

Complaint

IN THE MATTER OF
HANFORD F. SMITH

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

Docket 1456. Complaint, Apr. 19, 1927—Decision, June 30, 1927

Where an individual engaged in conducting a correspondence school from his residence without the assistance or services of any other person; in advertising and describing said school in letters, catalogues, etc., sent to prospective pupils, and through oral statements by his agents,

- (a) Falsely represented that (1) his courses of study were offered by "Princeton University," and, in some instances, by "Princeton N. I. University", setting forth the aforesaid names upon his envelopes, letterheads and other stationery, together with a list of purported professors and instructors on the faculty thereof, and the various branches of learning taught by them, and, separately, a list of the arts, sciences, trades and branches of learning purportedly offered to pupils by such fictitious educational institution; and (2) that such institution maintained and conducted sundry departments in which were taught, respectively, various courses of instruction; (3) was manned by a large and properly qualified faculty of professors and instructors who were learned and skilled in the teaching of said courses; and (4) owned and possessed sundry buildings and grounds in which its educational activities were conducted and carried on; and
- (b) Falsely represented that such fictitious institution would confer appropriate degrees and diplomas upon pupils taking the various courses, and, in accordance with such representation sent pupils a pretended diploma purporting upon its face to be the official diploma thereof;

With the effect of causing many of the public to take and purchase his courses of instruction, in reliance upon the truth of such statements and representations, and of diverting business, from and otherwise prejudicing competitors who did not falsely represent the nature and character of their business and professional organization, and of the courses offered by them;

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

Mr. Robert O. Brownell for the Commission.

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 teaching various arts, sciences, trades and branches of knowledge to persons in various States, by mail, and from his personal habitation in Elkhart, Ind., and with-

Complaint

11 F. T. C.

out the assistance or services of any professor, instructor or other person whatsoever, with advertising falsely or misleadingly, and misrepresenting services, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, for about five years preceding the complaint, in his letters to prospective pupils, and in his trade literature and through oral representations by his agents, made many false and misleading statements and representations, concerning his courses, including the following:

(a) That such courses were those of an educational institution named "Princeton University," and in some instances "Princeton N. I. University"; setting forth the aforesaid names upon its catalogues, pamphlets, envelopes, etc., used in conducting his said business, together with a list of purported professors and instructors, constituting ostensibly the faculty, along with the arts, sciences, etc., supposedly taught by them and, separately, a list of such purported arts, etc., ostensibly offered by such institution;

(b) That it maintained various departments in which said courses were respectively taught;

(c) That it was manned by a large and properly qualified faculty of professors and instructors, learned and skilled in the teaching of the various courses;

(d) That said purported, Princeton University, or, in some instances, Princeton N. I. University, would confer appropriate degrees and diplomas upon pupils completing its courses, and sending its pupils a purported diploma appearing upon its face to be that of the aforesaid institution;

(e) That it possessed and owned various buildings and grounds in which its educational activities were conducted; and

(f) Many other false and deceptive statements and representations of like kind and character.

Such false and deceptive statements and representations, as charged by the complaint, had the capacity and tendency to cause, and did cause, many of the public to purchase respondent's courses of instruction and pay respondent substantial sums therefor, believing in the truth thereof, and had the tendency to and did divert business from and otherwise injure and prejudice competitors who did not thus misrepresent "the nature and character of their business and professional organization and the nature and character of the courses

of study" offered by them; 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, the Federal Trade Commission issued and served a complaint upon the respondent, Hanford F. Smith, charging him with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act of Congress.

Respondent having entered his appearance and filed his answer herein, and having made, executed and filed an agreed statement of facts in which it is stipulated and agreed by respondent that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case in lieu of testimony and proceed forthwith upon such agreed statement of facts to make its findings as to the facts and such order as it may deem proper to enter therein, thereupon this proceeding came on for decision, and the Commission, having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is an individual residing in the town of Elkhart, Ind. He is now and for more than five years has been engaged in the business of teaching sundry arts, sciences, trades and branches of knowledge to persons hereinafter referred to as pupils residing at points in various States of the United States. In the course of his said business respondent secures pupils for his said sundry courses of instruction by means of written correspondence which respondent carries on with prospective pupils, in the course of which correspondence respondent sends to such prospective pupils by mail letters, catalogs, pamphlets, leaflets, and other literature describing and explaining said course of instruction. Further respondent secures pupils through sundry agents whom respondent employs to, and who do, visit prospective pupils located at points in sundry States of the United States and personally solicit said prospective pupils to take respondent's said courses of instruction. Respondent supplies to said agents aforesaid catalogs, pamphlets, leaflets and other literature and said agents display said literature to prospective pupils in and about soliciting said prospective pupils to

Findings

11 F. T. C.

take respondent's said courses of instruction. Upon securing pupils through aforesaid means for his said courses of instruction, respondent sends by mail from his said residence in the town of Elkhart, Ind., to such pupils at their respective places of residence in various States of the United States, written lessons, instructions, examination papers and text books to be used by said pupils in and about studying respondent's said courses of instruction, in consideration of which said pupils pay to respondent certain agreed sums of money. In the course and conduct of his said business respondent is now and has been in competition with other individuals, partnerships, and corporations also engaged in the instruction of persons in sundry arts, sciences, trades and branches of knowledge, by correspondence through the mails.

PAR. 2. In all the aforesaid letters and literature and through oral representations made by aforesaid agents to prospective pupils, respondent has caused and causes to be set forth and made many false statements and representations concerning his said course of instruction among which statements and representations are the following:

(a) That respondent's courses of study are the courses of, and are offered by, an educational institution named and designated Princeton University and, in some instances, Princeton N. I. University. Upon aforesaid catalogs, pamphlets, leaflets and other literature and upon envelopes, letterheads and other stationery used by him in and about conducting his said business respondent causes to be set forth, in some instances, said name and designation "Princeton University" and in other instances said name and designation "Princeton N. I. University", together with a list of purported professors and instructors on the faculty of said purported educational institution, said names being listed in connection with the arts, sciences, trades and branches of learning which said professors and instructors, respectively, are purported to teach and, separately, a list of said purported arts, sciences, trades and branches of learning purported to be offered by said institution to pupils;

(b) That said purported educational institution maintains and conducts sundry departments in which are taught, respectively, said sundry courses of instruction;

(c) That said purported educational institution is manned by a large and properly qualified faculty of professors and instructors who are, respectively, learned and skilled in the teaching of said sundry courses of instructions;

(d) That upon pupils taking said courses, said purported Princeton University, and in some instances said purported Princeton N. I.

University will confer appropriate degrees, respectively, and in witness thereof will issue to each such pupil an appropriate diploma. In accordance with said representation respondent sends and supplies to his said pupils, severally, a purported diploma appearing upon its face to be the official diploma of said purported University;

(e) That said purported educational institution owns and possesses sundry buildings and grounds in which said purported educational activities of said institution are conducted and carried on.

PAR. 3. The said statements and representations set out in paragraph 2 hereof are, and each of them is, false. The fact is that respondent's said courses of instruction are not offered and given by any educational or other institution whatsoever, and respondent has conducted and conducts his said business alone from his personal habitation in said town of Elkhart, Ind., and without the assistance or services of any professor, instructor or any other person whatever.

PAR. 4. The aforesaid false statements and representations made by respondent as set out in paragraphs 2 and 3 hereof have the capacity and tendency to and do cause many of the public to take and purchase respondent's said courses of instruction and to pay respondent sums of money therefor in the belief that said statements and representations are true.

PAR. 5. There are among the competitors of respondent referred to in paragraph 1 hereof many who do not falsely represent the nature and character of their business and professional organization and the character and nature of the courses which they offer, and respondent's acts and practices all as hereinbefore set out tend to and do divert business from and otherwise injure and prejudice said competitors.

CONCLUSION

The practices of 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 commerce and constitute a violation of an 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 upon the complaint of the Commission, the answer of respondent, and an agreed statement of facts, and the Commission

Order

11 F. T. C.

having made its findings as to the facts and its conclusion that respondent has violated the provisions of an 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",

It is now ordered, That the respondent, Hanford F. Smith, his agents, servants and employees do cease and desist:

(1) From representing in catalogs, pamphlets, or on envelopes and letterheads or by any other means whatever that the courses of study or instruction supplied by respondent are courses supplied by Princeton University or any other institution, or that such courses are prepared or endorsed in whole or in part by any professor or instructor other than himself, when said statements or any of them are not true.

(2) From giving, conferring or offering to give or confer a degree or diploma purporting to be the degree or diploma of Princeton University or any institution, educational or otherwise.

It is further ordered, That the said respondent shall, within 30 days after the receipt of this order, file with the Commission a report in writing setting forth the manner and form in which he has complied with this order.

Syllabus

IN THE MATTER OF

FAMOUS PLAYERS-LASKY CORPORATION, REALART PICTURES CORPORATION, THE STANLEY COMPANY OF AMERICA, STANLEY BOOKING CORPORATION, BLACK NEW ENGLAND THEATERS, INC., SOUTHERN ENTERPRISES, INC., SAENGER AMUSEMENT COMPANY, ADOLPH ZUKER, JESSE L. LASKY, JULES MASTBAUM, ALFRED S. BLACK, STEPHEN A. LYNCH, ERNEST V. RICHARDS, JR.

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

Docket 835. Complaint, Aug. 30, 1921¹—Decision, July 9, 1927

Where two individuals, organizers, presidents, and dominating spirits in two of the only three corporations then engaged in the production and distribution of "feature" pictures, and constituting the leading producing concerns in the motion picture industry;

- (a) Conspired to create a combination in restraint of competition and trade in the production of motion-picture films, and to create a monopoly therein, and in pursuance of said conspiracy, which they consummated, and with the intent and effect of creating a combination of producers of feature pictures, to produce and lease full programs sufficient to use all of an exhibitor's available time, and thereby exclude such exhibitor from showing competitive films;
- (1) Entered, through their respective corporations, and along with said third corporation, into an agreement with a concern engaged exclusively in distributing pictures for its corporate distributor owners, under its well-known and established trade-mark and with unique facilities for nation-wide distribution, giving said distributing concern the exclusive right to distribute all their films, each exhibitor to receive a full program of 104 pictures to be produced and furnished by them for such purpose; with the result that they thereby created in and for themselves a complete monopoly in the production and distribution of motion-picture films;
- (2) Acquired 50 per cent of the stock of the aforesaid distributing concern, which had theretofore acquired control of its distributors;
- (3) Incorporated a holding company (authorized also to carry on all branches of the industry) to acquire and hold the stock of their two companies, of said third corporation, and of a subsidiary created by it to produce feature pictures; with the intent of perpetuating and making more effective their aforesaid conspiracy, and of creating a convenient, permanent, and efficient instrumentality for the maintenance and operation thereof; and

Where said individuals and said holding company, in pursuance of the aforesaid conspiracy,

- (4) Caused to be transferred to it all the stock of the above four corporations and their physical assets, and said corporations to be dissolved;
- (5) Caused a company incorporated by them to engage in distributing pictures in competition with the aforesaid concern, featuring popular actors

¹Amended complaint, Feb. 14, 1923.