Letters

Defining Consumer Deception

I was shocked and chagrined to read R. Jeffrey Smith's article (News and Comment, 24 Dec., p. 1289) questioning my attempts to institute more *scientific* standards for regulation here at the Federal Trade Commission (FTC).

Surely readers would not deny the need to base regulatory action upon good, scientific evidence. The questions, then, are how much and what kind. Congress and the courts have clearly told us (*1*) that the FTC has relied on too little scientific evidence in the past. Moreover, in the ad substantiation area, the FTC has too often been unwilling to evaluate scientific evidence presented by advertisers. And, unlike the Food and Drug Administration, the FTC has no current protocols as to what constitutes appropriate tests for claims made. Unfortunately, some have jumped to the erroneous conclusion that my attempt to answer these questions is evidence that the Reagan Administration believes that advertisers should not be held to any standard.

Smith says that, I, "in particular," dislike "the existing statutory ban on 'deceptive acts or practices.' " As I have indicated on many occasions, I do not object to the statutory ban, but I would like the term deception clearly defined. This is one of those issues where everyone knows what the term means, but it means different things to different people. A review of the FTC's decisions in this area constitutes ample evidence on this point.

Smith characterizes me and my colleague, Timothy Muris, as "champions of the business community's right to free speech." Yes, we are in favor of free speech, but we also support truth in advertising and oppose attempts by the advertising community to be excluded from the FTC's jurisdiction over "unfair acts or practices."

Smith implies that the advertising industry is opposed to my initiatives. The fact is that all three advertising trade associations have endorsed the need to define deception and also my proposed investigation of the FTC's various procedures for dealing with ad substantiation.

While on the one hand condemning my proposals for seeming to rely less on scientific evidence, Smith later reports Commissioners Clanton and Pertschuk as saying that my proposals would require extensive consumer surveys and other evidentiary bases for action. One obviously can't have it both ways.

Truthful advertising is an emotional issue for many people and a goal most support. But how best to achieve that goal is something over which reasonable people can disagree. Public debate over the issue is important, but it will not be helped by articles such as Smith's. The readers of *Science* deserve better.

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Reference

1. See, for example, the congressional restrictions imposed in the FTC Improvements Act of 1980 (PL 69-252 96th Congress, 2nd sess., 1980) and contained in last year's (unsuccessful) reauthorization bills (H.R. 6995 and S. 2499, 97th Congress, 2nd sess., 1982). With respect to the courts, see my remarks before the Virginia Bar Association, Virginia Beach, 19 June 1982.

The FTC Improvements Act of 1980 contains no criticism of the agency's policy on false or deceptive advertising. In fact, the legislative history explicitly states Congress' belief that "the advertising substantiation program has been an important element of the Commission's effort to police the marketplace and protect consumers."

With regard to Miller's disapproval of "the existing statutory ban on deceptive acts or practices," my article clearly stated that he favored a different definition and was not proposing to omit the requirement entirely.

As to the comment about "having it both ways," there is no contradiction. As the article noted, Miller's proposal would clearly shift the burden of proof from industry to the agency's Bureau of Consumer Protection. Less evidence would be needed to substantiate advertisements, while more would be required to substantiate regulatory enforcement.—R. JEFFREY SMITH

Byssinosis Research

We object to Eric Frumin's description (Letters, 28 Jan., p. 340) of our published findings (*1*) regarding the respiratory health of cotton textile workers, particularly what we said about the "mill effect." We also object to his discussion of our testimony at the Occupational Safety and Health Administration (OSHA) hearing on the proposed cotton dust standard.

Frumin quotes parts of a consultant's report written by John M. Peters (*2*) for the Amalgamated Clothing and Textile Union about the "mill effect" observed in the study of byssinosis performed by researchers at Tulane University (*1*). The "mill effect" represents unexplained variability in byssinosis prevalence between mills *after* accounting for variation resulting from the level of exposure, smoking, job category, and length of employment.

Peters purports to eliminate the "mill effect" by using four categories of exposure rather than the three we used, saying that the use of three exposure categories masked the effect of high exposure in one of the mills. His analysis shows a dose-response relationship when byssinosis prevalences are collapsed across mills. We also reported a dose-response relationship when three categories of exposure are used (*1*). There is, however, significant variability between mills, after accounting for dose, when either three or four categories are used. The "mill effect" thus persists in spite of the analysis by Peters.

That there is variability in responses to cotton dust exposure between mills not explained by other measured factors should not be particularly surprising and has been accepted by the National Institute of Occupational Safety and Health in their studies of exposure to nontextile cotton (*3*). Mill variability may result from qualitative or quantitative differences in cotton contaminants, unaccounted-for personal factors in the host, or levels of past dust exposure. There may be other explanations.

Because there may be information in the "mill effect," denying its existence may hinder the search for the unknown agent(s) and mechanism(s) responsible for byssinosis. It is only after they have been identified that environmental controls protecting all workers can be instituted. Until that time, dust levels should be controlled. The Tulane study suggests that a suitable exposure limit lies in the range between 200 and 500 micrograms per cubic meter. A range was given because physiological measurements