

IN THE MATTER OF
T. H. BANFIELD, AN INDIVIDUAL, DOING BUSINESS
UNDER THE TRADE NAME AND STYLE OF PACIFIC
EXTENSION UNIVERSITY

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

Docket 2051. Complaint, June 7, 1932—Decision, Dec. 19, 1932

Where an individual engaged in sale of correspondence courses in secretarial duties and business, together with second-hand and rebuilt typewriters, to students in various States, through so-called "registrars" or agents,

- (a) Included the word "university" in the trade name employed by him, and in his representations to students and prospective students referred to himself and his organization as a "university", notwithstanding fact he did not teach the arts and sciences taught in universities, did not have a staff consisting of learned instructors in the various higher branches of learning, and was not authorized to confer degrees of higher learning, and his business and organization did not constitute a university;
- (b) Referred to supposed role of a purported "Students' Foundation" as a cooperating agency assisting pupils, in acknowledging receipt and acceptance of contracts from enrolling students, and set forth assignment of particular student's account thereto, and employed such name thereafter in dunning delinquents, facts being business involved was not an investment for benevolent purposes, or a donation, legacy, or fund for the support of such institutions as schools or hospitals, or of some specific object in connection therewith, but was a purely commercial enterprise for profit, and had no endowment or foundation connected therewith, and purported foundation was fictitious; and
- (c) Represented through agents and impliedly in contracts that regular prices varied from \$251.50 to \$295 depending upon deferred-payment arrangements, and that he was offering to waive the \$120 charge incorporated in said amounts for tuition as distinguished from price of typewriter and other materials, facts being balance thus left and charged constituted the regular price ordinarily received by him for the course, typewriter, and materials, was not special or reduced, and involved no free tuition;

With capacity to mislead prospective students and to induce them to enroll and pay for the course as and for that of a true university and believing in the truth of aforesaid representations, and thereby divert to himself patronage from competitors:

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

Mr. Eugene W. Burr for the Commission.

Phillips & Munck, of Oakland, Calif., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged, at Berkeley, Calif., as Pacific Extension University, in the sale of correspondence courses in secretarial duties and business, to students in the various States, together with sale of second-hand and rebuilt typewriters (of which one is supplied to each student), with using misleading trade name and misrepresenting business status, enforcing payment of delinquent accounts through fictitious agencies, and misrepresenting prices and terms, 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 and soliciting business through agents by him designated as "registrars", makes use of his aforesaid trade name including the words "Extension University", and represents to prospective students and to students through his solicitors, that his business is a university,¹ notwithstanding the fact that "respondent is not, and does not operate or conduct a university within said popular conception of the word, he does not undertake to teach the arts and sciences usually taught in colleges or universities, or any of them, nor does he teach or undertake or pretend to teach any art, science, or branch of learning other than the subjects * * * described."

Respondent further, as charged, makes use of a supposed "Students' Foundation" to dun students who have become delinquent in their payments, it being respondent's practice to advise the new student, over the signature of such foundation, that his account has been assigned thereto and that all payments should be made to it, and also to write such student, at the same time, over its own aforesaid trade name, that in order for the "foundation" which operates entirely from capital received from students, to continue to help students, each student must send in his payments regularly,² notwithstanding fact that the foundation is purely fictitious, and respondent's business in all aspects is purely commercial and conducted for profit, there being no endowment or foundation connected therewith or with any phase of the business.³

¹ As alleged in the complaint, "a university, as commonly understood, is an educational institution of higher learning empowered to confer degrees, with a faculty of learned persons acting as instructors in the various higher branches of learning embraced in the curriculum, which curriculum usually includes the liberal arts and sciences."

² The letter referred to is set forth in the findings infra.

³ As alleged in the complaint, "the word 'Foundation' as commonly understood means a fund invested for benevolent or charitable purposes, or a donation, legacy or fund for the support of such institutions as schools or hospitals, or the support of some specific object in connection with such institutions."

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Respondent further, as charged, through his agents and by implication in his various forms of contracts, represents that the regular price for a course varies from \$251.50 to \$295 (of which \$120 is for tuition, and balance for typewriter and other material), depending upon deferred-payment arrangements, but that he is offering to waive tuition and accept enrollment for price of typewriter and other material, facts being price thus charged constitutes his regular and full price for course, typewriter and material, is not special or reduced, and involves no free tuition.

Each and all of said representations, as alleged, "are false and misleading and have the tendency and capacity to deceive prospective students and to induce them to enroll and pay for respondent's courses in and on account of a belief that said representations are true, and so to divert to respondent patronage from his competitors", and said "acts and practices of the respondent are all to the prejudice of the public and of 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, the Federal Trade Commission issued and served a complaint upon the respondent, T. H. Banfield, an individual, doing business under the trade name and style of "Pacific Extension University", charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent having entered his appearance and filed his answer herein and having entered into a stipulation as to certain of the facts by which it was agreed that, as to the said facts so stipulated, said stipulation might be taken in lieu of testimony, and witnesses having been heard in documentary evidence received as to the facts not so stipulated, by a trial examiner thereunto duly appointed by the Commission, and said trial examiner having made and rendered report thereon, and respondent having waived the presentation of written and oral argument in opposition to an order to cease and desist herein, this proceeding has been brought on for final determination. Now, therefore, the Commission, having considered the record in this proceeding and being 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 T. H. Banfield is now and has been for over a year last past engaged at Berkeley, Calif., under the trade

name of "Pacific Extension University", in the business of selling, by correspondence, courses of instruction consisting of mimeographed, printed, and written lessons in secretarial duties and business to students being and residing at their places of residence in the various States of the United States, the number of such students exceeding 2,000. Respondent's business also embraces the selling of second-hand and rebuilt typewriters, such a typewriter being furnished to each student. When students are enrolled by contracts satisfactory to respondent as to the payment of the price of the course of instruction and typewriter, the lessons comprising said course of instruction, and said typewriter, are transported in interstate commerce by respondent, by means of express or mail, from respondent's place of business at Berkeley, Calif., or, in case of the typewriter, from some other place in the United States, to the several students at their various places of residence.

PAR. 2. In all of his said business respondent is in competition with other persons who are likewise engaged in the sale of kindred courses of instruction in interstate commerce and also in competition with other persons who sell typewriters and ship same throughout the United States in interstate commerce.

PAR. 3. The respondent solicits his business through agents designated by him as "registrars", who personally call upon young men and women throughout the United States and procure many of them to enroll as students and to purchase, receive, and agree to pay for, the courses of instruction and typewriter. Respondent uses his trade name and style aforesaid, including the word "university", and moreover in his representations to students and prospective students refers to himself and his organization as a "university". The word "university", as understood by the public, is an educational institution of higher learning empowered to confer degrees, with a faculty of learned persons acting as instructors in the various higher branches of learning embraced in the curriculum, which curriculum includes the liberal arts and sciences, and one or more special branches of learning, such as theology, law and medicine. Respondent's courses are limited to those referred to in paragraph 1 hereof. He does not teach the arts and sciences taught in universities. His staff does not consist of learned persons and he is not authorized to confer degrees of higher learning upon any persons. Respondent and his organization do not constitute a university.

PAR. 4. The respondent, upon the receipt of a contract of enrollment signed by the student and upon the acceptance of such contract, sends to such student a letter purporting to be signed by "The Students' Foundation" in which the student is advised that his ac-

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count has been assigned to The Students' Foundation, and that all payments should be made to said foundation. The student is at the same time advised by another letter signed "Pacific Extension University", reading as follows:

DEAR STUDENT: The Students' Foundation is operating entirely upon capital received from students of the Pacific Extension University.

They are willing and anxious to help students all the way through our course of training. However, in order to make it possible for them to continue to do this it is necessary for each student to send in regular payments to maintain the operating fund.

Thanking you for your cooperation in this matter, and trusting that you will not allow your account to get in arrears, we are

Very sincerely,

PACIFIC EXTENSION UNIVERSITY.

Thereafter in cases of delinquency in payments, the students are dunned by means of letters purported to have been signed by The Students' Foundation. The word "foundation" as commonly understood means a fund invested for benevolent or charitable purposes, or a donation, legacy or fund for the support of such institutions as schools or hospitals, or the support of some specific object in connection with such institutions. Whereas the respondent's business in all of its aspects is purely commercial and conducted for profit and there is no endowment or foundation in connection with the business, or any phase of the business, and the purported "Students' Foundation" is a fiction.

PAR. 5. The respondent, through his agents and by implication in his various forms of contracts presented prospective students, represents that the regular prices of a course of instruction varying in amount by reason of terms of the contract as to cash and deferred payments is from \$251.50 to \$295, and that of said amount \$120 is for tuition and the balance for the typewriter and other material. He represents that he is offering to the prospective student to make no charge for tuition and to accept the student's enrollment on payment of the alleged price of the typewriter and other material. Whereas said sum stated to be for material is the regular, permanent and full price ordinarily received by the respondent for the course of instructions including typewriter and material, and is not a special or reduced price, nor is there any free tuition involved in the transaction.

PAR. 6. The use of the word "university" as part of respondent's trade name and style is misleading and deceptive to the public and the representations, found to have been made in paragraphs 3, 4, and 5 hereinabove, are untrue and misleading and have the capacity

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to mislead prospective students and to induce them to enroll and pay for respondent's course in and on account of a belief that said use of said word "university" is justified by the character of respondent's institution and that said representations are true and so to divert to respondent patronage from his competitors.

CONCLUSION

The acts and practices of respondent under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in interstate commerce 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 considered by the Federal Trade Commission on the complaint, the answer of respondent, a stipulation entered into between the respondent and counsel for the Commission as to certain issues of fact, the oral and documentary evidence received as to the issues of fact not so stipulated, and the report of the trial examiner, and the Commission having approved said stipulation and having made its findings as to the facts and conclusion that respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That respondent, T. H. Banfield, his agents, representatives, and employees, in offering for sale or selling courses of instruction or equipment in interstate commerce, shall cease and desist from:

(1) Using the word "university" in the trade name of respondent, or in any manner, directly or indirectly, using said word as descriptive of respondent's business;

(2) Representing, directly or indirectly, that students' foundation cooperates with respondent's school or assists respondent's pupils so long as such is not the fact; and

(3) Representing, directly or indirectly, that the price at which respondent offers any course of instruction or any equipment or any combination of instruction and equipment, is a special or reduced

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price or a price that is lower than the respondent's ordinary or usual price therefor, when such is not the fact.

It is further ordered, That respondent shall, within 60 days after 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 and conformed to the order to cease and desist hereinabove set forth.

Complaint

IN THE MATTER OF
ANNA M. GIBBIN

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 2064. Complaint, Sept. 28, 1932—Decision, Dec. 20, 1932

Where an individual engaged in sale and transportation of plants, flowers and bulbs to purchasers pursuant to mail order, chiefly; in advertising said plants, etc., in pamphlets and newspapers,

- (a) Falsely represented same as of superior quality and variety, and of a large variety, and that bulbs would produce flowers of such a variety, facts being said plants, etc., were in many cases inferior in said respects, bulbs would not produce as represented, and shipments to customers frequently did not supply variety advertised and ordered and were often short of amounts requested and paid for;
- (b) Represented that she imported and offered Holland bulbs and operated a large floral establishment, growing most of her stock, supplying many notable florists with cut flowers, and offering her surplus to flower lovers, facts being she raised only a few of the flowers, etc., dealt in, and representations made by her as aforesaid in other respects were false;
- (c) Guaranteed that unsatisfactory goods might be returned and others would be given in place thereof or money refunded, and that orders would be filled promptly, facts being she frequently failed or refused to replace purchases brought to her attention as unsatisfactory or to return amount paid therefor, and made it her practice not to refill orders or make refunds upon complaint unless threatened with suit, and frequently received money in payment for orders without filling same at all (or until threatened with suit), or returning the money; and
- (d) Falsely represented that she offered her plants, flowers and bulbs at prices greatly reduced from those usually charged by her, facts being prices charged were sometimes those usually demanded by her and sometimes in excess thereof;

With tendency and capacity to deceive the purchasing public into believing said statements and representations to be true and induce purchasers to buy said plants, etc., in such belief and unfairly divert trade to her from competitors and otherwise injure the same:

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

Mr. E. J. Hornibrook 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, engaged as Wren's Nest in the town of Pemberton, N.J., in the sale of flowers and bulbs to purchasers pursuant to orders