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The Better Business Bureau: Administrator of Ethics Through Self-Regulatory Programs

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Feature

As the feature for this issue, the Reporter presents comments by James E. Baumhart on the philosophy of self-regulation and current programs of the Better Business Bureau which uphold this philosophy.*

The Better Business Bureau: Administrator of Ethics Through Self-Regulatory Programs

Self-regulation is the acknowledged driving force to consumer satisfaction in the 1990s. Businesses are now recognizing that a complaint handling mechanism like the Better Business Bureau ("BBB") is in their own best interest. This article will explore the purpose and result of pursuing self-regulation by examining the BBB's current self-regulatory programs including dispute resolution through conciliation, mediation and arbitration programs including AUTO LINE and BBB Care, advertising review, charitable solicitations and the inquiry center.

A Brief Background Of The BBB

The Better Business Bureau is an international organization with 181 Bureaus in major cities throughout the United States, nineteen in Canada, and two in Israel. Each BBB is autonomous and is under the direction of a Board of Directors, comprised of businessmen and women representing member companies in the area in which the Bureau is located. The major concern of the Better Business Bureau, from its inception in 1912, has been the ethics and morals of the marketplace. More than 2,000 years ago, Cicero clearly stated the philosophy of the BBB when he wrote to his son Marcus: "All things should be laid bare, so that the buyer may not be in any way ignorant of anything the seller knows."

In 1926, Chicago business leaders including George Lytton and Elmer Wieboldt joined the ranks of

other major cities in establishing a Better Business Bureau. They realized that self-regulation was needed to solve the ethical and moral problems of the marketplace. Initially, BBBs only handled advertising complaints and conducted advertising review. The advertising review activities were geared to head off misrepresentation in advertising—to ensure that a reader of an ad would be able to better understand the nature and price of the product or service being offered. The Bureaus eventually began to handle complaints regarding problems other than advertising due to the need to resolve product and service complaints such as warranties, defective merchandise, and unsatisfactory repairs of consumer products.

When the Bureau started handling non-advertising complaints, no other agency, either government or private, existed to resolve consumer complaints. There were no consumer protection agencies, few consumer action columns or consumer reporters, and quite frankly, little interest in buyer-seller issues; *caveat emptor*, let the buyer beware, was really the motto of the era.

Historically, the Bureau handled product and service complaints by the simple, expedient method of conciliation. Eventually, mediation evolved into its complaint handling process, as problems became more complex. In 1972, arbitration was added as the final dimension to complaint handling.

Current BBB Activities

Arbitration

While not readily accepted by the legal profession when first introduced by the BBB, arbitration is now used in both Cook and Winnebago counties as a means of resolving certain disputes filed in court. BBB arbitrations are unique. The arbitrator is chosen by both parties involved in the dispute and the hearing is held at a place and time convenient to all three parties, including at the home of the con-

sumer, should the problem involve a product or service rendered at the home.

The BBB program is individualistic because its pool of two hundred volunteer arbitrators in Northern Illinois are not experts in the area in which they hear an arbitration. For example, an arbitrator who is an auto dealer, will not be used to hear an automobile case; instead, a home improvement contractor or homemaker may be chosen for that hearing. An arbitrator literally walks into a hearing with a blank pad of paper. It is up to each party involved in the dispute to educate the arbitrator on their position. The only knowledge the arbitrator has in advance of the actual hearing is the names of the disputants and the nature and amount of their dispute. The BBB network has been recognized as the largest out-of-court settlement process in the country.

In 1975, the federal Magnuson-Moss Warranty Act was passed which provided additional consumer protection by prohibiting the waiver of implied warranties. In 1976, the Federal Trade Commission ("FTC") promulgated rules 701, 702, and 703 which required: an advertiser to make warranty information available to consumers before making a purchase; the FTC to monitor product warranties and service contracts to determine whether the information complies with the Magnuson-Moss Act; and the FTC to investigate companies that fail to honor their warranties or other contractual obligations. In addition, these rules were used to promote procedures to enable consumers and businesses to resolve complaints quickly and inexpensively.

Auto Line Arbitration Programs

As a direct result of this Act, the Better Business Bureaus, in 1978, launched a series of pilot media-

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tion and arbitration programs with automobile manufacturers, including General Motors. These pilot programs entitled Auto Line proved so successful that when the FTC filed a complaint against General Motors in 1980, alleging that there were certain defects in some General Motors' vehicles, the FTC decided to test mediation and the BBB's arbitration program as the process to address and resolve these problems.

A total of 49,000 complaints were handled through this test program from 1980-82. The test culminated in 1983 with the FTC formally naming the BBB network as the means by which dissatisfied consumers with General Motors vehicles could have their complaints mediated and, if needed, arbitrated by the BBB at no cost to them. Complaints rose in 1983 to 33,000 and, with the announcement and visibility of the program, the numbers skyrocketed in 1984 to a record 244,300.

General Motors, seeing the value in this third party complaint handling system, which enabled their customers to have disputes resolved without the need of court action, decided to enter into a contract with the Bureau to handle any alleged manufacturing defect complaints. Interestingly, most of these complaints continue to be referred by the GM regional offices or a GM dealer to the Bureau closest to the consumer's home, by means of a national 800-phone number enabling their problem to be addressed locally and expeditiously.

In May of 1991, the FTC announced that since January of 1984, more than 223,000 consumers received in excess of \$68 million from General Motors through the BBB mediation and arbitration program. These numbers do not reflect, however, the thousands of awards and settlements for repairs and or reimbursements to vehicles handled by the BBB's mediation and arbitration program which were not included in the FTC consent agreement with General Motors.

During 1990, 92,000 BBB Auto Line complaints were expeditiously handled by the network, on average, in only thirty-nine days

per case, including arbitration. During the past eight years, a number of other automobile manufacturers also have participated in the BBB Auto Line Program, including Nissan, Porsche, Audi, Saab, Scania, Volkswagen, Rolls Royce, Bentley, American Motors, Jeep, and Renault.

The success of this program, from my point of view, is that it enables a consumer who has purchased an automobile believed to be defective to have their problem addressed in less than forty days, at no cost to them, by a third party that they recognize and trust.

Arbitration is the tool that the BBB needed to assist both buyers and sellers in resolving their disputes. In the Chicago area, almost 5,000 arbitrations, both binding and non-binding in nature, have been held. While I personally believe that a binding arbitration is the only fair way to resolve a dispute, I understand and appreciate the automobile manufacturers' disapproval of the arbitration award being binding on them, but not on their customer. This non-binding system encourages their customers to more readily participate in the arbitration process, recognizing that should the customer lose in arbitration, the customer could still use the court system to address their problem.

BBB Care

A new self-regulatory program, called BBB Care, was launched in January, 1990. This program was

modeled after the Auto Line program, but is available to any company in any industry which is willing to precommit to use the BBB's services of complaint handling, which includes conciliation, mediation and, for the CARE program, binding arbitration. Automobile transmission firms, home improvement contractors, heating and air conditioning companies, water softener firms, plumbers, home builders, security companies and financial services represent some of the industries that have opted to join the BBB Care program.

Advertising Review

Advertising review is still a vital function of the BBB's self-regulatory program in the 1990s. Last year, the Chicago Bureau contacted sixty-five advertisers which were using underselling claims which the BBB believed were unprovable advertising claims, such as: "Lowest prices in Chicago," "Nobody, but nobody, sells for less," "Nobody can beat our price," etc., etc. Almost all of the advertisers agreed to revise these statements when asked to do so by the BBB. The Bureau is vitally interested in heading off complaints which may begin with questionable advertising and or promotions.

In 1971, while a member of the Board of Directors of BBB/Chicago, advertising giant, the late Leo Burnett explained the Bureau's imminent role in ethics of the advertising industry by writing a piece entitled "The Hole in the Leopard Skin." It reads in part:

In some early day, a caveman may have traded a leopard skin for an earthenpot, cleverly holding his thumb over the hole in the corner of the skins to conceal the defect, and after it had been discovered, a good clubbing match probably ensued.

If the caveman had extolled the glossiness of the hide and the thickness of the winter-killed fur, without either mentioning or concealing the hole, he would have been legitimately exercising the art of persuasive salesmanship. But the minute he put his thumb over the hole, he was

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ANNOUNCEMENT

1991 National Consumers Week

The 1991 National Consumers Week will be celebrated October 20-26. The theme, "Today's Choices-Tomorrow's Opportunity," will focus consumers' attention on how their individual actions and decisions will collectively shape the future of our nation and world. For more information, contact U.S. Office of Consumer Affairs, Washington, DC 20201 (202-634-4329).

Recent Legislative Activity

Acceleration Clauses

A new law passed by Virginia broadens the effect of its statute governing acceleration clauses in installment loans. The statute provided that notes evidencing installment loans with add-on interest may contain acceleration clauses. The new law allows contracts evidencing installment loans and installment sales obligations to also contain acceleration clauses. Acceleration clauses provide that the entire unpaid balance of a loan shall become due upon the default in payment of any installment by the borrower. Further, an accelerated balance shall bear interest at the rate shown, or which should have been shown if a consumer credit transaction were involved. **1991 Va. Acts 365.**

Smoke Detection Devices

Montana law now requires that the seller of a dwelling must give the buyer written notification of whether or not the dwelling is equipped with smoke or other fire detection devices. This required notice must be given to the buyer in the buy-sell agreement or at the time of the sale. The law defines "dwelling" as a building or portion of a building, including a mobile home or housetrailer, which contains the living facilities for not more than two families. Noncompliance or negligence in complying with this new law, however, does not make the seller liable in any civil action. Evidence of such is also not admissible in a civil action. **1991 Mont. Laws 181**

Garage Door Opening Systems

Minnesota has recently amended its automatic garage door opening systems law, adding the "automatic reversing requirement" for residential automatic garage door opening systems. The law now pro-

hibits anyone from repairing or servicing an automatic garage door system that does not have a reversing device. A reversing device includes an edge sensor or safety beam which when triggered will cause a closing door to open and prevents an open door from closing. This device is built so that a failure of the device prevents the door from closing altogether. The new Minnesota law also requires the person repairing such a system to test the system and if the system fails the test, to attach a red warning label which states that the garage door opener does not meet the requirements for a working safety reverse feature. The warning label further states that this can be highly dangerous, may cause serious injury or death and advises the owner to disconnect the opener from the door immediately in order to operate it manually. **1991 Minn. Sess. Law Serv. 104 (West).**

Rental Car Company Regulation

The House of Representatives is currently considering the **Collision Damage Waiver Act of 1991**. The Act would prohibit car rental companies from holding authorized drivers liable for any damage, except in certain circumstances, requiring security deposits for damage and selling collision damage waivers. The Act does allow a car rental company to hold an authorized driver liable for damage in several situations. These situations include those in which the damage is caused intentionally, while the driver was intoxicated or under the influence of an illegal drug, while the driver was in a speed contest, while the driver was committing a crime, or while the driver was transporting items for hire. A rental car company that violates the proposed law would be assessed with civil penalties of not less than \$500 and no more than \$1,000 for each violation. **H.R. 1293, 102d Cong., 1st Sess. (1991).**

Auto Dealer Advertising

California is considering an Act that would prohibit auto dealers to advertise a vehicle for sale for an amount above, below, or at the manufacturer's or distributor's invoice price to the dealer unless the invoice price is the amount that the dealer paid the manufacturer or distributor at the time the motor vehicle was purchased. The Act would also provide that the invoice price may exceed actual dealer cost for the vehicle because of refunds, rebates, allowances, or incentives which the manufacturer or distributor may provide to the dealer. However, a copy of the invoice must be shown to any customer upon request. Additionally, the Act would prohibit: (1) dealers from advertising free merchandise, gifts, or services contingent on the purchase of a vehicle; (2) guaranteed trade-in allowances unless the guarantee is provided by the manufacturer or distributor; and (3) rebates or cash back offers unless the rebate is expressed in a specific dollar amount and is offered by the manufacturer or distributor directly to the retail purchaser. A violation of these provisions would be a misdemeanor punishable by California state law. **1991 Cal. A.B. 1763 (IPA).**

Plain Language Contracts

Pennsylvania is considering the **Plain Language Consumer Contract Act** which will require all consumer contracts to be written in easily understandable language. The Act is intended to protect consumers from entering contracts they do not understand. It will help consumers to know better their rights and duties under those contracts. In determining whether a contract meets the plain language requirement, language guidelines are provided and should be considered. The guidelines state that the contract should make use of short words, sentences, and paragraphs,