

Syllabus

IN THE MATTER OF

CHARLES L. JOHNSON, INDIVIDUALLY AND TRADING AS
NATIONAL INSTITUTE OF ACCOUNTANCY, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2524. Complaint, May 26, 1936¹—Decision, Sept. 2, 1936*

Where an individual engaged in sale and distribution of correspondence courses in accountancy, through salesmen supplied with printed enrollment blanks and contract forms with such caption as "Application for Membership in the Department of Practical Higher Accountancy," and with advertising matter to be passed on, in accordance with instructions, to purchasers and prospective purchasers—

- (a) Represented that corporate name employed by him in his said business and which included words "National Institute of Accountancy," stood for a corporation with offices in the Institute Building in the city in or from which he conducted said business, and was a large, substantial correspondence school comparable with leading correspondence schools in the United States, with staff of trained and experienced teachers who would instruct and advise students, and that he was its "President," "Treasurer," or "Director," through practice of thus signing letters to subscribers, and through aforesaid printed matter, facts being corporation so named, acquired by him theretofore, had been dissolved pursuant to court decree several years theretofore, neither he nor business indicated was domiciled in said building, and business was a one-man concern with no teaching staff other than himself, and, at times, one or two persons to assist in grading papers;
- (b) Represented, as aforesaid, that such Institute of Accountancy was authorized to confer degree of Bachelor of Science in accountancy, and that lesson papers were reviewed and graded by certified public accountants, and that such degree certified that student had completed required subjects given in course and was entitled to recognition as a graduate in business and professional accountancy, facts being he was not authorized to confer such a degree, and practically all lesson materials were reviewed and graded by himself and not by certified public accountants; and
- (c) Represented that he had positions as accountants at his disposal for students who completed said courses, and that prospective purchasers would be given employment and such positions, upon such completion, facts being he did not secure or give such positions to purchasers and had no arrangements with any concerns or other employers of accountants through which they would employ students who had completed and paid for his said courses;

With effect of inducing and persuading purchasers to buy the same, and with result that there was substantial diversion of trade to him from competitors; to their injury and that of the public:

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.

¹ Amended and supplemental.

Complaint

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Before *Mr. John L. Hornor*, trial examiner.

Mr. Morton Nesmith and *Mr. Joseph C. Fehr* for the Commission.

COMPLAINT¹

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, having reason to believe that Charles L. Johnson, individually and trading as National Institute of Accountancy, Inc., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, and it appearing to said Commission that a proceeding by it, in respect thereof would be in the public interest, hereby issues its amended and supplemental complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Charles L. Johnson, is an individual doing business individually and trading as National Institute of Accountancy, Inc., and has his principal place of business in Chicago, in the State of Illinois. The respondent is now, and for more than one year last past, has been engaged in the selling and distribution of correspondence courses in accountancy direct to the purchasing public, located in the various States in the United States and has caused said correspondence courses, when sold, to be transported from his place of business in Chicago, Ill., to the purchasers thereof located in the various States of the United States other than the State of Illinois and in the District of Columbia. There is now and has been, for more than one year last past a constant current of trade and commerce by said respondent in aforementioned correspondence courses between and among the various States of the United States and the District of Columbia. In the course and conduct of said business, respondent is and has been in substantial competition with other individuals and with partnerships and corporations engaged in the sale and distribution of correspondence courses in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent has been and is now soliciting the sale of and selling correspondence courses in accountancy through the medium of salesmen, which salesmen are furnished by respondent, for submission to prospective customers, enrollment blanks, written contract, and other advertising material, containing, among others, the following statements:

¹ Amended and supplemental.

National Institute of Accountancy, Inc.

.Institute Building

4053 South Parkway

Chicago.

Graduation and Diploma. Upon Satisfactory completion of the course, the Institute confers a certificate of Graduation, conferring the Degree of Bachelor of Science in Accountancy is awarded, certifying that the student has completed the required subjects given in the course and is entitled to recognition as a graduate in Business and Professional Accountancy.

All papers are graded by Certified Public Accountants.

Said representations are false, misleading, and deceptive and have the capacity and tendency to mislead and deceive the prospective customer. In truth and in fact the "National Institute of Accountancy, Inc." is not a corporation and is not and has not been domiciled in the "Institute Building"; neither the National Institute of Accountancy, Inc., the trade name used by respondent, nor the respondent is authorized to confer the Degree of Bachelor of Science in Accountancy; and the lesson papers of respondent's customers are not graded by certified public accountants.

PAR. 3. In the course and conduct of his said business the respondent and his agents and representatives in soliciting the sale of said course of study and instruction orally represent, promise, and guarantee, and have so represented, promised, and guaranteed to purchasers and prospective purchasers of respondent's course of study that they will be given employment and positions as accountants upon completion of the said courses of study.

Said statements and representations made by the respondent and his agents and representatives are misleading, false, and untrue and are made for the purpose of inducing persons to purchase respondent's said courses of study in the belief that they will secure employment and positions as accountants, as promised them by the respondent or his agents. In truth and in fact, subscribers of respondent's correspondence courses never secure such employment or positions through or by means of any efforts or arrangements of the respondent, as represented.

PAR. 4. The use by respondent of the above quoted statements and representations is unfair to other individuals, partnerships, and corporations selling similar correspondence courses in accountancy who do not use the same or similar false and misleading representations in the solicitation and the sale of their correspondence courses.

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By reason of the said false, misleading, and deceptive statements customers are and have been induced and persuaded to purchase the correspondence courses in accountancy offered by respondent and the methods thus used by respondent result in a substantial diversion of trade to respondent from his competitors.

PAR. 5. The aforesaid methods, acts, and practices of the respondent are all to the prejudice of the public and of the respondent's competitors as hereinabove alleged. Said methods, acts, and practices constitute unfair methods of competition in 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, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on August 21, 1935, issued and served its complaint in this proceeding upon the respondent, Charles L. Johnson, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, no answer having been filed by the respondent, testimony and evidence, in support of the allegations of said complaint, were introduced by Morton Nesmith, attorney for the Commission, before John L. Hornor, an examiner of the Commission theretofore duly designated by it, no testimony and evidence being offered by the respondent; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter, upon the motion of the attorney for the Commission, and after notice of said motion was duly served upon the respondent, the Commission, on May 26, 1936, issued its amended and supplemental complaint, conformable to the testimony and evidence received at hearings theretofore held, and ordered that said testimony and evidence be received and considered under said amended and supplemental complaint. This amended and supplemental complaint charged the respondent, Charles L. Johnson, with the use of unfair methods of competition in commerce in violation of said act, and was duly served on May 29, 1936; answer was duly filed thereto by the respondent on June 19, 1936, but the respondent, although afforded an opportunity, did not offer any testimony and evidence in defense of the allegations of the amended and supplemental complaint, and has since waived the filing of briefs and oral argument herein. Thereafter, the proceed-

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ing regularly came on for final hearing before the Commission on said amended and supplemental complaint, answer thereto, testimony and evidence, and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent Charles L. Johnson is an individual trading as National Institute of Accountancy, Inc. His principal place of business is now in Evanston, Ill., but formerly he carried on his business in offices located in Chicago, Ill.

The respondent Charles L. Johnson is now, and for more than one year last past, has been engaged in selling and distributing correspondence school courses in accountancy. To all persons to whom respondent or his agents sold or to whom they sell said correspondence courses as a result of contacts made with members of the purchasing public, the respondent has caused and causes lesson materials and other written and printed matter pertaining to the courses of instruction sold by him to be shipped through the United States mails from his place of business in the State of Illinois, through and into States of the United States other than the State of Illinois, and in the District of Columbia. Respondent is and has been in substantial competition with other individuals and with partnerships and corporations likewise engaged in the sale and distribution of correspondence courses in commerce between and among the various States of the United States and in the District of Columbia.

Respondent Charles L. Johnson in 1923 acquired control of the National Institute of Accountancy, Inc., a corporation organized under the laws of the State of Illinois. This corporation's charter was subsequently dissolved pursuant to the Decree of the Superior Court of Cook County, State of Illinois, on January 13, 1934. Respondent has since that time continued to represent and still so represents, that said National Institute of Accountancy, Inc. is a corporation when, in truth and in fact, the National Institute of Accountancy, Inc., ceased to be an active corporation and going concern on January 14, 1934, as aforesaid.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, the respondent has been engaged in the business of soliciting the sale of and selling correspondence courses in accountancy through the medium of salesmen. The respondent and his agents and representatives offer and have offered purchasers and prospective purchasers a course in junior accountancy costing \$75,

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another course in senior accountancy costing \$85, and a course in business and professional accountancy costing \$165. The initial payment which is usually \$10, but which is sometimes as low as \$2 and sometimes as much as \$15, is retained by the respondent's agents as part of their fee or commission for selling said courses of instruction.

The respondent's salesmen and representatives were and are furnished with forms of an "Application for Membership in the Department of Practical Higher Accountancy", enrollment blanks and contract forms, all of which printed material contained and still contains advertising matter, which said salesmen and representatives of the respondent, were and are instructed to pass on, and which was and is passed on by them to purchasers and prospective purchasers of respondent's correspondence courses. All letters from the respondent to subscribers of his correspondence courses were and are signed by him with the title "President", "Treasurer" or "Director" appearing after his name.

Among the printed matter now used and distributed by and on behalf of the respondent for the purpose of promoting the sale of his correspondence school courses appear the following statements;

National Institute of Accountancy, Inc.,
Institute Building
4653 South Parkway
Chicago.

Graduation and Diploma. Upon Satisfactory completion of the course, the Institute confers a certificate of Graduation, conferring the Degree of Bachelor of Science in Accountancy is awarded, certifying that the student has completed the required subjects given in the course and is entitled to recognition as a graduate in Business and Professional Accountancy.

All papers are graded by Certified Public Accountants

The representations above quoted are false, misleading, and deceptive and have the capacity and tendency to mislead and deceive purchasers and prospective purchasers of correspondence school courses. In fact, the National Institute of Accountancy, Inc., ceased to be a corporation on January 14, 1934, as aforesaid. Neither the respondent, Charles L. Johnson, nor the National Institute of Accountancy, Inc., has been, and is now, domiciled in the Institute Building. Nor has the respondent, Charles L. Johnson, been authorized to confer the degree of Bachelor of Science in Accountancy. All lesson materials returned to respondent by subscribers of the various courses to be reviewed and graded were not and are not

reviewed or graded by certified public accountants, as represented. Practically all such papers were and are reviewed and graded by the respondent, Charles L. Johnson, who was not, and is not now a certified public accountant.

PAR. 3. In the course and conduct of his business, the respondent and his agents and representatives, in soliciting the sale of said courses of study and instruction, have represented and do represent to prospective purchasers of said courses of study and instruction that such prospective purchasers will be given employment and positions as accountants upon completion of said courses of study and instruction.

In truth and in fact the respondent has not and does not secure for or give to those purchasing said courses of study and instruction and to whom the promise of employment and a position as an accountant was and is made, employment and a position as an accountant. This representation is made solely for the purpose of inducing the persons to whom made to purchase said courses of study and instruction, and many students who subscribed for said courses of study and instructions were misled and deceived by said representation and believed that the respondent would secure for or give to them employment and positions as accountants.

At all times such representations were and are made, the respondent had and has no such jobs or positions at his disposal to give to those who enrolled or subscribed or who enroll or subscribe to his courses of instruction. Respondent had and has no arrangements with any corporations, firms, or other employers of accountants through which such corporations, firms, or employers would employ students who had completed and paid for said courses of instruction in the belief that they would secure employment through him.

PAR. 4. In the course and conduct of his business the respondent and his agents and salesmen represent that the National Institute of Accountancy, Inc., is a corporation, with offices in the Institute Building, Chicago, Illinois, and that it is a large, substantial correspondence school, comparable with the leading correspondence schools in the United States, with a staff of trained and experienced teachers who will instruct and advise students.

In truth and in fact the National Institute of Accountancy, Inc., is not a corporation, but a trade name used by the respondent, who does not have or maintain offices in the Institute Building, Chicago, Ill., and the National Institute of Accountancy, Inc., is not a large, substantial correspondence school with a staff of trained and experienced teachers, but is a "one man" concern without any teaching

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staff, except the respondent, and at times one or two persons to assist in grading papers.

By reason of the said false, misleading, and deceptive statements purchasers are and have been induced and persuaded to purchase the correspondence courses in accountancy offered by respondent and the methods thus used by respondent result and have resulted in a substantial diversion of trade to respondent from his competitors, to the injury of said competitors and to the injury of the public.

CONCLUSION

The aforesaid acts and practices of the respondent under the conditions and circumstances set forth in the foregoing findings are to the prejudice of the public and respondent's competitors, and are unfair methods of competition in commerce and constitute a violation of 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."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the amended and supplemental complaint, the respondent's answer thereto, testimony and evidence taken before trial examiner, John L. Hornor, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and amended and supplemental complaint (the filing of briefs and oral arguments having been waived) and the Commission having made its findings as to the facts and its conclusion that said 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 ordered, That the respondent, Charles L. Johnson, his agents, representatives, servants, and employees, in connection with the sale and offering for sale in interstate commerce and in commerce in the District of Columbia, of correspondence courses of study and instruction, do forthwith cease and desist from, directly or indirectly, representing:

1. That the National Institute of Accountancy, Inc., is a corporation, with offices in the Institute Building, Chicago, Ill., and that it is a large, substantial correspondence school, comparable with the leading correspondence schools in the United States, with a staff of trained and experienced teachers who will instruct and advise stu-

dents, and that respondent is its "President", "Treasurer" or "Director";

2. That the respondent is authorized to confer the degree of Bachelor of Science in Accountancy;

3. That the lesson papers when returned to respondent by subscribers are reviewed and graded by certified public accountants;

4. That the respondent has positions as accountants at his disposal for students who complete his said courses of study and instruction, unless and until such is the fact.

It is further ordered, That the said respondent shall, within 60 days after service upon him 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 this order.

IN THE MATTER OF
NATIONAL SALESMEN'S TRAINING ASSOCIATION

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

Docket 2528. Complaint, Aug. 22, 1935—Decision, Sept. 4, 1936

Where a corporation engaged in sale and distribution of correspondence courses in salesmanship and sales management, and in sale and distribution of books and other printed matter in connection therewith—

- (a) Represented, in magazine advertising and through salesmen, that earning capacity of those who studied or completed its courses was greatly in excess of their earning capacity under normal conditions, through such exaggerated statements as "Salesmanship is the highest paid profession in the world," and "More salesmen make 'huge sums' than do men in other professions";
- (b) Made similar representations through testimonials in a booklet sent in response to inquiries and purporting to show increased earnings of purchasers who had completed said courses, in such manner as to indicate that such increased earnings of those who had studied said courses were usual, and what prospective purchasers would receive upon completing the same, facts being they were extraordinary and resulted from special conditions;
- (c) Falsely represented that demands from employers of salesmen for students of said courses exceeded the supply and that it was unable to supply such demand therefor, and that there would be no delay in placing prospective purchasers in positions as soon as they had completed a sufficient portion of their courses to qualify, and that upon completion of its courses, it would secure the prospective purchasers positions at salaries greatly in excess of those earned on beginning the same, facts being it did not secure employment for purchasers when a portion of its courses had been completed, nor did it secure them positions upon completion of their studies at greatly increased salaries;
- (d) Represented that it would refund money paid for said courses to purchasers dissatisfied with training received, facts being that money-back agreement actually executed by it on sale of its courses specified that refund was conditioned upon written application by student within thirty days after receipt of diploma, and his failure to be entirely satisfied with service and instruction given, etc., and it was its practice, in many instances, to refuse diploma until after receiving purchaser's expression in writing of complete satisfaction, so as to rebut any possible claim within aforesaid period, and it did not return money paid to dissatisfied purchaser;
- (e) Represented that it had an advisory board of outstanding successful business men from nationally known firms who had assisted in preparing its courses and who would assist purchasers in their training and in securing employment, facts being many of such purported board members had no connection with it and none of them actively cooperated with purchasers as aforesaid, and their only service was in expressing approval of or preparing some particular portion of such courses;
- (f) Represented that it maintained a nation-wide employment service through which it was able to secure purchasers desirable positions at greatly