

Syllabus

IN THE MATTER OF

TITUS INSTITUTE, INC., W. HARRY TITUS, INDIVIDUALLY, AND AS PRESIDENT OF TITUS INSTITUTE, INC., AND RALPH H. SINCLAIR

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

Docket 1681. Complaint, July 3, 1929—Decision, June 30, 1931

Where a correspondence course in physical development consisting principally of illustrations, with explanatory matter, depicting the founder performing various physical exercises and particularly featuring his personal, individual instruction and adaptation of the course to individual needs and requirements, was carried on and conducted by him for many years until his death, and advertised through pictures representing him as a young vigorous and athletic man, and describing in detail successful results accomplished by his method; and thereafter a corporation organized under the family name by said founder's son to carry on the business, and an advertising agent, closely associated with the conduct thereof and familiar with the circumstances pertaining thereto, without disclosing the death of said founder, whose experience, skill, and reputation as a physical instructor gave said family name its only significance or value in the business of physical instruction, or that individual instruction, or adaptation of the course to individual needs or requirements would be made by said son instead of aforesaid founder,

- (a) Made statements and representations in their advertisements in magazines implying that they were those of the founder of the business and that it was being conducted by him and he was giving his individual attention and instruction to purchasers in accordance with their individual needs and requirements;
- (b) Made statements and representations implying that he had awarded and was awarding large prizes in money to those making the greatest improvement under his direction and that purported checks depicted in advertisements as thus given, and guarantees were copies of checks actually signed and given by him for such purpose and of his actual guarantees, facts being that his purported signature had been appended to such checks and guarantees by the son in conducting the business in question through the corporate instrumentality above set forth;
- (c) Set forth "before and after" pictures including one of a certain individual, together with such statements as "one—two—three, just like that", "The boy you see above changed from a puny weakling into a physical giant", and falsely represented pictures depicted under the caption "before", "30 days after" and "60 days after" as truthfully reflecting the physical condition of the individuals exhibited before and after receiving instruction, and that apparent improvement and development were the result of their course, facts being that said individual at time of beginning course was a well-developed, sturdy man, disclosed by his application blank as a person of exemplary habits, who took systematic physical culture, the

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"before" picture was the result of a carefully planned conspiracy as a result of which the head of said individual was superimposed upon some puny body so as to present contrast shown between it and the genuine ("after") picture of said individual as an athletic person, in the full vigor of health and strength, and pictures in other instances were those of said son or his brother and reflected conditions of persons long prior to taking the course, or exhibited development resulting from a prolonged course of training and not accomplished in any such short period, if due at all to the course in question;

- (d) Falsely represented that they had awarded and would bestow \$1,000 upon pupils making the greatest improvement and set forth picture of aforesaid individual as winner of an annual prize, under the caption "You're next", together with such statements as "What do you think of him? \$1,000 in cash and solid gold medal * * * for the greatest improvement * * * Nation-wide contest proves another amazing demonstration of Titus training", " * * * Are you going to get the marvelous muscular development you see * * * Make that your New Year's resolution", facts being said individual, winner theretofore of such a prize offered and paid by a competitor, received no prize from them, but \$100 for permitting use of his name and aforesaid photographs and returned to them, as required, \$1,000 check, together with his endorsement, for their use in connection with their aforesaid false and misleading claims; and
- (e) Falsely represented that their course had the capacity to and would transform undeveloped, stoop-shouldered, flat-chested, scrawny individuals, or those otherwise lacking in physical health or vigor, into big muscled, powerfully built men and had done so almost overnight in the case of thousands and for many years, and that 20 minutes a day for 30 days sufficed to put layers of muscle like iron bands all over the body, facts being it was impossible through said course to develop a puny weakling into a physical giant within any brief period of time and that to bring about such development as represented in "before" and "after" pictures of aforesaid individual would require a prolonged course in physical training indicated as extending from one to three years;

With intent to mislead and deceive public into purchasing such course as and for one conducted and directed by said deceased founder, and with effect of appropriating good will entertained toward said founder among patrons and purchasers and prospective patrons and purchasers, and with capacity and tendency so to mislead said public to its injury and prejudice, and also into purchasing said course as and for one yielding the results in development and strength suggested by aforesaid pictures, and holding prize contests offering purchasers the possibility of receiving a \$1,000 reward or prize through achieving greatest physical development, and promising results indicated in 30 days, and to divert trade to them from said competitor who did award such prize to said individual, and to divert trade from and otherwise injure competitors truthfully describing their courses, conducting contests among their pupils, and actually awarding and paying substantial sums of money to those accomplishing the greatest improvement by means thereof:

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

Mr. James M. Brinson, for the Commission.

Mr. Michael M. Doyle, of Washington, D. C., and *Mr. Joseph W. Gottlieb*, of Brooklyn, N. Y., 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 Titus Institute, Inc., a New York corporation engaged in conducting a correspondence school in physical culture, with office and sole place of business in New York City, respondent W. Harry Titus, president and general manager of said corporation, organized by said respondent in order to provide a corporate agency for carrying on the school of physical culture established by said respondent's deceased father,¹ and respondent Ralph H. Sinclair, engaged in behalf of and in conjunction with said other respondents in the preparation of all the literature, including advertisements in magazines, pamphlets, leaflets, circulars, and illustrations setting forth the alleged merits or advantages of respondent's course to the public, with misrepresenting business identity, offering deceptive inducements to purchase, misrepresenting results of service offered, and advertising falsely or misleadingly in regard thereto, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, engaged as above set forth, through false and fraudulent advertisements offering their said course, together with the appliances or devices included therewith, in maga-

¹ As alleged more fully in the complaint, respondent's father, one Henry W. Titus, known or designated as Prof. Henry W. Titus established about 1903 a school in the City of New York and State of New York for instruction in physical culture, chiefly by correspondence. His course of instruction consisted of certain illustrations of himself engaged in performance of various physical exercises, accompanied by communications from him containing explanations and directions for the successful application or use of such illustrated exercises by the purchaser, together with certain appliances or devices for muscular development to be employed in connection with the course of instruction. A booklet was distributed by him, among other means, for advertisement of his school among purchasers and prospective purchasers, containing a picture which represented him as a young, vigorous and athletic man, and describing the merits of and the successful results accomplished by his method of physical training, particularly his individual instruction, or adaptation of his course to individual requirements and needs. He conducted and maintained this school of physical culture until the year 1925, when he died. In 1927 his son, respondent W. Harry Titus, caused to be incorporated respondent Titus Institute, Inc., in order to continue the business established and maintained as aforesaid by Henry W. Titus deceased and, without disclosure of his death or of any change in the identity of the personnel of those offering for sale the Titus course of physical instruction, to appropriate the good will theretofore entertained by purchasers and patrons or by prospective purchasers and patrons toward Prof. Henry W. Titus.

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zines of general circulation in the various States, such as Physical Culture, Strength, Screen Land, Smart Set, and America's Honor, knowingly make false and misleading representations and statements to the effect that—

The representations and statements are those of Henry W. Titus who originally induced and conducted the Titus course of physical instruction, and is still conducting it and giving his individual attention and instruction to purchasers, in accordance with their individual needs, and who has awarded and is still awarding prizes to those making the greatest improvement in physical culture under his direction, and presenting contestants with large money rewards, fact being that said Henry W. Titus was already deceased for several years;

Checks or instruments represented as given in payment of said rewards and prizes, and displayed by respondents in their advertisements in booklets, pamphlets, leaflets, and magazines, as above set forth, in order to induce the purchase of said alleged Titus course, and as bearing the signature of said Henry W. Titus, are true copies of checks or instruments actually signed and given for such purpose by said Henry W. Titus, the facts being said Titus was already deceased, as above set forth, and his name was caused to appear on said alleged checks or instruments by respondent W. Harry Titus;

Certain guarantees of the efficiency of the course in question, in respondents' said advertisements, were over the purported signature of said Henry W. Titus, the facts being as above set forth;

Pictures in respondents' advertisements of their said course, under the caption "before", "thirty days after", and "sixty days after", truthfully represent the physical condition of the individuals depicted, before and after their instruction in the course involved, and show the improvement or development resulting to said individuals as a result of said course, the facts being that the various pictures were either not of the same individuals or were those of individuals at periods of their lives preceding their instruction by respondents, by one or more years, and that said individuals represent physical conditions and muscular development neither directly nor remotely attributable thereto, and that all of said pictures published by said respondents in magazines and otherwise were those of individuals associated with respondents or who had undergone no such course, but had been paid various sums by respondents for use of such pictures in respondents' advertising and publication of their course under the "before and after" captions, as above set forth;

Prizes of \$1,000 were given by respondents to pupils making the greatest improvement in their course, the facts being that respondents at no time had given any prizes in any legitimately conducted contest between purchasers of its course, but have from time to time selected individuals of approved physical development, due neither directly nor remotely to the alleged Titus course, to whom they have falsely pretended in their advertisements thereof to have awarded said \$1,000 prizes, and who, for \$100 or less, have allowed respondents to publish their pictures, together with copies of their indorsements on pretended checks for \$1,000, said respondents falsely representing the physical development and muscular growth of said persons, as published and displayed by them in respondents' advertisements, as the direct result of their course.

Respondents, further, as charged, falsely represented in their advertisements in magazines, booklets, leaflets, pamphlets, letters, and other advertising matter that their said course will transform undeveloped individuals and those who are stoop-shouldered, flat-chested, ungainly, weaklings or otherwise similar physically afflicted, or in other similar respects, as therein specified, physically afflicted or inadequate, into big-muscled, powerful built men, that almost overnight it has changed puny weaklings into physical giants; that such result has been accomplished for thousands of men; that it has transformed those of every size and condition into perfect physical specimens; that only twenty minutes a day for thirty days is required to put layer after layer of muscle on the body until said layers stand out like iron bands; and that the results accomplished by Titus and the Titus course have been called "miracles worked in muscle" and have been accomplished for many years, the facts being that respondents have not and can not through their said course, whether adapted or not to individual needs or through any other means, within the brief time represented, or in any time, accomplish any such transformation, development or improvement as claimed.

According to the complaint, the above and foregoing representations of respondents and each and all of them "have and has had and have and has the capacity and tendency to mislead and deceive the public into the purchase of the course of physical instruction offered for sale by respondents in the erroneous belief that it has been and is conducted and directed by Henry W. Titus, and that the bodily and muscular development and strength apparently possessed by the individuals whose pictures have been and are exhibited in the advertisements of respondents, have been and are the result of the course of physical culture offered for sale and sold

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by respondents, and such representations and all of them have had the capacity and tendency to divert trade from and otherwise to injure competitors of respondents truthfully describing the courses of instruction in physical culture offered for sale by them"; all to the prejudice of the public and of respondents' 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, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served its complaint upon Titus Institute, Inc., W. Harry Titus, individually and as president of Titus Institute, Inc., and Ralph H. Sinclair, hereinafter called respondents, 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 filed answers, testimony and documentary evidence were received and duly recorded and filed in the office of the Commission; thereafter the proceeding regularly came on for final hearing before the Commission on such complaint, answers, the testimony and evidence received, briefs and arguments of counsel, and the Commission having duly considered the same now makes this its report in writing, and states its findings as to the facts with its conclusion drawn therefrom as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Titus Institute, Inc., is now, and has been since July, 1927, a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and sole place of business in the City of New York in the State aforesaid. Its business has been and is the conduct of a correspondence school in physical culture. Its course in physical culture has been and is offered for sale and sold by respondent, Titus Institute, Inc., together with apparatus for use therewith, in commerce among and between the various States of the United States and when sold such course of instruction together with such apparatus has been transported from the place of business of respondent, Titus Institute, Inc., in the City and State of New York, to purchasers in the various States of the United States other than the State of New York and respondents and each of them have and has been and are and is in competition with individuals, partnerships,

and corporations engaged in the sale of correspondence courses of physical training or culture in interstate commerce. Respondent W. Harry Titus has been since its organization, and now is, its president and general manager.

Respondent Ralph H. Sinclair is an individual residing in the City of New York engaged in the advertising business, who, for several years last past, has prepared, and now prepares for, on behalf of, and in conjunction with respondents W. Harry Titus and Titus Institute, Inc., the literature, including advertisements in magazines, pamphlets, leaflets, circulars, and illustrations, which have been and are distributed by respondents Titus Institute, Inc., and W. Harry Titus among purchasers and prospective purchasers of the correspondence course of physical instruction offered for sale and sold by said respondents and through which the asserted merits or advantages of such course of instruction have been or are presented to the public.

PAR. 2. One Henry W. Titus established in 1903 a school in the City of New York and State of New York for instruction in physical development, chiefly by means of correspondence. He subsequently became known, and was designated, as Prof. Henry W. Titus. The course of instruction which he conducted consisted principally of illustrations of himself engaged in the performance of various physical exercises, which were accompanied by communications or letters of explanation from him which prescribed the method to be followed for the successful application or use of the illustrated exercises composing his course of instruction. There were also included in such course, appliances or devices for muscular development to be employed in connection with the course of physical instruction. Henry W. Titus distributed for the advertising of his school among purchasers and prospective purchasers, a picture which represented him as a young, vigorous, and athletic man, and which described in detail the successful results accomplished by his method of training. He particularly featured as an unusual element of efficiency for his course, individual instruction by him personally, and his adaptation of the course of instruction to individual requirements and needs. He maintained this school of physical culture until the year 1925 when he died.

Respondent W. Harry Titus continued to conduct it after the decease of his father, and in 1927, he caused to be incorporated respondent Titus Institute, Inc., and thereafter, without disclosing the death of Henry W. Titus, or the fact of any change in the identity of the personnel of those offering for sale the Titus course of physical instruction, he continued to conduct under the name of Titus Insti-

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tute, Inc., the business established, maintained, and developed by his deceased father. By means of such failure to disclose the death of Henry W. Titus, and of advertisements in magazines, pamphlets, leaflets, circulars, and illustrations, distributed as aforesaid among purchasers and prospective purchasers of the course of instruction, respondent Titus Institute, Inc., and W. Harry Titus have appropriated and utilized the good will entertained by purchasers and patrons, or by prospective purchasers and patrons toward the deceased Prof. Henry W. Titus. Nowhere in any such advertising literature have purchasers or prospective purchasers been advised that the individual instruction or the adaptation of the course of instruction to individual requirements or needs, is or will be rendered by respondent W. Harry Titus instead of by Prof. Henry W. Titus, whose experience, skill, and reputation as a physical instructor have given the name of Titus its only significance or value in the business of physical instruction.

Respondent W. Harry Titus, ever since the organization of respondent Titus Institute, Inc., has supervised, and controlled said respondent company which has been, and is merely the corporate agency or instrumentality by and through which respondent W. Harry Titus is enabled to sell the Titus course of instruction with himself as its manager and director, as and for a course of physical instruction conducted by his father Henry W. Titus.

It has been and is the practice of respondent Ralph H. Sinclair on behalf of and in conjunction with respondents Titus Institute, Inc., and respondent W. Harry Titus to cause publication and distribution of the literature and advertising matter of respondents in magazines, pamphlets, leaflets, and circulars, illustrations and otherwise, and he has prepared and caused to be published each and all of the advertisements of respondents Titus Institute, Inc., and W. Harry Titus with the knowledge and expectation that such literature was being distributed and would be distributed among and would be read by purchasers and prospective purchasers of the Titus course of instruction in the various States of the United States, and that such literature, including advertisements in magazines and newspapers, would be used and was being used to induce the purchase of such course of physical instruction, including the physical appliances to be used in connection therewith.

Respondent Ralph H. Sinclair has been at all times since the organization of respondent Titus Institute, Inc., and now is, closely identified with respondents Titus Institute, Inc., and W. Harry Titus, and has been and is familiar with the facts and circumstances involved in, or relating to the representations and statements in each

and all of the advertisements prepared by him and published and distributed by respondents in the course of such business. He has also, in connection with said respondent Titus Institute, Inc., and W. Harry Titus, caused to be transported from the City of New York and State of New York to places of business, in other States than the State of New York, plates, photographs, or pictures for use in the advertisements by respondents Titus Institute, Inc., and W. Harry Titus of their said course of physical instruction, in various magazines.

PAR 3. It has been and is the practice of respondents to offer for sale and sell their said course of physical instruction by means of advertisements prepared as described in paragraph 2 hereof in magazines in general circulation in the various States of the United States, such as Physical Culture, Strength, Screen Land, Smart Set, and America's Honor, containing representations and statements implying that they have been and are made by Henry W. Titus who originally introduced and conducted the Titus course of physical instruction; that he is conducting it, is giving his individual attention and instruction to purchasers of the course in accordance with their individual needs and requirements; that he has awarded and is awarding prizes to those making the greatest improvement in physical culture under his direction; that he has been and is presenting contestants for such prizes, large rewards in money; that checks or instruments purporting to be checks displayed by respondent Titus Institute, Inc., in advertisements of their course of instruction, and represented as given in payment of rewards and prizes bearing or purporting to bear the signature of the said Henry W. Titus, have been and are true copies of checks actually signed and given for such purpose or purposes by the said Henry W. Titus; that certain guarantees of the efficiency of such course of physical training appearing in the advertisements of respondent under the purported signature of the said Henry W. Titus have been and are the actual guarantees of Henry W. Titus. His son, respondent W. Harry Titus, has caused and causes the name of Henry W. Titus to appear subscribed to said pretended checks and guarantees, copies of which have been published by respondents in their booklets, pamphlets, leaflets, and in their advertisements, in aforesaid magazines, in order to induce the purchase of said alleged Titus course of physical culture.

Respondents have made in such advertisements false representations and statements to the effect that certain pictures which respondents Titus Institute, Inc., and W. Harry Titus have published in advertisements of their course of physical instruction in the mag-

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azines aforesaid under the captions "before", "thirty days after", and "sixty days after" have truthfully represented or reflected the physical condition of the individuals exhibited therein before their instruction in the Titus course of physical culture, and the physical condition of the same individuals thirty days and sixty days after undertaking it, and that the apparent improvement and development of such individuals, from their condition before such instruction, have been and are due to, or the result of, the Titus course of physical culture.

It has been falsely represented in the aforesaid advertisements of respondents that they have awarded to, and bestowed prizes upon pupils making the greatest improvements in their Titus course of physical training in the sum of \$1,000. Their method in this connection is evidenced by the following language appearing in their advertisements under the pictures and pretended pictures of one Gregory Paradise:

YOU'RE NEXT

Here's my prize winner for 1927! What do you think of him? \$1,000 in cash and solid gold medal awarded to Gregory Paradise, for the greatest improvement in physical development. Nation-wide contest proves another amazing demonstration of Titus training.

ALL ABOARD FOR 1928!

Well, boys, 1927 is past and now we're starting our 1928 prize contest. Are you going to get the marvelous muscular development you see in Gregory Paradise's pictures? Make that your New Year's Resolution!

Respondents have also falsely represented in their said advertisements that the course of physical instruction offered for sale by them has the capacity to, and will transform undeveloped, stoop-shouldered, flat-chested, scrawny, or ungainly individuals, or those having flabby flesh, or sickly weaklings into big muscled, powerfully built men, and that almost overnight such course of physical instruction has changed puny weaklings into physical giants, and that such result has been accomplished by Titus training for thousands of men; that thousands of every size and condition have been transformed by such course of instruction into perfect physical specimens; that all such course of physical instruction requires is the employment of twenty minutes every day for thirty days to put layer after layer of muscle all over the body until they stand out like iron bands; that the results accomplished by Titus and the Titus course of physical instruction have been generally called miracles in muscle, and have been accomplished for many years.

In truth and in fact all of the representations of respondents relative to the participation of Henry W. Titus in the conduct of respondent, Titus Institute, and the development and training of those purchasing a Titus course of physical culture were made with the full knowledge that he had died in 1925 and with the deliberate purpose of misleading the public into the belief that he was living and that he was actually in control of the Titus Institute and to induce purchase of the course in reliance on such belief.

The pictures which respondents have published and which purport to portray the results accomplished through their course of physical training have not fairly or truthfully represented the condition of the persons they purport to portray before or after such course of instruction. The pictures, in some instances, have been pictures reflecting the condition of the individual or individuals long prior to, rather than immediately before, taking the Titus course of physical culture; and in other instances they have been pictures of respondent, W. Harry Titus, or his brother, and have exhibited development which if due in any measure to the Titus course had not been accomplished in 30 or 60 days, or in any short period of time, but had been or was the result of a prolonged course or period of training.

Illustrative of the methods followed by respondent are the pictures published in magazines and distributed in pamphlets and circulars among purchasers and prospective purchasers of their course of instruction in physical development, which respondent represented to be the pictures of one Gregory Paradise. These pictures appeared either side by side, or one above the other. Under or over one appeared the word "before" and under or over the others appeared the word "after". In connection with and below these pictures appeared among other statements the following: "One—Two—Three—Just like that, the boy you see above changed from a puny weakling into a physical giant. Looks like magic doesn't it? But that's just an example of what Titus training had done for thousands upon thousands of men". The "boy" seen above represented as the "puny weakling" below whose pretended picture the word "Before" appeared, existed only in the imagination of respondents. The picture was the product of a carefully planned conspiracy between respondents, W. Harry Titus, Ralph H. Sinclair, and some unknown photographer. It was produced by the superimposition of the photograph of the head of Gregory Paradise on the photograph of some unknown and puny individual, in such a way that the cut and pictures resulting therefrom presented a composite consisting of the head of Paradise and the undeveloped body of another

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person. The other pictures presented the real Paradise as a robust and athletic man, in the full vigor of health and strength. These pictures were displayed as illustrative of his full development in 30 or 60 days after taking the Titus course. At the time respondents published these pictures there was in their possession the enrollment blank of Gregory Paradise when he began the Titus course of training in which he disclosed the measurements of his body. These measurements clearly revealed him as a man with a well developed and sturdy body, and represented him as a man of exemplary habits, who took systematic physical culture.

Gregory Paradise was not entitled to win a prize or reward in any amount for making the greatest improvement in the Titus course nor did he receive from respondent the prize of \$1,000 in cash as published by them on account of his success in the Titus contest for 1927.

There was no real contest conducted by respondents in 1927; there was no comparison by any jury as advertised by respondents of the improvement made by Gregory Paradise with the improvement made by other pupils of the Titus course of instruction.

He is, and in 1925 was, a resident of Nashua, N. H., who enrolled as a pupil in a correspondence school of physical culture, then and now conducted by Earl Liederman with his principal place of business in the City and State of New York. He was a contestant for and was awarded by Earl Liederman a prize of \$1,000 on account of his development by means of the Liederman course of physical culture. In the fourteenth edition of a book entitled "Muscular Development", published and distributed by Earl Liederman, there was published in 1925 a picture of Gregory Paradise of Nashua, N. H., and beneath the picture appeared the following:

The winner of the grand prize of \$1,000 cash, solid gold medal and diploma in the Earl Liederman 1925 International Improvement Contest. Mr. Paradise was a small-boned, weak young man on the day he enrolled and Earl Liederman's system coupled with his own determination made him the muscular athlete he is to-day in eight months.

Paradise received from Liederman \$1,000, the medal, diploma, and was entertained by him in New York.

Some time in December, 1927, respondent W. Harry Titus removed from his files pictures representing individuals of undeveloped and weakly types and with these in his possession proceeded to Nashua, N. H., where Gregory Paradise resided. He exhibited to Paradise these various pictures removed by him as aforesaid from the files of respondent Titus Institute.

Paradise selected from them a picture which he said could be used to represent his condition prior to the time he took the Titus course of physical culture and on the back of the photograph so selected he wrote the following: "I hereby state that this is how my body looked before taking this course. You have the full privilege to use this as you see fit. Gregory Paradise." After writing this language on the back of the photograph, respondent W. Harry Titus gave Gregory Paradise a check for \$100, and handed him a check for \$1,000, which he caused Paradise to indorse and return to him. He then returned to New York and in conjunction with respondent, H. Ralph Sinclair, he caused to be prepared the composite picture presenting the body of the individual pictured on the photograph selected by him and Paradise, and the head of Paradise, and published in magazines in connection with the announcement that Paradise was the winner in the 1927 contest, and that \$1,000 in cash had been given to him. Respondent W. Harry Titus caused Paradise to indorse the check for \$1,000 in order to publish it in the magazines used by respondents to advertise results of the contest, or using the language of respondent W. Harry Titus had it so indorsed that he "might have it for photographic purposes". When questioned by the management of the physical culture magazine regarding the integrity of this transaction he exhibited this check as evidence of the fact that \$1,000 had actually been given to Paradise.

In truth and in fact it is impossible by means or through use of the Titus course of physical culture to develop a puny weakling into a physical giant within 30 days or 60 days, or within any brief period of time to accomplish the development of the human body from the condition illustrated in the "before" picture published as that of Gregory Paradise, into the condition of the bodies represented in the published pictures of Gregory Paradise described as 30 or 60 days after. Development of an individual such as represented in the "before" picture of the pretended Gregory Paradise into the condition of the "after" pictures of Paradise would require a prolonged course of physical training or culture, of from one to three years according to the evidence.

PAR. 4. The above and foregoing representations of respondents have had, and have, and each of them has had, and has, the capacity and tendency to mislead and deceive the public to its prejudice and injury, into the purchase of the course of physical instruction offered for sale by respondents in the erroneous belief that it has been and is conducted and directed by Henry W. Titus, and that the bodily and muscular development and strength apparently possessed by the individuals whose pictures have been and are

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exhibit in the advertisements of the respondents, have been, and are the result of the course of physical culture offered for sale and sold by respondents, and that there have been, and are conducted by respondents Titus Institute, Inc., and W. Harry Titus, legitimate contests in the course of which rewards in the sum of \$1,000 have been and will be given the purchaser making the greatest physical improvement in the course of instruction by respondent; that the remarkable development apparently accomplished by Gregory Paradise, through respondents' course of training, was actually so accomplished, and was characteristic of the course so that in 30 days inches would be added to the muscles and puny weaklings converted into physical giants; and that in contests legitimately conducted, they would have the chance of winning a prize of \$1,000 by making the greatest physical improvement.

The representation by respondents that the remarkable development and physical strength acquired by Gregory Paradise was due to the Titus course of physical culture when in fact it had been acquired through and was due to the course of physical culture conducted by Earl Liederman, a competitor of respondent, had the capacity and tendency to divert trade to respondents from Earl Liederman and otherwise to injure him and his business. Each of the above and foregoing representations described in paragraph 3 hereof has had and has the capacity and tendency to divert trade from and otherwise to injure competitors of respondents who truthfully have described their course of instruction in physical culture offered for sale by them and who have conducted or conduct contests among their pupils and have awarded or actually do award and deliver substantial sums of money to pupils accomplishing the greatest improvement by means of such courses of physical culture.

CONCLUSION

The acts and practices described in the foregoing findings as to the facts have been, and are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the method 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", approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of re-

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spondents, testimony, evidence, briefs and arguments of counsel; and the Commission having filed its report stating its findings as to the facts and its conclusion that respondents have been, and are, violating 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 therefore ordered, That respondent, Ralph H. Sinclair, cease and desist from preparing for use by respondents, Titus Institute, Inc., and W. Harry Titus, and respondents Titus Institute, Inc., and W. Harry Titus, individually and as president of Titus Institute, Inc., cease and desist from using, in connection with offering for sale or selling in interstate commerce a course in physical culture or appliances for use in connection with physical culture, advertisements, or any written or printed matter containing representations, statements, or words implying or importing that Henry W. Titus is living, or has any connection with the conduct of respondent Titus Institute, Inc.; or containing any fabricated photograph, picture, or cut, or composite photograph, picture or cut falsely appearing to represent the physical conditions of pupils of respondent Titus Institute, Inc., before or after taking its course in physical culture, or any genuine photographs, pictures, or cuts of pupils of respondent Titus Institute, Inc., showing physical development or strength acquired by such pupil during other or longer periods of time than indicated, or by means of, or through other courses of physical culture than the Titus course, or by, or through any other agency or agencies than respondents Titus Institute, Inc., or W. Harry Titus; or containing any representations or statement that prizes, in the sum of \$1,000, or in any other sum, are being awarded to pupils making the greatest improvement in physical culture while undergoing respondents' course of physical culture, unless respondents Titus Institute, Inc., and W. Harry Titus, have actually awarded and delivered such prizes to pupils making the greatest improvement in their course of physical culture; or containing any representations or statements to the effect that by means of, or through, the Titus course of physical instruction, puny weaklings may be converted into physical giants within thirty days, or within any brief period of time.

It is further ordered, That respondents file a written report with the Commission within 60 days from and after service of this order, setting forth in detail the manner and form of compliance therewith.

IN THE MATTER OF
THE BREITBART INSTITUTE OF PHYSICAL CULTURE,
INCORPORATED

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

Docket 1609. Complaint, Apr. 24, 1929—Decision, Sept. 21, 1931

Where a corporation engaged in the sale of a course of physical culture, together with its so-called "Muscle Building Apparatus" for use in the fourth and subsequent lessons, and essential therefor,

- (a) Set forth names of nationally known athletes in advertisements of its course with such statements as "It's easy the Breitbart way. The methods used by the world's champions will also do the trick for you", and employed photographs of well-known athletes and of other persons showing exceptional physical development resulting from the practice of physical exercises, as illustrative of benefits conferred by said course, and published written statements by aforesaid individuals ascribing their physical development to its exercises, notwithstanding fact that some of the world's champion athletes referred to attained their physical development and condition entirely apart from any knowledge or practice of its lessons or apparatus, and many others either owed their physical development in no degree to said course or exercise or in part to instructions received elsewhere; with the tendency and capacity to mislead and deceive members of the public into believing that the individuals thus depicted had accomplished their physical development through physical exercises performed pursuant to its said course, and into purchasing the same in reliance upon such mistaken belief, and with effect of so doing;
- (b) Featured and depicted in its advertisements a number of nationally known athletes as composing its so-called Advisory Council and represented its said course as built around said council and said athletes as giving their personal attention and interest to the course concerned and to the individual cases of the different pupils, and represented one of said council, whose signature as physical director it affixed to letters, form letters, lessons, etc., as being a famous athlete, trainer, and outstanding authority on physical education and corrective exercise, and as being its athletic director, having personal charge and supervision of its course, notwithstanding the fact that the central figure depicted in the representation of such council had died prior to said corporation's organization, and said trainer, etc., and the others included never received any compensation from it and had no connection whatever with it or its course other than consenting to use of their names and photographs as members of said so-called council; with the capacity and tendency to mislead and deceive members of the purchasing public into believing that as subscribers to such course they and their individual cases would have the benefit of the skill and experience of the famous athletes composing such supposed Advisory Council;
- (c) Included in its corporate name the name of a former widely known "strong man" and professional athlete who had himself formerly conducted under his own name a course in physical training and depicted