thereon could be made only after extensive investigation, clinical study, testing, or collateral inquiry.

(c) If the statement in question is true, the Commission added, then of course there is nothing in the statutes which it administers to prohibit its use. The question, however, is enormously complicated and to answer it would require both quantitative and qualitative determinations which could only be made after extensive investigation. While the Commission must of necessity investigate the use of extravagant claims, such investigation should not be initiated in support of an advisory opinion.

(d) Moreover, because of the nature of the proposed claim, Commission approval could be construed and exploited as Government endorsement.

[32 F.R. 3818, Mar. 8, 1967]

§ 15.117 Misrepresentation of hand cream.

(a) The Federal Trade Commission advised a marketer of hand cream that it would be improper and a violation of Commission administered law to represent, contrary to fact, that the product had been "medically prescribed."

(b) There are many precedents for the proposition that it is an unfair trade practice to misrepresent approval or endorsement of products by medical associations, doctors, dentists, and related professional groups.

[32 F.R. 4308, Mar. 21, 1967]

§ 15.118 Reduced price on shopper's guide advertising for radio advertisers.

(a) The Federal Trade Commission advised a radio station that it might properly give reduced advertising rates in a printed shopper's guide which it plans to publish to those advertisers buying radio time at regular station rates.

The Commission was informed that radio advertisers would not be required to buy shopper's guide space, and that shopper's guide space could be purchased at regular shopper's guide rates by those not buying radio time.

(c) Three other radio stations and two newspapers are available to advertisers within the market area in question.

[32 F.R. 4569, Mar. 28, 1967]

§ 15.119 Trade association code of ethics.

(a) The Commission advised a trade association that the objectives sought by its proposed code of ethics appeared to be unobjectionable and that adherence to the code should not operate to effect an unreasonable restraint of trade. Accordingly it is the Commission's view that the mere act of becoming a member of the association and joining in its activities for the purposes outlined will not in itself violate any statute administered by the Commission.

(b) The association was advised, however, that if enforcement of the code operated so as to effect an unreasonable restraint of trade, serious questions would be raised as to the plan's validity. The general test, the Commission stated, is whether concerted action by competitors unreasonably affects a businessman's ability to compete. Thus, if association membership is an important competitive factor, arbitrary or discriminatory refusal of membership to a qualified applicant because of alleged failure to abide by the code would raise serious questions under Commission-administered law, as would arbitrary or discriminatory expulsion of association members.

(c) In conclusion, the Commission noted that it confined itself in its answer to so much of the question as falls within Commission jurisdiction. The extent, if any, to which another Government agency may be concerned with the association's activity is a matter to be determined by reference to that agency.

[32 F.R. 5620, Apr. 6, 1967]

§ 15.120 Permissible period of time during which new product may be described as "new".

(a) The Commission was requested to render an advisory opinion as to the permissible period of time during which an advertiser could continue to describe a new product as being "new".

(b) The Commission pointed out that the word "new" may be properly used only when the product so described is either entirely new or has been changed in a functionally significant and substantial respect. A product may not be called "new" when only the package has been altered or some other change made which is functionally insignificant or insubstantial.

(c) Assuming that a particular product could truthfully be described as

"new" in the first instance, the opinion noted that there is little precedent for determining how long an advertiser may truthfully continue to describe it as "new". The Commission stated it was aware, of course, that the word has been frequently abused and that it is in the interest of all advertisers to have established ground rules for its use. However, the time period during which a particular product may be called "new" will depend upon the circumstances and is not subject to precise limitations; any selection of a fixed period of time or a rigid cut-off date would have to be arbitrary in nature. Further, any such attempt would not only fence in all advertisers without regard to the circumstances, but would fence in the Commission as well, and deprive it of all flexibility in dealing with individual situations.

(d) Instead, the Commission felt it would be preferable, considering the absence of precedents, to establish a tentative outer limit for use of the claim, while leaving itself free to take into consideration unusual situations which may arise. Thus, the Commission's position was that until such a time as later developments may show the need for a different rule, it would be inclined to question use of any claim that a product is "new" for a period of time longer than 6 months. This general rule would apply unless exceptional circumstances warranting a period either shorter or longer than 6 months were shown to exist.

[32 F.R. 6023, Apr. 15, 1967]

§ 15.121 Resale price maintenance of books held on consignment.

(a) The Commission was requested to render an advisory opinion concerning the legality of an agreement between a university press and a scholarly association that the press would not sell the annual publication of the association, which it held on consignment, at less than the minimum resale price stipulated by the association. The book normally sells by mail order for the same amount as is charged by the association for annual dues. Members of the association are entitled to receive a copy of the book at no extra charge. The association wishes to include a provision in the contract prohibiting the press from selling to educational institutions, mainly libraries, at any discount below the usual retail price, its purpose being to prevent such buyers from obtaining the book at a lower price than they could by joining the association. This would mean that the press could not give libraries the normal trade discount.

(b) In addition, the Commission was assured that the relationship between the press and the association was strictly one of agency. The press does not print the books for the association, which subcontracts the printing and simply wishes to use the selling facilities of the press to handle sales to nonmembers. Legal title to the books remains in the association, which owns the copyrights, and the books are being handled by the press on a consignment basis.

(c) The Commission advised that it could see no objection to the inclusion of this provision under the precise factual situation presented. In arriving at this conclusion, the Commission stated that it was mindful of the fact that consignment agreements can, under certain circumstances, be used as a device for illegal resale price maintenance, even where patented or copyrighted articles are involved. However, it was of the opinion that this proposal would not fall within that category in view of the fact that the contemplated consignment agreement containing the clause in question will be with only one consignee and there will be no other outlets competing in the distribution of these books. This view of the law was limited solely to the factual situation involved. Hence, generalizations from this opinion or its extension to other factual situations would not be warranted.

[32 F.R. 6362, Apr. 22, 1967]

§ 15.122 Propriety of publishing marketing area price lists.

(a) The Federal Trade Commission advised a manufacturer who had requested an adivsory opinon that there is nothing inherently illegal about area price lists which make only due allowance for differences in the cost of shipment and delivery.

(b) The Commission advised the manufacturer further that price discriminations in sales to customers located in different areas who in fact compete with each other could amount to conduct in violation of section 2(a) of the Clayton Act, unless cost justified or unless the lower price is a good faith meeting of a competitor's equally low price.

(c) The Commission also pointed out that it could be unlawful if area price