7-20-1979

Correspondence and Articles regarding the Congress on the Voluntary Standards issue

Kendall Fleeharty

Joseph Olshan

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Dear Duane,

I want to thank you for your letters to the Congress on the voluntary standards issue. I also heard great things about your testimony. I'm sorry I missed it!

Would you also make your views known to the Senate Select Committee on Small Business? I'm enclosing a list of members. We've been trying to get Senator Gaylord Nelson, the Committee Chairman, interested. Already, we believe Senator Weicker will be receptive to our case.

As you may know, Sen. Helms introduced his "Voluntary Standards Amendment" to the FTC authorization bill last Friday. He is now looking for other co-sponsors and people willing to speak on the Senate Floor when the FTC bill is called up for a vote.

I'm also enclosing some of Helms's materials that we distributed to a meeting of people from the construction industry.

At this point, it looks as if the bill will be voted on in the Senate during the week starting July 30th. There are, though, vigorous efforts under way by the Senate leadership to bring the bill to a vote by next week, before any more "grass roots" pressure develops.

With continued best personal regards,

Sincerely,

enclosures
SELECT COMMITTEE ON SMALL BUSINESS

"...to consist of 17 Senators; studies and investigates problems of small business and reports findings and makes recommendations to the Senate. Can report legislation primarily relating to the Small Business Administration."

Sen. Gaylord Nelson (D WI), Chairman


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Neece, Allen W., Jr. .......... Legis. Counsel
Chwotkin, Alan L. ............ Counsel
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Klatt, Sandra K. .............. Prof. Staff Mbr.
Santy, Robert W. ............ Min. Staff Mbr.
Stokes, Robert S. ............ Prof. Staff Mbr.
Sturgis, Gerald D. ............ Prof. Staff Mbr.
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Olson, Dorothy C. ............ Staff Asst.
Wise, Jamie J. ............... Staff Asst.
Young, Karen M. ............. Staff Asst.

SUBCOMMITTEE ON ADVOCACY AND THE FUTURE OF SMALL BUSINESS
Sen. Walter D. Huddleston (D KY), Chairman

SUBCOMMITTEE ON ECONOMIC DEVELOPMENT, MARKETING, & THE FAMILY FARMER
Sen. Sam Nunn (D GA), Chairman

SUBCOMMITTEE ON GOVERNMENT PROCUREMENT
Sen. Robert B. Morgan (D NC), Chairman
MAJORITY: [3 D.] Senators Morgan, Baucus and Stewart.

SUBCOMMITTEE ON GOVERNMENT REGULATION AND PAPERWORK
Sen. John C. Culver (D IA), Chairman

SUBCOMMITTEE ON MONOPOLY, ECONOMIC CONCENTRATION AND ANTICOMPETITIVE ACTIVITIES
Sen. James R. Sasser (D TN), Chairman
May 16, 1979

Mr. Duane D. Pearsall, President
Small Business Development Corporation
6605 South Jay Drive
Littleton, Colorado 80123

Subject: Federal Trade Commission
Proposed Trade Regulation Rule: Standards and Certification

Dear Mr. Pearsall:

I, of course, do not know you, Mr. Pearsall, nor do I have any first hand knowledge of your prior or present business associations - all of which is totally unimportant in respect to the purpose of this letter. A common sharing that we do have, however, is of the above captioned matter and its predecessor Senate Bills S-825 and S 3555.

In regard to this matter I have had the opportunity to read your May 3 letter to the Federal Trade Commission on the entire subject. I personally, Mr. Pearsall, simply want to commend you for your letter. The numerous and various points you raised could not be more true in all their respects and if I may say "damn it" we need more people who will take the time and effort to express themselves on such matters as you have so well done.

Yours very truly,

Joseph R. Olshan
Vice President-General Counsel
and Secretary

JRO/sh

cc: J. M. Rhodes, Vice President
May 11, 1979

Mr. Duane D. Pearsall
President
Small Business Development Corp.
6605 South Jay Drive
Littleton, CO 80123

Dear Duane:

Thanks for sending me a copy of your letter to Cabell. The philosophy it reflects is great. They've got the show on a railroad but we're trying to apply brakes and put it on a side track. We've gone to court to seek an injunction but decision won't be forthcoming for a few days.

One correction in your letter should be noted. U.L. doesn't test detectors to an NFPA standard but to a U.L. standard. Our standard has its effect later as it relates to proper use of the product.

Best regards,

Sincerely yours,

Charles S. Morgan
President

CSM: kf
SCHEDULE OF APPEARANCES

Monday, June 25, 1979

W. -51 Esther Peterson - P
W. -23 Frank La Que - O
W. -35 Farm Industrial Institute - O
W. -106 ANSI - O
W. -149 United States Department of Justice (Allen) - P

Tuesday, June 26, 1979

W. -106 ANSI (continued)
W. -61 National Audio-Visual Assn. - O
W. -141 MHB Technical Associates - P
W. -56 Amsterdam Corporation - P

Wednesday, June 27, 1979

W. -170 Council of Vietnam Veterans - P
W. -145 American Institute of Architects - O
W. -16 Small Business Development Corporation - O
W. -50 Malcolm Jensen - O
W. -40 SMACNA - O
W. -2 Beacon Valves - P

Thursday, June 28, 1979

W. -38 Burton L. Williams - P
W. -62 Akman Associates - P
W. -63 National Consumers League - P
W. -142 Carl W. Schwartz - P

Friday, June 29, 1979

W. -95 ASME - O
W. -32 National Association of Corrosive Engineers - O
W. -4 William Livingston - P
W. -153 National Automatic Sprinkler & Fire Control Assn. - O
Monday, July 2, 1979

W.-8      EGSMA -
P
W.-132    Computer & Communications Industry Assn. - P
W.-93     Computer and Business Equipment Manufacturers - P
W.-34     Association for Computing Machinery - O

Tuesday, July 3, 1979

W.-26     National Sanitation Foundation - O
W.-27     University of Michigan, Hilbert - O
W.-31     American Society of Sanitary Engineering - O
W.-87     Plumbing & Drainage Institute - O
W.-7      Rockford Sanitary Systems - P

Thursday, July 5, 1979

W.-125    Caterpillar Tractor Co. - O
W.-100    American Mining Congress - O
W.-47     American Society of Agricultural Engineers - O
W.-49     Environmental Systems, Inc. - P
W.-136    California State & Consumer Services Agency - P
W.-11     J I Case Company - O

Friday, July 6, 1979

W.-151    Gypsum Association - O
W.-86     Anti-Friction Bearing Manufacturers Assn. - O
W.-173    Rexnord, Inc. - O
W.-41     Construction Industry Manufacturers Assn. - O
W.-90     Builders Hardware Manufacturers Assn. - O
W.-5      Rockwell International - O
Friday  
May 4, 1979  

MR. PEARSSALL  

This is a mock-up of the proposed 1-page entry that we are planning to place in the Chamber's Voluntary Standards Press Kit.  

I want to give you an opportunity to look it over and make any changes you may want. We would like to begin production by the latter part of next week.  

If you would like any changes or additions, please give me a call.  

Thanks.  

Kendall
Duane Pearsall, a small businessman from Denver, Colorado, has dealt extensively with the voluntary standards process, first as a member of the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE), then as the founder of a tiny company that developed and marketed the first home smoke detector. He has served on the Study Committee on Domestic Policy and has testified in opposition to S. 825, The Voluntary Standards and Accreditation Act, on behalf of the National Chamber. He will also testify, on his own behalf, at the FTC's Standards and Certification proceedings in Washington, D.C., on June 25.

As a small businessman dealing with the voluntary standards system, Mr. Pearsall experienced none of the antitrust or anticompetitive problems alleged in the FTC staff report on voluntary standards. In fact, by working with the standards setters, he initiated a proposal to amend an existing standard to allow the use of the first home smoke detector, his own invention.

After an efficient, year-long process of information gathering in which the insurance industry, the Fire Marshall's Association, equipment manufacturers and the government all provided input, the standard was amended to allow the fire detector's use in private homes.

After product testing by two major, national laboratories, the International Conference of Building Officials incorporated the use of smoke detectors into its Uniform Building Code.

Mr. Pearsall, who that year was named Small Businessperson of the Year by the Small Business Association, found the standards and certification process to be a rational, fair and useful system, and compliance with the system allowed his company to grow and prosper.

Mr. Pearsall feels that replacing the voluntary system with a government-mandated one would constitute unnecessary federal intervention into a system that is demonstrably workable, efficient and fair.

As for his thoughts about the FTC proposed rule, "I am appalled that our government would be so dictatorial as to unilaterally 'mandate' a cause which failed to survive the legislative process."
Dad,

I read this article and it sounded like right up your alley. I try to print somewhat like a draftsman now. Actually I'm more careful at work, but it's good practice anyway. This article was cut from the Feb. issue of Omni magazine. They advertise in that magazine quite a bit. Hope you are feeling better now. The CETA contract with Martin (to pay half my wages for on-the-job training) ended today. They haven't fired me yet & they sound like they'll keep me working overtime for awhile, so I guess I'm doing OK. Everyday I realize how much more I have to learn. See you soon.
I'm pretty lucky. When I started my business in my basement eight years ago, I had little more than an idea and a product.

The product was the pocket calculator. The idea was to sell it through advertisements in national magazines and newspapers.

Those first years in the basement weren't easy. But, we worked hard and through imaginative advertising and a dedicated staff, JS&A grew rapidly to become well recognized as an innovator in electronic products.

THREE BLIZZARDS

In January of 1979, three major blizzards struck the Chicago area. The heaviest snowfall hit Northbrook, our village—just 20 miles north of Chicago.

Many of our employees were stranded—unable to get to our office where huge drifts made travel impossible. Not only were they unable to reach our office, but our computer totally broke down leaving us in even deeper trouble.

But we fought back. Our staff worked around the clock and on weekends. First, we processed orders manually. We also hired a group of computer specialists, rented outside computer time, employed a company service bureau, and hired temporary help to feed this new computer network. We never gave up.

Our totally dedicated staff and the patience of many of our customers helped us through the worst few months in our history. Although there were many customers who had to wait over 30 days for their parcels, every package was eventually shipped.

WE OPENED OUR DOORS

During this period, some of our customers called the FTC (Federal Trade Commission) to complain. I couldn't blame them. Despite our efforts to manually notify our customers of our delays, our computer was not functioning making the task extremely difficult.

The FTC advised JS&A of these complaints. To assure the FTC that we were a responsible company, we invited them to visit us. During their visit we showed them our computerized microfilm system which we use to back up every transaction. We showed them our new dual computer system (our main system and a backup system in case our main system ever failed again). And, we demonstrated how we were able to locate and trace every order. We were very cooperative, allowing them to look at every document they requested.

The FTC left. About one week later, they called and told us that they wanted us to pay a $100,000 penalty for not shipping our products within their 30-day rule. (The FTC rule states that anyone paying by check is entitled to have their purchase shipped within 30 days or they must be notified and given the option to cancel.)

NOT BY CONGRESS

The FTC rule is not a law nor a statute passed by Congress, but rather a rule created by the FTC to strengthen their enforcement powers. I always felt that the rule was intended to be used against companies that purposely took advantage of the consumer. Instead, it appears that the real violators, who often are too difficult to prosecute, get away while JS&A, a visible and highly respected company that pays taxes and has contributed to our free enterprise system, is singled out. I don't think that was the intent of the rule.

And when the FTC goes to court, they have the full resources of the US Government. Small, legitimate businesses haven't got a chance.

We're not perfect. We do make mistakes. But if we do make a mistake, we admit it, accept the responsibility, and then take whatever measures necessary to correct it. That's how we've built our reputation.

BLOW YOUR KNEE CAPS OFF

Our attorneys advised us to settle. As one attorney said, "It's like a bully pulling out a gun and saying, 'If you don't give me a nickel, I'll blow your knee caps off.'" They advised us that the government will subpoena thousands of documents to harass us and cause us great inconvenience. They warned us that even if we went to court and won, we would end up spending more in legal fees than if we settled.

To settle would mean to negotiate a fine and sign a consent decree. The FTC would then issue a press release publicizing their victory.

At first we tried to settle. We met with two young FTC attorneys and agreed in principle to pay consumers for any damages caused them. But there were practically no damages, just a temporary computer problem, some late shipments, and some bad weather. The FTC then issued a massive subpoena requesting documents that will take us months to gather and which we feel was designed to harass or force us to accept their original $100,000 settlement request.

Remember, the FTC publicizes their actions. And the higher the fine, the more the publicity and the more stature these two attorneys will have at the FTC.

If this all sounds like blackmail—that's just what it appeared to be to us.

We did ship our products late—something we've admitted to them and which we publicly admit here, but we refuse to be blackmailed into paying a huge fine at the expense of our company's reputation—something we've worked hard eight years to build.

We're not a big company and we realize it would be easier to settle now at any cost. But we're not. If this advertisement can attract the attention of Congressmen and Senators who have the power to stop the harassment of Americans by the FTC, then our efforts will be well spent.

ALL AMERICANS AFFECTED

Federal regulation and the whims of a few career-building bureaucrats is costing taxpayers millions, destroying our free enterprise system, affecting our productivity as a nation and as a result is lowering everybody's standard of living.

I urge Congressmen, Senators, businessmen and the American people, the consumer to support legislation to take the powers of the FTC from the hands of a few unelected officials and bring them back to Congress and the people.

I will be running this advertisement in hundreds of magazines and newspapers during the coming months. I'm not asking for contributions to support my effort as this is my battle, but I do urge you to send this advertisement to your Congressmen and Senators. That's how you can help.

America was built on the free enterprise system. Today, the FTC is undermining this system. Freedom is not something that can be taken for granted and you often must fight for what you believe. I'm prepared to lead that fight. Please help me.

Note: To find out the complete story and for a guide on what action you can take, write me personally for my free booklet, "Blow your knee caps off."

By Joseph Sugarman, President, JS&A Group, Inc.

My story is only one example of how the FTC is harassing small businesses but I'm not going to sit back and take it.