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TRADE REGULATIONS-DECEPTIVE PRACTICES

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TRADE REGULATIONS—DECEPTIVE PRACTICES—Petitioner, an importer, distributed catalogs among some 25,000 retailers describing his porcelain line as follows: "IMPORTED Hand Decorated 'Du Barry' Porcelain," and " 'DU BARRY' Porcelain table lamps are nationally famous as reproductions of rare, original French and English 'old pieces.' " The Federal Trade Commission found that the advertising impliedly represented that the origin was French or British, whereas the products were made in Japan. A cease and desist order was issued prohibiting use of the legend, "Imported—Du Barry," or any other legend suggesting French origin, without clearly disclosing the fact of import from Japan. *Held,* affirmed. The order did not deprive petitioner of the use of its trade-mark "Du Barry." *Edward P. Paul & Co., Inc. v. Federal Trade Commission,* (App. D.C., 1948) 169 F. (2d) 294.

This decision indicates that the courts may be prepared to support the F.T.C. in establishing a high standard of advertising morality. Judicial restraints have long hampered the commission, largely as a result of two highly restrictive decisions: the *Gratz* case,[1] which denied the commission power to prohibit a practice unless that practice was unfair under the common law; and the later *Raladam* case,[2] which set up rigorous jurisdictional requisites. Subsequent decisions have limited the *Gratz* case,[3] while the Wheeler-Lea Act[4] repudiated the *Raladam* holding. The commission can now act where it finds an unfair or deceptive practice in commerce, as long as its action appears to be in the public interest. Even the public interest requirement is in the process of being discarded as a limiting device,[5] since it seems to be satisfied by the mere finding of a deceptive practice. This conclusion is supported by the *Mayers* case,[6] in which the court said, "It is in the interest of the public to prevent the sale of commodities by the use of false and misleading statements and representations." Therefore, it appears that a deceptive practice in commerce is the only real requisite to the commission's jurisdiction. Moreover, the courts are demonstrating a marked tendency to accept the commission's findings of unfair or deceptive practices, and this acceptance is the foundation upon which the agency is enlarging its field of activity. The common law standards of unfair practices are no longer controlling,[7] and the commission's finding of a deceptive practice is conclusive, if based upon substantial evidence.[8] As the principal case

[1] F.T.C. v. Gratz, 253 U.S. 421, 40 S.Ct. 572 (1920).

[2] F.T.C. v. Raladam Co., 283 U.S. 643, 51 S.Ct. 587 (1931).

[3] F.T.C. v. Winsted Hosiery Co., 258 U.S. 483, 42 S.Ct. 384 (1922); F.T.C. v. R. F. Keppel & Bro., Inc., 291 U.S. 304, 54 S.Ct. 423 (1934); F.T.C. v. Standard Education Soc., 302 U.S. 112, 58 S.Ct. 113 (1937); Handler, "Unfair Competition and the Federal Trade Commission," 8 GEO. WASH. L. REV. 399 (1940).

[4] 52 Stat. L. 111 (1938), 15 U.S.C. (1946) § 45; Wolf v. F.T.C., (C.C.A. 7th, 1943) 135 F. (2d) 564; Parke, Austin & Lipscomb, Inc. v. F.T.C., (C.C.A. 2d, 1944) 142 F. (2d) 437.

[5] F.T.C. v. Royal Milling Co., 288 U.S. 212, 53 S.Ct. 335 (1933); F.T.C. v. Klesner, 280 U.S. 19, 50 S.Ct. 1 (1929); National Silver Co. v. F.T.C., (C.C.A. 2d, 1937) 88 F. (2d) 425.

[6] L. & C. Mayers Co., Inc. v. F.T.C., (C.C.A. 2d, 1938) 97 F. (2d) 365 at 367.

[7] F.T.C. v. Standard Education Soc., (C.C.A. 2d, 1936) 86 F. (2d) 692 at 696, where the petitioner was found to have misrepresented the value and normal price of its book service; the court said: ". . . its [the commission's] duty in part at any rate, is to discover and make explicit those unexpressed standards of fair dealing which the conscience of the community may progressively develop."

[8] A.P.W. Paper Co., Inc. v. F.T.C., (C.C.A. 2d, 1945) 149 F. (2d) 424; Charles of the Ritz Distributors Corp. v. F.T.C., (C.C.A. 2d, 1944) 143 F. (2d) 676; Progress Tailoring Co. v. F.T.C., (C.C.A. 7th, 1946) 153 F. (2d) 103, where petitioner advertised "free suits" to salesmen accepting employment when in fact they were required to pay with services; the court said at p. 105, "The Commission may require advertisements to be so carefully worded as to protect the most ignorant and unsuspecting purchaser . . ."; Zenith Radio Corp. v. F.T.C., (C.C.A. 7th, 1944) 143 F. (2d) 29; Howe v. F.T.C., (C.C.A. 9th, 1945) 148 F. (2d) 561; Vacu-matic Carburetor Co v. F.T.C., (C.C.A. 7th, 1946) 157 F. (2d) 711; Gulf Oil Corp. v. F.T.C., (C.C.A. 5th, 1945) 150 F. (2d) 106.

illustrates, evidence to support a reasonable inference of a mere capacity to deceive the general public will suffice.

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