

July 30, 1975

Notes of Telephone Conversation
Between Eric Rubin, FTC, and HTA
July 28, 1975

Mr. Austern told Mr. Rubin that while at the Committee of Counsel meeting in New York Thursday, July 24, the tobacco people got a telephone call from Stanley Cohen of Advertising Age who wanted comments on Commission action about which nobody knew anything. HTA then stated that he had called Mr. Rubin and in his absence had called Mr. Boyle who told HTA that the Commission had voted to direct the filing of penalty actions on three areas and were deferring the other two. When Mr. Boyle was asked if he could be more specific, Mr. Boyle said that we would be getting a letter saying what it was all about. HTA then told Boyle that he would appreciate his letting our office know when the respondents received the letter. HTA then told Mr. Rubin that he knows nothing about any of this except an article he had read that morning in the Washington Post and one in The Wall Street Journal.

Mr. Rubin stated that he had tried to call HTA last week but that it had taken them a day "for the dust to settle" and so they would be sure exactly what the Commission had voted. HTA then asked Rubin if he was not at that meeting and Rubin said yes he was. Rubin then stated that he had called HTA to give us notice before anyone else but that there was a leak from the Commission but that it was not from his office.

Mr. Rubin then stated that nothing had been sent to the Justice Department and that it would be several weeks before anything would be sent if then and that the official letter from Tobin is not even ready to go out.

HTA then stated that he had read Miss Schifflin's (sp?) story to which Mr. Rubin replied that it was accurate. Mr. Rubin said that essentially the Commission issued a civil penalty action against the respondents on virtually all points. As to billboards and typography, the Commission is giving the respondents six months to either bring those into compliance or if those two areas are not brought into compliance, then they will be added to the areas which the Commission has decided to be under the civil penalty actions.

[Since there was interference on the telephone lines, at this point the call ended and HTA called Mr. Rubin back.]

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HTA then requested that Mr. Rubin explain what he meant by giving the respondents six months to come into compliance. In response, Mr. Rubin replied that the civil penalty proceedings involve vending machines, other point-of-sale materials including store signs and racks and others, foreign language requirements of the statement of enforcing policy in the Order, and many involving the improper placement of the warning in ads such as being placed near margins or too close to other rectangles. Rubin said that as to shrinkage, several paragraphs are included on that subject. Mr. Rubin then said that the above in very general terms are what is included in the actions and again listed those items, adding to the list of point-of-sale materials which will be covered "thank you notes", change mats, and shopping bags.

HTA then asked what vending machines he was referring to -- those since the Order or all of them. Mr. Rubin stated that it would apply to those since the effective date of the Order and would not be retrospective.

Mr. Rubin then stated that as to billboards and typography -- leading and spacing -- the Commission has found that the respondents are not in compliance and is giving the respondents six months to come into compliance on those two issues, and if at the end of those six months the companies are not in compliance on those two issues, they will be added to the list covered by the actions.

HTA asked whether the Commission had directed or approved complaints or what. Mr. Rubin replied that the legal phrase under the Magnuson-Moss bill is to "certify," and that eventually there will be a complaint written.

HTA then relisted the areas in which he understood the Commission would be acting and then told Mr. Rubin that shrinkage is a newspaper problem. Mr. Rubin responded that the Commission is prepared to litigate as to whose problem it is.

HTA then asked how the Commission was distinguishing leading and spacing from shrinkage and stated that as he now understands it, the industry is at the Commission level. Mr. Rubin replied that the industry was back at his division, that he is making the current telephone call as a courtesy, and that the Commission as a group naturally is not going to call HTA, but that Rubin had been requested to call HTA. HTA responded that what he meant was that he would like an official communication from the Commission, to which Rubin replied that he would get one within about two weeks.

HTA then said that he was astounded at the story in the Washington Post and in response to Rubin's question "why?",

HTA responded that it was the fact that it appeared at all and that he did not know where the leak came from. He then said that he did not know what the companies would be doing about publicity because they will be reading the Journal article and yet will not have any specific facts. Mr. Rubin then stated that the leak did not come from his division. HTA then invited Mr. Rubin to read the Post story and then say that the leak did not come from the Commission. Mr. Rubin said he did not say it did not come from the Commission but only that it did not come from his division.

Mr. Rubin then reminded HTA that when the companies made their last submission to the Commission, they had asked that it be sent back to the Bureau for discussion as to future compliance. Instead of the Commission replying in that manner, Mr. Rubin said that the Commission is now ready to move on this case and doesn't think that discussion of future compliance without first discussing the scope of penalties is worthwhile. He then stated that any one of three things can happen: (1) everyone can remain mute and the case in due course will be sent to Justice for filing, or if Justice does not file it, the Commission can file it itself; (2) during the interim if the companies feel there is still some ground for discussion which involves penalties, as Rosch discussed, then everyone can sit down and discuss it and settle it without litigation, but that once the suit is filed, the Commission will not consider settling it; and (3) covers the issue of billboards and typography and on those issues the industry can remain mute so that at the end of the six months they are added to the lawsuit, they can discuss the scope of compliance on those two issues (including what those terms mean or don't mean), or the companies can say that they are doing everything as the Order requires and they see no reason to discuss it any further so the Commission may add those two items to the lawsuit now.

Mr. Rubin then added that to the extent the companies want room to finish up the months of discussions that were had, there is still some latitude for that.

HTA then asked whether anyone in the agency was aware of all the things that have happened in the newspaper field since these reports went to the Commission relating to the newspapers' attempts to cope with shrinkage. Rubin replied that only the week before he had read an article in Newsweek on the subject. HTA replied that he meant all the official actions that had been taken in the publishing field to which Mr. Rubin said he doubted they know everything and that we should inform him of whatever we want them to know. Mr. Rubin then added that he thinks HTA is fixating

on the wrong things and that HTA should not waste so much time on shrinkage and should worry about some of the other areas. HTA then said that until we know something specifically we are unable to do anything and Mr. Rubin responded that the letter we will be getting, he thinks, will be very general and doesn't think it will specify which ads are involved but that we will have to wait for discovery for that specificity, or for the filing of a complaint. Mr. Rubin then stated that we will not get a copy of the complaint but will only receive a letter notifying us that the Commission has taken this action and indicating the areas involved. Mr. Rubin said that our getting the letter would only be as a courtesy because that was not the normal practice.

HTA then said he was confused and in response to Mr. Rubin's question as to why he was confused, HTA said that it dealt with a set of complaints that he has not seen. Mr. Rubin then reiterated that all we will be getting is a notice of the filing, that we will not get a copy of the complaint until a complaint that will be filed is actually prepared and that is some weeks away.

HTA then again brought up the six months period for compliance on billboards and typography to which Mr. Rubin replied that that the notice we will be receiving will merely state that the Commission does not regard the companies as being in compliance in those two areas, and the best way to treat that area is to go into the Commission and discuss why the companies are not in compliance and how the companies can come into compliance.