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## THE CAMEL'S NOSE



## -AND ITS RUMP

*A talk on the steadily increasing  
amount of governmental regulation  
and restriction on advertising, 1957  
Journalism Week, University of Missouri*

by ELON G. BORTON

PRESIDENT AND GENERAL MANAGER  
ADVERTISING FEDERATION OF AMERICA

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# Foreword

*The 48th Journalism Week at the University of Missouri School of Journalism on May 3, 1957, recognized Elon G. Borton, president and general manager of the Advertising Federation of America, with an Honor Medal for Distinguished Service in Journalism.*

*Mr. Borton's address was titled "The Camel's Nose -- and Its Rump." The subject matter is so significant that it is here reproduced as a University of Missouri Bulletin for student and general distribution.*

*Mr. Borton refers to the steadily increasing amount of governmental regulation and restriction of advertising, which poses a grave threat to the advertising industry. He points out that the advertising industry has constantly fought for ever higher standards in integrity and good taste.*

*He suggests that those in advertising be on guard against anti-advertising laws that peril the industry. The address should be of interest to all people in advertising and in business.*

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ADVERTISING  
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## **THE CAMEL'S NOSE -AND ITS RUMP**

by ELON G. BORTON,  
PRESIDENT AND GENERAL MANAGER  
ADVERTISING FEDERATION OF AMERICA

JOURNALISM WEEK,  
UNIVERSITY OF MISSOURI,  
MAY 2, 1957

A probate judge in Rhode Island refused at first to approve the appointment of a trust company as executor of a will because that trust company had advertised its executor services. The U.S. Patent Office requires that all advertising by patent attorneys or agents be submitted for approval in advance and restricts such advertising to name, address and phone number. An Oregon proposal defeated in an election of several years ago, would have prevented any "promotive advertising" of any alcoholic beverage from coming into the state. The Federal Trade Commission has ruled that a movie theatre may sell exclusive advertising rights on its screen for one year only, and has been upheld by the Supreme Court. At least three times, former President Truman denounced advertising by public utility companies, and Senator Kefauver has raised the same issue within the past month. The Joint Congressional Committee on the Economic Report published in 1951 the recommendation of its staff that advertising be taxed, possibly up to twenty-five percent.

These widely varied cases illustrate how advertising faces one grave threat—a trend which is gradually squeezing it, and, unless stopped, may soon foreclose its freedom and its ability to

## *The Camel's Nose*



serve business and the public effectively.

There is a steadily increasing amount of governmental regulation and restriction of advertising — national, state and local. It is estimated that at least 150 proposed laws are introduced in Congress and the state legislatures each year to control or tax advertising. In addition, there are many proposed city ordinances and rulings by state and national bureaus. Most of them fail of passage, but each year a few are passed and advertising is controlled a bit more.

Let's make it clear at the start that the advertising industry has always realized that there must be some regulation of excesses in advertising performed by a few bad boys. Advertising people initiated and pushed through the legislatures of forty-four states the so-called "Model Statute" forbidding untruth and deception in advertising. Our industry supported the Food and Drug Acts, the Wheeler-Lea Act, the Federal Trade Commission Act and other laws in states and the nation to safeguard the public. We are in favor of the laws prohibiting bait advertising.

In addition, our industry has consistently fought for ever higher standards in integrity and good taste. Advertising founded and cooperates closely with the Better Business Bureaus. The media, the various advertising associations, and the local advertising clubs urge clean advertising. The media particularly deserve much credit. There is probably not a publication or broadcast station which is not frequently turning down profitable advertising because it violates standards of truth or good taste.

We feel that the present laws and rulings plus the self-regulation in the industry are sufficient. Certainly no more should be passed without the advice of the advertising industry. But the deluge of proposed regulations continues and increases.

These restrictions fall roughly into three classes: laws passed by Congress, state legislatures or city councils; rulings made by government bureaus or commissions; and judicial interpretations. The first group is the one we hear most about, but sometimes I think the second group is more dangerous. Certainly it is more insidious and is spreading faster.

These bureau or commission rulings are made by committees of three or five or seven men who have been given some authority by law and often stretch it a bit farther. Usually when

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promulgated the rulings have the force of law even though they are enforced by the same men who pass them. Sometimes they are given real bite by the fact that the penalty for violation is the withdrawal of the license or permission to operate the business. Far too often, they are not subject to appeal to the courts. They increase constantly because of the natural urge of bureaucrats to increase their power. They are usually publicized only to the industry affected so the general public rarely learns about them.

There must be literally hundreds of these commissions and bureaus — national, state and local — which have power to issue rulings affecting advertising in some way. A casual survey showed at least seventeen Federal government departments exercising some regulatory power over advertising.

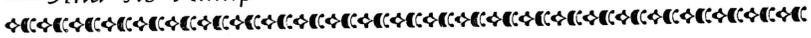
Unless you have made a study of this matter, the number and extent of advertising regulations will amaze you. In 1945, the U.S. Department of Commerce prepared and Printers' Ink published a book on "State Advertising Legislation." In preparing it, they digested 2,000 state advertising laws and they purposely left out of consideration at least as many more which affect advertising only partially, such as labeling and branding, fair trade, trade-marks, etc. They did not even attempt to cover bureau rulings and regulations.

Take an extreme example: the advertising of liquor. If you want to run a national advertisement, it must be okayed by the Alcohol Tax Unit of the Internal Revenue Bureau, and you must be sure it does not cross any of the regulations of the Federal Trade Commission or of the Food and Drug Administration. Under the voluntary code of the Distilled Spirits Institute, your advertisement, if it is for any alcoholic beverage other than wine or beer, cannot appear in a Sunday newspaper or be given on radio or television.

Then, you must check it against state regulations of forty-eight states, at least seventeen of which prohibit advertising of liquor (except wine and beer) on the air. In one state, I am told, you can show a big dog in your illustration, but not a small dog. In some states you can use outdoor posters, in others you cannot. In most states you can give advertising novelties to your retail dealers, in others you cannot. In most states you cannot give exterior signs to your dealers, in some you can furnish in-



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In Pennsylvania, the State Milk Control Board ruled that milk dealers may not give to their customers samples of their products or advertising items to the amount of more than one-fourth of one percent of net sales. Close to fifty different occupations or professions are subject to advertising regulation in the various states — some being forbidden to advertise beyond a card announcement card, others being more or less closely restricted. More than half the states have enacted some form of legislation expressly giving local governments supervision over advertising.

Taxes on advertising seem very close. Already in a number of states, outdoor advertising is taxed or licensed for a fee and this tax frequently increases. In four states, advertising agencies are taxed or licensed for a fee. Various cities have already tried to tax newspaper or radio advertising under one guise or another. In three states (Arizona, Indiana and New Mexico) the sales tax applies to gross advertising receipts by newspapers. Little Rock, Arkansas, passed an ordinance taxing radio time. Michigan has extended its sales tax to cover many advertising materials. The District of Columbia came very close to passing a tax on advertising in March of 1949 and was only stopped by the vigorous action of the advertising industry. The proposal now before Congress to charge a much higher postal rate on the advertising sections of publications than on the editorial section is really an indirect attempt to tax advertising.

The time is near when some city or state will levy a direct tax on advertising and make it stick. Then will come a deluge of similar measures everywhere. Politicians are seeking a new source of tax money and here in advertising is one that looks promising. A ten billion dollar industry to be taxed and an invitingly easy way to tax — simply order the twenty or thirty thousand operators of media to collect it and remit to the government.

Many laws now proposed or already in effect affect advertising indirectly but closely. These include the regulations on labeling or branding, particularly in food, drug and cosmetic lines; also the fair trade laws with their prohibition against advertising merchandise at prices below cost or below prices fixed in resale price maintenance contracts. Thirty states have laws which in some way affect the distribution or promotion of cash value coupons, trading stamps, premiums, etc. We must watch

with sharp concern the present efforts to pass compulsory trademark registration bills in the various states, for, if they pass, they will play havoc with brand advertising and competition.

I have barely mentioned the influence of judicial interpretation — rulings by courts. Yet, they are important and increasing in reference to advertising. A striking example was the decision in Washington about “captive audiences,” ruling that radio announcements in buses and streetcars are an infringement of personal right of privacy. Fortunately this was reversed by the Supreme Court. Another was the Supreme Court decision that communities can forbid house-to-house selling. Judges as a rule are not informed about advertising and apt to take a negative view toward it.

The dangerous factor in all this increasing regulation of advertising is the astonishing unawareness and complacency of our advertising industry. Many of these regulations slip through unnoticed by us — sometimes even requested or welcomed by various groups which think they hamper competitors and not themselves.

#### WHAT CAN WE IN ADVERTISING AND SELLING DO ABOUT THIS DANGER?

There are three necessary actions, as I see the situation.

1. WE MUST ELIMINATE the bad advertising practices — the cases of fraud, exaggeration and bad taste. They are comparatively few in number, only a very small percentage. But, they tax all of us and give excuses or claimed reasons for many of these regulations.

2. WE MUST WATCH for proposed laws or bureau orders constantly and everywhere. Many of them are not publicized.

The proposed tax on advertising in the District of Columbia was slipped into the Sales Tax measure at the last moment — some members of the Congressional Committee who voted for the measure did not know the clause was there. It was licked! Then, the U.S. Court of Appeals ruled the D.C. Telephone Company must pay on advertising in the classified directory. The clause providing for a \$5,000 fine per day on violations of Federal Trade Commission orders was lugged in on a law removing the tax on oleo-margarine. The New York City Police

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Department once ruled that Railway Express Company trucks could not carry on their sides the advertising of any products but their own services. Congress failed to pass the postal rate increases former Postmaster General Donaldson requested several years ago, so he went around Congress and asked the Interstate Commerce Commission to order parcel post raises. The Bureau of Animal Industry some years ago forbade Jones Dairy Farm Sausage to use in its advertising the jingle:

*“Most Little Pigs Go To Market,  
The Best Little Pigs Go To Jones”*

because, as the Bureau said, “. . . *all* the best little pigs did not go to Jones.” The Federal Trade Commission ruled that monument makers could not advertise granite as everlasting because it would not last forever.

You can never tell when some proposal will come up in some unexpected place.

Every advertising group like this and every individual in advertising should be alert to catch these items and report them to those who can do something.

3. WE MUST BE READY TO INFORM legislators, bureau officers and judges about the place of advertising in our economy and about the bad effects of any proposed regulations.

Call it lobbying, if you wish, but we have a right and an obligation to do this educational and informative job. It is a service to the legislator as well as to our industry and business.

In the average Congress, something over 10,000 proposed laws and several thousand resolutions were introduced for consideration. Many of them were never pushed — they were introduced simply to please some constituent. But, take these out and you still have thousands of measures on which our Congressmen must vote, either in committee or on the floor of the Senate or House. One state legislature passed over 1,500 measures in a three-month session, most of them in the last three days of the session. How in the world can any legislator possibly understand the nature and effect of all of these?

Advertising is a complex industry with tremendous impact on many phases of business and society. There isn't one legislator or bureau official in a hundred who understands the ramifica-

