

and of the claims made therefor, should be made before they are advertised over a broadcast station." 2 F.C.C. at 458. See also *WSBC, Inc.*, 2 F.C.C. 293, 294-296, and *Oak Leaves Broadcasting Station, Inc.*, 2 F.C.C. 298 (both involving advertising of quack medicines by one not licensed to practice medicine). The Commission has also applied the Fairness Doctrine to products such as *Krebiozen* and to the health issues involved in *Carlton Fredericks* program, "Living Should be Fun." See 33 F.C.C. 101, 107 (1962).<sup>7</sup>

13. Mr. Justice Brennan, in his concurring opinion in the *Head* case, 374 U.S. at 439, noted that:

"\* \* \* As early as 1928, for example, the General Counsel of the Radio Commission held that abuses in network cigarette advertising—while not a sufficient basis for revocation proceedings against an individual licensee—might on renewal militate against the requisite finding of broadcasting in the 'public interest.'"

The opinion also notes (n. 15) that:

"Shortly after the issuance of the General Counsel's opinion the Chairman of the Federal Radio Commission was asked by Senator Dill during his appearance before the Senate Commerce Committee whether he thought the Commission had sufficient power 'through its power of regulation and its determination of public interest to handle objectionable advertising?' The Chairman replied, 'I think so, Senator Dill, because we have had little trouble about it, even without direct power. \* \* \*'" Hearings before Senate Committee on Interstate Commerce on S. 6, 71st Cong., 1st sess., pt. 6, p. 230." See also Hearings before Senate Committee on Interstate Commerce on S. 6, 71st Cong., 1st and 2d sess., pp. 88-89. The particular complaint leading to the General Counsel's opinion charged, *inter alia*, that "the object of this broadcasting is to transform 20 million adolescent boys and girls into confirmed cigarette addicts by creating a vast child market for cigarettes in the United States," that "10 million boys throughout the country are being viciously and deliberately misled by paid testimonials, secured from professional athletes, football coaches and others, definitely suggesting the use of cigarettes as an aid to physical prowess," that "the medical opinion of the country is being continuously misrepresented to support the health and medical claims made for cigarettes," that the specific claims made for a particular brand of cigarette advertised on the air are overwhelmingly opposed by established health and medical facts," and that "Such radio activities, the petitioner maintains, are clearly contrary to public interest, public welfare and public health." Opinion No. 32, 1928-1929 Opinions of the General Counsel, Federal Radio Commission 77, at 78 (Apr. 15, 1929). General Counsel Bethuel M. Webster, Jr. concluded that the "Commission may find, in view of this showing, that public interest, convenience, and necessity will not be served by further renewal of the licenses in question, in which case the matter will be set for hearing pursuant to section 11, and petitioner's prayer for general relief will be granted." *Id.*, at 82.

14. In short, we believe that the licensee's statutory obligation to operate in the public interest includes the duty to make a fair presentation of opposing viewpoints on the controversial issue of public importance posed by cigarette advertising (i.e., the desirability of smoking), that this duty extends to cigarette advertising which encourages the public to use a product that is habit forming and, as found by the Congress and Governmental reports, may in normal use be hazardous to health, and that the licensee's compliance with this duty may be examined at license renewal time (see 1960 Programing Policy Statement, 20 *Pike and Fischer*, Radio Regulation 1901, 1912-1913). It is our belief that the public interest standard and Fairness Doctrine embodied this principle from their inception. In any event, even assuming the contrary, we think that the Commission clearly has the statutory authority to make this public interest ruling and to extend the Fairness Doctrine to cigarette advertising at this time. While the agency's position as to what the obligation to operate in the public interest requires for cigarette advertising may have fluctuated over the years since 1929, the exercise of such authority in the present circumstances is plainly reasonable. Considering the 1964 Report of the Surgeon General's Advisory Committee, the establishment of the National Interagency Council on Smoking and Health and the enactment of Cigarette Labeling and Advertising Act (Public Law 89-92, 15 U.S.C. 1331 et seq.) in 1965, and the recent Reports to Congress by the Federal

<sup>7</sup> As further administrative background in this area, see *In re petition of Sam Morris*, 11 FCC 197 (1946), where the Commission indicated the applicability of the Fairness Doctrine to advertising in certain situations.