

December 1958

Criminal Law--Deceptive Advertising--Printer's Ink Model Statute

J. O. F.

West Virginia University College of Law

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Recommended Citation

J. O. F., *Criminal Law--Deceptive Advertising--Printer's Ink Model Statute*, 61 W. Va. L. Rev. (1958).

Available at: <https://researchrepository.wvu.edu/wvlr/vol61/iss1/11>

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and the court held the place of the executed sales contract was where the acceptance was spoken.

Aside from these indications there is the persuasive argument of the desirability of uniformity in contract law. The great majority of states have adopted the view that telephone acceptances should be governed by the same rules as telegrams and letters, and it is submitted that the West Virginia courts would feel as did the court in the principal case, which stated:

"We believe that in this day of multistate commercial transactions it is particularly desirable that the determination of the place of contracting be the same regardless of the state in which suit takes place. The absence of uniformity makes the rights and liabilities of parties to a contract dependent upon the choice of the state in which suit is instituted and thus encourages forum-shopping."

T. J. W.

CRIMINAL LAW--DECEPTIVE ADVERTISING--PRINTER'S INK MODEL STATUTE.—The New York Penal Law § 421 prohibits untrue, deceptive or misleading advertising. Defendant placed several signs in his store windows advertising the he was selling toys at a twenty per cent to forty per cent discount. It was established from the evidence that his prices were the same as or in excess of the prevailing prices in the community. *Held*, affirming defendant's conviction, a retailer cannot establish his own prices at levels higher than the prices customarily charged in the community and then mark his prices down to a point equal to or in excess of the standard prices, thereby creating the impression through advertising that the merchandise could be purchased at his store for less than it could be purchased elsewhere. *People v. Minijac Corp.*, 175 N.Y.S.2d 16, 151 N.E.2d 180 (1958).

In recent years advertising has become the dominant influence in guiding the choices of the American public. The reliance of the public on the truth thereof has given advertisers an instrumentality for abuse, of which they have taken undue advantage. Established remedies of deceit, breach of warranty, rescission, and unfair competition cannot be extended to cope with offenses which they were never intended to cover. See Handler, *False and Misleading Advertising*, 39 YALE L.J. 22 (1929).

There have been numerous statutes enacted covering practically every phase of advertising, two of which are basic. The federal government created the Federal Trade Commission whose jurisdiction includes the power to issue cease and desist orders against deceptive advertisers. 38 STAT. 717, 15 U.S.C. §§ 41-77 (1926). However, since the Federal Trade Commission has power over interstate commerce alone, this device can only protect the average consumer in a small number of his purchases. *Ward Baking Co. v. F.T.C.*, 264 Fed. 330 (2d Cir. 1920). Thus most of the states have adopted a statute based on the "printer's ink model statute", which is a blanket prohibition of untrue, deceptive, or misleading statements in any advertisement.

The statute under which the defendant was convicted in the principal case was based on the so-called "printer's ink model statute", drafted in 1911 for the advertising journal of that name. See THAYER, *LEGAL CONTROL OF THE PRESS* § 87, at 606 (3d ed. 1956). The constitutionality of these statutes has been uniformly upheld. *Commonwealth v. Reilly*, 248 Mass. 1, 142 N.E. 915 (1924). Yet the number of convictions thereunder has been few. In fact it appears that most jurisdictions have never used the statutes at all, and only a few have had more than a handful of prosecutions thereunder. See 56 COLUM. L. REV. 1063 (1956).

In West Virginia the "printer's ink model statute" was adopted in 1915 and appears in the present code. W. VA. CODE ch. 61, art. 3, § 38 (Michie 1955). There has been only one attempted prosecution under this statute which reached our highest court and that resulted in an acquittal. *State v. Wohlmouth*, 78 W. Va. 404, 89 S.E. 7 (1916). In that case the accused published an advertisement that to each purchaser of a fifteen dollar suit there would be given a free palm beach suit, when, in fact he never intended to give a palm beach suit but to give one of inferior quality. The indictment was quashed because there was no sale made under this advertisement. The court said, "this section is penal; and an indictment charging a violation thereof must aver with precision all the constituent elements of the crime. Such indictment must not state a mere conclusion of law." Here the court's reading into the statute that there must be a sale serves to illustrate the narrow construction given to the statute.

In order to get a conviction under this type of statute which carries the penal sanction of a misdemeanor, the prosecution ordi-

narily must only prove three fundamental things. First, it must be proved that there was an intent to sell or dispose of goods or services. *State v. Carruthers*, 21 S.W.2d 895 (Mo. App. 1929). Secondly, the prosecution must establish that this advertisement was placed before the public in some manner. *People v. Wahl*, 39 Cal. App. 2d 771, 100 P.2d 550 (1940). Thirdly, such advertising must have contained therein an untrue or misleading statement. *People v. Byrnes*, 117 Colo. 528, 190 P.2d 584 (1948). Thus it is seen that the statute imposes absolute liability on the advertiser; yet, from the small number of convictions thereunder it appears something more is necessary.

The major reason for the small number of convictions under these statutes is the lack of an initiating agency to enforce them. Local police and other prosecuting agencies are probably unaware of the existence of such a statute, and, even if they are aware, their energies are diverted towards more profitable pursuits. A further reason may be attributed to the narrow construction given the statutes by the courts. Only when the enforcement of the statutes is assigned to some special agency or agencies and the courts begin to focus a sterner view toward deceptive advertisers will the reason for the enactment of these statutes be accomplished.

J. O. F.

CRIMINAL LAW—DUE PROCESS—COERCED CONFESSION IN STATE COURTS.—*D*, a mentally dull 19 year old Negro, was convicted of murder and sentenced to death. He had been arrested without a warrant, denied a hearing before a magistrate at which, under state law, he would be advised of his right to counsel and to remain silent, held incommunicado for more than two days, and told by the chief of police that there were thirty or forty people coming who wanted to get him. Under these circumstances *D* confessed to the murder. The confession was admitted in evidence over the objection of *D*'s counsel. The jury returned a verdict of guilty, the Supreme Court of Arkansas affirmed and *D* brought certiorari. Held, that *D*'s confession was coerced and its admission into evidence was denial of due process under U.S. CONST. amend. XIV, § 1. *Payne v. State*, 354 U.S. 930 (1958).

Whether a confession made to police officers after arrest is voluntary or coerced is ordinarily a question directed to the discretion of the trial court. *State v. Dowell*, 47 Idaho 457, 276 Pac. 39 (1929); 3