

THE DISTRICT OF COLUMBIA ADVERTISING LAW, ITS ENACTMENT,
ENFORCEMENT AND SOME RESULTS.*
WASHINGTON PLAN.

BY L. F. KEBLER.

The District of Columbia, like many other communities, has suffered from and is still afflicted with various forms of unfair advertising. The reader often discovers that he is victimized but usually find it out too late to act, or does not feel like making complaint because one seldom wants to admit that he has been imposed upon. The best class of merchants have for years realized the unfairness, both to business and the public generally, of all desceptive advertising, but found themselves handicapped to effect relief. The evil seemed to grow. The consumer became restless. Our merchants in self defense, found themselves compelled to use their influence against the growing evil.

The matter was taken up by the Retail Merchants Association. This organization for a time endeavored to carry out the reform through the efforts of its own membership. It was soon found that little progress was being made. In the latter part of 1915, a Vigilance Committee was organized consisting of a representative of the various civic bodies of the District and certain citizens, especially interested in honest advertising, together with five members of the association. The members of the Vigilance Committee serve gratuitously. The purpose of the committee is to study local advertising, receive and investigate criticisms, false advertising and unfair dealings. The committee early in its work decided to use moral suasion, as largely as possible, to bring about the results desired. All the work and experience gravitated toward the enactment of a law, which could be used to control the situation. At the instance of the Retail Merchants Association a bill was drafted with this end in view and submitted to the Chairman of the District committee, the Hon. Ben Johnson. Congressman Johnson did not consider the draft adequate. He therefore redrafted the bill, introduced and fathered it until it became a law. The need of a law to cover existing conditions was apparent to any one who gave the subject consideration. It did not take Congress long to see the necessity judging from the short time elapsing between the time of introducing the bill and its enactment into law, four months.

The law is entitled "An Act to prevent Fraudulent Advertising in the District of Columbia." The bill became a law May 29, 1916, and the two important sections 1 and 3, read as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be unlawful in the District of Columbia for any person, firm, association, corporation, or advertising agency, either directly or indirectly, to display or exhibit to the public in any manner whatever, whether by handbill, placard, poster, picture, film, or otherwise; or to insert or cause to be inserted in any newspaper, magazine, or other publication printed in the District of Columbia; or to issue, exhibit, or in any way distribute or disseminate to the public; or to deliver exhibit, mail or send to any person, firm, association or corporation any false, untrue, or misleading statement, representation or advertisement with intent to sell, barter, or exchange any goods, wares, or merchandise or anything of value or to deceive, mislead or induce any person, firm, association, or corporation to purchase, discount, or in any way invest in or accept as collateral security any bonds, bill, share of stock

* Read before Section on Education and Legislation, A. Ph. A., Chicago meeting, 1918.

note, warehouse receipt, or any security; or with the purpose to deceive, mislead, or induce any person, firm, association or corporation to purchase, make any loan upon or invest in any property of any kind; or use any of the aforesaid methods with the intent and purpose to deceive, mislead or induce any other person, firm, or corporation for a valuable consideration to advertising such services.

That any person, firm, or association violating any of the provisions of this Act shall, upon conviction thereof, be punished by a fine of not more than \$500 or by imprisonment of not more than sixty days, or by both fine and imprisonment, in the discretion of the court. A corporation convicted of an offense under the provisions of this act shall be fined not more than \$500, and its president or such other officials as may be responsible for the conduct and management thereof shall be imprisoned not more than sixty days, in the discretion of the court."

It will be noted that this is a rather inclusive law. The "knowing" element does not find a place. It covers every form of advertising, whether by newspaper, magazine, poster, placard, exhibit, circular, or otherwise. The Vigilance Committee adjusted numerous complaints of unfair advertising appearing in the windows, newspapers, etc., brought to its attention, even before the law became effective. In some instances it clearly developed that the management was not aware of the nature and character of the advertising being carried and willingly modified the advertising to comply with the facts.

The first case taken into court under the law was based upon advertisements appearing in the nature of placards, signs, etc., placed in the windows, and throughout the store. It covered men's clothing and supplies. Certain goods were advertised as being sold at a reduction, when as a matter of fact they were found to be of such a grade and character that the actual prices charged were more than they were regularly sold for. Standard brands of collars were included in the sale but if a prospective buyer sought to purchase them his size was no longer available and probably never was. The salesman would then endeavor to make a sale of another brand of goods. Pure substitution. The defendant was found guilty by jury trial, fined \$300 and given a jail sentence of 60 days. The latter however was suspended by the court.

The second was different in character and consisted in advertising and selling at reduced prices the high-grade clothing of a merchant of standing and integrity. Concerning such a transaction no exception could of course be taken, but mingled with these goods were articles of low grade and character, not a part of the quality merchant's wares. As the stock diminished, constant supplies of low grade material were brought in to be sold as goods of the best character; sold at prices considerably in excess of those generally charged for this grade of goods at regular sales. The defendant's in this case resided outside of the District of Columbia and it was therefore necessary to serve subpoena on them at such time as they would be present in the District. The opportunities came. The parties in the transaction were taken into court. Three defendants finally pleaded guilty and were fined \$100 each.

The third case covers advertising appearing in the newspapers of garments advertised as "natural wool" and "Australian wool," respectively. The "natural wool" garments contained from 50 to 89 percent of material other than wool. The "natural wool" garments represented by the sales-people as "all wool" consisted of only 45 percent of wool. The defendant and some of his witnesses contended that the color of the goods showed their nature and it was immaterial whether they contained 10 percent or 100 percent of wool. He furthermore testified that

he advertised and sold the goods in good faith; based on the representation and claims of the parties he had purchased them from. He did not seem to think that he was responsible for the claims and representations under which he sold his wares provided some one from whom he purchased the goods, at a sharp bargain perhaps, told him so and so. I fear such a claim would not get the druggist very far under present laws. If this principle should be sustained by the higher courts, the consumer would certainly be in an unfortunate predicament. Part of the Court's instructions to the jury follows:

"The jury are instructed that the defendant is on trial under the Act of Congress to prevent fraudulent advertising in the District of Columbia, and that it was not intended by the Act to charge an offense against a merchant who bought goods from a manufacturer or wholesaler and advertised or caused them to be advertised in the same way and manner as they were represented by the manufacturer or wholesaler at the time of said purchase, provided he honestly believed and had cause to believe the said representation to be true. And the jury are therefore instructed that if the defendant advertised the said goods as the same were represented at the time of the purchase from the manufacturer or wholesaler and he believed and had reason to believe the said representation to be true, then their verdict should be not guilty."

The jury found for the defendant. This interpretation of the Act is not considered good law in many quarters. It has in it the element of "knowingly," fraught with so much danger, in the laws enacted years ago. In fact it has long since been recognized that no law with this element in it, can be successfully executed in the interest of the public.

Let us now turn our attention to medical advertising. It is well recognized that this form of advertising presents some of the most difficult problems encountered by those interested in truthful advertising. False and fraudulent advertising accompanying the package is now quite well covered by the various Food and Drug laws, but such advertising is not reached by these laws where it appears in newspapers, circulars, magazines, posters, and otherwise, excepting in a restricted sense.

Soon after the organization of the Vigilance Committee and before the local advertising law was passed, a drastic criticism was received regarding the character of the medical advertising carried in the local newspapers. The communication was referred to a special committee for investigation and report. On April 25, 1916, this special committee submitted its report to the general committee. This report was referred to a second special committee for further consideration and final recommendation. This second committee reported back favorable action on the original report which was unanimously adopted. The essential features of the report follows:

The business of a goodly number of the so-called patent medicines has been built upon the credulity of the public especially the suffering sick and susceptible, by some of the cleverest and most ingenious advertising. Truth and honesty were often and still are lost sight of. In fact truth became such an unknown quantity in many instances that various promoters of nostrums seemed to vie with one another for supremacy in the realm of fairy tales. For example, a certain professor with a weak solution of salt and sugar dropped in the eyes, promised to cure consumption, paralysis, Bright's disease, cataracts, the morphine habit, and anything else the son of man may be afflicted with. His income was about \$150,000 a year. He is now serving time. In another instance a half ounce of

flavored vaseline, sold for a dollar, on the basis that it would remedy all defects of the eye. A third claimed to cure cancer, typhoid fever, consumption, scarlet fever, etc., by the laying on of various shaped packets filled with clay and charcoal. It is sad to relate but true, that those least able to pay, the poor, bear the burden of these gigantic frauds. These people seem to bite most voraciously at any sugar-coated bait. The tricksters can make a great market for a watery solution of salt and sugar, by using big words, extravagant words, mysterious words.

The newspapers play a very important part in disseminating information on the subject under consideration. Some are inclined to criticise these publications rather harshly. It is not believed however that a wholesale attack would be productive of the greatest good. That some censure lies, all will admit. There is room for improvement.

There are approximately 25,000 patent medicines advertised and sold in the United States and it is undoubtedly true that the management of any paper would find some difficulty in deciding what secret medicine advertisement is or is not within the realm of truth.

The "Specialist?" A multitude of sins are covered by the term "specialist." It is frequently used to work the unsuspecting public. Ignorant young men and old men are their special prey. The former is frightened because of the manifestation of certain physiological functions and the latter is promised the restoration of certain lost powers due to advancing age. Some one will say: "The poor fools ought to be stung." Let us not judge them without due evidence. Most people have or have had utmost confidence in the doctor. He to many, seems like one having superior knowledge and power. They appear to be like little children in these matters. Some of these so-called specialists are specialists about everything from the social diseases to pulmonary tuberculosis, diabetes, etc. Recently a case of pulmonary tuberculosis in the last stages came under observation. There was no ray of hope left. She had been treated by one of these men until all money was gone. Then she was cast off to die or left on the hands of some one more charitable.

The advertisements of "Blood Poison" specialists are generally so vile, repugnant and often salacious, that they should not find a place in any paper that reaches the fireside of any home. Think of such material falling into the hands of adolescent boys and girls who will make diligent inquiry. What impression it must leave! What idea must these young folks gain of the morals of the world? How they must picture in their minds the character of the editor of the paper or Mr. Merchant whose advertisement is found by the side of such material. "Damaged Goods" must be holy to them in comparison. The diseases commonly known as "Blood Poison" can be as a rule successfully treated, but such treatment can not be satisfactorily accomplished by mail. The disease leaves in its wake such frightful results that any physician who lightly treats a case has missed his calling and it would be far better for the community to either have his license revoked or have him placed where he no longer would be a menace to the public. The character of these men usually is such that they care little for the unfortunate victim after their shekels are gone. They have no feeling for their fellow-man.

It is sometimes difficult for a paper to decide what course to take. There are at least two ways out of the dilemma, and they are either to refuse all advertisements of a medical nature, or enlist the services of those who are competent to judge. The necessity of either of the above courses of action might be considered arbitrary and domineering and not productive of the best results. It is therefore suggested that the following seven rules be adopted as a tentative working basis.

1. Investigate the nature and character of the business and forces behind it.

NOTE: Interrogate the prospective advertiser from the view point of the consumer and your patron. Does he come with clean hands? A few questions will usually determine the nature of the business.

2. Get some idea as to the virtues of the medicine and the ingredients supposed to impart these virtues.

NOTE: If the prospective party submits copy claiming to "cure diphtheria" ascertain what is in the product that will effect this "cure."

3. Refuse all advertisements bearing claims and representations which mislead or deceive the consumer, or are liable to bring him injury, whether by direct or indirect statements or testimonials.

NOTE: There is no drug or mixture of drugs known to the medical profession which will cure tuberculosis. It will therefore be false to say (direct statement) "It will cure consumption." "An infallible cure for consumption." If the direct claims are without foundation, it would be equally deceptive to mislead the unfortunate sick by indirect statements, such as, "Valuable for tuberculosis." "Has cured tuberculosis," or by means of a testimonial, authentic or otherwise. The manner of propagating the falsehood is immaterial.

4. Reject any advertisement for any medicine which claims the medicine to be a "cure" or "infallible cure" or "unfailing cure," etc., or a remedy for any disease or condition for which the medicine is not a cure or remedy in truth and in fact.

NOTE: The following are some of the diseases or conditions which cannot be cured by any drugs at present known: Arteriosclerosis, asthma, Bright's disease, cancer, cataract, drunkard's liver, epilepsy, infantile paralysis, locomotor ataxia, paralysis, pellagra, pneumonia, whooping cough, yellow fever.

5. Refuse advertisements for mail order treatments or treatment in absentia.

NOTE: Diseases cannot be correctly diagnosed in the absence of a patient. It is sometimes almost impossible for the skilled physician at the bedside with every possible facility, to make a correct diagnosis.

6. Refuse all advertisements that offend the home, the reader or the clean, honest advertising merchant.

NOTE: The home is the most sacred institution. It is the best patron of the press. The columns of the press should be as free as possible from anything that defiles this institution. Clean advertisers do not relish the idea of having their advertising matter displayed by the side of vile, degrading, salacious matter.

7. In case of doubt, consult some one able to decide.

A committee was appointed and instructed to interview the management of the various papers and advise them of the findings of the Vigilance Committee, with the suggestion that they consider discontinuing carrying advertisements of a character adverse to the report. Each and every manager agreed willingly

to eliminate the advertisements as fast as practicable. Many of them did so. The idea of practicality apparently did not however present itself in some instances. Complaints that the papers were not acting in good faith were received. Some members in the drug trade became uneasy feeling that it was unfair to them to have their business connected or associated with many of the deceptive advertisements appearing in the papers. A special conference was called to which representative druggists were invited. The conditions obtaining were fully considered. This conference resulted in the appointment of a committee on Medical Advertising, consisting of two druggists, two physicians and an attorney. The committee was given authority to look into the nature and character of medical advertisements appearing in the newspapers, circulars, posters, magazines, etc., circulating in Washington. Numerous meetings were held. It was early decided that the function of the committee was false medical advertising and not an attack on patent medicines. No objection would be made to any medicine that made its way on honest advertising or did not work injury to the public. It was considered advisable to direct efforts along certain lines. Those liable to bring injury were first considered. The second line included the so-called "Prescription Scheme Products." It was decided to enlist the assistance of the drug trade, generally. A member of the committee appeared before the Retail Druggists Association and advised the organization of the findings of the committee, and asked the cooperation of the retailers in this matter. It seemed to be simply a question of the druggists voluntarily assisting in eliminating certain abuses or having outsiders step in and do the work, possibly not to their advantage. The organization voted unanimously to support the committee on medical advertising and act on its recommendation, as rapidly as possible. The association claimed that some of the undesirable business was thrust on them by the ads carried in the papers. If the papers did not carry certain ads no demand for certain questionable medicines would exist.

The next step was to advise the newspapers of the above action and attitude of the druggists with the suggestion that no advertisements be carried which will tend to bring reproach on the business. With some exception the local papers have assisted in improving conditions.

A special case illustrating the work of the committee was that of an advertisement being circulated by a party regarding an alleged radium preparation. It was advertised as a radio-strontium product having miraculous power for the curing of many human ailments. The case was carefully prepared and ready to be taken into court. The defendant realized his guilt, appeared before the Chairman of the committee and promised that he would discontinue the business if he was not taken into court. The Chairman, acting upon the general workings of the committee advised the party in question to put his promise in writing and the matter would be taken up by the committee at its next session. This was done and after due deliberation the committee voted to discontinue further action provided good faith was shown, and the business discontinued as promised. So far as it is known the business has been discontinued and the object of the law attained.

The psychology of untruthful advertising presents many angles. The ultimate goal is the "almighty dollar." The bars of restriction are often thrown down and full rein given to the wildest flight of get-rich-quick fiction. Some frankly

admit that the methods are unfair to the reader but attempt to justify them on the ground that they bring desirable financial results to the advertiser; in other words, "The end justified the means."

It is fully realized by some that the results do not tally with the promises. Others in man to man talks will you tell that their methods are not only dishonorable but distasteful to them. The newspapers are looked on as accomplices in the business. The flamboyant style of advertising is defended on the ground that it keeps a certain industry, city or state before the public. It is fortunate that there are very few persons who act along the above lines but it behooves the buyer nevertheless to exercise caution in purchasing.

DISCUSSION.

JACOB DINER: One of the New York daily papers took up the matter of deceptive advertising, and now whenever a case of misrepresentation is reported the papers confer with the merchants, and in the majority of cases they come to an adjustment. When they fail to do so they publish the facts, and this is quite a severe punishment. There has been a law passed in New York, which is being rigidly enforced, relating to the advertising and sale of remedies intended for the treatment or alleged cure of venereal diseases. That law is very drastic. It not only prohibits the advertising of such remedies, but prohibits the handling of them. The Washington plan, as outlined by Dr. Kebler, is the most comprehensive I have heard of.

M. E. DORSEY: With reference to the venereal law of which Dr. Diner spoke, the subject is coming before the public in a general way. It seems to me this Section should make a recommendation to the Council. A state law is all right but without federal enactments a state law will not be very effective. Such medical advertising should be stopped by the Post Office Department refusing the mail service to papers carrying this kind of advertising, otherwise the restriction will be local. National advertising of this character should not be permitted and the Associated Advertising Clubs of America can help to this end. When national advertising of these remedies is cut out the problem is solved. In our city, Ottawa, we have taken from our shelves every remedy for the treatment of venereal diseases. The War Department has asked that, and I think it is proper and right.

L. F. KEBLER: In order to stop the indiscriminate sale of venereal remedies publicity must not be given in the advertising columns of the newspapers. The public will ask for these preparations as long as they are advertised.

M. E. DORSEY: I move the adoption of this resolution:

Be It Resolved, that the Committee on Legislation of the American Pharmaceutical Association be instructed to take up with the War Department at Washington the control of advertising pertaining to venereal diseases, and use their influence with the Associated Advertising Clubs of America to entirely eliminate from the daily and weekly press all advertising pertaining to venereal diseases.

(After some discussion this motion was carried and referred to the Council.)

HOW CAN COÖPERATION BE SECURED BETWEEN STATE MEDICAL AND PHARMACEUTICAL BOARDS FOR JOINT CONTROL OVER THE PREPARATION, DISTRIBUTION, PURITY AND SALE OF DRUGS?*

BY F. E. STEWART.

Manifestly, state medical and pharmaceutical boards cannot exercise control over the preparation, distribution, purity and sale of drugs, except indirectly, by coöperating with the national and state authorities having charge of the

* A reply to Query No. 21 of the Section on Education and Legislation, A. Ph. A., and presented before joint session of this Section with the American Conference of Pharmaceutical Faculties and the National Association of Boards of Pharmacy, Chicago meeting, 1918.