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Protecting Business Entities under the Federal Anti-Tampering Act;Note

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PROTECTING BUSINESS ENTITIES UNDER THE FEDERAL ANTI-TAMPERING ACT

INTRODUCTION

Between September 30 and October 2, 1982, the deaths of seven Chicago area residents who had taken Extra-Strength Tylenol capsules laced with potassium cyanide shocked the nation.[1] Following the events in Chicago, a wave of copycat incidents involving both actual tamperings and hoaxes swept the country.[2]

This tampering mania led not only to these tragic deaths, but also to tremendous economic expense. Tylenol manufacturer, Johnson and Johnson, Inc., was forced to recall, test, and destroy its product rather than risk further injuries or deaths.[3] The incident cost Johnson and Johnson over $100,000,000.[4] Beyond this immediate expense, it is difficult to estimate the losses suffered by damage to the goodwill and reputation of this and similarly-affected manufacturers.

In response to these events, the 98th Congress enacted the Federal Anti-Tampering Act.[5] This statute provides sanctions for tampering with products with intent to cause death or injury,[6] or to damage the reputation of a business.[7] The Act also sets out penalties for making a false claim of a tampering which, if true, would pose a hazard to human safety.[8] The bill in its version as passed by the Senate,[9] also prohibited a false claim of tampering which did not threaten to cause physical injury.[10] When the bill was amended by substitution in the House of Representatives, however, this provision was eliminated.[11] This removed from the scope of the Federal Anti-Tampering Act what could be called "false claims of harmless tamperings," which is report-

1. *Poison Deaths Bring U.S. Warning on Tylenol Use*, N.Y. Times, Oct. 2, 1982, at 1, col. 1.
2. In the month following the Tylenol incident in Chicago, the Food and Drug Administration received 270 reports of product tamperings. Many of these involved over-the-counter drugs, and some resulted in serious injury. Among the incidents reported were: mercuric chloride in Excedrin Extra-Strength Capsules, rat poison in Anacin, and hydrochloric acid in eye drops. Other reports involved tampering with food products, such as sodium hydroxide in chocolate milk and straight pins found in candy. These latter reports raised fears of tampering with candy given to children on Halloween, and several communities around the nation banned "trick-or-treating" or advised against it. Of the 270 reports it received, however, the Food and Drug Administration estimated that only 36 were "hard-core, true tamperings." Church, *Copycats Are on the Prowl*, TIME, Nov. 8, 1982, at 27.
3. S. REP. No. 69, 98th Cong., 1st Sess. 4 (1983).
4. *Id.*
5. Federal Anti-Tampering Act, Pub. L. No. 98-127, § 3, 97 Stat. 832 (1983) (to be codified at 18 U.S.C. § 1365).
6. *Id.* § (a).
7. *Id.* § (b).
8. *Id.* § (c).
9. S. 216, 98th Cong. 1st Sess., 129 CONG. REC. S6313, 6314 (daily ed. May 9, 1983).
10. *Id.*
11. 129 CONG. REC. H7694, 7695 (daily ed. Sept. 29, 1983).

ing to a manufacturer or the media that a product has been altered in a way harmless to human health, but apparently dangerous, or at least repulsive, to many consumers.[12]

This note will examine some reasons why the House of Representatives eliminated the Federal Anti-Tampering Act provisions protecting businesses from significant damage caused by false claims of harmless product tamperings. After this review, the note will assess whether federal criminal sanctions are a necessary and proper means of dealing with this issue. Finally, this note will recommend that Congress act to restore to the Act those provisions proscribing false claims of harmless tamperings.

BACKGROUND OF THE ACT'S ENACTMENT

The 97th Congress passed a Federal Anti-Tampering Act near the close of its second session.[13] Due to the rush of business at the time, however, the anti-tampering legislation was tacked onto a larger anti-crime bill,[14] which President Reagan chose to pocket veto on January 17, 1983.[15] Shortly after the start of the 98th Congress' first session, Senator Strom Thurmond (R-S.C.) re-introduced the legislation as an individual bill, Senate bill 216 (S. 216),[16] and the House began work on its own version, House bill 2174 (H.R. 2174).[17] The bills successfully passed both Houses[18] without the provisions proscribing false claims of harmless tampering and the Federal Anti-Tampering Act[19] was signed into law by President Ronald Reagan on October 14, 1983.[20]

The House of Representatives considered a variety of factors in making its decision to eliminate criminal sanctions for false claims of harmless product tamperings. Three factors were most important. First, in its report on H.R. 2174, the House Judiciary Committee stated

12. As an example, the addition of beef blood to milk, which would not make the milk dangerous if both components were refrigerated, would make it seem dangerous or unfit for use to almost any consumer. An individual who claimed to have introduced blood into milk would not be liable under the Act, even though the milk's producer could suffer serious financial loss or damage to its reputation if the report were publicized. Representative William Hughes, D-N.J., illustrated what would not be covered under the Act in these terms:
> A consumer who grumbles that a particular hamburger is made of horsemeat, even if the consumer knows that the claim is false, and makes the claim with the intent to destroy the reputation of the company, or the confidence of consumers in it, is not liable under new subsection (c) because horsemeat in hamburgers will not cause a risk of death or bodily injury.

129 CONG. REC. H7697 (daily ed. Sept. 28, 1983).

13. S. 3048, 97th Cong., 2d Sess., 128 CONG. REC. S15167 (daily ed. Dec. 20, 1982).
14. H.R. 3963, 97th Cong., 2d Sess., 128 CONG. REC. H10,459 (daily ed. Dec. 20, 1982).
15. S. REP. NO. 69, *supra* note 3, at 6.
16. S. 216, 98th Cong., 1st Sess., 129 CONG. REC. S385 (daily ed. Jan. 27, 1983).
17. H.R. 2174, 98th Cong., 1st Sess., 129 CONG. REC. H1382 (daily ed. Mar. 17, 1983).
18. The bill passed the Senate, 129 CONG. REC. S6313, 6314 (daily ed. May 9, 1983); then the House amended it by substitution, 129 CONG. REC. H7694, 7695 (daily ed. Sept. 29, 1983); and the final version was passed by the Senate, 129 CONG. REC. S13,331, 13332 (daily ed. Sept. 30, 1983).
19. Federal Anti-Tampering Act, Pub. L. No. 98-127, § 3, 97 Stat. 832 (1983) (to be codified at 18 U.S.C. § 1365).
20. 19 WEEKLY COMP. PRES. DOC. 1434 (Oct. 17, 1983).

that a business entity may bring a civil lawsuit against a tampering hoaxer (although the Committee recognized that this would not always provide adequate relief).[21] The Committee also maintained that federal criminal laws could not be used to redress all wrongs.[22] Second, during final debate on H.R. 2174 before the full House, Representative W. Hughes (D-N.J.) argued that the bill was designed primarily to protect consumers.[23] Third, Department of Justice officials stated that false claims of harmless tamperings would cause less damage than false claims of physically dangerous tamperings, and that there was no pattern of such acts in the past to suggest the need for sanctions.[24]

These considerations raised two issues: first, whether civil actions can provide sufficient relief for businesses victimized by this type of hoax; and second, whether a federal criminal law is an appropriate remedy for this problem. To resolve the first issue, it will be necessary to examine potential civil actions to determine if they adequately address incidents which have occurred in the past or might occur in the future. Because the second issue is a public policy issue, it must be resolved through an evaluation of the social and economic costs of false claims of harmless tamperings, and a comparison of this Act to other federal laws providing protection to businesses. Before examining the two issues raised by the House of Representative's decision, the potential harm of a tampering hoax will be illustrated.

THE BALL PARK FRANK INCIDENT

This incident involved the Hygrade Food Products Corporation of Southfield, Michigan, producers of American's second best selling hot dogs, Ball Park Franks. In 1982, hot dogs accounted for sixty-five percent of the company's $200,000,000 sales.[25] The incident took place in the greater Detroit area, where Hygrade's hot dogs are the top selling brand with a one-third market share.[26]

On October 25, 1982, a housewife in Livonia, Michigan, where a plant producing Ball Park Franks is located, reported to Hygrade that she had found half of a razor blade in one of their hot dogs.[27] In an effort to warn consumers, Hygrade released this information to the press.[28] In the week following that release, thirteen additional reports were made by people finding foreign objects in Ball Park Franks.[29]

21. H.R. REP. No. 93, 98th Cong., 1st Sess. 5, *reprinted in* 1983 U.S. CODE CONG. & AD. NEWS 1257.
22. *Id.*
23. 129 CONG. REC. H7696 (daily ed. Sept. 28, 1983).
24. *Federal Anti-Tampering Act: Hearings on S. 216 Before the Senate Comm. on the Judiciary*, 98th Cong., 1st Sess. 8 (1983) (statement of D. Lowell Jensen, Assistant U.S. Attorney General) [hereinafter cited as *Hearings on S. 216*].
25. Colvin, *Lessons From a Hot Dog Maker's Ordeal*, FORTUNE, March 7, 1983, at 77.
26. *Id.*
27. *Id.* at 78.
28. *Id.*
29. *Id.*

Some of these reports were made to Hygrade Foods, others directly to the news media.[30] Hygrade promptly recalled 350,000 pounds of their Franks and set employees to work running them through metal detectors.[31] One hundred fifty tons of hot dogs were tested without finding any additional tampering before the woman who made one of the reports admitted that she placed the razor blade in the hot dog herself.[32] Apparently, the other thirteen reports of tampering were hoaxes as well.[33] The final cost to the Hygrade Corporation for the hoax was an estimated $1,000,000,[34] a serious loss in light of the company's $8,000,000 profits in 1982.[35]

Normally, a tampering incident detrimentally affects the reputation of a product and its manufacturer, as in the Tylenol case. Hygrade, however, was able to avoid this result because several factors worked in its favor. The incident occurred near Hygrade's main operations, where the company provided many jobs and had a strong local following.[36] Following the announcement of the hoaxes, the community showed strong support for the company, including editorial endorsements from at least one television station and one newspaper.[37] Much greater damage could have resulted if the community had not strongly supported the Hygrade company.

Officials of the Hygrade Corporation and the State of Michigan found that unfortunately they had little recourse against the fourteen hoaxers under Michigan law because none of the hoaxers had filed a claim for damages against Hygrade.[38] One of the fourteen was eventually convicted of filing a false police report, however, and sentenced to ten days in jail.[39]

Because the alleged tamperings in this incident were dangerous to human safety, they would fall within the scope of the Federal Anti-Tampering Act.[40] Nevertheless, the facts of this incident, as well as its serious results, provide a valuable illustration for examining the potential of current civil actions to remedy damages from false claims of harmless tamperings.

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30. *Id.*
31. *Id.* at 79.
32. *Id.*
33. *Id.* at 78.
34. *Id.*
35. *Id.*
36. *Id.* at 79.
37. In addition to the rare editorial endorsements, the citizens of Livonia held "Livonia Loves Hygrade Week" to help the company get over the damage to its reputation and to show their appreciation for the economic contributions of the firm. The focal point of the week was the citizens' effort to eat 104,000 Ball Park Franks in seven days, one for every man, woman, and child in the city. In the end, at least 148,000 Franks were consumed. *Id.*
38. *Id.*
39. *Id.*
40. *Id.*

CIVIL REMEDIES

In its report to the House of Representatives on H.R. 2174,[41] the House Judiciary Committee suggested the remedy of a civil lawsuit for businesses that suffer damages to their reputation resulting from a harmless tampering or a false claim.[42] At the same time, the Committee recognized that such suits might not always provide sufficient compensation to a firm which had experienced significant financial loss.[43] The report, however, did not include discussion of possible tort actions which businesses might instigate in response to a harmless tampering. The Committee also failed to fully discuss the potential effectiveness of a civil action in compensating the victimized firm, or the deterrent effect of a lawsuit.

Several tort actions might arise from a false claim of harmless tampering. Like individual persons, businesses are protected from libel[44] and slander.[45] Furthermore, the tort of injurious falsehood serves to compensate a business when false statements are made about its products.[46] While these actions would prove useful in some instances, they clearly do not provide a remedy in all instances. For example, one element of libel, slander and injurious falsehood is publication;[47] thus, the injured business would have to prove that the tort-feasor communicated the defamatory information to a third party.[48] This publication would be difficult to prove in circumstances similar to the Ball Park Frank incident,[49] where the communication was made directly to the manufacturer rather than a third party. There may be no liability for that communication, even if the manufacturer itself publicizes it in an effort to warn the public.[50]

41. H.R. REP. NO. 93, *supra* note 21.
42. *Id.*
43. *Id.*
44. " 'Libel' is written defamation." Spence v. Funk, 396 A.2d 967 (Del. 1978). "Corporations may recover for defamatory statements," Trans World Accounts v. Associated Press, 425 F. Supp. 814 (N.D. Cal. 1977).
45. " 'Slander' is defined as an oral communication which tends to injure plaintiff in his trade or profession, or community standing, or lower him in the estimation of the community." Smith v. District of Columbia, 399 A.2d 213 (D.C. 1979).
46. Injurious Falsehood, or disparagement, then, may consist of the publication of matter derogatory to the plaintiff's title to his property, or its quality, or to his business in general, or even to some element of his personal affairs, or a kind calculated to prevent others from dealing with him, or otherwise to interfere with his relations with others to his disadvantage. The cause of action founded upon it resembles that for defamation, but differs from it materially in the greater burden of proof resting on the plaintiff, and the necessity for special damage in all cases.
PROSSER, LAW OF TORTS § 128 (4th ed. 1971).
47. " 'Publication' of defamatory words means to communicate orally or in writing or in print to some third person capable of understanding their defamatory import, and in such a way that he did so understand . . ." Houston Belt & Terminal Ry. Co. v. Wherry, 548 S.W.2d 743 (Tex. Civ. App. 1976), *appeal denied*, 434 U.S. 962 (1977).
48. *See* McLaughlin v. Copeland, 435 F. Supp. 513 (D. Md. 1977); Carson v. Southern Ry. Co., 494 F. Supp. 1104 (D. S.C. 1979).
49. *See* Colvin, *supra* note 25.
50. In the past, courts generally held that there could be no liability if the plaintiff himself made the publication to a third party, *see* Lyle v. Waddle, 144 Tex. 90, 188 S.W.2d 770 (1945). An

Another civil action, deceit, may be possible where a claim of defamation or injurious falsehood fails for lack of publication. Deceit involves five elements: (1) a material misrepresentation of fact; (2) scienter;[51] (3) intent to cause reliance; (4) justifiable reliance; and (5) damages.[52] A consumer who deliberately made a false claim of a harmless tampering and expected the manufacturer to detrimentally rely on his information might be liable for the resulting damages. A problem may arise as to whether a business' reliance on a false claim was justifiable, but many courts do not require a plaintiff to have verified an apparently valid report.[53]

Nevertheless, even if an injured business can prove the elements of deceit or some other tort, it still must decide whether to bring a lawsuit at all. Such a tort action may be time-consuming and costly for the company, and the tort feasor may not have enough assets to even begin paying the company its damages. Furthermore, the same publicity which might foster deterrence could also prolong an ugly incident in the public's memory.[54] In any event, it seems unlikely that the threat of a lawsuit would deter persons of limited means from making false claims of harmless tamperings in hopes of winning a settlement from a manufacturer.

Thus, civil remedies might be available in some instances involving false claims of harmless tamperings, but not for all such acts. Even if there is an opportunity for a civil law suit, there would most likely be no chance for meaningful recovery, and no way to prevent the action from generating bad publicity. Civil remedies alone cannot adequately protect business entities from the threat of false claims of harmless tamperings.

THE NEED FOR A FEDERAL CRIMINAL LAW

The absence of effective civil remedies does not of itself justify the

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exception was sometimes made where the plaintiff acted out of necessity, *see* Bretz v. Mayer, 1 Ohio Misc. 59, 203 N.E.2d 665 (1963). More recently, recovery has been allowed where a reasonable person could realize that he is creating an unreasonable risk of the defamatory matter being communicated to a third party by the plaintiff, *see* First State Bank of Corpus Christi v. Ake, 606 S.W.2d 696 (Tex. Civ. App. 1980).

51. A majority of states define scienter as knowledge of falsity or reckless disregard of truth or falsity. *See* Limited Flying Club, Inc. v. Wood, 632 F.2d 51 (8th Cir. 1980); Manchester Bank v. Connecticut Bank and Trust Co., 497 F. Supp. 1304 (D. N.H. 1980); Idress v. American University of the Caribbean, 553 F. Supp. 485 (S.D.N.Y. 1982).

52. Mallis v. Bankers Trust Co., 615 F.2d 68 (2d Cir. 1980), *cert. denied*, 449 U.S. 1123 (1981).

53. *See* Holdsworth v. Strong, 545 F.2d 687 (10th Cir. 1976), *cert. denied*, 430 U.S. 955 (1977); Old Sec. Life Ins. Co. v. Waugneux, 484 F. Supp. 1302 (S.D. Fla. 1980); *but see* Federal Deposit Ins. Corp. v. Lesselyoung, 476 F. Supp. 938 (E.D. Wis. 1979), *aff'd*, 626 F.2d 1327 (6th Cir. 1979), where the court held that one cannot justifiably rely on a representation if its falsity could have been discovered with ordinary care.

54. *Hearings on S. 216*, *supra* note 24, at 40, 49 (statement of Gary Kushner, Vice President and General Counsel, American Meat Institute). Mr. Kushner also stated that he could not imagine any tort that would cover a hoax or false claim. George Green, General Counsel to the Food Marketing Institute, and Stephen W. Grafman of the Grocery Manufacturers of America, concurred in Mr. Kushner's assessment that civil suits are inadequate for businesses seeking a remedy in tampering incidents.

enactment of a federal criminal law dealing with false claims of harmless product tamperings. In its report on H.R. 2174,[55] the House Judiciary Committee stated that ". . . [f]ederal criminal laws, cannot be used to redress all wrongs, whether to an individual or a corporation."[56] The issue then is whether or not this problem is of sufficient importance to warrant criminal sanctions. To resolve this issue, important business and societal interests must be weighed.

During the House debate on H.R. 2174 on May 9, 1983, Representative Cardiss Collins (D-Ill.) argued that members of the business community have a right to pursue their dealings without fear of their reputations being marred by persons whose acts are "simply for the perverse pleasure of wreaking havoc with a nation of consumers and manufacturers."[57] Although the Justice Department opposed sanctions for harmless tampering hoaxes, its officials spoke of the harm to businesses which could result from tampering incidents. Assistant Attorney General D. Lowell Jensen stated that manufacturers may suffer "enormous financial losses and severe damage to the reputations of their otherwise useful and necessary products."[58]

Still, some might consider it inappropriate to enact criminal laws for protecting reputations of private, profitmaking businesses. The effect of a false claim of a harmless tampering, however, may often go far beyond the immediate damage to a manufacturer. The recall of products as a result of harmless tampering hoaxes can affect consumers by causing temporary or permanent unavailability of goods, or diminishing consumer confidence.[59] This, in turn, could lead to decreased competition, fewer choices of merchandise, and overall "dramatic adverse effects" on the economy.[60] Furthermore, the publication of harmless tampering hoaxes could lead to "copy cat" acts, some possibly involving risk to human health.[61] All of this could serve to lead consumers to believe that they are playing "Russian roulette" when buying and consuming products.[62]

The version of the Federal Anti-Tampering Act as passed by the Senate would have provided protection to business, and through that, protection to consumers. In its report on S. 216,[63] the Senate Judiciary Committee cited instances where federal criminal laws are currently used to protect businesses.[64] The Committee also cited federal laws pertaining to destruction of aircraft and aircraft facilities, including

55. H.R. REP. NO. 93, *supra* note 21.
56. *Id.*
57. 129 CONG. REC. H2703, 2707 (daily ed. May 9, 1983).
58. *Hearings on S. 216*, *supra* note 24, at 5.
59. *Id.*
60. *Id.* at 6.
61. S. REP. NO. 69, *supra* note 3, at 8. *See also* Church, *supra* note 2.
62. *Hearings on S. 216*, *supra* note 24, at 3 (statement of Rep. Harold Sawyer, R-Mich.).
63. S. REP. NO. 69, *supra* note 3.
64. *Id.* at 8. Among those cited were provisions dealing with embezzlement and destruction of a vessel to defraud an insurer.

provisions of false claims of such acts.[65]

Like the Federal Anti-Tampering Act, these statutes prohibiting false claims of attempted destruction of aircraft and aircraft facilities were enacted in response to tragedies involving the deaths of numerous innocent persons in a series of aircraft bombings during the 1950's.[66] Addressing this tragedy, Congress noted that beyond the appalling loss of life, these incidents and false claims of similar sabotage resulted in serious disruption of the flow of interstate air traffic.[67] To protect the interests of commercial airlines and the well-being of passengers, this statute was extended beyond threats of aircraft destruction, and written to include sanctions for the destruction of any airline property, without distinction as to passenger safety.[68] As a result, claiming to have placed a small explosive device in a disused warehouse on the edge of an airport is a federal crime, although there is no risk of injury to passengers or employees. Furthermore, the section covering false claims sets forth separate penalties for threats involving reckless disregard for human safety and those which do not, illustrating that Congress was concerned with more than just the physical well-being of air travelers.[69]

Thus it is clear that federal criminal laws have been used in the past to protect business interests, especially where a public interest is also protected. As a result, a statute which protects businesses and consumers from the effects of false claims of harmless product tamperings is undoubtedly a proper use of federal criminal law.

Even if sanctions for false reports of harmless tamperings are a proper function for federal criminal law, the question of whether such a law is necessary remains. In testimony before the Senate Judiciary Committee, Assistant U.S. Attorney General D. Lowell Jensen stated that there was no pattern of prior occurrences of harmless tampering hoaxes to suggest that a problem existed, and that damages from a false claim of harmless tampering would be less than those if the claim were of a dangerous act.[70] This view, however, is not wholly accurate. While incidents like the Tylenol tragedies, which involve massive, costly recalls, have not resulted from false claims of tamperings harmless to human health, other reasons for providing sanctions against

65. 18 U.S.C. §§ 32, 35 (1982).

66. H.R. REP. No. 1979, 84th Cong., 2d Sess. (1956), *reprinted in* 1956 U.S. CODE CONG. & AD. NEWS 3145, 3147 (statement of Sinclair Weeks, Secretary of Commerce).

> With the volume of air traffic steadily increasing, the need for equivalent peacetime protection of air traffic has become acute. Tragedies and near-tragedies, such as the case in Canada where a bomb placed on a commercial airliner exploded while the aircraft was in the air, causing the death of all aboard; the case in California where a man attempted to murder his wife by placing in her luggage an improvised bomb set to explode while the aircraft was in flight; and the most recent case in Colorado, where a man is being held for having caused the explosion of an aircraft in flight which killed all 44 persons aboard, are examples of the urgent need for such legislation.

67. *Id.* at 3146.

68. 18 U.S.C. § 32 (1982).

69. 18 U.S.C. § 35 (1982).

70. *Hearings on S. 216*, *supra* note 24.

hoaxes abound. An incident which does not cost a manufacturer much in recall expenses might nevertheless have a lasting effect on the company's reputation. Undoubtedly, a rumor of even a deficiency in a product can cause serious damage to the product's reputation and marketability, even when the rumor itself seems absurd.[71] Arguably, merely leaving the possibility of a false claim of a harmless tempering invites someone to make such a false claim under circumstances where a large scale recall might be necessary.[72] As Gary Kushner of the American Meat Institute told the Senate Judiciary Committee:

> There is no sense in having a loophole in the law that someone can get through because he says look, I knew it was a harmless dye product, I knew it cannot hurt anybody, and I did it because I did not intend to harm anybody, therefore, Mr. Prosecutor, I am not guilty of anything under this statute, and if you charge me, I am going to walk out the back of the courtroom.[73]

A statute, such as the Senate version of the Federal Anti-Tampering Act, also might be difficult, if not impossible, to enforce in many cases because of the ease in making an anonymous report as observed in connection with other laws dealing with false claims.[74] The United States Code, however, contains numerous provisions prohibiting conduct which involves similar enforcement difficulties and where the crimes are often accomplished in anonymity.[75] Furthermore, the fact that the culprit of the Tylenol poisonings has not been apprehended[76]

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71. S. REP. NO. 69, *supra* note 3, at 8. Two incidents which occurred over several months in 1978 and 1979 illustrate the potential power of a seemingly unbelieveable rumor to damage a business. First, the McDonald's chain of fast food restaurants was forced to spend thousands of dollars on public relations and advertising to dispel nationwide rumors that its hamburgers were made partially with worms. During the same period, the General Foods Corporation spent a similar amount of money to overcome a national rumor that its "Pop Rocks" candy would cause a fatal explosion when mixed with carbonated soft drinks in the human stomach. Of course, the money spent on combating these rumors does not constitute the totality of damages. The rumors' effect upon sales must also be considered. Rosnow, *Lives of a Rumor*, PSYCHOLOGY TODAY, June, 1979, at 88. *See also* Rown, *Where Did That Rumor Come From?*, FORTUNE, Aug. 13, 1979, at 130.

72. *Hearings on S. 216*, *supra* note 24, at 45 (statement of Gary Kushner, Vice President and General Counsel, American Meat Institute).

73. *Id.*

74. H.R. REP. NO. 1979, *supra* note 66, at 3150 (statement of William P. Rogers, Deputy Attorney General).

> In considering such legislation it should be noted that the majority of those false reports which have been called to the attention of the Federal Bureau of Investigation have been anonymous telephone calls. In connection with a call of this kind, the facts present little basis for logical investigation, and an exhaustive investigation covering all conceivable possibilities would call for the assignment of a considerable number of investigators over an extended period of time. In considering the possibility of prosecution under such a provision, it is logical to assume that a large percentage of persons making such reports would, if located, be found to be juveniles, inebriates, or persons of doubtful sanity.

75. *See* 47 U.S.C. § 223 (1976) (obscene and harassing phone calls); 18 U.S.C. § 35 (1982) (false information of an attempt to destroy an aircraft, motor vehicle or railway train); 18 U.S.C. § 871 (1982) (threats against the President or successors to the President); 18 U.S.C. § 873 (1982) (blackmail); 18 U.S.C. § 876 (1982) (mailing threatening communications).

76. Investigators were unable to discover a motive or a suspect for the Tylenol murders. James W. Lewis was arrested and charged with mailing a letter to Johnson & Johnson, Tylenol's

did not dissuade Congress from enacting a statute[77] to punish product tamperers.

CONCLUSION

Ever since the tragedy of the Tylenol murders in Chicago shocked the nation, product tampering and false claims of product tampering have become a serious concern for American business. Congress and the President acted wisely in enacting the Federal Anti-Tampering Act as a means of deterring conduct of this kind, but their efforts have fallen short of the full measure of protection needed.

False claims of physically harmless tamperings have a very real potential for damaging private business concerns. Apart from the wholly legitimate objective of protecting the interests of these businesses, such protection would shield consumers from apprehension caused by constant reports of altered products and promote stability in our economy. Current civil remedies are inadequate to deal with the situation, and it is doubtful that any civil action could ever provide meaningful deterrence or relief of damages. The only means which can consistently protect the interests of the business community and the general public in these circumstances is a federal criminal law.

Admittedly, a pattern of false claims of harmless tampering acts has not developed, but to refuse to provide protection on this ground is merely to wait for disaster, or worse, to invite it. In light of the sudden and unexpected nature of the incidents which led to the passing of this Act, precaution is clearly the best course when dealing with any product tampering situation. Rather than wait for some criminal or demented mind to inflict significant damage on an American business simply by contacting a newspaper and creating a fictional report that some product is apparently unfit, Congress should legislate to restore to the Federal Anti-Tampering Act those provisions proscribing false claims of harmless tamperings.

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manufacturer, in which he demanded $1,000,000 to "stop the killing." However, it was determined that Lewis had had nothing to do with the actual tampering. *Trial Begins for Suspect in Tylenol Extortion*, N.Y. Times, Oct. 17, 1983, at A12, col. 6.

77. Federal Anti-Tampering Act, Pub. L. No. 98-127, § 3, 92 Stat. 832 (1983) (to be codified at 18 U.S.C. § 1365).

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