

IN THE MATTER OF
H. L. METZGER, DOING BUSINESS AS NATIONAL
RAILWAY INSTRUCTION BUREAU

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

Docket 1987. Complaint, Nov. 14, 1931—Decision, July 7, 1932

Where an individual conducting a correspondence school course of instruction designed and intended to train students for various railroad positions such as fireman, brakeman, baggageman, passenger train porter, pullman porter, and pullman conductor.

- (a) Falsely represented himself in advertising his course in newspapers, magazines, and publications circulated among the various States as having railroad positions to offer and the advertisements as those of a railroad, through causing the same to be signed "Railway Bureau", and their frequent insertions in "help wanted" columns or columns containing such advertisements;
- (b) Represented that calls from railroads for men were frequent and that those who bought and pursued his courses of study would be assured of jobs, facts being students had no such assurance, calls from railroads for men were not frequent, vacancies were very few and the railroads generally pursued the policy of filling positions by advancement, or from former employees or experienced men in other lines, and did not generally give preference to graduates of said individual's school or to those of other schools;
- (c) Represented that he had close connection with leading railroads and great influence with the officials thereof, and was thereby enabled to place students, and displayed copies of purported letters or extracts therefrom in which railroads or railroad officials inquired for men to fill positions, facts being he had no such connections, and letters in question were written many years ago and in many cases incident to strikes or threatened strikes and did not reflect existing or recent employment conditions;
- (d) Falsely represented in form letters to prospective students that certain offers there made were limited as to time and were special offers to the addressee; and
- (e) Represented that the school owned its own building devoted exclusively to school uses, facts being portions of the building were so used only at times or incidentally, and portions thereof were used as living quarters for said individual and the janitor of the building;

With capacity and tendency to mislead and deceive members of public and to induce them to purchase such courses in erroneous beliefs thus induced, and with effect of unfairly diverting business to said individual from competitors who in no wise misrepresent their business status, their connection with railroads, or facilities for securing places for their students, or such special offers as may be made, and with tendency so to do:

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

Mr. Harry D. Michael for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, owner and manager of a business engaged in the sale and distribution of courses of study and inspection for training students for various railway positions such as fireman, brakeman, baggageman, etc., and with principal office and place of business in East St. Louis, Ill., with misrepresenting business status or advantages, and demand and possibilities of product or service offered, 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 aforesaid, so advertises in newspapers and magazines as to imply and create the erroneous belief among readers that the advertisements are those of a railway and that he wishes to employ men in various capacities as specified in said advertisements in the "help wanted" columns or mixed columns, through such statements (with a number preceding the words) as: "Firemen, brakemen, baggagemen, (white or colored), sleeping car, train porters (colored), \$150-\$250 monthly. Experience unnecessary, 236 Railway Bureau, East St. Louis, Ill."

Respondent further, as charged, makes representations in catalogs, circulars, contracts, and other literature sent to those answering such advertisements which "tend to and do create the impression that those who buy and pursue the courses of study described therein are assured of jobs and that respondent's school has great influence and close connection with the great railroads of the country and the officials thereof when such is not the case"; making such statements as "No charge * * * for securing graduates a position", "Thousands of graduates now in the service earning good wages", "Success is assured", "The many employing officials of the best railroads * * * know about this institution and our responsibility", "We have had many calls in for graduates that we were unable to supply. One hundred and thirty-two different calls from railroad officials in 1 day * * * ",¹ the facts being respondent is

¹ Other statements alleged and set forth in the complaint include the following: "This work is steady employment throughout the year. You will have a lifetime job. Our guarantee with every course, you cannot fail to pass. Quick promotion. Failure impossible. Many of our graduates have previously made unsuccessful attempts to secure a position, before receiving our assistance. * * * They afterward communicated with us, enrolled, completed the course, and were at once employed. Our student can choose his location. Any road in any State. He can start any season, any month, or any day of the year. Our facilities for referring you personally to the different officials are

Complaint

16 F.T.C.

not in a position to secure positions for his graduates, has not any special influence or connection with railroads whereby he or his graduates are given any special consideration in the employment of men, and many of such railroads listed by him have not called upon him for men and do not now do so, exceptions thereto having been many years ago."

Respondent further, as charged, states in his catalogs that "we own and occupy our building of three floors, 6,750 square feet devoted exclusively to educational and instructive work by mail, courses, and educational books of all kinds", and in circular letters makes certain offers and/or terms to be accepted by certain specified dates or within a specified number of dates, and held out as special confidential offers to the persons addressed, the facts being that said individual's school occupies only one floor of the building referred to and the offers in question are made to all inquirers after they have failed to reply to previous letters, and the time limits are not fixed or adhered to.

Said representations, as alleged, have the tendency and capacity "to confuse, mislead, and deceive members of the public into the belief that respondent has positions to offer to those who answer his advertisements; that such advertisements are those of a railroad; that respondent has special influence with railroads and officers thereof whereby he is enabled to secure positions for his students; that those who enroll, and pursue respondent's courses are assured of positions; that respondent's building is used exclusively for school purposes; and that offers of special prices and terms are special to the persons addressed and must be accepted within certain specified times, * * * and to induce members of the public to answer respondent's advertisements and to purchase and pursue his said courses because of the erroneous beliefs engendered as above set forth, and to divert trade to respondent from competitors engaged in the sale of correspondence courses in interstate commerce in similar and kindred lines to those of respondent and from those engaged in the conduct and sale of correspondence courses in other lines", all to the injury and prejudice of the public and competitors.

unsurpassed. When you complete the course, we will immediately, at no cost to you, get busy to at once get you into a job on a good road nearest your home, if you prefer it, by recommending you to the proper official. That good railroad job still awaits your decision. Success is assured. There are no 'ifs and ands' about our proposition. There is no possibility of failure when you enroll with us. Our business relations with the employing officials, division superintendents, train masters, master mechanics, road foremen of engines, etc., in every section of the country, are the best."

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 the respondent, H. L. Metzger, doing business under the name and style of National Railway Instruction Bureau, charging him with the use of unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

Respondent having entered his appearance and filed his answer to said complaint, hearings were had and evidence was introduced in support of the allegations of said complaint before a trial examiner of the Federal Trade Commission theretofore duly appointed. The respondent elected not to introduce any evidence in his behalf. At the close of the introduction of evidence on behalf of the Commission the trial examiner ordered the taking of testimony closed. The attorney for the Commission elected not to file a brief and notice of such election was duly served upon respondent by registered mail. No brief was filed by respondent although opportunity was duly given and the time for filing same expired June 15, 1932. Thereafter, this proceeding came on for final hearing upon the record, and the Commission having duly considered the matter and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, H. L. Metzger, is the sole owner and manager of a correspondence school conducted by him under the name of National Railway Instruction Bureau in the city of East St. Louis, in the State of Illinois, which said business has been conducted by him for a period of 20 years or more. Said business consists in the sale of courses of instructions designed and intended to train students for various railroad positions such as fireman, brakeman, baggageman, passenger train porter, pullman porter and pullman conductor, which said courses of study and instruction are sold to purchasers thereof in various States of the United States, and respondent causes and has caused books and pamphlets containing said courses of study and instructions to be transported in interstate commerce from his said place of business in Illinois to, into and through States of the United States other than Illinois

to persons to whom they are or have been sold. In the course and conduct of his said business respondent has been, and is now, in competition with other individuals, partnerships, and corporations engaged in the sale and distribution in interstate commerce of courses of study and instruction in railroad work similar to those of respondent and also in various mechanical and other lines.

PAR. 2. Respondent in advertising his said courses of study and instruction caused advertisements to be inserted in newspapers, magazines, and publications circulated in and among the various States of the United States, which said advertisements, by reason of their wording as well as by being signed "Railway Bureau" and by being frequently inserted in "help wanted" columns or columns containing such advertisements, imply and have the capacity and tendency to cause readers thereof to believe that the advertiser has railroad positions to offer to applicants and that such advertisements are those of a railroad. Respondent also sent out catalogs and advertising matter containing many statements and representations which imply and have the capacity and tendency to create the belief that those who bought and pursued respondent's courses of study would be assured of jobs; that jobs are plentiful; that calls from railroads for men are frequent; and that respondent has close connection with leading railroads and great influence with the officials thereof by reason of which he is able to place students in positions. Such representations were also made by means of copies of purported letters from railroads or officials thereof, or extracts from such letters, in which inquiries were made for men to fill positions. Respondent, in form letters to prospective students, represented that certain offers made therein were limited as to time and were special offers to the persons addressed. Representations were also made by respondent in his advertising literature that said school owned its own building devoted exclusively to school uses.

PAR. 3. Respondent has not had nor does he now have railroad positions to offer to applicants. Advertisements described in the preceding paragraph as having been inserted in newspapers and other publications were not those of a railroad but were those of respondent seeking prospects for his correspondence courses. Students who pursued respondent's courses of study are not assured of jobs. Railroad jobs are not plentiful. Calls from railroads for men are not frequent. Respondent has neither close connection with leading railroads nor great influence with the officials thereof by reason of which he is able to place students in positions. Purported special offers made by respondent were not limited as to

time and were not special to the persons addressed. Letters used by respondent as aforesaid were written many years ago, many of them in times of emergency incident to strikes or threatened strikes, and do not reflect employment conditions as they now exist or as they have been for a number of years last past. Vacancies in railroad positions are now very few. Railroads generally for a number of years have pursued the policy of filling positions by advancement or from former employees or from experienced men from other lines. Preference is not given by railroads generally to graduates of respondent's school or to those of other schools. Respondent owns and occupies his own building and it is used for school purposes, but portions of the building are so used only at times or incidentally and portions are used as living quarters for respondent and the janitor.

PAR. 4. The representations of respondent which imply that he has positions to offer; that the advertisements are those of a railroad; that students of his courses are assured of jobs; that jobs are plentiful; that calls from railroads for men are frequent; that respondent has close connection with leading railroads and great influence with the officials thereof by reason of which he is able to place students in positions; and that purported special offers made are limited as to time and as to the persons addressed, are misleading and deceptive because such are not the facts, and such representations have the capacity and tendency to mislead and deceive members of the public and to induce them to answer respondent's advertisements and to purchase and pursue his courses of study and instruction because of such erroneous beliefs.

PAR. 5. There are among the competitors of respondent those who in no wise misrepresent their business status, their connection with railroads, their facilities for securing jobs for students and special offers which may be made, and respondent's acts and practices as above set forth tend to and do unfairly divert business to respondent, from his competitors to the injury and prejudice of such competitors.

CONCLUSION

The practices of said respondent under the conditions and circumstances described in the foregoing findings are all to the injury and prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce and are in 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

16 F.T.C.

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 in support of the charges of said complaint and the report of the trial examiner therein, and the Commission having made its findings as to the facts and its conclusion that the respondent has been and is 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 ordered, That the respondent, H. L. Metzger, his agents and employees, in connection with the advertising and offering for sale or in selling in interstate commerce courses of study and instruction and books and pamphlets containing the lessons and subject matter studied in connection therewith, cease and desist from:

(1) Representing by statements which state or imply that men are wanted to fill positions on railroads or that respondent's advertisements are those of a railroad.

(2) Making representations as above set forth by placing advertisements in "help wanted" columns of newspapers or magazines or in columns containing such advertisements, and/or signing such advertisements simply as Railway Bureau, unless such advertisements contain a clear and explicit statement clearly making known that respondent has only courses of instruction for sale.

(3) Representing by statements which state or imply that students who pursue respondent's courses of study are assured of jobs; that jobs are plentiful; that calls from railroads for men are frequent; that respondent has close connection with leading railroads and great influence with the officials thereof by reason of which he is able to place students in positions, unless and until such are the facts at the time such representations are made.

(4) Making use in advertising of letters from railroads inquiring for men to fill positions unless such letters are of comparatively recent date and reflect conditions existing at the time of such use.

(5) Representing that terms offered are special and/or that such offers must be accepted within a specified time when such offers are not special to those to whom the same are made and when such time limits are not adhered to.

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 hereinabove set forth.

Complaint

IN THE MATTER OF
BLATZ BREWING COMPANYCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1990. Complaint, Dec. 23, 1931— Decision, July 7, 1932*

Consent order requiring respondent, in connection with sale in interstate commerce of plain unflavored malt sirup containing no hops, barley or other ingredients produced in or imported from Bohemia, to cease and desist from using word "Bohemian" to describe or designate said product, unless qualified as in said order set forth.

Mr. James M. Brinson for the Commission.

Richmond, Jackman, Wilkie & Toebaas, of Madison, Wis., for respondent.

COMPLAINT

Acting in the public interest 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 charges that the Blatz Brewing Co., hereinafter designated respondent, has been, and is using unfair methods of competition in commerce in violation of the provisions of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent Blatz Brewing Co. is now and has been for several years last past a corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business in the city of Milwaukee, in said State, engaged in the manufacture of malt sirup and its sale in commerce among and between the various States of the United States, in competition with individuals, partnerships, and corporations engaged in the sale of like products in interstate commerce. It has been, and is its practice to cause such product, when sold, to be transported from its aforesaid place of business at Milwaukee in the State of Wisconsin to purchasers located in the various other States of the United States than the State of Wisconsin.

PAR. 2. In the course and conduct of the business described in paragraph 1, it has been, and is the practice of respondent to offer