming public. Such disclosure of the fiber content of said products, pursuant to this rule, shall be made by accurately designating and naming each constituent fiber thereof in the order of its predominance by weight, beginning with the largest single constituent, such as, for example, "silk, rayon, and wool," for yarn, thread, strands, or fabric composed of silk, rayon, and wool and containing silk in larger proportion than either rayon or wool and containing rayon in greater proportion than wool; subject to the following:

(I) Said disclosure shall be made in labels, brands, or tags attached to the merchandise, and in such advertising and sales promotional descriptions or representations of the product as may be used, however disseminated or published. Said disclosure shall also be made in such other documents, passing from seller to purchaser, as may be necessary to fully inform purchasers of the fiber content of the merchandise and to avoid and prevent the sale or resale of the merchandise under deceptive or misleading conditions.

(II) In setting forth a disclosure of the names of the fiber contained in any such mixed product of two or more fibers, the respective name

of any such fiber shall not be set forth in type or manner so disproportionately enlarged, emphasized, or conspicuously placed as thereby to have the capacity, tendency, or effect of misleading or deceiving the purchasing or consuming public into the belief that a greater proportion of such overemphasized fiber is present than is in fact true; such as, for example, in printing or otherwise setting forth said illustrative disclosure of "silk, rayon, and wool," the word "silk" or the the word "wool" shall not be disproportionately enlarged or otherwise emphasized in such manner as to have the capacity, tendency, or effect of misleading or deceiving the purchasing or consuming public in respect to the proportion or effective character of the silk or the wool in such mixed product.

(III) In case the product contains silk noil, weighted silk, special or excess finishing materials or loading or adulterating materials, the disclosure thereof shall be made in conformity with the applicable provisions of the other Group I rules, namely, rule 2 respecting silk noil, rule 4 respecting weighted silk, rule 5 respecting special or excess finishing materials, loading, or adultering materials.

(IV) Where the fiber or fibers comprising at least 95 percent of the mixed product are disclosed not only by name as required by the foregoing provisions of this rule, but also with the percentage of each in the order of predominance by weight as recommended in rule A, Group II, then the remaining 5 percent or less of the fiber content of such product may be designated and disclosed as "other fibers" or "miscellaneous fibers," *provided* such 5 percent proportion or less is not definitely known to be composed of one fiber or readily ascertainable as consisting of but one fiber, but on the contrary is composed of fibers which may be of various kinds, the percentages or quantities of each of which are not definitely known or readily ascertainable; *and provided further*, that such fiber content designated or disclosed as "other fibers" or "miscellaneous fibers" is not otherwise misrepresented. Illustrative examples of the disclosure provided for under this rule are as follows: "50 percent silk, 46 percent rayon, 4 percent other fibers" or "55 percent silk, 40 percent wool, 5 percent miscellaneous fibers" for products composed of the respective stated percentages of silk, rayon, and wool and composed in the remainder of fibers the proportion or percentage of each of which is not definitely known or readily ascertainable, including such small additional amounts of silk or rayon as may be present due to unavoidable variations in manufacturing processes.

(V) In making disclosure of fiber content under these rules by choosing to specifically name any particular fiber in any such mixed product which is present in the proportion of 5 percent or less by weight of the entire content, the name of the fiber shall be accompanied in immediate conjunction therewith by accurate and nondeceptive disclosure of the percentage or proportion in which said specifically named fiber is present, such as, for example, "2 percent silk" or "2 percent wool," to the end that the purchasing or consuming public may not be misled or deceived into the erroneous belief that said fiber is present in a greater or lesser proportion than is in fact true. Nothing in this rule shall be construed as permitting the concealment of the percentage in which any fiber is present above 5 percent where conditions or circumstances misleading or deceptive to the purchasing or consuming public may be produced by reason of such concealment.

(VI) In setting forth any item, name, statement, percentage, or other information required to be disclosed under this or any other rule hereof, the same shall be set forth clearly and unequivocally and not in type or manner so disproportionate, or so minimized, obscured, or remotely or inconspicuously placed as to be misleading or deceptive to the purchasing or consuming public.

Rule 8. Passing Off Merchandise as and for Silk.

(*a*) It is an unfair trade practice to offer for sale, sell, distribute, describe, brand, label, advertise, or otherwise represent, directly or indirectly, any fiber, yarn, thread, strands, fabric, or garment or other product made therefrom, as being silk or as containing silk of any kind or as having any of the properties of silk when such is not the fact.

(*b*) In the case of fiber, yarn, thread, strands, fabric, or garment or other product, not containing silk of any kind but which has been manufactured or processed in such manner as to simulate silk or which purports to contain silk in whole or in part, the failure or refusal to make full and nondeceptive disclosure of the fiber content of such merchandise, in conformity with law and applicable rules and regulations thereunder, and so as to avoid and prevent deceptive concealment, confusion, misunderstanding, and misrepresentation, is an unfair trade practice.

Rule 9. Deteriorated or Damaged Merchandise.

In any case of merchandise, composed wholly or in part of silk, the character, quality, or value of which has become impaired through age, deterioration, or damage, it is an unfair trade practice in the sale or distribution of such merchandise to conceal such impairment for the purpose or with the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public in respect to the character, quality, value, or condition of such merchandise.

Rule 10. Encouraging or Promoting Misleading Merchandising Methods.

It is an unfair trade practice for any person, partnership, or corporation to induce, aid, or abet an importer, converter, manufacturer, distributor, dealer, or other person to cause any fiber, yarn, thread, strands, fabric, or garment or other product, containing or purporting to contain silk in whole or in part, to be advertised, represented, offered for sale, sold, or distributed through any means or devices or under any conditions which have the capacity and tendency or effect of causing, promoting, or aiding the marketing of any such merchandise in the channels of trade or to the consuming public under false, misleading, or deceptive circumstances or representations.

Rule 11. Word "Silk" as Part of Trade or Corporate Name.

(*a*) It is an unfair trade practice for any person, partnership, or corporation to use the word "silk," or word, term, or representation of similar import, as part of a trade or corporate name indicative of a silk business or silk products unless at least a substantial part of such business is devoted to silk or silk products and, as to any merchandise of said business which is not composed wholly of silk, full and nondeceptive disclosure is made, in immediate conjunction with such trade or corporate name, of the fact that such merchandise is not silk but is composed of or contains other named fibers.

(*b*) It is an unfair trade practice (1) to use the word "silk," or word, term, or representation of similar import, in any trade-mark indicative

of silk, when the merchandise which bears such mark, or which is advertised, offered for sale, sold, or distributed thereunder, is not in fact composed of silk; or (2) to use said trade-mark in any other manner, or under any other condition, which is misleading or deceptive.

Rule 12. Misrepresentations as to Being a Manufacturer, Producer, or Importer.

(*a*) It is an unfair trade practice for any person, partnership, or corporation, by trade or corporate name or otherwise, to hold himself or itself out as being a manufacturer or producer of silk or silk products when such is not true in fact.

(*b*) It is an unfair trade practice for any person, partnership, or corporation in the conduct of business to represent himself or itself, directly or indirectly, as having or operating a silk business in whole or in part, or a silk department or branch, or as being an importer of silk, when such is not true in fact; or in any other manner to misrepresent the character, nature, or status of the business of such person, partnership, or corporation.

Rule 13. Inducing or Abetting Violation of Rules.

(*a*) It is an unfair trade practice for any importer, manufacturer, producer, or organization to aid, abet, induce, or coerce a dealer, distributor, or other vendor to omit or refuse to make the disclosure as to content of merchandise required by the foregoing Group I rules, or to otherwise engage in any of the unfair trade practices specified in such rules.

(*b*) It is an unfair trade practice for any dealer or other vendor or organization to induce, aid, abet, or coerce an importer, manufacturer, producer, or other seller to omit or refuse to comply with the requirements of the foregoing Group I rules, or to otherwise engage in any unfair trade practice specified in such rules.

Group II

Compliance with the trade practice provisions embraced in these Group II rules is considered to be conducive to sound business methods and is to be encouraged and promoted individually or through voluntary cooperation exercised in accordance with existing law. Nonobservance of such rules does not, *per se*, constitute violation of law. Where, however, the practice of not complying with any such Group II rules is followed in such manner as to result in unfair methods of competition contrary to law, corrective proceedings may be instituted by the Commission as in the case of a violation of Group I rules.

Rule A. Disclosure of Proportions of Constituent Fibers in Mixed Goods.

The practice of making full and accurate disclosure of the proportions or percentages of the constituent fibers in mixed goods is approved as a proper practice to the end that salespersons, dealers, and other marketers of such products may have accurate information of the fiber content thereof and may in turn correctly inform the purchasing and consuming public, thereby avoiding confusion, misunderstanding, or misrepresentation as to the nature or content of such products. Any action taken in following this rule should be consonant with the requirements of the foregoing Group I rules. In the case

where all fibers present are listed and disclosed by name, together with the percentage in which each is present, a tolerance of not to exceed 3 percent variation from the stated percentages may be allowed to the extent that such variation is due to unavoidable variations in manufacturing processes and not to lack of reasonable effort to state such percentages accurately.

Rule B. Terms Descriptive of Silk Fabrics or Relating to Weaves or Textures.

Subject to, and in conformity with, the requirements of the foregoing Group I rules, the practice of truthfully qualifying by the word "silk" all words, terms, phrases, or representations which mean silk or are associated in the minds of the purchasing or consuming public with fabrics composed of silk is recommended as a desirable practice; for example, "silk chiffon," "silk crepe," "silk satin," "silk taffeta," etc.

Rule C. Information as to Treatment and Care of Product.

The practice, by producers, manufacturers, and distributors, of furnishing and disseminating, through tags, labels, advertisements, or other publicity, accurate information as to the proper treatment, care, and cleaning of the products covered by these rules is approved and recommended as a desirable practice to follow in the interest of enabling consumers to obtain and enjoy full benefit of the desirable qualities and services of such products.

Promulgated and issued by the Federal Trade Commission as of November 4, 1938.

Otis B. Johnson, *Secretary.*

INDEX

○