

Syllabus

IN THE MATTER OF

J. L. HEAPS, TRADING UNDER THE NAME CIVIL
SERVICE CORRESPONDENCE SCHOOL

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER
26, 1914

Docket 1354—June 30, 1926

SYLLABUS.

Where an individual engaged in conducting a correspondence school for those who wished to take civil service examinations for such positions as departmental clerkships, railway mail clerkships, etc., and in no way connected with the United States Civil Service Commission or the United States Government or authorized to act in their behalf,

- (a) Used the words "Civil Service" as a part of his trade name and displayed the same on his letterheads and other stationery, and in his advertising matter;
- (b) Placed pictorial representations of the Capitol, "Uncle Sam", a scroll surmounted by an eagle, and the shield of the United States, inclosed in a frame of red, white and blue, upon the front cover of his catalogues, and made statements therein and in his advertisements implying that he was connected with the aforesaid commission and engaged in behalf of the Government in securing needed employees;
- (c) Falsely represented in his catalogues that examinations by said commission to secure such employees were pending and that by reason of his possession of knowledge not enjoyed by others in reference to the matters herein concerned his courses were of particular value; and
- (d) Represented in his catalogues and advertisements that his courses consisted of questions and answers similar to those that would be propounded by the commission in its examinations and implied that customers and students would promptly secure employment by successfully passing the same, the fact being that the questions propounded were entirely different, that students could have obtained from the commission without charge sample sheets and descriptions of the examinations and any other information properly communicable in advance to applicants, that the relative weight or credit given by the commission for the successful passing of many subjects was erroneously set forth in said catalogues, and that employees of the kind herein concerned were not needed at the time, and that said individual could not and did not secure prompt employment for his students;

With the effect of misleading and deceiving many persons into believing him to be connected with the aforesaid commission and acting for the Government and of inducing persons who otherwise would not have done so, to purchase his courses of instruction, in the belief that by so doing and completing the same they would promptly become eligible for and secure employment with the Government:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. E. J. Hornbrook for the Commission.

Complaint

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SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, engaged in the sale of "courses of instructions" to persons in the various States, doing business under the trade name Civil Service Correspondence School, and with principal place of business in Philadelphia, with using misleading trade name, misrepresenting business advantages and connections, and advertising falsely or misleadingly, in violation of the provisions of section 5 of such act prohibiting the use of unfair methods of competition in interstate commerce, in the doing of the following alleged acts and things:

Respondent, as charged, being neither connected with the United States Government, nor the Civil Service Commission, nor capable, by reason of any peculiar or unusual information or knowledge, or on other grounds, of materially aiding persons (not already qualified) in passing United States Civil Service examinations and securing positions in the classified service, in order to induce persons to purchase his courses of instruction, featured his aforesaid trade name in his various advertisements, and catalogues and other advertising matter, caused pictorial representations of the United States Capitol, of "Uncle Sam" and of the United States shield, to be placed thereon, and made among other false and misleading representations, the following (each of which was false) and which directly asserted or imported or implied:

(a) That respondent is an agent of, or is otherwise connected with the United States Government, or with the Civil Service Commission of the United States Government;

(b) That the United States Government is in need of employees and that the said Government is seeking to secure employees through respondent;

(c) That respondent is possessed of peculiar and unusual information, knowledge and ability, by reason of which respondent is enabled to qualify persons for the passing of examinations to be conducted in the future by the United States Civil Service Commission;

(d) That persons receiving respondent's said courses of instruction will be successful in passing examinations to be given by the United States Civil Service Commission and will obtain appointments to and employment in the classified civil service of the United States Government;

(e) That respondent, for 16 years, has been engaged in instructing and preparing persons to take United States Civil Service

examinations, and that by reason of such instruction and preparation, such persons so instructed and prepared by respondent have been and are successful in passing said United States Civil Service examinations;

According to the complaint, "The use by respondent of the words Civil Service in his aforesaid trade name, and the statements and representations made by respondent in advertisements as aforesaid, had and have the capacity and tendency to, and did and do, mislead and deceive many of the public throughout the United States into the erroneous belief that persons purchasing and taking respondent's said courses of instruction, will, by reason of such courses, be enabled to pass United States Civil Service examinations and will secure employment from the United States Government, and many persons so deceived and misled, and so being of said erroneous belief, purchase said courses of study from respondent and pay unto said respondent the fees and charges imposed by said respondent for such courses of instructions;" all to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 719), the Federal Trade Commission issued and served a complaint upon the respondent, J. L. Heaps, trading under the name Civil Service Correspondence School, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondent having filed his answer herein, evidence was thereupon introduced in support of the allegations of the complaint and in support of the answer of the said respondent before an examiner of the Federal Trade Commission. Thereupon this proceeding came on for final decision and the Commission having duly considered the complaint, the answer thereto, and the evidence adduced, and being fully advised in the premises, makes this its report, stating its findings as to the facts, and conclusions drawn therefrom.

FINDINGS OF FACT

PARAGRAPH 1. The respondent is an individual with his principal place of business in the city of Philadelphia. He trades under the name "Civil Service Correspondence School." For more than 16 years last past, he has conducted a correspondence school under said trade name for the alleged purpose of tutoring those who wish to take civil service examinations for positions with the United States

Government, such as departmental clerkships, railway mail clerkships, post office clerkships, city and rural mail carriers, fourth class postmasters, custom house positions, internal revenue positions and stenographic positions. In the operation of this correspondence school respondent sells courses of instruction to persons located in various States of the United States, which instructions consist of printed questions and printed information.

PAR. 2. Respondent issues a catalogue and sends the same to customers and prospective customers in many States of the United States. Upon the front cover of this catalogue there appears a pictorial representation of the Capitol of the United States and a caricature of "Uncle Sam"; also a scroll surmounted by an eagle upon which scroll is printed "Departmental Clerks", "Railway Mail Clerks", "Post Office Clerks", "City Mail Carriers", "Rural Letter Carriers", "Fourth Class Postmasters", "Custom House Positions", "Internal Revenue Positions", "Stenographers and Typewriters", and at the bottom of the page flanked by two United States shields, appear the words "CIVIL SERVICE CORRESPONDENCE SCHOOL, PHILADELPHIA, PA." This entire picture is inclosed in a frame of red, white, and blue lines. The pictorial representations, wording, and coloring referred to in this paragraph, have the tendency and capacity to and do mislead and deceive a substantial portion of said customers and prospective customers into the belief that respondent's school is connected with, or is a part of, the United States Government.

PAR. 3. Respondent has advertised, and now advertises, its courses of instruction for rural mail carrier, postmaster, railway mail carrier, city mail carrier, post office clerk, stenographer, typewriter, departmental clerk, and other positions, in various weekly and monthly magazines and other periodical publications, all of which publications are circulated generally throughout the several States of the United States and the District of Columbia. Said advertisements import or imply that respondent is an agency of, or is connected with, the Civil Service Commission of the United States Government, and that as such agent respondent is authorized to, and is engaged in, securing for the United States Government employees for the various departments, branches of departments and bureaus of said Government. Respondent is not in any way connected with the United States Civil Service Commission, or any other department or branch of the United States Government, and is not authorized as agent, or in any other way, to secure employees for the Government, and the use by respondent of said advertisements in interstate commerce as above set forth, has the capacity and tendency to and does mislead

and deceive many persons in various parts of the United States into the belief that respondent is a part of, or connected with, the United States Civil Service Commission, and is an agent of said Commission, and to purchase respondent's said courses in such belief.

PAR. 4. Respondent has had printed many of the catalogues described in paragraph 2 hereof and has distributed and circulated, and is now distributing and circulating, the same throughout the various States of the United States and the District of Columbia. There are many statements in said catalogue which import and imply that respondent is an agent of, or connected with, the United States Civil Service Commission, and that as such agent respondent is authorized to and is engaged in procuring for the United States Government employees for the various departments, branches of departments and bureaus of said Government. Such statements import and imply that the Government of the United States is in need of such employees and is seeking to secure the same through respondent, and that respondent is possessed of information, knowledge and ability not possessed by or available to others, which makes respondent's said courses of instruction of unusual value and merit to its customers or students, for the reason that such information and knowledge is or will be imparted to such students in respondent's courses of study; and respondent in said catalogue offers this knowledge or information claimed by said respondent as an inducement to the public to purchase its course or courses of instruction. Respondent further represents in its catalogue that its courses of instruction consist of questions and answers similar to the questions and answers that will be propounded by the United States Civil Service Commission to those taking an examination, or examinations, and imports and implies that its customers and students promptly will secure employment in the departments or bureaus for which such customers or students are seeking to become eligible by successfully passing the examination therefor prescribed by the Civil Service Commission. The use by respondent of such statements in his catalogue, circulated in interstate commerce as aforesaid, has the capacity and tendency to, and does, mislead and deceive many persons in various parts of the United States into the belief that respondent is a part of, or connected with, the United States Civil Service Commission, and is an agent of said commission, and to purchase respondent's course or courses of study in the belief that by so doing they will secure information not possessed by others, and that they will secure an advantage over others taking civil service examinations and will be assured of securing employment after successfully passing the examinations through the assistance of respondent.

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PAR. 5. Since the complaint was filed in this case, respondent has had printed on the inside of the back cover of the catalogues which he uses, the following words:

NOTICE.—Our school is in no way connected with the Civil Service Commission or the U. S. Government.

Such words or explanation do not appear on any of the letters, letterheads, envelopes, examination papers, or other advertising literature used by respondent, upon all of which appear respondent's trade name, Civil Service Correspondence School. Said words or explanation are printed in an inconspicuous place at the end of respondent's catalogue and are not sufficient to put an ordinarily prudent person on notice that respondent is not connected with the United States Government.

PAR. 6. There are many correspondence schools, competitors of respondent, engaged in interstate commerce, purporting to give the same courses of instruction as respondent in preparation for civil service examinations, which do not use the words "civil service" in connection with their trade name or advertisements, and which schools do not advertise falsely or make false representations concerning their respective businesses.

PAR. 7. The use of the term "civil service" as a part of the trade names of correspondence schools has caused confusion in the United States Civil Service Commission. This confusion has been so great that the commission has been compelled to insert in its examination announcements and also in many of its pamphlets, a paragraph to the effect that the United States Civil Service Commission has no connection whatsoever with so-called civil service schools. The Civil Service Commission has been in receipt, for a number of years last past, of communications from persons in different places throughout the country, in which they indicated that the writers thereof were under the impression that these schools were either under the direction of the Government, or immediately connected therewith. The Civil Service Commission, for a number of years last past has been in receipt of a number of registered letters from students of such institutions containing money in payment for courses in the so-called civil service schools, and has also, for a number of years last past been in receipt of many lesson sets disseminated by these schools, which have been sent to the commission for correction. The Civil Service Commission has also received, during several years last past, many demands for return of money paid as tuition to these so-called civil service schools, from students thereof, who have been led to believe that in dealing with these schools they were dealing directly with the United States Government. All of the corre-

spondence mentioned above has been an annoyance to the Civil Service Commission and an added expenses to the same, necessitating much unnecessary and useless correspondence. There have been many instances of complaint to the Civil Service Commission from students of these schools, because they were not obtaining positions as a result of the examinations held by such civil service schools.

PAR. 8. Respondent is not a part of the United States Civil Service Commission and is not in any manner connected with the Civil Service Commission, and is not in any way connected with the United States Government, but is engaged in business for profit, and is in no way employed by or authorized by the United States, or by the said Civil Service Commission to secure employees for the United States Government in any department or bureau thereof referred to in said catalogue. During nearly all of the time that respondent was advertising as aforesaid, the United States was not in need of employees in its departments, branches or bureaus of the class, degree, kind or character mentioned in respondent's catalogue, and the register or roll of eligibles maintained by the Civil Service Commission contained the names of eligibles to appointment in the various departments or branches of departments, or bureaus of the Government more than sufficient to meet and fulfill the immediate or known requirements of the United States Government; and respondent could not and did not secure prompt employment for any of its customers or students. Respondent falsely advertised in said catalogue that examinations were pending before the Civil Service Commission, when no date for such examinations had been fixed by the Civil Service Commission, and it was not known when the same would be held, and such examinations were not held at the time and place stated by respondent in his said catalogue. Respondent represented in its catalogue that in its courses of instruction were contained the same matter, and were similar to the questions that would be propounded in the examinations of the Civil Service Commission. The questions propounded in the examinations conducted by the Civil Service Commission are and were entirely different from those furnished by respondent in his courses and the relative weight or credit given by the Commission for the successful passing of many subjects was and is erroneously stated in respondent's catalogue, and respondent's courses include instruction in many subjects which are not now used by the Civil Service Commission in its examinations. Respondent's students could have obtained from the Civil Service Commission, free of charge, sample sheets and descriptions of the extent and character of such examinations, and any further informa-

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tion concerning the examinations which properly may be communicated in advance to applicants for such examinations, all of which was known to respondent. The use by respondent of the representations and statements above set out have the tendency and capacity to and do deceive and mislead many persons in various States of the United States into the belief that respondent is a part of or connected with the United States Civil Service Commission; and said representations have the tendency and capacity to and do mislead and deceive many persons in the various States of the United States into the belief that by purchasing and pursuing the appropriate course or courses of study from respondent, they will become qualified and eligible to employment in the departments of the United States, or the branches of departments or bureaus to which said course of instruction of respondent related or relates, and that having purchased and pursued and completed such course or courses of study they would, through the agency and effort of the respondent, promptly secure employment in a department or branch of a department, or bureau of the United States Government.

PAR. 9. The use by respondent of the words "civil service" as a part of his trade name in his catalogue, advertisements, letters, letter-heads, circular letters, circulars, examination papers, and other literature has the tendency and capacity to, and does, mislead and deceive many persons in various parts of the United States into the belief that respondent was and is a part of or connected with the United States Civil Service Commission, is an agent of said Commission, and is acting officially for the United States Government.

PAR. 10. The representations and statements made by respondent in his catalogue and other advertising literature as set forth above have the tendency and capacity to, and do, mislead and deceive many persons in various parts of the United States into the belief that respondent was and is a part of the United States Civil Service Commission, is an agent thereof, and is acting officially for the United States Government, and acting in such belief many persons purchased respondent's course or courses of instruction, and paid respondent therefor; and said representations had and have the capacity and tendency to mislead and deceive, and did mislead and deceive, many persons in various States of the United States and the District of Columbia into the belief that by purchasing and pursuing the appropriate course or courses of study from respondent, they would become qualified for and eligible to employment in the service of the United States in the departments, or branches of departments, or bureaus to which said course of instruction of respondent related or relates, and that, having purchased and pursued and completed

such course of study, they would, through the agency and effort of respondent, promptly secure employment in a department, or branch of a department, or bureau of the United States Government; and, being so misled and deceived, such persons were induced to, and did, purchase and pay for respondent's said course or courses of instruction, who otherwise would not have purchased the same.

CONCLUSION

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and respondent's competitors and are unfair methods of competition in interstate commerce, and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer thereto and testimony and evidence submitted, the trial examiner's report upon the facts, and the Commission having made its findings as to the facts, with its conclusion that the respondent has violated the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

Now, therefore, it is ordered, That the respondent J. L. Heaps, trading under the name Civil Service Correspondence School, his agents, representatives, servants, and employees, do cease and desist from:

(1) Using and displaying the words "Civil Service" as a part of a trade name or upon catalogues, letterheads, stationery, letters, advertisements, circulars, literature, or other advertising matter or otherwise in connection with the solicitations of customers or students or the sale of its course or courses of instruction.

(2) From publishing and circulating or causing to be published and circulated throughout the various States of the United States, advertisements, circulars, booklets, letters, circular letters, catalogues, literature or any other printed or written matter wherein it is stated, implied or imported or held out to the public:

(a) That it is a part of the United States Government or of the United States Civil Service Commission, or in any manner connected therewith.

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(b) That the United States Government is in need of employees to be selected, appointed and employed from the register of eligibles of the United States Civil Service Commission.

(c) That the United States Government is seeking employees through respondent.

(d) That respondent's customers or students will secure employment in the Civil Service of the United States.

(e) That an examination or examinations prescribed by the Civil Service Commission is or are pending when not announced by said Civil Service Commission.

It is further ordered, That respondent shall within sixty days from the notice hereof file with this Commission a report in writing, stating in detail the manner in which this order has been conformed with.

Complaint

IN THE MATTER OF

JACOB BUSCH

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914

Docket 1066—July 7, 1926

SYLLABUS.

Where it had been long known that the City of Sheffield, England, and its vicinity constituted that country's largest producing area of silverware and silver-plated ware and the center of its silver industry, and such products there made had come to be highly regarded by the trade and public, and the words "Sheffield," "Sheffield Silver," "Sheffield Plate," and "Sheffield Silverplated Ware" had come to denote to a substantial portion of the public that the products so designated had been manufactured in Sheffield, England, and were of the quality or nature which had become associated with that name and industry; and thereafter an American dealer in silver-plated ware made by the electroplating process sold said ware with the word "Sheffield" and other combinations including the word "Sheffield" impressed thereon, notwithstanding the fact that the same was not manufactured in Sheffield but was of domestic origin and not of that quality associated with the term "Sheffield" as above set forth; with the effect of inducing the purchase of the aforesaid ware thus misrepresented as to origin and quality, by a substantial portion of the trade and public in preference to the product of competitors dealing in silver-plated ware manufactured in Sheffield, England, and of competitors dealing in products not there manufactured and not thus misrepresented, including concerns which, in the absence of any fixed standards for the ware in question, fairly and truthfully represented and identified their products by a firm or house name or nondescriptive trade name, the standard for which they severally fixed and determined or in unison agreed upon and maintained, and to the prejudice and serious injury of the aforesaid competitors from whom trade was thereby diverted:

Held, That the sale of products branded, as above set forth, constituted an unfair method of competition.

Mr. John R. Dowlan for the Commission.

Glenn & Ganter and *Mr. Leslie H. Buckler*, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an individual engaged in the purchase of silver-plated ware and in the sale thereof to wholesale and retail dealers in various