IN THE MATTER OF

T. G. COOKE, DOING BUSINESS UNDER THE TRADE NAME AND STYLE OF UNIVERSITY OF APPLIED SCIENCE

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

Docket 1502. Complaint, Mar. 13, 1928—Decision, Feb. 26, 1929

Where an individual engaged in the sale of a correspondence course in Finger Printing, Bertillon Identification and Secret Service Intelligence, and of a fingerprint outfit and apparatus accessory to the course, and with no corps of instructors other than one person chiefly engaged in grading pupils' examination papers, and using the same place of business as that of three other schools in which the aforesaid individual was financially interested,

(*a*) Advertised under the trade name "University of Applied Science" and signed form letters to prospective pupils as "President, University of Applied Science", making such statements as that there was "probably no other university president in the United States" "so close to his students and graduates" as himself, and otherwise representing his business as a university and himself as the president thereof; thereby implying to prospective pupils and to the public an institution of higher learning, with a group of learned instructors engaged in teaching the several sciences and the application thereof, and that pupils successfully pursuing its course of study would receive the benefit and advantages of the high reputation and prestige of such an institution;

(*b*) Represented to prospective pupils that he was offering them his course at a temporarily reduced price, making such statement as "This is a special rate made to a selected number of prospective students", "I don't want you to have to scrimp and strain to make good. * * * To do this I have made a very considerable concession", "These terms * * * open to you for *immediate* acceptance", the fact being that the pretended reduced price or concession was his regular price for the course and the articles and services sold therewith;

(*c*) Represented that he was offering the aforesaid articles and services to prospective pupils, free, and without compensation, the fact being that the price thereof was included in the regular charge for the course; and

(*d*) Represented that he furnished pupils with a life membership in an "actual and existing identification bureau", the fact being that there was no such organization pertaining to his business, but that reference was had to a cabinet with fingerprint records of a large number of anonymous persons, and that pupils coming to his place of business were afforded an opportunity of inspecting the same and of receiving instructions by means thereof in classifying, filing and searching for fingerprints;

With the capacity and tendency to mislead and deceive the public and induce persons to enroll as pupils in reliance upon the truth and accuracy of the aforesaid representations and in the erroneous belief that said business con-

stituted a university within the popular conception thereof and that pupils successfully pursuing the course would receive the benefit and advantages of the high reputation and prestige of such an institution:

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

Mr. Alfred M. Craven for the Commission.

McKercher & Link, 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 individual, engaged at Chicago under the trade name and style "University of Applied Science", in selling a course of printed instruction in fingerprint work and secret service intelligence, together with a complete fingerprint outfit for practical work[1] and a subscription, without cost to the pupil, to the only fingerprint magazine published, with using misleading trade name 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.

Respondent, as charged, engaged as above set forth, carries on all his advertising, correspondence, and other business only under the aforesaid trade name of University of Applied Science, thereby implying to the public and prospective pupils an institution of higher learning engaged in teaching the practical application and use of the several sciences usually taught in colleges or universities, together with a faculty, proper plant and equipment and high standards and that pupils successfully pursuing a course therein will receive the benefit and advantage of the high reputation and prestige of such an institution, the fact being that respondent, as above set forth, does not undertake to teach any subject other than the single one above referred to, nor operate or control a university within the popular conception or any proper conception thereof.[2]

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[1] Set forth in the complaint as consisting of "magnifying glass, fingerprint rolls, oil can, glass slab, counter, fingerprint cards, and other articles regarded as accessories and aids to the acquirement of the knowledge of, and to the use and practice of, said arts, sciences, professions, or trades."

[2] The allegations of the complaint with reference to the meaning and implication of the words "University", and "University of Applied Science", follow:

The word "University" carries by necessary implication to the public mind and to the minds of prospective pupils, and is commonly understood by the public to include and insure, an educational institution of higher learning with a single organization, a single faculty of learned persons acting as istructors in the various departments which severally give instruction in the several liberal arts and sciences embraced in the curriculum of said educational institution. Such curriculum is presumed to include the liberal arts and sciences, together with an additional subject or additional subjects of more advanced learn-

Respondent, further, as charged, in advertising his aforesaid course, and the articles and things supplied therewith, in newspapers, magazines, periodicals and other publications of general circulation in the United States and in the several States thereof, and in pamphlets, letters, circulars, and other forms of printed, written, or mimeographed matter, using his aforesaid trade name only, falsely and misleadingly represents that—

The course, with accessories, for which the regular price is $100, is being offered to pupils who shall enroll within a certain fixed time, at the temporarily reduced price of $70, the fact being that $70 is the regular full price for such course and accessories.

The course, with accessories, for which the regular price is $100 as above set forth, is offered to a limited number of selected prospective pupils at a special reduced price of $70, the fact being that such reduced price, as above set forth, is respondent's permanent full price, regularly and freely offered to all prospective pupils indiscriminately.

Prospective pupils are offered freely and without compensation to respondent, a fingerprint outfit (to wit, the articles and things above enumerated), employment bureau service for five years, and a course of instruction in secret service intelligence, the fact being that the price or cost of said pretended free gifts and service is included in the regular full price charged by respondent, and that they are not given to pupils without full payment therefor.

A life membership in an actual and existing identification bureau is included among the things of value furnished by respondent to pupils, the fact being that such bureau has no real existence and the promised life membership therein can have none.

The use by respondent of said trade name, and the statements and representations made as above set forth, as charged, have the tendency and capacity to mislead and deceive the public and prospective pupils and will probably mislead and deceive them into the erroneous belief that respondent is a university within the popular conception of the word and term, as hereinabove set forth, " and that pupils successfully pursuing a course of study therein will receive the benefit and advantage of the high reputation and prestige

ing. The name " University of Applied Science " carries by necessary implication to the public mind and to the minds of prospective pupils, and is commonly understood by the public to include and insure, such an institution of higher learning engaged in teaching the practical application and use of all or portion of the several sciences usually taught in colleges or universities. Such name by like necessary implication carries to the public mind the assurance of a group of such scholars and instructors engaged in such work, with a proper plant and equipment and with high standards of ability, character and conduct, and that pupils successfully pursuing a course of study therein will receive the benefit and advantage of the high reputation and prestige of such institution.

of such institution; that it is safe to rely and act upon statements and representations made by such university; that the several false statements and representations above set forth are made seriously and in good faith, and are true; and that, therefore, said university offers the best available opportunity for education, and that it is advisable to enroll as a pupil therein and pay to respondent the tuition so demanded by him."

Said acts and practices of respondent, as charged, are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5.

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, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission on the 13th day of March, 1928, issued and thereafter served upon respondent, T. G. Cooke, a complaint charging him with the use of unfair methods in competition in commerce, in violation of the provisions of section 5 of said act of Congress. The respondent, T. G. Cooke, having entered his appearance and filed his answer herein, a hearing was had and evidence was thereupon introduced and received on behalf of both the Commission and the respondent before an examiner of the Commission theretofore duly appointed. Thereafter this proceeding came on for decision upon the record, and the briefs of counsel for the Commission, having duly considered the matter and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

Paragraph 1. Respondent, T. G. Cooke, is now and since April, 1917, has been engaged in Chicago, Ill., under the trade name and style of University of Applied Science, in the business of selling and furnishing by correspondence a course of instruction in finger-printing, Bertillon Identification and Secret Service Intelligence, consisting in all of 54 printed lessons, to pupils residing at various places in the several States of the United States, and in selling to such pupils certain articles comprising a fingerprint outfit or apparatus accessory to said course of instruction.

PAR. 2. Respondent, when a pupil enters into a contract with him, and enrolls as such pupil, in consideration of the agreed cash tuition paid and agreed to be paid by such pupil, undertakes to sell and deliver to such pupil, through the United States mails and otherwise, the course of instruction and the fingerprint outfit described in paragraph 1 hereof. Thereafter and in pursuance of said contract with such pupils respondent furnishes and causes to be transported from his said place of business at Chicago, Ill., into and through the several States of the United States and delivered to such several pupils at their respective places of residence, the lessons comprising said course of instruction and the said articles comprising said fingerprint outfit. In all of his said business, and in the several parts thereof, and in the procurement of pupils to enroll as such, and to purchase said course of instruction and said articles, and to pay therefor, respondent is in competition with other persons, firms, and corporations, who are engaged in the same or similar lines of business activity in interstate commerce.

PAR. 3. In aid of his said business and for the purpose of inducing persons to enter into contracts with him and to enroll as pupils and to purchase the said course of instruction and the articles of merchandise comprising the fingerprint outfit, respondent causes advertisements of his said course of instruction, and of said articles of merchandise, to be inserted and made accessible to the public in newspapers, magazines, periodicals, and other publications of general circulation in the United States and throughout the several States thereof, and also in catalogues, pamphlets, circular letters, and other forms of printed, written, and mimeographed matter. In all such advertisements respondent by and under said trade name of University of Applied Science, makes the statements and representations hereinafter referred to, as follows:

(1) Respondent represents that he is offering prospective pupils said course of instruction, together with said articles of merchandise, for which the regular price is the sum of $100, at the temporary reduced and special price of $70. In a catalogue sent out by respondent to each prospective pupil, copyrighted in 1925, and used by respondent since that time, respondent states that the regular price of his said course of instruction is $100. From the year 1925 up to shortly after the commencement of this proceeding, to wit, March 13, 1928, respondent, in a form letter mailed with said catalogue to each prospective student, stated as follows:

The actual price of this course is $100. The regular terms are $20 down and $10 a month for 8 months. But to you, if you act quickly, they will be $70—only $5 down and $5 a month for 13 months—a reduction of $30, or 30 per cent.

In another form letter sent out by respondent to each prospective pupil, and used up to shortly after the commencement of this proceeding, respondent, in referring to the price of $70, said:

This is a special rate made to a selected number of prospective students to make up a new class.

The form letters above referred to were succeeded, shortly after the institution of this proceeding, by another form letter, which, thereafter and up to the present time, respondent has used, sending same out to each prospective pupil. In such form letter, the respondent, in reference to the price of $70, at which the course is offered, states:

So I have made the terms as low as business considerations will permit. I don't want you to have to scrimp and strain to make good. * * * To do this I have made a very considerable concession. If you act quickly, my terms will be $70—only $5 down and $5 a month for 13 months. * * * This is a wonderful opportunity for you. It gives you every advantage and privilege at a very considerable saving, and the terms are made exactly as you would like to make them yourself. The only condition is that you act quickly. These terms are open to you for *immediate* acceptance.

In truth and in fact, the said pretended reduced or special price of $70 is, and has been since the year 1925, the regular permanent and full price of said course of instruction, together with the articles of merchandise comprising the fingerprint outfit.

(2) The respondent represents that he is offering to give to prospective pupils, free and without compensation, the articles and things comprising the fingerprint outfit above mentioned, and also other articles or services; in truth and in fact, all of the said articles and things so represented as free gifts, are part of and included in the instruction, service, and articles for which pupils pay respondent in the payment of the regular price charged by respondent, as above set forth, and none of the said things so promised is given to pupils without payment therefor.

(3) Respondent represents that among the things of value furnished by him to pupils, is a life membership in an "actual and existing identification bureau". Respondent maintains at his place of business in Chicago, Ill., a filing cabinet designed to hold 10,000 card records of fingerprints. It is kept practically filled at all times with fingerprint records of anonymous persons, most of whom are dead criminals. Pupils of respondent, who may come to Chicago and respondent's place of business, are afforded the opportunity of inspecting this filing cabinet and of receiving instruction by means of such cabinet, in classifying, filing, and searching for fingerprints.

It is contended by respondent that this filing cabinet is an identification bureau, and the identification bureau referred to in his advertisements. An identification bureau, in which there can be any membership, is an organization of persons for the purpose of identifying criminals or other persons. There is no such organization pertaining to respondent's business, and respondent does not furnish to his pupils a membership in any such organization.

PAR. 4. The false and misleading statements and representations set forth in the third paragraph hereof, and each of them, have the capacity and tendency to deceive the public and to induce persons to enroll as pupils of respondent in reliance upon and by reason of their belief in the truth and accuracy of such representations.

PAR. 5. Respondent carries on all of his advertising under the trade name "University of Applied Science". He signs many of the form letters sent to prospective pupils for the purpose of inducing them to enroll as pupils, as "President, University of Applied Science". He otherwise represents his business to be a university, and himself to be the president of such university; for example, in the catalogue above referred to appears the following statement:

> There is probably no other university president in the United States who is so close to his students and graduates as T. J. Cooke.

A university, as commonly understood, is an educational institution of higher learning, empowered to confer degrees, with a faculty of learned persons acting as instructors in the various higher branches of learning embraced in the curriculum, and which curriculum usually includes the liberal arts and sciences and one or more special branches of learning, such as theology, law, and medicine.

The name "University of Applied Science" carries by necessary implication to the public mind and to the minds of prospective pupils of respondent, an institution of higher learning engaged in teaching the several sciences, and the application thereof, usually taught in colleges and universities. Such name, by like necessary implication, carries to the public mind the assurance of a group of learned instructors, and that pupils successfully pursuing the course of study therein, will receive the benefit and advantage of the high reputation and prestige of such institution.

In truth and in fact, respondent is not and does not have, operate, or control a "University" or "University of Applied Science" within any proper or common meaning of such terms.

Respondent's course of instruction is limited to the subjects set forth in paragraph 1 hereof, and such meager instruction in photography and chemistry as is incidental to instruction in finger-printing. The lessons are printed and sent out by mail to pupils, and when returned, are usually accompanied by a certain so-called examination, which is comprised of certain answers which the pupil makes to certain questions appearing at the end of the lesson. These examinations are graded by the respondent. The respondent has no faculty or corps of instructors other than one person whose time is chiefly taken up with marking or grading the examination papers above referred to. Respondent's place of business is one in common with three other correspondence schools, in which respondent individually is heavily interested financially. Respondent uses the term "University of Applied Science" solely as a trade name for his business.

PAR. 6. The use by respondent of the trade name "University of Applied Science", as set forth in paragraph 5 hereof, has the tendency and capacity to mislead the public and prospective students into the erroneous belief that respondent is a university within the popular conception of the word "University", as set forth in paragraph 5 hereof and within the popular conception of the name "University of Applied Science" as set forth in said paragraph, and that pupils successfully pursuing the course of study therein will receive the benefit and advantage of the high reputation and prestige of such an institution.

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 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 of the respondents, the evidence introduced on behalf of the Commission and said respondent, and the briefs of counsel for the Commission and counsel for respondent, and the Commission having made its findings as to the facts and its conclusion that said respondent, T. G. Cooke, 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 respondent, T. G. Cooke, in offering for sale or selling courses of instruction or articles of merchandise, in interstate commerce, to cease and desist from:

(1) Representing to prospective pupils or to the public that the price at which any course of instruction offered is a special or reduced price or a price that is lower than the price ordinarily and usually received, when such is not the fact.

(2) Representing that any article of merchandise or other thing or service is furnished free to pupils, when the price or value of such article of merchandise or other thing or service is included in the price specified as the price of the course of instruction.

(3) Representing that the respondent furnishes to the prospective pupil a life membership in an identification bureau.

(4) Using the word "University" in the trade name of respondent, or in any manner as descriptive of respondent's business; and from representing that the respondent is president of a "University", or that respondent's business is a "University" or "University of Applied Science".

It is further ordered, That said respondent, T. G. Cooke, shall within 60 days after the service upon him of a copy of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist heretofore set forth.

IN THE MATTER OF

MASLAND DURALEATHER COMPANY, W. & J. SLOANE

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

Docket 1311. Complaint, May 19, 1925—Decision, Mar. 22, 1929

Where the trade name "Duro" had long been used by a leather manufacturer in its labels, brands, literature, correspondence and invoices to designate its calfskin and veal skin leathers, and also in its advertising thereof at large expense; and thereafter a corporation engaged in the manufacture of an imitation or artificial leather product containing no leather, though resembling and made to resemble the same in appearance, and its sole sales agent, designated the aforesaid product "Duraleather" and the samples thereof supplied to customers or prospective customers, and conspicuously so advertised, stamped, listed, and billed said product, together with the words, after a time and in some cases, in much smaller letters and hardly discernible, "A Durable Leather Substitute"; with the result that the use of the aforesaid term to designate such imitation or artificial leather was suggested to their customers or their customers' customers in the marketing and sale of products made thereof, and there was placed in the hands of others the means of committing a fraud upon the consuming public by enabling dealers to offer and sell to said public articles made from the aforesaid product as and for articles made of real leather, and with the capacity and tendency to mislead and deceive such public into believing said imitation or artificial leather to be a product of the aforesaid leather manufacturer and to cause it to purchase articles made therefrom in such belief, and as and for articles made of genuine leather, and to divert trade from those engaged in the manufacture of real leather, and those engaged in the manufacture of imitation leather and selling and advertising the same as such:

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

Mr. E. J. Hornibrook for the Commission.
Roberts & Montgomery, of Philadelphia, Pa., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Masland Duraleather Co., a Pennsylvania corporation engaged in the manufacture and sale of imitation leather, and with principal office and place of business in Philadelphia, and respondent W. & J. Sloane, a New York corporation, engaged, among other