

Complaint

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IN THE MATTER OF
EARLE E. LIEDERMAN

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

Docket 1771. Complaint, Mar. 10, 1930—Decision, Feb. 10, 1931

Where an individual engaged in sale of courses in physical culture, together with books, pamphlets, and appliances, in describing his said course, etc., in follow-up letters sent to prospective customers in response to advertisements in newspapers, magazines, and other periodicals,

- (a) Represented that course was offered to particular prospect at \$19 instead of the \$37 theretofore demanded, fact being that such pretended special offer was made to all who had not theretofore subscribed at \$37, in response to solicitation in a regularly planned and arranged series of follow-up letters; with capacity and tendency to mislead and deceive prospective pupil into believing a special, personal, and confidential price of \$19 had been offered him;
- (b) Represented aforesaid pretended reduced prices, and inclusion of books or handgrips as offered for limited time only, and called upon prospect to take advantage thereof before date specified, to be sure letter of acceptance postmarked on or before such date, to "avoid the rush and get a jump on the next fellow", as offer was "a special offer", so huge and sensational," and so "sure to be snapped up by hundreds of men", that he "could not hold it open indefinitely," and after date named could not include any of aforesaid articles, facts being he accepted offers to enroll or purchase regardless of aforesaid wholly fictitious time limitations; and
- (c) Represented and promised that individual case of each pupil was and would be given his careful consideration and that course was prepared as special course to meet needs of individual pupil, facts being that said courses consisted of printed and mimeographed lessons and other matter prepared by him for general and uniform use and circulation in the giving of instructions and were not adapted to and prepared for needs and requirements of individual pupil;

With capacity and tendency to deceive purchasing public and induce prospective pupils to enroll or purchase said merchandise believing in truth of aforesaid representations and thereby divert trade from competitors to himself:

Held, That such practices, under the conditions and circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. Alfred M. Craven for the Commission.

Reeves, Todd, Ely, Price & Beaty, 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 re-

spondent individual, engaged in New York City in the sale by correspondence of courses in physical culture and health restoration, together with certain articles incidental and accessory thereto, such as booklets, exercisers, grips, etc., with advertising falsely or misleadingly as to prices, free products, and nature of service 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, in his advertisements of his aforesaid courses, etc., in newspapers, magazines, periodicals, and other publications of general circulation and in enrollment and other blanks, catalogues, pamphlets, letters, circulars, and other matter, makes many false and misleading statements and representations, namely, that—

(1) The ordinary regular price is a certain sum, as specified, but respondent is offering the courses, etc., at a certain substantially smaller sum, as specified, or is so offering said courses, etc., for a limited time as specifically set forth, facts being that the pretended reduced price is respondent's regular price for the courses and accessories, and the pretended time limit is fictitious;

(2) Individual case of each pupil will be given careful consideration and respondent's course is prepared as a special course to meet individual needs of the pupil, facts being lessons and other matter are not adapted to or prepared for individual needs; and

(3) Certain accessory appliances including exercisers, grips, books, and other articles are given to the pupil without cost to him or compensation to respondent, facts being the price of such articles or compensation therefor is at all times included in the tuition charge exacted.

Each of such statements and representations, as alleged, has the capacity and tendency to mislead prospective pupils and cause them to enroll and pay or agree to pay the tuition specified, relying on the truth thereof, and such acts and practices, as charged, are all to the prejudice of the public and of competitors and constitute unfair methods of competition in violation of the aforesaid section.

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" (38 Stat. 719), the Federal Trade Commission, on the 10th day of March, 1930, issued and served its complaint against the respondent, Earle E. Liederman, charging him with the use of unfair methods

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of competition in commerce, in violation of the provisions of said act.

Respondent having entered his appearance and filed his answer to the complaint, hearings were had before a trial examiner theretofore duly appointed, and testimony was heard and evidence received in support of the charges stated in the complaint and in opposition thereto. Thereafter, this proceeding came on regularly for final hearing, and the Commission having duly considered the record and being now fully advised in the premises, makes this its report, stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Earle E. Liederman, is now and has been for many years last past engaged at New York City, N. Y., in the conduct of a correspondence school for physical culture, in the conduct of which school he offers to sell and sells to persons resident in various States of the United States other than the State of New York certain lessons or courses in physical culture. Along with such lessons or courses of instruction, respondent, as a part of the transaction of the sale of lessons and courses, furnishes and sells to such pupils books and pamphlets on physical culture and health and also certain appliances to be used in following out the instructions contained in said lessons.

PAR. 2. Said respondent, when a prospective pupil enters into a contract with him and enrolls as a pupil, in consideration of the cash tuition agreed to be paid by such pupil, undertakes to sell and deliver to such pupil the course of instructions specified in the enrollment blank or contract, together with such books and accessories as may be included in such contract. Thereafter, and in pursuance of such contract, respondent causes to be transported from his said place of business in the City and State of New York, into and through the several States of the United States, and to be delivered to such several pupils at their respective places of residence, the courses of instruction, accessories and books above referred to.

In the course and conduct of his said business, respondent is in competition with other persons, partnerships, and corporations likewise engaged in conducting correspondence schools and selling courses and lessons in physical culture, together with the necessary accessories, in interstate commerce, to persons located at various points throughout the United States.

PAR. 3. In the promotion of his said business and to secure pupils, respondent causes advertisements of said course of instructions, coupled with an invitation to send for a free booklet describing

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said course, to be inserted in newspapers, magazines, and other periodicals in general circulation in the United States, and to persons who answer said advertisements respondent sends the free booklet promised, and thereafter circularizes the mailing list comprising those who answer the advertisements by a series of form letters sent at intervals of varying lengths of time to all those whose names appear upon the mailing list and who have not theretofore enrolled as pupils, and inclosing leaflets, circulars, and other advertising matter. The free booklet above referred to describes respondent's regular course of instruction as being a course consisting of 12 lessons to be sent to the pupil at the rate of one lesson per week. The price of this course, as stated in the first letter, which accompanies the booklet, is \$37. This price of \$37 is stated to be the price of the course in the various letters comprising the series up to and including the sixth. The seventh letter in the series, being Commission's Exhibit No. 8,¹ reads, in part, as follows:

DEAR FRIEND:

HERE IS A CHANCE FOR YOU TO SAVE \$18 COLD CASH

All I want you to do is to fill out the questions on the other side and mail to me. I want to prove to you what wonderful results you can obtain by following my instructions. If you will give me the chance to guide you for the next few months, you will not only have a splendid development and excellent strength, but you will be filled to the brim with the pep and energy that only a real well-trained athlete knows. You will just thrill with vitality. You just have to get strong—that is all there is to it.

If I could meet you face to face, I know I could convince you in a few minutes, and you would be so impressed that your desire for a better body would be greater than ever.

I want you to feel that I am doing all in my power to help you to obtain robust health and a splendidly developed body and I want to meet you halfway and expect you to meet me halfway. So allow me to offer you the following inducement. As you remember, I formerly asked you \$37 for my complete muscle-building course. Now, I have arranged things so that for one-half of the price—\$19, you can obtain the same results—the same massive chest, the same broad shoulders, the same powerful legs and the same vitality, health and strength, as if you paid me my regular price of \$37.

The representations and statements contained in said letter are misleading and deceptive and have the capacity and tendency to mislead and deceive the prospective pupil into the belief that a special, unusual, personal and confidential price has been made to him. Whereas the price of \$19 stated in said letter was the ordinary and usual price of the course, offered equally to all prospective pupils who had not theretofore become enrolled at the price of \$37 set out in the prior letters of the series.

¹ Exhibits not published.

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PAR. 4. In the various form letters comprising the series mentioned in paragraph 3, respondent makes other statements and representations as follows:

(1) That prices represented as reduced or special prices are offered to the public for a certain limited time, and that the offers of books are made for a limited time only. For example:

(a) In Commission's Exhibit 8, above referred to, respondent states:

As this is a special offer, I must insist that you take advantage of it and enroll with me on or before August 19, 1929, for I can not hold it open indefinitely. So be sure your letter is postmarked on or before August 19.

(b) In Commission's Exhibit 6-A, which is the fifth letter of the series above referred to, respondent states:

As this offer is so huge and sensational and it is sure to be snapped up by hundreds of men, I can not hold it open indefinitely; therefore, I must insist that you accept it on or before Monday, August 19, 1929, for after that date I can not include any of my books or handgrips.

(c) In respondent's Exhibit No. 2, respondent, in reference to what is stated to be a reduced price, says:

All things have an ending and this won't last forever. Why not enroll before, say May 19, 1930, for after that date I expect hundreds of enrollments and if you will take advantage of it before then, you will avoid the rush and get a jump on the next fellow.

In truth and in fact, the respondent accepts offers to enroll or to purchase, regardless of such time limitations and such limitations are wholly fictitious.

(2) Respondent represents and promises that the individual case of each pupil is given and will be given careful consideration by him, and that the course of instruction offered is prepared as a special course to meet the individual needs of the pupil. In truth and in fact, the course or courses thus represented are general courses, consisting of printed and mimeographed lessons and other matter prepared by respondent for general and uniform use and circulation in the giving of instructions, and are not courses adapted to and prepared for the needs and requirements of the individual pupil.

PAR. 5. The representations mentioned in paragraphs 3 and 4 hereof, and each of them, are misleading and deceptive and have the capacity and tendency to deceive the purchasing public and to induce prospective pupils to enroll as pupils or to purchase respondent's merchandise in and on account of the belief that such representations are true, and thereby to divert trade to respondent, Earle E. Liederman, from his competitors.

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 of respondent's competitors, 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, the testimony, briefs and oral argument, and the Commission having made its findings as to the facts and its conclusion that said 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 respondent, Earle E. Liederman, in connection with the sale or offering to sell in interstate commerce between and among the various States of the United States and in the District of Columbia, courses of instruction and accessories thereto, or other commodities, do cease and desist from—

(1) Representing that any price at which any course of instruction or commodity is offered for sale is a special or reduced price, or is lower than the price ordinarily and usually received therefor, when such is not the fact.

(2) Representing that offers to sell courses of instruction or other commodities are made for a limited time only, when such is not the fact.

(3) Representing that any course of instruction offered for sale by respondent, which is in fact prepared for general and uniform use, is prepared for or adapted to the individual needs and requirements of the pupil.

It is further ordered, That the said respondent 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 hereinbefore set forth.

IN THE MATTER OF

EDWARD L. JENKINS AND MYRTLE E. AUTEN, PART-
NERS DOING BUSINESS UNDER THE FIRM NAME AND
STYLE OF CHERI

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

Docket 1850. Complaint, June 20, 1930—Decision, Feb. 10, 1931

Where partners engaged in preparation and sale of toilet articles and similar products to agents for resale to purchasing public and individuals,

- (a) Represented themselves as manufacturers in circular letters sent to customers and prospective customers, selling direct, facts being that they had not at all times since starting business manufactured or compounded a substantial part of products dealt in, originally made only a few of such products, had never made 16 items on their price list, and had only meager facilities and equipment for manufacture;
- (b) Represented that they had a beauty expert or "cosmetician" named "Edmyr Jenaut" or "Miss Jenaut," and also a chemist of wide experience, facts being that partner referred to under aforesaid fictitious name had no preparation for or practical experience in beauty culture and had a training therein consisting chiefly in answering correspondence from customers as former employee of a toilet goods house, together with a little private instruction in facial treatments, and familiarity with literature and instructions furnished customers by said company, and that other partner had never studied or trained in chemistry and there was no chemist connected with firm; and
- (c) Represented their business as an old established one and of world wide extent, facts being that their place of business consisted of basement apartment of four rooms employed in part as sleeping and living quarters of one of partners, they had other occupations requiring all their working days, gave only incidental attention to business in question, and had no working force, business was first started in 1929, their products had not been marketed under the trade name employed or otherwise prior thereto, business was confined to United States and no sales had been made direct to any foreign country;

With capacity and tendency to mislead and deceive members of purchasing public in respect of operations, extent, duration and nature of their business and advantages of dealing therewith, and with effect of unfairly diverting business from competitors who do not in anywise thus misrepresent their businesses, or qualifications or professional status of those connected therewith, and with capacity and tendency so to do, to injury and prejudice of said competitors;

Held, That such practices, under conditions and circumstances set forth, were all to prejudice and injury of public and competitors and constituted unfair methods of competition.

Mr. Harry D. Michael for the Commission.

Mr. Henry L. Blinn of Chicago, Ill., for respondents.