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## Consumer Protection and the Proposed "South Carolina Unfair Trade Practices Act"

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## NOTES

## CONSUMER PROTECTION AND THE PROPOSED "SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT"

*Consumers, by definition, include us all. They are the largest economic group in the economy, affecting and affected by almost every public and private economic decision. Two-thirds of all spending in the economy is by consumers. But they are the only important group in the economy who are not effectively organized, whose views are often not heard . . . .*

*If consumers are offered inferior products, if prices are exorbitant, if drugs are unsafe or worthless, if the consumer is unable to choose on an informed basis, then his dollar is wasted, his health and safety may be threatened, and the national interest suffers.<sup>1</sup>*

### I. INTRODUCTION

Consumer problems have long been a matter of public concern. Two centuries ago Adam Smith proclaimed that "consumption is the sole end and purpose of all production" and that "the interest of the producer ought to be attended to only so far as it may be necessary for promoting that of the consumer."<sup>2</sup> Most recently, three presidents have recognized the need for consumer protection and programs.<sup>3</sup> Even though government, by

1. 108 CONG. REC. 4263 (1962) (message from President Kennedy to Congress concerning consumer protection programs).

2. A. SMITH, AN INQUIRY INTO THE NATURE AND CAUSE OF THE WEALTH OF NATIONS 625 (Modern Library ed. 1937).

3. See note 1 *supra*. In May, 1932, Franklin D. Roosevelt, then Governor of New York, stated: "I believe we are on the threshold of a fundamental change in our popular economic thought, that in the future we are going to think less about the producer and more about the consumer." Barber, *Government and the Consumer*, 64 MICH. L. REV. 1203 (1966), quoting THE PUBLIC PAPERS AND ADDRESSES OF FRANKLIN D. ROOSEVELT 639, 645 (1938). President Johnson in his message to Congress states:

[F]or far too long, the consumer has had too little voice and too little weight in government.

As a worker, as a businessman, as a farmer, as a lawyer or doctor, the citizen has been well represented. But as a consumer, he has had to take a back seat. That situation is changing. The consumer is moving forward. We cannot rest content until he is in the front row, not displacing the interests of the producer, yet gaining equal rank and representation with interest . . . .

What is new is the concern for the total interest of the consumer, the recognition of certain basic consumer rights; the right to choose, the right to be heard.

110 CONG. REC. 1958, 1960 (1964).

enacting consumer protection legislation, is exhibiting increasing awareness of the consumer and his problems, these problems, because of the magnitude of modern day business, are presently greater and more compelling than ever before.<sup>4</sup>

The modern economic structure, the deception inherent in sophisticated means of modern merchandising, and the continuous denial of information necessary to make wise purchases make it difficult for the individual consumer to protect himself against fraudulent business practices. While there is evidence that these deceptive practices are most commonly encountered by the elderly and the uneducated poor, the problems are by no means foreign to the better educated and the wealthy.<sup>5</sup> In illustrating the magnitude of this problem, which has been estimated to cost the purchasing public untold millions of dollars each year through fraud,<sup>6</sup> a congressional report stated that "[o]ne billion dollars was mentioned most often as the annual cost of quackery in the United States."<sup>7</sup>

"Among the various types of fraudulent schemes are activities running from all the way of [sic] outright fraud and potent misrepresentation to mere attempts to catch the consumer off balance."<sup>8</sup> Among these, the most prevalent types of consumer fraud schemes are:<sup>9</sup> bait and switch,<sup>10</sup> multilevel distributor-

4. See Barber, *Government and the Consumer*, 64 MICH. L. REV. 1203 (1966).

5. Hester, *Deceptive Sales Practices and Form Contracts—Does the Consumer Have a Private Remedy?*, 1968 DUKE L.J. 831 (1968); Note, *Translating Sympathy for the Deceived Consumers Into Effective Programs for Protection*, 114 U. PA. L. REV. 395 (1966). This writer interviewed approximately twenty-five doctors, lawyers, and college graduates of all ages and discovered that nearly all had been affected by some type of deceptive scheme.

6. Note, *Consumer Protection Under the Iowa Consumer Fraud Act*, 54 IOWA L. REV. 319 (1968).

7. SUBCOMMITTEE ON FRAUDS AND MISREPRESENTATION AFFECTING THE ELDERLY, 89TH CONG., 1ST SESS., REPORT ON FRAUDS AND DECEPTIONS AFFECTING THE ELDERLY 8 (Comm. Print 1965).

8. Address by Douglas R. Carlson, The National Association of Attorneys General Consumer Protection Conference, Louisville, Kentucky, Oct. 6-7, 1969 (unpublished manuscript in the office of the South Carolina Attorney General).

9. All of the consumer fraud schemes described in notes 10-19 *infra* are taken from a report distributed by the South Carolina Attorney General's office.

10. *Bait and Switch*. Bait and switch usually takes the form of an unbelievable bargain, a brand named item offered at a low price, or merchandise offered at special savings over the normal prevailing market price. When the customer arrives to avail himself to the advertised item, the salesman may tell him that the advertised item is either "sold out" or "no good." After thus explaining away the absence of the advertised item or after disparaging the advertised item, the salesman will try to sell the customer a substitute item at a much higher price. Thus, the customer has been switched to buying a higher priced item than he intended to buy.

ships,<sup>11</sup> car leasing,<sup>12</sup> free gift come-on,<sup>13</sup> fictitious discounts,<sup>14</sup> home improvement and repair swindles,<sup>15</sup> phoney contests,<sup>16</sup> oral guarantees,<sup>17</sup> lands in the sun,<sup>18</sup> and correspondence and trade

11. *Multilevel Distributorships.* The concept of the multilevel distributorship is probably one of the most prevalent consumer frauds in the nation today. Most companies using the multilevel distributorship scheme require the customer to purchase a certain amount of the product they are selling along with the distributorship title they get by paying the purchase price. Thus, the company is actually giving the customer some merchandise for his money. The company usually paints exaggerated pictures of the earning potential of the "distributor" by informing them that they can make large amounts of money by signing up other people as "distributors." The problem with this type of sales company is that they emphasize the sale of positions with the company rather than a product itself. The end result is similar to that of a chain letter in that the people that buy in on the lower levels may well get their money back, or even make a profit, but the people that buy in at the end of the scheme, just before the saturation level is reached, all stand to lose their money.

12. *Car Leasing.* The general pattern of this type of consumer fraud is to contact the owners of small businesses, such as service stations and automobile repair shops, and attempt to sell them a leasing brokerage for an application fee of \$500. Companies selling this type of car leasing broker's agreement will usually promise the potential broker a substantial return on his money by agreeing to act as their local agent in their soon-to-be-found car leasing business. As soon as the brokers' fee is paid, the company is never heard from again.

13. *Free Gift Come On.* "Tell me who was buried in Grant's Tomb, and win a prize." Then the telephone solicitor springs the trap: you must buy something to get the "free gift." This is also done by the mailing of materials offering free gifts if you will just come in and pick them up. The free gift is usually used simply as the inducement to get the potential customer to listen to the sales pitch of the door-to-door salesman, or to come into the place of business of the advertising merchants.

14. *Fictitious Discounts.* A fictitious discount is, for example, an item marked, "Regular Price \$60, now only \$30." Such an item may sell regularly for \$30 or less, and the price has been fraudulently inflated to promote the sale by making it seem like a bargain with the use of the phoney discount.

15. *Home Improvement and Repair Swindles.* This type of consumer fraud usually involves a stranger who appears unsolicited at the door offering to do such home repairs as inspecting and repairing the roof, asphaltting the driveway, installing lightning rods, waterproofing the basement, clearing septic tanks or sewers, roof painting, furnace repairs, and interior construction. These activities are all very common consumer frauds and should immediately arouse the suspicions of all informed consumers. The men involved in this type of work usually do their work quickly for large sums of money and then quietly disappear, never to be located when their work is found to be faulty.

16. *Phoney Contest.* A typical example of this type of fraudulent practice is an ad asking the reader to send in a card to win a free prize. Such contests are usually run to get the names of prospective purchasers of the company's products. In some cases, the prizes may never be given or if they are, there may suddenly be some sort of an expense involved.

17. *Oral Guarantees.* The typical high pressure salesman will try to talk a prospective customer into making a purchase by making all sorts of glowing statements and guarantees about the merchandise. However, when the contract is examined, it may be found that none of the guarantees are in writing and that there is even a provision stating that no oral statements, representations, or guarantees made by the salesman are valid.

18. *Lands in the Sun.* The selling of off-site land in other states is especially attractive to older people or people approaching retirement age. Quite often a brochure will be received in the mail pointing out a glowing picture of a

schools swindles.<sup>10</sup> Since the above list is by no means inclusive, it is apparent that any legal means used to curtail consumer fraud schemes must be both comprehensive and flexible.

## II. COMMON LAW TECHNIQUES

At common law unfair or deceptive business practices were dealt with in civil actions brought by competitors and individual consumers against defrauding merchants.<sup>20</sup> A deceived buyer might bring an action for deceit against a seller who had falsely advertised a product.<sup>21</sup> In order to recover in deceit, the consumer was, however, required to show that he had reasonably relied on a misrepresentation of fact, knowingly made by a merchant with the intent to deceive.<sup>22</sup> In addition, the consumer had to show that a verifiable fact had been misrepresented and that the representation was not privileged as "mere puffing."<sup>23</sup> The difficulties of establishing an intent to deceive, mislead, or convey a false impression and proving reasonable reliance on the misrepresentation made this common law remedy inadequate to protect the consumer.<sup>24</sup> Modern developments in the law have, however, made it easier for the consumer to utilize deceit actions. Approximately eighteen states have held that a cause of action can be founded upon innocent misrepresentations, with neither scienter nor negligence on the part of the defendant, if the representation was made to induce a business transaction and was relied upon by the plaintiff to his damage. Furthermore, many states have taken a pro-consumer approach to the fact-opinion distinction in deceit actions.<sup>25</sup>

home on an attractive lot site in a far away state. Usually this can be purchased for a small down payment and so much a month. On responding to this brochure, the consumer may well be invited to a dinner party at which he is shown many glamorous movies of this so-called land development and subjected to very subtle but high pressure salesmanship.

19. *Correspondence and Trade Schools*. While there are many legitimate trade and correspondence schools that give their students their money's worth in education and training, there are those that do not. Some of these so-called schools are primarily concerned with simply collecting fees. They give little regard to giving the student the proper training for the proposed occupation.

20. *State Consumer Protection: A Proposal*, 53 IOWA L. REV. 710, 712 (1967); see Note, *Developments in the Law—Deceptive Advertising*, 80 HARV. L. REV. 1005, 1016 (1967).

21. Bohlem, *Misrepresentation as Deceit, Negligence, or Warranty*, 42 HARV. L. REV. 733 (1929).

22. W. PROSSER, *TORTS*, § 100-05 (3d ed. 1964).

23. 1 S. WILLISTON, *SALES* § 202 (rev. ed. 1948).

24. See Note, *STATE CONSUMER PROTECTION: A PROPOSAL*, 53 IOWA L. REV. 710 (1967); Note, *Consumer Protection Under the Iowa Consumer Fraud Act*, 54 IOWA L. REV. 319 (1968).

25. W. PROSSER, *TORTS* § 102 (3d ed. 1964); see, e.g., *Tott v. Duggan*, 199 Iowa 238, 200 N.W. 411 (1924); *New England Foundation Co. v. Elliott A.*

Misrepresentations, at common law, also gave rise to equitable actions for rescission of contract so long as the parties could be returned to their original positions.<sup>26</sup> The consumer was, however, required to overcome the same difficulties that hindered an action for deceit and, in addition, show that the representation was not privileged as "mere puffing."<sup>27</sup> An action for rescission would lie if the misrepresentation was either intentional or innocent and material.<sup>28</sup>

The common law action for breach of warranty was also available to consumers to secure redress for injury resulting from deceptive business practices.<sup>29</sup> But, the buyer had to surmount obstacles similar to those present in deceit actions, such as puffing, reliance on a factual representation, privity of contract, and the parole evidence rule.<sup>30</sup> Here again, the law is now changing, and the obstructions to recovery are not as great as they once were.<sup>31</sup> Common law breach of warranty actions have been superseded by statutory enactments such as the Uniform Commercial Code which will be discussed in part III.

Apart from the purchaser, the class of persons most clearly subject to injury from false and misleading advertising consists of competing firms whose trade may be diverted by the misrepresentation.<sup>32</sup> At common law, competitors could bring civil actions against unethical merchants for utilizing trade practices which mislead consumers. The availability of such a remedy was limited, however, because proof of special damages was required. If the consumer benefited from an action brought by a com-

Watrous Inc., 306 Mass. 177, 27 N.E.2d 756 (1940). No South Carolina cases were found on this point.

26. 5 S. WILLISTON, CONTRACTS §§ 145-55 (rev. ed. 1937).

27. 1 S. WILLISTON, SALES § 202 (rev. ed. 1948).

28. RESTATEMENT OF CONTRACTS § 471(1) (1932); RESTATEMENT OF RESTITUTION, §§ 8, 28, 55 (1936).

29. 1 WILLISTON, SALES, §§ 178-226 (rev. ed. 1948); Note, *Advertising and the Buyer's Remedies*, 6 VAND. L. REV. 376 (1953).

30. Note, *Developments in the Law—Deceptive Advertising*, 80 HARV. L. REV. 1005 (1967).

31. *Baxter v. Ford Motor Co.*, 168 Wash. 456, 12 P.2d 409 (1932), *aff'd per curiam on rehearing* 15 P.2d 118 (1932); see also *MacPherson v. Buick Motor Co.*, 217 N.Y. 382, 111 N.E. 1050 (1916).

32. These common law actions by competitors were designed to protect competitors from unfair business practices of their fellow businessmen and, if effective, ultimately to protect consumers by deterring these practices. The most common actions of this nature were disparagement, false advertising, and trade symbol infringement. Stringent requirements had to be met in order to recover in several of these actions; therefore, many losses caused by unfair or deceptive practices were not compensated and further violations were not discouraged. Dole, *The Uniform Deceptive Trade Practices Act: Another Step Toward a National Law of Unfair Trade Practices*, 51 MINN. L. REV. 888 (1964).

petitor, it was only indirectly and actually afforded the consumer no recourse against an unethical merchant.<sup>33</sup> Consequently, while this area of law is important, it is beyond the scope of this article.

Most of the foregoing common law civil actions require the consumer to retain a private attorney, which means that legal fees exceeding the consumer's losses may be incurred in efforts to obtain restitution. Under these circumstances, many defrauded consumers will not institute legal proceedings; therefore, the existing legal sanctions neither prevent nor discourage fraudulent schemes. In many instances fraudulent operators carefully avoid cheating individuals out of large sums of money, because they realize that a person who is bilked out of a small amount of money is usually not going to pay a lawyer to have his money refunded. Thus, the only cases which lawyers handle are those brought either by the unusual individual who will pay more than the amount of his claim in order to see justice done or by those defrauded out of amounts large enough to justify expenditures for legal services. The number of consumers who have no redress because of prohibitive legal costs constitute the vast majority.<sup>34</sup> Even if a consumer does find it worthwhile to obtain a judgment, the defrauding seller may lack the assets to pay or may flee the jurisdiction.

The final factor which must be considered when discussing consumer protection at common law is the ancient doctrine of *caveat emptor*<sup>35</sup> which often acted as a bar to consumer recovery. Under this doctrine no actionable misrepresentation was possible if the parties were dealing at arms length,<sup>36</sup> had equal means of obtaining information, and were equally qualified to judge the value of the property sold.<sup>37</sup> The last few decades have, however, witnessed a marked change in the general attitude of the courts toward discarding the doctrine.<sup>38</sup> But, even though the doctrine

33. See note 59 *infra*.

34. Note, *Translating Sympathy for the Deceived Consumers into Effective Programs for Protection*, 114 U. PA. L. REV. 395, 409 (1966).

35. The magnitude of the doctrine can be illustrated by the following statement: "Not until the nineteenth century did judges discover that *caveat emptor* sharpened wits, taught self-reliance, made a man—an economic man—out of the buyer, and served well its two masters, business and justice." Hamilton, *The Ancient Maxim Caveat Emptor*, 40 YALE L.J. 1133, 1186 (1931).

36. *Burwash v. Ballou*, 230 Ill. 34, 82 N.E. 355 (1907).

37. *Carpenter v. Hamilton*, 18 Cal. App. 2d 69, 62 P.2d 1397 (Dist. Ct. App. 1936).

38. Seavey, *Caveat Emptor As of 1960*, 38 TEXAS L. REV. 439 (1960). South Carolina has long recognized that a sound price warrants a sound commodity

of *caveat emptor* has been largely abandoned by the courts, the prior mentioned impediments to consumer actions have destroyed any hope of effective consumer common law remedies.

It is apparent that more flexible remedies must be available to stop the deceptive practice before substantial injury is done to the consumer. The efforts of private and governmental organizations to warn the public about deceptive practices are absolutely necessary, but an approach which recognizes existing fraudulent practice and seeks to educate the consumer is not enough. The main goal of law enforcement should be the elimination of deceptive practices.<sup>39</sup>

### III. STATUTORY LAW

#### A. *Printer's Ink Statute*

As commerce and industry increased within the United States, deceptive business practices also increased. Since the rigidity of the common law remedies severely restricted their ability to handle consumer problems, state legislatures slowly began to act to fill the void.

In 1911, in response to efforts initiated within the advertising industry, a model statute was drafted by the *Printer's Ink* magazine to curb false or misleading advertising.<sup>40</sup> This model statute with some variations was adopted by all but three states.<sup>41</sup> This statute makes it a misdemeanor to advertise a representation that is "untrue, deceptive, or misleading"; a violation is committed by disseminating such an advertisement with the intent to sell merchandise even though no sale is made.<sup>42</sup> Prosecution under this

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and has rejected the doctrine of *caveat emptor* in favor of *caveat venditor*. See S.C. CODE ANN. § 10.2-314 (Supp. 1966) and South Carolina Reporter's Comments.

39. Saxbe, *The Role of the Government in Consumer Protection: The Consumer Frauds and Crimes Section of the Office of the Ohio Attorney General*, 29 OHIO STATE L.J. 897, 909 (1968).

40. Comment, *Untrue Advertising*, 36 YALE L.J. 1155 (1927).

41. Note, *State Consumer Protection: A Proposal*, 53 IOWA L. REV. 710 (1967). The three states which have not passed a Printer's Ink Statute are: Arkansas, Delaware, and New Mexico.

42. For the text of the model statute, see Comment, *State Control of Bait Advertising*, 69 YALE L.J. 830, 831 (1960). South Carolina's version of the statute does not use the words "untrue, deceptive, or misleading" and is entitled "Making Intentionally Untrue Statements in Advertising." The South Carolina statute reads as follows:

Any person who knowingly with intent to sell or in any wise dispose of merchandise, securities, service or anything offered by such person, directly or indirectly, to the public for sale of distribution or with intent to increase the consumption thereof, . . . pub-

statute requires three elements of proof: (1) an intent to sell, dispose of, or increase the consumption of goods, etc.; (2) the placing before the public, with such intent, of any type of advertising; and (3) the existence, in such advertising or representation, of a fact which is untrue.<sup>43</sup>

Because of the difficulty of proving criminal intent to advertise falsely and the narrow judicial construction of the Printer's Ink statutes by the courts,<sup>44</sup> there have been few prosecutions under this statute.<sup>45</sup> In at least one case, *People v. Glubo*,<sup>46</sup> the court has expanded the interpretation of the Printer's Ink Statute to include bait advertising. This case has been criticized as being beyond the intent and scope of the statute. The Printer's Ink Statute was, furthermore, designed for relatively clear-cut cases of misrepresentation of quality and will, therefore, not serve as an effective vehicle for combating bait advertising.<sup>47</sup> In spite of the statute's limited flexibility, some courts have followed *Glubo*.<sup>48</sup>

The proposed Draft of the South Carolina Criminal Code includes a section which deals specifically with bait advertising<sup>49</sup> and involves provisions which are very similar to those included in the proposed South Carolina Unfair Trade Practices Act (to be discussed in part VI). A person violates section 19-3 of the Draft if he (1) makes use of any medium whatever, (2) to facilitate a scheme or plan, (3) by which he offers (a) property or (b) services, (4) with the intent not to sell or provide the advertised commodity or service (a) at the price stated, (b) in a quantity sufficient to meet reasonably expected demand, unless

lishes, disseminates, circulates or places before the public . . . in a newspaper or other publication . . . an advertisement of any sort regarding merchandise, securities, service or anything so offered to the public which contains any assertion, representation or statement of fact which is intentionally untrue shall be guilty of a misdemeanor. . . .

S.C. CODE ANN. § 66-3 (1962).

43. Comment, *Untrue Advertising*, 36 YALE L.J. 1155 (1927).

44. An advertisement lacking the intent to sell, such as one soliciting employees, have been excluded from the operation of the statute. *State v. Caruthers*, 21 S.W.2d 895 (Mo. App. 1929).

45. A study of prosecutions under false advertising statutes showed clearly that most jurisdictions have never used the statutes at all, and that only a few have initiated more than a handful of prosecutions. Note, *The Regulation of Advertising*, 56 COLUM. L. REV. 1018 (1956). There have been no reported cases under the South Carolina statute.

46. *People v. Glubo*, 5 N.Y.2d 461, 186 N.Y.S.2d 26, 158 N.E.2d 699 (1959).

47. Comment, *State Control of Bait Advertising*, 69 YALE L.J. 830 (1960).

48. See, e.g., *Electrolux Corp. v. Val-Worth, Inc.*, 6 N.Y.3d 556, 190 N.Y.S.2d 977, 161 N.E.2d 197 (1968); *State v. Jost*, 241 A.2d 316 (Vt. 1968).

49. S.C. CRIMINAL CODE, § 19-3, (Tent. Draft. 1970).

he advertises limited quantities, or (c) at all.<sup>50</sup> The effect of this section of the Proposed Draft of the Criminal Code would be to make criminal a particular type of conduct for which the South Carolina Unfair Trade Practices Act provides a civil remedy.

### *B. False Pretense Statutes*

The disadvantages of civil remedies have prompted many states to enact penal statutes designed to protect purchasers from fraudulent businessmen. False Pretense Statutes have made it a crime to obtain money or property by false pretenses if the transaction involves an express or implied false representation of an existing fact (not a promise to perform some act in the future) made with intent to defraud. The operation of such deception must induce a transfer, and the actor must obtain something of value from the person defrauded.<sup>51</sup> South Carolina has two statutes which are typical of False Pretense Statutes and a wealth of decisions interpreting these statutes.<sup>52</sup>

Criminal legislation alone does not, however, adequately fulfill the demand for an effective public remedy for consumer frauds. The general problems of proof<sup>53</sup> encountered in enforcing criminal statutes, the practical limitations of ad hoc enforcement, and the restrictive interpretations given false pretense statutes by the courts<sup>54</sup> simply place too many impediments in the way of public officials who attempt to prosecute the unethical businessman.

### *C. The Uniform Commercial Code*

The Uniform Commercial Code has greatly expanded the concept of warranty as it was known at common law and, in so doing, has enhanced the possibilities of recovery for many consumers.<sup>55</sup> The U.C.C. alone, however, is not sufficient to give consumers protection against unethical merchants,<sup>56</sup> because many warranties can be disclaimed if certain requirements of

50. S.C. CRIMINAL CODE, § 19-3, Commentary (Tent. Draft 1970).

51. Annot., 99 A.L.R.2d 925 (1950).

52. See S.C. CODE ANN. §§ 16-366, 368 (1962) and the cases there cited.

53. 2 J. BISHOP, CRIMINAL LAW §§ 414-15 (9th ed. 1923).

54. Pearce, *Theft by False Promises*, 101 U. PA. L. REV. 967 (1953). The Ohio Attorney General reports that in his state only the most flagrant types of consumer frauds and deceptions are reached by the criminal law. Saxbe, *The Role of the Government in Consumer Protection: The Consumer Frauds and Crimes Section of the Office of the Ohio Attorney General*, 29 OHIO STATE L.J. 897 (1968).

55. UNIFORM COMMERCIAL CODE §§ 2-312 to -318.

56. Note, *State Consumer Protection: A Proposal*, 53 IOWA L. REV. 710 (1967).

the Code are met<sup>57</sup> and because the Code does not protect against or prevent the initial consumer fraud.

The "unconscionable" section<sup>58</sup> of the Uniform Commercial Code affords the consumer another means of protection, but for the aforesaid reasons and because of the need to hire an attorney, this section is also ineffective in protecting the consumer.

As the sophistication of promotional techniques increased, and with it the scope of the problems presented by false and misleading advertising, the inadequacy of existing common statutory law to deal with those problems became clear. With the development of major multi-state marketing areas the desirability of uniform standards suggested the possibility of federal regulation designed to fulfill the need for comprehensive and effective control.<sup>59</sup>

#### IV. FEDERAL LAW

The major federal agency concerned with this area of the law is the Federal Trade Commission.<sup>60</sup> The FTC was established in 1914 and is primarily concerned with advertising abuses. The Commission is empowered to enjoin false advertising which (1) constitutes an unfair method of competition,<sup>61</sup> (2) amounts to a deceptive practice,<sup>62</sup> or (3) is misleading in a material respect.<sup>63</sup> Even with these relatively broad powers, the FTC is limited in its effectiveness.

The basic section 5 jurisdictional grant of power to proceed against "unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce" was held by the Supreme Court not to reach intrastate practices merely affecting

57. UNIFORM COMMERCIAL CODE § 2-316; Note, *Warranty, Disclaimers & Limitations of Remedy for Breach of Warranty Under the U.C.C.*, 43 BOSTON U.L. REV. 343 (1963).

58. UNIFORM COMMERCIAL CODE § 2-302.

59. Note, *Developments in the Law-Deceptive Advertising*, 80 HARV. L. REV. 1005, 1019 (1967).

60. However, a 1961 survey showed that 33 of the 35 principal departments and agencies of the federal government were involved in some activity that protected or promoted consumer interest. Barber, *Government and the Consumer*, 64 MICH. L. REV. 1203 (1966).

61. Federal Trade Commission Act § 5, 38 STAT. 719 (1914), as amended 15 U.S.C. § 45(a) (1) (1952).

62. *Id.*

63. 38 STAT. 719 (1914), as amended 15 U.S.C. §§ 52(a), 55(a) (1) (1952). Only advertisements of food, drugs, devices, or cosmetics are subject to these sections. If the advertisement is not includible in these categories, the Commission can only proceed against the advertisement as an "unfair method of competition" or as a "deceptive practice."

interstate commerce.<sup>64</sup> Further, the FTC's policy is to attack only deceptive schemes which have national impact. The Commission has stated its position to be:

The FTC's fight against consumer deception is directed at gyp schemes that have an actual or potential impact on the public, as distinguished from actions to settle private controversies. In short, it has neither the staff nor the money to tackle cases that do not have sufficient public interest.<sup>65</sup>

The FTC has long been plagued by a huge backlog of cases and a resulting inordinate time lag between the filing of a formal complaint and the issuance of a final cease and desist order or a promise of voluntary compliance.<sup>66</sup> Moreover, a great majority of deceptive practices are conducted at the local level, and a single agency at the national level cannot adequately handle the vast number of consumer complaints. The diverse nature of deceptive practices and their tendency to vary with geography and population density make coordinated national regulation undesirable. The FTC has recognized that it lacks the manpower and resources to deal adequately with local deceptive practices. While concentrating on deceptive trade practices of national impact, it does provide source material to state agencies drafting consumer legislation.<sup>67</sup>

## V. CONTEMPORARY APPROACHES

### A. Attorney General Programs

Aside from accumulating a hotchpot of common law case material dealing with the regulation of deceptive business prac-

64. *FTC v. Bunte Bros. Inc.*, 312 U.S. 349 (1941).

65. Note, *Developments in the Law-Deceptive Advertising*, 80 HARV. L. REV. 1005, 1021 (1967), quoting from, *FTC FIGHT BACK—THE UNGENTLE ACT OF SELF-DEFENSE*.

66. Weston, *Deceptive Advertising and the Federal Trade Commission: Decline of Caveat Emptor*, 24 FED. B.J. 548 (1964); see, N.Y. Times, Aug. 4, 1970, at 11, col. 3.

67. See Note, *Consumer Protection Under the Iowa Consumer Fraud Act*, 54 IOWA L. REV. 319 n.29 (1968), quoting Paul Rand Dixon, Chairman of the Federal Trade Commission.

[W]e at the Commission would like to see the 50 states of our Union take potential business away from us by enacting more effective laws to prevent consumer deception and unfair competitive business practices. By stopping such practices before they grow into problems of interstate proportions, the need for federal action will be minimized, and the people most directly affected will have a telling voice in deciding what constitutes unfairness and deception. The more effective the states can be in nipping illegal schemes in the bud, the more energy the FTC can devote to dealing quickly and effectively with problems of regional and national significance.

tices, the states have adopted a staggering number of statutes noteworthy for their ad hoc and piecemeal approach to the problems of advertising control and for their lack of enforcement.<sup>68</sup> Mounting concern over the greatly increasing numbers of complaints received concerning deceptive business practices coupled with the phenomenal growth of promotional efforts has, however, catalized state action to protect the consumer.

In 1957 the Attorney General of New York, acting under various state statutes, established the first state bureau of consumer frauds and protection.<sup>69</sup> Following New York's lead, states began to enact consumer protection legislation and in some cases to establish a program within the office of the Attorney General to handle consumer complaints. Presently all but fourteen states have either an Attorney General's Program or legislation directed to the protection of the consumer.<sup>70</sup>

Since 1960, state regulation of deceptive trade practices has substantially increased through the passage of civil remedial statutes enforced statewide by the Attorney General and implemented in many instances by specialized divisions within the Attorney General's office created to deal exclusively with consumer law problems. Shifting the burden of consumer protection to statewide agencies has led to more effective enforcement. A statewide organization can more readily assess the most effective means of halting widespread fraudulent practices and also operate more effectively because of larger staffs.<sup>71</sup>

68. Note, *The Regulation of Advertising*, 56 COLUM. L. REV. 1021 (1956).

69. See Note, *Consumer Protection Under the Iowa Consumer Fraud Act*, 54 IOWA L. REV. 319 (1968).

70. The states without an Attorney General's Program or legislation are: Alabama, Arkansas, Georgia, Idaho, Indiana, Louisiana, Mississippi, Montana, Nebraska, Nevada, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Utah, and Wyoming. Of this number, four (Oklahoma, Oregon, South Carolina, and Wyoming) will have some type of consumer legislation introduced at the next session of the legislature. Two states (Louisiana and Mississippi) had consumer protection legislation defeated in committee in the last session of the legislature. One state, Nebraska, reports that it has adequate consumer legislation, but it lacks a centralized enforcement procedure and staff. Among Nebraska's arsenal of consumer legislation is the Uniform Deceptive Trade Practices Act and the statutes on unordered merchandise. Even states without consumer legislation recognize the need for such legislation or attorney general program. "This problem is becoming increasingly more important to the Attorney General and to the officials where the public's interest and protection are concerned." Letter from Marshall G. Bennett, Special Assistant Attorney General, State of Mississippi to the *South Carolina Law Review*, Aug. 5, 1970.

The *South Carolina Law Review* expresses its appreciation to the Attorney Generals of the above mentioned states for their cooperation in making this Note possible.

71. Note, *Translating Sympathy for the Deceived Consumers into Effective Programs for Protection*, 114 U. PA. L. REV. 395 (1966).

State Consumer Bureaus operating out of the Attorney General's office may exist either with or without enabling legislation.<sup>72</sup> Most bureaus have been active in two areas: (1) coordination of local law enforcement efforts and (2) consumer education; neither require legislation.<sup>73</sup> The bureaus attempt to increase consumer awareness of deceptive practices and to improve the consumer's ability to recognize such activities through informational programs, pamphlets, films, newspapers, radio, and television.<sup>74</sup> The Attorney General of Maryland states that there are four functions of his Consumer Protection Division: (1) mediation, (2) legislation, (3) education, and (4) investigation.<sup>75</sup> By performing these functions, the division is able to combat effectively deceptive trade practices on a statewide front.

### *B. Consumer Protection Statutes*

There are several types of civil statutes which give the Attorney General authority to protect consumers from false advertising and unfair trade practices. The first of these is the *False Advertising and Unfair Trade Practices Act* which was patterned after the 1963 New York False Advertising Law.<sup>76</sup> There has been little widespread acceptance of this act, because it does not give the Attorney General investigative powers, authority to seek an injunction, power to make rules or to accept an assurance of discontinuance, or give the court authority to order restitution or appoint a receiver.<sup>77</sup>

72. In Ohio there is no specific statutory enabling authority for the Consumer Frauds and Crimes Section of the Office of the Ohio Attorney General. Rather, it operates under the Attorney General's statutory power to act as "chief law officer for the state and all its departments." OHIO REV. CODE ANN. § 109.02 (Page 1962); see note 38 *supra*.

73. Note, *Developments in the Law-Deceptive Advertising*, 80 HARV. L. REV. 1005 (1967).

74. The North Carolina Attorney General's Office distributes a leaflet entitled *What Better Consumer Protection Means To You*, which lists a "10 Point Buying Guide for Tar Heel Consumers." The Massachusetts Consumer Protection Division distributes a quantity of cartoon leaflets warning the consumer of deceptive schemes, such as bait and switch, and also informing the consumer of consumer protection laws.

75. Burch, *Maryland's "Action" Program in Consumer Protection*, STATE GOV. 161, 162 (Summer 1969). Mediation means to "get the money back as promptly as possible for the citizen who has been cheated or defrauded." Legislation means that needed consumer legislation is recommended to the legislature. Education simply means to educate the consumer as to deceptive schemes and to applicable laws. Investigation means to investigate consumer complaints and possible unethical and deceptive trade practices.

76. S. Douglas, State Attorney General Consumer Protection Programs, June 1, 1968, (Unpublished Report in the Office of the South Carolina Attorney General).

77. *Id.* at 27.

The second consumer protection statute is the *Consumer Fraud Law*, which has been passed in approximately ten states.<sup>78</sup> Fraudulent and deceptive merchandising is declared unlawful, but the act specifically does not apply to television, radio, or newspaper advertising or where the FTC or a state insurance commissioner has jurisdiction. The Attorney General is given the power to investigate probable violations of the statute pursuant to court order. Basic sanctions (to be discussed later) are available to the court and the Attorney General via this act.

Connecticut, Georgia, Nebraska, New Mexico, and Texas have adopted a third type of consumer protection act. This act, entitled the *Uniform Deceptive Trade Practices Act*, was promulgated by the National Conference of Commissioners on Uniform State Laws. It defines terms, lists specific deceptive trade practices, and authorizes injunctive relief. The main difference between the Uniform Deceptive Trade Practices Act and the Consumer Fraud Act is that the former grants authority to prosecute only to the consumer or merchant, whereas the latter grants authority to the Attorney General.<sup>79</sup> This act should greatly heighten the ability of an individual merchant or consumer to halt a deceptive practice by means of an injunction and, thereby, provide a greater measure of consumer protection.

The fourth and final consumer protection act is the *Federal Trade Commission Model Law for State Government*. This act, often referred to as the "Little FTC Act," was written by and modeled after the Federal Trade Commission Act. It was introduced in the South Carolina General Assembly last year and had a first reading on January 28, 1970.<sup>80</sup> The bill passed the House, but died in the Senate Finance Committee at the end of the session. Presently, the bill is scheduled to be reintroduced in the forthcoming session of the General Assembly. The "Little FTC Act" will be discussed in part VI.

There are various basic sanctions that appear in the four acts heretofore discussed which should provide the consumer with adequate remedies for improper business conduct. While an in-depth discussion of each type of consumer protection act is beyond the scope of this note, these sanctions will be mentioned

78. *Id.* at 29.

79. *Id.* at 32.

80. The bill was introduced by Messrs. Hagins, Jenrette, McLendon, Sansbury, Kneece, Thomas E. Smith, Jr., Martin, Riley, Hartnett, James E. Moore, Harwell, Carnell, Medlock and sponsored by the Office of the Attorney General.

briefly. First, the Consumer Protection Division or the Attorney General can accept an assurance of discontinuance of the deceptive practice, or an assurance of voluntary compliance with the law. Second, the Attorney General or an individual can bring an injunction to prohibit the unlawful act. Third, the Attorney General may sue in a civil proceeding to recover a financial penalty for a consumer law violation. Fourth, the court may make such orders or judgments which may be necessary to restore to any person any moneys or property lost because of a violation of the consumer laws. Fifth, the court may terminate the business affairs of a consumer law violator by dissolving a corporation, or appointing a receiver to eliminate effectively the profit derived from a fraudulent scheme.<sup>81</sup> (This list is a composite of the sanctions available in all consumer fraud laws, and each may not be available in every state.)

It should be apparent that the use of these types of regulatory structures fills many of the gaps in the ineffective and inadequate regulation which existed under the traditional civil and criminal enforcement schemes.

### *G. Self-Regulation and Legal Aid*

Apart from government regulations, business has attempted to control deceptive practices through self-regulation. The most prominent such organization is the National Better Business Bureau, which is a non-profit organization established by business organizations to protect themselves and the consumer from national advertising which is unfair, misleading, or fraudulent. The Better Business Bureaus are financed entirely by membership dues or subscriptions of business firms and organizations operating on a national or regional level.<sup>82</sup> In areas where the Bureau is active, it can be helpful to consumers in some instances; because of the private nature of the organization, it can, however, do little against willful violators. This organization has no official power to compel compliance with its requests, nor does it have private sanctions to be used against non-complying businesses. The only action available to the Bureau is to

81. See note 20 *supra*.

82. The South Carolina Better Business Bureau went out of business on December 31, 1969. The functions of the BBB are now being conducted on a limited scale by the Business Ethics Division of the Chamber of Commerce. Interview with Don Libby, Director of the Business Ethics Division of the Chamber of Commerce.

request compliance and try to achieve the desired result through persuasion and publicity.<sup>83</sup>

Further aid for the consumer may come from Legal Aid Societies, although the injured consumer must meet the Office of Economic Opportunity's basic standards to be eligible for assistance. The limited class which the Legal Aid Society is allowed to serve, coupled with its united staff, prevents the society from becoming an effective deterrent against fraudulent business practices in the community.<sup>84</sup> Furthermore, the South Carolina societies are working within the same inadequate legal framework that hinders all consumer protection activities in the state today because of the absence of needed legislation.

## VI. LITTLE FTC ACT

To be effective, a civil regulatory statute should contain language sufficiently flexible to encompass subtle deceptive marketing and advertising schemes as they arise. This result is achieved to a large degree by those statutes (not the "Little FTC Act") which prohibit simply "deception and misrepresentation" in the advertising or sale of merchandise. The desired flexibility is, however, achieved to an even greater degree by statutes, like the "Little FTC Act," which adopt the wording of the FTC Act and bar "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce."<sup>85</sup> This broad language not only has the advantage of being able to deal with the many new and different types of deceptive practices which may arise, but also enables the state to employ the established body of FTC case law in the interpretation of the statute.<sup>86</sup>

83. See notes 33, 39 *supra*, and Note, *State Consumer Protection: A Proposal*, 53 IOWA L. REV. 710 n.36 (1967). See also Fair Practice Code for Advertising and Selling recommended by the Association of Better Business Bureaus, Inc., COLUMBIA CITY DIRECTORY, (1970); National Better Business Bureau, Consumer Information Series No. 1 (undated).

84. The local Legal Aid Service Agency has two offices, one in Columbia and one in Cayce. The Agency is staffed with four attorneys, four secretaries, one investigator, two reggies, and one law student. Interview with Doug Cannon, Attorney with Legal Aid in charge of consumer protection.

85. The South Carolina Unfair Trade Practices Act, H.2239, § 2(a) (1970); see Federal Trade Commission Act, 15 U.S.C. § 45(a) (1952).

86. In explaining why South Carolina decided to try to enact the "Little FTC Act" instead of one of the other consumer protection laws, John Bowen, an Assistant Attorney General, said:

The "Little FTC Act" is broad enough to give us the flexibility we need to attack the various unfair and deceptive practices that are occurring and will occur in the future. Also, section 2(a) of the Bill is the identical language used in the FTC Act which would give us numerous judicial decisions and interpretations so as to

The South Carolina bill to adopt the "Little FTC Act" defines "person," "trade," and "documentary material" in terms which are broad and comprehensive enough to effectuate the wide application of the act. These definitions were designed to include almost any *attempt* to induce a person to enter into an obligation for goods or services; an *actual* inducement is not a necessary element.<sup>87</sup>

The Bill does not apply when the FTC or a state agency has jurisdiction; nor does it apply to

[a]cts done by the publisher, owner, agent of employee of a newspaper, periodical or radio or television station in the publication or dissemination of an advertisement, when the owner, agent or employee did not have knowledge of the false, misleading or deceptive character of the advertisement and did not have a direct financial interest in the sale or distribution of the advertised product or service.<sup>88</sup>

Under the "Little FTC Act," when a complaint is brought to the attention of the Attorney General, he will first investigate the complaint to determine if there has been a violation of the act and also whether such complaint has sufficient public interest for the Attorney General's office to proceed. Second, the Attorney General will give the person accused of violating the act notice that a complaint has been filed against him.<sup>89</sup> The

give the businessman some sort of a guide to what act would be considered to be unfair and deceptive.

Interview with John Bowen, Assistant Attorney General for the State of South Carolina. See section 2(b) of the Bill; for a general discussion of the over 900 judicial interpretations given the language of the FTC Act, see Note, *Developments in the Law-Deceptive Advertising*, 80 HARV. L. REV. 1005, 1038-63 (1967).

87. The South Carolina Unfair Trade Practices Act, H.2239, § 1(a)-(d) (1970).

88. *Id.* § 3(b) provides: "The burden of proving exemption from the provisions of the act shall be upon the person claiming the exemption."

89. *Id.* § 8 provides:

Service of any notice, demand or subpoena under this act shall be made personally within this State, but if such cannot be obtained, substituted service therefore may be made in the following manner:

- (a) Personal service thereof without this State; or
- (b) The mailing thereof by registered or certified mail to the last known place of business, residence or abode within or without this State of such person for whom the same is intended; or
- (c) In the manner provided by the laws of this State as if a summons or other pleading which institutes a civil proceeding had been filed; or
- (d) Such service as a court of common pleas may direct in lieu of personal service within this State.

Attorney General would then contact the violator and ask him to stop such unlawful or deceptive acts. If such a request were to receive an affirmative response, a written assurance of voluntary compliance<sup>90</sup> would be accepted by the Attorney General, and the case would be closed. Such assurance of voluntary compliance would then be filed with and subject to the approval of the Court of Common Pleas for Richland County.<sup>91</sup> The assurance of voluntary compliance would not be considered an admission of violation; however, any violation of the terms of such assurance would constitute *prima facie* evidence of a violation of the provisions of the act.

If an assurance of voluntary compliance cannot be obtained, the attorney general may then proceed by way of injunction.<sup>92</sup> The injunctive action may be brought in the Court of Common Pleas in the county in which such person resides or has his principal place of business, or in the Court of Common Pleas for Richland County.<sup>93</sup> In this action the court may make such additional orders or judgments as may be necessary to restore to any injured person any moneys or property which may have been lost by reason of the unlawful act or practice.<sup>94</sup>

At any time during these proceedings, subpoenas<sup>95</sup> and investi-

90. *Id.* § 5 provides:

Such assurance may include a stipulation for the voluntary payment by such person of the cost of investigation, or of an amount to be held in escrow pending the outcome of an action or as restitution to aggrieved buyers, or both.

91. The assurance of voluntary compliance is filed in Richland County because the Attorney General's Office is located in Richland County and because it provides a centralized place to file them. Interview with John Bowen, Assistant Attorney General.

92. The South Carolina Unfair Trade Practices Act, H.2239, § 4(a) (1970).

93. The action may be brought in the Court of Common Pleas for Richland County so that a mobile scheme could be stopped by bringing only one action and not one in every county. The injunction so obtained would apply throughout the state. Interview with John Bowen, Assistant Attorney General.

94. The South Carolina Unfair Trade Practices Act, H.2239, § 4(b), (1970).

95. *Id.* § 7 provides:

To accomplish the objectives and to carry out the duties prescribed by this act, the Attorney General, in addition to other powers conferred upon him by this act, may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, prescribe such forms and promulgate such rules and regulations as may be necessary, which rules and regulations shall have the force and effect of law: *provided*, however, that none of the powers conferred by this act shall be used for the purpose of compelling any person to furnish testimony or evidence which might tend to incriminate him or subject him to a penalty or forfeiture; and *provided*, further, that information obtained pursuant to the powers conferred by this act shall not be made public or disclosed by the Attorney General or

gative demands<sup>96</sup> may be issued requiring persons to appear and documents to be presented. These documents and the testimony acquired by this act would not be applicable to any criminal proceeding and would not be admissible as evidence in a criminal prosecution.<sup>97</sup>

If any person fails or refuses to answer any reasonable investigative demand or subpoena, the court may be requested to grant injunctive relief, vacate or suspend a corporate charter, or grant such other relief as may be required. Any disobedience of any final order entered by a court after a refusal to file any statement or report, or obey any subpoena or investigative demand issued by the Attorney General shall be punished as contempt.<sup>98</sup>

If a court finds that a person is employing unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce, the Attorney General may recover on behalf of the state a civil penalty not exceeding five thousand dollars per violation.<sup>99</sup> Further, any person who violates a permanent injunction under the Act may be required to forfeit fifteen thousand dollars per violation.<sup>100</sup> This latter fine is for violating the injunction and not for violating the terms of the Act. Finally, upon petition and showing of good cause, the court may order the forfeiture of a corporate charter or the dissolution of the business.<sup>101</sup>

The proposed legislation also provides for a right of private action to anyone who has suffered an ascertainable loss through an unfair or deceptive practice. The person may recover his actual damages or two hundred dollars, whichever is greater. The Act further provides that, upon a finding by the court of a violation of the Act, the court *shall* award to the person bringing such action reasonable attorney's fees and costs.<sup>102</sup> Also, if the court finds that the employment of such unfair or deceptive act was a willful or knowing violation, such court *shall* award

his employees beyond the extent necessary for law enforcement purposes in the public interest.

The first *provided* clause was included in fear of violating the fifth amendment.

96. The South Carolina Unfair Trade Practices Act, H.2239, § 6(a) (1970). An investigative demand may require a person to furnish, under oath, a report in writing setting forth the relevant facts and circumstances of which he has knowledge, or to appear and testify or to produce relevant documentary material or physical evidence for examination.

97. The South Carolina Unfair Trade Practices Act, H.2239, § 6 (1970).

98. *Id.* § 9.

99. *Id.* § 10(a).

100. *Id.* § 10(b).

101. *Id.* § 11.

102. *Id.* § 13(a) (emphasis added).

triple damages.<sup>103</sup> This is an excellent section of the Act, because it allows a consumer a private cause of action and a means by which he can litigate a small claim without fear of expending more on attorney's fees than he could recover in litigation.

This remedy, however, raises the proposition that consumers will abuse the statute and the courts will be flooded with frivolous claims of consumers. This fear can easily be abated by emphasizing the fact that attorney's fees are recoverable by the consumer only if he is successful in litigation. Consequently, frivolous litigants will be paying their own attorney's fees, a factor which in itself should dissuade the individual from bringing such claims. Furthermore, to be successful under the Act the consumer must show that he has suffered an actual, ascertainable loss of money or property as a result of an unfair or deceptive practice.<sup>104</sup> Also, the provision awarding triple the actual damages comes into play only when either the violation was willful or knowing, or the merchant knew or had reason to know that the practice complained of was unfair or deceptive within the meaning of section 2.<sup>105</sup> Finally, the merchant is protected against uncertainty in the law by an existing body of case law, decisions by the FTC, and regulations by the Federal Trade Commission.

Attorney General Consumer Protection Bureaus have been criticised for spending too much time acting as a legal aid service for individual consumers and not enough time organizing industry-wide compliance programs or seeking meaningful sanctions against major consumer law offenders.<sup>106</sup> This criticism, however, would not be applicable in South Carolina, because the Act provides for an effective private remedy and thus leaves the Attorney General's office free to pursue larger offenders. Other questions have been raised concern the constitutionality of the act and whether or not the Federal Trade Commission has pre-empted the consumer law field. Since the language of the FTC Act has been found constitutional, it is assumed that no serious question would arise as to the constitutionality of the South Carolina act. As to the question of pre-emption, neither the language nor the legislative history of the FTC Act and the subsequent amendments to it explicitly indi-

103. *Id.*

104. *Id.* §§ 4(b) and 13(a).

105. *Id.* § 13(a).

106. Note, *Developments in the Law-Deceptive Advertising*, 80 HARV. L. REV. 1005, (1967).

cates whether Congress intended that this area be regulated exclusively by federal authority.<sup>107</sup> Furthermore, the FTC has recommended that states adopt consumer legislation and has gone so far as to draft a model act for the states to follow.<sup>108</sup>

## VII. CONCLUSION

The ever increasing number and type of deceptive business practices requires that the state of South Carolina take immediate and effective action to prevent these schemes and protect the innocent consumer. Other states have seen the need and have filled the void by one of several consumer protection statutes. The answer to this problem, however, does not lie in governmental regulation of trade practices alone. One of the basic reasons for the widespread use of deceptive and fraudulent practices is the gullibility and naiveté of the consumer; therefore, the goal of government should be education as well as legislation.<sup>109</sup>

The need for local consumer legislation is urgent. Responsible legislation will not only enhance the image of the business community, but will provide the consumers of South Carolina with the protection they need and deserve. Furthermore, the proposed legislation will not overload the Attorney General's office with individual complaints, because it provides a "self-help" method whereby the consumer can protect himself. The Attorney General, consequently, can deal primarily with the larger, more organized deceptive practices which would be difficult for the individual consumer to challenge. The "South Carolina Unfair Trade Practices Act," implemented by the Attorney General, could effectively control and eventually eliminate the large scale use of unfair and deceptive trade practices within the state of South Carolina.

N. HEYWARD CLARKSON, III

107. *Double-Eagle Lubricants, Inc. v. Texas*, 248 F. Supp. 515 (N.D. Tex.), *appeal dismissed*, 384 U.S. 434 (1965).

108. See note 66 *supra*.

109. The Attorney General of South Carolina fully realizes the need for educating the consumer and plans to initiate several consumer education programs as soon as the Consumer Protection bill is passed into law. Interview with John Bowen, Assistant Attorney General of the State of South Carolina.