

IN THE MATTER OF
**AMERICAN COLLEGE, AMERICAN UNIVERSITY, DENTON
N. HIGBE, INDIVIDUALLY AND AS PRESIDENT OF
AMERICAN COLLEGE AND AS PRESIDENT OF AMERI-
CAN UNIVERSITY**

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

Docket 2034. Complaint, May 13, 1932—Decision, Oct. 10, 1933

- Where two corporations respectively engaged in the sale of correspondence courses in, (1) "pedopractic", through which course it was undertaken to teach purchasers how to diagnose, treat and correct many disorders and deformities of the foot, by manual physical procedure and other methods, including dietetics, mechanotherapy, exercise, manipulations, massage, etc., and, (2) physiotherapy, through which course, involving such subjects and/or basic sciences as physiological therapeutics, mechanotherapy, nature cure, spinal adjustment, and suggestive therapeutics, and anatomy, psychology, pathology, symptomatology and diagnosis, it was undertaken to teach purchasers, by mail, how to diagnose, treat and relieve human ailments by manual physical means, and by methods of mental suggestion; and an individual, president and principal owner of the capital stock of the two corporations, and by virtue of such ownership in active control thereof and manager and director of their policies;
- (a) Falsely represented through their advertisements that graduates of the course of "Pedopractic" should earn from \$200 to \$500 a month and that their earnings might easily be from \$400 to \$1,000 a month, or more, or even \$50 a day, and that graduates in the course of physiotherapy could have large clienteles, big lucrative practices, and amazingly big incomes, with many physiotherapists earning from \$3,000 to \$5,000 a year, and that the student, almost immediately after graduation, could earn a larger income than he made before taking it, facts being such representations were so greatly exaggerated as to be false and misleading to prospective student purchasers;
- (b) Represented that the respective corporations contracted or undertook to refund to the students of their respective courses every cent paid therefor, without red tape or delay, if earnings did not come up to the student's expectations, or, in the case of the pedopractic course, if the students were in any way dissatisfied with instruction and service received, or did not feel capable of entering the work, or to continue their instruction until satisfied, should their earnings prove disappointing, facts being such refunds were admittedly granted only under exceptional circumstances, and were not granted where a graduate's office, following opening thereof by him, was thereafter closed by State authorities, and such representations were false and misleading:

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- (c) Represented that no license was required by persons practicing methods of diagnosis, treatment and correction which they undertook to teach in the course in pedopractic, and that their home study course in physiotherapy would qualify the student to practice such subject successfully, facts being that licenses are required by the great majority of the States as a condition precedent to diagnosis, treatment and correction of disorders and deformities of the foot, by persons who hold themselves out as qualified to treat and correct such ailments, or for diagnosis and treatment of human ailments, as students in or graduates of the course of physiotherapy would purport to diagnose and treat, for which license the great majority of such students or graduates would not be acceptable candidates; and
- (d) Represented that millions of patients demanded the treatment in physiotherapy, for the giving of which only a few thousand were qualified, and that students in and graduates of the latter course might qualify as physiotherapists and establish themselves in a profession, the services of which were demanded, as aforesaid, with resulting elimination of the long wait so common to other professions:

With capacity and tendency to mislead and deceive the public and student and prospective student purchasers into believing they were offering courses of instruction which qualified students and graduates thereof to earn large sums through the practice of the aforesaid subjects, that courses in question were offered under a money back arrangement, by which the money paid would be refunded at the desire of the student, and that students in and graduates of the courses were qualified to practice the things taught therein in any State, without examination or license, and with result that a large number of the public, in reliance upon such mistaken beliefs thus induced, applied for and subscribed to said courses in preference to those of competitors, who did not make such false, exaggerated, misleading and deceptive statements and representations, and trade was thereby diverted from them:

Held, That such acts and practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Robert H. Winn for the Commission.

Mr. Leo Conlon, of Chicago, Ill., for respondents.

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 American College, a corporation, American University, a corporation, and Denton N. Higbe, individually and as president and principal stockholder of respondent American College, and as president and principal stockholder of respondent American University, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation

of the provisions of Section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent American College is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business in the city of Chicago in said State. Respondent American University is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business in the city of Chicago, in said State. Respondent Denton N. Higbe caused respondent American College, a corporation, and respondent American University, a corporation, to be organized and incorporated and is the president and principal stockholder of respondents American College and American University, and as such respondent Higbe owns and controls the said respondent corporations and manages and directs their policies. Respondent Higbe has his principal office and place of business in the city of Chicago, State of Illinois.

Respondents' businesses consist in the sale and delivery by mail and other means of transportation of certain courses of instruction to subscribers or purchasers thereof located in various States of the United States. After the said courses of instruction have been subscribed for or purchased the respondents ship and cause to be transported from their principal places of business in Chicago, Ill., the printed matter, examination questions, charts, information, and paraphernalia comprising the said courses of instruction to the purchasers thereof located in a State or States of the United States other than the State of Illinois. Said subscribers or purchasers are members of the general public, and are hereinafter referred to as students.

In the course and conduct of their said businesses respondents are in competition with other corporations and individuals and with firms and partnerships engaged in the sale and interstate delivery, by mail and other means of transportation, of courses of instruction to subscribers or purchasers thereof located in various States of the United States.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent American College, advertises and offers for sale a course of instruction in a subject called by them Pedopractic. This course of instruction is represented by respondent American College as a course of instruction in drugless and non-surgical methods for the alleviation and correction of foot ailments.

PAR. 3. In the course and conduct of its business as described in paragraph 1 hereof, and in and about advertising and offering for

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sale the said course of instruction in Pedopractic respondent American College has inserted or caused to be inserted advertisements in various periodicals, newspapers, and magazines having an interstate circulation. Among others, the following representations and statements are included as a part of such advertisements:

Earn money as a foot specialist. Learn quickly at home * * * Earn while you learn * * * Build up a business or practice that will pay you thousands yearly.

Earn big money as a foot specialist * * * Learn quickly at home in spare time * * * Earn while you learn * * * We teach you how to quickly "cash in" on your knowledge.

Be a foot specialist. Earn more money * * * Learn quickly at home in spare time * * * Earn while you learn. The demand for your services will be so great that you can start in your own home and earn the cost of your training while you are studying the course.

In the course and conduct of its business as aforesaid respondent American College caused letters, circulars, booklets and brochures to be sent to those prospective students who have had their attention directed to the course in Pedopractic offered for sale and sold by respondent American College by such advertisements as those heretofore referred to or otherwise and who have requested information regarding the said course in Pedopractic. These requests have been received from various States of the United States, and respondents caused the said letters, circulars, booklets, and brochures to be sent to such prospective purchasers from the State of Illinois to their points of location in various States of the United States. In these letters, circulars, booklets, and brochures the respondent American College made the following, among other, statements and representations:

Of course, if you have the intelligence and the determination possessed by the average individual who investigates Pedopractic, you will, in all probability, be able to make a great deal more than you can make in any other vocation open to you *and be your own boss*. But why be satisfied with just a good income—say one of \$3,000 to \$5,000—*when you can earn twice this much for a few years, by being the first Pedopractor in a live and growing community.*

The cost of the training need not cause you to hesitate because you can begin earning money when you finish the first half of the course and *can easily earn more than the entire cost of the course before you have completed it.*

But don't conclude that you will not get very much from each person, because you permanently correct their foot disorders and foot deformities. The permanent removal of the causes usually required a dozen calls or more, over a course of several weeks, and you can easily collect from \$2 to \$3 a visit and \$10 to \$20 for arch supports—*from \$25 to \$50 from each client*—when the advantages of your plan are pointed out.

How much any practitioner can earn will depend largely upon his skill, his experience, his personality, his business ability, the population of the

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community in which he is located, etc. The earnings of Foot Correctionists vary for the reasons stated, but it would be safe to say that one should make from \$200 to \$500 a month.

The industrious student should have little difficulty in earning, during his study of his course, many times the cost of the course to him.

Foot correctionists earn large incomes * * * The average charge per visit is \$2. Time required is about fifteen minutes. This means an income of \$8 per hour or \$50 daily. And once established there is no limit to the number of patients the properly trained Pedopractor can attract.

In truth and in fact, the actual or probable earnings available to those who subscribe for or purchase the correspondence course in Pedopractic offered for sale and sold by respondent American College are in most instances less than the amounts stated by said respondent, or may be earned only after many years of practice. In many jurisdictions students or graduates of this course would not be allowed to engage at all in the practice of Pedopractic without obtaining a license by passing an examination given under the supervision of the State government, or satisfying the legal requirements calling for professional training in an approved school, or both.

PAR. 4. In the course and conduct of its business as described in paragraph 1 hereof, respondent American College in soliciting the sale of and selling its correspondence course in "Pedopractic" in interstate commerce has written or caused to be written and has published or caused to be published letters, circulars, booklets, and brochures; which letters, circulars, booklets and brochures respondent has sent or caused to be sent to prospective purchasers of its said correspondence course located in various States of the United States. In the said letters, circulars, booklets, and brochures said respondent has published or caused to be published certain statements and representations, among which are the following:

IS A LICENSE REQUIRED?

* * * So far as we know, there are no laws in any State providing for the examination and licensing of Pedopractors or those who use only the methods included in our course in Pedopractic. The legal rights of Physicians, Surgeons, Osteopaths, Chiropractors, Chiropodists and Podiatrists are clearly defined in the laws which provide for their examination and licensing. None of the practitioners, nor none of the boards providing for their examination and licensing, have any legal or other right to modify, alter, amplify or broaden the definitions of their systems of practice to include any measures, methods or procedures which the legislatures enacting the laws did not intend to have included in the laws.

In truth and in fact, the statutes of many States provide that chiropodists or podiatrists cannot practice in such States without having first secured a license. Most of them provide that the applicant for

a license must pass an examination, or that the applicant must have attended for a certain period of time a school or university teaching the subject for the practice of which the applicant is to be licensed, and the said school or university must be one which is approved by the licensing authorities in the State for which the license is to be given, or both. Many of the said statutes define chiropodists, podiatrists, or other forms of medical or drugless practice in terms sufficiently broad to bring students and graduates of the course in Pedopractic in the respondent American College within the terms of the statute. Respondent American College, with reference to its course in Pedopractic, is not an approved school or college within the meaning of such statutes in any State of the United States.

PAR. 5. In the course and conduct of its business as described in paragraph 1 hereof respondent American College in soliciting the sale of and selling its correspondence courses in interstate commerce has caused the same to be widely advertised in periodicals, newspapers, and magazines having an interstate circulation, and also through the medium of letters, circulars, booklets and brochures circulated by it or caused by it to be circulated in interstate commerce, containing the following, among other, statements and representations;

Now that you know that we are really asking you to make an investment—and an investment which will pay you greater returns than any other legitimate investment—and our *safe-guarding your investment by agreeing to refund your deposits to you* if your earnings do not come up to your expectations, I am quite sure that you will arrange to join us without further delay.

* * * you have evidently overlooked the tuition refund agreement. *This legal, binding, straight-forward contract to refund every cent you pay, without red-tape or delay*, makes it possible for you to find out for yourself, without risk, just what I can and will do for you.

We take all the risk of your being satisfied. You need not hesitate because you fear the picture that we are painting is "too good to be true." If we fail in any way to give you the instruction or service we promise you or if you do not feel capable of entering the practice of this work, we will either continue to instruct you until you are satisfied or will refund the money you have paid us.

* * * *We will accept your enrollment with the simple, straight-forward, and perfectly fair, written agreement to refund to you the money you pay us if you are in any way dissatisfied with the instruction and service you receive—you to be the sole judge.*

Our tuition refund agreement enables you to find out for yourself just what I can and will do for you—without your risking a cent.

More than that, *I am agreeing to make you successful or to refund your money if I fail.* I take all the risk of your not being satisfied, but I have no fear of your not making good because I have been doing this for fourteen years and I know what I can do.

These said statements and representations have the capacity and tendency to deceive and mislead the consuming public into the belief

that the said correspondence course offered for sale and sold by respondent American College is offered on a money-back arrangement whereby the purchasers thereof may claim and obtain a refund of the purchase price thereof if, as and when for any reason they become dissatisfied with the course or with earnings obtained as a result of taking the course or after graduating if they fail to be successful in their profession. As a matter of fact any refund by the respondent is conditioned upon the respondent being satisfied that the student has honestly endeavored to complete the course and second, as a condition precedent to any refund by the respondent, the study material must be returned to the respondent by express within two weeks after the time when the student finishes the course, and further that the student notify the respondent by registered mail of his desire for a refund, stating the student's reasons for desiring such refund.

PAR. 6. In the course and conduct of its business as described in paragraph 1 hereof respondent American University is now and for more than one year last past has been engaged in conducting a school, offering for sale and selling correspondence courses, the curriculum of which includes a correspondence course in physiotherapy, and in the sale and distribution of such course in commerce between and among various States of the United States, causing the printed matter, examination questions, charts, information and paraphernalia comprising said course when sold to be shipped from the place of business of respondent American University, located in the State of Illinois, to purchasers thereof located in a State or States of the United States other than the State of Illinois.

PAR. 7. In the course and conduct of its business as heretofore set forth respondent American University, in and about soliciting the sale of and selling its correspondence course in physiotherapy in interstate commerce has caused the same to be advertised in periodicals, newspapers, magazines, and other publications having an interstate circulation, and also through the medium of pamphlets, folders, circular letters, and other printed matter distributed by it in interstate commerce, and which advertisements and advertising matter contained, among others, the following statements and representations:

Drugless healing! A new easy way to master it at home and earn big fees. * * * In other words, there is waiting for you a dignified profession, a large clientele, and amazing big incomes. * * * Big money for you if you act at once.

You can become a physiotherapist. Many earn \$3,000 to \$5,000 a year. * * * Here is a dignified profession with amazingly profitable possibilities and everywhere a waiting clientele. * * * You can quickly establish a practice

of your own or you can assist physicians or administer to patients in their own homes.

Drugless healing! A new, easy way to master it at home and earn big fees. * * * In other words, there is waiting for you a dignified profession, a large clientele, and amazing big incomes.

First, let us take the cost in money. The total cost of the course may appear to be a rather large sum, but it really amounts to only a few cents a day for a few months' time. Even if it is necessary for you to take these monthly payments out of the amounts you would otherwise spend for food, clothing, entertainment, or something for your home, is this too much to pay for *training that will enable you to eat whatever you want to eat, wear the finest clothes, and to have a magnificently furnished home and the luxuries and the recreations of those who have the determination and the courage to climb over the obstacles between themselves and success?*

You can qualify as a Physiotherapist in a comparatively short time and, on graduation, you will find that you can quickly establish yourself in your profession and immediately reap the rewards that await the qualified Physiotherapist. The study of Physiotherapy offers you the easiest way to acquire a professional training in a profession that is comparatively new, scientifically sound, of great benefit to humanity, lucrative in practice, and one that will assure your social and professional standing in the community in which you practice.

One outstanding advantage of mastering our course in Physiotherapy, which is perhaps not sufficiently emphasized in our printed literature, is that the completion of the course enables one to enter a profession and to obtain the recognition and the benefits everywhere accorded to professional people.

* * * There are millions of patients seeking and demanding Physiotherapy treatment and only a few thousand qualified to serve them! There is no other profession, vocation or occupation offering such possibilities of immediate returns in the way of increased income, professional recognition and better social standing.

Now that you know that we are really asking you to make an investment—and an investment which will pay you greater returns than any other legitimate investment—and *are safeguarding your investment by agreeing to refund your deposits to you* if your earnings do not come up to your expectations, I am quite sure that you will arrange to join us without further delay.

I have shown you by testimonial letters what our graduates have done and are doing in the way of building up big lucrative practices. I have told you that I would see that you received the same personal, individual instruction that has made others so successful * * *

If you are hesitating because of the expense in connection with your training, you should remember that one of the big advantages of Physiotherapy, over all other professions, is that almost immediately upon graduation you can earn a larger income than you are now making. The big demand for qualified Physiotherapists entirely eliminates the long waiting period after graduation which is so common to other professions. Many of our students earn the cost of their training long before they finish the course.

Our home study course in Physiotherapy will qualify you to successfully practice Physiotherapy, either as an assistant to a medical or drugless physician, in charge of a Physiotherapy department in a hospital or sanitarium, or as an independent practitioner. * * *

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* * * you have evidently overlooked the tuition refund agreement. *This legal, binding, straightforward contract to refund every cent you pay, without red tape or delay, makes it possible for YOU to find out for yourself, without risk, just what I can and will do for you.*

In truth and in fact it is not always possible for qualified physiotherapists to immediately obtain more lucrative earnings than they have received in the past. There is not a great demand for physiotherapists. The profession is overcrowded, and it is not probable that graduates of the correspondence course in physiotherapy sold by respondent will be able to enter immediately into a profession which is lacking in competition.

In truth and in fact the statutes of many States provide that drugless healers (including physiotherapists) cannot practice in such States without having first secured a license. Most of them provide that the applicant for a license must pass an examination, or that the applicant must have attended for a certain period of time a school or university teaching the subject for the practice of which the applicant is to be licensed and the said school or university must be one which is approved by the licensing authorities in the State for which the license is to be given, or both. Respondent American University with reference to its course in Physiotherapy is not an approved school or college within the meaning of such statutes in any State of the United States.

The said statements and representations as to the tuition refund agreement have the capacity and tendency to deceive and mislead the consuming public into the belief that the said correspondence course offered for sale and sold by respondent is offered on a money-back arrangement whereby the purchasers thereof may claim and obtain a refund of the purchase price thereof if, as and when for any reason they become dissatisfied with the course or with earnings obtained as a result of taking the course or after graduating if they fail to be successful in their profession. As a matter of fact any refund by the respondent is conditioned upon the respondent American University being satisfied that the student has honestly endeavored to complete the course and second, as a condition precedent to any refund by the respondent, the study material must be returned to the respondent by express within two weeks after the time when the student finishes the course, and further that the student notify the respondent by registered mail of his desire for a refund, stating the student's reasons for desiring such refund.

PAR. 8. The said false, misleading, and deceptive statements and representations heretofore referred to have the capacity and tendency to deceive and mislead the consuming public into the belief

that the said correspondence courses offered for sale and sold by respondents are offered on a money-back arrangement whereby the purchasers thereof may claim and obtain a refund of the purchase price thereof if, as, and when, for any reason, they become dissatisfied with the course or with earnings obtained as a result of taking the course; that the purchasers thereof will be able upon completing a part of the course to begin immediately the practice thereof and earn large and lucrative fees; that upon the completion of any course the purchaser thereof will be able immediately to start practice without arranging for a license to practice and do so without violating any law or ordinance of any legal jurisdiction of the United States, when such are not the facts.

PAR. 9. The false and misleading statements and representations heretofore referred to in soliciting the sale of and selling the said correspondence courses have the capacity and tendency to induce the purchasing public to purchase the said correspondence courses from the respondents in reliance upon the said false and misleading statements and representations.

PAR. 10. The use by respondents of the false and misleading statements and representations as heretofore set forth constitutes practices or methods of competition which tend to and do (a) prejudice and injure the public, (b) unfairly divert trade from and otherwise prejudice and injure respondents' competitors, and (c) operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in the correspondence school or extension course business.

PAR. 11. The above alleged acts and practices of respondents are all to the prejudice of the public and respondents' 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", approved September 26, 1914.

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 American College, a corporation, American University, a corporation, and Denton N. Higbe, individually and as president of respondent American College and as president of respondent American University, charging them with the use of unfair methods of competition in inter-

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state commerce in violation of the provisions of said act. Respondents having entered their appearance and filed their answer to the complaint herein, hearings were held and evidence was introduced before an examiner of the Federal Trade Commission theretofore duly appointed, whereupon this proceeding came on for final hearing on the briefs filed in support of the complaint and in support of the answer, counsel for the Commission and counsel for the respondents having waived oral argument, and the Commission having duly considered the record 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. Respondent American College is an existing corporation organized in the year 1915 under and by virtue of the laws of the State of Illinois with its principal office in the city of Chicago in the State of Illinois.

PAR. 2. Respondent American University is an existing corporation organized in the year 1913 under and by virtue of the laws of the State of Illinois with its principal office in the city of Chicago in the State of Illinois.

PAR. 3. The individual respondent, Denton Higbe, is the president of both of the corporate respondents, and his office and place of business is in the city of Chicago in the State of Illinois. He is the principal owner of the capital stock of the corporate respondents herein, and by virtue of such ownership actively controls, manages and directs their policies. He organized and was one of the incorporators of respondent American College.

PAR. 4. In the course and conduct of their businesses as hereinafter set out, respondents and each of them are in competition with other corporations, partnerships, firms and individuals likewise engaged in the sale and distribution in interstate commerce of correspondence school courses comprised of written or printed instructions, materials, appliances and devices sold and offered for sale for the purpose of instructing and training the student purchasers thereof in the arts of "pedopractic" and physiotherapy.

PAR. 5. Respondents through respondent American College in advertisements circulated throughout the United States offer for sale and sell a correspondence course under the name "Pedopractic", by means of which they undertake to teach purchasers and prospective purchasers thereof how to diagnose, treat and correct many and various disorders and deformities of the human foot by manual physical procedure and other methods, including dietetics, mechano-

therapy, exercise, manipulations, massage, heat, light, water, electricity (involving the use of electric vibrators, therapeutic lamps and heaters), corrective shoes and stockings and the making and fitting of arch supports. The materials comprising the course consists of 28 typewritten mimeographed lessons, each varying from the other in length, from 5 to 16 pages, but averaging about 8 pages each. These sheets of paper 8½ by 11 inches, together with certain tools, supplies for making supports, rubber balls and wood blocks used in the lessons on manipulation, and other appliances are sold and delivered to the student purchasers. By devoting 10 to 12 hours a week to the course it is estimated that the student can complete it in six months. The price of the course is \$127.50 in cash or \$150 in monthly installments of \$15 each. The number of students taking the course in July, 1932, was approximately 600. Over 60% of the students who take the course complete it. When sold, respondents cause the materials and commodities comprising said course to be transported from the city of Chicago in the State of Illinois, into and through various other States of the United States to the student purchasers thereof.

PAR. 6. Through their advertisements aforesaid respondents in the course and conduct of their business represent that graduates of this course in Pedopractic should earn from \$200 to \$500 per month, and that the earnings of such graduates may easily be \$400 to \$1,000 a month or more or even \$50 a day. By means of such claims respondents indirectly represent the actual past earnings of graduates to be equally comparable with the aforesaid figures. The evidence, however, was to the effect that of four "graduates" one earned \$300 over a period of 10 months; one earned \$3,900 a year; one earned nothing; and the fourth testified that "Pedopractic" is of such poor demand by the public that a beginner could hardly make anything at it. Respondents, having offered no testimony in support of said claims, the Commission finds that respondents' representations relative to what their "Pedopractic" graduates have earned are so greatly exaggerated as to be false and misleading to prospective student purchasers.

PAR. 7. Respondents further represent in advertisements that the American College contracts to refund to its students of "Pedopractic" every cent of the money paid for the course without red tape or delay or to continue to instruct them until they are satisfied if their earnings do not come up to their expectations, or if they are in any way dissatisfied with the instruction and service received, or if they do not feel capable of entering the work. Respondent Higbe, however, testified that such refunds are granted

only under exceptional circumstances and the record reveals one instance where a graduate had opened an office which had later been closed by State authorities, and no refund was made. These representations are therefore false and misleading.

PAR. 8. Respondents further represent in advertisements that no license is required by persons practicing the methods of diagnosis, treatment and correction which the respondents undertake to teach students through the course in Pedopractic. These representations are misleading and false in that licenses are required by the great majority of the States of the United States as a condition precedent to the diagnosis, treatment and correction of disorders and deformities of the human foot by persons who hold themselves out as qualified so to diagnose, treat and correct.

PAR. 9. Respondents through respondent American University in advertisements circulated throughout the United States offer for sale and sell a correspondence course in "Physiotherapy", by means of which they undertake to teach by mail the purchasers and prospective purchasers thereof to diagnose, treat and relieve human ailments by manual physical means and by methods of mental suggestion. The course in Physiotherapy includes sections devoted to physiological therapeutics, mechanotherapy, nature cure, spinal adjustment, and suggestive therapeutics, and includes the basic sciences of anatomy, psychology, pathology, symptomatology and diagnosis. The material comprising this course consists of 54 lessons each varying from the other in length from 3 to 28 pages and averaging 9 pages, in part printed in booklets 5 inches wide by 7 inches long, the remainder being typewritten or mimeographed on one side of sheets of paper 8½ inches by 11 inches, together with motion picture films, a projector and a series of charts, all of which are sold and delivered to the student purchaser. The average graduate finishes the course in 8 or 9 months. There is no time fixed by the respondents within which the course must be completed. The price of the course is \$127.50 cash or \$150 in monthly installments of \$15 each. More than 1,200 students were taking the course in July, 1932. Approximately half of the persons enrolling for the course complete it. When sold, respondents cause the materials and commodities comprising said course to be transported from the city of Chicago in the State of Illinois, into and through various other States of the United States to the student purchasers thereof.

PAR. 10. Through their advertisements aforesaid respondents in the course and conduct of their business, represent that graduates in this course of Physiotherapy can have large clienteles, big lucrative practices and amazingly big incomes. They further represented

that many physiotherapists earn from \$3,000 to \$5,000 a year; that there is no other profession, vocation or occupation offering such possibilities of immediate returns in the way of increased incomes, professional recognition, and better social standing. They have further represented that almost immediately after graduation the American University student can earn a larger income than he made before taking the course; that millions of patients demand the treatment but that only a few thousand are qualified to serve them, and that the big demand entirely eliminates the long waiting period so common to other professions. The evidence shows that respondents have no knowledge of any graduate of their course in Physiotherapy who is earning such large sums of money in the practice of the profession, that there is no great demand for physiotherapists, and that there is a much smaller demand for physiotherapists trained only in a correspondence school. The Commission finds that respondents' representation relative to what their graduate physiotherapists have earned and relative to the existing demand for their services, are so greatly exaggerated as to be false and misleading to prospective student purchasers.

PAR. 11. Respondents further represent that the American University will refund to students every cent paid without red tape or delay if the earnings obtained through the practice of Physiotherapy do not come up to the student's expectations. Respondent Higbe, however, testified that such refunds are granted only under exceptional circumstances and the record reveals one instance where a graduate had opened an office which had later been closed by State authorities, and no refund was made. This representation is false and misleading.

PAR. 12. Respondents further represent that students in and graduates of their course in Physiotherapy may qualify as physiotherapists and establish themselves in a profession, the services of which are demanded by millions of patients. They further represent that the American University home study course in Physiotherapy will qualify the student to successfully practice Physiotherapy. These representations are misleading and false in that the majority of the States of the United States have licensing laws which require persons diagnosing and treating human ailments, as students in and graduates of the American University course in Physiotherapy would purport to do, to obtain a license as a condition precedent to such practice. In the great majority of cases students in or graduates of the American University course in Physiotherapy would not be acceptable as candidates for such a license.

PAR. 13. The aforesaid acts and things done and the representations made by the said respondents have the capacity and tendency

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to mislead and deceive the public, student and prospective student purchasers into the beliefs that the said respondents are offering for sale and selling courses of instruction in Pedopractic and Physiotherapy which qualify students and graduates of such courses to earn large sums of money in the practice thereof; that the courses are sold under a "money-back" arrangement by which the money paid the respondents will be refunded at the desire of the students; that students in and graduates of the courses are qualified to practice the things taught in the courses in any State of the United States without examination or license, and acting upon those beliefs and relying upon the aforesaid representations a large number of the public has applied for and subscribed to respondents' said courses of instruction in preference to the courses of instruction offered by their competitors, who do not make such false, exaggerated, misleading and deceptive statements, and representations, thereby diverting trade from such competitors.

CONCLUSION

The acts and practices of respondents set forth in the foregoing findings as to the fact constitute, under the circumstances therein stated, unfair methods of competition in interstate commerce in violation of 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."

ORDER TO CEASE AND DESIST ¹

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents and testimony having been taken and the Commission having made its findings as to the facts and its conclusion that respondents have been and are now violating Section 5 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 the respondents American College, a corporation, American University, a corporation, and Denton N. Higbe, and the agents, representatives, servants and employees of each of them, in connection with the sale, or offering for sale, of courses of instruction in interstate commerce, or in the District of Columbia, cease and desist as follows:

(1) From representing expressly or by implication that the usual and ordinary earnings of students or graduates of the Amer-

¹As modified, as to par. 4, on March 21, 1934.

Order

ican College course in Pedopractic or of the American University course in Physiotherapy will be from \$200 to \$1,500 per month or more, or that there is no long waiting for a big practice, and from misrepresenting in any way whatsoever the earnings of students or persons who are taking or have completed the said courses of instruction,

(2) From representing expressly or by implication that the respondents or any of them will refund to students or graduates of the American College course in Pedopractic, or of the American University course in Physiotherapy, any part or all of the money paid as tuition upon the happening of certain conditions, unless and until respondents adopt the practice of actually making such refunds under those conditions,

(3) From misrepresenting concerning the licensing requirements for the practice of "Pedopractic" or physiotherapy in force and effect in the various States of the United States,

(4) From misrepresenting by exaggeration or otherwise the existing demand for graduates of respondents' various courses, and

It is further ordered, That each of the said respondents within 60 days from and after the date of the service upon them of this order, shall file with the Commission a report or reports in writing, setting forth in detail the manner and form in which they are complying and have complied with the order to cease and desist hereinabove set forth.

IN THE MATTER OF

ACME SHELLAC PRODUCTS CORPORATION

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

Docket 2082. Complaint, Dec. 8, 1932—Decision, Nov. 6, 1933.

Where a corporation engaged in the manufacture and sale of shellac, shellac substitutes and other similar products, adopted the trade name "Shea-Lac" for shellac substitute, and sold said product in cans upon which had been stamped the words "Guaranteed 5 lbs. cut, an Acme Product, 'White Shea-Lac'", together with the words, in prominent lettering, "Acme Shellac Products Corporation", and, after a number of years and on containers intended for distribution and sale in interstate commerce, the words "shellac substitute", so lightly or carelessly stamped on some cans that they could not be seen after most careful scrutiny except by one who knew they had been placed thereon, and so inconspicuously stamped in others, as to be practically illegible; with capacity and tendency to mislead and deceive the purchasing public into believing said substitute to be the genuine and more costly shellac, and to induce the purchase thereof, and divert trade from and otherwise injure competitors, including manufacturers of the substitute product, who plainly and conspicuously mark the containers thereof as such:

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

Mr. Richard P. Whiteley for the Commission.

Frank & Julius Zizmor, 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, a New York corporation engaged in the manufacture of varnishes and sale and distribution thereof in the various States; and with principal place of business at Astoria, Long Island, N.Y., with misbranding or mislabeling in violation of the provisions of Section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce; in that respondent labels certain of its products sold in interstate commerce "Guaranteed Five Pound Cut Acme Product White Shea-Lac To be reduced with Alcohol Manufactured by 'Acme Shellac Products Corp.—New York, N.Y.—Boston, Mass.'"; notwithstanding the fact that said products so labeled are not made of genuine shellac gum dis-