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LITTLE F.T.C. ACT: THE NEGLECTED ALTERNATIVE

by Richard A. Schulman*

INTRODUCTION

As the consumer advocates become increasingly aware of the assorted dangers and promotional schemes associated with products on the market, a higher degree of consciousness is awakened in both the purchasing public and the legislature. The function of the latter is to protect the public from defects designed in the product and deceptions which are defrauding the consumers and to assure businessmen that such practices will not unduly hinder their market. Accordingly, consumerism has recently become a popular cause which is necessary to assure protection to those who have neither the time nor facilities to adequately protect themselves.

Illinois has recently embarked on a new consumer protection act entitled the “Consumer Fraud and Deceptive Business Practices Act,” popularly known as the “Little F.T.C.,” the breadth of which is beyond the protection previously afforded to consumers and businessmen competing against those engaged in unfair practices. The scope of this article is to familiarize the practitioner with the new approaches available in Illinois consumer actions and to demonstrate the magnitude of possibilities under the Little F.T.C.

BACKGROUND

The Federal Trade Commission Act was adopted in 1914 with the intention of protecting against unfair trade practices in interstate commerce. A condition precedent to relief under the F.T.C. Act, as first enacted, was the necessity of proving that competition existed and was aggrieved by the alleged misconduct. The breadth of this legislation was expanded in the

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1. ILL. REV. STAT. ch. 121 1/2, §§ 261 et seq. (1961) as amended P.A. 78-904, § 1 (1973) [hereinafter referred to as the Little F.T.C.].
2. ILL. REV. STAT. ch. 121 1/2, §§ 261 et seq. (1961) [hereinafter referred to as the Consumer Fraud Act] and ILL. REV. STAT. ch. 121 1/2, §§ 311 et seq. (1966) [hereinafter referred to as Deceptive Trade Practices Act].
5. Id. at 647. The Commission issued a complaint against Raladam for unfair methods of competition. The Court affirmed the court of appeals reversing the Commission's order against Raladam because of the
Wheeler Lea Amendment (1938)\(^6\) which provided that it was no longer necessary to prove that competition existed or that it was injured by the alleged conduct. The F.T.C. was thereby enabled to commence proceedings for violations of the Act which detrimentally affected consumers.\(^7\) The precedents so established by the amended statute's scope and longevity cover a myriad of factual situations creating a sound foundation for any state statute predicated on the F.T.C. Act. Starting in 1966, the F.T.C. was attempting to do just that—to promote state legislation using the F.T.C. Act as its basis.

In 1967, model legislation emerged from discussions with the Federal Trade Commission and state officials and the “Unfair Trade Practices and Consumer Protection Act” was drafted.\(^8\) By 1969, some states had already adopted the proposed Little F.T.C.\(^9\) but the F.T.C. issued a revised proposal\(^10\) which was more comprehensive than the 1967 edition. The new proposal allowed the consumer to bring his own action without the necessity of using the Attorney General, to receive treble damages in some instances,\(^11\) and to eliminate the holder in due course status of transferees in installment transactions.\(^12\)

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7. Under the F.T.C. Act, only those methods of unfair competition and deceptive practices which affect interstate commerce are subject to the jurisdiction of the Commission.
11. The provision suggesting treble damages was not adopted in Illinois. Even though the Sherman Act, Robinson-Patman Act, and Clayton Act are within the protective scope of section 5 of the F.T.C. Act (F.T.C. v. Brown Shoe Co., 334 U.S. 316 (1948)) and are thereby incorporated into the standards of the Little F.T.C., one who seeks an action for antitrust violations should first resort to ILL. Rev. Stat. ch. 38, §§ 60-1 et seq., which is the Antitrust Act of Illinois wherein acts in violation of the antitrust laws are enumerated. Included in section 60-7 is a provision for treble damages for individuals who have been injured by the conduct. When an antitrust matter is involved, one would resort first to the Antitrust Act because of the allowance for treble damages and the clear delineation of what conduct violates the Act. This preexisting antitrust act was probably the reason that the Little F.T.C. did not include a treble damages provision as was suggested in the model legislation; to have adopted it would have been repetitive. The Antitrust Act of Illinois can be as valuable a tool as the Little F.T.C. when there are antitrust violations, but only under the former can one recover treble damages. However, one must also heed the fact that the anti-competitive conduct not previously covered by the Illinois Antitrust Act, e.g., Robinson-Patman price discrimination, may now be within the purview of the Little F.T.C.
12. The elimination of the holder in due course status in installment transactions...
The most important features, however, of these two sets of proposals were that: 1) "unfair methods of competition and unfair or deceptive acts or practices" are to be construed in light of the decisions under the F.T.C. Act; 2) there is to be a centralized agency, the Attorney General's Office, to enforce the Act; 3) an individual who has been injured by the unlawful conduct can bring his own cause of action with the right to collect, in addition to damages, attorney fees and court costs; and 4) civil damages may be awarded to the state as a further deterrent to such wrongs.  

While the F.T.C. was attempting to provide consumer protection in states without any consumer protection laws or without adequate protection, Illinois had adopted two acts—the Consumer Fraud Act and the Uniform Deceptive Trade Practices Act—which encompassed some of what the F.T.C. had proposed. Illinois, apparently sensing that these two acts were inadequate to meet the demands of consumer protection, acted on the suggestions of the F.T.C. in House Bill 1548 (1973 session) which became effective on October 1, 1973. To date, there are forty-seven other states which have adopted comparable Little F.T.C. Acts.

**Unfair Methods of Competition and Deceptive Acts**

When utilizing the Little F.T.C., particular attention should be focused on section 2, for therein the Act provides that "[i]n construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a) of the Federal Trade Commission Act [15 U.S.C. § 45(a)]."

Prior to this provision, the Consumer Act of Illinois had no such reference to the decisions of the F.T.C. Act and the state was compelled to create its own case law to determine which

contracts was not adopted in Illinois. The provision advanced was not a total elimination of the status but the burden would have shifted to the holder to prove that he was in fact without knowledge of any claims or defenses and that he purchased the contract in good faith—the presumption of good faith would no longer exist.

13. Letter from Paul Rand Dixon to Phillip S. Hughes, April 23, 1939.
18. The only states which have not enacted "Little F.T.C. Acts" are Alabama, Georgia and Tennessee.
19. Section 262 of chapter 121½ provides: "Unfair methods of competition and unfair or deceptive acts or practices . . . are hereby declared unlawful. . . ."
conduct was violative of the consumer laws—a burden which dictated indecisiveness on the part of all concerned.

This section of the Little F.T.C. is designed to synthesize the criteria upon which conduct is to be characterized as an unfair method of competition or a deceptive act. These standards are essential to a firm foundation of the Little F.T.C. and their precedent value will be of immeasurable assistance to all who intend to utilize the Act. With the incorporation of the case law under the F.T.C. Act and the standards so established, most factual situations will have been decided and all parties subject to the Little F.T.C. should be well apprised of the legality of their conduct.

What is "Unfair Competition or Deceptive Acts"?

Since the F.T.C. Act of 1914 concerned itself only with unfair competition and was absent the amendment relating to deceptive acts, the earlier cases pertained to that limited area. In A.L.A. Schechter Poultry Corp. v. United States, the Court held that:

Unfairness in competition has been predicated of acts which lie outside the ordinary course of business and are tainted by fraud, or coercion, or conduct otherwise prohibited by law.

What are 'unfair methods of competition' are thus to be determined in particular instances, upon evidence, in the light of particular competitive conditions and of what is found to be a specific and substantial public interest.

The abstractness of the definition of unfair competition is further demonstrated in Federal Trade Commission v. R.F. Keppel & Bro., Inc. Therein the Court made the point that unfair competition depends upon situations rather than a congressional standard and the standard should be flexible such that innovators cannot circumvent any pre-determined criteria.

Congress, in defining the powers of the Commission, thus advisedly adopted a phrase which, as this Court has said, does not "admit of precise definition but the meaning and application of which must be arrived at by what this Court elsewhere has called 'the gradual process of judicial inclusion and exclusion.'"
The intended scope of the F.T.C. Act of 1914 can be demonstrated best by a House Conference Report which reasoned why general language ("unfair methods of competition") should be used rather than a concise definition.

It is impossible to frame definitions which embrace all unfair practices. There is no limit to human inventiveness in this field. Even if all known unfair practices were specifically defined and prohibited, it would be at once necessary to begin over again. If Congress were to adopt the method of definition, it would undertake an endless task.\(^{26}\)

The rather vague definitions of unfair competition are complemented by a seemingly non-existent definition of what constitutes a deceptive act. The cases under the F.T.C. Act predicate liability on the impressions\(^{27}\) left with the purchasers either from statements made by the seller\(^{28}\) or innuendos resulting from the seller's representations.\(^{29}\) These deceptive acts are more often based on the factual situations rather than a concrete rule.\(^{30}\) Once again, Congress has avoided a concise definition in order that all deceptive acts are included, not just those enumerated.

Acts against both competitors and purchasers are unfair in that an unjust advantage is gained by the perpetrator of the wrong. Since the party who creates the disadvantage is operating unfairly against both the public and competitors, all such acts will be denoted as unfair competition for the purpose of this article.

**Unfair Competition in Advertising**

**Acts Against Competitors**

When section 5 of the F.T.C. Act was enacted, the intent of Congress was to combat trade practices which exhibited a strong potential for stifling competition\(^{31}\) while preserving competitive practices so long as they did not have a tendency to unduly

\(^{26}\) H.R. REP. No. 1142, 63d Cong., 2d Sess. 19 (1914).
\(^{27}\) Continental Wax Corp. v. F.T.C., 330 F.2d 475, 477 (2d Cir. 1964); National Bakers Service, Inc. v. F.T.C., 329 F.2d 365, 367 (7th Cir. 1964); Country Tweeds, Inc. v. F.T.C., 326 F.2d 144, 148 (2d Cir. 1964); Murray Space Shoe Corp. v. F.T.C., 304 F.2d 270 (2d Cir. 1962).
\(^{28}\) Korber Hats, Inc. v. F.T.C., 311 F.2d 358 (1st Cir. 1962).
\(^{29}\) National Bakers Service, Inc. v. F.T.C., 208 F.2d 382, 387 (7th Cir. 1953); Rhodes Pharmacal Co. v. F.T.C., 208 F.2d 382, 387 (7th Cir. 1953).
\(^{30}\) The fact that merchants are so ingenious in designing new methods of deceiving the public or competitors is one of the shortcomings of the Uniform Deceptive Trade Practices Act. Under the Act, there is a list of "deceptive practices" and the list concludes with the words "engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding." If the precedents of the F.T.C. are utilized rather than the first-impression wisdom of the Illinois judges, there may be greater protection afforded to consumers and competitors under the Little F.T.C.
hinder competition, create monopolies or become oppressive. The criteria were measured by the reasonableness of the conduct in light of its impact upon the competitive structure and where the conduct was not inherently unlawful and unfair, the experience of competitors was an additional yardstick to determine whether unfair competition was being exercised.

Some cases in which unfair competition was found to have existed between competitors are more obvious than others, but the subtle cases are what might go undetected if diligence is not exercised. A more blatant instance arose in White Tower System, Inc. v. White Castle System. White Tower had used the same shape of buildings, a similar name, and a similar slogan of the well-established White Castle in an attempt to secure a region of the country that the latter would undoubtedly enter. White Castle had sought an injunction against this practice and in affirming the issuance of the injunction by the district court, the appellate court held that "[u]nfair competition is 'a convenient name for the doctrine that no one should be allowed to sell his goods as those of another.'"

A more subtle instance of unfair competition is F.T.C. v. Royal Milling Co. Royal Milling had merely packaged flour but the packaging indicated that they actually milled it. The Supreme Court found this to be unfair competition since some consumers and dealers bought directly from the mill to avoid the cost of middlemen. As a consequence of the deceiving labels, the other flour mills had lost potential business as a direct result of the inference raised by the economy-saving labels. The competitors did not prove how much business had been misdirected to Royal Milling, but the evidence raised the inference that there had been some harm done to them by virtue of the unfair competition. In this instance, the competitors did not prove actual damages since, as the Supreme Court set forth in later cases, an action by the F.T.C. is adequate, so long as a "not insignificant volume of commerce" has been affected by the unfair burden. This requirement was apparently shown by the mere potential of deception and inferences raised from the false labels.

34. Union Circulation Co. v. F.T.C., 241 F.2d 652, 656 (2d Cir. 1957).
36. 90 F.2d 67 (6th Cir. 1937).
37. Id. at 69.
38. 288 U.S. 212 (1933).
Another point requiring mention is that some practices are fairly well known in commerce to be a misrepresentation of fact (advertising 6% financing when the actual time balance amounts to 11.5%). This fact, however, is inconsequential since "[a] method inherently unfair does not cease to be so because those competed against have become aware of the wrongful practice."  

In *F.T.C. v. Algoma Lumber Co.*, Algoma and others had represented their lumber for over 30 years as "California white pine," which naturally created the impression that it was white pine. In point of fact, it was yellow pine which had inferior qualities to that of white pine. The dealers in the California area were aware of the nature of the pine but as the market for the pine increased toward the eastern states, those who dealt with the lumber were less knowledgeable of its true qualities. Those dealers who were aware of the misnomer did not relay such information to the customers in the East who thought that they were purchasing white pine. This practice was declared to be a method of unfair competition since those lumber mills which did sell white pine were unjustly burdened in their business due to the detraction of customers.

**Acts Against the Public**

Just as the consumer advocates are more interested with the effect of company products and policies, so are the most recent decisions. Ever since the Wheeler Lea Amendment allowed actions where deception against the consumer constituted an actionable offense under the F.T.C. Act, the cases have been predominantly instances where purchasers have been deceived by advertisements. Consequently, an immense number of cases exist from which one can ascertain how the Illinois courts should respond to situations wherein an advertisement is claimed to be deceptive.

The basic criteria for ascertaining whether or not an advertisement is deceptive are: (1) whether such advertisement is "likely to deceive"; (2) the net impression that it is likely to make on the general populace; and (3) the predictable infer-

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40. *Ford Motor Co. v. F.T.C.*, 120 F.2d 175 (6th Cir. 1941).
42. 291 U.S. 67 (1934).
44. *F.T.C. v. Standard Education Soc.*, 302 U.S. 112 (1937); *F.T.C. v. Cinderella Career and Finishing Schools, Inc.*, 404 F.2d 1308, 1314 (D.C. Cir. 1968); *National Bakers Service, Inc. v. F.T.C.*, 329 F.2d 365, 367 (7th Cir. 1964); *F.T.C. v. Sterling Drug, Inc.*, 317 F.2d 669 (2d Cir. 1963); *Feil v. F.T.C.*, 31 F.2d 878 (9th Cir. 1929); *Kalwajtys v. F.T.C.*, 237 F.2d 654 (7th Cir. 1956); *P. Lorillard Co. v. F.T.C.*, 186 F.2d 52, 55 (4th Cir. 1950);
ences a prospective customer is likely to draw therefrom.\textsuperscript{45} Examples of cases bearing out these standards indicate that it is unfair competition to advertise a drug as a cure-all where no evidence was shown that it could cure anything;\textsuperscript{46} to advertise an all wool good when it had mixed materials;\textsuperscript{47} to procure information as a prerequisite to receiving "free" money when the information was used by a collection agency;\textsuperscript{48} and to represent the price of a product as a sale price when it was actually the same as the regular price.\textsuperscript{49}

In short, the overriding consideration in determining whether an advertisement is deceiving is as follows: "The important criterion is the net impression which the advertisement is likely to make upon the general populace."\textsuperscript{50} This standard, however, is not based on any fine distinctions and arguments that can be made in support of the representation; rather, it is predicated on the effect that these statements may reasonably be expected to have upon the general public.\textsuperscript{51} The representations need not be literally false in order to fall within the proscription of the F.T.C. Act\textsuperscript{52} (and now the Little F.T.C.). If the statements should prove to be literally true but technically false, a sufficient deception may have occurred to warrant action,\textsuperscript{53} and should there be a possibility that the statements are susceptible to both a truthful interpretation and a misleading one, the statement will be construed against the advertiser.\textsuperscript{54}

\begin{thebibliography}{9}
\bibitem{45} Parker Pen Co. v. F.T.C., 159 F.2d 509, 511 (7th Cir. 1946); Charles of the Ritz Distrib. Corp. v. F.T.C., 143 F.2d 676 (2d Cir. 1944); Stanley Labs., Inc. v. F.T.C., 138 F.2d 388 (9th Cir. 1943); Aronberg v. F.T.C., 132 F.2d 165 (7th Cir. 1942); Ford Motor Co. v. F.T.C., 120 F.2d 175, 182 (6th Cir. 1941).
\bibitem{46} Korber Hats, Inc. v. F.T.C., 311 F.2d 358 (1st Cir. 1962); Aronberg v. F.T.C., 132 F.2d 165 (7th Cir. 1942).
\bibitem{47} Koch v. F.T.C., 206 F.2d 311 (6th Cir. 1953).
\bibitem{48} Gimbel Bros. v. F.T.C., 116 F.2d 578 (2d Cir. 1941).
\bibitem{49} Bennet v. F.T.C., 200 F.2d 362 (D.C. Cir. 1952).
\bibitem{50} Spiegel, Inc. v. F.T.C., 411 F.2d 481 (7th Cir. 1969).
\bibitem{51} Charles of the Ritz Distrib. Corp. v. F.T.C., 143 F.2d 676, 679 (2d Cir. 1944); see note 44 supra.
\bibitem{52} U.S. Retail Credit Assoc., Inc. v. F.T.C., 300 F.2d 212 (4th Cir. 1962); P. Lorillard Co. v. F.T.C., 186 F.2d 52 (4th Cir. 1950).
\bibitem{53} F.T.C. v. Sterling Drugs, Inc., 317 F.2d 669, 674-75 (2d Cir. 1963); Moretrench Corp. v. F.T.C., 127 F.2d 792, 795 (2d Cir. 1942).
\bibitem{54} Country Tweeds, Inc. v. F.T.C., 326 F.2d 144 (2d Cir. 1964); Murray Space Shoe Corp. v. F.T.C., 304 F.2d 270 (2d Cir. 1962); Koch v. F.T.C., 206 F.2d 311 (6th Cir. 1953); Bennett v. F.T.C., 200 F.2d 362, 363 (D.C. Cir. 1952); Bockenstette v. F.T.C., 134 F.2d 369 (10th Cir. 1943).
\bibitem{55} In Country Tweeds, Inc. v. F.T.C., 326 F.2d 144 (2d Cir. 1964), the manufacturer had its new line of cashmere tested against its old line. The report carefully explained that certain results indicated an insignificant difference between the products but the manufacturer deleted certain clarifying statements in the report and compared various results in such a manner that it appeared as though there had been a major improvement in the cashmere. This was accomplished by using data which was literally true but which was presented in a distorted way so that the report apparently praised the new line of cashmere while it, in fact, gave the new cashmere the same rating as the old one. The court re-
Once again, it must be kept in mind that since these types of actions are concerned with wrongs committed against the public rather than against a competitor, there is no need to show that competitors were injured in any way. All that need be proven is that there is a burden imposed upon the consumer by the advertiser\textsuperscript{55} and the consumer was, in some manner, misled or deceived into purchasing the product.

The next problem is to ascertain the standard to which the advertiser is subjected in terms of the ability of a person comprehending the meaning of the advertisement's representations. In \textit{F.T.C. v. Standard Education Society},\textsuperscript{56} encyclopedia purchasers were solicited by salesmen representing that the volumes were being given away free as an advertising plan. The customers only had to purchase a loose leaf extension service at a price of $69.50. In actuality, the $69.50 was the retail price of both the encyclopedia and the loose leaf service. The court held that:

The fact that a false statement may be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced. There is no duty resting upon a citizen to suspect the honesty of those with whom he transacts business. Laws are made to protect the trusting as well as the suspicious. The best element of business has long since decided that honesty should govern competitive enterprises, and that the rule of \textit{caveat emptor} should not be relied upon to reward fraud and deception.\textsuperscript{57}

This same notion was later stated in \textit{Aronberg v. F.T.C.},\textsuperscript{58} as follows:

The law is not made for experts but to protect the public,—that vast multitude which includes the ignorant, the unthinking and the credulous, who, in making purchases, do not stop to analyze but too often are governed by appearances and general impressions.\textsuperscript{59}

The cases under the F.T.C. Act have held advertisers to a high standard in the use of language in their advertisements. The language is carefully scrutinized such that it cannot have a double meaning and the representations must be displayed such that all readers are readily aware of those essential parts of the ad which would distinguish the advertisement from a

\textsuperscript{55} Koch v. F.T.C., 206 F.2d 311, 319 (6th Cir. 1953); Parke, Austin & Lipscomb v. F.T.C., 142 F.2d 437 (2d Cir. 1944).
\textsuperscript{56} 302 U.S. 112 (1937).
\textsuperscript{57} Id. at 116; see Feil v. F.T.C., 285 F.2d 879 (9th Cir. 1960).
\textsuperscript{58} 132 F.2d 165 (7th Cir. 1942).
\textsuperscript{59} Id. at 167.
deceitful one. The Commission has the responsibility to protect the casual, one might even say the negligent reader, as well as the vigilant and more intelligent and discerning public.

These requirements as to fairness and truthfulness of advertising are not to preclude the permissible amount of puffing which most advertisers utilize to assist in the promotion of their product. The parameters of this asset are limited to the extent of the common law requirements in that a seller has some latitude in puffing his goods but he is not authorized to misrepresent them or assign to them benefits or virtues they do not possess.

Besides puffing, a statement of opinion which affects commerce may also be outside the purview of the F.T.C. Act and the Little F.T.C. In Scientific Manufacturing Co. v. Federal Trade Commission, Force, the president of Scientific Manufacturing, published two articles alleging the dangers to health from poisoning which attend the use of aluminum utensils in the preparation and storage of food for human consumption. These articles were false, but they were the honest belief of Force. Furthermore, neither Force nor his company were in any way connected with the sale, manufacture, or distribution of cooking utensils of any sort.

The F.T.C. was awarded a cease and desist order because the articles were “false, misleading and disparaging.” The court, however, reversed the order by stating that:

Surely Congress did not intend to authorize the Federal Trade Commission to foreclose expression of honest opinion in the course of one’s business of voicing opinion. The same opinion, however, may become material to the jurisdiction of the Federal Trade Commission and enjoinable by it if, in wanting in proof or basis in fact, it is utilized in the trade to mislead or deceive the public or to harm a competitor.

The significance of this decision appears in the above language of the court: should there be an honest opinion which may affect trade, the F.T.C. lacks jurisdiction unless the pro-

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60. Jacob Siegel Co. v. F.T.C., 327 U.S. 608 (1946); F.T.C. v. Standard Education Soc., 302 U.S. 112 (1937); Niresk Industries, Inc. v. F.T.C., 278 F.2d 337 (7th Cir. 1960); Parker Pen Co. v. F.T.C., 159 F.2d 509 (7th Cir. 1946); Progress Tailoring Co. v. F.T.C., 153 F.2d 103 (7th Cir. 1946); Dorfman v. F.T.C., 144 F.2d 737 (8th Cir. 1944); Charles of the Ritz Distrib. Corp. v. F.T.C., 143 F.2d 876 (2d Cir. 1944); Parke, Austin & Lipscomb v. F.T.C., 142 F.2d 437 (2d Cir. 1944); Aronberg v. F.T.C., 132 F.2d 165 (7th Cir. 1942).
61. Parker Pen Co. v. F.T.C., 159 F.2d 509 (7th Cir. 1946). Parker had advertised a guarantee on its pens in large print, but in smaller and less obvious print, it recited that a small fee had to be sent in to get the guarantee. The court held this to be unfair competition.
62. Gulf Oil Corp. v. F.T.C., 150 F.2d 106 (5th Cir. 1945).
63. 124 F.2d 640 (3d Cir. 1941).
64. Id. at 641.
65. Id. at 644-45.
motor or creator of the opinion has his own business interests at stake in circulating the unfounded opinion.

**Intent to Deceive**

Whether the unfair competition has been directed at competitors" or at the consumer, the prerequisite intent has been judicially established under the F.T.C. Act. In either instance, the decisions have held that unfair competition does not depend upon good faith or bad faith on the part of the advertiser; all that matters is that a deceptive practice has been exercised. To establish a cause of action, there need not be proof or an allegation that the representation was intentional since the purpose of the Act is to protect consumers and competitors regardless of the design of the advertiser. The rule was set forth in *F.T.C. v. Sterling Drugs*:

... [P]roof of intention to deceive is not requisite to a finding of violation of the statute ... since the purpose of the statute is not to punish the wrongdoer but to protect the public, the cardinal factor is the probable effect which the advertiser's handiwork will have upon the eye and mind of the reader.

The Little F.T.C., however, deviates from this established rule and the variance may prove to be catastrophic should the judiciary read the act to require intent in all instances, or should businessmen produce advertisements which artfully avoid the consequences of the act. Section 2 of the Little F.T.C. states that

[u]nfair methods of competition and unfair or deceptive acts or practices ... with the intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the 'Uniform Deceptive Trade Practices Act' ... are hereby declared unlawful ... .

The specific problem arises from the mention of intent as a prefix to concealment, suppression or omission and is, on its face, a deviation from the F.T.C. Act which requires that no intent be

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67. Montgomery Ward & Co. v. F.T.C., 379 F.2d 666 (7th Cir. 1967); Ford Motor Co. v. F.T.C., 120 F.2d 175 (6th Cir. 1941); Gimbel Bros. v. F.T.C., 116 F.2d 578 (2d Cir. 1941); F.T.C. v. Balme, 23 F.2d 615 (2d Cir. 1928).
68. F.T.C. v. Sterling Drugs, Inc., 317 F.2d 669 (2d Cir. 1963); Charles of the Ritz Distrib. Corp. v. F.T.C., 143 F.2d 676, 680 (2d Cir. 1944); Stanley Labs., Inc. v. F.T.C., 138 F.2d 388, 392-93 (9th Cir. 1943); Ford Motor Co. v. F.T.C., 120 F.2d 175 (6th Cir. 1941); Gimbel Bros. v. F.T.C., 116 F.2d 578, 579 (2d Cir. 1941); General Motors Corp. v. F.T.C., 114 F.2d 33, 36 (2d Cir. 1940).
69. F.T.C. v. Algoma Lumber, 291 U.S. 67 (1934); Pep Boys-Manny, Moe & Jack v. F.T.C., 122 F.2d 158 (3d Cir. 1941); Gimbel Bros. v. F.T.C., 116 F.2d 578 (2d Cir. 1941); F.T.C. v. Balme, 23 F.2d 615 (2d Cir. 1928).
70. 317 F.2d 669, 674 (2d Cir. 1963).
proven for any misrepresentations. As such, the Illinois legislature has diminished the effectiveness of the Act by prescribing intent as an element when an inference has been raised in the consumer's mind by a deletion or omission of material facts. The obvious advantage gained by an advertiser in an action brought against him for a violation of the Little F.T.C. Act is the necessity of proving intent by the petitioner should the advertiser decide that certain facets of his product should not be made known to the public. This burden is one which should not have been imposed upon an aggrieved purchaser.

The second problem raised by the language of the section is a matter of construction: is intent a modifier of both "concealment, oppression, or omission" and conduct where affirmative misrepresentations have been made? By careful examination of the language of the Act, intent only modifies deletions of material facts and it should be construed accordingly. Any other construction would be contrary to the language and intent of the Act.

Accordingly, intent is an element of a cause of action for misrepresentation where material facts have been omitted but it need not be proven where material facts have been affirmatively presented by the advertiser or seller.

Misrepresentations Generally

Since the enactment of the F.T.C. Act, there have been some interesting cases which, at first blush, would not appear to be sufficient to warrant an action by the F.T.C. Actions, nonetheless, have been taken with results favorable to the Commission. Perhaps some of these cases will shed some light on the possibilities open to the Attorney General, the consumer and the competitor who seek recourse under the Little F.T.C.

In Parke, Austin & Lipscomb v. F.T.C., the petitioner was a corporation engaged in the publication and distribution of books. The Smithsonian Institution and petitioner had negotiated an agreement whereby a set of books written and edited by the scholars of the institute would be published and distributed by the petitioner's subsidiary. The institute was to receive a

71. See note 69 supra.
72. The original House Bill 1548 was drafted without the word "intent" in it. Mrs. Marie Eldon, Assistant Attorney General, was the draftsperson of the Bill and she has advised this author that it was intentionally deleted from the Bill so that the Act would have the maximum effectiveness in deterring unfair methods of competition or deceptive acts or practices. The Bill, obviously, was altered from this original form to what it is now somewhere between its submission and final passage. Mrs. Eldon speculates that it occurred on the floor of the House during final debate.
73. 142 F.2d 437 (2d Cir. 1944).
10 per cent royalty on the books. The subsidiary adopted the name of Smithsonian Institution Series, Inc. at the request of the institute to indicate a relationship between the parties. However, when the salesmen of the petitioner sold the books, the impression that most purchasers received was that the Smithsonian Institution was receiving all of the proceeds from the purchase since it appeared as though the publications were coming directly from the institute rather than a private organization. These salesmen represented that they were employees of the institute and that the persons who were solicited were specially chosen by virtue of their social standing or influence or some commendable deed which enabled them to become patrons of the institute. Despite the fact that the petitioner had carefully instructed its salesmen against such practices, the cumulative effect of the misrepresentations was sufficient to warrant a cease and desist order by the Commission.

In *Bankers Securities Corp. v. F.T.C.*, the defendant had represented that there was a sale on carpeting and that it would be sold at $10.89 or $10.95 per square yard while the carpet was regularly sold at prices between $15.95 and $16.95 per square yard. In fact, this carpet was sold regularly at the stated prices in other stores but this was the first time the defendant had offered it for sale. The court held this advertisement to be within the scope of section 5 of the F.T.C. Act because the impression left with the consumer was that there had been a reduction in the store's regular price when in fact there was no regular or usual price. This case stands for the proposition that in order to claim a discount on the regular price of a product, the product must have been sold by the store previously—the price in other stores is insignificant in ascertaining a regular price.

In *Arnold Stone Co. v. F.T.C.*, the defendant had been in the business of manufacturing building materials composed of about 75 per cent crushed natural stone and about 25 per cent cement. The Commission sought an injunction because the defendant had called his product "cast stone." The facts showed that none of its users (architects, contractors, engineers) had been deceived as to the nature of the product but the contention by the Commission was that the name had the tendency and capacity to deceive. The court rejected the Commission’s argument and stated that:

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74. 297 F.2d 403 (3d Cir. 1961).
75. In Spiegel, Inc. v. F.T.C., 411 F.2d 481 (7th Cir. 1969), regular price was defined as "the price at which the article is openly and actually sold on a regular basis for a reasonably substantial period of time in a recent and regular course of business."
76. 49 F.2d 1017 (5th Cir. 1931).
The remote possibility or fanciful theory of private injury is not enough to authorize the commission to issue an order to cease and desist from a business practice which cannot reasonably be said to constitute an unfair method of competition.\textsuperscript{71}

The particular importance of this decision is that under either the F.T.C. Act or the Little F.T.C., the commercial context must be given consideration and the potentiality of the representations must be considered against commercial practices and knowledge.

\textit{Effect of Little F.T.C.}

The importance of the Little F.T.C. in the areas of unfair competition against competitors and the public is primarily the establishment of standards of conduct which will warrant actions against the advertiser.\textsuperscript{78} Prior to the adoption of the Little F.T.C., the case law was so minimal that the Illinois courts had no criteria upon which to decide whether or not the advertiser had gone beyond those limits which are now clearly delineated by reference to the F.T.C. Act. Regarding unfair competition against competitors, the Illinois decisions had not established the degree of effect that such conduct had to have upon other businesses in order to invoke an action. Further, there were no cases dictating the standards for businesses where the business community within a certain locale was uniformly aware of misleading practices but the businesses outside the area and the public in general were ignorant thereof.

Similarly, the protection of the public has been enhanced due to the production of standards under the Little F.T.C. The standard now is whether or not an advertisement is likely to deceive, and if there is any question as to whether or not the representations are literally true or technically false, it will be construed against the advertiser. Furthermore, the laws are to protect all persons who might read or hear them since the less suspicious are to be protected as well as those who may be more aware of frequent misrepresentations in advertising.

The fact that there need not be an intent to deceive where material facts have been misrepresented is essential since it makes the task of the injured party that much easier and

\textsuperscript{77} Id. at 1019.

\textsuperscript{78} In addition to the foregoing standards dictated by the case law, the Federal Trade Commission has the authority to promulgate rules and regulations pertaining to section 5 of the F.T.C. Act. Attention should be focused on these guides for they provide standards which should be given the same consideration as the case law. These rules and regulations include the following: "Guide Concerning Use of the Word 'Free' and Similar Representations," "Guides Against Deceptive Advertising of Guarantees," "Guides Against Bait Advertising," "Guides Against Debt Collection Deception," and "Guides Against Deceptive Pricing."
eliminates what would otherwise be an affirmative defense—one which may be hard to overcome. By the same token, the greatest shortcoming of the Act is the requirement of proof of intent to deceive where the advertiser has deleted material facts. Caution must be exercised by the petitioner in bringing an action predicated on this situation for this may be the most essential part of the case in order to prevail.

The Little F.T.C. will benefit greatly by the case law establishing these standards under the F.T.C. Act.

UNFAIR ACTS OR PRACTICES

While the preceding section elaborates on what constitutes an unfair method of competition or a deceptive act, there still remains the question of what constitutes “unfair acts or practices.” Section 5 of the F.T.C. Act does provide that unfair acts or practices are declared unlawful but this aspect of the Act has not received the same attention as the other portions of section 5. While this section had been unexplored in the past, the Supreme Court has recently created what is known as the “fairness doctrine.” This doctrine can be used as a wedge into practices which were seemingly beyond the reach of the F.T.C. and now the Little F.T.C.

The fairness doctrine evolved from Federal Trade Commission v. Sperry & Hutchinson Co.79 Briefly, the facts are that the respondent, Sperry and Hutchinson, sold stamps to merchants who gave them to customers, the number of stamps received by the customers dependent upon the size of their purchase. Some of the customers, however, found themselves with too few stamps to redeem them for merchandise. Realizing this dilemma, some individuals established exchange centers where a person could trade his stamps for cash, buy more books of stamps to have enough to redeem them for merchandise, or to exchange stamps they do not normally collect for stamps that they do collect (exchange of “competitive” stamps). Sperry and Hutchinson feared these activities, believing that it would reduce customer proclivity to return to green-stamp-issuing stores and thus lower the store’s incentive to buy and distribute S & H stamps. In order to prevent this practice, Sperry and Hutchinson placed a notice in every stamp book stating that the holder of the stamps could only redeem the stamps for merchandise from Sperry and Hutchinson unless the holder had prior written consent. Furthermore, in following up on this notice, Sperry and Hutchinson, between the years 1957 and 1965, filed for 43 injunc-

tions against the exchange centers and mailed 315 threatening letters to merchants and centers that redeemed the stamps. In almost all instances, the threat or reality of suit forced the businessmen to abandon this practice.

The court was confronted with the issue of whether "... § 5 empower[s] the Commission to proscribe practices as unfair or deceptive in their effect upon consumers regardless of their nature or quality as competitive practices or their effect on competition."  

The Court stated:

Thenceforth, unfair competitive practices were not limited to those likely to have anticompetitive consequences after the manner of the antitrust laws; nor were unfair practices in commerce confined to purely competitive behavior. . . .

. . . The [Wheeler Lea] amendment added the phrase 'unfair deceptive acts or practices' to the section's original ban on 'unfair methods of competition' and thus made it clear that Congress, through § 5, charged the FTC with protecting consumers as well as competitors.

Thus, legislative and judicial authorities alike convince us that the Federal Trade Commission does not arrogate excessive power to itself if, in measuring a practice against the elusive, but congressionally mandated standard of fairness, it, like a court of equity, considers public values beyond simply those enshrined in the letter or encompassed in the spirit of the antitrust laws.

Consistent with the concept of fairness is the Court's comparison of the F.T.C. and courts of equity. The Court seemingly enlarges the jurisdiction of the F.T.C. Act to cover conduct which may not be violative of any laws but is inequitable to the consumer.

The precedent relied upon by the Court to substantiate the fairness doctrine is both the language of the F.T.C. Act and Federal Trade Commission v. R.F. Keppel & Bro., Inc. Keppel & Brother sold candies in "break and take" packs, a means of merchandising that induced children to buy greater amounts of inferior candy in the hope of finding bonus packs containing extra candy and prizes. The F.T.C. issued a cease-and-desist order under section 5 on the theory that the marketing scheme contravened public policy by tempting children to gamble and compelling competitors to abandon their scruples by similarly tempting children. The Court sustained the F.T.C.'s conclusion that the practice was unfair by reasoning that "... the competitive method is shown to exploit consumers, children, who are unable to protect themselves."

80. Id. at 239.
81. Id. at 244.
82. 291 U.S. 304 (1934).
83. Id. at 313.
The unfair practice doctrine was further incorporated into the F.T.C. Act standards by requiring that when advertisements make assertions that appear to be based on scientific evidence, they must, in fact, be reasonably founded. In 1973, the Federal Trade Commission rendered its opinion in a complaint against Pfizer, Inc.,\(^\text{84}\) regarding allegations claiming Pfizer had conducted an unfair practice. The complaint alleged that the claims by Pfizer as to the qualities of one of its products, Un-Burn, had not been substantiated by scientific proof prior to the making thereof. The Commission affirmed the hearing officer's opinion which dismissed the complaint for failure to prove lack of reasonable reliance on scientific substantiation, but the opinion delineated the standards for advertisements which make affirmative representations as to the quality of a product which appears to be scientifically supported.

As the Commission stated:

... the Commission is of the view that it is an unfair practice in violation of the Federal Trade Commission Act to make an affirmative product claim without a reasonable basis for making that claim .... Absent a reasonable basis for a vendor's affirmative product claims, a consumer's ability to make an economically rational product choice, and a competitor's ability to compete on the basis of price, quality, service or convenience, are materially impaired and impeded.\(^\text{85}\)

The opinion noted that the "standard of reasonableness" is not an absolute, but one which is governed by a case-by-case analysis. The facts upon which any claim is to be made, however, must be ascertained prior to any such assertions, for a subsequent affirmation does not establish a reasonable basis for a claim previously made.

In order to have had a reasonable basis, the tests must have been conducted prior to, and actually relied upon in connection with, the marketing of the product in question. Nor does the fact that the product subsequently performed as advertised indicate that there is a lack of public interest in the matter. The fundamental unfairness results from imposing on the consumer the unavoidable economic risk that the product may not perform as advertised; that is, at the time of sale, neither the consumer nor the vendor have a reasonable basis for belief in the affirmative product claims.\(^\text{86}\)

The tests which are necessary for any such assertions should be well-controlled scientific tests which simulate the anticipated usage of the product. These tests, however, need not be conducted in connection with the immediate product, but may be

\text{\(^\text{84}\) F.T.C. v. Pfizer, Inc., 81 F.T.C. 56 (1972).}
\text{\(^\text{85}\) Id. at 62.}
\text{\(^\text{86}\) Id. at 67.}
founded on experimentation conducted with similar products or ingredients or on medical literature containing reports of adequate and well-controlled tests. Reliance may not be had on the fact that comparable products make similar claims and have similar ingredients unless it is known that they have conducted the appropriate scientific tests. While the Pfizer decision did not find against the respondent, it did create the requirements of and standards for an advertiser who makes claims about its products which appear to be substantiated by scientific proof.

The recent adoption of the fairness doctrine by the F.T.C. opens innumerable doors which were seemingly closed prior to Sperry & Hutchinson. On March 4, 1974, the F.T.C. made a press release which announced an investigation into debtor suits by Montgomery Wards and Spiegel, both of Chicago. Apparently, both companies were having default judgments entered in courts which were extremely inconvenient to the debtor—so inconvenient that the debtors rarely would appear simply because of the expense necessary to get to court. The courts where the suits were filed had proper jurisdiction and these companies had a right to have the judgments entered therein, but the F.T.C. is pursuing the matter because it feels that the practices, though lawful, are simply unfair to the consumer. This is an instance of the potential breadth of the F.T.C. Act and the Little F.T.C. should the Attorney General or an individual decide to capitalize on the fairness doctrine.

This area warrants close examination since it may eliminate practices which are not contrary to antitrust laws or illegal otherwise, but are adverse to the concept of fairness.

**State and Private Causes of Action**

*Proper Parties and Remedies*

Under the F.T.C. Act, there is no right to a private action because of conduct declared unlawful under section 5 of the Act.\(^87\) Similarly, under the Consumer Fraud Act of Illinois, there was no provision allowing for an action by an individual; only the Attorney General could bring an action.\(^88\) The Uniform Deceptive Trade Practices Act, however, permits only actions by individuals\(^89\) (not the Attorney General) but the relief thereunder is limited to injunctions.\(^90\)

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89. Id. § 313 (1973).
90. Id.
The Little F.T.C., however, specifically provides that actions can be brought by either an individual or the Attorney General. The obvious advantage to the consumer is that he is assured that his complaint will be diligently pursued inasmuch as a complaint previously filed under the Consumer Fraud Act would only be pursued if the Attorney General's office felt that an action was warranted and that it had the time and manpower to do an adequate job. With these new provisions for consumer enforcement, the consumer can regulate the litigation entirely since it is brought in his own name. The Attorney General also benefits in that he may now seek relief which is more deterring to violators of the Act and more clearly related to the harm done to the public.

The parties to be named in the complaint for violation of the Act are obviously those who made the misrepresentations which created the possible deception of consumers. Section 10(b)(3), however, goes further in that it, by implication, provides that the disseminator of the deceptive advertisement may additionally be liable if the advertisement were accepted for publication with knowledge of its falsity or the disseminator had a financial interest therein. Proving knowledge on the disseminator's part may be an onerous task, but if financial strings can be established, and additional party may find himself sharing a judgment.

Even though an individual may bring the action, a problem which the drafters foresaw was the likelihood of minimal damage awards, a certain discouragement of private actions. The Little F.T.C. compensated for the expected small awards by allowing recovery of reasonable attorney fees and costs should the individual prevail. By the same token, the legislature foresaw the possibility of harassment litigation and provided for recovery of attorney fees and costs to whichever party prevailed. The new Act was designed for private actions but not as a license to sue on unfounded or frivolous claims which are essentially a means of harassment. The aforementioned provision allowing for costs and attorney fees for the prevailing party is a necessary tool for the injured party, yet it serves as a shield to the party alleged to have acted in violation of the Act.

A further deterrent to unfair competition is the civil dam-

91. Id. §§ 267, 270a.
92. A question which is unanswered by the Little F.T.C. is whether class actions will be permitted thereunder. The Act itself is silent on the question but the concept of class actions would be consistent with the intent of the Act, the types of relief available, and the provision allowing costs for the prevailing party.
94. Id.
ages that may be awarded to the state when the Attorney General brings the action. In the cases under the F.T.C. Act, the only relief is a cease and desist order which amounts to a slap-on-the-wrist dictating that the particular practice be terminated. It is indeterminable as to who in particular is injured by the practice; therefore, no monetary damages are awarded and the only relief that the Commission can receive is the elimination of the practice by the particular violator in the future. But, by the time a judgment or consent order is entered, most of the damage has already been done and the company has made its profits and perhaps planted its advertising with the public such that the advertising will serve to its benefit long after the wrongful practice had been ordered to cease and desist.

The F.T.C. apparently realized this dilemma and in its two drafts of proposed model legislation for the states, it recommended a $25,000 and $2,000 civil penalty, respectively, for each violation of the Act. The Illinois Little F.T.C. went further than either proposal and adopted a provision that allows the court, in its discretion, to assess a civil penalty not to exceed $50,000. This monetary penalty is in addition to the relief available previously under the Consumer Fraud Act and now the Little F.T.C.; said relief includes injunctions, dissolution of the corporate charter, revocation of any license, or any other equitable relief the court deems necessary. These equitable forms of relief would certainly be the most harmful to the business conducting unlawful practices (e.g., revocation of license) but the courts will probably be reluctant to impose these penalties since they are so severe. Some of the cases prosecuted under the F.T.C. Act will substantiate this hesitancy by the courts and as a consequence, the alternative relief of a monetary penalty

95. Id. § 267.
96. An excellent example of the continued effect of the deceptive advertising occurred in F.T.C. v. Colgate-Palmolive Co., 380 U.S. 374 (1965). Colgate advertised "Rapid Shave" shaving cream by using the "sand-paper mask" test. Colgate was enjoined from using the advertising in the future because of the deceptive mock-up but, by this time, the advertising had made an impression on the viewing public and no order by the Commission could curtail that effect unless they would go so far as to order corrective advertising.
98. Letter from Paul Rand Dixon to Philip S. Hughes, April 23, 1969.
100. Id.
101. See F.T.C. v. R.F. Keppel & Bro., Inc., 291 U.S. 304 (1934); F.T.C. v. Royal Milling Co., 288 U.S. 212 (1933); Country Tweeds, Inc. v. F.T.C., 326 F.2d 144 (2d Cir. 1964); Union Circulation Co., Inc. v. F.T.C., 241 F.2d 652 (2d Cir. 1957); Gulf Oil Corp. v. F.T.C., 150 F.2d 106 (5th Cir. 1945); L. & C. Mayers Co. v. F.T.C., 97 F.2d 365 (2d Cir. 1938); F.T.C. v. Balme, 23 F.2d 615 (2d Cir. 1928); Eastman Kodak Co. v. F.T.C., 7 F.2d 994 (2d Cir. 1925).
is required to enforce compliance with the new standards. Therefore, this large civil penalty should work effectively in reprimanding those businesses engaged in unfair practices whose conduct is not severe enough to warrant a dissolution or forfeiture of license.

In addition to the attorney fees and costs, the Act appears to provide for punitive damages in an action by an individual.\textsuperscript{102} The Act specifically provides for "any other relief which the court deems proper"\textsuperscript{103} and punitive damages would appear to be included in the scope thereof. To further substantiate this, the Act has specifically allowed punitive damages to actions brought by the Attorney General ($50,000 per violation). Since the same ends are sought, it would be inconsistent to contend that the Act did not authorize the same type of relief to an individual when he brings an action predicated on the same or similar violation as that which entitles the Attorney General to punitive damages.

The importance in this area of the Little F.T.C. should be abundantly clear—a greater number of persons can bring the actions and the penalties for the violation should serve as an effective deterrent to those contemplating such practices. Perhaps most important is the ability of the individual to bring his own action based on the unfair competition and the inclusion of a provision allowing for recovery of attorney fees and costs to the prevailing party. These provisions allow for greater protection to the consumer and competitor but still discourage harassment litigation which would impose an unwarranted burden on the honest businessman.

\textit{Elements Necessary to Bring an Action}

The decisions under the F.T.C. Act dictate that "the public interest must be specific and substantial"\textsuperscript{104} and where a controversy is essentially private in nature, the F.T.C. lacks jurisdiction.\textsuperscript{105} The Little F.T.C., though, is broader than these requirements and broader than the former Consumer Fraud Act of Illinois.

In the new Act, there is a provision defining trade and commerce,\textsuperscript{106} these terms being used for the first time. In so defining, the Act refers to "any services and any property, tangible or intangible, real, personal or mixed, and any other

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{102} ILL. REV. STAT. ch. 121\(\frac{1}{2}\), § 270a(a) (1973).
\item \textsuperscript{103} Id.
\item \textsuperscript{104} F.T.C. v. Klesner, 280 U.S. 19, 28 (1929).
\item \textsuperscript{105} Id. at 27-28.
\item \textsuperscript{106} ILL. REV. STAT. ch. 121\(\frac{1}{2}\), § 261(f) (1973).
\end{itemize}
\end{footnotesize}
article, commodity, or thing of value wherever situated...\textsuperscript{107}

The relevancy is that the Little F.T.C. is directed toward legislative protection irrespective of the frequency of the transaction and the magnitude of the offense; a one-time violation is just as subject to action as that which is done continuously. Under the old Act, there was a question as to the magnitude of the offense as a prerequisite to the action but the repetitive use of the word "any" should obviate the necessity of determining that query.

This same section of the Little F.T.C. eliminates another unanswered question: Is real estate included within the Act? The definition of merchandise seemingly made it inclusive in the Consumer Fraud Act\textsuperscript{108} but the new Act makes specific reference to reality and any other tangible or intangible of value.\textsuperscript{109} Thus, another possible problem under the old Act has been eliminated by a more comprehensive and flexible Little F.T.C.

An example of the breadth of the Little F.T.C. was illustrated in the \textit{Chicago Sun-Times} wherein a hypothetical was presented.\textsuperscript{110} In the article, a small businessman purchased a barber shop and the seller had misrepresented the possible income therefrom. Since these representations were material and related to a purchase of something of value, either the Attorney General or the purchaser could bring the action.

This hypothetical illustrates three important points. The first is that the causes of action that may be brought are wide and varied; second, the advantage to the parties bringing the action is that they can now sue on a statute rather than the common law action of fraud; and third, that the rights and duties are clearly established by the precedents of the F.T.C. in establishing standards of conduct. Even though there is a question of puffing or expression of opinion as opposed to fact in the example, the standards for evaluation come from a larger pool of case authorities than previously available.

Another problem which has been considered and resolved by the F.T.C., and is thereby incorporated into the Little F.T.C., is whether the violative conduct has been terminated before the action was commenced. The cases under the F.T.C. Act have held that having ceased the illegal conduct prior to the issuance of a complaint does not absolve the violators\textsuperscript{111} and a voluntary

\textsuperscript{107} Id. (emphasis added).
\textsuperscript{108} Id., § 261(b).
\textsuperscript{109} Id., § 261(f).
\textsuperscript{110} Chicago Sun-Times, Oct. 1, 1973 at 6, col. 1.
\textsuperscript{111} Country Tweeds, Inc. v. F.T.C., 326 F.2d 144, 148 (2d Cir. 1964); Giant Food, Inc. v. F.T.C., 322 F.2d 977 (D.C. Cir. 1963).
Little F.T.C. Act

1976]

discontinuance is no bar to the action either.\footnote{112} The purpose of the cease and desist order in these instances is to insure that the conduct will not occur again and consequently the order is a preventative measure. Language of the Little F.T.C., and previously the Consumer Fraud Act, indicates the same results since remedies may be had when a person "has engaged in, is engaging in, or is about to engage in" an unlawful practice.\footnote{113}

The new versatility of the Little F.T.C. comes primarily from the frequent use of the expression "any" in defining trade and commerce. The scope of possible actions has been broadened to include all transactions involving property of value and these dealings are subject to actions by either the Attorney General or the individual purchaser. Since the draftsmen indicate such a broad spectrum, no litigation should fail because of the value of the property, the frequency of such transactions, the type of property, or the termination of the practice prior to the litigation.

\textit{Injury Resulting From the Unlawful Practice}

Since there are so few decisions under the Consumer Fraud Act, it is necessary to evaluate the decisions of the F.T.C. Act in order to understand what types of injuries must be shown to invoke the jurisdiction of the Little F.T.C.

In \textit{Ford Motor Co. v. F.T.C.},\footnote{114} Ford had advertised 6% financing of cars when the true time balance payments were 11.5%. The defense was raised that there was no proof that there had been any damages. The court rejected the contention by stating that "[t]he Federal Trade Commission Act was intended to afford a preventative remedy, not a compensatory one, so that the suggestion no damage has been shown . . . is no defense to the proceeding."\footnote{115}

Also, there need not be evidence that anyone had in fact been deceived in relying on the petitioner's representations\footnote{116} and if damages should be alleged, it is not necessary to show

\footnote{112}{Montgomery Ward & Co. v. F.T.C., 379 F.2d 666 (7th Cir. 1967); Clinton Watch Co. v. F.T.C., 291 F.2d 838, 841 (7th Cir. 1961).}
\footnote{113}{I.L. REV. STAT. ch. 121.5, § 263 (1973).}
\footnote{114}{120 F.2d 175 (6th Cir. 1941).}
\footnote{115}{Id. at 182.}
\footnote{116}{F.T.C. v. Raladam Co., 316 U.S. 149 (1942); F.T.C. v. Winsted Hosiery Co., 258 U.S. 483 (1922); F.T.C. v. Sterling Drug, Inc., 317 F.2d 669 (2d Cir. 1963); American Life & Accident Ins. Co. v. F.T.C., 255 F.2d 289 (8th Cir. 1958); Herzfeld v. F.T.C., 140 F.2d 207 (2d Cir. 1944); Bockenstette v. F.T.C., 134 F.2d 369 (10th Cir. 1943); Pep Boys—Manny, Moe & Jack, Inc. v. F.T.C., 122 F.2d 158, 161 (3d Cir. 1941); F.T.C. v. Hires Turner Glass Co., 81 F.2d 362, 364 (3d Cir. 1935); Brown Fence & Wire Co. v. F.T.C., 64 F.2d 954, 956 (6th Cir. 1939); F.T.C. v. Balme, 23 F.2d 615 (2d Cir. 1928).}
them in terms of specific dollar value\textsuperscript{117}—only that there was some potential damage. The reason for this rule has been stated simply as "the purpose of a cease and desist order is not to punish for past acts, but to prevent the occurrence or the threatened continuance of illegal acts."\textsuperscript{118} Consequently, the Commission has no intention of punishing the wrongdoer \textit{per se} but rather to protect the consumers. Justice would be affronted if the wrongdoer were to continue the practice simply because specific damages could not be proven.

These excerpts from the case law of the F.T.C. once again illustrate standards by which the actions are measured. There are no provisions in the Little F.T.C. expressing the aforementioned rules but they are incorporated in the Act by virtue of the section stating that interpretations of the Federal Trade Commission and the courts shall be given consideration relating to Section 5(a) of the F.T.C. Act.\textsuperscript{119} As a practical matter it is important to bear in mind that specific proof of damages is not essential to the cause of action; all that need be shown is the probability of injury to either the consumer or competitor.

**CONCLUSION**

Besides those sections specifically referred to herein, other portions of the Little F.T.C. alter the procedural aspects of the Act\textsuperscript{120} but the ones mentioned have the major substantive effect with regard to consumer protection. When utilizing the Act, particular attention must be focused on those standards established under the F.T.C. Act, for those standards are what make the Little F.T.C. such a reliable and substantial law; a law which has numerous decisions to serve as a backbone, yet structured such that it is flexible enough to adapt to new situations and deal with them according to what serves the community best.

The Act was drafted to allow private litigation where it was previously forbidden or of little use, but safeguards are incorporated to prevent harassment litigation, thus protecting the honest businessman.

The Act is a preventative measure, rather than a punitive one, but if practices exceed certain permissible deviations, the Attorney General may seek the revocation of a license or perhaps some other relief which would literally put the violator out of business. By the same token, an individual who has been,

\begin{footnotesize}
\begin{enumerate}
\item[117.] Rothschild v. F.T.C., 200 F.2d 39, 42 (7th Cir. 1952); Consolidated Book Publishers, Inc. v. F.T.C., 53 F.2d 942, 945 (7th Cir. 1931).
\item[118.] California Lumbermen's Council v. F.T.C., 115 F.2d 178, 184 (9th Cir. 1940).
\item[119.] ILL. REV. STAT. ch. 121½, § 262 (1973).
\item[120.] Id., § 265 (Service of Process).
\end{enumerate}
\end{footnotesize}
or may be, injured by the conduct may be able to receive punitive damages from the violator.

The Act lessens the burden of proof by the complainant since there need not be an element of intent on the part of the violator should there be an affirmative misrepresentation. On the other hand, the one failing of the Act is the requirement of proof of intent where the misrepresentation arises from an omission or suppression of material facts.

The Little F.T.C. forbids acts or practices which are unfair towards consumers irrespective of whether the conduct is deceptive or unfair to competitors. The Act, by reference to the F.T.C. Act, also dictates permissible conduct when the issue of the case relates to practices directed against the public or a competitor in advertising.

When all of the assets of the new Act are examined, the total effect is an extremely broad and practical law which is necessary to consumerism. The Little F.T.C. was designed to be easily utilized by the consumer, competitor, or the Attorney General, and sufficiently broad to cover situations which may be novel enough to have evaded the prior law of Illinois. The Little F.T.C. is an act which is necessary to the administration of justice in the field of consumerism and one which should have a beneficial effect on all who believe that the immense amount of advertising in this state requires scrutiny to protect the public. The Act is also essential in order to preserve "fairness" so that consumers can live their lives without fear that an unscrupulous merchant will take advantage of their less fortunate situation in life.
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