California State University, Northridge

CONSUMER CYCLES TO CONTROL FALSE ADVERTISING, 1865-1972

A thesis submitted in partial satisfaction of the requirements for the degree of Master of Arts in Mass Communication by Marion Boyle Redfield

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Committee Chairman

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ABSTRACT

CONSUMER CYCLES TO CONTROL FALSE ADVERTISING, 1865-1972

by

Marion Boyle Redfield

Master of Arts in Mass Communication

September, 1972

This study investigated the possibility of a cycle of consumer protection activity operating in the United States during the past century, spaced at approximately thirty-year intervals and followed by legislation to control false advertising.

Economic, social, and political conditions were described in the four periods delineated, i.e., post-Civil War, the early 1900's, the Great Depression years, and the contemporary era dating from 1960.

The investigation traced the history of advertising and attempts of the advertising profession at self-regulation, the rise of the consumer movement to its present strength, and significant legislation passed and pending affecting false advertising and consumer protection.

Creation of the Federal Trade Commission was described, as well as the ways in which its authority has been expanded through testing in the courts and recent structural reorganization and policy changes. Corrective advertising, substantiation of advertising claims, and
counter-advertising proposals of the Commission from 1970 to mid-
1972 were discussed and the reaction of the advertising profession to
them.

The conclusion showed that there appeared to be evidence to
support an hypothesis of cyclical activity relating to consumer up-
risings and legislation, with the possibility of the cycle continuing
in the future. Reasons for the unlikelihood of cycles occurring
either less, or more, frequently were presented, and similarities and
dissimilarities of the four periods were traced. Recommendations for
further study concerning advertising, business, government regulation,
and the consumer movement were given.
Chapter 1

INTRODUCTION

Federal controls over false advertising have been enacted at various periods during the past century to protect the consumer. These controls were preceded by protests, led by crusading journalists and other social critics, against deceptive practices. Therefore, it seems possible that the "protest-control syndrome" appears regularly enough to be considered a cyclical activity.

Shortly after the Civil War, complaints were launched against advertisements that promised medical cures from nostrums, charms, and appliances. Samuel Bowles II, publisher of the Springfield Republican, editorialized about "the spread and dominion of quack medicines and the never-failing appetite of people for them." He said that they were made for specific and guilty purposes and questioned whether the good and right-minded could be awakened to their mischiefs.

A few powerful newspapers, such as the New York Herald, decided to dispense with patent medicine advertising, beginning in 1865. However, newspapers of small circulation and revenue could not afford to exclude it, and with only minimal objections, the advertising of nostrums continued unabated until the twentieth century. This category of advertising led all others throughout the nineteenth century in money spent for national advertising. By 1904, the output from the proprietary medicine industry had multiplied more than twenty times since 1859, reaching expenditures of more than $70,000,000.
So exaggerated were the claims made for certain patent medicines around 1900 that concerned publications such as the *Ladies' Home Journal*, *Collier's*, and the *Emporia Gazette* launched vigorous crusades to warn the public about the hazards of self-dosage with these medicines. Articles written by "muckraking" journalists of the period revealed chemical analyses of various widely advertised nostrums and showed that many contained habit-forming drugs and alcohol. In his series in *Collier's*, entitled "The Great American Fraud," Samuel Hopkins Adams accused America of being "gullible" in the purchase of patent medicines and swallowing, far in excess of other ingredients, "fraud, exploited by the skilfullest of advertising bunco men." These exposes and others about the meat-packing industry stimulated a move for reform which gathered impetus from the Progressive mood of the country. The reform movement resulted in the passage of the Pure Food and Drug Act of 1906, which specified the manner in which drugs should be labeled and made shipments in interstate commerce of adulterated foods and drugs illegal.

Five years later the advertising industry acted to police its own profession by instituting a model statute law penalizing false and misleading advertising which was adopted by a number of states. Shortly thereafter the Federal Trade Commission Act was passed and although it was not intended primarily as a form of administrative law to control false advertising, protection of the consumer in this regard eventually became one of its major functions.

With the development of new products following World War I, manufacturers turned to advertising to create mass desire. Ingenious promotions were launched, and there was heavy reliance upon slogans
and testimonials to sell products. Advertising budgets expanded until
the stock market crash of 1929 when banks closed and businesses failed.
During the years of great depression that followed, consumers often
were hard-pressed to feed their families, and they became suspicious
of claims made for products through advertising. Consumer organiza-
tions were formed, and the controversy over advertising practices
reached Congress, culminating in the 1938 Wheeler-Lea Amendment to the
Federal Trade Commission Act of 1914. This Amendment provided that
if an advertisement deceived consumers, the FTC could act to protect
them.

With the appearance in 1963 of Ralph Nader's book, Unsafe At
Any Speed, consumers throughout the United States began to question
not only the promotional promise, but the motives of manufacturers and
their advertising representatives. Consumer advocates broadened
their base of support and organizational structure to form a twentieth
century revolt against the unresponsiveness of business to human needs.
Commenting on the consumer revolt, Senator Warren G. Magnuson, Chair-
man of the U. S. Senate Commerce Committee, says "you can no longer
ignore its depth and force." Consumer advocates broadened
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century revolt against the unresponsiveness of business to human needs.
public opinion studies we have clear indications of public attitude
toward advertising and toward business in general. It is frighten­
ingly and increasingly negative."16 Consumers will continue to create
pressure for more informative advertising according to Virginia H.
Knauer, Special Assistant to the President for Consumer Affairs.17

The 1969 report of the American Bar Association Commission to
Study the Federal Trade Commission concluded that the FTC had fallen
far short of what it could have done and had committed insufficient
resources to the area of false and deceptive advertising.18 Since
then the FTC has developed some new weapons to supplement its "cease
and desist order." These include "corrective advertising," by which
the Commission may require a company's future advertising to correct
the misleading impression created by previous advertising, and "sub­
stantiation," by which the FTC asks selected advertisers to submit in­
formation substantiating their advertising claims.19

In January, 1972, the FTC went a step further by announcing that
it supported counter advertising in the broadcast media in order to
facilitate public debate on controversial issues that are raised by
commercial advertising. It recommended that the Federal Communications
Commission require broadcasters to provide public service time for
counter advertising and also urged access to the broadcast media for
paid counter-advertising time.20 This proposal had not been put into
effect by mid-1972, but it did create widespread controversy in busi­
ness, advertising, government, and telecommunications.21

Bills were pending in Congress to strengthen the powers of the
FTC, to create a separate Consumer Protection Agency, and to establish
"truth-in-advertising" provisions, requiring advertisers to furnish
consumers with proof of claims made in print and broadcast media. Advertising's response to the rising tide of consumerism and the FTC's aggressive policing has been the establishment of advertising review boards to try to persuade advertisers who employ questionable practices to change their methods. Another effort to encourage ethical business standards started a year ago when President Richard M. Nixon, by Executive Order, created the National Business Council for Consumer Affairs.

All indications point to a shift from "let the buyer beware" to the contemporary and future dictum, "let the seller beware."

This study proposes to investigate the frequency with which fraudulent advertising occurred during the past century, the forces at work to control it, and the means by which it was controlled in order to determine whether a round of events recurred at regular intervals and in the same sequence. Research will take into account economic, social, and political conditions and their effect on the advertising climate and reform movements, noting any similarities in such conditions that may have existed.

In addition, there is evidence to suggest that consumer protests against false advertising have occurred at approximately thirty-year intervals during the past century and have resulted in reform, mainly through federal legislation. Therefore, it seems justifiable to explore the possibilities of a cyclical factor operating. This research seeks to determine why the protest-control syndrome occurred at intervals of thirty years instead of ten or fifty years and hopes to suggest either the continuance or discontinuance of the syndrome.
in the future.

**Hypothesis**

A cyclical factor of approximately thirty years in the demand for protection of the public against false advertising has been operating in the United States for the past century, spurring the enactment of major legislation to curb advertising abuses.

**Methodology**

This thesis will be descriptive in nature and will employ a search of historical and legal records, as well as contemporary publications. It also will utilize personal interviews and correspondence with officials who are involved currently with consumer protection.

**Assumptions**

The study assumes that social, economic, and political conditions are of prime importance in affecting advertising practices and reform movements. While there may be other factors operating in the environment, their influence is considered to be minimal. An assumption also is made that fraudulent and deceitful advertising may exist for a period of time, but it will not continue unchecked indefinitely due to certain individuals and groups who will attempt to alert the public to abuses and will lead protest movements.

**Limitations**

With the industrial expansion after the Civil War, advertising grew into a full-fledged business and became an important part of the economy. Not only was advertising needed to sell products, but it was relied upon as a valued source of income by the increasing numbers of
newspapers and magazines. The period immediately following the Civil War seems to mark a turning point from advertising in its primitive stages to its more widespread and sophisticated uses. This study, therefore, begins with the year 1865 and continues to the present writing, August, 1972.

Research will be concerned only with major periods of consumer agitation and corrective legislation. Investigative methods are limited to a survey of the literature concerning the development of advertising in both written and spoken media, voluntary and legal regulation of advertising nationally, the consumer movement, U. S. economic, social, and political history, and a survey of legal records. It does not embrace every article about advertising and its regulation, hundreds of which have appeared in the last few years, nor does it include the search of state and local laws or reviews of every complaint filed by the FTC.

Definitions

**Cycle of Activity.** The conception of human activity as (a) stemming from a drive or urge, (b) developing into a restless search for a way to satisfy the need, (c) the actual satisfaction of the drive or need, and (d) a sense of satisfaction or rest resulting from the achievement or goal.

**False Advertising.** In brief, it is the likelihood of an advertisement's deceiving a given segment of the population to which the advertising message is addressed. The term is described in Section 15 (a) of the 1938 Wheeler-Lea Amendment to the Federal Trade Commission Act, as follows:
The term "false advertising" means an advertisement, other than labeling, which is misleading in a material respect; and in determining whether any advertisement is misleading, there shall be taken into account (among other things) not only representation made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the advertisement fails to reveal facts material in the light of such representation of material with respect to consequences which may result from the use of the commodity to which the advertisement relates under the conditions prescribed in said advertisement, or under such conditions as are customary or usual.27

Consumer Movement. The consumer movement refers to individuals and organizations who are concerned about the buyer getting full value for whatever he purchases and being protected against false advertising. They believe, as stated in the F.T.C. v Standard Education Society:

There is no duty resting upon the 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 decided that honesty should govern competitive enterprises and the rule of "caveat emptor" should not be relied upon to reward fraud and deception.28

Consumer Protection. Protection of the consumer is related to the consumer movement and means shielding the buyer from advertising and marketing abuses by means of informal pressures and legal recourse. After consumer advocate Ralph Nader became prominent in the middle of the 1960's, the term, "consumer protection," was mentioned frequently in the media and grew to its present significance as one of the major concerns of legislators, businessmen, the advertising profession, organized consumer groups, and individual buyers.29

Major Legislation. This term means such monumental controls as the Pure Food and Drug Act of 1906 and the FTC Act of 1914, amended in 1938. In addition, there are U. S. Supreme Court and District Court decisions which have defined, interpreted, and in some cases, ex-
expanded the authority of the FTC to regulate advertising.

Why This Study Was Made

While this is a study which concerns advertising as a medium of mass communication and the laws pertaining thereto, it is interdisciplinary in its approach since it also involves business, economics, sociology, political science, and history.

It is hoped that this research will be helpful in several ways: by showing whether there is a rhythm of cyclical activity operating in the control of false advertising instead of chance occurrences at various periods during the past century; by showing the need for regulatory laws as advertising developed; by tracing the factors which motivate the public and legislators toward reform; and by providing a worthwhile reference for persons interested in the consumer protection movement.

Organization of the Thesis

Chapter 2 contains a Search of the Literature. Chapters 3, 4, 5, and 6 are devoted to major periods from 1865 to 1972 which are characterized by consumer unrest followed by advertising regulation. Chapter 7 contains a summary of the chapters, an evaluation of the evidence found, and the conclusion.
Chapter 2

REVIEW OF THE LITERATURE

The literature concerning the thesis subject chronicles the growth of the advertising industry in the United States from a volume of $50,000,000 in 1867 to an estimated $22,800,000,000 in 1972. As advertising historian James Playsted Wood and others explain, most of the early ideas about advertising came to this country from England, starting with placards and handbills and progressing into announcements in newspapers. The adoption of these ideas to attract and, at times, to fool the public is well illustrated in the career of showman Phineas Taylor Barnum, who lived from 1810 to 1891.

In tracing the first attempts by government to control advertising in the United States, Congressional authority to regulate business and transactions pertaining thereto is vested in Article I of the Constitution, which delegates to Congress the power "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

Certain premises of the common law, however, precluded prosecution of trade practices which Congress might think unfair. One of these premises was that man was rational in following his self interest. The common law took for granted that the seller and the buyer would understand the "game" of trade. Because they met on equal terms, it was assumed the buyer and seller would strike a mutually advantageous bargain; otherwise, they would not conclude a transaction. Coercion,
conspiracy, or false weights were the typical grounds for an action at common law. In its application to advertising, the common law provided only two grounds for commercial deception. These were simulation and passing off one's business or goods for another's, both of which involved infringement of a competitor's property right. 34

The first consumer protection law relating to advertising was passed in 1872, making it a federal crime to defraud through the use of mails. The law revised, consolidated, and amended the statutes relating to the Post Office Department. Section 149 of the 1872 Act stated:

It shall not be lawful to convey by mail, nor to deposit in a postoffice to be sent by mail, any letters or circulars concerning illegal lotteries, so-called gift concerts, or other similar enterprises offering prizes, or concerning schemes devised and intended to deceive and defraud the public for the purpose of obtaining money under false pretences, and a penalty of not more than five hundred dollars nor less than one hundred dollars, with cost of prosecution, is hereby imposed upon conviction, in any federal court of the violation of this section. 35

In the late 1800's patent medicines and adulterated food had become menaces to the consumer and between 1879 and 1905, more than one hundred bills were introduced in Congress to regulate interstate production and sale of food and drugs. 36 Due to the apathy of Congress and the public, as well as strong business opposition, no action was taken on any of the proposed measures. The publication of The Jungle by Upton Sinclair marked a turning point and helped to assure passage of the Pure Food and Drug Act of 1906. 37 This measure did not insure truth in advertising, but the role of advertising in the sale of products was regulated to the extent that the Act attempted to prevent the manufacture, sale or transportation of adulterated, misbranded, poisonous
or deleterious foods, drugs, medicines, and liquors. Eight years later the FTC Act was passed to supplement sanctions over unfair competition which had been provided by the Sherman Anti-Trust Act of 1890 and the Clayton Act of 1914.\(^{38}\) This Act, amplified in 1938 by the Wheeler-Lea Amendment, was destined to have a significant and far-reaching effect on the control of false advertising.\(^{39}\)

The literature shows that before the twentieth century, selling was conducted on the premise of caveat emptor, or "let the buyer beware." Consumers were treated with a casual attitude and since government control was limited to the mails, disillusioned and cheated buyers had little recourse. Harold L. Nelson and Dwight L. Teeter, Jr. of the University of Wisconsin point out that "from the first days of the nation throughout the nineteenth century, the philosophy motivating advertising was largely laissez faire."\(^{40}\) They explain that what would be termed unreliable or even fraudulent advertising was published by some of the most respectable newspapers and periodicals, operating on the policy that advertising columns were an open business forum with space for sale to all who applied.\(^{41}\)

A case in point is that of James Gordon Bennett, publisher of the *New York Herald*, which by 1845 had become the leading advertising medium in America.\(^{42}\) Advertising historian E. S. Turner says that Bennett's advertisers could make whatever claims they wished. To complaints in the early 1860's that quacks abused his columns, the publisher retorted: "Business is business, money is money. We permit no blockhead to interfere with our business."\(^{43}\) In this attitude he did not differ greatly from his rivals, who held that so long as the language of the announcement was decent, the publisher had no further
A review of the literature substantiates that before 1900, advertising had little established ethical basis. Exaggerated claims were made for dishonest, shoddy merchandise and the hopes of the ill and suffering were built on pills and tonics of questionable composition. When the industrial revolution occurred in the period after the Civil War, conditions grew worse. The growth of publishing media and railroads made feasible the marketing of branded consumer products on a nationwide basis.

Stewart Holbrook, author of The Golden Age of Quackery, describes some of the popular nostrums, patent medicines, and healing devices, and the exaggerated claims that were made for them. Although soaps, cereals, cough drops, and canned milk joined the parade to nationwide advertising and distribution, the drive for ethical standards in advertising originated in the area of patent medicines and healing devices.

Crusading journalists launched severe attacks on the advertising industry in the 1890's to correct abuses such as exaggeration, falsehood, and fraud. However, the first semblance of a consumer movement did not occur until 1916 when the National Consumers' League was formed. This organization issued lists of manufacturers having League-approved labor programs and products. Later, in the post-World War One period, a number of women's organizations in large cities became concerned about the plight of the buyer. They expressed discontent over mounting prices, conducted investigations into the sale of
food, and staged occasional boycotts of high-priced goods. 49

It was not until 1927 that a book appeared that clearly articulated the growing consumer interest, *Your Money's Worth* was a general indictment of the entire marketing structure of American business and specifically, of advertising. 50 Consumers' ignorance of specialized products contributed to economic waste, the authors claimed, and most consumer advertising exploited this ignorance and compounded the waste. They believed that the consumer must find a way to oppose the power of advertising with a power of his own based on knowledge and skepticism. This way was quickly introduced by Schlink who formed an independent testing agency called Consumers' Research. Begun in 1928 in White Plains, New York, as a club where members exchanged information about products, the agency grew to national proportions within two years. Its membership in 1930 was 12,000 and it increased during the next six years to 48,000. 51

Other groups, such as the American Home Economics Association, the Stephens College Institute for Consumer Education, the American Association of University Women, and the National League of Women Voters quickly became involved in consumer education and lobbied for legislation to regulate advertising.

From small beginnings in the 1930's, the consumer movement rapidly gained momentum. By 1971 its influence had become so great that Stephen A. Greyser, Harvard Business School professor, termed it "too big an issue for business to ignore." 52

The literature before 1965 on the history of the consumer movement is scant, and even at this writing, there are few definitive works on the subject.
Organized protests against false advertising appear to have occurred at thirty-year intervals during the past century and have stimulated reform, yet a search of the literature does not seem to reveal references to the operation of a cyclical factor as such.

In his book, *The Age of Reform, From Bryan to F.D.R.*, Richard Hofstadter, Professor of History at Columbia University, states that "one of the most interesting and least studied aspects of American life has been the frequent recurrence of the demand for reforms . . . "\(^{53}\)

It is hoped that this study will contribute to the literature concerning the history of the consumer movement and the control of false advertising.
Chapter 3

POST-CIVIL WAR: PATENT MEDICINES AND THE BEGINNING OF ETHICAL STANDARDS

Prior to 1865, proprietary-medicine advertising constituted more than half the lineage in many papers, according to advertising historian Frank Presbrey. After the Civil War, this type of advertising reached an even greater volume, culminating in the "great patent-medicine craze" of the 1890's. The exposure of camp life, the effect of wounds, and an assortment of chronic ailments acquired by men during the war created for the patent-medicine manufacturer a multitude of very receptive customers, each of whom became a nucleus for the spread of self-treatment in the community. The effect of some patent medicines was powerful due to the high alcoholic content. Hostetter's Celebrated Stomach Bitters, a favorite with unsuspecting temperate readers of the religious weeklies, contained modest amounts of herbs and fruits and alcohol totalling at least forty-seven percent by volume. Many users of the product found in it something that their "stomach trouble" required with regularity.

The black sheep of the proprietary family, the "cures" for "lost manhood" and alleged remedies for venereal disease, ran riot in nearly all classes of media in the last half of the nineteenth century and were responsible for most of the disrepute which surrounded the industry. Because of its lurid and dominating copy, patent medicine advertising was held in poor esteem and this feeling was extended, in
a measure, to advertising as a whole. To many people, advertising was synonymous with patent medicines. Even when advertising pertained to retail stores, the copy was written according to the ethics of the man who believes, or pretends to believe, that *caveat emptor* is everyone's rule of conduct.

Presbrey says that "the grocer who called down to his son directions to sand the sugar and water the vinegar and come up to evening prayer had his counterpart in many lines of business." Barnum's success and the good-natured tolerance of his showman's methods, Presbrey feels, had a deep influence on the ethics of the period. Barnum's exploitation of the public through exaggeration and fakery was a deterrent to truthful advertising. Many people were aware that they were being duped, but they admired his showmanship and appreciated the spectacular events he staged. An expectation prevailed that commercial enterprises would twist the truth to some extent, and consumers usually remembered this when engaging in transactions. On the whole, there was acceptance of this ethical climate without much resistance or attempt to effect change.

The advertising of patent medicines, lotteries, and fakery in general could not have reached such proportions after the Civil War without the increased circulation of print media made possible by the extension of railroads. As Presbrey explains:

The influence of newspapers on extension of communications and the influence of better communication for new growth in the press furnish an example of the reciprocal action of advertising and other developmental forces. Newspapers encouraged rail extensions and by this helped all business, obtaining for themselves increased circulation and more advertising; increased demand created by advertising gave birth to new business enterprises, more employment, more money for purchases, and renewed expansion all around the circle of agriculture,
trade, manufacture, advertising, and communications. 59

Sunday newspapers, occasioned by the demand for war news, came into existence during the early 1860's along with the "patent inside" page, which later became an important medium in national distribution. 60 Before the Civil War began in 1861, advertising had appeared on the front pages of American newspapers. When the demand for war news grew, editors began to put advertising on the inside pages and inaugurated multiple-deck news headlines on front pages. After the newsstand circulation value of outside display headlines was discovered, paid announcements were relegated entirely to the inside and back pages where they continue to this day. 61 However, advertisers were allowed more freedom in type size and illustrations, which represented a break with the former "dark ages" of typographical display consisting of agate and single-column width for paid announcements. 62

During the decade, 1860 to 1870, magazines emerged as an important advertising medium. Prior to this time, they carried a few mild announcements or advertised only for the books published by the house owning the periodical. So rapid was the onslaught of advertising that by 1900 the magazine had become the medium par excellence for the manufacturers of branded merchandise in their quest for national markets. 63

Economic and Social Changes in the 1860's

The years during and following the Civil War were marked by economic and social changes which greatly affected the future of advertising. 64 With men at the front, harvesting and other farm machinery came into use and new labor-saving machinery was introduced into
manufacturing. In the war years, women did men's work in the field, and in urban communities they replaced men in the factories. After the war, more of the family's clothing was purchased and less made at home. More than a million men returned to productive industry after the Civil War and all could find employment. Except for slight recessions in 1867 and 1869, the economy moved forward until the financial crisis of 1873 and resultant depression lasting through 1877.65

In the post-war period, manufacture increased and so did the purchasing power of the people. Bessemer steel was inaugurated in 1865, starting an industry of far-reaching importance, and Pennsylvania oil had an influence on the country's prosperity.66 Domestic output was expanded by a higher tariff on imports, and specialization increased in industry.67 The consumer began to devote more time to earning money at his trade and consequently bought home needs which previously he had furnished with his own hands. By this time groceries were stocking canned goods, shoe stores displaced the local cobbler, and the sewing machine came into wider use.68

When women acquired the habit of purchasing many of the family's needs, they had more time for reading, and advertisers began to direct special messages to them.

As long as there was a pent-up demand for merchandise resulting from the Civil War, the distinguishing of one maker's goods from another's was unimportant. However, when increased production facilities and transportation began to equal the demand, competition became marked. Advertising was a way to compete. From a volume of $50,000,000 in 1867, advertising revenues quadrupled by 1880, with a volume of $200,000,000.69
Irresponsibility Toward the Consumer

Historian Foster Rhea Dulles refers to Mark Twain's description of the years immediately following the Civil War as the Gilded Age. Dulles says that the "public be damned" was a widely prevalent attitude and that the men who set up industrial monopolies sent representatives to Congress to promote their interests. The Administration, caught up in wartime reconstruction problems, showed little disposition towards championing the rights of the people. Andrew Johnson, who succeeded Abraham Lincoln as President on April 15, 1865, is described by historian Arthur Schlesinger as a man ill-fitted, by temperament or training, to assume the reins of government at such a trying juncture.

While the impeachment trial of President Johnson was still in progress in 1868, the National Union Republican party held its national convention in Chicago on May 20 and nominated Ulysses S. Grant for President. He was elected, and Schlesinger describes his presidency as being marked by outright bribery and corruption. Men who rose to national political eminence were sometimes personally interested as stockholders or corporation attorneys in business enterprises which might be affected by their actions as lawmakers. In President Grant's administration, as in President Johnson's, industrialists treated the people as consumers with a casually indifferent attitude. Although the government was strongly influenced by business interests, the first consumer protection law relating to advertising was passed during this period, making it a federal crime to defraud through the use of mails.
Internal Regulation of Advertising

Free-lancing literary men were engaged to write advertisements in the 1860's and, as late as 1867, most merchants thought advertising was undignified. However, chief among the forces which began to exert some ethical control over advertising and to foster professionalism in the 1860's was the advertising agency. Advertising agents of this period did not write copy, but merely placed ads for clients. There were no standard rates, and the charge was dependent mainly upon what the traffic would bear.

In 1869 George P. Rowell, an advertising agent and founder of Printers' Ink, issued a directory which provided every agency and advertiser for the first time with a complete list of newspapers in the United States. Advertising historian Frank Presbrey calls Rowell "the largest single influence for betterment of methods and the spread of information on every phase of advertising in the nineteenth century." In his book, The History and Development of Advertising, Presbrey includes a paragraph written by Rowell in 1871:

Honesty is by all odds the very strongest point which can be crowded into an advertisement. Come right down with the facts, boldly, firmly, unflinchingly. Say directly what it is, what it has done, what it will do. Leave out all ifs. Do not claim too much, but what you do claim must be claimed without the smallest shadow of weakness.

Another good influence on advertising in the 1860's was Francis Wayland Ayer who laid the foundation of the N. W. Ayer agency of Philadelphia. He was quick to demonstrate that a policy of honesty in advertising was not necessarily a foolish strategem. One of his innovations was an open contract under which a client might see how his money was being spent. He had the courage to renounce patent medicine
business and upon his death he was referred to as "The Man Who Led Advertising From the Shadows."  

A third man who helped establish advertising ethics during this period was John E. Powers, an advertising copywriter and consultant. Powers had a candid style of writing, and he scorned the exaggeration which most of his contemporaries considered essential.

Crusading Efforts to Control False Advertising

On the eve of the Civil War, in 1859, the proprietary medicine industry had an output valued at $3,500,000. By 1904 the sum had multiplied by more than twenty times. In total money spent for national advertising, the proprietary medicine industry led all other categories of advertising throughout the nineteenth century. For example, by 1868, much of the advertising in the Atlantic Monthly was for patent medicines and cosmetics. Among products advertised were the Universal Neuralgia Pill, described as "the undoubted cure for all excruciating ills known as neuralgia or nervous ache," Dr. Babcock's Hair Dressing, its purity guaranteed by S. Dana Hayes, State Assayer for Massachusetts, and Dr. J. W. Poland's Humor Doctor, advertised as "an invaluable medicine for purifying the blood."

In a review of advertisements in the New York Times for the period 1860 to 1870, the author found claims such as the following frequently made: "Nervous debility and private complaints of either sex cured by Dr. Evans. 94 Chatham St. Manhood restored in fifteen minutes," and "$1,000 reward for any private disease that Dr. Evans' remedies fail to cure. Apply to Dr. Evans, No. 94 Chatham St."
An advertisement for The Only Lung Pad, which "absolutely cures consumption, asthma, bronchitis, and all diseases of the throat, lungs and chest," appeared in American magazines and newspapers during the post-Civil War period.89

Because of the need for income, newspapers of weak circulation and uncertain finances were the most susceptible to patent medicine advertising. The powerful journals could afford to dispense with some, if not all, of it. In 1865 the New York Herald, which held the lead in advertising volume, announced that "all objectionable medical advertisements will be rigorously excluded from this paper as soon as existing contracts have expired.90

Samuel Bowles II, publisher of the Springfield Republican, showed his concern about patent medicine during Civil War days. On January 3, 1864, he published an editorial under the heading, "Quackery and Vice; Advertisements that Encourage Crime." The editorial was directed at the advertisements for aphrodisiacs and cures for venereal disease. It read, in part, as follows:

... There is something marvelous in the spread and dominion of quack medicines and the never-failing appetite of people for them. And if they were only quack medicines and killed people off gently and quietly, there might not be so much harm done. To be sure, it was rather hard when a nurse not long since gave a dose of that "harmless" soothing syrup to precious first-born son on whom many hopes rested, and laid him down in the sleep of death. But that was not a calamity beyond a narrow circle.

But the nostrums are not mere quack medicines; they are many of them made for specific and guilty purposes, which they state more or less clearly, according to the degree of decency of the paper in which they appear, always making it a rule to go as far as they dare by direct statement and declaration. ... Is it possible to any way waken the attention of the good and the right-minded to the mischiefs of quackery in general, and of this particular form of quackery, whose object is the encouragement of vice and immorality?...91
Although Bowles suggested the arousing of public sentiment against patent medicine advertising, he was not joined to any extent by other newspaper publishers.  

For example, Francis Wayland Ayer's renunciation of patent medicine business was an unusual and courageous act, but the writer found no comment, either pro or con, in the New York Times for that period. The press depended upon patent medicine advertising for operating capital, and the public seemed disinterested in disputing the exaggerated claims made by advertisers. In Bowles' words, "men love quackery, and after it they will go, while the more arrant the pretension, the better they like it..."  

Summary

With only minimal objections, patent medicine advertising continued to grow until approximately thirty years later. Around the turn of the century, publishers began to refuse this type of advertising because of the dangers inherent in self-medication, and they commissioned reporters to write exposes concerning the contents of popular drugs. As consumer advocates, "muckraking" reporters aroused the public to the point of demanding legislation to check the false claims being made for patent medicines. The Pure Food and Drug Act of 1906 helped to control the labeling of drugs and with the passage of the Federal Trade Commission Act of 1914, advertising indirectly came under federal regulation. While these Acts did not entirely eradicate the fraudulent practices associated with patent medicines, they did protect the consumer's health and safety to some extent.
Chapter 4

TURN OF THE CENTURY: THE ERA OF MUCKRAKING AND REFORMATION

By 1890 advertising volume in the United States had reached $360,000,000, increasing $160,000,000 in ten years, and it was destined to top the one billion mark in 1909, climbing to $1,300,000,000 in 1915. A transition occurred from the space-broker advertising agent of the 1860's to the advertising agency of the 1890's, which offered skill in the preparation of advertising. By 1895 some agencies had copy men and artists of their own, and art managers appeared around 1900.

Copy, illustration, and selection of media were the strong points of the service agency of the 1890's and early 1900's. Agencies helped to find customers for products already established as needed and created wide desire for articles not regarded as necessary until advertising pictured their desirability. Successful campaigns were launched for food, wearing apparel, drugs, toilet accessories, and luxury articles. As a result, in the early 1900's advertising was recognized by manufacturers as an essential part of business.

One of the chief factors in the growth of advertising during the latter part of the nineteenth century was the emergence of the magazines as an important advertising medium. Prior to this, the newspaper had been the primary medium, with most magazines, like Bonner's New York Ledger, carrying no advertising, or a few mild announcements such as advertising books published by the periodical's
Magazines offered an ideal medium for manufacturers of branded merchandise seeking to create national markets for their products. When the literary magazines recognized the business and circulation possibilities that advertising offered, they started to accept advertising, thereby becoming a motivating force in the growth of advertising in the United States. A case in point is Harper's New Monthly Magazine, founded in 1850 to present selections from other periodicals to American readers. The magazine, with a circulation of 50,000, was useful to the Harper family as a private preserve for advertising books they published, and other advertising was refused. This included an offer in the early 1870's of $18,000 a year to advertise the Howe Sewing Machine on the last page of the magazine. Harper's Magazine finally relented in 1882 and by 1890, this publication led all others in advertising volume.

The popularity of magazines as compared to newspapers is well illustrated in circulation figures between 1890 and 1905. Monthly periodicals (including general magazines, women's magazines, farm, business and technical publications) rose from 18,000,000 per issue to 64,000,000. During the same period the circulation of daily newspapers increased from 8,000,000 to 21,000,000. Newspapers and periodicals published weekly had a circulation per issue in 1905 of 36,000,000 compared with 28,000,000 in 1890. Monthly periodicals had an aggregate circulation per issue in 1905 greater than the per-issue circulation of daily and weekly newspapers combined.

By the turn of the century the position of literary magazines was threatened by magazines founded deliberately as business ventures. They were aimed not at the educated, but at the prospering middle
classes which were untouched by, and uninterested in the literary monthlies. The most important of these new magazines in their order of appearance were the Ladies' Home Journal, 1883; Cosmopolitan, 1886; Munsey's, 1889; and McClure's, 1893. These magazines were able to cut circulation rates due to the Postal Act of 1879, which granted favorable mailing privileges to magazines because of the educational nature of their contents. As a consequence, the higher-priced literary magazines soon lost their prosperity and influence.

Magazine advertising of the 1890's went far beyond the neighborly approach to a local audience which was used in newspapers for more than a century. The September, 1893 issue of the North American Review, founded in Boston in 1815, carried many national advertisements for medicine, furniture, food, clothing, schools and colleges, bicycles, lecturers, pianos, baby foods, soap, cement, and shirts. A painless and certain cure for hernia and rupture was offered by the Baltimore Hernia Institute, and Lithia Spring Water and Brigg's Respi- rator promised to bring health for almost any ailment. Dr. J. Stephens of Lebanon, Ohio, advertised that he could cure the morphine habit in ten to twenty days and "no pay till cured."

The January, 1896, issue of Munsey's contained a variety of advertisements, many illustrated with half-tone and line engravings. Cures for alcohol, opium, and tobacco-using were prominently displayed along with inventions such as magnetic foot batteries to reduce sluggish, thick blood to natural circulation, and the Eclipse Dynamo Outfit to cure invalids of numerous disorders.

The North American Review, Munsey's, and most magazines and newspapers were havens for patent medicine advertising during the
waning years of the nineteenth century. Only an occasional farm journal questioned this type of advertising. Popular Science Monthly was hostile to patent medicines, and the Ladies' Home Journal took a stern view of nostrums that were actually liquor in disguise. In many advertising agencies, patent medicine accounts made up three-quarters of the business.

To insure acceptance of his advertising, the patent remedy proprietor invented a "red clause" to insert in advertising contracts. "It is mutually agreed," the red type stated, "that this Contract is void, if any law is enacted by your State restricting or prohibiting the manufacture or sale of proprietary medicines." This clause could be pointed to from time to time when danger threatened from a legislative proposal. Consequently, magazine and newspaper readers of the 1890's saw hundreds of patent medicine advertisements and for the most part, their exaggerated claims were unchallenged until the turn of the century.

The Depression of 1893-7 and Its Far-Reaching Effects

During the 1890's an agrarian crisis developed as a result of land booms, droughts, and failure of farm prices to move upward. The crisis extended to Europe, and the international market was affected. From 1870 to 1900 more new farm land was taken up than in all previous American history. By the mid-eighties a feverish land boom developed, based on the high prices of farm produce. When artificial inflation set in, the farmer found that he could not reckon his prosperity by his farm production, but rather by the exchange value of his products as measured by the supplies and services they could buy. His
standard of living became dependent upon his commercial position which was related to the fluctuating climate of the world market.110

In a larger sense, the depression of 1893 to 1897 and its accompanying distress inspired a search for the causes of economic ills and ways to cure them. According to the interests and attitudes of geographical sections and economic groups, this pursuit in the United States was directed into issues of money, tariff, labor, taxation, and agrarian discontent. The whole system of American government was examined, and the depression spawned some critics who thought the crisis was indicative of moral decay, while others saw in it the hope of regeneration.111

**Politics and the Impetus for Social Reform**

The dissatisfaction of America's farmers found its most intense expression in the Populist Party which favored the free coinage of silver and supported Democrat William Jennings Bryan for President in 1896, opposing William McKinley. Historian Richard Hofstadter states that long before the agrarian crisis of the 1890's, many farmers and businessmen were discontented with the economic changes of the late nineteenth century. He observes that their trend of thought stemmed from the time of Andrew Jackson and crystalized after the Civil War in the Greenback, Granger, and anti-monopoly movements.112

The Progressive era takes its name from the Progressive Party formed by the Republican insurgents who unsuccessfully supported Theodore Roosevelt for a third term as President at the nominating convention in 1912. "Progressivism" as such, however, dates from the turn of the century when agrarian discontent was enlarged and
re-directed by middle-class people eager for social and economic reform. A breakdown in the relative homogeneity of the population had occurred beginning in about 1880. Prior to this, American democracy had been Yankee and Protestant in its basic notions. With the rise of industry came a massive forty-year migration of Europeans whose religions, traditions, and languages made assimilation difficult. Populism and later, Progressivism, represented a reaction to this immigrant stream as well as a protest to the passing world of individual enterprise represented by small or modest-sized business.\textsuperscript{113}

After the start of the twentieth century, business was characterized by industrial discipline which encouraged a bureaucratic outlook. The theme of the Progressive movement was to restore a type of economic individualism and political democracy believed to have existed earlier, but to have been destroyed by great corporations and corrupt politicians. A large part of society hoped to bring back a morality and purity that were thought to have been lost.\textsuperscript{114}

\textbf{Journalists as Champions of the Consumer}

At the dawn of the twentieth century, the mood of the country was ripe for reform. A few years later, crusading journalists, portraying themselves as objective observers of society, began to report conditions as they found them. Their articles were dramatic, revealing and often shocking. Increased circulation of print media made it possible for the reform journalist to communicate with a vast reading audience. Magazines which published articles of exposure had combined circulations of more than 3,000,000, crusading-type books sold as many as 100,000 copies, and the \textit{New York World} and the \textit{Kansas City
Star aided materially in the reforms campaign. Consequently, writers pricked America's conscience and attained a central position in the discussion of public affairs by their dramatic exposure of evils.

President Theodore Roosevelt, who succeeded President McKinley after his assassination in 1901, is credited with labeling these crusading journalists as "muckrakers," referring to the Man with the Muck-rake in Bunyan's Pilgrim's Progress. However, critic Robert Cantwell says that this is misleading. He credits a young journalist, Ellery Sedgwick, with first applying Bunyan's phrase to describe them.

Muckraking journalists wrote a behind-the-scenes history of their own times, tracing the relationship of the police, the underworld, and local political bosses, as well as the secret connections between the new corporations, the legislatures, and the courts. The Spanish-American War of 1898 had briefly stayed corporate consolidation, but post-war acceleration was so great that by 1904, 318 industrial trusts represented mergers of practically 5,300 plants and capitalization exceeding $7,000,000,000.

Few evils of American life escaped the penetrating eyes of the muckrakers, and it was only a short time before patent-medicine advertising came under their scrutiny. Nostrums were regarded as excellent journalistic subjects for two reasons: the harm many of them exerted upon a naive public and the fact that a number of drug manufacturers were considered "big business."

In 1892 the Ladies' Home Journal announced that it would refuse nostrum advertising, and several other periodicals, as well as a number of newspapers, soon followed suit. By 1902 a substantial list of
magazines and newspapers either barred all patent medicines or tried to sort the good from the bad. Some nostrums were harmless, but a national exposure of the health hazards contained in others was needed to awaken both the advertising media and the public.

Edward W. Bok, editor of the Ladies' Home Journal, arose to the occasion by printing, in 1904, chemical analyses of various widely advertised nostrums, showing that many contained alcohol and habit-forming drugs. Unsuspecting mothers found that they had been giving their teething babies morphine, one of the ingredients in a soothing syrup. Users of catarrh "cures" discovered they were taking cocaine, and one medicine had a forty percent alcoholic content.

The maker of a famous female compound, known to most people in America by name and picture and by advertising that in her laboratory she was more helpful to women than any physician, was revealed by the Ladies' Home Journal to have been dead for twenty-two years. Continuing its investigation with the aid of a Harvard-trained journalist and lawyer, Mark Sullivan, the magazine disclosed the existence of a testimonial bureau in Washington, D. C., which obtained a senator's endorsement of patent medicine for seventy-five dollars and a congressman's for forty dollars. With shock and dismay a million people who had written confidential letters to nostrum companies about their ailments learned that they were on "sucker lists" which were being sold to purchasers for five cents per name.

The muckraking effort aimed at patent medicines which was considered by critics to have the greatest effect on the public was the Samuel Hopkins Adams series that began in 1905 in Collier's magazine, then under the editorship of Norman Hapgood. Adams, a free-lance
journalist, conducted extensive investigations, utilizing his background as a crime reporter and as a writer of medical developments. He was assisted by agricultural chemists and editors of pharmaceutical journals. The result was a series entitled "The Great American Fraud," published between October 7, 1905, and February 17, 1906, with a second series extending from July 14, 1906, until September 22, 1906. In opening his series, Adams said:

Gullible America will spend this year some seventy-five million dollars in the purchase of patent medicines. In consideration of this sum it will swallow huge quantities of alcohol, an appalling amount of opiates and narcotics, a wide assortment of varied drugs ranging from powerful and dangerous heart depressants to insidious liver stimulants; and, far in excess of other ingredients, undiluted fraud. For fraud, exploited by the skilfullest of advertising bunco men, is the basis of the trade. In his series, Adams got down to actual cases. He rebuked Pond's Extract for "trading on the public alarm" by running an advertisement headed "Meningitis" while New York was suffering an epidemic. He examined fake antiseptics, like Radam's Microbe Killer, and attacked pain-killers overloaded with acetonilid such as Cuforhedake Brane-Fude. The institution of the "red clause" in placing advertising was exposed in the series, and Adams advocated enactment of a national law to curtail patent medicine abuses.

With Adams' sensational disclosures, a collaborative effort against nostrums ensued, fed, in part, by the Progressive climate of opinion. The American Medical Association purged its journal of questionable advertising, and other drug journals followed suit. State chemists pooled their knowledge of nostrum analyses and furnished specific information to lay reporters for muckraking articles. William Allen White, editor of the Emporia Gazette, pioneered, with other
papers following suit, in pointing out to readers the hazards of self-
dosage with patent medicines.  

Another danger to health, the meat-packing industry, was graph-
ically described by Upton Sinclair in his novel, *The Jungle*, published
in 1906. Although originally written by the Socialist Sinclair to
awaken sympathy for the plight of the workers in the Chicago slaughtering
industry, the book's great impact came from its sometimes nauseating
account of the conditions of slaughtering.  

The work of crusading journalists continued until 1912 when the
muckraking mood of the country tapered off and business pressures af-
fected popular publications. Historian Richard Hofstadter points out
that a large magazine, such as *McClure's*, was vulnerable as a business
organization. Advertisers did not hesitate to withdraw orders for
space when their own interests or related ones were touched upon, and
bankers held a tight rein on credit so that it was difficult to secure
even modest loans for a business of value and stability. While citing
these reasons for the decline of muckraking, Hofstadter comments that
the whole subject of its demise deserves a full-length study of its own.  

In evaluating the work of muckraking journalists, Hofstadter
believes that their main role was to provide searching criticisms.
"They were working at a time of widespread prosperity, and their chief
appeal was not to desperate social needs but to mass sentiments of re-
ponsibility, indignation, and guilt," he concludes.  

Commentator Walter Lippmann analyzes the muckraking period
thusly:
It has pointed to a revolution in business motives; it has hinted at the emerging power of labor and the consumer—we can take those suggestions, perhaps, and by analyzing them, and following them through, gather for ourselves some sense of what moves beneath the troubled surface of events.\textsuperscript{130}

\textbf{Reformation Within the Advertising Industry}

While the exposures of fraudulent patent medicine advertising were damaging both the advertiser's revenue and reputation, deceitful advertising in the financial field came to light. Newspaper advertising of wildcat stock schemes, proposals to develop non-existent lands, and get-rich-quick enterprises came under bitter attack in 1904, and some newspaper publishers were accused of knowingly accepting false advertising of this type.\textsuperscript{131}

Aroused by these attacks, leading newspapers took protective action, starting with the \textit{Scripps-McRae League of Newspapers} which appointed an advertising censor empowered to reject misleading copy and art. The newspaper group turned away approximately $500,000 by rejecting advertisements during the first year.\textsuperscript{132}

Many other large newspapers not only attacked quacks and frauds in editorial pages, but they began to censor their advertising pages. The \textit{New York Times}, which was accustomed to barring disreputable advertising, offered a reward of one hundred dollars for information leading to the conviction of persons using its advertising space to defraud.\textsuperscript{133} Among periodicals running exposes of financial frauds were the \textit{Financial World}, the \textit{Literary Digest}, and the \textit{Outlook}.\textsuperscript{134}

The incidence of fraudulent advertising was of grave concern to thoughtful advertising men. One of them, John Adams Thayer, advertising manager of the \textit{Delineator}, in 1903 addressed the Sphinx Club, a
group of New York advertising men, citing many instances of false advertising. His talk gave birth to a reform movement, with the Associated Advertising Clubs of America being formed in 1905 and later re-named the Advertising Federation of America. This organization adopted "Truth in Advertising" as a slogan and established vigilance committees in clubs represented. The Better Business Bureau originated from such a vigilance committee formed by advertising men in Cleveland in 1913.

After the Advertising Federation of America met in Boston in 1911, a model statute law penalizing false and misleading advertising was drawn up and published by Printers' Ink in November of that year. The statute declared that any person who placed before the public an advertisement "containing any assertion or statement of fact which is untrue, deceptive or misleading, shall be guilty of a misdemeanor."

At this time only New York and Massachusetts had laws forbidding fraudulent advertising, and the Advertising Federation and Printers' Ink worked for adoption of the model statute in other states. It first became law in Ohio, and shortly thereafter the statute was adopted in Minnesota and Pennsylvania.

Another landmark in the internal control of false advertising was reached in 1910 when the Curtis Publishing Company established "The Curtis Advertising Code," setting up rules and regulation regarding acceptance of advertising. The Code applied to the Ladies' Home Journal and The Saturday Evening Post, the latter being the nation's largest and most powerful weekly magazine and considered to be the prime advertising medium. In 1901 the Curtis Publishing Company had already inaugurated another important reform by issuing its first agency contract.
This was aimed at abolishing rate-cutting, commission kickbacks, and various other furtive devices employed in media placement of advertising. 142

Other publications followed the Curtis Publishing Company's lead, and in 1914 the Newspaper Division of the Associated Advertising Clubs of the World produced "Standards of Newspaper Practice." These declared that the duty of publishers was to protect the reader and the honest advertiser from deceptive or offensive advertising, to sell newspaper advertising on the basis of proved circulation, to maintain uniform advertising rates, and to accept no advertising which threatened public welfare. These standards were endorsed by leading newspapers across the country. 143 The New York Tribune actually guaranteed its readers against loss through patronage of Tribune advertisers, and barred one of the large New York department stores from advertising due to misrepresentation of merchandise. 144

Another move in the direction of greater honesty in the internal operation of advertising came with the 1914 establishment of the Audit Bureau of Circulations, which verified the circulation of print media. This eliminated mythical approximations, often weighted towards personal interests. 145

Assessing the attack on advertising and reform measures adopted by the industry during the muckraking years, advertising historian James Playsted Wood states:

... Yet advertising was chastened, disciplined, and emerged an improved and more dependable instrument through the reforms forced upon it, mostly by its own adherents and practitioners, in the first decade of the twentieth century. Whatever their motives, and they were not all dictated by understandable self-interest, the reform was necessary. It was
made necessary not only through obvious and flagrant abuses, but also by the dawning realization that advertising was a major force that could no longer be allowed to rage out of all control.\textsuperscript{146}

**Legislative Reforms**

During the opening years of the twentieth century, the public and private remarks of President Theodore Roosevelt concerning the importance of honesty in all relations helped to stimulate the mood of reformation which was popular in the country. After half a century of trying to adapt to the Barnum philosophy of fooling the public, consumers were ready for a change. Lawmakers sensed this and if some sellers were reluctant to change their methods, government would provide the means to control their actions.\textsuperscript{147}

Agitation for federal laws to prevent the adulteration and misbranding of food had been taking place since 1890 and became especially strong following exposures of so-called "embalmed beef" fed to soldiers during the Spanish-American War.\textsuperscript{148} Aroused public opinion was due, in a large part, to the work of Dr. Harvey Washington Wiley, who became chief chemist to the United States Department of Agriculture in 1883 and led a crusade, with evangelical fervor, for pure food and drugs.\textsuperscript{149}

When the first Congressional hearings were held in 1899 on a bill to control adulteration of food and deleterious drugs, Dr. Wiley was the first witness and became the chief draftsman of the bill presented in the Senate. When the bill failed to pass, he stumped up and down the country, speaking to individuals and organizations about the need for legislation. In 1903 he expressed himself on the nostrum issue by saying that the new law that soon would come should contain "stringent" controls over the patent medicines "especially."\textsuperscript{150}
Alarmed at the prospect of controls, the Proprietary Association held a special secret meeting in December, 1905, and called for an end to nostrums containing narcotics and remedies overloaded with alcohol. The Association also urged its committee on legislation to work for a moderate-type law.\footnote{151}

The move for reform, however, was growing stronger every day. The Pure Food Exhibit at the St. Louis, Missouri, Exhibition in 1904 had attracted wide attention.\footnote{152} By 1906 "The Great American Fraud" series by Samuel Hopkins Adams was in full swing, Upton Sinclair's novel, The Jungle, was being read throughout the country, and President Roosevelt spoke out in favor of a national food and drug law. Adding to the momentum, the American Medical Association and women's organizations pressed for a rigorous bill.\footnote{153}

In February, 1906, a Senate bill, delineating food and drug controls, was passed. A debate in the House of Representatives occurred in June, mainly on nostrum provisions since a separate meat inspection bill had already been introduced into Congress. When Congressional differences over drug control were dissolved, a Pure Food and Drug Act emerged, making shipments in interstate commerce of adulterated foods and drugs illegal and specifying the manner in which drugs should be labeled. The Act was signed by President Roosevelt on June 30, 1906.\footnote{154}

The new measure, popularly called "Dr. Wiley's Law," was hailed optimistically in a number of publications. The New York Times editorialized that "the purity and honesty of the food and medicines of the people are guaranteed," while the Journal of the American Medical Association hailed the new Act as being "far better in every respect"
than its most ardent supporters could have hoped.\textsuperscript{155}

The 1906 statute required that the labels which manufacturers put on their medicines must tell the truth concerning the presence and amount of certain dangerous drugs, such as opiates and alcohol, but other ingredients need not be named unless the proprietor chose to do so.\textsuperscript{156} Paraphrased, the Act meant, "Keep quiet on the label, or do not lie." It did not go as far in controlling truth-in-labeling as Dr. Wiley and other proponents of the measure had hoped originally, and unfortunately, it did not insure truth in advertising.\textsuperscript{157} Despite the legislative set-back, manufacturers of patent medicines continued to do a brisk business by stressing the values of self-medication. However, in 1911 the American Medical Association issued the first volume of its series entitled "Nostrums and Quackery," which furthered the knowledge of physicians and portions of the public with which they came in contact.\textsuperscript{158}

The advertising industry, for the most part, escaped government control in 1906, but eight years later it indirectly came under federal regulation through the Federal Trade Commission Act which was passed to prevent monopoly and restraint of trade by supplementing the Sherman Anti-Trust Act of 1890 and the Clayton Act of 1914.\textsuperscript{159} Section 5 of the FTC Act of 1914 declared "that unfair methods of competition in commerce are hereby declared unlawful."\textsuperscript{160} This Section became the basis for the general authority granted the Commission, composed of five persons appointed by the President and confirmed by the Senate. As originally conceived, the FTC had no special authority to protect the general consumer. However, the Wheeler-Lea Amendment of 1938
broadened the phrasing of Section 5 and added two other Sections which were to have a profound effect on the control of false advertising and on consumer protection. 161

Summary

In the years immediately preceding the turn of the century, fraudulent advertising of patent medicines had become a critical issue, and deceptions in many other forms of advertising were prevalent. The Populist movement provided the proper climate for change which led to the many economic and social reforms instituted during the Progressive era of the early 1900's. False advertising did not come under significant government control until the 1930's, but federal regulation began with the FTC Act in 1914.

Although champions of the consumer, muckraking journalists did not represent an organized group which had vowed to clean up advertising. Rather, they were hired by shrewd publishers of popular magazines and newspapers to write exposes of business practices and social conditions which would boost circulation through "shock" value.

Undoubtedly muckraking journalists took their jobs seriously and vigorously pursued their investigations. The results had a far-reaching effect on public opinion and in the advertising field, stimulated an internal movement to police the profession.

Reforms instituted by advertising agencies and the media showed clearly that the old doctrine of "caveat emptor" was changing. The consumer had become more knowledgeable, and skepticism had entered into his thinking. Moreover, the Progressive era had awakened businesses to the need for public confidence in their products in order
to sell them successfully. Also, the passage of the Pure Food and Drug Act of 1906 brought an awareness that the federal government could, and would if necessary, act to protect the consumer.
Chapter 5

THE GREAT DEPRESSION: THE ASSAULT ON ADVERTISING AND RISE OF THE CONSUMER MOVEMENT

Advertising surged forward during the 1920's, changing the thinking and habits of the American people and becoming an important part of the economy. In 1918 total advertising expenditures were $1,468,000,000, but ten years later they had reached $3,262,000,000.\textsuperscript{162} This was an increase of 122 percent as compared to a growth rate in advertising expenditures of only 65 percent from 1960 to 1970.\textsuperscript{163} Businessmen recognized the need for advertising to create mass desire for their products, and they appropriated large sums of money for nationwide campaigns. Some of these were laudable, such as Firestone's "Ship By Truck" campaign which was instrumental in the passage of a Federal Highway Act creating liaison between the federal government and the states to develop a coordinated highway system.\textsuperscript{164} Other promotions were less praiseworthy, such as those for cosmetics which promised love, prestige, and social success through the use of a soap or face cream.\textsuperscript{165}

Advertising agencies, where ideas were born that could catapult product sales into millions of dollars, became important and powerful. Newspapers and magazines had been successful advertising media for many years. In the 1920's magazines developed high-speed, four-color printing, and agencies used the process to dazzle the public with an array of new products. Promotions were ingenious, and some
violated the prevailing standards of good taste. Remedies were pro-
moted for pyorrhea, dandruff, body odor and intestinal toxicity.
"Halitosis" and "athlete's foot" were invented to sell mouthwash and
liniment. Testimonial advertising had a heyday as celebrities were
paid to endorse cigarettes, soap, cars, and a multitude of other prod-
ucts. This was the era of famous slogans such as Lucky Strike's
"Reach For a Lucky Instead of a Sweet," Woodbury's "The Skin You Love
to Touch," and Listerine's "Even Your Best Friend Won't Tell You." It
was also the era of picturing life as people wanted it to be. Adver-
tising reached not only for their cash, but for their future income.
Installment selling gained impetus through hard-hitting promotion of
automobiles, electric sewing machines and other home appliances. By
1927 it was estimated that consumers had actual possession and use of
more than $4,000,000,000 in unpaid merchandise.

Advertising experienced another sweep forward in the 1920's
due to a new medium of communication — radio. WEAF, opened by the
American Telephone and Telegraph Company in New York on July 25, 1922,
was the first station to accept advertising. It rented time at one
hundred dollars for ten minutes to business firms and organizations.
Radio quickly attracted two classes of advertisers: those with prod-
ucts of low price and frequent purchase, and those with large durable
goods such as cars who kept their products before the public by spon-
soring network programs. By 1930 more than half the homes in the
United States had radios, and advertisers spent $40,000,000 for broad-
cast time in a medium that was almost unknown ten years before.
With advertising intensified to an unprecedented degree, the year 1929 began with bright prospects for both business firms and their advertising agencies. Advertising expenditures were continuing to rise and did, in fact, reach $3,426,000,000 for the entire year. But on October 29, 1929, the stock market crashed. Panic gripped the country as banks closed, businesses failed, and industry faltered and ground almost to a halt. When unemployment, hardship and hunger became realities of life, buying power all but vanished. In a year's time advertising expenditures dropped almost a billion dollars, falling to $2,607,000,000 in 1930, dropping nearly another billion in 1932, and reaching their lowest point, $1,302,000,000 in 1933. It took seventeen years for advertising to regain its volume of 1929.171

Not only was advertising severely cut back after the stock market crash and the years of great depression that followed, but the industry was sharply attacked by newly formed consumer organizations, economists, and government officials. There were those that threatened to prune advertising away from the root "disease" of competitive enterprise, while others felt it should be rendered impotent through government control. Advertising men answered the attack by marshalling defenses and by policing their industry more diligently. The controversy over advertising practices eventually reached Congress, culminating in legislation enacted in 1938 to amend the FTC Act of 1914.

Economic Factors in the 1920's and 1930's

During the late 1920's, private capitalism flourished with wealth and industry showing almost steady increase. Technical marvels
were stepping up the production of industry and without any visible price inflation, the national income grew from year to year as a result of augmented production of physical goods. Business profits became larger, while those who shared in them through ownership of stocks and other securities received a steadily mounting stream of dividends and interest. Higher wages were paid on the average than the nation had ever known.

The mood of genuine economic democracy was well expressed by President Calvin Coolidge in his annual message to Congress on the state of the nation December 4, 1928, less than a year before the stock market crash. In part, President Coolidge said:

The requirements of existence have passed beyond the standard of necessity into the region of luxury. Enlarging production is consumed by an increasing demand at home and an expanding commerce abroad. The country can regard the present with satisfaction and anticipate the future with optimism.172

When the stock market crashed, its impact swept the country. The quoted value of all stocks listed on the New York Stock Exchange on September 1, 1929, was $89,668,276,854. By July 1, 1932, the quoted value of all stocks had fallen to $15,633,479,577. Stockholders had lost more than $74,000,000,000, or $617 for each person in America at that time.173 Those who had lost heavily could buy less in the retail markets and even those who had not been caught in the crash felt poorer because of the decline in values of their securities. Buying of furs, jewels and other luxuries that had been so prominent was drastically curtailed. Producers of automobiles and of other durable goods were reluctant to expand production. Regarding this period economist George Soule comments:
The panic on the exchange undoubtedly had more influence on business than those who tried to isolate it hoped that it would. Its psychological repercussions, both on consumers and on investors, were serious. No one can tell how great an effect the shock of this experience had in strengthening the reluctance of business to expand investment in subsequent years.174

During the depression of the 1930's, gross national product and income failed to regain the levels of the 1920's in current dollars and to exceed them in constant dollars.175 Even though personal income reached a peak in June, 1937, of $76,600,000,000, it was still approximately 12 percent less than the 1929 peak of $86,900,000,000. The gross national product in 1937 listed at $90,200,000,000, measured in current dollars, was 13 percent less than the 1929 figure of $103,800,000,000.176 Workers suffered losses in average weekly earnings in the 1930's which severely restricted their buying power. In January, 1935, average weekly earnings were only $21.47 compared with an average of $27.53 in 1927, $27.80 in 1928, and $28.55 in 1929. Hours reported worked declined by twelve hours from an average of 48.3 per week in 1929 to 36.3 in January, 1935. With hourly wages at $.594, weekly wages declined more than seven dollars per week during this same period because of the reduced number of hours worked.177

Widespread unemployment prevailed in the severest economic depression America had ever known. Historian John Sperling says:

Within a year after the stock market crash, 6,000,000 men were unemployed. By 1932, the worst of the depression years, Chicago alone had more than 650,000 jobless; New York City counted over a million. During the three years after the crash, an average of 100,000 workers were laid off from their jobs every week, and there were no new jobs to be found, . . . In the worst of the depression, fully a fourth of the
The belief in laissez-faire capitalism and a self-regulating economic system came to an end with the depression. In pre-depression days, businessmen had argued that the economy would always right itself if only government would let it alone. But as the economy sank lower and lower, a cry for government intervention reached President Franklin D. Roosevelt, who had taken office in 1933 following the Hoover administration. Congressmen also heard the cry. The result was the New Deal, a disjointed attempt to meet the crisis through legislative acts. Historian Arthur Schlesinger says that the New Deal involved the greatest peacetime centralization of federal authority yet known in the United States and that its "three R's" of relief, recovery, and reform were not always sharply separated in the measures undertaken. Reform measures, however, produced a lasting effect upon the U.S. economy. Stock market regulations made speculation on the scale of the big bull market impossible. Banking reforms made bank failures a national rarity. Legislation to provide such benefits as unemployment compensation, social security, and minimum wage laws built automatic stabilizers into the economy to temper the ups and downs of the business cycle. Along with other reforms came those to place advertising practices under closer supervision of the federal government.

Social Consequences of the Great Depression

During the "Roaring Twenties," Americans indulged in hedonism. Life was gay and automobiles, the stock market, jazz, raccoon coats
and "flapper" styles characterized the period. With full stomachs and many of the luxuries of life, most people expected the future to be even more promising. Overnight, the stock market crash and its aftermath entwined icy tentacles around U.S. society causing hysteria, suicides, unemployment and hunger. During the spring of 1930 breadlines began to appear in New York, Chicago, and other U.S. cities. In New York, the number of families on relief was 200 percent greater in March, 1930, than it had been in October, 1929.\(^1\) William Green, President of the American Federation of Labor, reported that in Detroit "the men are sitting in the parks all day long and all night long, hundreds and thousands of them, muttering to themselves, out of work, seeking work."\(^2\)

Many families, unable to find work, roamed from town to town and state to state, seeking employment that did not exist. Children dropped out of school and while parents starved themselves to see that their children were fed, often this did not prevent malnutrition and attendant maladies.

Gloom in urban areas was equalled in rural life as a pall settled over the nation's farmers. Farm prices fell 30 percent during the first two years of the depression, and some farmers found it cheaper to burn crops than to pay to have them hauled to market.\(^3\) Editor William Allen White wrote, "Every farmer, whether his farm is under mortgage or not, knows that with farm products priced as they are today, sooner or later he must go down."\(^4\)

The social consequences of the depression touched everyone. Misery was rife, and people questioned how a wealthy country could
suddenly become a land where survival was the foremost goal. Unemployed stockbrokers fought for the privilege of selling apples on street corners, while former bankers shined shoes for a nickel. Existence was perilous and if people were going to spend a dime, they wanted assurance that they were getting their money's worth.

Birth of the Consumer Movement

In describing the depression years, author John Steinbeck said:

The decay spread over the State, and the sweet smell is a great sorrow on the land . . . and in the eyes of the hungry there is a growing wrath. In the souls of the people the grapes of wrath are filling and growing heavy, growing heavy for the vintage.

Part of this wrath was directed at the advertising industry. If people were not already aware of deficiencies between the promises of advertising and the actual performances of products, they quickly were alerted by individuals and groups seeking to protect the customer. A consumer movement rapidly developed in the 1930's which had important effects on legislation and on the advertising industry as a whole.

In 1927 Stuart Chase and Frederick J. Schlink published their best-selling book, Your Money's Worth, an expose of marketing methods and advertising practices. The following year Schlink founded Consumers' Research, an independent testing agency and club which quickly drew a large national membership. Again in 1933 Schlink published a best-selling book with Arthur Kallet, secretary of Consumers' Research, entitled 100,000,000 Guinea Pigs. This work was an expose of food and drug advertising and stimulated books by other authors who castigated manufacturers and advertisers of food, cosmetics and products
The economic and social conditions of the depression nurtured the consumer movement, and a number of institutions began to support consumer education. The American Home Economics Association, with a membership of 14,000, lobbied for legislation to regulate advertising and sponsored comparative studies of commercial products. Together with the Stephens College Institute for Consumer Education, the Association urged the teaching of courses in home economics and recommended standards for such courses. By 1940 more than 250,000 students were enrolled in them, and they were encouraged to discount advertisements and to consume according to their rational appraisal of products.

Other influential groups also were concerned about the consumer. The American Association of University Women and the National League of Women Voters, with a combined membership of more than 100,000, sponsored exhibits and conferences to inform the purchaser. Both groups advocated federal grading of canned goods and a stricter Food and Drug law. Appearing at the same time were "consumer" clubs associated with labor unions, farm organizations, and churches. Even public agencies such as land-grant college extension services, the Bureau of Home Economics in the United States Department of Agriculture, and the federal Bureau of Standards became increasingly involved in consumer protection.

Although the various groups lacked overall cohesiveness, each was concerned with high prices and the low purchasing power of the buyer. As the country began to rally somewhat from the depression during the late 1930's, this concern lessened and attention was
focused on seeing that advertisements contained reliable information about the quality and price of products.

During the 1930's, private testing agencies worked to provide information, independent of advertising, upon which consumers could assess products. Consumers' Research, controlled by Schlink, was the only agency until 1936. At that time Arthur Kallet, an associate of Schlink's, disagreed over the agency's labor policies and founded Consumers Union. Operating on meager budgets, each agency had a staff of engineers and technicians who tested and reported on about 2,000 products a year to a readership estimated at two or three million. Bulletins and other periodicals, as well as syndicated newspaper columns, were the methods used to reach the public. Commenting on the testing agencies, historian Otis Pease says:

There is no doubt that their opinions of products were often dogmatic and sometimes in serious error; but they reported facts which few consumers could have established for themselves and which had been made public nowhere else. They consequently furnished the consumer movement with a unique foundation of empirical knowledge, an effective counterweight to the prevailing power of advertising judgment.

As the consumer movement grew, it received solid support from two periodicals, the Nation and the New Republic. Maintained independently of advertising, these magazines were in a unique position to expose specific untruths in large national advertising. They supported the consumer testing agencies, published columns to guide buyers, and urged greater government control over advertising practices.

From small beginnings the consumer movement rapidly gained momentum during the 1930's. An aroused public seemed capable of
threatening sanctions against advertisers deemed to be negligent and of pressuring government for stricter legislation.

**Internal Regulation of Advertising**

At first, advertising men paid little attention to the consumer movement. After repeated attacks, they decided it could not be ignored. The internal regulation of advertising had become a complex operation. Better Business Bureaus, trade associations, and publishers struggled in various ways to establish standards of behavior and fair methods of competition.

Few prosecutions were made under the model statute law penalizing false and misleading advertising which was drawn up by the industry in 1911 at the urging of *Printers' Ink*. However, Better Business Bureaus and other voluntary agencies used the statute effectively to persuade offenders to reform. By 1940 twenty-six states had adopted it.

Because of the need to police national advertisers, the National Better Business Bureau was formed in 1925, and it sponsored "fair trade practice" conferences for businessmen to establish rules of advertising behavior.

In 1931 *Printers' Ink* proposed, in conjunction with the National Better Business Bureau, that a Review Committee be formed composed of an equal number of representatives from the Association of National Advertisers, the American Association of Advertising Agencies, a group of publishers, and the public. The Committee would be empowered to review any case of advertising deemed "unfair" or "detrimental to the public interest" which the Bureau submitted to it.
By February, 1933, the Review Committee began to work, armed with an elaborate Copy Code enumerating seven "practices that are unfair to the public and tend to discredit advertising."200 The Code was approved by the major associations in the national advertising industry, but the Committee's services were only requested twice in one year and in neither case was a decision rendered. Consequently, the Review Committee soon stalled and went out of existence.201

By the 1930's significant internal regulation of advertising had been achieved by prominent publishers. Approximately ten years earlier the New York Times began insisting that its advertisements conform to the standard of accuracy and taste found in the Times' news columns.202 Other publishers soon followed the Times' example, and by 1930 every important periodical had established principles by which advertisements were accepted or rejected.203 By the advent of the New Deal, most publishers could spot and eliminate advertising of a fraudulent nature, and in this respect they performed a valuable service for the consumer.

Through various means the national advertising industry attempted to erect for itself effective and responsible standards of behavior. However, as historian Otis Pease comments, "It was exceedingly doubtful whether volunteer internal regulation could ever have offered the public the added protection it sought; yet, on the undesirability of external regulation of any kind, advertising men were in firm agreement."204

**Government Control Over Advertising**

Throughout the 1920's the attention of the Federal Trade
Commission, created in 1914, was confined largely to violations of fair trade practices. Yet the FTC was expanding its concern beyond the protection of the "injured competitor" to embrace the "injured consumer." In its first twenty years of activity, two-thirds of the 3,000 "cease and desist" orders which it issued were attempts to prohibit false or misleading advertising.

Early judicial decisions cast doubt on the Commission's power over advertising; but in 1922 the U.S. Supreme Court supported the FTC's power to control false labeling and advertising as unfair methods of competition in a case involving the labeling of underwear as wool. In the Winsted Hosiery Co. case, Justice Louis Brandeis, speaking for the Court, said that the Commission was justified in its conclusions that the company's practices were unfair methods of competition, and the Court authorized the FTC to halt such practices. The Justice declared, "When misbranded goods attract customers by means of the fraud which they perpetrate, trade is diverted from the producer of truthfully marked goods." This "landmark" case established the FTC's authority to control false advertising.

Consumer interests actually received little protection from the Courts during the following decade and in 1931, they suffered a marked setback with the Raladam case. The FTC complaint focused on the likelihood of actual physical harm to consumers from an "obesity cure" product advertised as containing "dessicated thyroid" and manufactured by the Raladam Company. The Supreme Court, however, disallowed the Commission's order that the company cease such advertising. The Court ruled that to come under the purview of the Commission, a
practice had to be proven substantially injurious to a competitor as well as to the public.

Those in consumer movements were greatly concerned over the Raladam decision, and it seems likely that the courts were aware of this and of the increasing pressure for stricter marketing controls. In three succeeding cases, the Supreme Court appeared to be changing its attitude toward federal regulation of advertising by ruling in favor of the FTC. Justice Hugo Black stated in the FTC v. Standard Education Society,

Laws are made to protect the trusting as well as the suspicious. The best element of business has long decided that honesty should govern competitive enterprise and the rule of "caveat emptor" should not be relied upon to reward fraud and deception.208

From its inception in 1914 until 1933, the FTC successfully sustained only sixty-nine decisions in the courts, losing sixty-three. Evidence of changing judicial attitudes is reflected in the period 1933 to 1940 when the courts upheld the Commission in 100 of 111 appeal cases.209

Legislative Reforms

In 1933, and for a number of years following, the Food and Drug Administration of the U.S. Department of Agriculture sought from Congress legislation to control more effectively the sale of harmful and adulterated drugs and food. During the same time the FTC sought legislation to extend its authority to include the prohibition of trade practices deceptive or misleading to the public—as well as those detrimental to the interests of a competitor. These efforts were received with hostile reaction by the advertising industry, and
a bitter controversy ensued. Involved at one time or another during
the period 1933 to 1938 were advertising agencies, publishers, manu-
facturers, consumers' organizations, and the New Deal Administration.

Most of the controversy centered around Senate Bill 1944, in-
troduced by Senator Royal S. Copeland of New York on June 12, 1933,
and named the "Tugwell Bill" because it was largely written by Rexford
Guy Tugwell, a Columbia University economist who had been appointed
an Assistant Secretary of Agriculture. Among the provisions of the
Tugwell Bill were compulsory grade labeling and permit control of all
canning plants. Section 9a of the bill defined false advertising:

An advertisement of a food, drug or cosmetic shall be
deemed to be false if in any particular it is untrue, or
by ambiguity or inference creates a misleading impression
regarding such food, drug, or cosmetic.210

The bill proposed to substitute government grade labeling, at
the expense of the packer, for advertised brands. This was to be ap-
plied to foods, then to drugs and cosmetics. All authority for en-
fforcement of the provisions of the bill was to be vested in the Secre-
tary of Agriculture and severe penalties were provided for viola-
tions.

The advertising industry was alarmed at the extent of govern-
ment control outlined in the Tugwell Bill and threw all of its resources
into a massive effort against it. On the other end of the spectrum
were spokesmen and lobbyists for consumers' organizations, particularly
women's clubs, who enthusiastically endorsed the Bill, as did the
American Medical Association, the Nation, the New Republic, and Good
Housekeeping magazine.

Consumer interest had received the recognition of the New Deal
and at the request of President Franklin Roosevelt, a Consumers' Advisory Board (CAB) had been established within the National Recovery Administration. Its purpose was to bring to the formulation of industrial codes a "public" viewpoint, distinct from that of business and labor. Recommendations of the CAB pertaining to provisions of the Tugwell Bill seemed destined for success; but opposition crystallized and in the ensuing five years every "consumer-minded" bill was subjected to a tortuous course of revision and compromise. Similar bills—milder in content—were proposed in 1935 and 1937, but they failed to pass.

Further postponement of legislation was becoming more difficult, particularly with organized consumer pressure on Congress. In the fall of 1937 the nation was shocked when seventy-three persons died as a result of using a patent medicine called "Elixir Sulfanilamide" and yet, under existing law, the manufacturer could not be held responsible. The tragedy seemed to speak for itself and in June, 1938, a new federal Food, Drug, and Cosmetic Act supplanted the earlier Act of 1906 and provided the Food and Drug Administration with a major part of the new power it sought, except for regulation of advertising.

The Wheeler-Lea Amendment to the FTC Act of 1914 also was passed, granting to the FTC substantially all of the extension of power which it had requested, particularly over the advertising of food, drugs, and cosmetics. The Amendment changed Section 5 of the Act to read: "Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce are hereby declared unlawful." The italicized words removed the limits on FTC authority as
defined in the Raladam decision, No longer was the emphasis on harm to a competing business. If an advertisement deceived consumers, the FTC could act to protect them.

Summary

Passage of a federal law to regulate advertising climaxed a lengthy struggle between the advertising industry and consumer organizations, as well as other interested groups. At first it appeared that the consumer had won a resounding victory by obtaining a new standard for responsible behavior in advertising. In practice, however, the Wheeler-Lea Amendment could control only a small portion of the nation's advertising and was dependent upon Court interpretation in many instances. There seemed to be little political sentiment for more comprehensive action, and the major goals of the consumer movement remained unattained. Thirty years would pass before the movement made another try in the 1960's.

In retrospect, consumerism gained a strength during the 1930's that was unparalleled in American history. Consumer organizations learned how to exert pressures on manufacturers and how to lobby for corrective legislation. Their influence even reached the White House, and a special advisory board was created for them in the government. Marketing education conducted by testing agencies and other groups was equipping growing numbers of consumers to judge products independently of advertising appeals. These advances, all of which had taken place in a span of ten years, substantially affected the consumer movement in the 1960's and early '70's.
Chapter 6

THE 1960'S: A SHIFT FROM CAVEAT EMPTOR TO CAVEAT VENDITOR

Attuned to the public's affluence and increasing leisure time in the early 1960's, advertising dazzled, entertained, and persuaded buyers to try new products and to rediscover the merits of established ones. The introduction of television in the 1950's brought with it a mass medium which had the great advantage of simultaneous stimulation of eye and ear. In 1950 there were only 5,000,000 homes in the U. S. equipped with television sets, but by 1963, this number had multiplied ten times, and there was rapid increase in two-set and three-set families.215

As to the pervasiveness of advertising, the editors of Time magazine commented in 1967:

... today, Americans talk about advertising more than ever because it has woven itself inextricably into the texture of their everyday lives. The first songs sung by today's toddler are less apt to be nursery rhymes than mesmeric radio and TV jingles. Millions of Americans might have trouble identifying Ernest Hemingway, but it would be hard to find one who does not know what to order for The Pause that Refreshes...216

Ernest Van Den Haag of New York University, in 1962, estimated that a man and his wife engaged in an average number of normal activities such as viewing TV, reading a newspaper and magazine, traveling to the office and back, and listening to the radio, on one weekday were exposed to between 1,500 and 2,000 general advertisements, not counting those in business and professional magazines or direct mail.217
By 1962 advertising expenditures had reached $12,381,000,000 and would increase to almost $20,000,000,000 by 1970. The 1962 sum exceeded the gross national products of Austria and Norway combined, and the average U. S. business spent one dollar on advertising for every seventy dollars in sales.

One of the reasons that advertising became so valuable in marketing was that it served as an indispensable substitute for the personal salesmanship of a bygone era. When the high cost of labor resulted in the opening of self-service supermarkets and drug stores, the consumer frequently relied upon what he had read or heard about various products as he filled his shopping cart. This was particularly important in cases where competing products were very similar, and purchase might hinge upon the remembrance of a phrase or a jingle.

In the early 1960's, advertising men were concerned over the attacks by Vance Packard and others that the hidden urges and frustrations of the American people were being used to sell everything from gasoline to politicians. Some critics felt that advertising men did not answer this charge very successfully because they exaggerated the powers of their craft, claiming they could sell not only soap but democracy and the American way of life.

Starting with the 1960's, virtually all major agencies backed up their copywriters and artists with sociologists, economists, statisticians, and a psychologist. The goal was to find a way to create advertising that would sell products without fail. Costs of advertising had skyrocketed with the advent of special entertainment programs called "television spectacles," and whereas an annual advertising budget of $1,000,000 was considered respectable for many businesses in
There was no doubt that advertising had become a controversial subject in the 1960's. Robert W. Spike, a prominent churchman, gave this objection to advertising:

The worst influence of the advertising industry as a whole is the building of a superficial image of the good life. Four-color, smiling America, which is infinitely content because it has all the latest appliances and takes the right patent medicines, is an unreal America. Advertising is the creator of a phony world in which there is no war or tragedy or suffering. (Problems) can all be washed away in a flood of detergent.

Defenders of advertising, however, pointed to the ways in which the public was served with announcements of new products and bargain prices. They claimed that the toothbrushing habit was promoted by advertisers as well as the nutritious custom of having orange juice with breakfast. Moreover, the Advertising Council of America spent large sums annually to educate people to the need for improving their government, communities, schools, and health.

A Limit to Prosperity

In 1960 there was full employment, the country had become a major importer of industrial and consumer goods, and the level of consumption was the highest in the world.

With the election of John F. Kennedy as President in 1960, the country's abundance continued. Historian Theodore H. White says that this, coupled with peace, were the primordial legacies which Kennedy delivered to Americans and to Lyndon B. Johnson who succeeded him in 1963. He points to the fact that abundance is the first of the underlying assumptions of the Great Society, a far-reaching program of the Johnson Administration. Moreover, the unbroken period of American
prosperity, stretching from 1961 to 1967, constituted the longest period of uninterrupted prosperity in the history of the nation. One of the underlying causes of prosperity was the growth of population, providing new consumers for a highly productive economy. In addition, families had more money to spend. The median income of American families usually considered in the middle income bracket rose from about $4,200 in 1950 to $5,800 in 1960, reaching $6,200 in 1964. Significantly, there was an increase in the proportion of families with professional class incomes exceeding $10,000. This category represented 15 percent of the population in 1960 and 20 percent in 1964, leading historian Gerald Priestland to comment that "America is becoming less and less of a working man's country."

More than 60 percent of the population owned their own homes in 1960, nine families out of ten had television sets, and eight out of ten had a car, often with the help of consumer credit. More people were becoming educated, only a small percentage of the population was self employed, and less than 8 percent lived on farms.

Large corporations, capable of financing research facilities to develop new products and techniques, became an important source of the nation's economic growth. Many of them benefited from government military contracts which reached $50,000,000,000 annually by the early 1960's and were incentives to corporate activities and profit accumulation.

One of the most powerful forces affecting the U.S. economy was government, which had become not only a regulator of business, but an active participant in it. In commenting on the role of government in the economy, historian Carl N. Degler says:
Indeed, the expenditures of the local, state, and federal governments after 1955 were so large that they dwarfed those of any other "industry," constituting about one fifth of all purchases made in the private sector. In fact, the federal government's role as purchaser, aside from any of its other economic roles, was so great that in 1965 and in 1966 the Johnson administration was able to prevent price increases in aluminum and then in copper simply by releasing large quantities of these strategic metals from its stockpiles.235

Government's role as an employer enlarged significantly, with the staff of the federal government increasing by 22 percent during the 1950's, and staffs of state, county, and city government growing by 35 percent.236 The federal government also was one of the principal forces in the construction and consumer purchase of homes following World War II by financing mortgages.237

In addition to population growth, corporate expansion, heavy government expenditures, release of consumer savings, and the housing boom, there was a large increase in productivity which was reflected in economic growth. In the years from World War II to 1959, the output per man-hour almost doubled the rate between 1890 and 1914.238 This was due to expanded use of machines and power and the combining of a sequence of operations into a single one. For example, in the automobile industry, in 1960 one machine drilled holes in automobile crankshafts which formerly had required twenty-nine different machines.239

The introduction of automation made machines self-regulating through the use of electronic devices, resulting in a reduction of man-hours of labor needed to turn out goods. Meanwhile, weekly wages of workers in manufacturing increased 16 percent between 1947 and 1957, and a higher standard of living was possible for the working man through the growing productivity of the economy.240
Besides the disappearance of the individual farmer and businessman, changes in the labor force in the 1960's included an upsurge in the number of white-collar workers and employed women. By 1962, white-collar workers outnumbered blue-collar workers by 8 percent, and one in every three persons employed was a woman. 241

Historian Degler points to the dominance of the white-collar class as testifying to the high level of productivity in an economy that could dispense with its labor in fields and factories. He believes that this dominance also emphasized the consumer nature of the American economy in the 1960's since the white-collar class either distributed food and goods produced by blue-collar workers or provided personal consumer services. 242 Degler makes a comment that is significant in this study when he says:

\[\ldots\] in a society of consumers and service workers the emphasis is on personal relations, for instead of things being the object of work, people are. Sometimes this emphasis results in the outright manipulation of people, as in certain types of selling and advertising. 243

With the potential of still greater productivity and prosperity in the economy, by the late 1960's there were ominous signs that a recession was on the way. 244

Outlays for the continuing war in Vietnam, begun in 1964, and other national defense programs reached an estimated 45 percent of the total federal budget for the financial year ending July 1, 1968. 245 By the end of 1969, there was a curtailment in the output of defense equipment in line with President Richard M. Nixon's attempt to de-escalate the Vietnam war, an endeavor he pursued after his election in November, 1968. 246
Economists were talking about a "wage-price spiral" in 1969, resulting from rapid increases in costs and prices caused by the following: government defense spending in the billions of dollars without an increase in taxes or restriction of non-defense spending; large increases sought by workers to compensate for the higher cost of living; deficit spending by the government and creation of credit at an abnormally rapid rate by the Federal Reserve Board. Economists predicted that with the slowing of defense spending, demand for workers would be less intense and consumer spending would be curtailed.

By December of 1970, 6.2 percent of the labor force was unemployed, as compared with 3.5 percent at the close of 1969. Much of the unemployment occurred among adult men, reflecting layoffs in manufacturing and in the aerospace industries where government contracts had been cut back due to reductions in the space program. U.S. production slowed down markedly during 1970, especially in the automobile industry due to a debilitating strike at General Motors Corp., but price inflation continued with the annual rate computed at 6 percent. The stock market was unstable, and at the end of 1970, the national budget was out of balance and a deficit of about $11,000,000,000 was forecast. Indications were strong that some sort of controls over rising prices would have to be introduced to stabilize the economy.

In August, 1971, President Nixon, with Congressional approval given in the passage of an Economic Stabilization Act, instituted wage and price controls administered by a Pay Board, Price Commission, and Cost of Living Council. The President signed an extension of the
Act in December, 1971, authorizing the current Phase II, and there are signs that the economy is recovering in 1972, Business Week commented on May 27, 1972, that "the economic news keeps getting better and better. Not only do the business statistics reflect an accelerating recovery, but there is a satisfying deceleration in the rate of price increase." However, on July 15, 1972, the same magazine maintained that "inflation stubbornly persists" and "a number of factors are tending to hold the jobless rate up, even though the rise in business activity is unusually rapid."

Even with dark areas remaining in the U.S. economic outlook, the U.S. Bureau of Census reported on July 17, 1972, that family incomes had reached a new high, with more than half of the families in the country having incomes above $10,000 in 1971. The Bureau noted that due to price increases, 1971 income was about the same as 1970 in purchasing power.

The Social Revolution

In 1960 the gross national product of the U.S. was more than $500,000,000,000, representing an increase of almost $200,000,000,000 in the short span of ten years. Workers as well as employers shared in the wealth, but despite an improved standard of living, a feeling of anxiousness prevailed. Senator Hubert H. Humphrey described it as follows:

There is abroad in the land today a widespread unease; for while we may be proud of our progress, and while we are the wealthiest country in the world, there is still a pervasive feeling that something has been lost. Something has gone wrong, . . , the fact remains that our vision of the past is a set of values which, in large part, is lacking from contemporary life, . . .
The old American virtues of hard work, individual initiative, and thrift seemed to be vanishing in the 1960's. This was an age of large corporations and conglomerates and increasing power of the federal government as an employer and funder of large contracts heavily geared to the aerospace industry. With the passage of major legislation in the Kennedy and Johnson Administrations to aid the disadvantaged, the government also became the bill-payer for many of the country's impoverished citizens. For example, in 1964, the government's direct expenditures in relief payments and unemployment compensation were over $6,000,000,000 a year for food, clothing and shelter.261

Anti-poverty legislation was stimulated by two influential books, John Kenneth Galbraith's The Affluent Society, published in 1958, followed by Michael Harrington's The Other America in 1962.262 Galbraith called attention to the poverty in the U.S, in the midst of acknowledged prosperity and stated that it was up to the government to increase taxes and improve the public sector of society.

Like Galbraith, Harrington recognized that a generally advancing economy would not improve the plight of the poor, and they could be helped only by specific programs for the disadvantaged in areas of education, health, old age, and racial discrimination.263 President Johnson's concept of the Great Society and his legislative program, two-thirds of which was passed by the eighty-ninth Congress, subsequently eased the plight of the poor and of minorities in many areas which Harrington had named.264

Although some of the poor lived on impoverished farms or in migratory labor camps, a great deal of the poverty in the United States
was concentrated in the cities. By 1965, almost 70 percent of the population lived in cities, and the urban culture was stratified into two classes: inner-city poor and suburban better-off, represented by the colors of black and white, respectively. 265

As the drive for black equality gained momentum, it ignited the Negro ghettos of the great cities, causing massive outbursts of bloodletting, burning, and looting. Large scale riots erupted in more than a dozen principal cities in the summers from 1964 through 1967. 266

The riots were part of the violence which seemed to spread through the country after the assassination of President Kennedy in 1963. Disrespect for law and order, bombings of federal buildings, banks, and other institutions continued through the decade into the seventies. Counted in the tragic toll were the murders of the Reverend Martin Luther King, Jr., and Senator Robert Kennedy in 1968 and the attempt on the life of Alabama Governor George Wallace in 1972.

Crime, which had always been higher in the city than in the country, shot upward, with violence against persons, burglary, and grand larceny becoming so common that citizens stopped using public parks and were afraid to walk outdoors at night. 267

Other types of problems also plagued the cities. Heavy traffic and crowded living conditions, coupled with the vast quantities of people to govern, food to distribute, wastes to remove, water to supply, fires to fight, and air to clean from noxious exhausts and other impurities posed almost insurmountable deterrents to purposeful, healthy living. 268

The plight of the city and the state of American society and culture is characterized by economist and social historian Galbraith as follows:
The family which takes its mauve and cerise, air-conditioned, power-steered and power-braked automobile out for a tour passes through cities that are badly paved, made hideous by litter, blighted buildings, billboards and posts for wires that should long since have been put underground. They pass on into a countryside that has been rendered largely invisible by commercial art. (The goods which the latter advertise have an absolute priority in our value system. Such aesthetic considerations as a view of the countryside accordingly come second. On such matters, we are consistent.) They picnic on exquisitely packaged food from a portable icebox by a polluted stream and go on to spend the night at a park which is a menace to public health and morals. Just before dozing off on an air mattress, beneath a nylon tent, amid the stench of decaying refuse, they may reflect vaguely on the curious unevenness of their blessings. Is this, indeed, the American genius?269

In the 1960's, a new permissiveness changed many of the social customs which had existed since the United States began. This was based on the assumption of the individual's right to his own "life style," although this might mean ignoring wedding vows and bearing children out of wedlock. Literature and the theatre arts took sexual encounters and violence to extremes that previously had been shunned by society.270 Ruthless candor, shocking to some and appealing to others, seemed to characterize the social upheaval in progress.

Among those who favored the assertion of individuality were many young people of college age. Their dissatisfaction with a society of plenty and gigantic institutions was dramatically expressed in sit-ins and rioting at universities and colleges across the country. Although student dissatisfaction started with protests against the impersonality of educational institutions, during 1964 and 1965 it grew into large-scale opposition to the United States involvement in the war in Vietnam.271 The immorality of the administration's position was the primary issue, with students stressing the need in international
affairs for a morality by government which was similar to the morality that was expected in an individual. The large number of college students actively opposing the war was without equal in the history of American youth. 272

At the beginning of the 1960's, a "youth culture" became prominent and served to identify the young as a distinct force in society with unique values and aspirations, often creating a "generation gap" with their elders. 273 The attack on accepted views and styles broadened to such an extent, embracing many beyond adolescence, that "youth culture" was replaced by the term, "counter culture," which meant everything new from clothing to politics. 274 Rock music festivals, the "twist" dance with its emphasis on individuality, unorthodox newspapers, drugs, and communal living were part of the counter-culture. Aimless, generally peace-loving young people called "hippies" were the most publicized of the cultural rebels, and they became the subjects of a great deal of moralizing during the height of their movement from 1965 to 1969. 275

Historian William L. O'Neill comments on the counter-culture as follows:

The rise of hedonism and the decline of work were obviously functions of increased prosperity, and also of effective merchandising. The consumer economy depended on advertising, which in turn leaned heavily on the pleasure principle. This had been true for fifty years at least, but not until television did it really work well. The generation that made the counter-culture was the first to be propagandized from infancy on behalf of the pleasure principle. 276

In contrast to the hedonistic counter-culture, a social force of the late 1960's that was disciplined, angry, and work-oriented was the women's liberation movement. Despite Title VII of the Civil
Rights Act of 1964, which prohibited certain discriminatory practices, women continued to earn less than men with the same training and experience. In addition to employment, feminists were concerned about abortion laws and finding fulfillment beyond the traditional roles of wife and mother. By the end of the decade there were several prominent feminist groups and in March, 1972, an Equal Rights Amendment to the Constitution was passed by Congress and came before State legislatures for ratification.

Another cause of the 1960's which showed the effort to correct long-standing inequities of working conditions and pay was the grape-pickers' strike led by Cesar Chavez in Delano, California, in September, 1965. After four years of disputes and the organization of a national boycott against grapes, growers capitulated and negotiated with Chavez' group.

The assertion of individuality against bigness received support from still another quarter, the Supreme Court of the United States, during the 1950's and 1960's. Prior to this time, the Court was regarded as the guardian of the established order. In a number of notable decisions, it defended individual rights, even when the accused were Communists or were known criminals pursued by the police.

At the end of the decade, public attention had turned away from the receding war in Vietnam and problems of social unrest and was focusing on damage to the environment and the consumer's right to be informed. Man had reached the moon during the 1960's, but as historian Degler asks, "Could he survive at all when his scientific achievements so easily outran his social wisdom?"
Consumerism Comes of Age

The economic and social changes of the 1960's provided a springboard for a consumer movement of such force and depth that it represented a full-scale rejection of the doctrine of *caveat emptor*.283

Inflation and rising prices during the sixties led consumers to higher quality expectations which, in many cases, were not achieved. Demands for product improvement led to increased product complexity, stimulated by the emergence of new technology. Service difficulties, and performance and reliability problems, arose, and yet society had been conditioned to expect perfection from its technology. Moon landings, miracle drugs, organ transplants, and jet transportation made the housewife wonder why a zipper failed to work. With increased leisure time, generally greater affluence, and a higher educational level, the consumer looked for products that would express his individuality. He found that the market provided mass-consumption products which did not satisfy him completely.284

The agent for expressing the frustrations and discontent of consumers and for bringing about change was attorney Ralph Nader. His book, *Unsafe At Any Speed*, published in 1963, charged large corporations with producing automobiles which were hazardous to driver safety.285 Nader declared:

> It is a lag of almost paralytic proportions that ... values of safety concerning consumers and economic enterprises, reiterated many times by the judicial branch of government, have not found their way into legislative policy-making for safer automobiles.286

An auto-safety enthusiast while at Princeton University and Harvard Law School, Nader went to Washington, D.C. after his graduation...
as an aide to Daniel Patrick Moynihan, Assistant Secretary of Labor. General Motors Corp. put private detectives on Nader's trail just before his book was published, and he later instigated a lawsuit against the corporation which was settled with a net amount to Nader of $270,000. The Public Interest Research Group, Nader's non-profit law firm, is financed from proceeds of the settlement.  

During Senate hearings on auto safety which followed publication of Unsafe At Any Speed, Nader came out a clear winner in a much-publicized confrontation with James Roche, then President of General Motors. The imagination of the American people was captured by the spectacle of a great corporate Goliath being toppled by a solitary David, and the publicity assured passage of the Motor Vehicle Safety Act which established a government agency to set mandatory vehicle-safety standards.

Nader's fame quickly spread, and he became a hero to many people, especially of young age. Students in law, medicine, engineering, and other fields identified with Nader's efforts to unmask the fraud in big business and government institutions, and they became known as "Nader's Raiders" for their investigative work. In seven years, without funds and with a narrow base of expert knowledge in a single subject, automobile safety, Nader created a flourishing nationwide consumer movement. In addition to the Motor Vehicle Safety Act, he has been chiefly responsible for the passage of laws imposing new federal safety standards on meat and poultry products, gas pipelines, coal mining, and radiation emissions from electronic devices. His investigations have led to a strenuous renovation at both the FTC and the Food and Drug Administration.
Nader operates from a modern suite of offices in Washington, D.C., housing the Center for the Study of Responsive Law, which is home base for the seven most senior of "Nader's Raiders." The Center is tax-exempt and is supported by well-known foundations. A few blocks away are the Auto Safety Center, to which Consumers Union is the biggest single donor, and Nader's non-profit law firm.292

In describing the advertising profession, Nader says that "Madison Avenue is engaged in an epidemic campaign of marketing fraud. It has done more to subvert and destroy the market system in this country than ten Kremlins ever dreamed of."293 According to Fortune magazine, Nader would like to replace the present market system with devices of his own, such as a government rating system for every consumer product.294

The consumer advocate of the 1960's calls his own organization "a big joke really, a drop in the bucket compared to the size of the problem."295 To support all of his investigative activities and to expand them, Nader has set up a non-profit corporation, Public Citizen, Inc., to raise funds in direct appeals to the public. He says he no longer is relying heavily on foundation support because small contributions from a small number of people are "more stable, more permanent, and more consistent with our purpose." He sees the added advantage of more people "writing in, wanting to help, supplying information."296 In a Louis Harris poll conducted in March, 1971, Ralph Nader drew the endorsement of 53 percent of Americans for doing "more good than harm," and only 9 percent gave the opposite opinion. He was approved by 72 percent of college graduates and by 67 percent of those people earning above $10,000 in annual income.297 Even
business editors of major newspapers, usually conceded to be friendly towards business, feel that Nader's influence, in the long run, will be a plus, according to a survey conducted in 1971 by Opinion Research Corporation. 298

Another consumer advocate of the 1960's who did not receive the vast amount of personal publicity accorded Nader, but whose influence was far-reaching, was John F. Banzhaf III, a young New York lawyer, anti-smoking crusader, and later, a Professor of Law at George Washington University. In 1966 Banzhaf wrote to the Federal Communications Commission, complaining that a network-owned station in New York, WCBS-TV, had broadcast many cigarette commercials without allowing time for spokesmen to rebut the advertisements with information about smoking's harmful effects. He urged that the FCC's long-standing "Fairness Doctrine" be invoked to allow replies to the many cigarette advertisements broadcast every day. The Fairness Doctrine, in the past, had dealt primarily with the presentation of news or editorial matter. On June 2, 1967, the FCC sent a letter to WCBS-TV, holding that the Fairness Doctrine was applicable to cigarette advertising, and that a station broadcasting this type of advertising must give responsible voices opposing smoking an opportunity to be heard, and a charge could not necessarily be required for the air time used. 299

In litigation that followed, the Court of Appeals for the District of Columbia and the U.S. Supreme Court upheld the decision of the FCC and reaffirmed the theory stated in the Valentine case that "promoting the sale of a product is not ordinarily associated with any of the interest which the First Amendment seeks to protect." 300 Congress subsequently enacted a ban on all cigarette advertising on radio
and television. Banzhaf, meanwhile, carried his "Fairness Doctrine" crusade to the FCC again in 1968 with complaints against WFBM-AM-FM-TV of Indianapolis, Indiana, regarding failure to tell "the other side of the issue" in the smoking controversy. After investigation, the Commission gave the opinion that the stations had not complied with the Fairness Doctrine.

Interestingly, some time after all cigarette advertising was removed from radio and television and while anti-smoking advertisements were still being put on the air, the tobacco industry requested the FCC to apply the Fairness Doctrine in such a way that the industry could respond to the commercials without advertising brands or encouraging smoking generally. This request was denied. Subsequently many individuals and groups have petitioned the Commission to apply the Fairness Doctrine to other advertising, but without success.

The phenomenon of Naderism and the success of Banzhaf in opening the regulatory process to "outsiders" gave many consumers the courage to speak out about abuses in the marketplace. Marketing analyst E. B. Weiss commented in April, 1972, as follows:

Five years ago, there were few organized public groups dedicated to activist consumerism—and few politicians who listened to them. Today there are thousands of consumer organizations with several million members. Many are quite sophisticated in political lobbying, as well as in staging public demonstrations. They are adept and indefatigable in getting 100,000 signatures on petitions. And their demonstrations win favorable coverage on television.

One of the strongest consumer groups is Consumers Union, founded in 1936 with a handful of people. With a current staff of more than 300 persons who test and rate products and publish the results in the Union's publication, Consumer Reports, the organization
looks forward to reaching 5,000,000 people within the next four years. Circulation has more than doubled recently, and the vast majority of subscribers are college-educated and have annual incomes of more than $15,000. Since there are now about 12,000,000 families in this income bracket, Consumers Union expects to be influencing around half of them in three or four years. Reporter Alexander Auerbach comments in the Los Angeles Times that "in effect, these families will have what amounts to their own independent, well-funded testing lab. That could make a lot of the old rules of Madison Avenue as stale as a Studebaker ad."  

In considering the rise of consumerism and attitudes toward advertising, Thomas W. Benham, President of Opinion Research Corporation, has described the "typical" people who make up the public. His surveys in 1971 showed that over 80 percent of these "typical" people had not traveled by air during the last year, eight in ten did not own stock, three-quarters of them had never been outside of the country, half of them had not been 200 miles from home in the last year, and half of them did not use credit cards. He found that some 21 percent of people in a nationwide probability sample said they had been cheated or deceived in their recent dealings as consumers, and one way they had been cheated was through misleading advertisements.

An assumption many manufacturers have made is that the consumer is capable of exercising intelligent choice, yet few consumers can peer under the hood of an eight-cylinder, air-conditioned, power-assisted automobile and understand what is there. Management consultant Dr. Peter F. Drucker says that, Consumerism means that the consumer looks upon the manufacturer
as somebody who is interested, but who really doesn't know what the consumer's realities are. He regards the manufacturer as somebody who has not made the effort to find out, who does not understand the world in which the consumer lives, and who expects the consumer to be able to make distinctions which the consumer is neither able nor willing to make.309

Mrs. Knauer, Special Assistant to the President for Consumer Affairs, says that "a good advertisement is one of industry's most effective ways of providing the consumer with the information to which he has a right." She is confident that consumers will continue to create pressure for more informative advertising.

Not everyone agrees with Mrs. Knauer about the strength of consumer pressure. Marketing analyst Weiss says that the original dedicated ardor of organized consumers is waning and suggests that the total consumerism movement is starting to go through a shakedown and a slowdown. He points to the food store picketing by homemakers in 1969 over high food prices as compared to the lack of demonstrations in 1972 despite high prices, the failure of legislative hearings on consumer proposals to attract overflow crowds, and the small number of bills that have become law.311

Weiss admits that this may be a spotty and temporary situation, with consumerism fervor mounting again. He predicts that it will involve less fanaticism and more rationality and maturity. Business is reassessing its position, he feels, and will decide to listen more attentively to the public and to respond with more social awareness and responsible marketing-advertising programs.312

Business Response to Consumerism and Efforts at Self-Regulation

Business Week agrees with Weiss that the first blast of consumerism has passed and that the current period is one of sober
reevaluation for business leaders and advertising men. On June 10, 1972, the magazine reported that corporate heads and advertising agency people, perhaps for the first time, were trying to develop mutual goals that went beyond the selling of goods or services. 313

This is not to say that the impact of consumerism has been minimized. In October, 1971, Edward M. Thiele, National President of the American Association of Advertising Agencies, the organization representing the nation's largest advertising agencies, said that consumerism was the primary concern of the advertising industry "and will almost surely be our number one concern five years from now." He claimed that the reason advertising was being maligned was because "we're extremely visible and we're the easiest dog to kick at." 314

In the same month Fred Baker, National Chairman of the American Advertising Federation, stated that "through bona fide public opinion studies we have clear indications of public attitude toward advertising and toward business in general. It is frighteningly and increasingly negative." Speaking of the social changes taking place and the need to regain consumer confidence, he added, "We know we must face today's public with our hands spotlessly clean." 315

Last November H. Bruce Palmer, National President of the Council of Better Business Bureaus, Inc., told commerce leaders in Los Angeles that "we may witness the first full-scale consumer revolt in the history of our nation" unless certain signs are heeded. 316 He identified these as consumer alienation and redress, discord in the marketplace, doubt, fear, suspicion, and outright hostility toward the free enterprise system.
The problem of consumer satisfaction is a complex one. As Federal Trade Commissioner Mary Gardiner Jones pointed out recently in an address at the University of California, Berkeley:

We have to recognize that consumers will continue to make purchases even as their frustrations and outright hostility to the businesses which they patronize continue to grow. Consumer sales, thus, may be as much of an indication of consumer satisfaction as continued payment by a citizen of his taxes reflects satisfaction with government policies. Mrs. Jones feels that the solutions to delivering consumer satisfaction must be a function of private business reactions as well as of public policy.

The words, "public policy," have an ominous ring to advertising men. Many of them have a deep-seated fear that increased governmental regulation of the advertising industry would lead to less advertising, slimmer agency commissions, and fewer product sales.

To correct potentially deceptive or misleading advertisements before the government steps in, the advertising associations, with funding from the National Council of Better Business Bureaus, set up a self-regulatory system in September, 1971. Called the National Advertising Review Board and headed by former United Nations Ambassador Charles W. Yost, the organization already has received some 200 complaints from consumer groups and individuals.

The Board believes that some of the complaining groups are testing the effectiveness of the NARB, which assembles panels of five adjudicators to discuss complaints about national advertising with offending agencies and advertisers. To increase effectiveness, the panels are drawn from a roster of fifty executives both inside and outside of the advertising industry. NARB Executive Director William H.
Ewen, who feels that the ultimate responsibility for advertising is that of the client, not the agency, reports that results have been positive. The alternative to compliance is severe. Disregard of a NARB order to modify an advertisement means that the Board will turn the findings and complaint over to the FTC or other regulatory body.322

Colgate-Palmolive Co. became the first advertiser to agree to change an ad following a complaint to the NARB about its Bright Side shampoo being described as "organic." On June 26, 1972, Advertising Age editorialized that this was "good news because the action provides some pretty vivid evidence that NARB is much more than a paper tiger, and that maybe the industry is capable of putting its own house in order after all."323 The magazine stated that "we think advertisers will get a fairer shake with NARB than with the FTC."324

To deal with local problems, the advertising associations are currently setting up advertising review boards in what the NARB terms "priority cities." Local Better Business Bureaus are responsible for the staffing and investigative function, and advertisements reviewed are those which were subjects of complaints to the Better Business Bureaus.325

The move for self-regulation through the mechanisms of advertising review boards is regarded favorably by the FTC. Chairman Miles Kirkpatrick, speaking before the American Advertising Federation in May, 1972, termed the NARB an "enlightened activity" and added, "I am hopeful that effective self-regulation not only can make the Commission's job easier, but may also have the broader virtue of minimizing government interference."326 However, the FTC recently moved to set up a special task force to study whether industry self-regulation has
much over-all effect. A prior staff study revealed considerable doubt. 327

In an effort to improve relations with the public, some large companies have set up departments, employed consumer advisers, put in "cool" lines which customers can call toll-free with complaints, and encouraged letters from disgruntled customers. 328

To stimulate more comprehensive action on the part of business to meet legitimate consumer grievances, President Nixon issued Executive Order 11614 on August 5, 1971, creating the National Business Council for Consumer Affairs under the U. S. Department of Commerce. 329 The President stated in his Executive Order:

In recent months I have been gratified by the increasing desire of the business community to take a more active role in meeting the concerns of the American consumer. These businessmen recognize that the concerns are widespread and often spring from valid complaints. They also share my belief that neither the government nor the consumer movement can alone solve these problems, but that we must also rely upon the traditional goodwill and sound practices of the business community. 330

The Council operates as a Presidential Advisory Panel with responsibility for recommending positive action programs for industry to follow in anticipating and resolving consumer demands and problems. Through the Secretary of Commerce, it also advises the U. S. Justice Department, the Office of Consumer Affairs, the FTC and other government agencies on programs of business relating to consumer affairs. 331

Membership in the NBCCA includes more than one hundred leading U. S. business executives drawn from a cross-section of companies which deal with consumers either directly or indirectly. There are seven Sub-Councils, including one on advertising and promotion, and all will publish comprehensive recommendations for positive action programs.
within the next several months. The Chairman of the Advertising and Promotion Sub-Council is Robert J. Keither, Chairman and Chief Executive Officer of the Pillsbury Co., and the Vice-Chairman is Archibald Mc. G. Foster, Chairman and Chief Executive Officer of Ted Bates & Co., advertising agency. The selection of Foster as one of the heads of the Advertising and Promotion Sub-Council appears to be a questionable choice since his company has been involved in a succession of cases with the FTC in which the Commission has charged his agency and its clients with false and misleading advertising.

In a talk July 21, 1972, before the Public Relations Society of America, Greater Los Angeles Chapter, Paul T. O'Day of Washington, D.C., Deputy Director and Counsel of the NBCCA, said that according to latest polls, the public believes the average manufacturer makes a profit of twenty-eight cents on every one dollar after taxes on sales, when, in fact, the figure is four cents, according to the FTC and the Securities Exchange Commission. He stated that a Louis Harris poll in 1971 showed that only 27 percent of the public had confidence in big companies as compared to 55 percent in 1966, and only 13 percent expressed confidence in advertising as compared to 21 percent in 1966.

As to the effectiveness of the NBCCA, O'Day said that the test will be in the implementation of the recommendations of the Sub-Councils. "The crux of the matter lies in how to implement them on a nationwide basis," he stated. The Council will operate for an indefinite term, with no budgetary implications, according to O'Day, and he admits that there have been some negative reactions to its formation. "Ralph Nader thought our first action should be to abolish the Council, but he has changed his opinion in the last few months," he claimed.
Shortly after the Council was formed last year, there were charges that it did not consist of consumer champions. Some members were said to have been criticized by consumer advocates, others were charged with being among the President's largest campaign contributors, and at least two supposedly were clients of the law firm in which Mr. Nixon and former Attorney General John Mitchell had been partners. Attention was also drawn to members Stuart Hensley of the Warner-Lambert Pharmaceutical Co. and Hobart Lewis of the Reader's Digest, whose companies were the subjects of action by the FTC at the time of the executives' appointment to the Council. 336

Regarding these charges, O'Day wrote the author on August 9, 1972, that they were:

... obviously a very selective, one-sided commentary on the Council... Our emphasis in the NBCCA is on positive and constructive action to assist consumers, and we will hold to that plan.... There simply is no better answer than that (to the criticisms) ... 337

He did not comment on her query regarding the appointment of Foster of Ted Bates and Co. 338

Consumer Protection Through Federal Control

The responsibility of the federal government in consumerism was described in President Kennedy's directive to the newly created Consumer Advisory Council in March, 1962. He said:

Additional legislative and administrative action is required, however, if the federal government is to meet its responsibility to consumers in the exercise of their rights. These rights include: (1) the right to safety; (2) the right to be informed; (3) the right to choose; and (4) the right to be heard. 339

Richard H. Buskirk and James T. Rothe comment in the Journal of Marketing that "the responsibility President Kennedy mentioned ...
should be industry's in a free society, not the government's. However, consumerism rightly claims industry has neglected its responsibility. The relative role the government will play, and that which industry should play, is a critical aspect in the resolution of the consumerism issue.340

The Consumers' Advisory Council, created by President Kennedy as an adjunct to the Council of Economic Advisers in order to have consumer interests given "full and sympathetic consideration in the formulation of Government policy," was given somewhat more formal status by President Johnson's Executive Order of January 3, 1964.341 In addition to the Council, which is composed of twelve private citizens, President Johnson established a Committee on Consumer Interests composed of private citizens and representatives of government agencies.342 A Special Assistant for Consumer Affairs was appointed by the President early in 1964 to serve as the principal spokesman for the consumer in the federal government and to serve as Chairman of the Committee on Consumer Interests. 343

Perhaps the single most important weakness in the Johnson administrative plan for consumers was the lack of authority noticeable in both the Council and the Commission, as well as in the Special Assistant, according to Richard J. Barber, writing in the Michigan Law Review. He cites the fact that each organization was charged with the responsibility of "advising," "reviewing," or "consulting," but none had the power to modify, execute, or instigate any program of its own.344

The Nixon administration has attempted to correct this situation in several ways. On October 30, 1969, President Nixon, in a special message, urged the ninety-first Congress to enact a legislative program aimed at establishing a "Buyer's Bill of Rights." Along with several other proposals, he asked Congress to make the office of Special Assistant for Consumer Affairs into a permanent White House agency
and to establish a consumer advocate's office in the Justice Department.\textsuperscript{345} The President's program met with little success, and he again submitted plans for consumer protection to the ninety-second Congress on February 25, 1971.\textsuperscript{346}

In his 1971 message, the President dropped the idea of letting the Justice Department serve as consumer advocate and stated that he was opposed to an independent consumer agency. Instead, he expressed interest in a reorganization of the FTC into two agencies, one to perform anti-trust functions and the other to administer new consumer laws.\textsuperscript{347} Knowing that Congress was considering voting on the establishment of an independent consumer agency, Mr. Nixon said that "if the Congress feels it must proceed on the matter of consumer advocacy. . . then I strongly urge and would support, as an interim measure, the placement of the advocacy function within the Federal Trade Commission."\textsuperscript{348}

Although FTC Chairman Kirkpatrick is a Nixon appointee, he has spoken out emphatically against splitting up his agency.\textsuperscript{349} Consumers Union also opposes such a move and has commented that "advocacy cannot be assigned to any agency with regulatory responsibility, since it is just that responsibility that a consumer advocate would have to oversee."\textsuperscript{350}

Since Congress did not make the office of Special Assistant for Consumer Affairs into a permanent White House agency, as Mr. Nixon had requested in 1969, the President announced in his 1971 message the creation by Executive Order of a new Office of Consumer Affairs in the Executive Office of the President.\textsuperscript{351} This office would be headed by Mrs. Knauer, whom Mr. Nixon had appointed previously as his Special
Assistant for Consumer Affairs, and it would be responsible for analyzing and coordinating all federal activities relating to consumer protection. Consumers Union said that the President's action "elevated Mrs. Knauer's operation on paper by renaming it," and cautioned that since the office existed only by Executive Order, another President could as easily order it disbanded.

A continuing movement to establish a consumer protection agency at the federal level started in 1969 when several bills directed to this purpose were introduced into the ninety-first Congress. The Administration's Consumer Representation Act, S.3240, proposed the establishment of a statutory Office of Consumer Affairs, but it, and similar bills, failed to pass.

Again, in the ninety-second Congress, several bills were introduced to create an Office or a Bureau of Consumer Protection. In October, 1971, the U.S. House of Representatives approved by a vote of 344 to 44 a bill, H.R. 10835, sponsored chiefly by Representative Chet Holifield of California. This legislation would establish an independent Consumer Protection Agency as an agency with powers to represent consumer interests throughout government and in the courts. At this writing, the U.S. Senate still is considering the merits of its own bill, S. 1177, which is similar to H.R. 10835.

The Senate bill, which is authored by Senators Abraham Ribicoff, Jacob Javits, and Charles Percy, creates a Consumer Protection Agency as an independent entity, empowered to act as a consumer advocate before governmental regulatory agencies and in the courts. It would have a three-member Council of Consumer Advisers similar to the Council of Economic Advisers or the Council on Environmental Quality. The council
would prepare an annual report on the status of consumer matters and recommend program priorities. It also would provide assistance in program coordination and in developing new policies and legislation as well as providing an evaluation of current programs.357

The Consumer Protection Agency would be headed by an administrator appointed by the President and confirmed by the Senate. The agency would be non-regulatory in function, representing consumer interests in governmental regulatory and judicial procedures.358 It would have the right to intervene as a party of interest representing consumers in any rule-making proceeding taking place at a regulatory agency such as the FTC, intervene in, or institute a court review of a regulatory agency's proceedings, and it could cause regulatory agencies to subpoena information from companies.359 It would also receive and transmit consumer complaints; conduct surveys and research and disseminate information relating to consumer interest; and make grants to states, localities and non-profit private organizations to encourage and assist their consumer protection programs and activities.360

Although S. 1177 was expected to move swiftly toward passage by the Senate, as late as July 9, 1972, it was reported to be in "parliamentary quicksands" and was still there when Congress recessed for the Democratic National Convention.361 Representatives of about 150 companies and trade associations, including the Grocery Manufacturers of America, Inc., were trying to line up support among Senators for an amendment that would strip the right of the agency's administrator to intervene as a party in federal proceedings and leave him only in a friend-of-the-court role.362 The Administration, meanwhile, was reported to be seeking support for thirteen amendments of its own. Their
most important general effect would be to cut back sharply the power of the administrator to intervene in informal agency proceedings. Senate floor action on the bill will be sought after August 7, 1972, and Senator Percy has commented that he believes the delay has increased the determination of supporters to fight for the measure.

There is some speculation that the President may veto S. 1177 even if the Senate approves it. However, columnist Ernest B. Furgurson believes that Mr. Nixon is not likely to take such a step in a Presidential election year despite the fact that the bill's opponents "are among his lifetime allies."

Strong opposition to the creation of a Consumer Protection Agency has come from the American Advertising Federation which has been concerned with this type of legislation for two years and has sought modification of powers proposed for the new agency to a "friend of the court" status. The Federation has urged its affiliated advertising clubs across the U.S. to write or contact their senators, asking them to vote against the measure.

Another bill, introduced into the ninety-second Congress, but not yet passed, which has great import for the advertising industry is S. 1461, called the "Truth in Advertising Act." Authored by Senators Frank Moss and George McGovern, the bill would require the furnishing of documentation of claims concerning safety, performance, efficacy, characteristics and comparative price of advertised products and services.

When Senator McGovern introduced the bill in March, 1971, he told the Senate that "it is an elementary requirement that in the free enterprise system, competition should be not only free, but fair."
By requiring advertisers to supply consumers with information substantiating their advertising claims, truth in advertising would make an important contribution to the free enterprise system, the Senator predicted. He said that under this bill, consumers would be able to take direct action, such as an exchange of information among private parties, rather than the traditional class action approach.369

McGovern's views on consumerism were spelled out in considerable detail when he attempted to compete for the 1968 Democratic Presidential nomination. At that time he offered a five point "Bill of Rights for the American Consumer." He pictured the consumer in the marketplace as a "David facing a regiment of Goliaths, mostly without organized help, generally powerless and completely confused by the bewildering barrage of modern marketing."370 According to his advisers, this description continues to reflect the viewpoint of McGovern, the 1972 Democratic nominee for President.371 However, Stanley E. Cohen, Washington Editor of Advertising Age, reports that the Moss-McGovern "truth-in-advertising" principle, which was supposed to be included in the 1972 Democratic platform, went astray—apparently because of pressures from business interests.372

In May, 1972, the FTC asked the Senate Consumer Subcommittee to delay the Moss-McGovern bill until more has been determined about the agency's advertising substantiation program. Chairman Kirkpatrick told the Subcommittee that the Commission needs additional time and experience in order to make a thorough evaluation of the program on which to base a positive or negative decision regarding the bill.373 Kirkpatrick also registered concern about administrative costs. He noted in his testimony that under the proposed bill, the FTC "will not only be
required to police compliance of the law, but also undoubtedly will be called upon to ensure that advertisers are turning over all appropriate material, including that which detracts from the [ad] claim."  

Mark Silbergeld, Director of the Public Interest Research Group, formed by Ralph Nader, supports the Moss-McGovern bill. However, due to resource limitations of the FTC, he recommends "additional provisions which require that the substantiation of advertised claims be adequate and provide for consumer enforcement of the act through civil suits and class action."  

Advertising associations have expressed opposition to the "Truth in Advertising Act," claiming that consumers would be confused by substantiation data, and the labor and reproduction costs involved in supplying information would be passed on to them. The National Advertising Review Board hopes for a delay in passage of the legislation to see if the NARB's self-regulation program and the FTC's substantiation program can meet the problems to which the bill is directed.  

Another bill, S. 1753, proposed by Senator Moss and supported by the FTC, has drawn a mixed reaction from the advertising industry. This bill would establish a National Institute of Advertising, Marketing and Society as part of the National Science Foundation. Its purpose would be to study the impact of advertising and marketing upon society. The NARB favors this bill, but the Association of National Advertisers feels that the institute would concentrate a disproportionate amount of government time and money on advertising.  

A fourth bill which is significant to the advertising industry
is S. 986 (and H. R. 4809), the "Consumer Product Warranties and Federal Trade Commission Improvements Act of 1971." This legislation has passed the Senate and is currently pending in the House Commerce Committee. Among other provisions, it would amend the FTC Act to give the Commission authority to apply to a Federal court for a preliminary injunction in connection with the issuance of an administrative complaint pertaining to false advertising or other deceptive practices. Many companies continue deceptive advertising even after the FTC has issued a complaint because they theorize that they cannot be fined until formally ordered to cease and desist. This bill is designed to put an immediate halt to such advertising. Kirkpatrick says that "the preliminary injunction is a very powerful instrument in the enforcement of law, and I would anticipate a sparing use of it—perhaps limited to situations involving safety and health or other such emergent considerations." In addition to giving the FTC the right to obtain preliminary injunctions, S. 986 spells out the Commission's authority to issue trade regulation rules. Increasingly, in recent years, the FTC has used an industry-wide approach of obtaining agreement to certain standards as an alternative to case-by-case lawsuits. Many industry people like the "guidance" trade regulations provide and the opportunity to avoid lawsuits.

After estimating that the average motorist spends from fifty to seventy-five dollars extra a year buying octane gas unnecessarily, in 1971 the FTC announced a rule that would have forced oil companies to post octane ratings on gas pumps. Two trade associations and thirty-four oil companies blocked enforcement of the rule and
challenged the right of the FTC to issue trade rules. The case was heard in the U.S. District Court for the District of Columbia, and on April 4, 1972, Judge Aubrey Robinson ruled that the FTC had no authority to issue trade regulation rules. Since this decision, now under appeal by the FTC to the U.S. Court of Appeal for the District of Columbia Circuit, there has been renewed activity to expedite passage of S. 986.

The Robinson decision was surprising because of a case decided March 1, 1972, by the U.S. Supreme Court involving the FTC and the Sperry & Hutchinson Co., a trading stamp firm. In a seven to zero decision the court said the regulatory agency's authority was not limited to providing protection against anti-trust violations, and Justice Byron H. White indicated that the FTC may combat an apparently limitless array of unfair trade schemes. White said this position, first taken by Justice Louis D. Brandeis in 1922, had support in a 1934 Supreme Court ruling and in the 1938 Wheeler-Lea Amendment to the FTC Act. He commented:

Legislative and judicial authorities alike convince us that the Federal Trade Commission does not arrogate excessive power to itself if ... it ... considers public values beyond simply those enshrined in the letter or encompassed in the spirit of the antitrust laws.

At this point, government and business leaders are having a difficult time in reconciling Judge Robinson's decision with that of the U.S. Supreme Court, given a month earlier.

The Revitalization of the Federal Trade Commission

Before 1969, consumer advocates said that the FTC was failing to protect consumers from unfair or deceptive business practices. In
1972, the Chairman of the Commission has had to defend the agency against business advocates who feel that innocent companies are being sacrificed to consumerism. 393

Changes began to appear in 1969 after an American Bar Association panel studied the FTC at the request of President Nixon. The panel confirmed reports by critics, notably "Nader's Raiders," that the Commission needed a thorough overhaul. "Its efforts have been piecemeal," the ABA Study stated, pointing out that "often the agency has seemed more concerned with protecting competitors of an enterprise practicing deception rather than consumers." 394 In the area of false and deceptive advertising, the ABA group cited the recurrent flaws of FTC enforcement including failures of detection, undercommitment of resources to important projects, timidity in instituting formal proceedings, and failure to engage in an effective compliance program. 395

After Caspar Weinberger was appointed Chairman of the FTC in January, 1970, he said,

I do not think it rash to admit that the Commission can do better, and in this decade our constituency has already indicated that "better" will not be sufficient. Excellence will be demanded in order to meet the challenge of improving the quality of life for all our citizens. 396

The changes Weinberger started were continued by his successor in 1970, Miles W. Kirkpatrick, who had chaired the ABA Study. He appointed Robert Pitofsky, counsel for the ABA panel, to head a new Bureau of Consumer Protection and, according to Business Week, "the agency set out to establish itself as the 'hottest' regulatory body in Washington." 397

Revamping of the FTC extended to its regional offices, which were given new authority to investigate problems in their areas, hold
public hearings, and argue their own cases before FTC hearing exam-
iners. A new type of staff position, the consumer-protection spec-
ialist, was created so that "paralegal" personnel could work in teams
with attorneys in regional offices. Young law school graduates with
high academic ratings have been attracted to the Commission, represent-
ing a change from the type of personnel formerly employed by the "coun-
try club on Pennsylvania Avenue," as the agency was known.

The legal staff has come up with some novel interpretations of
the agency's responsibilities and ways to carry them out besides the
traditional complaint and "cease and desist" order. New ideas have to
be approved by the five Commissioners: Kirkpatrick, Paul Rand Dixon,
a former FTC Chairman, David S. Dennison, Jr., Mary Gardiner Jones, and
Everette MacIntyre. Pitofsky praises "... the willingness of the
Commission to attempt new types of economic regulation, to review the
traditional ways of doing things and to bring cases that depart to some
extent from the past and try for new remedies."401

Speaking of advertising, he has said that at the FTC "there is
increasing concern whether advertising tactics, in terms of truth and
relevance, have gotten out of hand. The consumer's tolerance for bor-
derline claims has been stretched to the breaking point."402 The Los
Angeles office of the FTC told the writer on August 7, 1972, that ap-
proximately 40 percent of the complaints received pertained to decep-
tive advertising.403

One of the first programs of the revitalized FTC which startled
and worried advertisers occurred about two years ago and was called
"corrective advertising." Originally, advertising which included a
public confession of deceit, as called for in corrective advertising,
was named "soup clause." This referred to a FTC action September 19, 1969, against Campbell Soup Co., charging that marbles were placed in a bowl of soup used in a commercial, thus causing the vegetables to float on top and the soup to appear richer. A group of George Washington University students, under the direction of Professor Banzhaf, instrumental earlier in changing FCC regulations, formed SOUP (Students Opposing Unfair Practices), Inc. They argued before the FTC that a cease-and-desist order was not sufficient punishment and that Campbell Soup Co. should be forced to admit it deceived the public. The consent order agreed to by the company did not contain a corrective advertising provision, but SOUP had made an impact upon the Commissioners.

Approximately one year later, in a complaint filed September 29, 1970, against Standard Oil Co. of California and its advertising agency, Batten, Barton, Durstine & Osborn, Inc., concerning Chevron F-310 gasoline, the FTC proposed that the company spend 25 percent of its advertising budget for the coming year to admit that it had deceived the public. While this action was pending, ITT Continental Baking Co. of Rye, New York, makers of Profile bread, and its advertising agency, Ted Bates & Co. of New York, agreed in July, 1971, to dispute their own advertising claims in the first settlement of its kind won by the FTC. The companies agreed, without admitting violation of the law, to spend one quarter of the next year's Profile advertising budget to tell consumers that the bread was not effective for weight reduction as previously advertised. Mrs. Knauer has claimed that the public has not given up on Profile bread despite the corrective advertising program and that "consumers are happy to hear the unvarnished truth about
what they can expect from a product, and what they cannot expect. However, Arthur Ostrove, the company's advertising director, says that Profile sales in the past year dropped off tremendously, but he does not know whether this was due to the revised advertising or adverse publicity stemming from the original FTC complaint.

Corrective advertising also has been called for in the pending Wonder bread and Hostess cake case against the same company and advertising agency. In a complaint issued in August, 1971, the FTC challenged claims that the bread "helps build strong bodies twelve ways," and that the cake has unique qualities.

In another case, Ocean Spray Cranberries settled with the FTC on May 4, 1972, agreeing to run corrective advertising for its cranberry juice cocktail, explaining that, in discussing food energy, Ocean Spray was referring to calories and not to vitamins or minerals. In this settlement, the FTC wrote specific corrective language to be used, and Gerald Thain, the Commission's chief for national advertising, said this will be the practice in the future.

Also under attack by the FTC, which is requesting corrective advertising, are the Coca-Cola Co. for its Hi-C fruit drink, and manufacturers of major pain remedies such as Bayer, Excedrin, Anacin and Bufferin. Regarding analgesics, the FTC argues that there is no clear-cut evidence to justify advertising claims that place any one of them in a superior position.

"The specter of corrective advertising is a grave matter," Advertising Age states, "and an advertiser to agree to such a procedure should be convinced that his ad program was so blatantly and harmfully deceptive that he must be willing to spend twenty-five percent of his
media budgeting to tell his customers he, in effect, lied to them."412

Business Week, however, says that the industry at large does
not view the proposals for corrective advertisements as a major threat.
"They have to be made on a case-by-case basis, and the courts are
likely to bottle up individual complaints for lengthy periods, should
the advertiser fight back," the publication explains.413

As part of its concern about the validity of advertising, in
1971 the FTC began asking selected advertisers to submit information
substantiating their advertising claims. This was an outgrowth of an
action by Nader in November, 1970, when he wrote to about sixty com-
panies asking them to substantiate various claims which he found in
their advertisements. When most companies paid scant attention to the
request, he proceeded to report his experience to the FTC.414 Since
then the advertising industry has been enmeshed in FTC's "ad substantia-
tion" program.

Leading manufacturers have been requested to prove their ad-
vertising claims for toothpaste, air conditioners, electric razors,
television sets, cough and cold remedies, automobiles, and tires.415
For example, makers of the Contac cold remedy have been asked to prove
how and why the product "provides relief for up to twelve hours" as
stated in the advertising.416 According to FTC Chairman Kirkpatrick,
advertisers will be required to submit tests, studies, or other data
available to substantiate advertising claims with respect to the price,
safety, performance, efficacy, or quality of the product advertised.
He emphasizes that "the Commission is not bent on dismantling the ad-
vertising industry. We seek knowledge to help us enforce the law, to
sort out what is unfair and deceitful in advertising."417
The Commission has promised to make manufacturers' replies available to the public, and last fall seven U.S. and foreign auto manufacturers submitted 1,100 pages of documentation and data which are available to the public at all of the FTC's regional offices. The information documents such claims as "a longer-lasting, more powerful engine," "over 700 percent quieter" and brakes "less subject to heat build-up and fade."418

In an appearance before the Senate's Consumer Subcommittee in May, 1972, Kirkpatrick conceded that much of the data collected by the FTC seems to be too technical to be useful to the ordinary consumer, but he said the Commission intends to continue the program at least until the end of 1972 before deciding whether to modify or to abandon it.419

One company, the Sunbeam Corp. was asked to substantiate claims in an electric shaver advertisement and complained to the FTC of intimidation and a violation of its rights under the First Amendment.420 The Corporation wrote to the FTC as follows:

The practice of advance press publicity in the absence of any evidence of violations of law and without waiting for the filing of special reports which might disclose such evidence, thus bringing the full weight of the federal government to bear invidiously on selected respondents, has the effect of intimidating advertisers and may tend to pre-publication restraint in violation of the rights guaranteed by the First Amendment and has the tendency to chill the free exercise of First Amendment rights.421

Surprisingly, the Sunbeam response was the only complaint from more than fifty major advertisers who have been exposed to publicity emanating from the FTC regarding requests for substantiation of claims.422

Many advertisers felt, by the end of 1971, that the Commission
had shaken up the industry enough; but on January 7, 1972, the agency announced that it supported counter advertising in the broadcast media to facilitate public debate on controversial issues raised by commercial advertising. It recommended that the FCC require broadcasters to provide public service time for counter advertising and also urged access to the media for paid counter advertising time. According to the FTC, counter advertising would be appropriate where product claims explicitly raise controversial issues, such as the product's effectiveness in solving ecological problems, or where advertising is based upon scientific premises which are controversial in the scientific community.

Although it has not been put into effect yet, the counter-advertising proposal has created an uproar in the advertising and broadcast industries and has raised doubts about the survival of a free broadcast system. Some government officials are strongly opposed to the proposal. Clay T. Whitehead, who directs the White House Office of Telecommunications Policy, has challenged it, arguing that whatever is required should be done by the FTC and not involve the FCC.

Frank Stanton, Vice Chairman of Columbia Broadcasting System, has pointed out that the information an advertiser gives in a commercial announcement is not covered by the First Amendment, but messages put on by groups to counter the ads would have Constitutional protection.

Advertising and broadcasting executives worry that ecologists might demand free air time to attack car advertising on the grounds that cars cause pollution, organic-food advocates would be allowed to protest chemical additives in pastries or other foods, etc. According
to Chairman Kirkpatrick, the FTC does not intend that the right of reply to an advertisement would be on a one-for-one basis. He has suggested one prime five-minute period a week, with access controlled by broadcasters.426

However, agency men are reasoning that perhaps clients should put their budgets into newspapers or magazines since print media has no "equal time" or fairness requirements. They also wonder what will happen to coverage of public events like the President's 1972 trip to Peking or the moon landings if advertising support is withdrawn from television. Speculation and dire predictions "must be taken with a grain of salt" until there has been a test, according to FTC Director of Consumer Protection Pitofsky.427

While the FTC continues to aggravate and worry advertising men, they take comfort in two widely publicized cases wherein the Commission had to retract some of its more damaging allegations. In the first case, the FTC withdrew a charge that Du Pont Corp. and its advertising agency, Batten, Barton, Durstine & Osborn, Inc., had staged a deceptive television demonstration for Zerex anti-freeze. Testimony showed that the Commission had not tested the demonstration or contacted the company or agency before issuing its proposed complaint. After undergoing "trial by FTC press release" and fighting the charge for a year, the defendants finally heard the FTC say that "... in the Commission's judgment, the demonstration was accurate and not deceptive."428

The latest incident involves Standard Oil Co. of California. Turner McBain, an attorney for the company, has contended, and the Commission has confirmed, that the FTC first issued a proposed complaint
claiming that a Chevron gasoline additive, F-310, was not a new or significant development. When the FTC got around to issuing a formal complaint, the charge had been dropped, "although by that time, of course, incalculable harm had been done to Standard," McBain declared. 429

Within the short span of two years, the FTC launched corrective-advertising, substantiation, and counter-advertising programs and also won agreement from cigarette makers to print prominent health warnings in all advertisements, climaxing a lengthy battle. 430 In 1972 it received approval from the U.S. Supreme Court to police the marketplace with almost unlimited authority. Consequently, many people across the U.S. are wondering what the FTC has in mind for the future. In testimony May 2, 1972, before the House Appropriations Subcommittee on Agriculture, Environmental and Consumer Protection, Kirkpatrick discussed FTC budget requirements for the fiscal year 1972 and projects ahead. He said that monitoring of all new national television advertising will be expanded as well as surveillance of questionable advertising of foods, drugs, cosmetics, and devices. Major programs will include an assessment of the impact of television advertising, particularly with reference to children. Also to be assessed are advertisements related to the nutritional value of food products and those claiming environmental and ecological benefit. "Mood" drugs, analgesics and pills, non-prescription drugs, health products, beauty aids, and reducing drugs and devices will receive the attention of the Commission. 431

The agency will continue to explore the feasibility of establishing a Consumer Fraud Clearinghouse as a means whereby federal, state and local officials can rapidly exchange enforcement planning information on a nationwide basis, Kirkpatrick said. 432
Although the FTC appears to have moved quickly against deceptive advertising in the past two years, the structure and legal restrictions of the agency make it far from fast-moving in litigation. FTC lawyers say it may be five years before all of the "experimental" approaches now being taken are tested all the way through the Commission and the courts. The agency is small when viewed against the huge industries it is supposed to regulate, and its total budget is around $25,000,000 annually. This budget covers many duties, and policing advertising is only one of them. In a recent year, one hundred companies spent close to $3,500,000,000 for advertising in major media. Proctor & Gamble, for example, spent almost $190,000,000 in one year on major media advertisements, which is nearly eight times the budget of the FTC for fiscal year 1972. Although the agency knows of many cases of false advertising, it has to pick and choose the ones to prosecute due to staff limitations, attorney Perry W. Winston in the FTC's Los Angeles office told the writer. Selection is based on severity and number of people affected by the deception, he said.

As for a change in the FTC's aggressive role, there is the possibility that there may be some "cooling off" due to President Nixon's reported annoyance with Kirkpatrick and young lawyers who are trying to challenge the system. Although the President's briefing meeting in July, 1972, with thirty selected broadcasters, was supposed to be "off the record," he is reported to have said that he can appoint people like Kirkpatrick, but after they are in their jobs, he cannot do anything about them. If Kirkpatrick should return to private law practice, a less aggressive person presumably would be appointed as Chairman providing the Nixon administration is still in office. Such an appoint-
ment could mean fewer new approaches and an end to the agency's revitalization.

In the meantime, while advertisers fret and hope for "a rainbow in the clouds," the FTC Chairman tells them, "If you can invent it, patent it, manufacture it, and distribute it, surely you have the ingenuity to explain it." 438

Summary

The last decade saw startling changes in society, brought about by larger income, more leisure, and a desire to express individualism in a culture increasingly defined by mass appeal. The period had high points, such as the moon landings, but it was marred by rioting in the black ghettos and at colleges and universities, large-scale protests to the Vietnam war, assassinations and bombings. During the upheaval, one of the forces which emerged, with a strength it had not known before, was the consumer movement. Dissatisfaction with products and the feeling of being at the mercy of the manufacturer, often a huge corporation, began to plague the purchaser. When Ralph Nader challenged the General Motors Corp., he not only won a court case, but the applause and appreciation of many people who joined him in the fight for consumer protection.

Consumerism expressed both a disillusionment with contemporary life and a desire to challenge the system and make things "right." When consumer groups adopted sophisticated techniques of publicity and legislative pressure to correct what they considered abuses, advertising came under the strongest attack it had ever experienced.

The creation of the Office of Consumer Affairs and the
introduction of legislation to establish a Consumer Protection Agency, delineate "truth in advertising," and expand the authority of the FTC caused deep concern in the advertising industry and recognition that it was not blameless. A National Advertising Review Board was formed by the advertising associations to attempt self-regulation, and business leaders agreed to serve on a special advisory panel, the National Business Council for Consumer Affairs, created by President Nixon.

The strongest force in bringing about reform within the advertising industry was the revitalization of the FTC in 1969. The agency's militant program has uncovered deception, lack of information, particularly in broadcast media advertising, and has unleashed a storm of controversy over its recent counter-advertising proposal. The methods employed by the FTC have not always been fair. Some companies have suffered untold loss in public confidence and patronage due to the FTC's publicity about the issuance of proposed complaints, which later were modified or dropped. A court case in one instance proved that the Commission had failed to examine evidence substantiating a television demonstration and had not contacted the advertising agency about it before announcing to the news media that it was charging the advertiser with deception. Since the FTC has attacked large corporations repeatedly, there is some indication that making headlines and getting public attention are goals of the Commission. Its latest proposal of counter advertising raises grave questions regarding application of the "Fairness Doctrine" to broadcast media, First Amendment protection, and increased government control of the air-waves.

In light of the FTC's continued surveillance of advertising, the industry has resorted to a new type of advertising which says
virtually nothing about the product. To avoid antagonizing the Commission, many agencies are going to additional costs in television commercials to conduct what virtually are laboratory demonstrations. It is likely that this cost will be passed on to the public. 439

There is fear among advertising leaders that repeated FTC attacks will tend to picture advertising as an evil and the public as victims, even though there is impressive evidence that advertising is a major force in the U.S. economy and the main support of a free press. 440

The present, highly-charged atmosphere surrounding the FTC's position could continue or it could taper off due to Presidential disapproval of the agency's militancy and subsequent action to change it, including the eventual appointment of a new Chairman and other Commissioners. Meanwhile, advertisers are hoping that they can prove effective regulation through their own advertising review board and that pending consumer protection legislation will be held over until the next Congress.

With their continuing concern over the FTC and legislation, advertisers may underestimate the strength of the consumer movement. Now firmly established, it is not likely to diminish. "Let the seller beware" is the motto of the present and from all indications, it will be the motto of the future, as well.
Chapter 7

EVALUATION AND CONCLUSION

During the past century there have been four major periods in which protests against deceitful advertising have been made, resulting in government intervention to control advertising for the public good. These periods occurred after the Civil War, at the turn of the twentieth century, during the depression years of the 1930's, and from the mid-1960's to the present time.

A century ago protests against false advertising were feeble and accomplished little except passage of the Postal Act of 1872 to halt the exploitation of lotteries. At this time the greatest menace in advertising to the public's well-being concerned patent medicines. Exaggerated claims promised cures for a myriad of complaints ranging from neuralgia to consumption and lost manhood. Some publishers, such as Samuel Bowles II, publisher of the Springfield Republican, tried to "waken the attention of the good and the right-minded to the mischiefs of quackery in general," but without much success. The powerful journals could afford to dispense with questionable medical advertisements, but the many small newspapers with uncertain finances depended upon this type of advertising for existence. Despite the efforts of George P. Rowell, founder of Printers' Ink, Francis Wayland Ayer, and a few others to establish ethical standards in advertising, the industry as a whole was regarded with disrepute, mainly because of its association with patent medicines.
With only a few objections, this type of advertising flourished until the turn of the century when "muckraking" journalists exposed the dangers involved in self-medication and the fraudulent claims foisted upon a gullible public.

The Industrial Revolution which followed the Civil War and the growth of large corporations left many farmers and small businessmen with feelings of discontent about a way of life that had passed from the American scene. They were attracted to the Populist and Progressive movements which sought social and economic reform. After the depression of 1893 to 1897, this search was intensified with the aim of exposing and curing the ills afflicting society. Crusading journalists began to report conditions as they found them, and their articles were revealing, dramatic, and shocking. Few evils of American life escaped them, and patent-medicine advertising soon came under their penetrating eyes. Notable among the "muckraking" efforts was the "Great American Fraud" series in Collier's magazine in 1905 and 1906 in which writer Samuel Hopkins Adams accused a gullible America of swallowing fraud to the tune of some $75,000,000 annually. Another danger to health, the meat-packing industry, was exposed by Upton Sinclair in his book, The Jungle, published in 1906.

Journalists continued their crusading work until 1912 when the reform mood of the country died down and publishers bowed to the pressures exerted by advertisers. Although "muckraking" journalists did not represent an organized consumer movement, their efforts had lasting effects. Never again would the public be quite as naive, and voluntary and federal reform was stimulated. Leading publications, such as the Scripps-McRae League of Newspapers and the New York Times, intensified
efforts to censor their advertising pages, and they attacked quacks and frauds in their editorial pages. Advertising men, with the help of Printers' Ink, instituted a model statute law penalizing false and misleading advertising and worked for its adoption in the states. Legislative reforms ensued, principally the Pure Food and Drug Act of 1906, making shipments in interstate commerce of adulterated foods and drugs illegal and specifying the manner in which drugs should be labeled. This Act did not insure truth in advertising, but eight years later the advertising industry indirectly came under federal regulation through the FTC Act of 1914.

Despite criticism and new federal regulation, manufacturers of patent medicines continued to do a brisk business. Deception in advertising was not curtailed effectively, and there were faint rumbles of a consumer movement. Commentator Walter Lippmann believed the muckraking period revealed some significant trends. One of them, he said, "hinted at the emerging power of ... the consumer."

The first semblance of a consumer movement occurred in 1916, when the National Consumers' League was formed and issued lists of manufacturers having League-approved labor programs and products. After World War One, a number of women's organizations in large cities conducted investigations into the sale of food and occasionally staged boycotts of high-priced goods. But it was not until 1927 that a book, Your Money's Worth, appeared, clearly articulating the growing consumer interest. Its publication was followed the next year by the establishment of an independent testing agency called Consumers' Research, and by 1936 the agency had a membership of 48,000.
Other groups, such as the American Home Economics Association, the Stephens College Institute for Consumer Education, the American Association of University Women, and the National League of Women Voters quickly became involved in consumer education and lobbied for legislation to regulate advertising.

The economic and social climate of the Great Depression nurtured the growth of the consumer movement. During the "Roaring Twenties," a great percentage of the people enjoyed many luxuries unknown before, and the future was expected to be even more promising. Overnight, the 1929 stock market crash swept away businesses and savings, leaving widespread unemployment and hunger. Existence was perilous and before spending a dime, consumers wanted assurance that they were getting their money's worth.

During the 1930's, Consumers' Research and Consumers Union, founded in 1936, tested products and reported their findings to members and to the public through the Nation and the New Republic, periodicals which supported their work. Regarding these testing agencies, historian Otis Pease comments that "they furnished the consumer movement with a unique foundation of empirical knowledge, an effective counterweight to the prevailing power of advertising judgment."

As the country began to rally from the depression, consumer groups made concerted efforts to see that advertisements contained reliable information about the quality and price of products. At first, advertising men paid scant attention to the consumer movement, but after repeated attacks they decided something must be done to put their houses in order. The National Better Business Bureau, formed in 1925, tried to establish rules of advertising behavior, and a Review
Committee was formed by the advertising associations to check on advertising deemed unfair or detrimental to the public interest. The Committee quickly went out of existence, but progress in voluntary regulation was achieved by prominent newspaper publishers who insisted that advertisements must conform to the standards of accuracy and taste found in news columns.

Federal regulation of advertising was slight until the late 1930's. The attention of the FTC was confined largely to violations of fair trade practices from its founding in 1914 and throughout the 1920's. Moreover, early judicial decisions cast doubt on the Commission's power over advertising. The Winstead Hosiery Co. case in 1922 was considered a landmark in establishing the Commission's authority to control false advertising, but consumer interests actually received little protection during the following decade.

Starting in 1933, the FTC sought legislation to extend its authority to include the prohibition of trade practices deceptive or misleading to the public, as well as those detrimental to the interest of a competitor. At the same time, the Food and Drug Administration of the U.S. Department of Agriculture was seeking legislation to control more effectively the sale of harmful and adulterated drugs and food. These efforts were received with hostile reaction by the advertising industry, and a bitter fight ensued. Involved during the period 1933 to 1938 were advertising agencies, publishers, manufacturers, consumer organizations, and the New Deal Administration. Consumer interests had received the recognition of the New Deal through the establishment of a Consumers' Advisory Board within the National Recovery Administration, and there was organized consumer pressure on Congress.
A new federal Food, Drug, and Cosmetic Act in 1938 supplanted the earlier Act of 1906, and the Wheeler-Lea Amendment to the FTC Act of 1914 also was passed in 1938, giving the Commission an extension of power under the Act's Section 5. No longer was the emphasis on harm to a competing business. If an advertisement deceived consumers, the FTC could act to protect them.

Purchasers appeared to have won a resounding victory in obtaining a new standard for responsible behavior in advertising. In practice, however, the Wheeler-Lea Amendment could control only a small portion of the nation's advertising, and in the final analysis, it was dependent upon Court interpretation. The major goals of the consumer movement were not attained, but consumer organizations had learned how to exert pressures on manufacturers and advertisers and how to lobby for corrective legislation.

It was not until thirty years later, in the 1960's, that the consumer movement really came of age. Consumerism caught the attention of the public, and its importance was acknowledged by business, advertising, and government. With swelling ranks, the movement influenced Presidential thinking, pressured politicians into demanding reform, and forced a change in marketing philosophy from caveat emptor to caveat venditor.

The newly aggressive FTC has business and the advertising industry fearful of Commission complaint orders, demands to run advertisements admitting deception, requests for substantiation of product claims, and the prospect of counter-advertising over the air-waves. Advertising associations and some manufacturers are trying to delay legislation that would establish a separate Consumer Protection
Agency, define truth in advertising, and extend the authority of the FTC. Advertising review boards have been set up by the associations in an effort to show government and the public that the industry can solve its own problems and does not need more federal regulation. Businessmen, meanwhile, are participating in an advisory council created by President Nixon to set ethical standards in advertising, packaging, and other marketing areas.

The present consumer movement started in a period of the greatest prosperity the U.S. had ever known, followed by a recession. It represents dissatisfaction with the mass-production techniques and the impersonality of huge corporations which, many people feel, are more interested in accumulating profits than in manufacturing safe and satisfying products. In line with the revision in social values occurring during the last decade, consumers feel that the manufacturer and advertiser should show a genuine concern for the individual, his well-being and the environment in which he lives.

Findings

The foregoing resumé of the four major periods of consumer action to control false advertising during the past century shows occurrences at approximately thirty-year intervals: 1865-70, 1895-1905, 1928-38, and 1965-present. Major legislation which followed consumer protests also was spaced at intervals of some thirty years, starting with the Postal Act of 1872, the Pure Food and Drug Act of 1906 (and the FTC Act which followed in 1914), the Wheeler-Lea Amendment to the FTC Act in 1938, and bills introduced into the ninety-first Congress and currently pending in the ninety-second Congress. This
evidence would seem to establish validity of the hypothesis:

A cyclical factor of approximately thirty years in the demand for protection of the public against false advertising has been operating in the United States for the past century, spurring the enactment of major legislation to curb advertising abuses.

Research indicates that the efforts of consumers, even though feeble in the beginning, were the prime factor in bringing about reform. In all periods there was a recognition of activities which were harmful to society and the attempt to do something about them.

Investigation also suggests that it is unlikely that a cycle could have occurred more frequently than every thirty years due to a sequence of events that seems to be present in consumer efforts around the turn of the century, in the 1930's, and will, in all probability, occur with the present movement. The sequence includes an awakening to the problems involved, a rallying of consumer forces, a decision regarding the type of reform legislation needed, and exertion of public-information and political pressures until the legislation is achieved, which may take several years. After reaching the goal, there is a relaxing of effort and a feeling of confidence, sometimes exaggerated, that new laws will take care of fraudulent practices. When some of the old abuses continue and new ones appear, time is needed to activate the sequence.

The possibility that the cycle could have occurred less often during the past century seems unlikely. The U.S. is barely two hundred years old, and many changes have occurred since the days of life on the farm and hand-produced goods. With the phenomenal growth of the population, economy, and advertising industry, abuses have arisen which needed correction on a fairly frequent basis.
Investigation shows that social, economic, and political conditions differed in the four periods, but there were some similarities. All four periods happened at times of great change, occurring during the Industrial Revolution following the Civil War, the agrarian crisis and formation of large corporations at the turn of the century, the unemployment and lowered standards of living in the 1930's, and the social revolution in the 1960's.

The last three consumer movements were marked by feelings of disillusionment with life, expressed in the Populist movement of the late 1890's, the vanishing of the American dream of plenty in the depression years, and the present dissatisfaction with mass-produced goods and the de-emphasis of the individual.

During these same three movements, the economy was depressed through part of each period, but the first movement occurred in a time of great prosperity and high employment.

All periods, except the third, happened at times which followed, or were during, wars.

There was no congruency in political parties in power at the time of consumer uprisings, with the Republican administrations of Lincoln, Johnson, Grant, McKinley, Theodore Roosevelt and Taft dominating the first two periods, Republican Hoover and Democrat Franklin Roosevelt serving as Presidents in the third, and the Democratic administrations of Kennedy and Johnson and the Republican administration of Nixon covering the fourth period.

The Postal Act of 1872 and the Pure Food and Drug Act of 1906 occurred in Republican administrations, the FTC and its Wheeler-Lea Amendment in Democratic administrations, and the pending legislation
could occur either under a Republican President this year or if delayed until after the national elections, perhaps a Democratic President.

In assessing political influences, the climate associated with Presidential administrations has been important in the development of reform movements. In the Johnson and Grant administrations following the Civil War, business interests dominated and reform efforts were not encouraged. In the first years of the twentieth century, President Theodore Roosevelt stimulated reform by speaking out about the need for honesty in all relations. Approximately thirty years later, President Franklin Roosevelt indicated the government's willingness to listen to the consumer by establishing a Consumers' Advisory Board within the National Recovery Administration to convey the public's viewpoint. In the 1960's, all three Presidents, beginning with President Kennedy's enunciation of the consumer's right to safety, to be informed, to choose, and to be heard, have shown acceptance of federal responsibility toward the consumer. "The right to be heard" opened the door for the present massive consumer movement.

There appear to be no similarities in age groups of those involved in consumer movements, but women were especially active before and after World War One and in the 1930's. Young people, such as "Nader's Raiders," have participated extensively in the present movement.

One comparison worthy of note is that all four consumer movements began with the printed word. Publishers and editors in the late 1960's wrote about the evils of patent medicines, "muckraking" journalists stimulated reforms in the early 1900's, the appearance of the
book, *Your Money's Worth*, in 1927 marked the start of a national consumer movement, and Nader's *Unsafe At Any Speed* was the focal point for contemporary consumerism.

Another point of interest concerns patent medicines. The consumer effort began a century ago with this type of false advertising, and in 1972, the FTC says patent-medicine advertising for "pain-killers" and other drugs is deceptive. A hundred years of effort has not solved the problem.

An additional similarity may be seen in the creation of an Advertising Review Committee in 1931 by advertising associations to forestall increased government regulation and the recently created National Advertising Review Board, a combined effort of the associations and formed for the same purpose. The earlier Committee stalled and went out of existence within a short period of time, and currently questions are being raised about the efficiency of the NARB. In an editorial August 14, 1972, *Advertising Age* comments:

> It looks like the honeymoon is just about over for the advertising industry's self-regulation apparatus. Various consumer groups are becoming disenchanted with what they consider to be the foot-dragging tactics of the National Advertising Review Board . . . .441

The latest floundering effort at self-regulation by the advertising industry points up the need for some type of governmental control, starting with the growth of advertising after the Civil War. Understandably, advertising people want to operate in a free economy without growing federal intervention. The FTC and other regulatory agencies do not have the staff or funds to police the marketplace fully and, even if they did, increased government controls could stifle creativity, cut product sales which would sharply affect the nation's
economy, and threaten the media which looks to advertising for financial support. The problem is complex and involves not only economic, but ethical issues concerning the public good. More federal control seems inevitable in view of the consumer-protection bills pending before Congress. These may take some time to pass, indicating that the present consumer cycle will continue for several years. It is not likely to subside until the consumerists' major goal of a separate federal Consumer Protection Agency is achieved and the current public hostility to business abates.

In view of the cyclical theory investigated in this thesis, the next consumer cycle should fall in the first years of the twenty-first century. By this time, advertising may come to the consumer by satellite transmission via television-linked facsimile units in the home, bringing new problems.

Although goods produced in the next century undoubtedly will differ from those consumed now, one of the answers to consumer protection lies in increased education about products, such as the nutritional value of foods. Of the present period, Mrs. Knauer has said that "the rudiments of nutrition, which we learned from our parents, give us little help in choosing wisely from all the new, highly-processed foods on the supermarket shelves." Consumer education has begun, and Consumers Union currently is involved in developing a massive program to inform the purchaser, with teaching guides for all school levels and for adults under a federal grant of $250,000,000.

Education about products seems particularly appropriate for young children, who will be in their thirties by the dawn of the twenty-first century. A recent study conducted by the Harvard Graduate
School of Business Administration, under the sponsorship of the U.S. Department of Health, Education and Welfare, showed that as early as the second grade, children were cynical about the promises of television commercials. \(^4^{44}\)

Consumer education points up one of the areas which the writer suggests for future investigators. Occasional consumer-education columns appear in some newspapers, and a few broadcasting stations feature a consumer educator for a few minutes on news programs. How much information is the media giving consumers to help them make intelligent choices among products? Is the information specific or general? Is there evidence to show that choice of information is influenced by advertisers?

In the same vein, another area of worthwhile investigation concerns the operation of consumer departments within various companies. Is this a genuine means of helping the consumer or an effort on paper to give a consumer-oriented image to the company? If this is a valid function, how is the consumer helped, and how many are served?

Other areas which seem worthy of investigation include questions of how great the threat to private initiative may be through increased intervention by government in advertising practices; current and past efforts to place advertising under the protection of the First Amendment; the possibility of the application of the Fairness Doctrine to print, as well as broadcast media; whether labor and reproduction costs involved in furnishing the consumer with substantiation of advertising claims, as called for in the "Truth-In-Advertising" Act, would be passed on to him in terms of higher price per product; the effectiveness of a Consumer Protection Agency, if it is established.
through pending legislation; the efficiency of such agencies now operating at state and local levels; and a detailed history of the consumer movement.

Although this study has been confined to the U.S., it is worth noting that the consumer movement is world-wide in scope and has grown most rapidly in economically advanced countries. The International Organization of Consumers Unions was founded in April, 1960, with the U.S. represented by Consumers Union. Among the organization's activities are the interchange of educational materials, techniques, and test results, providing a technical committee to represent consumers on international standardization bodies, and assisting consumers in under-developed nations.

In the U.S., consumers have demonstrated that they can effect change. During the past century, they have brought the weight of public appraisal to bear on the fraudulent practices of business and the advertising industry. They have pressured legislators for reform, and they have won victories. Not all of them have been great, but the consumer movement has matured. Many lessons have been learned from the past. Armed with this knowledge and new political sophistication, consumers are forcing advertisers to acknowledge that their function is social, as well as economic.
FOOTNOTES


2. Ibid.

3. Ibid., p. 181.


5. Ibid.


7. Young, op. cit., pp. 30-1.


15. Ibid.

17. Virginia H. Knauer, paper read before the Advertising Club of Los Angeles, Sheraton West Hotel, Los Angeles (Calif.), Mar. 1, 1972.


20. Ibid.


22. Senate Bills 986, 1177, and 1461 of the 92d Congress.


29. Magnuson, loc. cit.


31. Wood, op. cit., p. 84.

32. Ibid., pp. 148-158.


41. Ibid.


43. Ibid., p. 135.

44. Ibid.


51. Pease, op. cit., p. 100.


56. Presbrey, ibid., p. 296.

57. Ibid., p. 297.

58. Ibid.

59. Ibid., p. 230.

60. Ibid., p. 253.

61. Ibid., p. 259.

62. Ibid., p. 244.


64. Presbrey, op. cit., p. 253.


67. Ibid., pp. 254, 255.

68. Ibid., p. 254.


71. Ibid., pp. 54-5.


73. Ibid., p. 244.

74. Ibid., p. 291.

75. Ibid.

76. Dulles, op. cit., p. 54.

77. Postal Act of 1872, loc. cit.
79. Ibid., pp. 274-5.
80. Ibid.
81. Ibid., p. 276.
82. Ibid.
83. Turner, op. cit., p. 141.
84. Ibid.
85. Young, op. cit., p. 25.
86. Ibid., p. 21.
90. Wood, op. cit., p. 181. (Publisher Bennett changed from his earlier disregard of quackery in advertising.)
91. Ibid., p. 180.
92. Ibid., p. 181.
93. Ibid.
96. Presbrey, op. cit., p. 525.
97. Ibid., p. 526.
100. Wood, op. cit., p. 195.
104. Ibid., pp. 199-200.
106. Young, op. cit., p. 29.
108. Young, op. cit., p. 29.
110. Ibid., pp. 57-8.
112. Hofstadter, op. cit., p. 4.
113. Ibid., pp. 8, 10.
114. Ibid., p. 5.
120. Ibid., p. 532.
121. Ibid.
122. Young, op. cit., pp. 30-1.
123. Ibid., p. 31.
124. Ibid., pp. 31-2.
125. Ibid., p. 30.
126. Sinclair, loc. cit.
128. Ibid.
129. Ibid., p. 195.
133. Wood, op. cit., p. 335.
134. Ibid.
135. Ibid.
136. Ibid.
137. Presbrey, op. cit., p. 538.
138. Kenner, op. cit., p. 27.
140. Ibid.
141. Ibid., pp. 336-7.
142. Ibid., pp. 338-9.
143. Ibid., p. 341.
144. Ibid.
145. Ibid.
146. Ibid., pp. 341-2.
147. Presbrey, op. cit., p. 534.
148. Ibid.
149. Young, op. cit., pp. 32-3.

150. Ibid., p. 34.

151. Ibid.

152. Presbrey, op. cit., p. 534.


154. Ibid., p. 35.

155. Ibid., pp. 35-6.

156. Pure Food and Drug Act, 1906, loc. cit.


158. Ibid.

159. Sherman Act, loc. cit.; Clayton Act, loc. cit.

160. FTC Act, loc. cit.


167. Ibid., p. 392.


170. Ibid., p. 413.

171. Ibid., pp. 417-8.


176. Ibid.

177. Ibid., p. 37.

178. Sperling, op. cit., p. 129.


181. Ibid.

182. Ibid., pp. 51-2.

183. Ibid., p. 52.

184. Sperling, op. cit., p. 130.


186. Chase and Schlink, loc. cit.

187. Arthur Kallet and Frederick J. Schlink, *100,000,000 Guinea Pigs* (New York: Macmillan, 1933).

188. Pease, op. cit., p. 106.

189. Ibid., p. 102.

190. Ibid.

191. Ibid.


197. Pease, *ibid.*


219. Editors of Time, loc. cit.

220. Ibid.

221. Ibid.


223. Editors of Time, loc. cit.

224. Ibid.

225. Ibid.


231. Ibid., p. 69.
232. Ibid., pp. 69-70.

233. Degler, op. cit., pp. 177, 179.

234. Ibid., p. 171.

235. Ibid., pp. 171-2.


238. Ibid.

239. Ibid.

240. Ibid., pp. 184, 173.


243. Ibid.


248. Ibid., p. 47.


250. Ibid., p. 264.

251. Ibid., pp. 263, 715.

252. Ibid., p. 264.


255. Ibid., May 27, 1972, p. 11.

256. Ibid., July 15, 1972, pp. 16, 15.

258. Ibid.


261. Ibid., pp. 189-90.


263. Degler, op. cit., p. 185.


266. Degler, ibid., p. 190.

267. Ibid., pp. 188, 190.

268. Ibid.

269. Galbraith, op. cit., p. 223.


271. Ibid., and p. 201


274. Ibid.

275. Ibid., p. 254.

276. Ibid., p. 270.

277. Ibid., p. 195.


283. Magnuson, loc. cit.


288. Ibid., p. 147.

289. Ibid.

290. Ibid., p. 145.

291. Ibid.

292. Ibid., pp. 146-7.

293. Ibid., p. 145.

294. Ibid.

295. Ibid.


301. Sam J. Ervin, Jr., "Advertising: Stepchild of the First Amendment?" Advertising Age, July 17, 1972, p. 44.


303. Ervin, Advertising Age, loc. cit.


306. Ibid.


308. Ibid.


310. Knauer, paper read before the Advertising Club of Los Angeles, loc. cit.

311. Weiss, Advertising Age, loc. cit.

312. Ibid.


318. Ibid.


322. Ibid.


324. Ibid.


331. Ibid.

332. Ibid.


334. Ibid.

335. Ibid.


338. Ibid.


342. Ibid.

343. Ibid.

344. Ibid.


348. Ibid.

349. Ibid.

350. Ibid.

351. U.S., President, 1968- (Nixon), Message from the President of the United States to the 92d Congress, 1st Session, loc. cit.

352. Ibid.


356. Ibid.

357. Ellen Stern Harris, "Hope for a Protection Law," Los Angeles Times, July 9, 1972, Sec. E, p. 6, cols. 1-5.

358. Ibid.


360. Harris, Los Angeles Times, loc. cit.


362. Ibid.

363. Ibid.

364. Ibid.


369. Ibid.

370. Ibid.

371. Ibid.


374. Ibid.

375. Ibid.

376. Ibid.

377. Ibid.

378. Ibid.


382. Miles W. Kirkpatrick, statements in an address before the International Radio and Television Society, loc. cit.


385. Ibid.


391. Ibid.; FTC v. Winsted Hosiery Co., loc. cit (Footnote 206), was considered a "landmark" case in establishing the FTC's authority to control false advertising; in FTC v. Algoma Lumber Co., loc. cit. (Footnote 208) Justice Benjamin Cardozo said: "Competition may be unfair within the scope of the discretionary powers conferred on the Commission, though the practice condemned does not amount to fraud as understood in courts of law."


395. Ibid.

396. Caspar W. Weinberger, paper read before the Ohio State Bar Association, Akron (Ohio), May 14, 1970. Italics included in paper.


399. Ibid.


401. Ibid.

402. Ibid.

403. Brown, conversation with the writer, loc. cit.


407. Knauer, paper read before the Advertising Club of Los Angeles, loc. cit.
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<th>Reference</th>
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<td>413.</td>
<td>Business Week, Special Report, loc. cit.</td>
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<td>416.</td>
<td>Ibid.</td>
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<td>418.</td>
<td>Ibid.</td>
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<td>422.</td>
<td>Ibid.</td>
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<td>Knauer, paper read before the Advertising Club of Los Angeles, loc. cit.</td>
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<td>424.</td>
<td>Ibid.</td>
</tr>
<tr>
<td>427.</td>
<td>Ibid.</td>
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432. Ibid.


434. Ibid.


440. Ibid.


442. Knauer, paper read before the Advertising Club of Los Angeles, loc. cit.


444. Knauer, paper read before the Advertising Club of Los Angeles, loc. cit.

BIBLIOGRAPHY

Books


Kallet, Arthur and Frederick J. Schlink. 100,000,000 Guinea Pigs. New York: Macmillan, 1933.


Court Decisions


FTC v. Winsted Hosiery Co. 258 U.S. 483 (1922).

National Petroleum Refiners Ass'n v. FTC. Civil Action no. 1180-71, reported in U.S. *Congressional Record.* April 5, 1972.
Red Lion Broadcasting Co. v. FCC. 381 F.2d 908 (D.C.Cir., 1967).


FTC Complaints Pending


Government Documents and Publications


Interviews and Correspondence


Newspapers


_______. July 18, 1972.


Periodicals

Advertising Age, Apr. 24, 1972, p. 2.

_______. June 26, 1972, p. 18.

_______. May 8, 1972, pp. 1, 133.

_______. May 15, 1972, p. 97.

_______. May 29, 1972, p. 2.


*Changing Times*, Nov., 1969, p. 46.


———. "ITT Strongly Counters FTC Charges . . .," *Advertising Age*, July 17, 1972, pp. 1, 61.

Proposed Legislation

U.S. Senate. Bills, 986, 1177, and 1461, 92d Congress.

Public Statements


_______. Statements in an address before the International Radio and Television Society, New York City, Apr. 27, 1972.


Statutory Law

Unpublished Works
