

newspaper advertisements probably would not be in violation of any of the laws which it administers. The Commission is also of the view that it is permissible to use the word "imported" in newspaper advertisements promoting the sale of imported merchandise. If, however, the articles of wearing apparel are imported furs or are fur products containing imported furs, Sec. 5 (a) (6) of the Fur Products Labeling Act requires that the name of the country of origin of the imported fur must be disclosed in advertising.

By **directon** of the Commission.

Letter of Request

DECEMBER 4, 1970

DEAR MR. SHAY:

Mr. **Aliza** of the Los Angeles Federal Trade Commission Office **sug-  
gested** that we write you for an opinion on the use of the word 'import' in newspaper advertising.

Our **specific** problem: Is it mandatory to use the term 'imported' if the article is an import or may it be omitted? Or if, on the other **hand**, we want to stress the fact that an article is imported, may we speak of 'imported coats' or must the source be defined, as 'coats imported from Spain'? And in the event that the leather for the coats came from Spain, but the coats were manufactured in Italy or the U.S. what would the proper reference be?

We would appreciate, too, any literature you could let us have on the subject. We are **aware that there** is a completely different set of rules for fur **products** which we are not concerned with at this time.

Thank you for your assistance.

Yours sincerely,

MRS. BEA FORMAN,  
*Advertising Department, Robinson's,  
Seventh and Grand, Los Angeles, Calif.*

Legality of a Proposed Standard Certification Program. (File  
No. 713 7002)

*Second Opinion Letter*

MARCH 8, 1971

DEAR MR. ROCKWELL:

The Commission has given further consideration to your **request** for an advisory opinion on the legality **of** a proposed standard **cer-  
tification** program, and in an effort to be as helpful as possible in **this**

important and difficult area involving programs of self-regulation believes that it would be desirable to amplify its letter to you of December 29, 1970, with the following comments.

The Commission is sympathetic to the growing interest in the development of plans for self-regulation which will avoid the strictures of the antitrust laws. On the other hand it is mindful of its responsibility to evaluate all such plans in light of the many anti-competitive potentialities inherent therein.

Some of the matters which must be considered in an evaluation of any program of self-regulation are :

1) Standardization and certification programs must not be used as devices for fixing prices or otherwise lessening competition. See, e.g., *Milk mm? Ice Cream Cm Institute v. F.T.C.*, 152 F.2d 478 (7th Cir. 1046).

2) Standardization and certification programs must not have the effect of boycotting or excluding competitors. See, e.g., *Silver v. New York Stock Exchange*, 373 U.S. 341 (1963).

3) Standardization and certification programs must not have the effect of withholding or controlling production. See, e.g., *Standard Sanitary Mfg. Co. v. United States*, 226 U.S. 20 (1912) ; *National Macaroni Manufacturers Ass'n v. F.T.C.*, 345 F.2d 421. (7th Cir. 1965).

4) Construction or specification standards should not be used except in exceptional circumstances and never when performance standards can be developed.

5) It is incumbent upon any organization sponsoring, adopting, administering or enforcing standards to insure that its standards reflect existing technology and are kept current and adequately upgraded to allow for technological innovation.

6) Where certification is involved, no applicant for certification may be denied certification for any of the following reasons: (a) that he is a nonmember of any association or organization ; (b) that he is a foreign competitor; or (c) that he is unable to pay the fee or cost charged for certification. See Advisory Opinion Digest No. 152, 3 CCH Trade Reg., Rep. para. 18, 125 (December 13, 1967).

7) Fees charged in connection with participation in a standardization or certification program must be reasonable as related to the direct and indirect costs involved.

8) Membership in groups or organizations sponsoring, promulgating or administering standardization or certification programs, must be open to all competitors, domestic or foreign.

9) Due process must be accorded all parties interested in or affected by a standardization or certification program, including suppliers,

manufacturers, distributors, **customers** and **users**. Due process includes, but is not limited to, the conduct of timely hearings with **prompt** decisions on claims respecting standards or the denial of certification.

10) Standards and certification programs, unless otherwise clearly required by considerations of safety, may not be used to reduce, **re-**strict or limit in any manner, the kinds, quantities, sizes, styles or qualities of products. See, e.g., the consent decree in *United States v. General Electric Co.*, 1956 Trade Cas. paras. 67,714, 67,794, 67,795, 67,796 (D. N. J. 1954).

11) The exercise of the responsibility of validating any proposed standard should include a **determination** by a laboratory or other appropriate entity independent of those **immediately** affected by the proposed standard that the criteria set forth in such standard **are** meaningful and relevant. See, e.g., the consent decree in *United States v. Southern Pine Ass'n*, 194043 Trade Cas. para. 56,007 (E.D. La. 1940).

12) The function and responsibility of determining whether any product is to be certified under any program involving certification should be performed by an appropriate organization independent of those immediately affected by such program. *United States v. Southern Pine Ass'n, supra*.

13) Representations made by standards organizations with respect to testing procedures, standards, etc., must be truthful. See, e.g., *In the Matter of Parents' Magazine Enterprises, Inc.*, FTC Dkt. No. C-1133 (1966).

14) In cases involving a challenge to standards, the burden of proof respecting 'reasonableness' is upon those who develop and enforce the standards. *Kestenbaum, Antitrust Questions In Voluntary Industry Standards*, p. 10, Address prepared for delivery before the National Association of Manufacturers Marketing Conference (October 9, 1969).

15) All standards must be voluntary.

16) Certification programs should avoid the use of **single** standard, "pass/fail" systems and, in lieu thereof, employ graded systems which preserve consumer and user **options**.

**The foregoing criteria**, which are by no means exhaustive, demonstrate the many factors which make it **difficult** to approve a standard certification program such as the one you suggest. **The difficulty is** increased by the uncertainty which **exists** in the court decisions on this subject. **Accordingly**, the problems of establishing a program which will qualify for approval before it can be seen in action are **formidable**.

**Nevertheless**, the Commission would **like** to assist in **exploring the possibilities** of self-regulation through standard certification. **To that**

and it has directed its staff to commence an in depth study of the subject to determine whether it is possible for the Commission to make a meaningful contribution to the development of a satisfactory and legal program.

The Commission is not presently in possession of sufficient information to enable it to make all of the determinations essential to an evaluation of your program. Even if this information were furnished, the Commission feels that it would be inappropriate for it to act in this area until the results of its present study are known. It must, therefore, decline to act at this time on your request for an advisory opinion.

By direction of the Commission.

*First Opinion Letter*

DECEMBER 29, 1970

DEAR MR. ROCKWELL:

This is with further reference to your request for an advisory opinion regarding the general format of ANSI's voluntary Certification Program.

Based on the information you have provided, it is the Commission's understanding that any manufacturer of a product covered by an American National Standard, which standard lends itself to a certification procedure, may apply to ANSI to have the product certified as conforming to the standard. The fees for submittal of a product to be certified are designed to support the program but to avoid placing participating manufacturers at a disadvantage in competing with non-participating manufacturers.

An independent qualified laboratory selected by the producer's trade association, or by the producer, and approved by ANSI determines whether the product complies with the standard. An approved certification mark may be placed on products submitted which are found to comply. Also, a public information program to inform consumers regarding the ANSI certification and what it means is in use and periodically, a listing of products which have been certified as issued. To check on continued compliance of a certified product with the standard, there is continuing inspection and followup by the testing laboratory, using procedures tailored for each standard and administered by the appropriate trade association, all of which, however, is monitored by ANSI.

The Commission is of the view that an advisory opinion would be inappropriate in this matter inasmuch as an informed decision thereon could be made only after extensive investigation and collateral inquiry. In these circumstances, the request is inappropriate under Section

1.1 (c) of the Commission's rules. It also appears that the **course of** action is already being followed. If this is the situation, the request **for** an advisory opinion is also inappropriate under Section **1.1(a)** of the rules.

By direction of the Commission.

*Letter of Request*

MAY 6, 1970

**DEAR COMMISSIONER WEINBERGER :**

At the suggestion of Commissioner Jones I am writing you to let you know about our Certification Program.

As you know, the American National Standards Institute is the lending voluntary standards coordinator. We also handle all international standards through the International Organization for Standardization (**ISO**). Under separate cover I am sending a booklet 'describing our functions and a catalog of our standards. In addition, I am sending a copy of the **LaQue** Report and a copy of our Annual Report.

As a natural follow up on standards we have initiated a voluntary Certification Program in which any manufacturer can **participate**. Our basic requirements are that there be an American National Standard covering this item, that **the** standard be one that is adequate for certification, and **that** this program is **available** to anyone whether or not he is a member of a trade association or a domestic producer. I am also sending you a copy of an article I have written on certification and a copy of our procedures and a model contract which we have prepared.

We are aware of the active part the Commission has played in reviewing these Certification Programs and your various advisory opinions. Our certification is primarily aimed at consumer goods and is for the benefit of the consumers. Knowing of your concern in this area I am sure you will **find** this proposed program of interest. For your **information** I am also sending you a booklet on our Consumer Council and our consumer standards program. . . .

We would like to obtain approval of the general format of our program from the Commission. . . .

Very truly yours,

(S) **WILLIAM H. ROCKWELL,**  
*Director of Certification and Consumer Affairs.*