

Findings

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IN THE MATTER OF
TARBELL SYSTEM, INCORPORATED, AND T. G. COOKE

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

Docket 1721. Complaint, Nov. 12, 1929—Decision, Feb. 17, 1931

Where a corporation engaged in the sale of a course in magic, together with supplies and accessories thereto, and an individual, treasurer and general manager thereof, owner of the majority of its stock, in direct and active charge of its business, and responsible for its policy and advertising literature; in advertising circulars and circular letters sent in response to inquiries from periodical advertisements, and to mailing list names,

- (a) Represented that it was making a special offer of \$69.50 to prospective pupils in place of its regular and full price of \$90 and drew a red line through figures setting forth the larger price and payments and substituted or added the lower figures and urged prompt action before closing of offer, facts being that price of \$69.50 was its regular, permanent, and full price for the course and accessories included therewith;
 - (b) Represented that its diploma was so highly prized that graduates could secure big bookings and enjoy handsome incomes and earned from \$250 to \$1,000 a month, and informed the prospective pupil through said circulars, etc., and magazine advertising that he would be in demand at his club, lodge and social functions and would soon be a semi-professional, making big money "on the side", facts being that during most of the time concerned said corporation had issued no diplomas, the art or profession was only seasonal, those engaged therein did not give performances majority of nights during the year, and amateurs and semi-professionals devoting their attention to exhibitions at church socials, lodges and similar gatherings received from \$15 to \$100 for exhibitions, depending upon nature thereof, and no graduate averaged from \$250 to \$1,000 a month as a result of having completed its said course; and
 - (c) Represented that it would make pupils proficient and expert magicians almost immediately through such statements as "You can become an amazing magician not in a year or six months but almost at once," " * * * inside of a week you can have friends standing around you with their mouths open and their eyes bulging with amazement at your apparently supernatural powers," and guaranteed that "Dr. Tarbell can make you a master magician," facts being that to become expert in such art or profession requires continuous practice, many enrolling for the course in reliance upon such statements and representations are naturally awkward or otherwise unable to become proficient therein, and it is impossible to guarantee even so much, since natural aptitude for the art can not be known nor whether instructions given have been followed;
- With tendency and capacity to mislead and deceive the public and prospective pupils into enrolling in reliance upon the erroneous belief that such statements, etc., were true and thereby divert trade to said corporation or individual, from competitors and with effect of so doing;

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

Mr. G. Ed. Rowland for the Commission.

Mr. Gustav E. Beerly, of Chicago, Ill., 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 Tarbell System, Inc., an Illinois corporation engaged in the sale of courses of instruction in the art or profession of magic, to pupils at various places in the several states, and of certain supplies, accessories, and articles as incidental and accessory to such instruction, and with principal place of business in Chicago, and respondent T. G. Cooke, treasurer of said corporation and owner of the majority of the stock thereof and in direct control of its business, with advertising falsely or misleadingly as to prices and results of product or service, advertised, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent corporation, as charged, engaged as above set forth, in selling a course of printed instructions in the art or profession of performing tricks and illusions of various kinds, commonly referred to as magic, together with a number of articles regarded as accessories and aids to the acquirements of the "knowledge of, and to the use and practice, of said art or profession," in advertising its said courses and articles in newspapers, magazines, periodicals and other publications of general circulation throughout the United States and in the several States and in pamphlets, letters, circulars and other forms of printed, written or mimeographed matter, falsely and misleadingly represents that—

It is making a special extraordinary offer to prospective pupils who enroll immediately before the offer closes, to wit, the sale of its full course of instruction and the articles and things incidental and accessory thereto at the temporarily reduced price of \$69.50, instead of the regular, full price of \$90, fact being said pretended reduced and special price is its regular price for said course and articles;

Its diploma is so highly prized that its graduates can secure big bookings, enjoy handsome incomes, and earn from \$250 to \$1,000 a month, fact being it has had no graduates from its said course, its diploma has no value in enabling a pupil completing same to secure bookings and enjoy handsome earnings, no pupils have completed

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the course, and none of them have earned or are earning sums referred to as a result of taking said course.

A pupil taking the course will become an amazing magician "not in a year or six months, but almost at once," fact being that in order to become proficient in the art in question it is necessary for a pupil to study and practice for months and not all persons are capable of becoming proficient therein and there have not been any pupils who have completed the course in question.

The use by respondent Tarbell System, Inc., controlled by respondent Cooke, of the methods and practices alleged, as above set forth, and the statements and representations made as above set forth, "have the tendency and capacity to mislead and deceive the public and prospective pupils, and will probably mislead and deceive the public and prospective pupils, into the erroneous belief that said statements and representations are true, and that pupils of respondent, Tarbell System, Inc., will in fact receive its course of instruction at a price less than the permanent, regular price of said course if they enroll immediately; that they will be able to become expert and proficient in the art or profession of magic in a short time; and that when they graduate from said course of instruction they will earn large sums by the practice of the art or profession of magic because of their proficiency and because of the prestige attaching to a diploma from respondent, Tarbell System, Inc.," and said acts and practices of respondents are all to the prejudice of the public and of respondents' 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 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondents above named, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having entered their appearance, and having filed their answers herein, hearings were had and evidence was thereupon introduced before an examiner of the Federal Trade Commission theretofore duly appointed.

Thereupon this proceeding came on for final hearing, and counsel for the Federal Trade Commission and counsel for respondents having submitted briefs, and counsel for the Commission having argued the case before the Commission (counsel for respondents

failing to appear), and the Commission having duly considered the record, and being now fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Tarbell System, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its office and principal place of business at 1926 Sunnyside Avenue, in the city of Chicago, in said State.

Respondent, T. G. Cooke, is treasurer of respondent, Tarbell System, Inc., and owns the majority of the stock in said corporation. The business of said respondent corporation is under the direct control of respondent, T. G. Cooke. The other officers of respondent corporation are Harlan Tarbell, president, and E. L. Frey, secretary.

PAR. 2. Respondent, Tarbell System, Inc., at its said place of business, is engaged in the business of offering for sale and selling and furnishing courses of instruction by correspondence in the art or profession of magic, as hereinafter defined, to persons hereinafter referred to as pupils, such pupils residing and being and remaining at various places in the several States of the United States, and in selling and furnishing to such pupils severally, as incidental and accessory to such instruction, the certain supplies, accessories and articles hereinafter enumerated.

PAR. 3. Respondent, Tarbell System, Inc., when a prospective pupil enters into a contract with it and enrolls as such pupil, in consideration of the agreed tuition price paid and agreed to be paid by such pupil, undertakes to sell and deliver to such pupil, through the United States mail or otherwise, a complete course of printed instructions in the art or profession of magic, as hereinafter defined, together with a number of articles regarded as accessories and aids to the acquirement of the knowledge of, and to the use and practice of, said art or profession.

The art or profession of magic, as taught by respondents in the course of instructions sold and distributed by them, and as referred to in these findings, means the performing of tricks and illusions of various kinds, including sleight of hand, and is commonly referred to among the exponents thereof as "magic", and the person or persons engaged in such art or profession are commonly referred to as "magicians".

Thereafter, and in pursuance of said contract with such pupils, said respondent, Tarbell System, Inc., furnishes and causes to be transported from its said place of business into and through the

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several States of the United States, and delivered to such several pupils at their respective places of residence, the several items of printed matter and other articles and things above enumerated.

PAR. 4. In all of its 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 things above enumerated and to pay therefor, respondents are in competition with other persons, firms or corporations, who are likewise engaged in the same or similar lines of business activity, and who are seeking to procure prospective pupils in and throughout the several States of the United States to enroll as such and to purchase, receive and pay for courses of instruction by correspondence as above set forth and for printed matter and other articles and things to be sold, furnished and delivered to such pupils as incidental or accessory to the learning and practice of such arts, sciences, professions or trades.

PAR. 5. The course of instruction sold by respondent consists of 60 printed lessons, in which the method of performing various tricks and illusions are set forth in detail, together with diagrams and illustrations intended to aid the pupil in understanding and perfecting himself in the performance of said tricks and illusions. Various and sundry accessories are necessary for use in the course and these are all included in the course as supplied to their pupils by respondents, without extra charge. The president of respondent, Tarbell System, Inc., is Harlan Tarbell, who is a professional performer of tricks and illusions, and who has devoted practically his entire active life to that profession, and who has had many years experience in giving public performances on the stage and in private entertainments.

The lessons comprising the course of instruction sold by respondents was prepared and written by Harlan Tarbell, and originally was intended to consist of only 50 lessons, but during the development of said course it was increased to 60 lessons, and for the past three years the complete course has comprised 60 lessons. Harlan Tarbell devotes about one-half of his time to the business of respondent, Tarbell System, Inc., his work consisting of answering inquiries received from pupils relative to the tricks and illusions contained in the course, and in a few instances giving personal instruction to pupils who come to see him. He is the only person connected with respondent, Tarbell System, Inc., who knows anything about magic.

Respondent, T. G. Cooke, is treasurer and general manager of respondent, Tarbell System, Inc., and owns the majority of the capital stock of said respondent. He is in direct, active charge of the

business of respondent, Tarbell System, Inc., and is responsible for the policies of said respondent, and the advertising literature prepared and distributed by it.

PAR. 6. In the course and conduct of their aforesaid business, and for the purpose of inducing prospective pupils to enter into contracts with respondent, Tarbell System, Inc., and to enroll as pupils with it, and to purchase the courses of instruction sold by it and to pay the purchase price therefor, respondents cause advertisements of its said course of instruction to be inserted in magazines having general circulation throughout the United States and the several States thereof, and prepare and distribute to said prospective pupils pamphlets, letters, circulars and other forms of printed and mimeographed matter advertising and describing their said course of instruction.

Respondent, Tarbell System, Inc., secures its pupils by means of such advertisements, and by means of mailing lists which it buys or obtains by other means. To any inquiries received from any of its aforesaid advertisements, and to the names upon its mailing lists, respondent, Tarbell System, Inc., at the instance, and by direction of respondent T. G. Cooke, sends one of the aforesaid advertising circulars, together with a circular letter and application for enrollment blank. If no reply is received to this letter, respondent sends a number of other circular letters, in regular order, at intervals averaging about two weeks, and other advertising circulars.

In the advertising circulars and circular letters sent by respondents to prospective pupils appear the following statements and representations:

(1) That respondent, Tarbell System, Inc., is making a special, extraordinary offer to prospective pupils who will enroll as pupils immediately before such offer closes, by which said offer it will sell to such prospective pupils its full course of instruction in magic, and such articles and things incidental and accessory thereto, for which the regular and full price is the sum of ninety (\$90) dollars, at the temporarily reduced and special price of sixty-nine (\$69.50) dollars and fifty cents. In a circular sent out by respondent to prospective pupils until a short time before the commencement of this proceeding, respondent stated, among other things:

Extraordinary Offer—ACT NOW Before this offer closes—**Right Now—if you act quickly—you** have the remarkable opportunity to enroll in the world-famous Tarbell Course in Magic, endorsed by the world's greatest magicians, at the phenomenally low price of **ONLY \$69.50.** * * *

But remember—you must act quick! * * *

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Fill in and mail the enclosed Enrollment Blank Today. Do it NOW—Quick—before our Extraordinary Offer and Easy Terms Offer outlined above CLOSE! Enroll NOW—Before Offer Closes!

The application for enrollment blank sent by respondents to each prospective pupil, accompanying aforesaid circular, contained the following:

6. That I promise to pay my tuition fees regularly as stated below:

Then followed the words:

\$10 Cash with enrollment and \$10 per month for 8 months, total cost \$90.

through which a red line was drawn, and immediately thereunder were the words:

Cash Price \$69.50.

under which, in facsimile handwriting, written in red ink, was the following:

Convenient terms only \$5 down and \$5 per month for 13 months, total cost only \$69.50.

In an application for enrollment blank used by respondents for some months after Tarbell System, Inc., began business, in 1926, but discontinued sometime in 1927, the price of the course was represented as \$120, with a red line drawn through that price, and "\$60" written in red alongside of it.

In truth and in fact, the course of instruction sold by respondents was never sold at a price of \$90, or of \$120, and the said price of \$69.50, at which the said course of instruction was offered to prospective pupils by respondents, was not a special, reduced price, or an extraordinary offer, but was in fact the regular, permanent and full price of said course of instruction, together with all articles and things incidental and accessory thereto at all times during which said circulars, circular letters and application for enrollment blanks were being used.

Sometime during the year 1929 the price of the said course of instruction was raised by respondents to \$79.50, and said course of instruction was being sold by respondents, together with all articles and things incidental and accessory thereto, at the said price of \$79.50 at the time testimony was taken in this proceeding.

(2) That a diploma from respondent, Tarbell System, Inc., is so highly prized that graduates of said respondent's course of instruction can secure big bookings and enjoy handsome incomes, and that graduates earn from \$250 to \$1,000 a month. In a circular letter sent by respondents to prospective pupils, appears the following:

I wish it were possible for you to call at our school so that I could talk to you personally about this. Then you would know why the Tarbell diploma

is so highly prized and why Tarbell graduates secure big bookings and enjoy handsome incomes.

In advertisements in magazines, advertising circulars, and circular letters sent to prospective pupils, respondents have made the following statements and representations:

You will be in demand at your Club, your Lodge, and social functions. This reputation will grow—soon you will be a “semi-professional” and will be making big money.

Earn Big Money “On the Side” as a Semi-Professional.

You do not, however, have to give up your business or your job and join professional ranks to make big money as a Magician. You can do it “on the side” as a semi-professional.

In truth and in fact, during most of the time in which the aforesaid circular letters were used no pupils had completed the full course of instruction sold by said respondents, and respondent, Tarbell System, Inc., had not issued any diplomas. The first diploma issued by said Tarbell System, Inc., to any of its pupils was some time during the year 1929, respondents being unable to furnish the exact date. Since that time other diplomas have been issued to pupils completing the full course of instruction.

The art or profession of magic is a seasonal one, and those individuals engaged in it, including the professional magicians, are not occupied with the giving of performances every night during the year, nor the majority of nights during the year. An amateur magician does not average one performance a week. The professional magicians giving entertainments on the professional stage receive comparatively large sums of money for their services, but the amateur and semi-professional magicians devote their time to exhibitions at church socials, lodges, and gatherings of a similar character, and receive from \$15 to \$100 for an exhibition, depending upon how elaborate the exhibition is. Harlan Tarbell, president of respondent, Tarbell System, Inc., who is a professional magician, averages from \$75 to \$150 a performance, and on one occasion has received \$1,000 for a single night's exhibition. In a number of instances, depending on the nature of the gathering before which he exhibited and depending upon the paraphernalia necessary for the giving of the performance, Harlan Tarbell has received \$250 for a single performance. Many amateur and semi-professional magicians use the art or profession of magic as an additional means of making money aside from their regular employment, and many of them use it for the purpose of home entertainment exclusively, without giving paid exhibitions. No graduates of respondent, Tarbell System, Inc., average from \$250 to \$1,000 a month in earnings as a

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result of completing the course of instruction in magic sold by respondents.

(3) That respondent, Tarbell System, Inc., will make pupils proficient and expert magicians almost immediately. In a circular letter sent to prospective pupils enclosing the application for enrollment blank, it is stated:

You can become an amazing magician!

Not in a year or six months. But almost at once!

Enroll today and inside of a week you can have your friends standing around you with their mouths open and their eyes bulging with amazement at your apparently supernatural powers.

In another circular letter sent to prospective pupils as a follow-up letter, it is stated:

We guarantee that Dr. Tarbell can make you a Master Magician.

In truth and in fact, respondent, Tarbell System, Inc., does not make a pupil an expert magician or a master magician in a very short period of time, as represented in the above-quoted circular letters. The course of instruction sold by aforesaid respondent consists of 60 lessons, which are sent to the pupils as they are ready for them, the average time for completing said course being two years and a half. In order to become an expert magician it is necessary for the individual to practice continuously, as the art or profession of magic is based upon the ability of its exponent to deceive spectators by expert manipulations of various kinds. Many persons enrolling for respondents' course, relying on the statements and representations made by respondent, Tarbell System, Inc., in its advertising circulars, circular letters, and other advertising material, are naturally awkward or otherwise unable to become proficient in the profession. The president of respondent, Tarbell System, Inc., Harlan Tarbell, testified that after the tenth lesson a pupil would have quite a number of tricks and could begin giving shows, and that it would take about three months before he would have completed a sufficient number of lessons to enable him to do this. It is impossible for respondents to guarantee that every pupil who completes the course of instruction sold by said Tarbell System, Inc., will become even proficient in the art of magic, because it is impossible for said respondent to know whether or not its pupils are naturally adapted to the course of instruction or have followed the instructions given to them in the said course.

PAR. 7. Subsequent to the investigation of this case and prior to the taking of testimony, respondents made certain changes in the advertising circulars, circular letters, and application for enroll-

ment blank used by them, and since that time have been sending said advertising circulars and circular letters to prospective pupils, in place of those referred to and quoted in paragraph 6 herein. Respondents have eliminated from the application for enrollment blank the price of \$90 for the course, with a special price of \$69.50, as set forth in paragraph 6 herein, and the only price at which the course sells is printed on the blank, namely, \$79.50 on the instalment basis, and \$69.50 for cash, respondents have also eliminated from the circular letters and advertising literature used by respondent, Tarbell System, Inc., any reference to said price being a special, extraordinary offer. Respondents have also eliminated from the circular letters used by respondent, Tarbell System, Inc., the statement:

Not in a year or six months. But almost at once!

PAR. 8. The statements and representations set forth in paragraph 6 herein are false and misleading and the use of said statements and representations by respondents, Tarbell System, Inc., and T. G. Cooke, in the manner and form above alleged has the tendency and capacity to and does mislead and deceive the public and prospective pupils into the erroneous belief that said statements and representations are true and to induce persons to enroll as pupils of respondents in reliance upon and by reason of their belief in the truth and accuracy of said statements and representations and thereby to divert trade to respondents, Tarbell System, Inc., and T. G. Cooke, from competitors.

CONCLUSION

The acts and practices of said respondents under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and respondents' competitors and constitute unfair methods of competition within the intent and meaning of section 5 of an act of Congress 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 answers of respondents, the testimony taken and briefs filed herein and oral argument by counsel for the Commission and the Commission having made its findings as to the facts and conclusion that respondents have 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,"

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It is now ordered, That respondent, Tarbell System, Inc., its officers, agents, representatives and employees, and respondent, T. G. Cooke, an individual, cease and desist from making statements and representations in advertisements in magazines, periodicals, and newspapers, and in circular letters, pamphlets, booklets and other advertising literature, circulated and distributed in connection with the offering for sale and sale in interstate commerce of a course of instruction in the art or profession of magic, as defined in the findings of fact and conclusion herewith, as follows:

(1) That the regular and usual price of said course of instruction is \$90, or any other price, when such is not the fact;

(2) That prospective pupils are being offered the said course of instruction at a specially reduced price for a limited period of time, unless said offer is actually limited in point of time for acceptance at such reduced price;

(3) That a diploma from respondent, Tarbell System, Inc., will enable a pupil to obtain engagements to give exhibitions of magic, and earn a large income, when such is not the fact;

(4) That a graduate of the said course of instruction sold by respondent, Tarbell System, Inc., will earn from \$250 to \$1,000 a month, when such is not the fact;

(5) That a pupil taking the said course of instruction sold by respondent, Tarbell System, Inc., will become a proficient magician almost immediately after beginning the study of said course.

And it is further ordered, That respondents shall, within 60 days after the service upon them of a copy of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which this order has been complied with and conformed to.

Syllabus

IN THE MATTER OF

DR. RODNEY MADISON LABORATORIES, INC., AND DR. RODNEY MADISON, AN INDIVIDUAL AND AS PRESIDENT OF THE DR. RODNEY MADISON LABORATORIES, INC.

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

Docket 1507. Complaint, Mar. 24, 1928—Decision, Feb. 24, 1931

Where a corporation engaged in the manufacture and sale of an electric belt for attachment to the ordinary house current, and for treatment of human diseases and ailments, and an individual, its president, organizer, majority stockholder, and an active promoter of the sale of said device, whose name, with prefix Dr. was, with his consent, included in that of said corporation; in describing said device in leaflets, sales contracts, and directions for use,

- (a) Represented that said article was based upon and made practical application of biological, electrical and chemical discoveries and theories of well known scientists and created a magnetic field, with therapeutic value and effect, and that said device applied to the body cured and benefited through magnetism the diseases, ailments and defects thereof, including high blood pressure, rheumatism, neuritis, kidney trouble, stomach trouble, pulmonary tuberculosis, and numerous others specified, facts being that such device was based upon no such discoveries and theories and made no practical application thereof, was incapable of transmitting sufficient energy in any form to the body to be of therapeutic value or effect, and was not a proper treatment for nor of assistance in, the cure of, any disease through magnetism or otherwise, and the so-called "control box" attached to the belt was merely a subterfuge to induce purchase by the public; and
- (b) Falsely represented that said individual was a graduate of a college of medicine, a noted inventor, an experienced, skillful and distinguished physician, and descendant of the family of James Madison, fourth President of the United States;

With capacity and tendency to divert trade from competitors to said corporation and to mislead and deceive the purchasing public in respect to the qualities possessed by the aforesaid device and results from the use thereof, and into believing the indorsement and recommendation of such device by said individual to be those of a skilled and distinguished physician, etc., as above indicated:

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

Mr. E. J. Hornibrook for the Commission.

Mr. John W. Kern and *Mr. W. D. Fitzpatrick* of Indianapolis, Ind., for William F. Taylor, receiver; the former also appearing for Rodney Madison, individually and as president of Rodney Madison Laboratories, Inc.