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## Classification of Consumer Protection Statutes

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## CLASSIFICATION OF CONSUMER PROTECTION STATUTES

As Mrs. Knauer has pointed out, the President has called for more sweeping and pervasive consumer protection statutes.<sup>1</sup> The question must be asked: "What is the scope of present consumer protection legislation?" "Do we need more legislation; or rather do we need a re-thinking of consumer problems?" In the next few paragraphs, one set of parameters on the problem will be explored. There are basically three types of "consumer protection" statutes; it is the purpose here to explore these conceptually.

### I. DISCLOSURE STATUTES

The Fair Packaging and Labeling Act<sup>2</sup> is a fairly recent example of a disclosure consumer protection statute.<sup>3</sup> Its expressed purpose is to allow the consumer to make an intelligent choice among different products. This act is not dissimilar in concept to the New York City ordinance which requires "unit-pricing."

### II. FRAUD AND DECEPTIVE PRACTICES

Another type of legislative scheme is that presented by the proposed Uniform Consumer Sales Practices Act (working draft) and a portion of the Uniform Deceptive Trade Practices Act,<sup>4</sup> as well as criminal and civil provisions of the United States Code dealing with the Postal Service.<sup>5</sup> Statutes of this type are designed to "outlaw" certain types of practices—declaring them unlawful and giving the consumer some relief under the statute. To a great extent these legislative schemes were probably and properly designed to accomplish other ends,<sup>6</sup> but under the current concern for the consumer, they have been extended to cover this situation also.<sup>7</sup>

### III. TRUE PROTECTION STATUTES

The third type of consumer protection scheme could quite truthfully be characterized as a consumer protection statute. An example

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<sup>1</sup> U.S. Code Congressional and Administrative News, 91st Cong., 1st Sess., 1730 (Nov. 20, 1969).

<sup>2</sup> Act of Nov. 3, 1966, Pub. L. No. 89-755, 80 Stat. 1296.

<sup>3</sup> See also Truth in Lending Act, 15 U.S.C. § 1601 (1964), as amended, (Supp. IV, 1968).

<sup>4</sup> For a similar act see LOCAL LAWS OF THE CITY OF NEW YORK no. 83 (1969).

<sup>5</sup> 18 U.S.C. § 1341 (1964); 39 U.S.C. § 4005 (1964).

<sup>6</sup> See *Proceedings in Committee of the Whole, Uniform Sales Practices Act*, 91st Cong., 1st Sess. (Aug. 6, 1969).

<sup>7</sup> See Dole, *Merchant and Consumer Protection: The Uniform Deceptive Trade Practices Act*, 76 YALE L.J. 485 (1967).

of this sort of statute would be the Food, Drug, and Cosmetics Act<sup>8</sup> whereby a federal agency is given the power to investigate and remove a product from the market. Clearly, this sort of procedure is beyond the ken of the average consumer.

#### IV. COST-BENEFIT NOTIONS

Protecting the consumer has a cost. Is the price worth the value received? Since most costs in this sort of distributional chain are passed on to the consumer, one must ask the question: "Is he getting a benefit commensurate with the cost?" It is clear that in certain technical areas, the consumer must be advised, *e.g.*, food and drugs. This concept would tend to legitimize legislation of the third type mentioned above. As to disclosure statutes, the cost may well be greater than the benefit. As to deception and fraud legislation, there are two possible ways of enforcing this type of legislation (as is true with the other types of legislation), that is, by public and private action. In either case, there is a direct cost to prosecuting the action. Is the cost of this prosecution worth the cost of the benefit to be gained therefrom? The answer may well be no.

#### V. A CONSIDERATION

The purpose of the foregoing classification and discourse was to point out what few commentators bother to point out, that is, that there is another side to the consumer-benefiting side of the consumer protection coin, even considering the problem from the standpoint of the consumer, as the costs of protecting him will usually be passed onto him. Perhaps, as an added parameter, when one reacts to consumer protection legislation, he should consider the cost which will be passed on to the consumer, and not so blithely offer to protect him with no thought to the overall effect.

*The Editors*

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<sup>8</sup> 21 U.S.C. § 301 (1964).