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ADVERTISING—1971

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HEARING

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

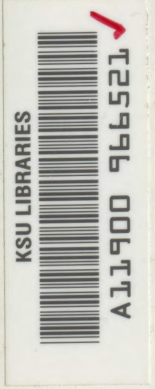
ON

S. 1461

TO REQUIRE THE FURNISHING OF DOCUMENTATION OF CLAIMS CONCERNING SAFETY, PERFORMANCE, EFFICACY, CHARACTERISTICS, AND COMPARATIVE PRICE OF ADVERTISED PRODUCTS AND SERVICES

S. 1753

TO ESTABLISH A NATIONAL INSTITUTE OF ADVERTISING, MARKETING, AND SOCIETY



OCTOBER 4, 1971

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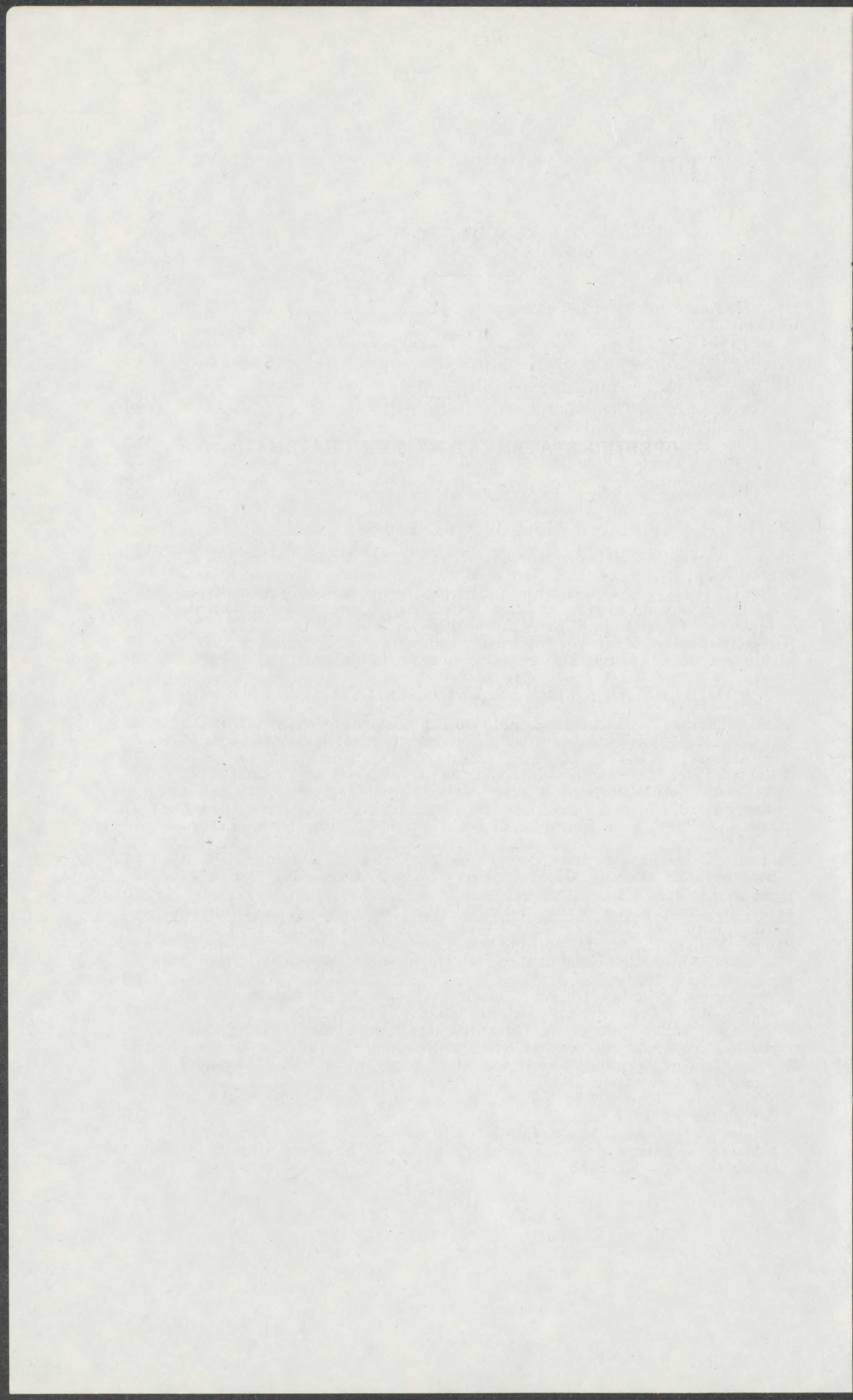

TRUTH IN ADVERTISING ACT OF 1971

MONDAY, OCTOBER 4, 1971

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met at 10 a.m., in room 5110, New Senate Office Building, Hon. Frank E. Moss, presiding.

Present: Senators Moss, Cook, and Hatfield.

OPENING STATEMENT BY THE CHAIRMAN

Senator MOSS. The committee will come to order.

We are convening these hearings this morning to hear testimony on S. 1461, the Truth in Advertising Act, and S. 1753, the National Institute of Advertising, Marketing, and Society Act, and amendment 421 to S. 1753.

The Truth in Advertising Act would require advertisers to provide documentation for claims made in advertisements to individuals requesting such information. The act would also require the carrier of advertisements, that is the publisher or broadcaster, to furnish the name and address of the advertiser, so that the public would know where to turn to obtain the substantiating information.

S. 1753 and amendment 421 would establish within the National Science Foundation a research capacity to study the psychological and social effects of advertising and marketing. The institute would also serve as a clearinghouse for Government, industry and the academic community, and the public in the dissemination of this type of information.

The complex marketing system in our country is meeting new stresses and changes, many of which are brought on by consumer demands for the fulfillment of newly defined consumer rights. Under the auspices of the Council of Better Business Bureaus, advertisers and advertising agencies have established a self-regulatory mechanism, the National Advertising Advisory Committee and its companion National Advertising Review Board.

The Federal Trade Commission, shedding a long standing reluctance to deal intimately with advertising has, under Chairman Kirkpatrick, embarked on a comprehensive review of advertising practices and concurrently developed a program of combating violations of the Federal Trade Commission Act at a pace never before witnessed by the public or the industry.

Staff member assigned to this hearing: Edward Merlis.

But, S. 1461 gives the individual the necessary powers to make his own decision in the marketplace. Basically it flows simply from the conservative principle that an advertiser must stand behind the claims he makes.

S. 1753 has a broader, more far-reaching objective. The National Institute of Advertising, Marketing and Society would be a research institution, independent of the distortions of economic self-interest and bureaucratic stagnation, with a broad mandate to consider the social impact of the consumer culture, engage in the analysis of marketing themes, techniques, and behavioral problems, and illuminate conflicts between the consumer culture and national goals and ideals.

The institute would have no regulatory powers, but it is envisoned that industry, Government, and the public at large would make full use of the knowledge developed by the institute to better American life.

In the Congress we find ourselves faced repeatedly with questions involving marketing techniques and effects. We recently passed in the Senate, a campaign financing bill, which has much to do with the marketing of politicians. We passed a law banning broadcast cigarette advertising. We have discussed the problem of advertising and nutritional illiteracy and advertising and drug abuse.

And each time we have delved into these areas, we have been stymied in one way or another by a lack of basic scientific literature accurately describing the psychosocial impact of advertising.

So we will hear testimony on both of these bills this morning.

(The bills and agency comments follow:)

92d CONGRESS
1st Session

S. 1461

IN THE SENATE OF THE UNITED STATES

April 1, 1971

Mr. McGovern (for himself and Mr. Moss) introduced the following bill; which was read twice and referred to the Committee on Commerce

A BILL

To require the furnishing of documentation of claims concerning safety, performance, efficacy, characteristics, and comparative price of advertised products and services.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Truth in Advertising Act
4 of 1971".

5 FINDINGS AND PURPOSE

6 Sec. 2. (a) The Congress hereby finds that informed
7 consumers are essential to the fair and efficient functioning
8 of the free market economy; that the individual has the right
9 to know and ought to be able to obtain for his personal con-
10 sideration, the documentation advertisers use in support of

1 claims for the products and services he is asked to purchase;
2 and that this information, which frequently is unavailable
3 through the advertising itself, is needed by the individual to
4 make intelligent and informed choices in today's highly com-
5 petitive and complex market place.
6 (b) It is the purpose of this Act (1) to ensure that no
7 advertisement can be disseminated if substantiating docu-
8 mentation is not available to the public and (2) to ensure
9 that individuals will be able to exercise their right to know,
10 to protect themselves from unsubstantiated claims and to act
11 directly to promote fairness in advertising.
12 DEFINITIONS
13 SEC. 3. As used in this Act—
14 (a) The term "advertisement" means all forms of pro-
15 motion for products and services conveyed through, but not
16 limited to, radio, television, cable television, cinema, news-
17 papers, magazines, billboards, posters, direct mail material
18 and point of sale display material.
19 (b) The term "Commission" means the Federal Trade
20 Commission.
21 (c) The term "commerce" means commerce between
22 any State, or possession of the United States, or the District
23 of Columbia, and any place outside thereof; or between points
24 within the same State, possession, or the District of Colum-

1 bia, but through any place outside thereof; or within the
2 District of Columbia or any possession of the United States.
3 (d) The term "documentation" means—
4 (1) in the case of any advertisement containing
5 claims concerning the safety, performance, efficacy, or
6 characteristics of a product or service including testi-
7 monials thereto—
8 (A) a full and complete description of all
9 material aspects of any pertinent research or other
10 data, including a detailed summary of all tests, in
11 support of or detracting from any claim in the
12 advertisement, including the name and address of
13 any testing organization or agency and its principal
14 officers, the date, duration, procedures, methods,
15 and results of any tests, the brand names of products
16 or services tested, and the technical names of any
17 ingredients tested;
18 (B) when specifically requested by a person,
19 full disclosure of all material research, tests, and
20 other data contained in the description and sum-
21 mary referred to in clause (A) of this paragraph.
22 Nothing in this subsection shall require disclosure
23 of the exact product formulation when such a dis-
24 closure comprises a trade secret;

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1 (2) in the case of an advertisement with respect
2 to compartive price, a substantial representative listing
3 of prices of products or services sold in the marketing
4 area served by the advertisement which form the basis
5 for the comparison.
6 (e) The term "person" means an individual, corpora-
7 tion, partnership, association, or any organized group, includ-
8 ing local, State, or Federal Government agencies.
9 (f) The term "principal office" means the headquarters,
10 corporate or otherwise, of the person disseminating the
11 advertising; however, in the case of regional or local adver-
12 tising, the principal office shall mean an office located within
13 the regional or local marketing area in which the advertis-
14 ing is disseminated.
15 UNLAWFUL ADVERTISING WITHOUT FURNISHING
16 DOCUMENTATION
17 SEC. 4. (a) It shall be unlawful for any person to
18 disseminate, or cause to be disseminated, by the United
19 States mails, or in commerce by the use of, but not limited
20 to, radio, television, cable television, cinema, newspapers,
21 magazines, billboards, posters, and point of sale display mate-
22 rial, any advertisement concerning the safety, performance,
23 efficacy, characteristics, or comparative price of any product
24 or service unless documentation is available at the principal

1 office of such person in the United States for public inspec-
2 tion, including the furnishing of copies of such documenta-
3 tion to any person requesting such documentation by mail,
4 telephone, or otherwise. The cost of duplication may be
5 charged to the person requesting such copies, but in no case
6 shall the charge exceed the actual cost of duplication.
7 (b) The publisher, radio or television broadcast sta-
8 tion, or agency or medium for the dissemination or advertis-
9 ing, except the person making the claims subject to this Act
10 in such advertisement, shall be liable under this section by
11 reason of the dissemination of such advertising—
12 (1) if he refuses, on the verbal or written request
13 of any person, to furnish the name and address of the
14 person who caused him to disseminate such
15 advertisement.
16 (2) if he fails to inform publicly his readers,
17 listeners, or viewers on a regular basis that documenta-
18 tion for advertising claims is available upon request
19 and that the name and address of the person making
20 the advertising claims subject to this Act, and carried
21 by his publication or broadcast station, is available by
22 contacting his publication or station.
23 (c) The dissemination or the causing to be dissemi-
24 nated of any advertisement in violation of subsections (a) and

1 (b) shall be an unfair or deceptive act or practice in com-
2 merce within the meaning of section 5 of the Federal Trade
3 Commission Act.

4 ADMINISTRATION

5 SEC. 5. (a) This Act shall be enforced by the Commis-
6 sion under rules, regulations, and procedure provided for in
7 the Federal Trade Commission Act.

8 (b) The Commission is authorized and directed to pre-
9 vent any person from violating the provisions of this Act in
10 the same manner, by the same means, and with the same
11 jurisdiction, powers, and duties as though all applicable terms
12 and provisions of the Federal Trade Commission Act were
13 incorporated into and made a part of this Act. Any such
14 person violating the provisions of this Act shall be subject
15 to the penalties and entitled to the privileges and immunities
16 provided in the Federal Trade Commission Act, in the same
17 manner, by the same means, and with the same jurisdiction,
18 powers, and duties as though the applicable terms and provi-
19 sions of such Act were incorporated into and made a part
20 of this Act: *Provided*, That persons excepted by section
21 5 (a) (6) thereof shall not thereby be exempted from Federal
22 Trade Commission enforcement of the provisions of this Act.

23 (c) The Commission is authorized to prescribe such sub-
24 stantive and procedural rules and regulations as may be
25 necessary or proper in carrying out the provisions of this Act.

1 EFFECTIVE DATE

2 SEC. 6. The provisions of this Act shall take effect upon

3 the expiration of one hundred and twenty days after the date

4 of its enactment, except that subsection 5 (c) shall take

5 effect immediately.

92d CONGRESS
1st Session

S. 1753

IN THE SENATE OF THE UNITED STATES

May 3, 1971

Mr. Moss introduced the following bill; which was read twice and referred to the Committee on Commerce

A BILL

To establish a National Institute of Advertising, Marketing, and Society.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "National Institute of Ad-
4 vertising, Marketing, and Society Act."

5 POLICY AND PURPOSE

6 Sec. 2. (a) The Congress hereby finds that—
7 (1) there is increasing concern in the United States
8 and in other industrialized countries over the partially
9 hidden, imperfectly understood psychological and social
10 costs of mass marketing and advertising techniques;

1 (2) local, State, and Federal governments do not
2 have the capacity to integrate and evaluate the psycho-
3 logical and social effects of advertising and marketing;
4 (3) marketing and advertising utilize highly refined
5 techniques about which little information of significance
6 is available to the public and to governmental agencies;
7 (4) there is no existing governmental or non-
8 governmental institution capable of adequately studying
9 and comprehending the psychological and social aspects
10 of the consumer culture in an objective and comprehen-
11 sive manner or of integrating such knowledge as does
12 exist;
13 (5) the public interest requires the widest possible
14 range of social and scientific insights applied by an insti-
15 tution independent of economic and political pressures;
16 and
17 (6) there is a need for a focused, scientifically
18 sound program of behavioral research on the psycho-
19 logical and social impact of marketing and advertising
20 to be conducted by an appropriate independent insti-
21 tution.
22 (b) It is the purpose of this Act, therefore, to establish
23 the National Institute of Advertising, Marketing, and
24 Society.

1 ESTABLISHMENT

2 SEC. 3. (a) There is hereby established within the Fed-
3 eral Trade Commission an agency to be known as the Na-
4 tional Institute of Advertising, Marketing, and Society.
5 (b) The Institute shall be headed by a Director, who
6 shall be appointed by the President, by and with the advice
7 and consent of the Senate, for a term of six years. Under
8 the general supervision of the Chairman of the Federal
9 Trade Commission, the Director of the Institute shall be
10 responsible for carrying out the functions of the Institute
11 and shall have authority and control over all personnel and
12 activities of the Institute.
13 (c) A Deputy Director of the Institute shall be ap-
14 pointed by the President, by and with the advice and consent
15 of the Senate, for a term of six years. The Deputy Director
16 shall perform such duties and exercise such powers as the
17 Director may prescribe, shall act for, and exercise the powers
18 of, the Director during his absence.

19 FUNCTIONS OF THE INSTITUTE

20 SEC. 4. (a) In order to carry out the objectives of this
21 Act, the Institute shall—
22 (1) undertake, on its own initiative, research proj-
23 ects concerning the impact of advertising and marketing
24 upon society, particularly the psychological, and social

1 effects of advertising and marketing techniques upon
2 the consumer;
3 (2) undertake, at the request of any agency rep-
4 resented on the Advisory Council, research projects
5 concerning the impact of advertising and marketing
6 upon society;
7 (3) intervene on its own initiative or upon the
8 request of any Federal executive agency with respect
9 to any issue affecting the impact of advertising and
10 marketing upon society when in the opinion of the
11 Director such representation would contribute to carry-
12 ing out the purposes of this Act;
13 (4) conduct a study of the relationship between
14 the themes and techniques of advertising and drug
15 abuse;
16 (5) conduct a study of the relationship between
17 marketing techniques and advertising and the alienation
18 of young persons from society;
19 (6) conduct a study of the relationship between
20 advertising and the knowledge, attitudes and percep-
21 tion of children;
22 (7) collect, analyze, and disseminate to the public
23 relevant information on behavior research relating to
24 advertising and marketing practices; and

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1 (8) prepare at least annually, and at such other
2 times as the Director may deem appropriate, a report
3 concerning its activities together with such recommenda-
4 tions, including recommendations for additional legis-
5 lation, as the Director deems advisable.

6 (b) In carrying out the functions of the Institute under
7 this section, the Director may establish such laboratories
8 and facilities as it deems necessary to be operated by the
9 personnel of the Institute. With a view to obtaining addi-
10 tional scientific and intellectual resources available, the Di-
11 rector shall, whenever feasible, enter into contracts with
12 public or private educational or research institutions for the
13 purpose of undertaking any particular study or research proj-
14 ect authorized by this Act.

15 ADMINISTRATIVE PROVISIONS

16 SEC. 5. (a) In addition to any authority vested in it by
17 other provisions of this Act, the Institute, in carrying out its
18 functions, is authorized to—

19 (1) prescribe such regulations as it deems necessary
20 governing the manner in which its functions shall be
21 carried out;

22 (2) receive money and other property donated,
23 bequeathed, or devised, without condition or restriction
24 other than that it be used for the purposes of the Insti-

1 tute; and to use, sell, or otherwise dispose of such prop-
2 erty for the purpose of carrying out its functions;
3 (3) in the discretion of the Institute, receive (and
4 use, sell, or otherwise dispose of, in accordance with
5 paragraph (2)) money and other property donated,
6 bequeathed, or devised to the Institute with a condition
7 or restriction, including a condition that the Institute
8 use other funds of the Institute for the purposes of the
9 gift;
10 (4) appoint one or more advisory committees com-
11 posed of such private citizens including representations
12 of concerned consumer organizations and officials of
13 Federal, State, and local governments as he deems de-
14 sirable to advise the Institute with respect to its func-
15 tions under this Act;
16 (5) appoint and fix the compensation of such
17 personnel as may be necessary to carry out the provi-
18 sions of this Act without regard to the provisions of title
19 5, United States Code, governing appointments in the
20 competitive service, and without regard to the provisions
21 of chapter 51 and subchapter III of chapter 53 of such
22 title relating to classification and General Schedule pay
23 rates, but no more than three individuals so appointed
24 shall receive compensation in excess of the rate pre-

1 scribed for GS–18 in the General Schedule under section
2 5332 of title 5, United States Code;
3 (6) obtain the services of experts and consultants
4 in accordance with the provisions of section 3109 of title
5 5, United States Code, at rates for individuals not to ex-
6 ceed the rate prescribed for GS–18 in the General
7 Schedule under section 5332 of title 5, United States
8 Code;
9 (7) accept and utilize the services of voluntary and
10 noncompensated personnel and reimburse them for travel
11 expenses, including per diem, as authorized by section
12 5703 of title 5, United States Code;
13 (8) enter into contracts, grants or other arrange-
14 ments, or modifications thereof to carry out the pro-
15 visions of this Act, and such contracts or modifications
16 thereof may, with the concurrence of two-thirds of the
17 Members of the Board, be entered into without perform-
18 ance or other bonds, and without regard to section 3709
19 of the Revised Statutes, as amended (41 U.S.C. 5);
20 (9) provide for the making of such reports (includ-
21 ing fund accounting reports) and the filing of such appli-
22 cations in such form and containing such information
23 as the Director may reasonably require:
24 (10) make advances, progress, and other payments

1 which the Director deems necessary under this Act with-
2 out regard to the provisions of section 3648 of the
3 Revised Statutes, as amended (31 U.S.C. 529); and
4 (11) make other necessary expenditures.
5 (b) Each member of a committee appointed pursuant
6 to paragraph (4) of subsection (a) of this section who is
7 not an officer or employee of the Federal Government shall
8 receive an amount equal to the maximum daily rate pre-
9 scribed for GS-18 under section 5332 of title 5, United States
10 Code, for each day he is engaged in the actual performance
11 of his duties (including travel time) as a member of a com-
12 mittee. All members shall be reimbursed for travel, subsist-
13 ence and necessary expenses incurred in the performance
14 of their duties.

15 ADVISORY COUNCIL ON ADVERTISING
16 MARKETING, AND SOCIETY

17 SEC. 6. (a) There is hereby established in the Institute
18 a National Advisory Council on Advertising, Marketing,
19 and Society to be composed of—
20 (1) the Secretary of Health, Education, and
21 Welfare;
22 (2) the Chairman of the Council on Environ-
23 mental Quality;
24 (3) the Administrator of the Environmental Pro-
25 tection Agency;

1 (4) the Director of the National Science Founda-
2 tion;
3 (5) the Chairman of the Federal Trade Commis-
4 sion, who shall be Chairman of the Council;
5 (6) the Chairman of the Federal Communications
6 Commission;
7 (7) the Director of the Consumer Protection
8 Agency.
9 In the event of the unavoidable absence of any member of
10 the Council, that member may designate an officer of the
11 agency concerned to represent him.
12 (b) The Council shall advise the Director of the Insti-
13 tute with respect to appropriate research projects within the
14 jurisdiction of each agency represented on the Council to
15 be conducted by the Institute and to establish criteria for
16 the priority of such projects.
17 COMPENSATION OF DIRECTOR AND DEPUTY DIRECTOR
18 SEC. 7. (a) Section 5315 of title 5, United States
19 Code, is amended by adding at the end thereof the following
20 new paragraph:
21 "(95) Director, the National Institute of Advertis-
22 ing, Marketing, and Society.".
23 (b) Section 5316 of title 5, United States Code, is
24 amended by adding at the end thereof the following new
25 paragraph:

1 "(130) Deputy Director, National Institute of
2 Advertising, Marketing, and Society.".

3 DEFINITIONS

4 SEC. 8. As used in this Act the term—
5 (1) "Council" means the National Advisory
6 Council on Advertising, Marketing, and Society;
7 (2) "Director" means the Director of the National
8 Institute of Advertising, Marketing, and Society;
9 (3) "Federal executive agency" means any de-
10 partment, agency, or independent establishment in the
11 executive branch of the Government, including any
12 agency described in section 551 of title 5, United States
13 Code, and any wholly owned Government corporation.

14 AUTHORIZATION OF APPROPRIATIONS

15 SEC. 9. There are authorized to be appropriated such
16 sums, not to exceed $5,000,000 in any fiscal year as may be
17 necessary to carry out the provisions of this Act.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., October 12, 1971.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the Federal Communications Commission's views on S. 1461 and S. 1753.

The "Truth in Advertising Act," S. 1461, would make it unlawful for any person to advertise in commerce concerning the safety, performance, efficiency, characteristics, or comparative price of any product or service without having substantiating documentation available for public inspection at its principal office, including furnishing it to anyone requesting it.

The Federal Trade Commission would be empowered to enforce the provisions of the Act. The FTC administratively has undertaken certain steps consistent with the objectives of the legislation. In July of this year that Agency announced its intention to require the submission by selected industries of documentation substantiating their advertising claims, which data would be made public. In testimony before the Senate Consumer Subcommittee, Chairman Kirkpatrick suggested that any final action on S. 1461 be deferred until the experience gained under FTC's program can be assessed.

The FTC is, of course, charged with certain responsibilities concerning false, misleading, or deceptive advertising. While the Federal Communications Commission is also concerned with advertising carried by broadcast licensees, we believe that the FTC, with its scientific expertise to evaluate advertising claims and its ablity to act across-the-board, has primary responsibility with respect to questions concerning the truth of falsity of advertising. We would thus defer to the Federal Trade Commission's views as to the need for legislation such as S. 1461.

We note, however, that section 4(b)(2) requires, in part, that a radio or television broadcaster inform his listeners or viewers on a regular basis that documentation for advertising claims and the name and address of the person making them are available by contacting the station. Should legislation along this line be enacted, we suggest the Federal Communications Commission should properly be the Agency to determine the frequency of such announcements by our licenses. We would, of course, be pleased to consult with FTC on the matter.

S. 1753, the "National Institute of Advertising, Marketing, and Society Act" would establish an Institute to gather or initiate and produce a focused, scientifically sound, program of behavioral research and collect, analyze and disseminate information based upon such research as it relates to advertising and marketing practices. Further, it would create within the Institute a National Advisory Council on Advertising, Marketing and Society composed of representatives from appropriate government departments and agencies.

Here again the Commission defers to the views of the Federal Trade Commission as to the need for such an Institute and we express no opinion as to the proper structure or location for such an office. We note with approval the suggestion of Chairman Kirkpatrick to delete section 4(a)(3) of the bill which directs that the Institute shall "intervene on its own initiative or upon the request of any Federal executive agency with respect to any issue affecting the impact of advertising and marketing upon science."

The Office of Management and Budget advises that while there is no objection to this report to the Congress, that office strongly opposes enactment of S. 1753 at this time for the reasons stated in the report of the Department of Commerce.

Sincerely,

DEAN BURCH, *Chairman.*

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., October 19, 1971.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in further reply to your request for the views of this Department concerning S. 1461, a bill to require the furnishing of documenation of claims concerning safety, performance, efficacy, characteristics, and comparative price of advertised products and services, to be cited as the "Truth in Advertising Act of 1971."

S. 1461 would prohibit the dissemination of any advertisement concerning the safety, performance, efficacy, characteristics, or comparative price of any product or service unless documentation is available for public inspection and distribution at the principal office of the individual, corporation, or other organization responsible for such product or service. The "documentation" of a product must contain a full and complete description of all pertinent research or other data in support of or detracting from any claim in the advertisement, including the name and address of any testing organization, and the date, duration, and procedures used in any test. The allowable fee for any distribution of such documentation to the public would be limited to the actual cost of duplication.

Further, the publisher, radio or television broadcast station, or agency or medium for the dissemination of advertising, would be required to furnish the name and the address of the advertiser to any person upon request, and would also be required to publish a notice to the effect that documentation for any advertised claims is available through his medium. Failure to do so would constitute an unfair or deceptive trade practice under section 5 of the FTC Act. The FTC would also be responsible for the enforcement of this Act.

The Department of Commerce recommends against enactment of S. 1461 at this time.

At the present time, the Advertising Industry Advisory Committee to the Department of Commerce, which is composed of leading industry executives, is considering various methods and specific proposals to institute effective self regulation in advertising. The Secretary of Commerce has attended two advisory committee meetings within the past few months.

Industry believes, and we concur, that effective self regulation is the best method of providing the consumer with sound data to make intelligent buying decisions. In fact, the Advertising Code of the American Advertising Federation developed in cooperation with the Council of Better Business Bureaus, incorporates the principle of eliminating false claims in advertising.

Moreover, we believe that certain provisions of the bill are ambiguous and vague. Under section 3(d)(1) the definition of "documentation" is so broad as to permit inspection of any materials and data which would support or detract from any claims regarding "safety, performance, efficacy, or characteritsics of a product or service." Conceivably, the entire research and development program of an advertiser in relation to the advertised product would have some bearing, however slight, on the above claims. He would therefore be forced to permit inspection of such data by the public, including his competitors. In this manner those not willing to invest in basic research could obtain the benefits of the investment of others. This situation is not alleviated by the proviso exempting product formulation when such is a trade secret. The scope of valuable business data and even legally protectable trade secrets is far broader than product formulation and would include *inter alia* process data, tolerances and market research. Further, an evaluation by the FTC as to what constitutes a "trade secret" without criteria or standards would pose a formidable task.

Further, the provision in the bill relating to comparative pricing (section (3)(d)(2)) requires the documentation to include a "substantial representative listing of prices of products or services sold in the marketing area served by the advertisement which form the basis for the comparison." Yet, the bill does not contain a definition of "substantial representative listing." Prices on individual products and services shift quickly, from day to day, because of special sales or promotions. Hence, any attempt to develop a record of price information on competing products or services would result in an impracticable burden on industry. A uniform price comparison standard should be included in this section which would give all advertisers an objective standard on which to base their comparisons.

Under section 4(a) an advertiser is required to have "documentation . . . available at" his "principal office" and to furnish copies of same upon request "by mail, telephone or otherwise." Obviously, the receipt and response to such requests can become an extremely burdensome and expensive operation, particularly for nationwide advertisers. In fact, this provision lends itself to concerted efforts by groups of individuals who would seek to harass a particular company for any of a variety of reasons. It is therefore necessary to impose added restrictions to limit those who can request such documentation and to restrict the manner in which such requests can be made.

Finally, under section 4(a) of the bill, advertisers would be allowed to recover only the actual costs of duplication when they provide any documentation of

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their claims to the public. We believe that this provision would impose a substantial and undue administrative burden on industry. Smaller companies may not be able to absorb the costs associated with the development and publication of the required materials. As a bare minimum, advertisers should be allowed to recover administrative costs associated with the duplication of the documentation.

Because of the desirability of self regulation by industry, and industry's demonstrated willingness to accept it, and for other reasons contained herein, we cannot recommend enactment of S. 1461 at this time.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of our report to the Congress from the standpoint of the Administration's program.

Sincerely,

WILLIAM W. LETSON,
General Counsel.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., June 28, 1971.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: By letter of May 10, 1971, you requested our comments on S. 1753, 92d Congress.

The bill would establish a National Institute of Advertising, Marketing, and Society within the Federal Trade Commission and a National Advisory Council on Advertising, Marketing and Society.

We have no special information as to the advantages or disadvantages of the measure and therefore make no comments regarding its merits. However, we have the following comments on specific provisions of the bill.

Section 5(a)(5) authorizes the Institute to set pay rates for its personnel without regard to title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification and General Schedule pay rates except that "* * * no more than three individuals so appointed shall receive compensation in excess of the rate prescribed for GS-18 in the General Schedule * * *." We perceive no reasons why the activities of the Institute cannot be conducted by personnel appointed and compensated within the structure of the Executive Schedule and the General Schedule. We suggest that section 5(a)(5) be deleted from the bill or that it be revised to merely authorize appointment and compensation of personnel in which case the provisions of title 5 of the United States Code relating thereto would be applicable.

Section 5(a), paragraph 8, authorizes the Institute to "enter into contracts, grants, or other arrangements, or modifications thereof * * *." We suggest that the committee consider providing for the Comptroller General to have access for the purpose of audit and examination to the books and records of the recipients of Federal grants. This could be accomplished by adding the following language to section 5(a):

(12) Each recipient of a grant under this subsection shall keep such records as the Director may prescribe, including records which can be used to support fully the amount of his grant, and such records as will facilitate an effective audit.

(13) The Director and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers and records of the recipient of any grant under this subsection which are pertinent to such grant.

Section 5(a)(8) would also authorize the Institute, with the concurrence of two-thirds of the members of the Board, to enter into contracts without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5). We believe that the specific exemption from section 3709 is unnecessary because that statute provides sufficient exceptions to its basic provision to cover the needs of the Institute. Also, since there is no other mention in the bill of a "Board," its use in this section suggests that a section dealing with a "Board" has been omitted from the bill, or that the word "Board" should be changed to "Institute."

Section 5(b) provides that "All members [of advisory committees] shall be reimbursed for travel, subsistence, and necessary expenses * * *." This section places no restriction upon either the type or the amount of travel expenditures

for which the Government would be obligated, nor does it permit the payment of either travel or subsistence on a commuted basis. Sections 5701–5708 of title 5, United States Code, provide general authority for the heads of all agencies and establishments to pay a commuted allowance of $25 per day in lieu of actual expenses for subsistence and other necessary travel expenses unless such allowance would be much less than the actual and necessary expenses, in which event the head of the agency or establishment may authorize reimbursement, not to exceed $40 per day, on an actual expense basis.

Assuming that it is not desired to make the travel expenses of the committee members subject to the general laws relating thereto, we believe that the bill would provide more satisfactory guidelines from the standpoint of both administration and audit and, at the same time, not result in the loss of monetary benefits if the final sentence of section 5(b) were amended to read as follows:

Each committee member shall be entitled to reimbursement for necessary travel expenses (or in the alternative, mileage for use of his privately owned vehicle and a per diem in lieu of subsistence not to exceed the rates prescribed in 5 U.S.C. 5702, 5704), and other necessary expenses incurred by him in the performance of duties vested in the committee, without regard to the provisions of subchapter I, Chapter 57 of title 5 of the United States Code, the Standardized Government Travel Regulations, or 5 U.S.C. 5731."

Section 4(a), paragraph 8, provides for reporting on the activities of the Institute but no mention is made as to whom the report shall be made. The committee may wish to consider this point.

Sincerely yours,

R. F. Keller,
Assistant Comptroller General of the United States.

National Science Foundation,
Washington, D.C., October 8, 1971.

Hon. Warren G. Magnuson,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

Dear Mr. Chairman: This is with further reference to your letters of May 12 and September 17, 1971, requesting the comments of the National Science Foundation on S. 1753 and Amendment No. 421 thereto, providing for the establishment of a National Institute of Advertising, Marketing and Society within the National Science Foundation.

I am much in sympathy with the apparent purposes of the bill—to seek an understanding of the impact of advertising and marketing techniques in widespread use today on the welfare of our citizens. There is some evidence and much speculation in the press and other literature concerning the undesirable aspects of this impact. However, truly scientific research in this area is very slight. The National Science Foundation has supported only a handful of projects in the last several years without rejecting any competent proposals. In my opinion, much more effort is appropriate to seek an understanding of the actual impact of modern advertising and marketing techniques and the means by which it is achieved. The National Science Foundation already has authority to increase support of research in this field, subject to the availability of funds, if more competent researchers become available and present acceptable proposals. Thus, S. 1753, as it applies to the Foundation's authority to support such research is unnecessary.

I am much more concerned with other aspects of the bill assuming that Amendment No. 421 is incorporated in it. It would establish in the Foundation an apparently semi-autonomous institute with authority to establish its own laboratories and to intervene affirmatively in the affairs of private organizations. With respect to the first point, with your personal participation the National Science Foundation was expressly prohibited from operating its own laboratories. I believe that this prohibition was wise, for I believe that an agency cannot fairly and effectively administer a program largely devoted to supporting scientific activities selected competitively on the basis of intrinsic worth when it is in direct competition with applicants for such support. I therefore strongly oppose establishment by the Foundation of its own laboratories. To do so in an area such as that delineated in S. 1753, which is bound to be controversial, would be particularly unfortunate. While Section 4(b) does not make establishment of any laboratories mandatory, I feel that the tenor of the bill would

lead to very strong pressures on the Institute to do so, particularly if the present shortage of competent investigators and institutions which are available to work in this area persists.

Another source of major concern to me is Section 4(a) (3) providing for intervention on request of an Executive agency "with respect to any issue affecting the impact of advertising and marketing upon society." No guidance is given in the bill as to what form such intervention could or should take, but I fear that this requirement to intervene directly in commercial affairs would seriously jeopardize the basic nature of the National Science Foundation and expose it to attacks from without which could seriously impair its relationships with the scientific community to which it principally does and must continue to relate.

I stated at the outset that I agree that sound research into the mechanism and effects of advertising and marketing techniques would be extremely useful. However, I feel very strongly that direct responsibility of such a specific nature as that provided in this bill should not be placed upon the National Science Foundation. Therefore the Foundation opposes enactment of S. 1753 with Amendment No. 421.

The Office of Management and Budget has advised us that there is no objection to the submission of this report from the viewpoint of the Administration's program.

Sincerely yours,

RAYMOND L. BISPLINGHOFF,
Acting Director.

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., October 12, 1971.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in further reply to your request for the views of this Department with respect to S. 1753, a bill to establish a National Institute of Advertising, Marketing, and Society, cited as the "National Institute of Advertising, Marketing, and Society Act."

This bill would establish, within the Federal Trade Commission, an agency to be known as the National Institute of Advertising, Marketing, and Society, headed by a Director appointed by the President. Under the general supervision of the Chairman of the Federal Trade Commission, the Institute would be required to undertake research concerning the impact of advertising and marketing upon society, with particular reference to psychological and social effects of advertising and marketing techniques, on the consumer.

Section 4 of the bill sets forth the functions of the Institute. Among other things, the Institute is directed to conduct studies of the relationship between the themes and techniques of advertising and drug abuse; between marketing techniques and advertising and the alienation of young persons from society; between advertising and the knowledge, attitudes and perception of children. In addition, it would empower the Institute to collect, analyze, and disseminate to the public information on behavior research relating to advertising and marketing practices.

The bill would also establish, in the Institute, a National Advisory Council on Advertising, Marketing, and Society to be composed of the heads of seven Federal agencies, and permit the Institute to appoint advisory committees composed of private citizens and Federal, State and local government officials.

The Department of Commerce recommends against enactment of S. 1753.

The functions of the Institute proposed in Section 4 of the bill appear to assume a relationship between advertising, drug abuse and alienation of young persons, and that the Institute's research would establish this relationship. We are unaware of any evidence which would warrant such a premise.

We note that the Federal Trade Commission has recently augmented its research staff to provide study capability concerning advertising and marketing practices, and that the Commission itself has announced the intention to hold informational hearings on the subject commencing this month. Accordingly, there is now in progress a Federal initiative to collect information on present knowledge with respect to socioeconomic considerations in the particular field of interest to which the Institute's activities would be addressed. This undertaking will hopefully produce data which may be useful in determining whether centralized

Federal research such as is proposed by this bill is warranted, and if so, the best manner of approach.

For this reason, we feel action on S. 1753 at this time would be premature. The question whether a Federal research effort in the field of advertising is necessary or desirable—or, if so, what organizational structure and focus is appropriate—should, at the very least, be deferred until the Congress has the benefit of such information as may be developed in the Federal Trade Commission's hearings.

Apart from the foregoing, we have the following technical comments on S. 1753, should the bill be acted on at this time.

We believe that it would be desirable for the Secretary of Commerce to be a member of the National Advisory Council on Advertising, Marketing and Society and we urge that, should the bill be acted upon, it be amended to add him to the membership.

Also, we believe that it is inappropriate for an Institute such as is proposed in this bill to be involved in adversary proceedings such as the intervention before Federal executive agencies authorized in Section 4(a)(3) of the bill. We strongly recommend deletion of this provision.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of this report to the Congress from the standpoint of the Administration's program.

Sincerely,

William W. Letson,
General Counsel.

Department of Health, Education, and Welfare,
October 19, 1971.

Hon. Warren G. Magnuson,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

Dear Mr. Chairman: This letter is in response to your request of May 10, 1971, for a report on S. 1753, a bill to establish a National Institute of Advertising, Marketing, and Society.

The bill would establish within the Federal Trade Commission a National Institute of Advertising, Marketing, and Society. Senate amendment No. 421 would place the institute within the National Science Foundation. The Director and Deputy Director would be appointed by the President with the advice and consent of the Senate and would serve for a term of six years. The institute would have the following functions: (1) undertake on its own initiative research projects concerning the impact of advertising and marketing upon society; (2) undertake such projects at the request of agencies represented on its Advisory Council; (3) intervene with respect to any issue affecting the impact of advertising and marketing upon society; (4) study the relationship between the themes and techniques of advertising and drug abuse; (5) study the relationship between marketing techniques and advertising and the alienation of young persons from society; (6) study the relationship between advertising and the knowledge, attitudes, and perception of children; (7) collect, analyze, and disseminate to the public, relevant information on behavior research relating to advertising and marketing practices; and (8) prepare a report (at least annually) concerning its activities, together with such recommendations, including recommendations for additional legislation, as the Director deems advisable.

The bill would also establish a National Advisory Council on Advertising, Marketing, and Society, composed of: the Secretary of Health, Education, and Welfare; the Chairman, Council on Environmental Quality; the Administrator, Environmental Protection Agency; the Director, National Science Foundation; the Chairman, Federal Communications Commission; the Director, Consumer Protection Agency; and the Chairman, Federal Trade Commission, who would be Chairman of the Council. Senate amendment No. 421 would transfer chairmanship of the Council to the Director, National Science Foundation. Administrative authority of the institute would include appointment of appropriate advisory committees.

Because of the breadth of the mission envisioned for the institute and the large number of agencies to be represented on its Advisory Council, we shall confine our comments to the effect the bill would have on the operations of the

Department of Health, Education, and Welfare and its relationship with other agencies.

We agree that the relationship between advertising, marketing, and social behavior is an important one. We would point out, however, that the mandate given the new institute duplicates certain DHEW authorities in the areas of child development and mental health, specifically:

(1) Sections 4(a) (4) and (5) duplicate research authorities assigned to the Surgeon General (Secretary) under Sections 301, 302, and 303 of the Public Health Service Act. Research activities authorized under these sections are carried out by the National Institute of Mental Health within the Health Services and Mental Health Administration.

(2) Section 4(a)(6) duplicates the Surgeon General's research authority in Section 301 of the Public Health Service Act, as well as the research authorities assigned to the National Institute of Child Health and Human Development by Section 441 of that Act.

(3) Sections 4(a) (5) and (6) duplicate authorities contained in Section 426 of the Social Security Act presently being carried out by the Office of Child Development within this Department.

We therefore recommend against enactment of S. 1753 and Senate amendment No. 421 thereto.

We are advised by the Office of Management and Budget that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

ELLIOT L. RICHARDSON,
Secretary.

Senator MOSS. We are very pleased to have as our first witness, the Chairman of the Federal Trade Commission, Hon. Miles W. Kirkpatrick.

He has appeared before this committee many times, and he has always been most helpful.

I would like to commend Chairman Kirkpatrick for the excellent job he is doing at the Federal Trade Commission.

STATEMENT OF HON. MILES W. KIRKPATRICK, CHAIRMAN, FEDERAL TRADE COMMISSION

Mr. KIRKPATRICK. Good morning, sir.

Senator MOSS. Good morning.

Mr. KIRKPATRICK. Mr. Chairman, members of the subcommittee. I am happy to be here with you today to present the views of the Federal Trade Commission on two bills, S. 1461, the Truth-In-Advertising Act of 1971, and S. 1753, the National Institute of Advertising, Marketing and Society Act.

I might say this statement I am about to make is supported by a majority of the Commission. Mr. MacIntyre has certain reservations, and Mr. Dixon has not been able fully to consider it. But other than that it has the full support of the Commission.

I also note time did not permit the clearance of this statement with the OMB.

Let me first turn to the Truth-In-Advertising Act. This bill would require advertisers to have available for public inspection documentation for claims relating to the safety, performance, efficacy, characteristics, or comparative price of the advertised products.

Any person wishing to inspect the documentation could do so at the principal office of the advertiser, or could mail or telephone his request to the advertiser, who would be required to furnish copies of

the documentation upon payment by the inquirer of the cost of duplication.

Dissemination of advertisements containing claims for which documentation is unavailable would be unlawful, and the Commission would be empowered to prevent violations by means of the Federal Trade Commission Act.

Documentation of claims is an area in which we at the FTC have some new and quite relevant activities underway. In July of this year, the Commission announced its intention to require the submission by members of selected industries of such tests, studies, or other data as would substantiate any claims, statements or representations made in advertisements regarding comparative price, safety, performance, efficacy, or quality of the products advertised. (The Commission's announcement, dated July 7, 1971, is attached at the end of this statement.)

We announced that after examining, collating, and indexing the data submitted, we would make the information available to the public.

Underlying our program is our belief that public disclosure can assist consumers in making rational choices among competing claims for similar products and enhance competition by encouraging competitors and others to challenge advertising having no, or a limited, factual basis.

Also, it seems probable that once advertisers realize that the lack of adequate substantiation for factual claims will be open to public scrutiny, they will think twice before asserting claims without making sure that they have documentation available.

And I believe that there is little disagreement today with the proposition that claims of performance, safety, efficacy, quality, or comparative price should not be made unless they have foundation in fact. We have already asked, in connection with the program I just described, for documentation of claims made by manufacturers of automobiles, air conditioners, and electric shavers. We have another one forthcoming in the next two or three weeks in a major industry.

The question is adequacy of substantiation is currently before the Commission in an adjudicative case, and therefore I cannot and will not comment on the desirability of, or need for, legislation which would require an advertiser to have on hand adequate substantiation for claims he makes in advertisements.

It is the Commission's understanding that this bill that is before us, is intended to require only the making available to the public of whatever documentation the advertiser has, thus allowing the consumer to judge for himself the adequacy of the documentation. It is on that understanding that our position is based.

Since this goes to the very essence of the bill, it is important that this matter be clarified.

It is not entirely clear whether S. 1461 as it stands would outlaw advertising claims which are not adequately substantiated by available documentation, or whether it simply requires public disclosure of all documentation known to the person making the claims. Section 2, containing the findings and purpose of the bill, states that the bill is intended "to ensure that no advertisement can be disseminated if substantiating documentation is not available to the public."

This wording may mean that advertisements must be adequately substantiated by the available documentation.

However, section 4(a) of the bill declares unlawful the dissemination of advertisements "unless documentation is available" for public inspection. The word "substantiating" does not appear.

Section 3(d) defines "documentation" as:

> a full description of the material aspects of any pertinent research, other data, and tests which either support or detract from any advertising claims and the disclosure of such data to any person on request.

Thus, "documentation" by definition would appear to consist only of all pertinent data as may be available. As both sections 2 and 4(a) depend on the definition of "documentation," it seems to the Commission that one would meet the bill's requirements for documentation by making publicly available any material he may have which supports or detracts from his claims but that he would not be required to make substantiating tests, et cetera, as a prerequisite to disseminating such claims.

Another feature of S. 1461 which the Commission suggests might be modified is section 5(b). Section 5(a)(6) of the Federal Trade Commission Act excludes from the Commission's jurisdiction unfair methods of competition and unfair or deceptive acts or practices by—

> banks, common carriers subject to the Acts to regulate commerce, air carriers, and foreign air carriers, subject to the Federal Aviation Act of 1958, and persons, partnerships or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended, except as provided in Section 406(b) of said act . . .

The proviso of section 5(b) of S. 1461 would eliminate the foregoing exemption in enforcing the provisions of this bill.

The Commission does not support this proviso as it considers that the piecemeal jurisdiction that would be given it under this legislation would be unsound policy.

The Commission also suggests that section 3(d)(2) which defines "documentation" of advertising claims concerning comparative prices, and which requires a "substantial representative listing of prices of products or services sold in the marketing area served by the advertisement" should be replaced by a provision which would permit the Federal Trade Commission to define this term under its rulemaking authority.

The Commission has had a great deal of experience in dealing with comparative prices under the Federal Trade Commission Act, and considers that the flexibility of rulemaking, which would tailor the definiton to fit the matter to be regulated, would be preferable to the rigidity of an omnibus statutory definition.

Another definitional problem can be found in section 3(c). The definition of the term "commerce" is not identical to the definition of "commerce" in the Federal Trade Commission Act, which would cause we believe, some confusion. We suggest that the definition of the term "commerce" in S. 1461 should be conformed to that in the Federal Trade Commission Act, and that the phrase "in commerce" in section 4(a) should be changed to "affecting commerce," assuming that other legislation now pending in Congress will be adopted.

Another provision of the bill may prove to be somewhat troublesome. You will recall that the terms of the Commission's announcced program related to claims of "performance, safety, efficacy, quality, or

comparative price;" I note that in addition to the foregoing terms, the legislation under consideration would include claims with respect to the product's "characteristics." The inclusion of that term, it seems to me, broadens, perhaps unduly, the range of the documentation inquiry. For example, if a product is described as "blue" it hardly seems necessary or desirable that the advertiser have any substantiation in his files for such a claim.

A host of other possibilities are imaginable here and I question whether the term "characteristics" should be used without further definition. Is not the important element in the term "characteristics" really the performance of the product? I suggest that the term "characteristics" might be eliminated from the legislation in order to avoid a good deal of confusion.

The legislation also gives rise to some questions to which the answers are for the time being unknown. For example, to what extent will advertisers be bombarded with requests for documentation and thus bear costs that may be disproportionate to the benefits to the public? The bill makes reimbursable to business only the actual costs of duplication, but obviously there may be additional administrative and clerical costs. These may or may not be important depending on the size of the business and the extent to which its advertising elicits requests for documentation.

Another concern which it is difficult to measure objectively at this time is what effect the emphasis on documentation may have on the future course of advertising. While I think it unlikely, it is at least possible that if advertisers reach the conclusion that the cost of documentation is undue in relation to the benefit obtained from such informative advertising, the advertisers may choose to adopt wholly uninformative advertising programs. I believe that we would all regard this as an undesirable result.

In sum, the Federal Trade Commission supports the general objectives of this legislation. However, the objectives so closely resemble those which the Commission seeks in its current ad substantiation program that it may be that this committee would wish to consider deferring any final action on this legislation at this time.

The flexibility of the Commission's procedures, together with our planned review of the impact of the program, may well indicate that before such a program is made more comprehensive, and hardened into law, our experience in the development of this program should be assessed by this subcommittee.

Let me turn now to S. 1753, the National Institute of Advertising, Marketing, and Society Act. The proposed legislation would establish an institute to gather or initiate and produce a focused, scientifically sound program of behavioral research, and collect, analyze, and disseminate information based on that research. The issues raised by regulation of marketing practices, including advertising, increasingly demand basic information from a variety of academic disciplines, including the behavioral sciences. The experience of the Commission, which is charged with broad responsibility for regulating these fields, has been similar to that expressed by Senator Moss in introducing this bill—namely, that our efforts are sometimes frustrated by a lack of basic scientific literature accurately describing the impact of marketing practices and advertising. In fact, the Commission has

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scheduled hearings on modern advertising practices to begin in October for the purpose of expanding the Commission's understanding of advertising and its implications.

The agenda suggests that the record developed at the hearings will be quite comprehensive as to existing data. The Commission, therefore, enthusiastically supports the concept of a federally supported institute which would supply us and other Government agencies charged with similar responsibilities with basic data in these fields.

We are concerned, however, about possible difficulties with the structural and management arrangements for the proposed institute. The institute would be headed by a Presidential appointee who, subject only to the general supervision of the Chairman of the Federal Trade Commission, would have authority and control over all personnel and activities of the institute. As the bill stands, and this is the bill before the proposed amendment, the Commission would have virtually no control over the activities, the personnel, the funds, or the management of the institute.

The institute would be using our real estate and our facilities but would not be required to heed the Commission's requests for information or assistance. We appreciate the concern for assuring the institute's objectivity, but we do not believe that it must be so insulated from the Commission to achieve that result.

The experience of the economists at the Federal Trade Commission may be instructive in this connection. The Commission has had a staff of economists since its very inception. We do not believe that their objectivity has been compromised by their location within and their responsibility to the Commission.

Thus, while we would welcome the addition to our staff of social scientists and others who might help shed light on complex advertising and marketing issues, we do not believe that S. 1753's organizational structure is adequate. As an alternative, we would suggest that statutory creation of a Bureau of Marketing, Advertising, and Society, which would fulfill a role identical to that of the institute, but which would be headed by a director appointed in the ordinary course by the chairman with the approval of the Commission. In effect it would be the analog of our Bureau of Economics.

To further assure the objectivity of the research, however, we suggest that section 4(a) (3), which directs that the institute shall "intervene on its own initiative or upon the request of any Federal executive agency with respect to any issues affecting the impact of advertising and marketing upon society" should be deleted. An intervenor must function as an adversary, which might diminish the objective character of the researcher's work.

In conclusion, the Commission supports the basic concept of an institute for marketing, advertising and society because we recognize the need to develop a systematic analysis of the implication of marketing and advertising. The Commission's broad mandate to protect consumers would be implemented in important ways by the adoption of this bill as modified by our suggestions.

Thank you.

(The attachment follows:)

UNITED STATES OF AMERICA BEFORE FEDERAL TRADE COMMISSION

Commissioners: Miles W. Kirkpatrick, chairman; Paul Rand Dixon, Everette MacIntyre, Mary Gardiner Jones, David S. Dennison, Jr.

RESOLUTION REQUIRING SUBMISSION OF SPECIAL REPORTS RELATING TO ADVERTISING CLAIMS AND DISCLOSURE THEREOF BY THE COMMISSION IN CONNECTION WITH A PUBLIC INVESTIGATION

PRODUCTION OF DOCUMENTATION

The claims made in advertising consumer products often lead the consuming public to believe that such claims are substantiated by adequate and well-controlled scientific tests, studies, and other fully-documented proof.

If the public and the Commission knew whether substantiation actually exists and the adequacy of substantiation, they would be aided in evaluating competing claims for products, and in distinguishing between the seller who is advertising truthfully and one who is unfairly treating both consumers and competitors by representing, directly or by implication, that it has proof when in fact there is none or the proof is inadequate.

Considering the importance of these questions to consumers and businessmen, the Commission, in fulfilling its statutory responsibility under Section 5 of the Federal Trade Commission Act (15 U.S.C. 45) with respect to false and deceptive advertising, and unfair methods of competition, *resolves* that advertisers shall be required, on demand by the Commission, to submit with respect to any advertisement such tests, studies or other data (including testimonials or endorsements) as they had in their possession prior to the time claims were made and which purport to substantiate any claims, statements or representations made in the advertisement regarding the safety, performance, efficacy, quality, or comparative price of the product advertised.

The claims, statements or representations subject to the above requirement will be identified in Orders to File Special Reports which will be issued to such advertisers as may be selected from time to time by the Commission. If the advertiser had no data to substantiate these claims before they were made, he shall notify the Commission of this fact before the return of the Order to File Special Reports.

The Commission will compel the production of said tests, studies or other data (including testimonials or endorsements) in the exercise of the powers vested in it by Sections 6, 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 46, 49 and 50), and with the aid of any and all powers conferred upon it by law and any and all compulsory processes available to it.

PUBLICATION OF DOCUMENTATION SUBMITTED

Except for trade secrets, customer lists or other financial information which may be privileged or confidential, pursuant to Section 6(f) of the Federal Trade Commission Act, the material obtained by the Commission pursuant to this resolution will be made available to the public under such terms and conditions as the Commission may from time to time determine. In addition, the Commission may release summaries, reports, indices, or such other publications which will inform the public about material delivered or not delivered to it hereunder.

In deciding to make this material available to the public, and to publish summary reports, the Commission is persuaded by the following policy considerations:

1. Public disclosure can assist consumers in making a rational choice among competing claims which purport to be based on objective evidence and in evaluating the weight to be accorded to such claims.

2. The public's need for this information is not being met voluntarily by advertisers.

3. Public disclosure can enhance competition by encouraging competitors to challenge advertising claims which have no basis in fact.

4. The knowledge that documentation or the lack thereof will be made public will encourage advertisers to have on hand adequate substantiation before claims are made.

5. The Commission has limited resources for detecting claims which are not substantiated by adequate proof. By making documentation submitted in response to this resolution available to the public, the Commission can be alerted by con-

sumers, businessmen, and public interest groups to possible violations of Section 5 of the Federal Trade Commission Act.

By direction of the Commission.

CHARLES A. TOBIN, *Secretary*.

Adopted June 9, 1971, as amended July 7, 1971.

Senator MOSS. Thank you, Mr. Chairman, for your statement. The notice that is appended will be part of the record in this matter. We do appreciate your coming here.

I am somewhat disappointed with the testimony because of your recommendation that this matter be in effect deferred until completion of the Commission's study. It seems to me we are postponing again, as we have done before, arriving at a legislative route to effective advertising regulation. Of course, I understand your recommendation, that there is more information to be developed and techniques to be examined. I think the thrust of the bill allowing the consumer himself to take action is being blunted by having the matters filtered through the Commission in a search for documentation of advertised claims of performance, efficacy, or safety.

The new campaigns and the hard sell are just beginning on 1972 cars and we are still awaiting the Commission's release of substantiating information on 1971 cars. And the same holds true for air conditioners and other products. The individual has a right to know and we have to find a way that he can secure that right. I am enough of a realist to know that we aren't likely to pass the bill unless the Commission gives us full support; so I would say right here and now, that we will set a date and keep our calendars clear and expect to have a report by April of next year, so that we can know where to go on this matter.

Mr. KIRKPATRICK. We welcome that, sir.

Senator MOSS. All right. We will look forward to that.

The suggestions made on the research institute are very good. And I appreciate your recommendation for clarifying language in S. 1461. You are correct in stating that the intent of the bill is to require the making available to the public of whatever documentation that the advertiser has, thus allowing the consumer to judge for himself the adequacy of the documentation.

If the Commission had an action program on substantiation it might remove the necessity of letting the individual take action. But what is the man on the street to do, sit back and wait for the FTC to release the information?

Mr. KIRKPATRICK. We will do that quite promptly. We have now the return from the automotive survey. We have it underway at the moment, it should be only a matter of a few days. We have to collate that information, index it, so the man on the street can have better access to it, rather than simply throwing papers at him, so to speak. Those will be put on the public record. We have had a considerable number of inquiries about it and we are going to make it as available as quickly and as fully as we possibly can.

Senator MOSS. Doesn't the Commission really wind up being sort of a public data bank, in being required to respond whenever the public wants some documentation on a claim?

Mr. KIRKPATRICK. Yes, in this instance, that is true. Of course, this is a program which is new to us. We don't have any real notion, for example, of the number of individual consumers that may have an

interest in the long run. Provided national information is available to consumer groups, to consumer research people, there are a lot of people who would probably more effectively report to the consumer, having analyzed those, and the consumer could decide for himself.

Now, it will be available to individuals as well, of course. If anybody wants it, they can come and see it.

Senator MOSS. Isn't the effect, though, to build up a larger staff at the Trade Commission for securing and documenting and publishing all of these data, rather than the simpler procedure of allowing the consumer simply to write to the advertiser, the media, if he doesn't know the advertiser, find out who the advertiser is and write to him, and say, "In your ad, you say 'a', and 'b', and 'c'. Now I would like to have the documentation on which you base that claim."

Can't all that function outside of the Government, without the Commission being involved?

Mr. KIRKPATRICK. I think it could. Of course, there is going to be a cost to do this whether it be the few people that are required on our staff or whether it is those in industry. And for the time being, it seems to me that not knowing quite where we are going in this field, and not knowing the ultimate utility, and how much the individual consumer is going to avail himself of this information, that we are making it available really in a more—I guess I would say—a more sensible way, for the time being, until we see how the program works.

Senator MOSS. Well, of course, advertising falls within the jurisdiction of the Federal Trade Commission; you have to go into it and issue appropriate orders as you have been doing for a long time. But we are moving on a step further, to where the consumer simply wants to satisfy himself that some claim or statement made is verifiable and his only weapon, other than finding out, is just not to buy the product and maybe tell his neighbors not to buy it, because the advertising doesn't measure up, or the product doesn't measure up to the advertising in his opinion.

This is a simple consumer weapon beyond the Commission's power in deceptive or false advertising that we have dealt with to date. I just wonder why we can't take the next step rather than involving the Commission as the filter and have the consumer take the active part.

Mr. KIRKPATRICK. Well, at this stage of the program, my own view, sir, is that the Commission may be performing a very valuable function as a filter. We don't know how costly this program may be; whether it is going to materially affect the smaller advertiser who may have difficulty in responding; and whether there may be a disproportionate cost. We don't know in fact how interested the individual consumer may be. We have had some contact with those who are organized; they have a real interest in what we are doing.

My thought is—I don't disagree with what you say—I simply don't have the basic information upon which to either agree or disagree. It is just as I suggest in the statement, I would prefer to wait the short time that is required to see whether we can't get some basic data in this area.

Senator MOSS. I have a number of questions that pop into my mind, and I am going to defer to my colleagues now. I have to step over to the floor for a few minutes, so I may not be able to get back in time. If I don't, I would like to send you some written questions, and if you would respond to them, I would appreciate it.

Mr. KIRKPATRICK. Surely.

Senator MOSS. I wanted to say on behalf of Senator Baker also that he wanted to be here this morning, but he is in an executive session of another committee marking up a very important bill, and could not be here and he also asks for the privilege of submitting written questions after he reads the transcript.

Mr. KIRKPATRICK. We would be happy to receive them, sir.

Senator MOSS. I am sure you would be glad to respond to Senator Baker on that basis.

Mr. KIRKPATRICK. Yes, sir.

Senator MOSS. So I will ask my colleague, Senator Cook, to preside and I will return as soon as I can. But these gentlemen will carry on the hearing. I am sure they have some questions for you.

I wanted to say a word about the institute. I am very glad you have endorsed that principle. It seems to me we are ready to move on with that one right away.

Mr. KIRKPATRICK. Yes, sir.

Senator MOSS. If you will excuse me, then, I will turn it over to Senator Cook.

Senator HATFIELD. Senator Cook has deferred to me.

In your testimony, you refer to the exemption or the exclusion of the Commission's jurisdiction relating to unfair methods of competition, unfair deceptive acts or practices by banks, common carriers, et cetera. Then, as I understand your testimony, you indicate that section 5(b) of S. 1461 would eliminate the exemption. You do not support this proviso as you consider that piecemeal jurisdiction would be given under this legislation and that would be unsound policy.

Could you elaborate a bit on that point as it relates to other exclusions or other exemptions which might exist which would make this a piecemeal approach? I was under the impression that this would give you a broader based judisdiction.

Mr. KIRKPATRICK. It would, sir. And I would not have any hesitation in welcoming that broader base for all purposes, but it seemed to me that this would give for the purpose of this act alone, a broader base, and since we have no authority for other purposes, it seemed to me that the two should be consonant. We shouldn't have for this particular purpose a jurisdiction that the Congress had not seen fit to give us for all other purposes of advertising.

I think we might get into some conflicts and confusion about that.

Senator HATFIELD. Is this the only example of exclusions of certain industries or certain types of enterprises?

Mr. KIRKPATRICK. This section is the one which states the exemptions, yes, sir. None come to mind that are not included therein.

Senator HATFIELD. As it would relate to advertising and so forth, the main thrust of S. 1461, you would have general, complete jurisdiction over all other enterprises that come under the jurisdiction of this bill. Is that correct?

Mr. KIRKPATRICK. That would be my answer to that, save only that, of course, interstate commerce, depending upon its ultimate destination, be involved.

Senator HATFIELD. I have no further questions.

Senator COOK (presiding). Mr. Chairman, in reviewing the bill, it seems to me one is immediately struck with what could continue to

be done under this act in the field of advertising, and this is the one thing that bothers me particularly. I have come to the conclusion that the manufacturer doesn't sell the advertising agency on its advertising; the advertising agency sells the manufacturer.

Under this bill, what do you file with the Federal Trade Commission when you tell everybody that if you buy a Dodge Charger, you can go through toll gates these days without paying tolls? And where, under this act, do you find a prohibition against the type of radio advertising that is going on right now, urging you to have telephone extensions in every room in the house? These ads have a rampage of telephone calls saying, "I'm in jail," or "I have had an accident," and then all of a sudden the phone is not ringing any more, because you had to run from the basement to the upstairs bedroom to get to your only telephone.

None of these are covered in this act. And this is the thing that bothers me. It seems to me that we are focusing on one phase of advertising, and totally ignoring another. I don't see how, under the language of this bill, it could even be reached; do you?

Mr. KIRKPATRICK. I do not think those examples you gave would be reached. I would not expect there would be documentation for any such claim. And it is in fact, it seems to me, not a factual claim, as opposed to an argument.

Senator COOK. Does Volvo have to prove in Sweden they really do last 10 times longer than they do in the United States?

Mr. KIRKPATRICK. There you are getting——

Senator COOK. We are getting closer.

Mr. KIRKPATRICK. That is right. We are getting closer.

Senator COOK. I am afraid that from the standpoint of requiring information within your department to substantiate a particular scientific approach, we are eliminating about 50 or 60 or 70 percent of all advertising that we are subjected to during the course of the day.

Mr. KIRKPATRICK. I cannot differ with you that there is a great deal that is not covered by this bill.

Senator COOK. It is very simple, for instance, under 4(b), for the newspapers to insert near their classified column, that one can get this information by writing to so and so, if they want to, I expect. That is like when you have a full-page double ad in the middle of the front section of a newspaper, and then a little notification back in the newspaper someplace, that if you want this information you can write some place.

This does practically nothing to their costs, I would think. But what does this do to a television or radio station's time schedule, when it also has to comply with the act and give up time to give notification to the general public that if they want this information, they can write to so and so, or write to this station. If they failed to do so, they would be liable for the advertising which they carry.

Mr. KIRKPATRICK. I would look upon 4(b) a little differently, sir. I think it would be a periodic announcement; I wouldn't suggest any time. But many stations have available time, 30 seconds——

Senator COOK. Suppose you have a periodic announcement every night at 11:55. Do you think the Federal Trade Commission is going to rule that that is sufficient notice to the general public to get information on advertisers that it would be in compliance with the law?

Mr. KIRKPATRICK. I would have difficulty with that precise question.

Senator COOK. I think these are the problems we face.

Mr. KIRKPATRICK. It is a hard question, I grant you, sir.

Senator COOK. I think these are the problems we face. We also face, I think, the more serious problem that if we are really going to do it, we ought to look at it from one end of the spectrum to the other and not just one particular phase of it.

It seems to me that if we are going to get into the field of controlling advertising—and I wish the corporate structure would do it with their advertising agencies rather than have us do it—I think all we are doing is scratching the wrong end of the horse. And it really bothers me that at least under this bill, as I read it, I can think of watching that rather remarkable football game yesterday between the Redskins and the Cowboys, and thinking of all of the advertisements that came through everytime there was a time out, and I would say 95 percent of them couldn't file anything with you.

Mr. KIRKPATRICK. That may well be the case.

Senator COOK. For instance, it is like saying you have a product that is tremendously delicious. That is a characteristic word. Now what do you say in a filing with the FTC, to substantiate that your product is delicious? I am not quite sure.

Mr. KIRKPATRICK. I agree with you. In our program we have made it quite clear that for statements of that character, puffing statements, we are not asking for any kind of documentation, sir.

Senator COOK. So these are the problems. I think you addressed yourself to them this morning, frankly. I realize the Federal Trade Commission would like this extended authority.

Mr. KIRKPATRICK. I think we have it already, Senator, because we are doing it under our program. The essential difference is, it is not done at the request of an individual consumer. We are requiring under our process that documentation such as may exist be filed with us.

Senator COOK. But you will admit that this is like regulating one slice of bread out of the whole loaf. I think this is what bothers me.

Mr. KIRKPATRICK. Of course, we do regulate other aspects of advertising. We never have tried to, nor do we think we should, get into matters of taste and puffing, which is that to which you refer.

I don't think we have any business in trying to regulate taste.

Senator COOK. How can you prove you can wake a sleeping man if you hit him on the side of the face with Mennen's Skin Bracer and say, "Thank you, I needed that?" What do you file with the Federal Trade Commission? This is why I wonder whether the Federal Trade Commission has any intention of encouraging and working with the new National Advertising Review Board.

My only problem is I am sorry that the review board is all advertisers, because I think they are opinionated to begin with. But I am just wondering what you think of this business of "sell if" regulation.

Mr. KIRKPATRICK. Well, first of all, let me say there are representatives of the public, I think some 10 out of 50 on that review board. We have met with that group, and have worked with it upon a number of occasions.

Mr. Elliott, who is here, has been one of the principal proponents of it. And my own personal hope is they will be able to achieve in substantial measure the result they wish to.

There are some thorny questions; there are questions of antitrust laws; there are questions of procedure, and they are going to have to feel their way along. But I think in general the Commission will support it.

Senator Cook. Do you have concerns about the dissemination of trade secrets within the corporate structure in regard to the terms of this bill?

Mr. Kirkpatrick. This bill, sir? Trade secrets are excepted. I think that could be handled. There may be a quarrel as to what constitutes a trade secret. But I think it would be properly protected. The Commission would never require under this bill the making public of that which is truly a trade secret, nor could we, in our program, at the present time.

Senator Cook. Getting, again, to the principal point, I think this only attacks a small segment of the advertising that we contend with today. For instance, in situations of free offers, you might run into all kinds of problems—major offers that are made throughout the United States, that are subject to laws of the various States and therefore not eligible.

These in a way can get the consumer into a great deal of trouble. Yet, I see no control or no ability to require a filing on such advertising.

So, the fact that there is a national campaign by major gasoline companies who don't want to sell gasoline any more—they want to give away glass, everything under the sun—and many people go to the filling stations and there aren't any gifts there. This is deceptive advertising, but what kind of filing do you make with the Federal Trade Commission? Do you say you are completely capable and ready and willing to fulfill the advertising promises that you make? Yet, this has nothing to do with the product involved.

Mr. Kirkpatrick. But under this bill I think we may not have powers to deal with these misrepresentations.

Senator Cook. So these are the things I think we ought to take into consideration when we discuss this bill. And if we are going into this field, I think we ought to treat everybody on the same basis, rather than dig ourselves into a grave for a very small percentage of the advertising world, and leave the rest of it rather flexible and free to function.

What type of relationship do you maintain, for instance, between your organization and the FCC?

Mr. Kirkpatrick. We have a regular liaison. We have had a number of meetings on matters of common interest. Obviously there is an overlap there in advertising, and they have a different concern than ours, but nonetheless, we each ought to know what the other is doing.

Senator Cook. Absolutely. It seems that if this were to become law in its present form, you will also create a tremendous bit of confusion between the FTC and FCC, in that the moving force would come from the Federal Trade Commission against licensees of the FCC, and apparently we could then turn around and say it would be a matter of judgment in the FCC as to license renewals—whether the fact that they have been slapped on the wrist by the Federal Trade Commission is sufficient information to deny a license.

Mr. Kirkpatrick. I think that is the situation already now, Senator.

Senator Cook. I am sure it is already in existence. But this is a situation that directly pushes the responsibility of the Federal Trade

Commission in the control of the media a great deal further, don't you?

Mr. KIRKPATRICK. I really don't think there is a great deal more control given here, sir. The only thing that directly would be required would be a periodic announcement, and I am sure we would be reasonable about that, as to the factual claims that upon request, such documentation as exists would be made available. I doubt that that is a very serious problem with broadcasters, most of whom have public-interest time of one kind or another anyway. It doesn't occur to me this would be a major obstacle.

Senator COOK. Also this bill says this information can be available to you either by contacting the publication or the station. Now, I assume by contacting the publication, you mean that it may not be the manufacturer, and that it might be necessary for the station to make all of this information available to a consumer, rather than the individual manufacturer, who is directly responsible for the either deceptive or nondeceptive ad in the first place.

Mr. KIRKPATRICK. I think you put your hand on what is a latent ambiguity. I would not interpret the bill as you suggested. But it is true that in 4(a) the language is "or cause to be disseminated," and then it brings in any such person. I see what you mean. It has not occurred to me that that was a real possibility, that the interpretation would be that the broadcaster itself would be the one.

The bill should be cleared up, I think, in that regard.

Senator COOK. I refer you to b(2) where it says, "And carried by his publication or broadcast station, is available by contacting his publication or station." So I think the ambiguity gets a little wider, frankly.

Mr. KIRKPATRICK. Yes.

Senator COOK. Well, this is all very interesting and I appreciate your remarks very, very much. I have been helped by the staff, as you can well see. As you may notice, Senator Moss has introduced an amendment to place the Advertising Institute in the National Science Foundation. You advocate that it be in the FTC. Do you have any objection to it being an integral part of another functioning agency, or is your objection that you don't want it to be an independent agency as it is outlined in here?

As you well know, we have had hearings relative to the creation of a new consumer agency.

Mr. KIRKPATRICK. I start with the proposition that I think the idea of having this Institute and accumulating a body of knowledge is a good and a necessary step at this time.

Now, I would welcome it, because I think we are equipped to handle it in the Federal Trade Commission, on the same basis that we have a good bureau of economists.

As indicated in the statement, I do not like the way it was set out in the bill before the proposed amendment for management reasons and other reasons. I would welcome it equally being a part of another organization.

I think it is the knowledge we want, and I am not concerned particularly about its location—although I think as a matter of policy and a matter of good management, we are probably the best agency to have it. We have had more experience in this area and I think we could handle it very well.

But that isn't the concern, it is that it be done and not where it is.

If it were in some other agency, or an independent agency, I would have no objection to that, of course.

Senator COOK. Obviously, at this stage you have no idea how much money would be necessary for such an Institute or what kind of funding would be necessary?

Mr. KIRKPATRICK. As I sit here; no, sir.

Senator COOK. Yes. But if there was an independent head of this Institute, who truly functioned as an independent agency within an agency, you would be responsible for that budget, and you would have no control over that budget.

Mr. KIRKPATRICK. That is the problem.

Senator COOK. I agree. Thank you very much.

Our next witness is Senator McGovern.

STATEMENT OF HON. GEORGE McGOVERN, U.S. SENATOR FROM SOUTH DAKOTA

Senator McGOVERN. Thank you, Mr. Chairman. I am pleased to have this opportunity today to testify before the Commerce Committee on the Truth-In-Advertising bill.

I think it would be helpful to the members of this subcommittee and to those who are particularly interested in this bill, just to know briefly how the legislation evolved.

I have long been concerned that the individual citizen lacks the legal authority to take action on his own behalf to protect his rights. Too often the choice that is open to him is between full-scale Government intervention, or no action at all. And this bill outlines a middle road.

The Government should be able to provide all citizens a mechanism for direct action to protect themselves. In some areas access to the courts will be necessary, and that is what the distinguished Senator from Michigan, Mr. Hart and I have proposed in the Environmental Protection Act of 1971.

In the present situation we can proceed under this proposed legislation by empowering a Federal agency to guarantee that individuals can obtain information from private sources operating in the public media. As a result, the Truth-In-Advertising Act of 1971 was developed.

I want to express my appreciation, especially for the help that Mr. Warren Braren, now associate director of Consumers Union, provided to me in the preparation of the bill.

At the same time that work was going forward on this legislation, Mr. Ralph Nader and Miss Aileen Adams, together with two consumer organizations, petitioned the FTC to issue regulations requiring advertisers to justify their claims.

Subsequently, together with the distinguished chairman of this subcommittee, Senator Moss, I introduced the Truth-In-Advertising Act of 1971.

Mr. Nader has endorsed this bill and I understand will testify before this subcommittee.

Mr. Chairman, here is what the proposed legislation would do:

(1) It would make it unlawful for any person to advertise concerning the safety, performance, efficacy, characteristics, or comparative

price of any product or service without having substantiating documentation available for public inspection in person or by mail at its principal office.

(2) It would require media for the dissemination of advertising to furnish on request the name and address of advertisers and to inform the public that documentation for advertising claims is available upon request from the advertiser.

(3) It would give the FTC power to insure that the two previous points are enforced.

It is equally important to point out what S. 1461 would not do, because there are some who may read more into the bill than was intended.

Here is what S. 17461 would not do:

(1) It would place no additional burden on those advertisers who today base their claims on substantiated research or findings. In fact, the Truth-In-Advertising Act would remove from them the penalty that they now pay in terms of cost in comparison with their less scrupulous competitors.

(2) It would not create a great new Federal bureaucracy. The FTC would be expected to intervene only when an advertiser failed to provide information directly requested by an individual or when media failed to disseminate certain minimal information.

(3) It would not require that radio and television stations broadcast a public service announcement concerning the name and and address of advertisers every time they broadcast an advertisement. They are merely required to inform the public that such information is available "on a regular basis."

(4) It would not require that advertisers would have to submit their documentation to any Government agency prior to beginning their advertising campaign.

(5) The bill as presently drawn does not apply directly to political campaigns. While I believe that such a provision might unduly complicate this bill and detract from its clear purpose, if the subcommittee believes that political advertising concerning retrospective claims, for example as to voting record, should be included, I would find such a provision acceptable.

In short, if we are to enact any legislation which will offer any meaningful degree of protection to the American consumer, this Truth-in-Advertising Act represents the minimum that the Congress can deem acceptable. Anything less would be deceptive because it would not offer protection. I believe this bill is sufficient.

It may be argued by some that since the Federal Trade Commission has already acted on the Nader-Adams petition, there is no need for Congress to take any action. But this argument confuses the purposes of the FTC ruling and of this bill.

The FTC has said that it will require firms on an industry-by-industry basis to submit to it substantiating documentation. This is a reasonable first step. But it leaves to the FTC the task of checking on advertising claims.

Clearly, it will take some years before the FTC has been able to cover a significant proportion of all advertising and it will be restricted to national advertising. As a result, regional and local advertising will not be covered. In fact, the FTC ruling may be considered

discriminatory in that it requires substantiation from some advertisers while allowing many to continue with their traditional practices prior to FTC review.

This legislation that is pending, Mr. Chairman, in short, depends not on an elaborate enforcement procedure, or industry-by-industry check, but it lets consumers know that if they wish information to substantiate the claim of an advertiser, that is available and the advertiser would risk the embarrassment of exposure if he could not provide satisfactory substantiation.

I just wanted, Mr. Chairman, to call your attention to some of the kinds of claims that are made in magazines and in other advertisements today, that I believe point up the need for this kind of legislation.

This is an ad from the current issue of Good Housekeeping magazine—I am not in any position to either challenge or confirm it—but the Clorox Co. claims that Clorox kills more viruses and bacteria than any household cleaner and any other kind of household disinfectant.

Now, that may be a perfectly valid claim. But, if it is, somewhere that company ought to have readily available documentation to prove that.

Here is an ad from Palmolive dishwashing detergent, which says that this liquid softens hands.

Clorox® was here!

and killed the germs floor cleaners can't

Directions: Just add ¾ cup Clorox per gallon of water right into your cleaning solution. Mop or scrub, rinse. (Do not use with ammonia or on cork.) Clorox kills more viruses and bacteria than any household cleaner and any other kind of household disinfectant. Also removes stains, deodorizes. See label for other ways it can help you all through the house.

a whole houseful of uses

©1971, The Clorox Company. "Clorox" is a registered trademark of The Clorox Company.

Whether it does or doesn't, I don't know, but if it does make your hands softer than before you washed the dishes, there ought to be some substantiating documentation for that.

One of the movie magazines that I have contains a number of what seemed to me to have rather startling claims.

Here is one that is of special interest to me, a product that claims that it will instantly produce longer and thicker hair.

If that is true, we ought to have some documentation of that. And I am sure there would be a widespread increase in the sales of that product, if it instantly produced thicker hair.

Here is one that, a product that promises the most successful new advance in bosom building in history. It is guaranteed to add from 1 to 3 inches on the bustline in 8 days, which seems to me to be a remarkable achievement.

Look What You're Missing!

There isn't more gleaming, lasting, natural-looking hair color in all the world than

COLOR 'n TONE

...and only 75¢.

You can pay more if you wish, but nothing will make your hair more beautiful. Go brighter, go darker, add new color, cover gray completely. Not a permanent tint, yet lasts thru 6 shampoos. Why only 75¢? Use your head darling, that's all it should cost!

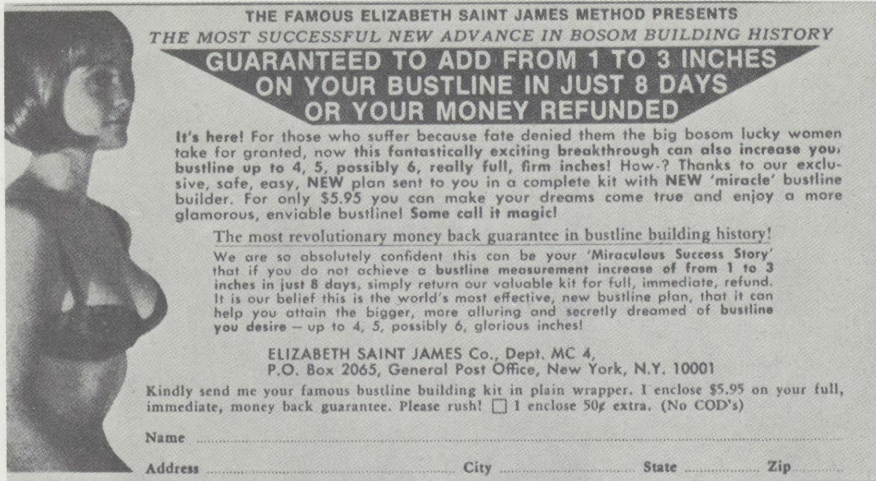
Nestle®

APPROVED BY PROFESSIONAL HAIR COLORISTS

COLORINSE

An exciting temporary rinse that adds shimmering color-highlights and brilliant new lustre to your own hair shade, in minutes. A "must" after every shampoo. Rinses in, lasts till your next shampoo. 6 Rinses, 39¢.

69-853 O - 71 - 6



If those things can be documented, well and good. But that is the kind of advertising claims that I think do suggest a need for more documentation.

I would like to just submit the rest of my testimony, along with some perfecting amendments, that I believe will strengthen the legislation.

And when the FTC makes documentation it has received public, the public may erroneously believe that it has been approved. And, most important, the FTC ruling does not allow the individual the right to inform himself and to take action to protect himself.

The Truth in Advertising Act recognizes that most consumers believe that if they can be given enough information to make an intelligent choice, they will be able to protect their own interests. And that procedure will be a lot less cumbersome and a lot less expensive than total reliance on the Federal Trade Commission.

Another alternative to the Truth in Advertising Act would be industry self-regulation. In effect, whatever form it took, self-regulation would amount to industry saying that it would assume the responsibility for assuring that all advertising claims can be substantiated.

I find two difficulties with the self-regulatory approach. First, industry has had an ample opportunity to adopt effective self-regulatory procedures. In most if not all cases it has not done so. Indeed, the main reason that a need is now felt for the kind of legislation we are discussing today is that industry has not adequately met its moral obligation to be open and honest with consumers. I do not mean to imply that all or even most advertisers make false claims. But most advertisers are unwilling or unable to inform consumers about the basis for their claims.

The second weakness of the self-regulatory approach is that it would not cover a great many advertisers reached by the Truth in Advertising Act. Industrywide associations, taken together, cannot speak for all of the advertisers in the United States. And we have no present indication that every industrywide association would adopt the obligation for self-regulation.

This bill would make self-regulation easier because it would provide necessary information to the National Advertising Review Board to evaluate advertising claims.

In any case, we should clearly understand that the Truth-In-Advertising Act actually starts from the premise of self-regulation. Advertisers are simply asked to be prepared to provide substantiating information to consumers on request. If they fulfill this requirement, they will not be subject to any direct Government action. The FTC will not bother them on that score. The relationship will exist between two private parties: the advertiser and the consumer. It is only when advertisers fail to regulate themselves that the Government will step in.

As distinct from the requirement to be met by advertisers is the requirement that the media inform the public that they can obtain information concerning advertising claims directly from the advertiser. The media does not have to provide the information. I believe that in view of their public service responsibilities, their obligation to the public, and the considerable revenues they derive from advertising, this requirement is quite reasonable.

Mr. Chairman, I submit for inclusion in the record six textual changes which I suggest for the bill. Four of these relate to clarifying the distinction between those who pay for advertisements and those who disseminate advertisements through the media. The other suggested changes are corrections of words erroneously appearing in the print of the bill.

Mr. Chairman, to a great extent this bill represents what I believe are the hopes of the American consumer. And it preserves the essence of the free enterprise system.

Every American is a consumer. Does any manufacturer or advertiser want to see himself or his wife cheated when they go out into the marketplace? Of course not. Therefore, we can reasonably expect that he will not try to cheat others.

Frankly, the persistent contempt shown by some for the American consumer defies reason. Unless we are all open and fair in our commercial dealings with each other, only the law of the jungle will prevail. I repeat: We are all consumers. If we persist in dishonesty in producing and selling goods and services to each other, then the deceivers shall be deceived.

Instead, we should recognize that our economic system can only survive and function if it is based on honest dealing. The seeds of decay of the American economic system are sown every time a consumer is cheated.

Thank you very much.

Suggested Changes to S. 1461 (Original Print)

Page 4, line 8: Instead of "of the person disseminating the" read "of the person initiating and paying for"

Page 4, line 16: Delete "disseminate,"

Page 5, line 5: Instead of "dissemination or advertising" read "dissemination of advertising"

Page 5, line 11: Instead of "person who caused him to disseminate such" read "person who initiated and paid for such"

Page 5, line 20: Delete "The dissemination or"

Page 5, line 22: Instead of "receptive act" read "deceptive act"

Senator COOK. I hope that coupon for thicker hair is still there. I may have to find out who to write to.

I think, first of all, the exhibits that you gave are the ones that fall right in this category, Senator.

I was talking to the Commissioner a minute ago, about those advertisements that will continue, and I guess I had more reference to radio and television than anything else that do not and will not necessitate any filing with the Federal Trade Commission and yet I consider to be in such kind of bad taste.

I am wondering if what we are doing is not getting to a small part of the advertising field, and if it is necessary, really to do it, that if we see how we can get to all of it.

Senator MCGOVERN. I think it should cover all advertising claims. And this legislation really goes to that problem, Mr. Chairman. It does cover every advertiser who uses the media or uses the kind of written claims I have referred to here.

Senator COOK. I referred, for instance, to one this morning that I find very objectionable on radio right now, and that is the one where apparently everybody has to have an extension phone in every one of his rooms, because he is going to miss the phonecall that will tell him his son is in jail, or his daughter has eloped, and as a matter of fact, one in particular that they give, is the young man who found himself in jail, off to college, and he has two completely paranoid parents who can't even talk to the son on the telephone, and all confusion breaks loose. And this seems to me to be really in the nature of trying to scare people into the fact that they need more telephones in their house.

And yet, they would be required to make no filing under the terms of this bill.

I recall when we had some hearings not too long ago, Senator, that I had serious objection as I told Mr. Kirkpatrick a minute ago, that somebody's new car is so great that he now goes through all of the toll gates without paying the toll.

The company was rather concerned about this, and they merely came back and said, well, it is so far in the pipeline that nothing can be done about it.

Which gets me to the point that somehow or other, it seems to me that advertising agencies, major advertising agencies through the country, have more control over their clients than their clients over the agencies.

I want to know whether you feel that any of this can be touched by this bill, because I don't think it can?

Senator MCGOVERN. You may be right, Mr. Chairman.

I think this bill is a good long first step in the direction of protecting the consumer. It may not reach every abuse. I am not sure about the particular question you raise. But as the committee proceeds with the consideration of the bill, strengthening amendments could be offered and I would, of course, be more than happy to support them.

Senator COOK. Thank you very much, Senator. We appreciate your presence here this morning.

Mr. Braren, assistant director of Consumers Union.

We are delighted to have you, sir.

STATEMENT OF WARREN BRAREN, ASSOCIATE DIRECTOR, CONSUMERS UNION, MOUNT VERNON, N.Y.

Mr. Braren. Thank you.

My name is Warren Braren. Briefly by way of identification, I have served as a radio and television commercial supervisor for a large New York advertising agency; as the assistant manager and then manager of the New York office of the National Association of Broadcasters' Code Authority, covering a span of 8½ years; and as the executive director of the National Citizens Committee for Broadcasting. Less than 2 months ago I became an associate director of Consumers Union—the publisher of Consumer Reports.

As an individual citizen, I have testified before Congress on cigarette advertising and advertising self-regulations; submitted comments to both the FTC and FCC on matters pertaining to advertising and broadcasting; and finally conceived the Truth in Advertising Act of 1971 (S. 1461), introduced by Senator McGovern and Senator Moss, which is one of the two bills now before this committee. My comments will be directed mainly toward that legislation.

Partly because involvement with this bill predates my joining Consumers Union and partly because lack of time has not allowed me to check these comments with my colleagues, I am speaking today in an individual capacity.

At the same time, I believe it is fair to say, as any regular reader of Consumer Reports knows, that Consumers Union (CU) historically has favored the premise of open disclosure of the basis for advertising claims—providing such disclosure is used to inform, not as a public relations tool to exploit the consumer.

In fact, just last week CU's president, Dr. Colston Warne, in a Massachusetts Better Business Bureau forum, spoke of the need for "integrity for the marketplace" and expressed the view that "the marketplace will in the future reward those businessmen who provide relevant and accurate information to the consumer."

The integrity of our whole marketing system depends in no small part upon buyer information. Consequently, we cannot help but move to the principle of open disclosure as exemplified, for instance, in the call for unit pricing and open dating of products. It is that simple and basic principle—open disclosure, as it pertains to advertising claims documentation—which forms the basis for the Truth in Advertising Act. This principle follows the President's Economic Report for 1970 which stated that:

"* * * this Nation has accepted the premise that the individual should be as free as possible to decide for himself what goods and services will be best for him * * *"

The individual cannot possibly decide if relevant information needed to make intelligent choices is not available to him.

The Advertising Code of American Business—initially developed and issued, I believe, in 1966 by what was then the Advertising Federation of America, the Advertising Association of the West and the Association of the Better Business Bureaus—recognizes the need.

Under the section "Responsibility," the code reads: "Advertising agencies and advertisers shall be willing to provide substantiation of

claims made." Another section calls for "Truth * * * Advertising shall tell the truth, and shall reveal significant facts, the concealment of which would mislead the public."

Advertisers unfortunately have been too often delinquent on both counts. In the same year, 1966, the National Association of Broadcasters conducted a comprehensive, nationwide survey, the results of which they attempted unsuccessfully to keep confidential. It revealed that a remarkable 60 percent of the respondents agreed with the statement that "Many TV commercials claim too much for the product." Forty-four percent had the same reaction to radio commercials.

Just this year, I understand that in a nationwide poll conducted by Louis Harris & Associates for Life magazine, 34 percent of the public said that within the last year, they had purchased a product which did not perform as the advertising said it would. Again, I don't think that result has been made public by either Life or the Harris Polling Co. To the question of what people liked and disliked about advertising, more people, 44 percent, mentioned misrepresentation and exaggeration than any other reason for liking or disliking.

When it comes down to the actual practice of providing claims documentation, many advertisers have a history of being guarded and extremely protective of their self-interests. In the 1950's advertisers didn't do much more than supply large media representatives, upon request, with a self-serving letter stating that they had in their files tests, studies, or the like supporting the advertising representations. This practice as we all know proved futile.

As public pressures grew, it became the policy in the 1960's for television networks and some publications to seek copies of the actual documentation. Yet even under this procedure documentation sometimes is late in coming, sometimes is incomplete or inadequate, and often is accepted on face value with superficial critical review from the standpoint of the consumer.

If questions are raised, the advertiser's agency and legal representatives are known to use subtle pressures and arguments which too frequently turn self-regulation into a bargain counter for truth. And, of course, the public is none the wiser since it has no access to the documentation and because confidentiality is observed throughout.

The need for open disclosure of claims documentation became apparent to me as far back as 1963 when I was at the code authority. An internal memorandum almost 8 years ago questioned the content and believability of many commercial techniques such as:

Conflicting claims with regard to product superiority involving analgesics, razor blades, and gasolines;

Demonstrations offered as proof of product effectiveness involving automobiles, drugs, and other unnamed categories;

Dangling comparatives claiming for instance "product *x* works better," leaving the consumer to ask "better than what?"

Surveys as proof of product performance extolling that nine out of 10 professionals recommend the ingredients in product *x*;

References to clinical tests as proof of effectiveness;

Claims based upon more or added ingredients, such as 50 percent stronger, more pain reliever, implying superior performance.

Oversimplification and exaggeration of performance showing the problem disappearing upon use of the product, exemplified by the advertising of drugs and household cleaning products;

Partial or biased disclosure of available facts relating to product performance.

These techniques and the resultant problems as I indicated are still very much with us. Some of you may recall the March 1971 Consumer Reports article on American Tourister luggage and its ads involving a demonstration. One showed a woman leaning out of a car and looking with despair at a piece of luggage under her rear tire. The copy said:

> I backed our car over the suitcase. Inside was my husband's portable radio. I got so rattled . . . I put the car in drive and ran over it again . . . the radio wasn't even scratched.

Consumers Union tried to duplicate the woman's experience. No matter how hard the testers tried to back the car onto the suitcase it skidded away. Finally by jacking up the car they lowered the rear wheel onto the bag. The result made front cover—a suitcase with the sides collapsed.

In the same issue, Consumers Union reported on Polaner's Jam claim that it contains 10 percent more fruit than regular jams. When compared against the Nation's best seller, Kraft, using the most popular fruit flavors—strawberry, raspberry, and apricot—Consumers Union found Polaner's to contain the same percentage of strawberry, 8 percent less raspberry, and 4 percent less apricot.

The article concluded in part:

> The Polaner's products didn't even seem to contain 10 percent more fruit than any product that might legally be called jam. They thus appear to be misleadingly advertised.

In the July issue, CU looked at the widely advertised STP Oil Treatment, pointing out that it was primarily an oil thickener, an expensive one at that, and also calling attention to the fact that its use might violate new car warranties.

In the August issue, CU took a look at the Excedrin commercials that referred to "tests conducted at a famous hospital" supposedly showing "two Excedrin contain twice as much pain reliever as four of the best selling aspirin." After looking at those tests, it was concluded that:

> The statistical deficiencies in the report were so numerous that Consumers Union's medical and statistical consultants dismiss it as worthless.

Last year Consumers Union reported on drain cleaners. The television advertising for Drackett's Plunge and Jiffee Chemical's Liquid-Plumber has extolled the speed of the respective products working to open up clogged drains through water, no less. The tests showed that both products "had relatively little effect on sluggish drains . . . no effect on clogged drains."

Luggage, food, an automobile product, a drug, household cleaners—not to mention automobiles, detergents, appliances, mouthwashes—provide some idea of the scope of the problem relating to claims documentation and the inadequacy of industry product testing.

Consumer Reports contains many more examples, which of itself is remarkable since CU's coverage on products and services by economic

necessity has always been small in relation to the vast number of products and services available.

The information supplied in the Ralph Nader and Aileen Adams Cowan petition to the FTC clearly supports the fact that advertisers have been accustomed for too long—despite their code section on "Responsibility"—to shielding their documentation from public scrutiny. The FTC resolution announced in June requiring advertisers to furnish documentation on demand has resulted in some initial piecemeal steps to change this situation, and the agency is to be commended for this action. The FTC action, however, is by no means a substitute for this bill—rather the two are complementary.

The bill affects all advertising for products and services equally—be it national, regional, or local. It brings the public into direct contact with the advertiser and avoids the Government serving as an intermediary in the dispensing of the advertiser's information. It calls upon the media to keep the public regularly informed that the documentation is available upon request to the advertiser, and the bill is reasonable in not requiring that this information be a part of all advertising messages.

The advertiser's claims documentation is available simultaneously to all interested parties including the growing number of consumer reporters and media in general, experts who have special competence in specific areas of product efficacy, consumer organizations, researchers and educators, State and city agencies, industry and media self-regulatory bodies, and even competitors.

With such a cross section of people involved, the advertiser should be encouraged to take greater pains in assuring the accuracy and adequacy of both his advertising claims and the documentation in support of these claims.

If self-regulation of advertising is ever to stand a chance, this bill is a basic necessity. No longer will the recalcitrant advertiser be able to stall and avoid request for all pertinent research. Also the self-regulators will no longer themselves be able to hide behind the cloak of confidentiality by claiming that the material is privy information.

The bill does not require advertisers to disclose product formulations which comprise trade secrets; nor do I believe it requires advertisers to furnish the names of patients treated, given the confidential physician-patient relationship. Any other product information is considered to be as valuable, if not more so, to consumers than it is to competitors.

Given that choice, it is the consumer's right to know which must be given foremost consideration. Furthermore, since no prior submission of documentation is required, the advertiser with innovative research studies will have such a jump on his competitors as to be in a superior market position anyway.

Some people, while supporting the open disclosure premise of the bill, have expressed concern to me that advertisers might turn around and use the bill's requirements as a public relations vehicle to confuse consumers. They see the possibility that advertisers with shoddy and inadequate tests could cite compliance with the act while promoting to the public the availability of the tests in a manner which implies proof of the claims.

Of course, there is nothing stopping advertisers from promoting the availability of their tests without this law. Yet to avoid abuse of the

spirit and intent of the bill, it could be amended to rule out advertising references claiming compliance with this legislation.

As already mentioned by Senator McGovern, the bill does require amendment in four paragraphs to avoid confusion between the person making the advertising claims (initiator) and the media (disseminator).

Additionally, I recommend that the word "immediate" be inserted on page 5, line 2, before "furnishing," to avoid advertisers delaying the furnishing of copies of the documentation to the public.

Finally, I wish to note that this bill was not designed to set standards for testing consumer products, nor does it establish means for the technical analysis and evaluation of claims documentation. These are extremely important consumer problems of themselves, which will be receiving treatment through other legislation.

Under this act, the consumer must look to public exposure and to vigorous FTC action against questionable documentation and claims representations. Other alternatives for consumer recourse to marketplace abuses—such as class action—have been or will be the subject of other legislation.

Open disclosure is a fundamental part of the consumer's right to know and is essential if integrity in the marketplace is to be achieved. This is what the Truth-In-Advertising Act is all about. Its purpose is to help stimulate forthrightness and the flow of information. In so doing, it should help to hold shoddy practices up to public scrutiny. It most certainly will be no hindrance to those advertisers who observe the need to treat the consumer fairly, honestly, and openly. If advertisers follow the law's spirit and intent, it could be the beginning of a new-found and much-needed confidence between buyer and seller.

A number of these comments naturally spill over to the bill to establish a National Institute of Advertising, Marketing, and Society (S. 1753). It should be readily apparent that advertising techniques of the kind mentioned earlier are employed with little or no understanding of the psychological and social impact on our society. Marketers know a great deal about mass media viewer and reader profiles, and how to reach people to motivate them to buy. But virtually nothing is known on the short- and long-term consequences of marketing and advertising practices on the individual's psyche and emotional and cognitive development.

To give this phenomenon perspective, one should know that in 1936, just under $15 per person was spent on advertising persuasion; by 1957, this had risen to just over $60; and by 1969, advertising expenditures exceeded $96 for every man, woman, and child in the United States.

Said another way, in 1936, some $1.902 billion was spent on advertising retail goods and services; by 1969, this figure had skyrocketed to $19.565 billion. Today's consumer is confronted by some 500 to 1,500 advertising messages daily.

It is truly incredible that given the huge sum of moneys expended and given the predominant role assigned to advertising in our free economy, that we have developed no discipline to study the consequences upon attitudes and behavior.

Schools dealing with advertising are mainly concerned with turning out practitioners, not persons trained to look at marketing and adver-

tising techniques objectively to study their impact upon our way of life. Perhaps it is because to the dedicated scholar and researcher, advertising is considered to be plebian and corrupt to begin with.

Whatever the reasons, our country needs to apply the same kind of disinterested scholarly curiosity to advertising as the anthropologist applies to the institutions of a primitive society. And unfortunately, unless Government takes the initiative and supplies the basic resources, we can expect nothing to be done.

The proposed National Institute can begin to fill a very important need, provided that its staff and advisory committees are of the highest caliber and above reproach. Consequently, I would view as suspect, participation on these advisory committees of private citizens representing commercial interests. Equally suspect would be the receipt of moneys from industry, even though donated with no strings attached.

Mr. Chairman, I believe that both of the bills before this committee are constructive, sound, in the public interest, and too long overdue. I thank you for this opportunity to express my views and hope that they will prove to be of help to the committee.

Senator Cook. Mr. Braren, I want to commend you for a very fine and remarkable statement. I do wonder whether it accomplishes all of the things that you are talking about.

For instance, I wonder how one makes a filing on your remark, for oversimplification and exaggeration of performance, showing the problem disappearing upon the use of a product. I am trying to figure out what kind of filing they would make with the Federal Trade Commission under the terms of this act.

Under the terms of this act, in essence, we are talking about the type of things that go into a product, whether, in fact, these things really can accomplish what it is stated they can.

I am talking about those kind of advertisements that we see every day that absolutely show nothing, that indicate no particular kind of a product, no particular kind of an ingredient.

How do we go about that within the terms of this bill?

Mr. Braren. I think that this bill contains a very important thing that perhaps the Chairman of the FTC overlooked, and that is public disclosure.

We are witnessing a phenomenon in this country on the whole matter of consumer issues.

Since 1967, the consumer reporter has doubled, tripled, quadrupled in size in this country. They are beginning to report on a wide spectrum of items, holding up marketing practices to exposure.

I heard your earlier comments, and I, indeed, think that they are very valid. But the law, as it is now constituted, does not provide for the treatment of advertising puffery. It is public exposure, public scrutiny, and, if you will, the kind of polls which I just referred to in my testimony which show that advertisers face a large credibility gap that is going to force them toward critical reexamination of the kinds of belittlement, lack of taste, and sheer disregard for the intelligence of the American public.

You mentioned the issue on telephones. Consumers Union, this year being its 35th anniversary, is coming out with a 35th anniversary issue in November.

The introduction to that issue, written by the president of Consumers Union, raises the very substantial question as to where and when the logical choice for the consumer may be not to consume.

And the item which you mentioned on telephones, I think, is a very valid thing, especially when it gets involved in matters pertaining to the environment. Taste is not legislatable.

Senator COOK. I know you are right, but this is a different category of advertisement. This is the kind of advertisement that basically frightens the consumer in relation to his own family.

And so it becomes a necessity for him to consider an action because of a fear of what he may miss in relation to his own family relationship, which I find rather distasteful. I have to be very frank with you.

Mr. BRAREN. This is where the National Institute of Marketing comes into play, and the FTC inquiry later this month into the research and motivational techniques employed in advertising.

Advertisers know that people are concerned about crime, about their safety and well-being, and when advertisers pick this up, they tend to exploit. American Express is doing this in their ads. They raise the fear that to carry money, means you will get mugged.

In fact, they go to the extent of showing in pretty careful detail how to go about it. Apparently, American Express hasn't given any consideration to the propriety of exploiting the fears of the American public for these kind of commercial purposes.

Senator COOK. The thing that bothers me is that in your remarks, you talk about the advertisers, and you don't talk about the producers. This substantiates my fear that, unfortunately, the producer buys an advertising package because he is convinced it will sell the product, even though he may not be convinced that what he says is really the truth in relation to the product he is about to sell.

Mr. BRAREN. Who do you mean by the producer?

Senator COOK. The manufacturer. I am talking about the manufacturer. All through your remarks you talk about the advertiser.

Mr. BRAREN. That is the manufacturer, the producer.

Senator COOK. Well, I make a distinction there, because I think an advertising agency sells a package to a manufacturer. One day I complained bitterly about an advertisement in hearings, and apparently somebody from the company concerned was sitting here and chatted with me later about it. He agreed the ad was in bad taste, and they didn't like it, but it was so far along in the pipeline that there wasn't anything they could do about it.

It seems to me if a manufacturer is in real control of his product, all he has to do is say stop. That may sound rather trite, but I think if the integrity of his product is involved, he ought to want to reserve that right to himself.

Mr. BRAREN. He certainly should.

Senator COOK. Well, I think, frankly, you give tremendous arguments for going into the whole field of advertising. I think you give tremendous arguments for trying to analyze its effect on the American people, because as you so very aptly put it, much of the advertising that the American individual is subjected to today really just insults his intelligence.

And I think this is another thing that the advertising agencies throughout the country unfortunately exploit.

I am sorry that you did not hear this testimony, because I think it goes directly to the point, and will add a great deal to this record, Mr. Chairman.

Senator MOSS. Thank you. I am sorry I didn't hear it orally, but I shall read it very carefully. I know the fine work that Mr. Braren does with Consumers Union, and I am sure that it is outstanding testimony. I appreciate it.

Do you have any questions, Senator Hatfield? The Senator from Oregon has a few questions. I will forgo asking questions until I have read the testimony.

Senator HATFIELD. Thank you very much, Mr. Chairman. I would like to echo the comments made by Senator Cook in complimenting you on some very challenging and interesting testimony.

There have been a number of questions raised concerning the actual requirements of this bill, and I would like to sort of get your reaction to a few of them.

There was a question relating to the necessity of requiring the media to inform the public regularly that documentation is available. How important do you feel this notification action is?

Mr. BRAREN. I think it is an important feature of the bill. I also think that is an extremely reasonable request. The stations currently identify that they are subscribers to the industry's radio and television codes. Stations will, if the FCC proceeds in its recommendations, notify the public when their licenses will come up for renewal; regular brief announcements indicating to the public that information on a licensee's program promises is available will also be required. I think this is very consistent with a broadcaster's obligation to operate in the public interest.

The print media—it is very easy for them to put a little blurb in a prominent position in their publication.

How important? A significant distinction exists between the FTC action and what this bill proposes. The FTC for months kind of holds the material to its chest. As you know, the FTC has requested documentation, and if Consumer's Union right now asked for it, I assume the FTC would say we would have to wait for it.

The public does not know that they can go to the FTC for this material, and if the public did go to the FTC, the agency would never be able to accommodate the volume of requests, because it is not set up for that purpose.

Direct public contact with the advertiser represents a wise and prudent measure in this bill.

Senator HATFIELD. What is the frequency that you would recommend as being reasonable?

Mr. BRAREN. Oh, I would say in the case of a broadcaster, once a week during the daytime and once during the evening time. I mean, in other words, announcements during the day and in the evening to get to the two different audiences.

Perhaps subsequently every other week would be satisfactory.

Senator HATFIELD. Part B of the bill on page 3 requires, when specifically requested, full disclosure of all material, research, testimony and other data, except trade secrets.

We have Consumer's Union in the testing business, and I must assume that there are industries that are testing their competitors' products as well, or at least have a capacity to do so. Would disclosure,

as now worded in this part B reveal any secret information or would there be problems here in their request of trade secrets and so forth that would arise?

Mr. BRAREN. I really believe not. I indicated in the opening part of my testimony, which you did not hear, that I was with the code authority, National Association of Broadcasters. I was the man responsible for advertising review for the broadcast code mechanism. The code received documentation regularly when we requested it, and there was never a problem of trade secret material.

This information in on way or another becomes known in the grapevine. I honestly and seriously do not believe that a case can be made other than for product formulations, that trade secrets would be released under this bill. And——

Senator HATFIELD. You say they would know it already and they are probably aware of it in most instances?

Mr. BRAREN. One advertiser's scrutiny of another's advertiser's claims, they do not live in a dark chapter.

Senator HATFIELD. You do not see this as a valid objection that is raised, because of the fact that there is this knowledge of all competitors products and claims, and so forth?

Mr. BRAREN. No, I really do not. I think it is extremely important that this information be held up to scrutiny, otherwise, the testing, which is poor and inadequate in many cases, will never benefit from public scrutiny which might serve to improve the quality of testing and other documentation.

Senator HATFIELD. Are you saying also that perhaps the patent laws, as such, would give ample protection, in addition to anything that might otherwise be disclosed?

Mr. BRAREN. Yes, sir, I believe that is the case.

Senator COOK. The only point I wanted to make is that much of what you are talking about is substantiation of a claim such as that certain tests were made at a major hospital? You are not going into the ingredients of the product itself? You are going into one phase of the advertising, and I know we could go further than that. But I am talking about the basic examples we have in mind and that you gave here in your testimony.

Mr. BRAREN. Yes, we are going into——

Senator COOK. I agree. But again what we basically are talking about, in relation to the consumer, are those situations where claims are made as to the utilization of a product, that cannot be substantiated. In fact there really might be no way to give the information, or to give the Federal Trade Commission any basic information that this had been successful anyway. Isn't it true?

Mr. BRAREN. You say we are not going into that?

Senator COOK. No, I say you obviously have to.

Mr. BRAREN. Yes.

Senator COOK. You have to. But I am saying this is the distinction between going into the efficiency of the product itself, and going into specific trade secrets. I am making this a distinction. I think your testimony makes it a distinction.

Mr. BRAREN. If I understand you correctly, and I am not sure that I do, I think I am agreeing, but I am not sure I understand the distinction.

Senator COOK. Well, fortunately for me, I think you have answered the question correctly, and we don't need to go further. But I think we are in the situation that there is a degree of complaint in regard to this bill in relation to trade secrets.

However, I believe that the major problem we face is the substantiation of claims that are made not as to particular ingredients in the product, but substantiation that tests have been carried out, or ingredients have been added, when, in fact, your testing of this can prove it either has or has not been done. The manufacturers ought to be perfectly willing to file such information with the FTC.

Mr. BRAREN. Yes. As far as ingredients, for instance the analgesics, advertisements talk about aspirin in the most weasel-worded kind of way, strongest in pain reliever, doctors recommend most, things of that kind.

The cough remedies, ads for one product talk about a cough silencer, when a half dozen of the same type products have the same ingredient in them. But the ingredient is labeled differently in the ads, and the public has no way of knowing. People are led to think they are getting some remarkable different kind of ingredient. When advertisers talk about a product having more of an ingredient, the implication is that it gives the consumer added results.

Senator COOK. Which is your jam case?

Mr. BRAREN. Well, sure.

Senator COOK. And by testing this, can either be established as being true or false?

Senator HATFIELD. May I just finish my questions?

Senator COOK. I am sorry I interrupted.

Senator HATFIELD. That is all right, because actually I would like to restate this.

As I understand you, we cannot separate totally the claims in advertising from the ingredients of the product; because it would naturally relate to those claims.

As I understand your testimony, you are saying that there just aren't that many trade secrets around as relates to ingredients and so forth, because of the testing laboratories like yours, for probably each major industry is testing its competitors' products in their own laboratories. Also there are patent laws that give protection to these trade secrets anyway, over and above this type of legislation.

So that the thrust of this legislation is to challenge or to at least evaluate and alert the public to the claims that they are making of their product. Is this correct?

Mr. BRAREN. That is correct.

Senator HATFIELD. So you are not really concerned about the argument that has been used against this legislation, that somehow we are requiring people to divulge what would normally be considered as trade secrets?

Mr. BRAREN. I am familiar with that argument. I have discussed it with advertisers and representatives of advertising trade associations. The issue of confidentiality is too often used as a cloak for advertisers to hide behind. And I truly believe that the bill is in their long-term best interests, it is in the best interests of self-regulation that this material become public, so advertisers are discouraged from engaging in the kind of surreptitious activity that exists.

I have looked at a great deal of substantiation during my professional career, and there is hardly any of it that, in my opinion, comprises a trade secret.

Senator HATFIELD. Do you see any impact on the general rate of advertising? You gave us some very interesting statistics about the trend in advertising costs and so forth. If the general public becomes aware of the similarity that exists between certain categories of products, and, therefore, are more sophisticated about buying those products and less influenced by advertising, do you see any impact on the general advertising economy by this type of legislation?

Mr. BRAREN. Put it this way: I don't see a negative impact upon the economy. In fact, I see a greater public trust reflecting favorably on the economy. As far as advertising is concerned, as to whether $7 million a year should be spent promoting Alka Seltzer, whether $7 million or more, whatever the figure, should be spent for Anacin, to advertise insignificant product differentials, I think that practice has to be held up to public scrutiny.

Such scrutiny might raise the advertising volume for some, more advertising revenue for some products, and diminish it for others. Several people have raised a concern with what is happening to our free economy system today through advertising. Take the guy who comes up with a better mousetrap and wants to introduce it, but he has to compete against the other guy's extensive advertising which has created a very favorable product image. The public has to see its way through the advertising so as to make an intelligent product choice.

The lack of reliable product information, compounds the problem. I don't believe that this bill will result in substantial lessening of advertising revenues, if that is what you are referring to.

Senator HATFIELD. Let's take that same hypothetical case where the public becomes more sophisticated and has more understanding of it, and look at the other side of the coin. Do you think there would be a possible impact on the general economy of industry as it relates to the prices in the marketplace for the consumer?

In other words, if he has less money going into the advertising media, when the public becomes aware that there is less difference, could this possibly lead to a lower pricing of that product to the consumer?

Mr. BRAREN. Well, advertising——

Senator HATFIELD. With $7 million out of Alka Seltzer's advertising budget, wouldn't that have an impact on the bottle price when this is cut?

Mr. BRAREN. It certainly should. Advertisers use the argument that mass media advertising stimulates production, that is, greater consumption, which in turn allows the cost of the product to be reduced because of greater volume. Certainly this is something the National Institute, if it is established, has to examine. Because I think that claim represents a generalization that is not capable of support in many, many instances. A logical consequence of reduction of advertising revenue should be a reduction in the cost of the product to the consumer.

Senator HATFIELD. Thank you very much, Mr. Chairman.

Mr. BRAREN. Mr. Chairman, I just did want to say one or two things about the testimony by the Chairman of the Federal Trade Commission, if there is any chance to do that before closing.

Senator MOSS. You may do that.

Mr. BRAREN. The reference by the FTC Chairman to the effect that the Federal Trade Commission program might handle the ad claims documentation problem, I think, represents an apples and oranges kind of thing. The bill is much broader in its perspective than the FTC program and I would hope that the Federal Trade Commission would reexamine its position before this committee. Any of us who have been in the FTC corridors know they cannot handle regional and national advertising and make no attempt to do so.

If any of us have tried to look at the scripts the FTC receives every month from the networks on television advertising, they are piled up, I am not condemning them for it, but they are not set up to handle that kind of volume.

As far as the adequacy of tests is concerned, this bill merely requires the public release of claims documentation. The adequacy of the tests must be the subject of other legislation. The Federal Trade Commission itself has a problem of determining the adequacy of tests and has to turn to professionals and research people in order to get help.

As to the question of cost to advertisers, I think that to the honest advertiser, the cost will be so insignificant as to be meaningless. The public simply is not going to be by and large pummeling all advertisers for their material.

There is not a substantial cost factor to be considered for the great majority of advertisers. As for questionable advertising, again all that is required is the release of the documenting material. The cost is not a significant factor. With regard to the charge that this bill might cause advertising to become uninformative, I just disagree with that observation, because public disclosure, open disclosure, cannot help but to stimulate dialog. And I think that that is what is desired through this bill.

Senator MOSS. Well, thank you very much. I was going to ask a question on this cost factor. Some have suggested that there ought to be some additional payment beyond duplication cost, because of overhead in assembling the material. But as you say, already the networks make reports to the Federal Trade Commission and send advertisers documentation or scripts, and it seems to me that it would be rather inconsequential, the amount of additional overhead that they could claim, simply because they must reply to an inquiry and supply a copy of some information they surely ought to have.

Mr. BRAREN. That is precisely right. The documentation for any bona fide advertiser should be available when they go to the media to place the advertising anyway. It is really not much more than a clerical function to handle those requests that may come in for the same material.

Senator MOSS. Thank you very much. I do appreciate your coming here and presenting your testimony.

We have Mr. John Elliott, chairman of Ogilvy & Mather, who is also chairman of the Government and Public Relations Committee of the American Association of Advertising Agencies.

We are very pleased to have you, Mr. Elliott, and we look forward to hearing from you.

STATEMENT OF JOHN ELLIOTT, JR., CHAIRMAN, OGLIVY & MATHER, CHAIRMAN, GOVERNMENT AND PUBLIC RELATIONS COMMITTEE, AMERICAN ASSOCIATION OF ADVERTISING AGENCIES; ACCOMPANIED BY WILLIAM J. COLIHAN, JR., SENIOR VICE PRESIDENT, AMERICAN ASSOCIATION OF ADVERTISING AGENCIES

Mr. ELLIOTT. Thank you, Mr. Chairman.

I think you have already introduced me, covering my first two paragraphs, so I will just add that sitting with me is Mr. William J. Colihan, Jr., who is senior vice president of the American Association of Advertising Agencies, stationed here in Washington, and I think he will be helpful to us in our discussion.

Senator MOSS. We are very pleased to have him before the committee, too.

Mr. ELLIOTT. The position of the American Association of Advertising Agencies with respect to the McGovern-Moss truth-in-advertising bill is this:

We believe and have long stated in our AAAA standards of practice that advertising agencies should not knowingly produce advertising which contains "claims insufficiently supported, or which distort the true meaning or practical application of statements made by professional or scientific authority."

Therefore, we can be said to be in sympathy with the intent of S. 1461. We believe an advertiser making objective claims has an obligation to provide sufficient proof of objective claims on reasonable request. However, we believe this may be better enforced through existing FTC procedures than through legislation as proposed.

Our reason for opposing S. 1461 is first that it is unnecessary, because of "substantiation" procedures recently inaugurated by the Federal Trade Commission. We believe that these provide the consumer with a strong and powerful friend to whom he can turn for help. The Commission shows itself increasingly active on behalf of honest advertising, informed consumers and the maintenance of fair competition, as you, yourself, pointed out this morning.

We believe that the present orderly centralization in the FTC avoids some of the objections and inadequacies in the proposed legislation. These appear to us to be:

(1) The bill calls for the delivery of all material or pertinent data, research, et cetera, which may be on hand, not limited to that which may be sufficient to prove the claim. We believe this is a serious defect because it will allow a competitor to have access to a company's files and discover their research with no more expense than a postage stamp.

(2) It does not recognize that as modern business is conducted the preservation of competition calls for strict security in matters other than product formulas. Trade secrets, which the present wording of the bill implies should be protected, should include many other factors, such as financial data, customer lists, and, we believe, consumer and market research where disclosure could injure competition. None of these is specifically protected by the bill.

(3) It does not precisely limit the kind of claims which must be proved to those capable of objective proof. A claim of "delicious flavor" for instance would seem to be a "characteristic" as described in the bill but is not scientifically provable.

(4) It does not limit the liability a company might incur in terms of cost or diverted manpower in responding to calls for proof, some of which might be artificially stimulated. The bill limits the charges to cost of duplication but does not provide that they may be overheaded.

(5) It does not limit the amount or cost to the consumer of proof which a company may choose to supply, nor does it specify a procedure for discovering that cost before incurring the obligation to pay it. Such detailed proof could easily cost the consumer more than the product.

(6) It puts an uneven and, therefore, unfair burden on the media. Radio stations could comply with its provisions at almost no cost, for instance, while for print media the cost could be substantial.

We recognize that many of these objections could be met by appropriate amendments to the bill.

Some of these objections may also apply to the FTC's new procedures, unless the FTC establishes proper safeguards.

However, we have a more basic objection to the bill. We believe that it is not an appropriate means of accomplishing what it purports to aim at; that is, the benefit of individual consumers.

Very few individual consumers are likely to go to the trouble of requesting research material or tests from advertisers; even fewer will have the time or capacity to draw any meaningful conclusions from the documentation which they receive.

Consumer organizations can, of course, be expected to request substantiation for the benefit of the individual consumer. But rather than give them direct access to the files of advertisers, we suggest they might more appropriately make their request of the Federal Trade Commission. The FTC, acting as a screening body, would call for documentation only in cases where there appears to be good reason to require it.

We suggest in summary that the FTC procedure—subject to proper safeguards—is superior to the procedure under S. 1461, which could produce very little benefit for the average member of the public while causing serious problems for advertiser firms.

We respectfully recommend against the bill.

Turning to S. 1753, the American Association of Advertising Agencies wishes to support the proposed National Institute of Advertising, Marketing, and Society as described in S. 1753 as a desirable and timely undertaking.

We feel such an activity could do much to clarify the role and value of advertising and marketing in modern life. Few proposals could be better in this country and at this time than a broad, objective, continuing investigation of the relationships between commercial and social forces, their advantages and liabilities.

The AAAA itself has been funding such studies as are described in the bill for a number of years through our AAAA Educational Foundation, which at this time has projects funded by grant in process at 22 universities. As a result of this kind of effort, over a number of years, we believe we have gained special insight and experience which we will be glad to offer to the Institute along with all the studies we

have completed. Some of these may be a good base on which to plan or begin future research.

While strongly supporting the idea of the NIAMS, we take exception to one provision of the bill (sec. 3(a)), et cetera, that the Institute should be established "within the Federal Trade Commission." We object to this for two reasons:

First, without disrespect to the Commission, we believe this action would add yet another role to a body which already has many parts to play—that of prosecutor, judge, and de facto legislator. To add to those the necessity of operating a research institute in the social sciences would seem too much.

Second, we believe the Institute belongs in a different atmosphere from that of a regulatory agency if it is to develop and flourish as it should. Properly the ambience should be scientific and academic. For this reason we urge that it be placed in the National Science Foundation and generally supervised by the Director of that organization.

We note that you, Senator Moss, intend to propose an amendment to S. 1753, to the effect that the Institute should be sited within the National Science Foundation. We endorse this amendment.

Finally, we wish to suggest extension of the membership of the Advisory Council (sec. 6(a)) to include representatives from business and consumer organizations. It is our experience that inclusion of all elements into groups like this does much to minimize the inevitable outcries when one or another study turns out to displease this or that spokesman or group. We suggest that the various advertising and marketing associations be invited to submit suggestions for one or more members. From the consumer area we suggest that one or more nominees be named by the Director of the Consumer Office.

Beyond this we endorse the intent of the bill and will urge our members to seek support for it.

Thank you.

Senator Moss. Well, thank you very much, Mr. Elliott, for your statements on the two bills. I am pleased to note that you endorse almost in its entirety S. 1753 and your suggestions for amendment are very good.

As you indicated, I already had concluded that the Institute would be better located in the National Science Foundation, so we are in very much agreement there. We are not in as much agreement on the truth-in-advertising bill; you have many objections to that. But representing, as you do, the American Association of Advertising Agencies, we are very conscious of your expertise in dealing with the problems here and we want to give attention to what you have to say.

I have a few questions.

In your objections to the Truth in Advertising Act, you mention that all materials not limited to that which may be sufficient to prove the claim would be required. Let's say it takes 50 tests and only one supports a claim, don't you think the public has a right to know that 50 tests were necessary to support the claim and that documentation is quite tenuous?

Mr. Elliott. Sir, if there were 50 tests and only one of them documented the claim, I think it would be extremely misleading to use that one to document the claim. In fact, inexcusable. But what I mean there is that when you call for a full and complete description of all material

aspects of any pertinent research or other data, and just below, results of any tests, and so on—this is in point A—you must remember that these tests can go on over a long period of time in the process of the development of the product.

I read into that that all these various tests in all varying conditions should be submitted. And that in submitting such exhaustive information, it goes beyond what the consumer needs and also discloses information that could be helpful to competition.

Senator MOSS. What if the documentation requirement in the bill were limited to the first half of the definition in section 3(d), that is, a description of all material aspects, not the complete research itself? Wouldn't this requirement allow a firm to preserve those trade secrets and financial data and customer lists that might harm the disclosing firm, yet at the same time give some public protection?

Mr. ELLIOTT. Well, I think if it were limited to all material aspects related to the claim itself, that that would answer the problem.

Mr. COLIHAN. Senator, the way that reads now, you could get into a thing where if you were manufacturing a product, you would have to include your quality control tests, because it says all tests. There is no reluctance on our part to get out of giving adequate proof that the claim is true. It is just that I don't believe it is clearly understood how much information about the manufacture and researching of a product accumulates, and I can scarely see this thing delivered, other than by truck.

Senator MOSS. Well, do you really think that is so broad that it would include quality control tests?

Mr. COLIHAN. I think the way the language of the bill is now and I don't think it is intended.

Mr. ELLIOTT. We are in agreement with the spirit of the request. It is just that it seems to us that this requirement is so broadly worded that it would go beyond the scope of what you are trying to accomplish.

Senator MOSS. In your testimony you bring up the subject of puffery. This bill was never intended to cover subjective claims where documentation can't be supplied. Do you think it is really necessary to disclaim puffery? Such as claims for a product which smells good or something of that sort?

Mr. ELLIOTT. I don't understand what you mean by disclaiming puffery.

Senator MOSS. Well, you indicated that there would be requests for documentation on endless subjects. The concern of the bill is simply to require documentation where there is some objective matter claimed, like "9 out of 10," or "in 3 days" something happens, et cetera.

Mr. ELLIOTT. Well, in the case of nine out of 10 and in 3 days, of course, we believe that that should be substantiated. The only reservation that we have is that when you refer to characteristics, those characteristics can include puffery characteristics or subjective claims which can't be substantiated.

Senator MOSS. You suggest that some other word other than characteristics be used then? Or should that be eliminated entirely?

Mr. ELLIOTT. You might use the term "characteristics," but qualify it by saying that these do not include subjective claims such as delicious taste, handsome, and so on.

Senator MOSS. In your fourth objection, I think it is, you point to the costs of providing information, and yet, on the next page you say very few individual consumers are likely to go to the trouble of requesting research materials.

Under those circumstances, the costs would be minimal, and perhaps we should not even provide for duplicating costs. There are a number of food companies which supply consumers with additional nutritional information at no cost. These firms have gone to the expense of preparing booklets about their foods and tables of nutritional values, and they don't charge and don't seem to be swamped with requests, as you observe would be the case under the bill.

Under these circumstances, wouldn't charging for overhead be a little greedy, it would appear that charging for duplication is already more than necessary, it seems.

Mr. ELLIOTT. Well, I realize that there is a seeming inconsistency there, where we say very few individual consumers are likely to go to the trouble. We say that because, while we are not sure, of all the complaints that have come in to the Better Business Bureau in toto, or to the FTC in toto, less than 5 percent consist of complaints about advertising.

So that is one of the reasons why we think that the requests might not be too many. But it is possible that a number of, a large number of requests could be artificially stimulated. And all we are suggesting is that there be a provision in the bill to protect advertisers from such a situation where the expense could become substantial.

Senator MOSS. Hasn't the Federal Trade Commission's substantiating policy been of rather limited use when it comes to purchasing consumer goods? We still haven't received the substantiating information on the 1971 automobiles and the 1972's are on the market. The right of the individual to take immediate action is missing from the Federal Trade Commission's policy. For instance, if I want to buy a product that is on the market now, and I want to know about it, why shouldn't I have the right to get the substantiating information?

Mr. ELLIOTT. Well, as Chairman Kirkpatrick pointed out this morning, it has been slow up to now, it is rapidly speeding up, in the next few days for example he said the information would be out about the automobiles, and we believe that the individual consumer should have the right to request this information but that it be more orderly to do so through a speeded up FTC procedure than going to the individual advertiser.

Senator MOSS. But the FTC just isn't geared for this; it doesn't have the personnel to accomplish this. Going back to this automobile situation, they made a request for that data a long time ago, and they still haven't released it, and we have gone on to another model year.

Mr. ELLIOTT. Well, we will assume that the consumer is only going to want substantiation if he has a reason to believe the substantiation is not there. If he believes the substantiation is there, there is not much point in his asking for it. He is challenging the claim that is made.

Under the new self-regulatory system, it will be possible for him to do this through any one of the 130-odd Better Business Bureaus throughout the country, and that self-regulatory system can act as a screening body.

I think that he will be able to get fast action through that and faster action than in the past through the FTC.

Senator MOSS. Doesn't the fact that he has the right to get the substantiation clear up a lot of basic skepticism that exists now for the consumer looking at advertisements and seeing some that appear outrageous to him, and he discounts advertising generally? The end result of this bill is to make advertising more credible, because if we have the right to request substantiation the public will have greater confidence in advertising.

Mr. ELLIOTT. That is right. But I think as the National Advertising Review Board gets underway, and as the speeded up FTC procedures gain more publicity and so on, that the consumer will realize that he does have the right and the means to go after that information through those groups.

Senator MOSS. Well, I still don't see why giving the public this right would necessarily put any great burden on the advertiser, and I think the net effect might be more beneficial to the advertiser than any great change in the product. But I appreciate your position, and it is one we certainly want to examine carefully, because we don't want to do anything that is futile or unnecessary or undly burdensome. We are simply trying to improve the relationship, to give the consumer his rights and at the same time have advertising fulfilling its legitimate function of informing accurately about the product yet weed out the areas where abuses have crept in.

Thank you very much, Mr. Elliott, and Mr. Colihan. We appreciate having your statement and we are going to have further hearings on this matter and we may want to get back in touch with you as we go along developing the testimony.

Mr. ELLIOTT. Thank you very much.

Senator MOSS. This will complete our list of witnesses today. I want to thank all of them for their interesting presentations, they have been most helpful to our understanding and interpretation of the legislation and the need for these two bills. It is evident that there will be a research institute which brings together the very best thinking necessary to review and analyze the problems and considerations of advertising and marketing in the consumer culture of today. And there is no question that a mechanism is needed for giving the consumer adequate supporting information concerning product claims.

The question raised here has been one of administration. I feel that we can work these problems out so we will have truth in advertising.

We now stand in recess subject to the call of the Chair.

(Whereupon, at 12:35 p.m., the committee was adjourned, to reconvene subject to the call of the Chair.)

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

THE PENNSYLVANIA STATE UNIVERSITY,
COLLEGE OF BUSINESS ADMINISTRATION,
University Park, Pa., March 8, 1971.

Hon. FRANK MOSS,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MOSS: I read with great interest a story in the February 15 issue of *Advertising Age* which reported on your proposal for a National Institute of Marketing and Society. For those of us who have been struggling with the many barriers to research support, your proposal is the most hopeful thing to come out of Washington in years. We seem to have somewhat strange priority systems in our nation, but I would wager that more federal moneys have been made available for research for improving the growing of flowers than for the improvement of the welfare of America's consumers. Much consumer legislation reflects that lack of research.

I am sure you are aware of the fact that there is in the marketing academic community a whole new breed of young, well-trained, rigorous consumer researchers. Further, this new breed of scholars feels a very strong commitment to consumers and to the improvement of consumer welfare. At the same time, they feel much less attached to the business community than have their elders. On the whole, these young scholars are well-grounded in the theory and research methodology of the behavioral sciences. In spite of the paucity of research funds, the beginnings of a new discipline of consumer behavior have been made.

Your proposal would have major long-run payoff to this nation's consumers. Is there anything that the academic community can do to help you sell this program to your colleagues? If there is, please let us know, and what can be done will be done.

Let us hope that this "dream" becomes more than that. Congratulations on your wisdom in proposing it.

Respectfully,

PETER D. BENNETT,
Chairman, Department of Marketing.

MICHIGAN STATE UNIVERSITY,
GRADUATE SCHOOL OF BUSINESS ADMINISTRATION,
East Lansing, Mich., April 5, 1971.

Hon. FRANK MOSS,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MOSS: As a Professor of Marketing in the Graduate School of Business Administration at Michigan State University, and as Vice President for Education of the American Marketing Association, I read with great interest and pleasure the report of your proposal for a National Institute of Marketing Society in the February 15th issue of Advertising Age. It is extremely encouraging to know that a senator of your stature is concerned with marketing issues. These issues are vital and pivotal to an understanding of our economic system, to consumer and social welfare, and to our national goals.

It has always been a source of great concern and disillusionment for me to realize that marketing in the broad sense does not have a home in government. There are no governmental funds available to support the kind of substantive research so necessary and vital for our economic well-being. Other areas such as education, health, agriculture, the sciences, and now some of the arts, are able to gain governmental support for research activities. Marketing, regardless of the critical and vital problems with which it must deal, is not even eligible for grants from the National Science Foundation.

In February, along with other officers of the American Marketing Association, we tentatively explored the possibility of gaining support from agencies of our federal government for fundamental academic marketing projects. The prospects were not at all encouraging.

The academic community in marketing now possesses a group of well-educated researchers willing and able to deal with fundamental social and consumer problems. It is my belief, sir, that your proposal would permit marketing scholars to make significant contributions to the welfare of this nation of which they are capable.

Is there anything that I could do personally, as a member of the academic community, or as a Vice President of the American Marketing Association to support your suggestion? It would be a great pleasure and privilege to meet with you and your assistants in Washington if that might prove fruitful.

I sincerely hope that your program will become a reality, for in so doing it will advance our knowledge of fundamental marketing activities and their impact on our economy and its value systems.

Yours respectfully,

WILLIAM LAZER,
Professor of Marketing.

CONSUMER CENTER,
LEGAL AID SOCIETY OF METROPOLITAN DENVER,
Denver, Colo., August 5, 1971.

Senator WARREN G. MAGNUSON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MAGNUSON: This office strongly supports the effort to establish the National Institute of Advertising and Marketing as proposed in S. 1753, currently pending before your Committee on Commerce.

We are a branch of the Legal Aid Society of Denver which is funded through both OEO and Model Cities. We are responsible for dealing constructively with the problems of the low income consumer. We are convinced that in addition to the normal run-of-the-mill fraudulent selling, extortionate interest rates, shoddy merchandise, and a biased legal system, the consumer is being systematically misled by modern advertising.

Perhaps misled is the wrong word, if one believes that happiness comes through ever increasing levels of consumption or that a three-hundred horse power automobile can relieve one's sexual anxieties as well as provide transportation to and from work, then media advertisements are not misleading.

It is important to understand, however, that media advertising is the most effective propaganda device ever conceived and that such advertising seeks to create a frame of reference—a philosophy—which will enhance merchandising efforts. I think the ad people call this process "creation of demand." Thus, it is rarely that we see a product sold. What is being sold is a life style which the product logically enhances. Such selling ultimately and inevitably reflects itself in the basic political and social structures of the country. Societal changes brought about by the automobile are perhaps the most obvious.

We think that the time for some serious and scholarly study into the effects of such advertising are long overdue. Hopefully, such a study would include not only deceptive or fraudulent advertising, but advertising which seeks to create a psychological response in the viewer.

In our analysis, this is a much more important problem and one that has not to our knowledge ever received serious systematic study.

Thank you for your attention.

Very truly yours,

JAMES RODE,
Attorney at Law.

NORTHWESTERN UNIVERSITY,
GRADUATE SCHOOL OF MANAGEMENT,
Evanston, Ill., August 25, 1971.

Senator FRANK E. MOSS,
Salt Lake City, Utah.

DEAR SENATOR MOSS: I have read your proposed bill calling for a National Institute of Advertising, Marketing, and Society. The idea of such an institute to

conduct objective investigations of some of the major issues involving marketing and society has great merit. I would like to express my own personal endorsement of this legislation.

There are two observations I would like to offer. First, the very nature of the problems outlined in the legislation are methodologically very complex and difficult to examine although I agree their substantive significance demands that they be studied. Very considerable behavioral and marketing sophistication will be necessary in any research if the program is to be implemented in an objective way. Such talent is not readily come by and may also reside outside the immediate realm of business. Provision for a special advisory committee to identify and secure the interest of scholars and practitioners having the requisite skills might be formed involving personnel from government, business, and academia.

My second point is that marketing (including advertising) has a very positive role to play in furthering social goals and programs. Marketing tools can be harnessed for positive social action. This important positive dimension seems to be lacking in the spirit of the legislation. I would urge you to consider more specific reference to what my colleague, Philip Kotler, and I term "social marketing." Social marketing is the design, implementation, and control of programs such as those sponsored by the American Cancer Society, the National Safety Council, etc., calculated to influence the acceptability of social ideas and involving considerations of product planning, pricing, communication, distribution, and marketing research.

Sincerely,

GERALD ZALTMAN,
Associate Professor of Behaviorial Science and Director of Research.

THE UNIVERSITY OF WISCONSIN,
GRADUATE SCHOOL OF BUSINESS,
Madison, Wis., September 7, 1971.

Senator FRANK E. MOSS,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MOSS: In the mid-August issue of The Marketing News I saw a news story concerning your bill S. 1753. According to the news report, you propose the establishment of a National Institute of Advertising, Marketing, and Society. As a former advertising practitioner now turned college professor and researcher, I would like to let you know how much I agree with what seems to be the intent behind your proposal.

We, in fact, know very little of practical value about the actual impact of advertising and other forms of marketing communications upon the value systems of our society. In fact, we know very little about how advertising works or what specific effect it has as compared to other marketing factors upon the sale of individual products. Yet as a nation we are currently spending close to 21 billion dollars annually of our scare resources on advertising! In my opinion, we clearly need to do a great deal of objective and exhaustive research in this area over the coming years. But it cannot be simply scattered bits and pieces of unconnected research, as it has been. It must be led by a large, well-planned, well-financed and staffed, coordinated research program that attempts to pull together and integrate what information is now available and then go on from there with perhaps a series of longitudinal studies. And, as you have already stated, this work must be objective, free from the pressures of practical politics and business. If this is the type of think you are trying to establish with your institute concept, then I am fully behind the idea. I would be happy to lend what help I can give the cause.

I worked for some 13 years in the 1950's and 60's for three major firms (A.T. & T., American Cyanamid, and Pfizer) doing advertising and public relations and I saw the urgent need for a better understanding of the effect of marketing communications upon our markets. Since 1965 I have been in the academic world (receiving a Ph.D. from the University of Michigan in 1968 after working with George Katona there in the Institute for Social Research) and the need seems to me now to be even clearer and more urgent. My students (even though they are business students) are quite fed up with "advertising puffery as usual". They want to move ahead with the serious business of communicating in the best way possible the information the consumer needs to make intelligent buying decisions.

But they can see that much research needs to be done before we can do that efficiently, and before our federal and local governments can have a firm basis for regulatory laws in this field.

I wish you the best of luck with your bill. I hope that soon there will be an objective, well-financed institute that conducts a "focused, scientifically sound program of behavioral research on the psychological and social impact of marketing and advertising."

Sincerely,

WM. H. PETERS, Ph. D.,
Visiting Associate Professor of Business Administration.

FEDERATION OF AMERICAN SCIENTISTS,
Washington, D.C., September 13, 1971.

Hon. FRANK E. MOSS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MOSS: We have a special interest in supporting S. 1461, the Truth in Advertising Act of 1971, requiring advertisers to furnish documentation of claims on request. As you are well aware, most of the claims that are susceptible to documentation claim the support of "scientific tests" or the support of "scientists" or "doctors," etc. False, undocumented claims of this kind misuse science and, the credibility of advertising being so low, these claims tend to undermine the credibility of science.

We see no difficulty in asking advertisers to present documentation on request, so long as the costs of reproduction and mailing, etc., of the documentation are borne by those requesting it. We believe that media advertisers would find this documentation useful since it protects the media from distributing unsubstantiated claims that may turn out to be false—claims for which the media bears moral, if not legal, responsibility. We do not think that the media should have to add to each advertisement the fact that the Truth in Advertising Act provides for such documentation. But we think when it passes—the consumer groups can further spread the word.

With these understandings, we support and welcome S. 1461 and will do whatever we can to assure its passage.

Respectfully,

JEREMY J. STONE, *Director.*

CORNELL UNIVERSITY,
GRADUATE SCHOOL OF BUSINESS AND PUBLIC ADMINISTRATION,
Ithaca, N.Y., September 22, 1971.

Hon. FRANK E. MOSS,
U.S. Senate,
Washington, D.C.

MY DEAR SENATOR: May I add my small voice of support to your very imaginative proposal for a National Institute of Advertising, Marketing, and Society (S. 1753)? The need for such an institute could not be greater. The timing is most fortunate.

Twelve years of academic research and teaching marketing, marketing research, and related subjects have impressed upon me the need for such an institute. An institute such as the one you propose will provide an objective link between marketing theory and practice. The present systems for funding basic research tends to widen the gap between the behavioral theories and marketing practices. For example, a research proposal to study the urgent questions that you pose would be rejected by most of the foundations with which I am familiar because the problems are applied, with little contribution to theory. Conversely, industries would reject them because the problems are theoretical, with little immediate application. Your proposed Institute will fill the void between theoretical and very practical research, both of which are subject to bias.

The timing seems fortunate because there is a convergence of thought among behaviorial scientists in marketing. For example, there is a trend toward studying the buyer and the consumer as a processor of information. The problems that you cite can be handled very efficiently in this framework. Thus, research conducted through your Institute could develop generalizations that would make

important contributions to the behavioral sciences and to marketing efficiencies, as well as provide guidance for public policy.

If I may be of assistance to you or your staff I hope that you feel free to call on me. I would appreciate receiving copies of materials that are distributed as a result of your forthcoming hearings.

Respectfully yours,

G. DAVID HUGHES,
Associate Professor of Marketing.

AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION,
New York, N.Y., October 1, 1971.

Hon. FRANK E. MOSS,
Chairman, Senate Commerce Subcommittee on Consumers, New Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: In lieu of personal appearance of a witness at hearings, the American Newspaper Publishers Association herewith submits its views on Bill S. 1461 by Sen. McGovern (S.D.), with you as co-sponsor, dealing with the furnishing of documentation of advertising claims.

ANPA is the national trade association of daily newspapers. Its membership includes more than 1,000 daily newspapers in all 50 states, having more than 90 per cent of total U.S. daily newspaper circulation.

Newspaper publishers have a great stake in preservation of the highest standards of truthfulness in advertising. Claims which are advanced in advertising should be supportable by credible evidence, and we support the objectives of the proposed legislation. However, we emphatically *oppose* Bill S. 1461 for the following reasons:

1. It is unnecessary. The Federal Trade Commission has already undertaken an orderly approach to substantiation of advertising claims through the Commission where this responsibility properly resides and where safeguards exist to protect the interests of consumers and competitors. Authority of the Commission to undertake this program has not been seriously challenged.

2. It would subject business firms to unrestricted harassment. One need only look through the pages of any newspaper or magazine or watch an evening of television to comprehend the potential for extreme harassment of business enterprises by extremist groups which could seize upon every descriptive adjective in every advertisement. Contrast this with the efficiency and fairness with which documentation can be administered in the public interest by the Federal Trade Commission.

3. It would lead to endless debate about what constitutes "trade secrets." A requirement to give any member of the public "full disclosure of all material research, tests and other data" is tantamount to disclosure of competitive trade secrets unless clear-cut rules and definitions are spelled out. The proposed legislation fails to do so.

4. It is potentially against the best interests of consumers. Advertising in public media is only one of several alternative methods of sales promotion. Valid research has shown, however, that it is the form preferred by consumers because they find advertising useful in making buying decisions. If businesses which utilize advertising in the public media are to be subject to unending harassment, they would simply choose other methods of sales promotion, and consumers would be the losers. This is sometimes not understood by persons who are not close to the field of advertising and marketing. However, it is well known to advertising practitioners.

The defective craftsmanship of Bill S. 1461 is well illustrated in its provision pertaining to the media, requiring that publishers and others publicly inform readers, listeners and viewers "on a regular basis" that documentation of claims is available and also imposing an obligation on the publisher to supply addresses of advertisers for this purpose. The meaning of this is not clear. If "on a regular basis" means "daily" in some form of standing message, it would be burdensome in the extreme, expensive and completely unnecessary. If this legislation should be enacted, it would be fully reported in the news columns of newspapers and discussed many times in subsequent articles. As for names and addresses, they appear for the most part in the advertisements themselves in newspapers. This merely illustrates the further potential for harassment without serving any useful purpose. Finally, the publisher is in no position to guarantee the accuracy of

his statement that documentation is available to substantiate all claims in all advertisements.

For all these reasons, we favor deferring any consideration of legislation at this time to afford the Federal Trade Commission full opportunity to develop and carry out in an orderly fashion the program of monitoring advertising claims which the Commission has already undertaken.

We understand that your Subcommittee plans to hold hearings on this legislation on *October 4*. We respectfully request that this letter be made a part of the hearing record.

Respectfully submitted.

STANFORD SMITH,
President and General Manager.

B. BERNSTEIN & CO., INC.,
Providence, R.I., October 13, 1971.

Hon. JOHN O. PASTORE,
New Senate Office Building,
Washington, D.C.

DEAR JOHN: In furtherance of my conversation with Pip relative to the two Senate Bills S. 1461 and S. 1753:

On 4 October John Elliot, Jr., appeared before the Senate Commerce Committee, Subcommittee on the Consumer, and stated the position of the American Association of Advertising Agencies on these bills:

". . . that the F.T.C. procedure (subject to proper safeguards) is superior to the procedure under S. 1461 which could produce very little benefit for the average member of the public while causing serious problems for advertiser firms."

(I may add that Chairman Kirkpatrick of the F.T.C. has taken the same position.)

"While strongly supporting the idea of the NIAMS, we take exception to one provision of this bill (S. 1753 Section 3a); i.e., that the Institute should be established 'within the Federal Trade Commission.' We object to this for two reasons:

First, without disrespect to the Commission, we believe this action would add yet another role to a body which already has many parts to play—that of prosecutor, judge and de facto legislator. To add to those the necessity of operating a research institute in the social sciences would seem too much.

Second, we believe the Institute belongs in a different atmosphere from that of a regulatory agency if it is to develop and flourish as it should. Properly the ambience should be scientific and academic. For this reason we urge that it be placed in the National Science Foundation and generally supervised by the Director of that organization."

(I am advised that the bill is being revised to provide for this.)

I, personally, and on behalf of our Agency, endorse the position of American Associate of Advertising Agencies and respectfully request any help that you, in your good conscience, can give in support of our position.

Personal regards.

As ever,

HARRY BERNSTEIN,
Vice Chairman.

CAMPBELL-EWALD COMPANY,
Detroit, Mich., October 25, 1971.

Hon. PHILIP A. HART,
U.S. Senate, Old Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: I understand that the Senate Commerce Committee will be holding hearings on S. 1461 and S. 1753, and I am writing you to give you the benefit of our thinking in regard to this legislation for your consideration in making a decision.

We are in sympathy with the intent of S. 1461—the McGovern-Moss "Truth in Advertising" Bill. We and our clients long ago discovered that advertising which contains unsupported claims or intentionally distorts the true meaning of any statement, is not only undesirable for the customer but also for the advertiser, since it is difficult for any advertiser, to overcome consumer attitudes toward a

product which has not lived up to the claims made for it. This legislation could help advertisers in this respect.

While we feel that our own approval procedures and the procedures recently inaugurated by the Federal Trade Commission seem to provide adequate protection for the consumer and the advertiser, we would be more favorably inclined toward S. 1461 if there was assurance that the administration of the legislation could take our concerns into consideration. For example, protection of the manufacturer's right in test marketing situations to prevent premature disclosure. Also protection of financial data, customer lists and other information where disclosure could injure competition. These and several other considerations along this line were covered in the testimony of John Elliott, Jr., of the American Association of Advertising Agencies, before the Senate Commerce Subcommittee on the Consumer, on October 4.

Basically, we feel that unless the procedure developed in S. 1461 is amended to include these considerations, it could cause serious problems for advertiser firms, and would not be as effective as the present FTC procedures, subject to proper safeguards.

In regard to S. 1753—we believe, with The American Association of Advertising, Agencies, that the proposed National Institute of Advertising, Marketing and Society described in the bill is a desirable and timely undertaking. The advertising industry has, as a matter of fact, been funding the kind of studies described in the Bill, for a number of years.

We do believe, however, that the Institute should not be established within the Federal Trade Commission, but in an appropriate body in the Federal Government which can more objectively conduct research in the social sciences. We would also like to suggest that representatives from business and consumer organizations be included in the Advisory Council. It has been my experience, that when representatives from business are not included, a great deal of time is often wasted in making proposals which may seem desirable from the standpoint of the public sector, but often can be much more easily and economically accomplished by administrative procedures within business, proposed by someone who is knowledgeable about business activities.

I hope that these comments will be of value to you in your consideration of legislation.

Sincerely,

THOMAS B. ADAMS.

AMERICAN ADVERTISING FEDERATION,
Washington, D.C., October 27, 1971.

Senator FRANK E. MOSS,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR MOSS: We wish to offer the following views with regard to S-1753, a legislative proposal to establish a National Institute of Advertising, Marketing and Society.

The American Advertising Federation was originally scheduled to testify on October 27, 1971, on both S-1753 and S-1461, the Truth-in-Advertising bill. That hearing date has been cancelled, with legislative action on S-1461 now in abeyance pending a report next spring from the Federal Trade Commission on its own substantiation program. We would like, however, to offer the following views on S-1753.

We support the principles contained in this bill to establish a National Institute of Advertising, Marketing and Society to study the impact of advertising on the consumer.

We know you share the conviction that this study should proceed without any preconceived notions or points of view. We believe very strongly that a totally objective study would serve the best interests of the consumer as well as industry.

There are certain recommendations we would like to make with regard to the present legislation. We believe that the institute should be established under the auspices of the National Science Foundation, and not the Federal Trade Commission which is the regulating agency of primary jurisdiction in the advertising area. An amendment to place the institute under the National Science Foundation instead of the Federal Trade Commission is pending, and we support this action

In addition, we do not believe the institute should have the power to intervene in any federal-agency proceeding affecting advertising. This power goes beyond the scope of an institute established to do objective research on the impact of advertising.

Finally, we believe that the institute's advisory council should include business and marketing executives, as well as government and consumer representatives. With these modifications, we support the intent and scope of S-1753 and offer our cooperation and assistance in its fulfillment.

Because of your interest in advertising, we know you will be interested in the industry's new program of self regulation. Enclosed is a copy of my testimony before the FTC on October 20, 1971, which outlines the objectives and machinery of the plan.

Sincerely,

HOWARD BELL.

Enclosure.

STATEMENT BY HOWARD H. BELL, PRESIDENT, AMERICAN ADVERTISING FEDERATION

My name is Howard H. Bell and I am president of the American Advertising Federation, which has its headquarters in Washington, D.C., and a western region office in San Francisco, California.

The AAF is an organization whose roots extend back to 1905. Its membership embraces all segments of advertising at the national and local levels, including more than 180 advertising clubs throughout the country; 450 company members comprising advertisers, agencies and all media, and some 30 advertising and media associations. The current chairman of the Board of Directors is Frederick E. Baker, N.W. Ayer/F. E. Baker Advertising Agency, Inc., Seattle, Washington.

The Federation engages in a variety of activities affecting all advertising, including government and public affairs, advertising education, and advertising standards. In recent years we have appeared before this Commission on many issues, including the introduction of the AAF model deceptive practices act for adoption by states in dealing with misleading practices locally. We have recognized the need for a strong and effective Federal Trade Commission and on numerous occasions have supported increased funding and authority, including legislation to grant the Commission injunctive relief powers under certain conditions.

This current FTC study comes at an appropriate time in history. There are increasing regulatory pressures in the marketplace and the voices of those who criticize advertising are becoming louder. In evaluating criticism it is often difficult to separate subjective response from valid concerns. For this reason we applaud this effort by the Commission and staff to explore the advertising process first hand and to seek the expert views of so many different segments of industry and society generally. For government, industry and the public all have a stake in the pervasive role of modern advertising and the issues to be discussed in this proceeding.

Advertising can and should stand the glare of public scrutiny and we recognize that it, like all institutions, has its imperfections. We believe the over-riding importance of advertising to the economic health and growth of our nation and its role in serving the varied needs of the consumer will emerge more clearly as a result of these hearings. The eminently qualified array of witnesses which the FTC and its staff have assembled for this proceeding in cooperation with industry should contribute greatly to this understanding.

Because of the extensive nature of subsequent presentations on the role and function of advertising the Federation wishes to confine its comments essentially to two aspects of advertising that relate to its performance in todays marketplace.

First, we want to emphasize the role of advertising as a competitive tool of small businesses and retailers in this country.

Second, we want to express our views on advertising's responsibility to the public and set forth for the record industry's plans to strengthen the commitment to high standards.

ADVERTISING AND SMALL BUSINESS

All too often advertising is equated with big business. However, a substantial portion of advertising is local on behalf of small business. For example, most of the 40,000 persons associated with advertising through the 180 advertising clubs in the AAF fall into this category. Generally speaking the advertising

clubs represent the practice of advertising on Main Street, U.S.A., as distinct from Madison Avenue and Michigan Avenue, although these centers are fully represented. Much of the work of the Federation centers around the activities of these practitioners through the advertising clubs.

Main Street, U.S.A., is where competition in this country is joined. The retailers of this nation in all categories—food, shoes, jewelry, cars, restaurants—all need and rely on advertising to compete daily in the local marketplace. The new retail establishment can only gain a foothold in the market through the use of advertising and the established store can not compete without it.

The reliance of local businesses on advertising is illustrated by examining the billing figures of several major media that deal in both local and national advertising—newspapers, radio and television. For two of the three categories, local billings far outstrip national usage.

Of approximately $5.7 billion spent in newspaper advertising in 1970, $4.7 billion came from local advertisers, of which $3.2 billion was retail display and $1.5 billion was classified advertising. A little more than $1 billion was in national business.

Of approximately $1.2 billion spent in radio in 1970, approximately $840 billion was spent by local advertisers, with the balance of $398 million coming from national and regional business.

In television—a major medium for rational advertising—of $3.6 billion spent in 1970, $706 million was spent by local advertisers.

The volume of local advertising in local media every Thursday and Friday testifies to the strong reliance of the consumer on such advertising as a basis for week end buying decisions.

ADVERTISING RESPONSIBILITY

Whether advertising is local or national, there is an overriding responsibility on all who contribute to its production and dissemination to be certain that it presents an accurate and reliable portrayal of the characteristics and performance of the product or service. This is a concern we share with the Commission which has the ultimate responsibility in this area under the law.

In recognition of this need the Federation undertook a study of advertising self regulation some fifteen months ago which culminated in the announcement on September 28 of significant new machinery to deal with the truth and accuracy of national consumer advertising.

Specific public proposals dealing with the mechanism of such a self regulatory program first were presented in September 1970 by the then chairman of AAF, Victor Elting, Jr., now retired vice president of advertising for the Quaker Oats Company, Chicago, and by the current AAF chairman, Mr. Baker. Throughout the evolving stages of the plan informal consultations with the Commission and its staff were most helpful in developing a sound and effective program, and avoiding possible legal problems. We are deeply grateful for the assistance and the encouragement received.

The new program of self regulation in advertising as finally adopted involves a two-tier system. The first element is the new National Advertising Division of the Council of Better Business Bureaus. It is headed by Roger Purdon as vice president and is located at 845 Third Avenue, New York.

The second tier is the newly created, independent National Advertising Review Board (NARB) under the chairmanship of Charles W. Yost, former ambassador to the United Nations. Ambassador Yost will be devoting a considerable portion of his time to overseeing the operation of this board. In addition, the NARB has a full-time executive director, William H. Ewen, whose offices will be located at 850 Third Avenue, New York. He is currently using temporary office space until those quarters become available. In addition to the chairman, the NARB consists of 50 members—30 representing advertisers (of which 27 have been appointed), 10 representing advertising agencies, and 10 representing public or non-industry fields. We would like to submit for the record a list of the members of the National Advertising Review Board.

In the development of this program there were two essential elements that were uppermost in importance in establishing a system that would be effective, respected, and credible.

The first was the desirability of public representation in the structure itself so that the consumer would have a role in its functioning.

The second essential element was that there be adequate enforcement machinery, consistent with existing laws.

The plan which evolved through many stages contained both features. During its development in consultation with government and industry leaders, the effort was joined by the American Association of Advertising Agencies, the Association of National Advertisers and the Council of Better Business Bureaus.

These organizations and the AAF became the steering committee which now comprises the National Advertising Review Council, a separate corporate body which has been formed to implement the project. While the president and chairman of each sponsoring organization serves on the Board of Directors of the corporation, their responsibilities relate to the housekeeping matters of the corporation. They are precluded from involvement in the decision-making process of the National Advertising Review Board.

The machinery and functions of the National Advertising Division of the CBBB and the National Advertising Review Board (NARB) may be summarized as follows.

The NAD will receive, evaluate and act on complaints with regard to truth and accuracy in national consumer advertising. The complaints may come from any source—public, industry, or even government.

In addition to handling complains, the NAD staff will engage in monitoring to uncover possible abuses on its own initiative. It also will render advisory opinions in advance to advertisers and/or agencies on planned advertising as a means of offering early guidance to help avoid problems.

In the handling of complaints, the staff will seek to evaluate the merits of the issues raised. In most cases this will mean checking the representations made in the advertising with the available information on the performance of the product under accepted standards of truth and accuracy.

If a complaint is considered justified, the staff will work with the advertiser and/or agency to seek an appropriate change in the advertising. The emphasis will be on a constructive resolution of the problem.

If there is an impasse and the questionable advertising is neither altered nor withdrawn the complaint will be appealed to the NARB.

To expedite the appeals process, the chairman of the NARB will convene a five-man panel of the board to hear the specific case and reach a decision on behalf of the board. Each panel will include three advertisers, one agency and one public member.

The decision of a panel will be transmitted to the advertiser at the highest corporate level. If the advertiser refuses to cooperate with the NARB panel or does not agree with the decision of the panel that the advertising is in violation of NARB standards, the chairman of the NARB after exhausting all procedures shall inform the appropriate government agency. The letter shall describe the advertising and the questions raised and advise that the NARB file is available for examination upon request. The chairman shall make public the letter and any comments or position statement received from the advertiser.

We believe that these enforcement measures will assure a meaningful and respected effort while recognizing the ultimate jurisdiction of government to exercise its statutory responsibility with respect to such matters.

We would like to submit for the record the by-laws of the National Advertising Review Council Inc. and the Statement of Organization and Procedures of the National Advertising Review Board.

It has been suggested that the percentage of public representation on the Board should have been larger than 20%. However, it should be acknowledged that the inclusion of public representatives in an industry program of self regulation is in itself a major step forward. There are, in fact, few—if any—industries or professions that provide for direct public involvement of this nature and extent. The objective is to give the public a voice in an industry program and this has been accomplished.

The quality of the public members selected for the NARB is self-evident—and this is of paramount importance. The question is not the number of public members, but how well this Board performs its responsibilities. We are confident that the program will earn the respect of the public generally, as well as critics based on this performance. It merits the support of all who have an interest in improving the system.

The NARB will hold its first organizational meeting next month. And it is hoped that the public will take full advantage of the program.

Earlier I spoke of the importance of local advertising for the small business or retailer in this country. Since this national program of self regulation will

deal with advertising appearing in national media, we believe that machinery should be established to deal with local advertising practices as well.

The AAF and the CBBB are presently developing jointly a blueprint for the establishment of local advertising review boards, initially in those cities where there are local better business bureaus and advertising clubs in a position to administer such programs. We believe that an extension of the national program is essential to complete the circle of concern with respect to the truth and accuracy of all advertising. We will make the blueprint available to the Commission when it is completed.

The AAF is encouraged by the progress that has been made during the past year in the area of advertising responsibility. We are encouraged, too, by the increasing awareness of top management in American business that the public policy questions affecting marketing practices must receive equal consideration with other essential concerns of management and finance. This awareness is beginning to filter down from the top echelons to those who are on the firing line of the selling effort where the pressures are often most intense. For the real issue is the integrity of the marketing process and the need to foster public confidence in the free enterprise system.

There is also a greater willingness on the part of business and advertising to listen to the critics—a willingness that should extend to all sides. I would hope that we can continue to find ways to substitute consultation for confrontation on these issues.

If we are going to be constructive all groups—industry, government and critic—need to be better informed and have a better understanding of each other's problems and concerns. That should be one of the great values of these proceedings.

As a means of maintaining a continuing dialogue we suggest that the FTC consider establishing an industry advisory council to assist the Commission on a continuing basis in its consideration of issues such as those being discussed at this hearing. This is a practice followed by other government agencies in dealing with specialized areas of responsibility. Such a procedure could provide the kind of input which the Commission could find of value on broad policy matters.

It also would provide a conduit for information and concerns of the Commission to flow back to industry.

The Federation offers its cooperation to assist the Commission in keeping open the channels of communication and in developing a concept of this nature.

Membership—National Advertising Review Board

Chairman: Charles W. Yost, Columbia University

Public Members

Prof. Raymond A. Bauer, psychologist, Harvard Business School
LeRoy Collins, Ervan, Pennington, Varn & Jacobs, Tallahassee, Florida
Norman Cousins, editor, *The Saturday Review*
Kenneth A. Cox, Haley, Bader & Potts, Washington, D.C.
Arnold Elkind, Attorney at Law, New York
Benny L. Kass, Boasberg, Granat & Kass, Washington, D.C.
Prof. Otis A. Pease, chairman, Department of History, University of Washington
Virginia Trotter, dean, College of Home Economics, University of Nebraska
Dr. Aurelia Toyer Miller, director of the data center, National Board of the YWCA
Dr. Harold Williams, dean, School of Business, UCLA

Advertising Agency Members

Thomas B. Adams, chairman, Campbell-Ewald Company, Detroit
Edward L. Bond, Jr., chairman, Young & Rubicam, Inc., New York
Archibald McG. Foster, chairman, Ted Bates & Company, New York
Robert S. Marker, chairman, McCann-Erickson, Inc., New York
Alfred J. Seaman, president, SSC&B, Inc., New York
Walter Bregman, president, Norman, Craig & Kummel, Inc., New York
Neal W. O'Connor, president, N.W. Ayer & Son, Inc., Philadelphia
John E. O'Toole, president, Foote, Cone & Belding, New York
Bradley O. Potter, chairman, Klemtner Advertising, Inc., New York
Stanley Tannenbaum, chairman, Kenyon & Eckhardt, Inc., New York

Advertisers

Charles R. Stuart, Jr., vice president marketing services, Bank of America, San Francisco

Robert L. Ficks, Jr., vice president advertising and sales promotion, Baumritter Corporation, New York

Arthur Schwartz, vice president advertising, Bulova Watch Company, New York

William L. Jackson, group vice president, director and member of the executive committee, Chesebrough-Pond's Inc., New York

Ira C. Herbert, vice president and marketing director, Coca-Cola USA, Atlanta

A. Dexter Johnson, assistant vice president and director of advertising, Eastman Kodak Company, Rochester

F. Kent Mitchel, vice president and director corporate marketing services, General Foods Corporation, White Plains, New York

Robert L. Garrison, vice president marketing, ITT Levitt Development Corp., New York

William K. Eastham, executive vice president, U.S. and European operations and director, S. C. Johnson & Son, Inc., Racine

Walter Roberts, Jr., executive vice president—group services, consumer products group, Miles Laboratories, Inc., Elkhart, Ind.

Harry F. Schroeter, vice president communications, Nabisco, New York.

William M. Claggett, vice president and director of communications and new products, consumer products group, Ralston Purina Company, St. Louis.

Richard N. Confer, vice president and general director of advertising, Reynolds Metals Company, Richmond.

Norbert W. Markus, Jr., vice president, group executive director, Scott Paper Company, Philadelphia.

Samuel Thurm, advertising vice president, Lever Brothers Company, New York.

F. J. Solon, vice president advertising and public relations, Johns-Manville Corporation, New York.

Thomas R. Chadwick, vice president advertising, Admiral Corporation, Chicago.

Craig Moodie, Jr., vice president, advertising and sales promotion, Armstrong Corp Company, Lancaster, Pa.

Alfred L. Plant, vice president advertising, Block Drug Company, Inc., Jersey City, New Jersey.

Samuel White, corporate vice president, Liggett & Myers Incorporated, New York.

H. Walton Cloke, vice president, advertising and public relations, North American Philips Corporation, New York.

Jack J. Bard, vice president, advertising services, Purex Corporation, Ltd., Lakewood, California.

Earl G. Tyree, executive vice president, Glenbrook Laboratories Division, Sterling Drug, Inc., New York.

W. M. Oliver, director-marketing communications, Westinghouse Electric Corporation, Pittsburgh.

William M. Yankus, vice president—consumer products, Kimberly Clark Corporation, Neenah, Wisconsin.

Richard Q. Kress, president, home appliance division, North American Philips Corporation, New York.

Henry E. Arnsdorf, vice president public relations and advertising, Prudential Insurance Company of America, Newark, New Jersey.

Statement of Organization and Procedures of the National Advertising Review Board

ORGANIZATION

1.1 Purpose

The National Advertising Review Board (NARB) is a body of industry and public persons as herein defined sponsored by the National Advertising Review Council, Inc. (NARC) for the purpose of sustaining high standards of truth and accuracy in national advertising.

1.2 Structure of the NARB

The National Advertising Review Board shall be composed of a Chairman, fifty members, and as many alternate members as the Chairman may specify,

all elected by the NARC Board of Directors. Thirty members of the NARB shall be persons whose principal affiliation is with an advertiser; ten members shall be persons whose principal affiliation is with an advertising agency; and ten members shall be public members. If any member's principal affiliation changes, his eligibility to serve as a member will be reconsidered by NARC. The status and privileges of alternate members shall be the same as the status and privileges of regular members except that alternate members are not qualified to vote upon any matter which comes before the full NARB. No member of the NARC Board of Directors, while so serving, shall be eligible to be a member or alternate member of the NARB.

1.3 Term of Office

The term of office for NARB members shall be two years except that the terms of one-half of the members of the original NARB (fifteen advertiser members, five advertising agency members and five public members) shall be for one year. A member is eligible for reappointment for one additional term. An eligible member may be removed from office by a two-thirds majority of the total membership of the NARB and by no other means.

1.4 Compensation

Advertiser and advertising agency members and alternates of the NARB shall receive no salary, but nonindustry members and alternates shall receive per diem compensation in such amount as shall be determined by the NARC Board of Directors. In addition, all NARB members shall be entitled to reimbursement for such out-of-pocket expenses as they shall incur in connection with the performance of their duties on the NARB.

1.5 The NARB Chairman

There shall be a Chairman of the NARB who shall be elected by the NARC Board of Directors for a term of one year and who shall be eligible for reelection. The Chairman shall receive such compensation for his services as shall be determined by the NARC Board of Directors.

1.6 Duties of the Chairman

The NARB Chairman shall be the overall coordinator of the activities of NARB and shall be its public spokesman. He shall appoint a panel composed of five NARB members to hear and decide each case which is brought before the NARB. In the event the Chairman is unable to appoint a qualified panel from among the regular membership of the NARB, he shall appoint the necessary number of qualified alternate members to fill the panel. The Chairman shall also act as Chairman of the NARB's Steering Committee and shall perform such other duties as may be directed by the NARB.

1.7 The NARB Executive Director

There shall be an Executive Director of the NARB who shall be appointed by the Chairman to serve as the Staff Executive.

1.8 Duties of the Executive Director

The Executive Director shall assist the Chairman in carrying out his duties. He shall also be responsible for managing the NARB office, maintaining liaison with NAD and other organizations and such other duties or projects as assigned by the Chairman.

1.9 The Steering Committee

At its first meeting and at each annual meeting thereafter, the NARB shall elect from among its members a Steering Committee composed of three members affiliated with advertisers, one member affiliated with an advertising agency and one member who is a public member, plus the Chairman (ex officio). The Steering Committee shall act as liaison and spokesman for the NARB in its contacts with the NARC Board of Directors. It shall survey and review the operations of the NARB (except that it shall have no authority with regard to individual cases which are being, have been, or may be considered by the NARB), and shall make recommendations thereon to the full NARB or to the NARC Board of Directors. It shall oversee the preparation and issuance of reports on NARB operations, or any other matters properly within the NARB's purview for submission to the members of NARB.

1.10 Annual and Interim Reports

By March 31 of each year, the NARB Steering Committee shall cause to be prepared a report of the proceedings of the NARB during the preceding calendar year and shall submit such report to the NARB. The Steering Committee may direct the preparation and publication of such interim reports as the Committee shall consider reasonably necessary to provide information to the public concerning the activities of the NARB, but under no circumstances shall any report disclose information on any proceeding currently being considered by the NARB. Reports may be published by the Chairman following their adoption, by majority, through a mail ballot by the NARB.

1.11 Meetings

As soon as practical after formation of the original NARB, the Chairman shall call a meeting of the full NARB. Thereafter, there shall be at least one annual meeting and such special meetings as the Steering Committee, in consultation with the Chairman, deems necessary. NARB members shall be given at least fifteen days' notice of annual and special meetings. At the original, and at each subsequent annual meeting, the NARB shall conduct such organizational and other business as may come before it.

1.12 Standards

The NARB shall promulgate, adopt, amend and publish, with the advice and counsel of the NARC Board of Directors, advertising standards to aid in its evaluation of the truth and accuracy of national advertising.

1.13 Autonomy of NARB

In the review and disposition of all cases coming before it, the NARB shall be completely autonomous and independent of any and all other persons and organizations. It shall conduct its business and issue its reports and opinions with full regard for the public interest. The individual members of the NARB shall be answerable to no one for the decisions reached and actions taken by the NARB or any panel thereof.

1.14 Definitions

The term "national advertising" shall mean advertising disseminated in all of the United States or in a substantial section thereof. The term "advertiser" shall mean any seller who uses "national advertising" in the sale of goods or services or for other purposes, and the term "advertising agency" shall mean any organization engaged in the creation and placement of "national advertising." The term "public or nonindustry member" shall mean any person has a reputation for achievements in the public interest.

PROCEDURES

2.1 Function of the NAD

The National Advertising Division of the Council of Better Business Bureaus (hereinafter NAD) shall be responsible for receiving or initiating, evaluating, investigating, analyzing, and holding initial negotiations with an advertiser on complaints or questions from any source involving the truth or accuracy of national advertising.

2.2 Requests for Review

When an advertising matter being handled by the NAD cannot be satisfactorily resolved by mutual voluntary agreement, either the NAD or the advertisers may request review by the NARB by preparing a Request for Review and mailing one copy to the other party or parties and six copies to the Executive Director of the NARB. The Request for Review shall contain: (1) a statement of facts supported by attached documentary and physical exhibits including any significant exculpatory material previously supplied to the NAD by the advertiser and (2) an analysis of the facts giving reasons, conclusions and recommendations. The other party upon whom such Request for Review is served may submit to the Executive Director of the NARB within 10 days any requests as to procedure or dates for meetings or hearings as well as any documents he wishes the Executive Director to submit to the panel.

2.3 Requests for Review by Complainant

Any complainant may request review of a prior NAD decision by filing a Request for Review with the Executive Director of the NARB. If the Chairman decides it should be granted, he shall appoint a panel. Such Request need not

follow any particular form but should contain sufficient information to support a decision as to whether the matter is appropriate for NARB consideration.

2.4 Appointment of Review Panel

Upon receipt of a Request for Review from NAD or the advertiser involved, the Executive Director shall immediately notify the Chairman of the NARB and the Chairman shall appoint a panel of qualified NARB members and designate the panel member who will serve as panel chairman.

2.5 Eligibility of Panelists

An "advertiser" NARB member will be considered as not qualified if his employing company manufactures or sells a product or service which directly competes with a product or service sold by the advertiser involved in the proceeding. An "agency" NARB member will be considered as not qualified if his employing advertising agency represents a client which sells a product or service which directly competes with the product or service involved in the proceeding. An NARB member, including a nonindustry member, shall consider himself as disqualified if for any reason arising out of past or present employment or affiliation he believes that he cannot reach a completely unbiased decision. If the Chairman is unable to appoint a qualified panel, he shall complete the panel by appointing an alternate NARB member.

2.6 Composition of Review Panel

Each panel shall be composed of one "public" member, one "advertising agency" member, and three "advertiser" members. Alternates may be used where required. It will meet at the call of its Chairman, who will preside over its meetings, hearings and deliberations. A majority of the panel will constitute a quorum, but the concurring vote of three members is required to decide any substantive question before the panel.

2.7 Procedures of Review Panel

As soon as the panel has been selected, the Executive Director will inform all parties as to the identify of the panel members and will mail copies of the Request for Review and, upon receipt, any response or request submitted by the other party or parties to each of the panel members. Within ten days after receipt of the Request for Review, the panel members shall confer and decide and fix the procedure and time schedule which they will follow in resolving the matter. In reaching a decision as to procedure, the panel should aim for informality and speed. If any party has requested an apportunity to appear and offer testimony or argument, he shall be accommodated and shall submit to cross-questioning. All evidentiary material and oral testimony introduced in any matter before the NARB shall be available for inspection by the NAD and the advertiser who is a party to such matter. All parties to a matter before the NARB shall be given ten days' notice of any hearing or meeting in which evidence or argument will be reeived. Such notice shall set out the date, place and procedure of the meeting or hearing.

2.8 Referral to a Government Agency

When the panel has reached a decision that an advertisement is misleading or deceptive and is thereby in violation of NARB standards, it shall notify the advertiser in writing of its decision and the reasons therefor, and request that the specific advertisement(s) be modified or withdrawn in accordance with the panel's findings and decision within a time period appropriate to the circumstances in the case. The advertiser shall have ten days to respond, indicating his acceptance, rejection or request for modification or reconsideration of the panel's decision; if he fails to respond or indicates his unwillingness to accept or comply with the decision, the panel will issue a Notice of Intent to the advertiser that the matter will be publicly referred to an appropritae agency of government. The Notice shall also inform the advertiser that he may submit within five days a concise statement of his views on the controversy which will be released and published by the NARB simultaneously with the release and publication of its letter referring the matter to a government agency. If the advertiser fails to respond or refuses to voluntarily comply with the panel's decision, the panel shall transmit the file to the Executive Director. Upon receipt of the file, the Chairman shall inform the appropriate government agency by letter that the NARB has reached a decision that an advertisement is misleading and that the NARB has been unable to persuade the advertiser to correct the advertisement. Said letter shall describe the advertising and its alleged faults, shall identify the product, the advertiser, and shall announce that the NARB file is available

for examination by the appropriate government agency upon request. The Chairman shall release the letter and any comments or position statement received from the advertiser to the news media.

2.9 Closing a File

When the panel has obtained voluntary compliance from the advertiser, or has reached a decision that the questioned advertising is not misleading for any reason, it shall prepare a report of its findings and decision and transmit the file to the Executive Director. Upon receipt of the report and file, the Executive Director shall inform the advertiser, the NAD, and the complainant of the NARB's decision, the reasons therefor, and that the matter has been closed.

2.10 Panel Proceedings Are Confidential

The panel, through the Executive Director, shall maintain a complete file and record of its proceedings, but a verbatim transcript is not required except to preserve the oral testimony of a witness. All deliberations, meetings, proceedings and writings of the panel shall be confidential. Upon completion of its assignment and after the file and record have been turned over to the Executive Director, the panel will stand disbanded.

GENERAL PROVISIONS

3.1 Amendment of Standards

Any proposals to amend the advertising standards which may be adopted by NARB may be acted on a majority vote of the entire membership of the NARB at any special or regular meeting or by written ballot distributed through the United States mails, provided that the text of the proposed amendment shall have been given to the members thirty days in advance of the voting date and provided further that the Board of Directors of the National Advertising Review Council, Inc., shall have been given notice of such proposed amendment at least sixty days in advance of the voting date to afford said Board of Directors the opportunity to render advice and counsel to the NARB members on the proposal and to make such other proposals and recommendations as it deems necessary and appropriate.

By-Laws of National Advertising Review Council, Inc.

(A Delaware Corporation)

ARTICLE I

Section 1. The name of the corporation shall be "National Advertising Review Council, Inc."

Section 2. The purpose of the corporation shall be to create and maintain as part of the corporation, the National Advertising Review Board (NARB), formed to sustain the highest standards of truth and accuracy in national advertising through self-regulation.

Section 3. The principal office of the corporation shall be in the City of New York, State of New York.

Section 4. The corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine and the business of the corporation may require.

Section 5. The members of the corporation initially will be composed of the following four constituent organizations: The American Advertising Federation, Inc., American Association of Advertising Agencies, Inc., the Association of National Advertisers, Inc. and the Council of Better Business Bureaus, Inc.

ARTICLE II.—BOARD OF DIRECTORS

Section 1. The Board of Directors shall consist of eight members who shall be the Chairman and President of the American Advertising Federation, the Chairman and President of the American Association of Advertising Agencies, the Chairman and President of the Association of National Advertisers and the Chairman and President of the Council of Better Business Bureaus. Any Director of one of the aforesaid organizations may, by a written notice signed by the Chairman of such organization, be designated to serve as a Director of the corporation in lieu of the Chairman of such organization. Such designation may be revoked at any time by written notice signed by the Chairman of such organiza-

tion. Each Director of the corporation shall be such a Director by reason of his office in one of the aforesaid organizations and shall continue to be a Director during his tenure in the aforesaid office. Any person ceasing to hold an office in one of the member organizations shall cease to be a Director.

Section 2. The number of members and Directors of the corporation may be changed only by unanimous vote of the Board of Directors.

Section 3. The business of the corporation shall be managed by the Board of Directors which may exercise all such powers of the corporation and do such lawful acts and things except as may be otherwise provided, by statute, by the Articles of Incorporation or by these By-laws. The authority of the Board of Directors shall not, however, extend to any particular substantive advertising matter which is being, has been, or may be considered by the National Advertising Review Board in carrying out its functions.

Section 4. The Board of Directors shall propose and submit to the NARB its recommendations concerning advertising standards. The Board shall also provide a *Statement of Organization and Procedures of the National Advertising Review Board*. The Board of Directors shall conduct continuous oversight and review of said advertising standards and *Statement of Organization and Procedures of the National Advertising Review Board* and may from time to time recommend such alterations, amendments, or repeals as the Board of Directors believes the public interest requires.

Section 5. The annual meeting of the members of the National Advertising Review Council, Inc., shall be held in September or October of each year beginning in September or October, 1972 on such date and such place as may be set by the Board of Directors.

Section 6. The Board of Directors of the corporation may hold meetings, both regular and special, either within or without the State of Delaware. The Board of Directors may, from time to time, determine the time and place at which its regular meetings will be held and, following such determination, notice of such meetings need not be given. If no such determination is made, however, ten days' notice of all regular meetings shall be given.

Section 7. Special meetings of the Board of Directors may be called by the President on three days' notice to each Director, either personally or by mail or by telegram; special meetings shall be called by the President in like manner and on like notice at the written request of three Directors.

Section 8. At the annual and all other meetings of the Board, a majority of the Directors then in office shall constitute a quorum for the transaction of business, provided however, that at least one Director representative of each member organization is present and the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute or by the Articles of Incorporation. If a quorum shall not be present at any meeting of the Board of Directors, the Directors present thereat may adjourn the meeting from time to time without notice other than announcement at the meeting, until a quorum shall be present.

Section 9. The Directors shall not receive any compensation for their services as Directors.

ARTICLE III.—NOTICES

Section 1. Whenever, under the provisions of the statute or of the Articles of Incorporation or of these By-laws notice is required to be given to any Director, it shall not be construed to mean personal notice, but such notice may be given writing, by mail, addressed to such Director, at his address as it appears on the records of the corporation, postage thereon prepaid and such notice shall be deemed to be given at the time when the same is deposited in the United States Mail. Notice to Directors may also be given by telegram.

Section 2. Whenever any notice is required to be given under the provisions of the statute or of the Articles of Incorporation or of these By-laws, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

ARTICLE IV.—OFFICERS

Section 1. The officers of the corporation shall be chosen by the Board of Directors and shall be a President, Secretary and a Treasurer. Any number of offices may be held by the same person, unless the Articles of Incorporation or these By-laws otherwise provide.

Section 2. The Board of Directors may appoint such other officers and agents as it shall deem necessary who shall exercise such powers and perform such duties as shall be determined from time to time by the Board.

Section 3. The salaries of all officers and agents of the corporation shall be fixed by the Board of Directors.

Section 4. The officers of the corporation shall hold office for a term of one year and until their successors are chosen and qualified. Any officer elected or appointed by the Board of Directors may be removed at any time by the affirmative vote of the majority of the Board of Directors. Any vacancy occurring in any office of the corporation shall be filled by the Board of Directors.

Section 5. The President shall be a member of the Board of Directors and shall preside at meetings of that Board. He shall be the chief executive officer of the corporation, shall have general and active management of the business of the corporation and shall see that all order and resolutions of the Board of Directors are carried into effect. He shall execute bonds, mortgages and other contracts requiring a seal, under the seal of the corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution hereof shall be expressly delegated by the Board of Directors to some other officer or agent of the corporation.

Section 6. The Secretary shall attend all meetings of the Board of Directors and record all the proceedings of such meetings in a book to be kept for that purpose. He shall give, or cause to be given, notice of all meetings of the Board of Directors. The Secretary shall perform such other duties as may be prescribed by the Board of Directors or President. He shall have custody of the corporate seal of the corporation and he shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by his signature. The Board of Directors may give general authority to any other officer to affix the seal of the corporation and to attest the affixing by his signature.

Section 7. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit all monies and other valuable effects in the name and in the credit of the corporation in such depositories as may be designated by the Board of Directors. He shall disburse the funds of the corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and the Board of Directors at regular meetings or when the Board of Directors so requires an account of all his transactions as Treasurer and of the financial condition of the corporation. If required by the Board of Directors, he shall give the corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of his office and for the restoration to the corporation, in case of his death or resignation, retirement, or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the corporation.

ARTICLE V.—INDEMNIFICATION

Section 1. The corporation shall indemnify to the full extent authorized or permitted by the General Corporation Law of the State of Delaware (and in the manner therein provided) any person made, or threatened to be made, a party to an action, suit, or proceeding (whether civil, criminal, administrative, or investigative) by reason of the fact that he, his testator or intestate is, or was, a Director, officer, or employee of the corporation or serves or served any other enterprise at the request of the corporation.

ARTICLE VI.—GENERAL PROVISIONS

Section 1. All checks or demands for money and notes of the corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may, from time to time, designate.

Section 2. The fiscal year of the corporation begins on the first day of January and ends on the 31st day of December in each year.

Section 3. The corporate seal shall have inscribed thereon the name of the corporation, the year of its organization and the words "Corporate Seal, State of Delaware." The seal may be used by causing it, or facsimile thereof, to be impressed or affixed or reproduced or otherwise.

Section 4. A resolution proposing alteration, amendment or repeal of these By-laws or the adoption of new By-laws may be adopted by the Board of Directors at any regular meeting of the Board of Directors or at any special meeting of the Board of Directors if notice of such proposal is contained in the notice of such special meeting.

Section 5. A proposal and recommendation for the amendment, alteration or repeal of any of the provisions of advertising standards adopted by NARB or of the *Statement of Organization and Procedures of the National Advertising Review Board* may be adopted by the Board of Directors at any regular or special meeting if notice thereof has been given at least 15 days in advance of such regular or special meeting.

NATIONAL HOME FURNISHINGS ASSOCIATION,
Washington, D.C., November 5, 1971.

Re S. 1461, Truth in Advertising Act of 1971.

Hon. FRANK E. MOSS,
Chairman, Consumer Subcommittee, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The National Home Furnishings Association, as representative of 9,000 furniture retailers with 15,000 stores throughout the country, has a deep interest in S. 1461, the "Truth in Advertising Act of 1971" which you cosponsor with Senator George McGovern. Of course, all of these stores rely heavily on advertising, in all the media but especially in newspapers. Furniture stores are one of the prime users of newspaper advertising space.

The aim of S. 1461 is to arm consumers with the "facts" before they make a buying decision. To do this, the bill has two basic requirements:

(1) All advertisers must collect "substantiation," such as test results, description and findings of research, to back up any claim made in advertising about a product's safety, performance, efficacy characteristics or comparative price;

(2) This documentation must be made available, at the advertisers principal place of business, to any person who asks to see it—at no charge except for duplication costs.

NHFA supports the underlying premise of the "Truth in Advertising" bill: that the customer is entitled to truthful, factual advertising, and should be able to base his purchasing decisions on advertising statements that can be trusted and believed. The association does not condone misrepresentation in advertising in any form.

In fact, NHFA recently instituted a new Consumer Confidence Program which consists, in part, of a pledge that home furnishings retailers make to the American consumer. The pledge is signed by a key official of each participating store and sent to the office of the President's Special Assistant for Consumer Affairs Virginia Knauer, who contacts the store official if a consumer complaint involving the store or its advertising is ever brought to her attention.

One of the four basic points of the Consumer Confidence pledge is that "we will fairly represent our merchandise." Currently, home furnishings retailers are signing up for the program at the rate of 50 per week—indicating their willingness and desire to treat the consumer with the fairness he deserves.

The association also approves the recent activity of the Federal Trade Commission on truth in advertising. In fact, NHFA supports FTC's call for documentation of advertising claims and the two goals of the program: 1) to put all advertisers on notice that they should be able to back up the claims they make in ads, and 2) to alert consumers to advertising claims that cannot be substantiated. We believe that, given time, the FTC program will be very effective in driving from the marketplace those questionable advertising practices at which it is aimed.

However, despite the fact that NHFA supports the concept of "Truth in Advertising," and the FTC activity in this area, we must oppose S. 1461 for several reasons.

First and foremost is the paperwork burden that it would place on retailers—especially the smaller stores with few employes. As you know, recent laws passed by Congress, such as Truth in Lending, Credit Reporting, extension of Wage-Hour coverage to smaller stores, etc., have burdened these stores in an avalanche of paperwork and recordkeeping. The list grows longer every year, making retailers wonder sometimes whether they are in the business of selling merchandise of maintaining federally-required records.

Second, there is little or no way to know in advance what the reaction to this bill would be by the consumer. If there are few requests for the substantiation, the stores will have been put through a great deal of work in collecting and filling written records of proof for little useful purpose. On the other hand, if stores are inundated with requests for substantiation, they will be burdened with a great deal of time and expense for which they cannot be reimbursed—since they are allowed only to charge for "duplication" of records, not for their "preparation." These are large unknowns for a bill that would require so much.

Third, the bill could very well bring about the exact opposite result of what it intends, by encouraging advertising that gives the reader very little specific information at all. Since any kind of factual statements about a product would require the advertiser to gather, maintain and distribute records to back up the statement, many advertisers would undoubtedly choose to make nothing but the most bland, general or strictly emotional claims about the products—simply to avoid all the extra work.

A very good example of the effect S. 1461 would have lies in the advertising provisions of the Truth in Lending law. As you know, the Truth in Lending law requires that, each time credit terms or costs are mentioned in advertising, they must be accompanied by disclosure of many other details, including the annual percentage rate and finance charge. The purpose of those provisions was to allow the consumer to "shop for credit" in advertising. However, since compliance with this section of the law is so difficult, credit advertising has virtually dried up in the marketplace and consumers have less opportunity to "shop for credit," not more. The "Truth in Advertising" bill would undoubtedly have the same effect on many advertisers.

Finally, FTC has only just begun its program calling for documentation of advertising claims, and should be allowed an opportunity to carry its program through. At the very least, time should be allowed to thoroughly analyze the results of the FTC program before a second step such as S. 1461 is taken. It is very likely that this added step will not be necessary at all.

In sum, NHFA supports the concept of "Truth in Advertising," but opposes S. 1461 because it:

(1) Requires a great deal of work for benefits that can only be guessed at presently;

(2) Is much too soon, in any event, and should at the very least be postponed until the facts are in on the FTC program.

We respectfully submit these views for the careful consideration of your subcommittee and request that this statement be made a part of the formal record of the hearings on S. 1461, the "Truth in Advertising Act of 1971."

Sincerely,

M. WALLACE RUBIN,
Chairman, NHFA Government Affairs Committee.