

The Catholic University of America, Columbus School of Law

CUA Law Scholarship Repository

Scholarly Articles and Other Contributions

Faculty Scholarship

1976

Documents of the Federal Trade Commission

Stephen G. Margeton

The Catholic University of America, Columbus School of Law

Follow this and additional works at: <https://scholarship.law.edu/scholar>



Part of the [Legal Writing and Research Commons](#)

Recommended Citation

Stephen G. Margeton, Documents of the Federal Trade Commission, 69 L. LIBR. J. 66 (1976).

This Article is brought to you for free and open access by the Faculty Scholarship at CUA Law Scholarship Repository. It has been accepted for inclusion in Scholarly Articles and Other Contributions by an authorized administrator of CUA Law Scholarship Repository. For more information, please contact edinger@law.edu.

Documents of the Federal Trade Commission

By STEVE MARGETON*

This article is intended to briefly survey Federal Trade Commission documents, materials published by private publishing houses, recent freedom of information sources, legislative histories, and computerized indexing tools—all available to the law librarian engaged in Federal Trade Commission research.

The Federal Trade Commission was organized as an independent administrative agency in 1915, pursuant to the Federal Trade Commission Act of 1914 (38 Stat. 717; 15 U.S.C. 41-51). Related duties were subsequently delegated to the Commission by the Wheeler-Lea Act, the Alaska Pipeline Act, the Clayton Act, the Export Trade Act, the Wool Products Labeling Act, the Fur Products Labeling Act, the Textile Fiber Products Identification Act, the Fair Packaging and Labeling Act, the Lanham Trade-Mark Act of 1946, the Truth in Lending Act, and the Fair Credit Reporting Act.

The basic objective of the Commission is the maintenance of strongly competitive enterprise as the keystone of the American economic system. Although the duties of the Commission are many and varied under law, the public policy underlying all of these duties is essentially the same: to prevent the free enterprise system from being stifled, substantially lessened, or fettered by monopoly or restraints on trade, or corrupted by unfair or deceptive trade practices. In brief, the Commission is charged with keeping competition both free and fair.¹

For the most part, law observance is obtained through voluntary and cooperative action by way of staff-level advice, advisory opinions, trade regulation rules, and through issuance of guides delineating legal requirements for particular business practices.²

The Commission's formal litigative proceedings are similar to those used in courts. Cases are instituted by issuance of a complaint charging a person, partnership, or corporation with violation of one or more of the statutes administered by the Commission. Cases may be settled by consent orders, i.e. acceptance by the business community of Commission determina-

tions without admitting a violation of law, or occasionally through informal administrative correction of minor violations. If the charges are not contested, or if in a contested case the charges are found to be true, an order to cease and desist is issued requiring discontinuance of the unlawful practice.³

The Federal Trade Commission activities are officially and unofficially reported through five kinds of documentation:

- 1) Primary Commission materials available in a law library,
- 2) Materials available through private publishing houses,
- 3) Information released through the Freedom of Information Act,
- 4) Legislative history source material, and
- 5) Computer assisted searching of Federal Trade Commission documents.

Primary Commission Materials Available in a Law Library

Many law librarians are already familiar with the *Federal Trade Commission—List of Publications*. Available from the Federal Trade Commission Publications Office, the bibliography contains materials currently for sale from the Superintendent of Documents and the National Technical Information Service.⁴ The Commission prints *Federal Trade Commission News Releases*, *Federal Trade Commission News Summaries*, and the *Federal Trade Commission Calendar*.

Federal Trade Commission News Releases are informational releases that discuss final orders against corporations, consent orders, Federal Trade Commission enforcement policy promulgated, and invitations to the public to comment on various rules and regulations. The *Federal Trade Commission Calendar* gives weekly notice of upcoming hearings. Included

* Librarian, Steptoe & Johnson, Washington, DC.

¹ 1974-75 *United States Government Manual* 486-87.

² *Id.* at 488.

³ *Id.*

⁴ National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22151

are hearing dates, times and places, companies involved, and the complaint, i.e., "a Section 5, restraint of trade violation." The *News Summary* briefly notes recent developments at the Federal Trade Commission. Frequently it contains petitions, consent orders, and notices of recent papers delivered by Federal Trade Commission officers.

Other important primary documents published for the Federal Trade Commission and likely to be found in a law library are the laws of the Federal Trade Commission, *Organization, Procedures and Rules of Practice* of the Federal Trade Commission; the Foreign Trade Series; *Federal Trade Commission Decisions*; the *Advisory Opinion Digest*; *Statutes and Court Decisions*; Industrial Corporation Reports (by industries); and the quarterly financial report.

Most familiar to law librarians is *Federal Trade Commission Decisions*. Bound in 82 volumes, the set contains Commission decisions, interlocutory orders, advisory opinions, various tables, indexes, and listings. Also helpful are the subject and commodity indexes to the opinions.

The *Federal Trade Commission Advisory Opinion Digest* was created to index in one central spot advisory opinions scattered throughout the *Federal Trade Commission Decisions*. In June 1962, the Commission provided an advisory opinion program for the business community to determine whether an intended course of business action, if pursued, is likely to violate any of the Commission administered laws. Digests of these selected advisory opinions of general interest are published as news releases, subject, of course, to statutory restrictions against disclosure of trade secrets, names of customers, and other points of confidentiality.⁵ Further information concerning the *Advisory Opinion Digest* may be obtained from the Division of Advisory Opinions.⁶

Statutes and Court Decisions include statutes administered by the Commission and syllabi of court decisions construing them during the years 1914 to 1971. The set contains all cases to which the Commission was a party. These cases

are taken from the *Federal Reporter*, the *Federal Supplement*, the *Supreme Court Reporter*, and other reporters of the National Reporter System by permission of the West Publishing Company.

Organization, Procedures and Rules of Practice is published as a looseleaf service and contains general materials including a brief history of the Commission. It discusses procedures and rules of practice for adjudicative and nonadjudicative proceedings. These procedures include pleadings, answers, motions, investigations, consent order procedures, etc. Furthermore, the service treats discovery and other miscellaneous rules.

The *Quarterly Report for Manufacturing, Mining and Trade Corporations*, as the name implies, is printed four times a year, and indexes corporate financial statistics by industry and by assets of industry groups. The purpose of the sample survey is to produce, each calendar quarter, statements of income and retained earnings, balance sheets, rates of return (profits rates), and related financial and operating statistics for all manufacturing corporations, classified by industry and asset size.⁷

Materials Available Through Private Publishing Houses

Many are already familiar with two private publishing attempts to index the voluminous materials printed by and for the Federal Trade Commission: *Trade Regulation Reporter* published by Commerce Clearing House, and *Anti-trust and Trade Regulation Reporter (ATRR)*, published by the Bureau of National Affairs.

Because much of trade regulation law is case law that attempts to interpret Federal statutes and Commission determinations, there is a definite need for an adequate digesting system. The Commission publishes no such set of current digest materials, and *Trade Regulation Reporter* and *ATRR* attempt to fulfill this need. They are used widely; perhaps as much by the Federal Trade Commission attorney as by the general antitrust practitioner.

The current edition of *Trade Regulation Reporter* stems from the original publication inaugurated in 1914, shortly after the Federal Trade Commission was created. It covers the

⁵ *Federal Trade Commission Advisory Opinion Digests* 1-313 (June 1, 1962-December 31, 1968).

⁶ Bureau of Industry Guidance, Division of Advisory Opinions, Federal Trade Commission, Washington, DC 20580.

⁷ "Quarterly Financial Report for Manufacturing, Mining and Trade Corporations", 4 (first quarter 1975).

important laws and rules of antitrust and trade regulation at Federal and State levels. Also included are official court and administrative decisions, legislation, advisory material, regulation, policy announcements, case settlements, and other developments in the field.⁸ The service is looseleaf and is distributed weekly to subscribers. A quick update segment reports developments, notes highlights, and makes temporary reference to interim developments in pending legislation and other matters of less permanent interest. The second section of the service consists of new pages to be inserted in one of the five looseleaf volumes, which incorporate the full text of Federal and State court decisions, preceded by a headnote outlining the issues settled by the court's holding. A series of quick reference (paragraph) numbers act as keys. The text of the FTC industry guides, trade rules, and the multitude of regulations, together with texts or summaries of advisory opinions, policy announcements, speeches by the FTC members and staff, and agency investigations rounds out the coverage of the agency.⁹

The Bureau of National Affairs offers *ATRR*. Begun in 1962, *ATRR* is a weekly report on trade regulation in the United States. In format it is somewhat like reading a magazine devoted to trade regulation matters with a news and comments section; an in-depth analysis section; official actions of the Supreme Court, Justice Department, Federal Trade Commission, and the Congress; and the complete text of important court cases, administrative agency regulations, and new laws. The last page is a calendar of events. Included are trade regulation seminars, bar meetings, and private publisher institutes.

In the area of trade regulation law there seems to be great need for both a current developments reporter, much like *ATRR*, and an in-depth reference service, such as *Trade Regulation Reporter*.

U.S. Attorney General's Study

In 1953, U.S. Attorney General Herbert Brownell, Jr. announced his intention to establish a national committee to undertake "a thoughtful and comprehensive study of [the] antitrust laws." At the same time, the President of the United States expressed the hope

that Brownell's group would "provide an important instrument to prepare the way for modernizing and strengthening the laws to preserve American free enterprise against monopoly and unfair competition."¹⁰ Liaison was established with other government agencies; and views were received from the Departments of State, Commerce, Defense, and Labor, as well as Foreign Operations Administration and private antitrust authorities. The results of this Committee's work were published in 1955 as *The Attorney General's National Committee to Study the Antitrust Laws*. This report covers the entire field of antitrust law, and attempts to define it and give subsequent history. It also discusses the economics of antitrust monopolization.

In 1968, the ABA Section of Antitrust Law completed an update of the original U.S. Attorney General's study. The volume covers the years 1955-68. It was designed to survey the developments in the antitrust field since the original 1955 work. More recently, the Section of Antitrust law has published a second successor volume to the 1955 study entitled *Antitrust Law Development*. This 1975 volume is not intended to be a further update of the study; but, rather, it is intended to state as objectively as possible the current state of the law and developments in the antitrust field.¹¹

The Section of Antitrust Law has also recently published *State Antitrust Law*.¹² Briefly stated, the book is divided into 50 State chapters, each of which contains pertinent State laws and citations discussing trade regulation, restraint of trade, monopolization, and boycotts. Mergers, price discrimination, antitrust exemptions, and remedies available are also summarized.

Also of note this year are two additional works: *Antitrust Consent Decrees, Voluntary Antitrust Compliance: Analysis and History of The Justice Department Consent Decrees*;¹³ and *Trade Regulation by Negotiation: Federal*

¹⁰ *The Attorney General's National Committee to Study the Antitrust Laws* iv (1955).

¹¹ American Bar Association, Section of Antitrust Law, *Antitrust Law Developments* (1975).

¹² American Bar Association, Section of Antitrust Law, *State Antitrust Laws* (1974).

¹³ T. Lindstrom & K. Tighe, *Antitrust Consent Decrees, Voluntary Antitrust Compliance: Analysis and History of Justice Department Consent Decrees* (1974).

⁸ *Trade Reg. Rep.* vol. 1 ¶ 1, at 5.

⁹ *Id.* at 7.

Trade Commission Consent Decrees.¹⁴ Both of these publications provide abstracts of consent decrees with indexes by case name and subject matter. In addition, the *Trade Commission* volume provides a major acts index, a products index, and an industry index; the *Justice Department* volume includes an in-depth, unique catalog outline.

Also offered by a private publisher is one last title: *The Federal Trade Commission: A Study in Administrative Law and Procedure*.¹⁵ Written many years ago, and only recently reprinted, the treatise gives a good account of the fledgling Commission during its first 10 years. The work is a must for anyone interested in early historical or legislative research about the Commission.

Information Released Through Freedom of Information Act

No discussion of the primary documents of the Federal Trade Commission would be complete if one did not look into the advantages of using the Freedom of Information Act (FOIA).¹⁶

The first of two items recently made available through the FOIA is entitled *A Staff Guide to the Federal Trade Commission: Practice and Procedure*. This guide provides the professional Commission staff member with a sequential account of each step in enforcement matters. It leads the novice from the first report of possible violation to final compliance action. The contents of the *Staff Guide* cover public complaints, adjudications, pleadings, counsel appearance, prehearing procedures, appellate court review, reopening of cases, and monitoring compliance with final orders.

The FOIA was also responsible for the release of the *Manual for [FTC] Attorneys*. Although the *Manual* is out of date and contains substantial inaccuracies, it is the only FTC attorney handbook available. The *Manual* is also advisory in nature and confers no substantive or procedural right. In some instances,

however, it can provide useful insight into the Commission rationale.

Legislative History Material

In Washington, D.C., a number of Government and private libraries are engaged in the collection of congressional bills, reports, hearings, and debate on legislative measures.

Through cooperative efforts of the membership of the Law Librarians' Society of Washington, D.C., a *Union List of Legislative Histories* has been published. The *Union List* is currently out of print, but for libraries in Washington fortunate enough to have a copy, there are identified within its pages a number of trade regulation legislative histories.

Libraries that are not located in Washington, D.C. may find the following privately published history sources helpful: *The Economic Regulation of Business and Industry: A Legislative History of U.S. Regulatory Agencies* by Bernard Schwartz,¹⁷ volume III contains a brief legislative history of the Federal Trade Commission Act; *Business Organizations Antitrust Laws and Trade Regulation* by Julian O. von Kalinowski,¹⁸ a multivolume looseleaf service containing brief summaries and excerpts from the various trade regulation legislative histories; and, a soon to be published set entitled *Antitrust*¹⁹ 5 volumes; and *Antitrust Exemptions and Regulated Industry*,²⁰ 6 volumes.

This entire legislative history work is edited by Earl W. Kintner, former Chairman of the Federal Trade Commission. The prepublication brochure announces that "each legislative history contains verbatim extracts from congressional hearings, bills, reports, debates, court decisions, presidential messages, and agency documents" with extensive cross referencing to original official citations.

Computer Assisted Searching of Federal Trade Commission Documents

Mead Data Central has recently announced a data base addition to its extensive com-

¹⁴ T. Lindstrom & K. Tighe, *Trade Regulation By Negotiation: Federal Trade Commission Consent Decrees* (1974).

¹⁵ G. Henderson, *The Federal Trade Commission: A Study in Administrative Law and Procedure* (1924).

¹⁶ Address for FOIA materials: Office of Public Information, Federal Trade Commission, Pennsylvania Ave. at Sixth St., N.W., Washington, DC 20580.

¹⁷ B. Schwartz, *The Economic Regulation of Business and Industry* (1973).

¹⁸ J. von Kalinowski, *Antitrust Laws and Trade Regulation* (1970).

¹⁹ Brochure information: E. Kintner, *Antitrust, a Complete Documented Sourcebook of Federal Legislation* (Oct. 1975).

²⁰ Brochure information: *Antitrust Exemptions and Regulated Industries, a Complete Documented Sourcebook of Federal Legislation* (Spring 1976).

puterized legal research service LEXIS. The base, a *Trade Regulation Library*, contains five separately searchable files of material.

The Federal Court file contains trade regulation opinions of the Supreme Court (1890 to date), the U.S. Court of Appeals (1950 to date), and the U.S. District Courts (1950 to date). In addition, the Supreme, Appeals, and District Court files can be combined and searched as a single unit. The new data base also contains FTC decisions and consent orders. The FTC decisions begin with 1950, and the consent orders begin with 1970.

Each document, in addition to the text, has a number of searchable segments including the judge's name, the date, the action segment,

the trial examiner segment, and the appendix segment. The LEXIS user may search for a U.S. court opinion, FTC decision or order by requesting one of these segments, or by searching the data base with actions, subjects, or commodities in mind.

The method of access involves the use of a typewriter terminal and cathode ray tube assembly. A hard-copy printer for note taking is also nearby. The system is interactive in method, with the user and the computer "talking directly" with each other. Thus, the user receives a reply and can make modifications to his request, or he may proceed from one segment of his search to another in an orderly fashion.

APOLOGIES

Apologies to the Matthew Bender Company whose name was inadvertently omitted from the listing of 1975 grant donors as shown in the November 1975 Annual Proceedings issue of the *Law Library Journal*, 68 *LLJ* 377 (1975). AALL and the *Law Library Journal* are pleased to correct this oversight.

Editor