

IN THE MATTER OF

J. M. TONKIN AND S. M. MODLIN, TRADING AS COLUMBIA DISTILLING COMPANY, TONKIN DISTRIBUTING COMPANY, AND OLD ABBEY DISTILLING COMPANY

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

Docket 2422. Complaint, June 1, 1935—Decision, Nov. 19, 1936

Where two individuals engaged as rectifiers and wholesalers of liquor, in purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages, and in making gin by redistillation of purchased alcohol, not produced by them, over juniper berries and other aromatics, with still used therefor, and in selling such various products at wholesale in competition with those engaged in manufacture by distillation of whiskies, gins, and other spirituous beverages and in sale thereof, and with those engaged in purchasing, rectifying, blending, bottling, and selling such various beverages, and including among their said competitors those who, engaged in manufacturing and distilling from mash, wort, or wash whiskies, gins, and other spirituous beverages sold by them, truthfully use words "distillery," "distilleries," "distillers," or "distilling" as part of their corporate names and on their stationery and on the labels of the bottles in which they sell and ship such products, and those who, engaged in purchasing, rectifying, blending, and bottling such beverages, do not use such words as above set forth—

Represented, through use of word "Distilling" in their trade names, printed on their stationery and on the labels attached to the bottles in which they sold and shipped their products, together with the words, in some cases, "Made by," or "Prepared by," or "Bottled by," or "Bottled for," and in other ways to their customers, and furnished said customers with means of representing to latter's vendees, both retailers and ultimate consuming public, that the whiskies, gins, and other spirituous beverages contained in such bottles were by them made through process of distillation from mash, wort, or wash;

Notwithstanding fact they did not own, operate, or control any such places where such beverages are made by aforesaid process, were not engaged in distilling their said beverages, as long definitely understood in the trade and by the consuming public, i. e., in making same by original distillation from grain, fruit, or vegetable mash, and were not distillers, investment and expenses of which in general are greater than those of rectifiers, and which have a prestige in the minds of the wholesale trade, of advantage to the seller of their products, as controlling the making thereof from start to finish;

With effect of misleading and deceiving dealers and purchasing public into belief that such whiskies and other spirituous beverages sold by them were by them made and distilled from mash, wort, or wash, and of inducing dealers and purchasing public, acting in such belief, to buy said whiskies, gins, and other spirituous beverages bottled and sold by them, and of thereby diverting trade to them from their competitors who do not, by their corporate names

or in any other manner, misrepresent that they are manufacturers by distillation, as above set forth, of such spirituous beverages, for purchase of which from actual distillers and manufacturers there is a preference on the part of a substantial portion of the purchasing public; to the substantial injury of substantial competition in commerce:

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

Before *Mr. W. W. Sheppard* and *Mr. John W. Addison*, trial examiners.

Mr. Edw. W. Thomerson and *Mr. PGad B. Morehouse* for the Commission.

Mr. Edmond F. Maher, of San Francisco, Calif., for respondents.

COMPLAINT

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 J. M. Tonkin and S. M. Modlin, individuals trading under the names and styles, Columbia Distilling Co., Tonkin Distributing Co., and Old Abbey Distilling Co., hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents are individuals, J. M. Tonkin and S. M. Modlin, trading under the names and styles, Columbia Distilling Co., Tonkin Distributing Co., and Old Abbey Distilling Co., with offices and principal place of business in the city of San Francisco, State of California. They are now, and for more than one year last past have been, engaged in the business of rectifiers and wholesalers of liquors purchasing, rectifying, blending, and bottling whiskeys, gins, and other spirituous beverages and selling the same at wholesale in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of their said business, they cause their said products when sold to be transported from their place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers some located within the State of California and some located in other States of the United States and in the District of Columbia. In the course and conduct of their business as aforesaid

Complaint

23 F. T. C.

respondents are now, and for more than one year last past have been, in substantial competition with other individuals and with corporations, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of their business as aforesaid respondents are, and for more than one year last past have been, in substantial competition with other individuals and with corporations, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof 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 their business as aforesaid respondents have, upon their premises, a still which they use in the production of gin by a process of rectification whereby alcohol, purchased but not produced by respondents, is redistilled over juniper berries and other aromatics. Such rectification of alcoholic spirits does not make or constitute respondents distillers, as defined by Section 3247 of the Revised Statutes regulating Internal Revenue, nor as commonly understood by the public and the liquor industry. For a long period of time the word "Distilling" when used in connection with the liquor industry and with the products thereof has had and still has a definite significance and meaning to the minds of wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the manufacturing of such liquors by the process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete, and a substantial portion of the purchasing public prefers to buy spirituous liquors bottled by the actual distillers and manufacturers thereof.

PAR. 3. In the course and conduct of their business as aforesaid, by the use of the word "Distilling" in their trade name, printed on their stationery and on the labels attached to the bottles in which they sell and ship their said products, and in various other ways, respondents represent to their customers and furnish them with the means of representing to their vendees, both retailers and the ultimate consuming public, that the whiskies, gins, and other spirituous beverages therein contained were by them manufactured through the process of distillation from mash, wort, or wash, as aforesaid, when, as a matter of fact respondents are not distillers, do not distill the said whiskies, gins, or other spirituous beverages by them so bottled, labeled, sold, and transported, and do not own, operate, or control

any place or places where such beverages are manufactured by the process of distillation from mash, wort, or wash.

PAR. 4. There are among the competitors of respondents engaged in the sale of spirituous beverages as mentioned in paragraph 1 hereof individuals, firms, partnerships, and corporations who manufacture and distill from mash, wort, or wash, as aforesaid, whiskies, gins, and other spirituous beverages sold by them and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery, and on the labels of the bottles in which they sell and ship such products. There are also among such competitors individuals, firms, partnerships, and corporations engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. Representation by respondents, as set forth in paragraph 3 hereof, is calculated to and has the capacity and tendency to and does mislead and deceive dealers and the purchasing public into the belief that the whiskies, gins, and other spirituous beverages sold by the respondents are manufactured and distilled by them from mash, wort, or wash, as aforesaid, and is calculated to and has the capacity and tendency to and does induce dealers and the purchasing public, acting in such belief, to purchase the whiskies, gins, and other spirituous beverages bottled and sold by the respondents, thereby diverting trade to respondents from their competitors who do not by their corporate or trade name or in any other manner misrepresent that they are manufacturers by distillation from mash, wort, or wash of whiskies, gins, and other spirituous beverages, and thereby respondents do substantial injury to substantial competition in interstate commerce.

PAR. 6. The acts and things above alleged to have been done and the false representations alleged to have been made by respondents are to the prejudice of the public and the competitors of respondents and 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

Findings

23 F. T. C.

Federal Trade Commission on June 1, 1935, issued and served its complaint in this proceeding upon the respondents J. M. Tonkin and S. M. Modlin, individuals trading under the names and styles of Columbia Distilling Company, Tonkin Distributing Company, and Old Abbey Distilling Company, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Edward W. Thomerson, attorney for the Commission, before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it; and by PGad B. Morehouse, attorney for the Commission, before John W. Addison, and examiner of the Commission theretofore by the Commission duly substituted to take testimony and other evidence in the place and stead of the said W. W. Sheppard; and in opposition to the allegations of the complaint by Edmond F. Maher, attorney for the respondents; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, and brief in support of the complaint; brief in opposition thereto and oral arguments of counsel aforesaid having been waived; and the Commission having duly considered the same, and being now 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. Respondents are individuals, J. M. Tonkin and S. M. Modlin, trading under the names and styles, Columbia Distilling Company, Tonkin Distributing Company, and Old Abbey Distilling Company, with offices and principal place of business at 440 Ninth Street in the city of San Francisco, State of California. They are now, and for more than one year last past have been, engaged in the business of rectifiers and wholesalers of liquors purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and selling the same at wholesale in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of their said business, they cause their said products when sold to be transported from their place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers some located within

the State of California and some located in other States of the United States and the District of Columbia. In the course and conduct of their business as aforesaid respondents are now, and for more than one year last past have been, in substantial competition with other individuals and with corporations, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of their business as aforesaid respondents are, and for more than one year last past have been, in substantial competition with other individuals and with corporations, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Rectifying, in the distilled spirits rectifying industry, means the mixing of whiskies of different ages or types, or the mixing of other ingredients with whiskies, but reducing proof of whiskey by adding water is not rectifying. Rectifiers also blend whiskies with neutral spirits (grain alcohol).

A distiller, in the sense ordinarily understood by the liquor industry, is one who prepares distilled spirits by a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete. Many distillers operate a separate establishment 600 feet or more away from their distillery, known as a rectifying plant, wherein they operate in the same manner as described above, for a rectifier—sometimes exclusively with spirits of their own distillation, and sometimes with spirits purchased from other distillers, or both. Some distilleries have a tax-paid bottling room on the distillery bonded premises wherein their distilled spirits are bottled straight as they come from the still, or in a bonded warehouse after aging, or after reduction of proof. Any rectifying by a distiller, however, must be done in his rectifying plant under his rectifier's permit. On all bottled liquors, whether bottled at a distillery rectifying plant, or at any other rectifying plant, appear the words "Bottled" or "Blended" (as the case may be) "by the ----- Company". If the distilled spirits therein contained are bottled by a distiller either in his distillery or are spirits of his own distillation bottled in his rectifying plant, the distiller may, and does, put "Distilled and Bottled by ----- Company". If, in the distillery's rec-

Findings

23 F. T. C.

tifying plant, other spirits have been blended or rectified, he puts "Blended and Bottled by ----- Company". Finally, blown (usually in the bottom) in each bottle is a symbol, consisting of a letter followed by a number, identifying the bottler, viz, a "D" for a distillery and "R" for rectifier, the number following said letter corresponding with the distiller's or rectifier's permit. Thus "R-107" designates these respondents. A distiller who also operates a rectifying plant, having both kinds of permits, may use either symbol, depending upon whether the liquor contained in the bottle was produced and bottled under his distiller's permit.

It is not always possible to determine from the presence of the phrase "Blended and Bottled by" or the phrase "Bottled by" on the label whether the package was bottled by a rectifier who is a distiller or by a rectifier who is not a distiller.

PAR. 3. Respondents, in the course and conduct of their business, use one or the other of their said trade names on their stationery and on the labels attached to the bottles in which they ship and sell said beverages. On the labels for gin redistilled by respondents, the name is preceded by the words "Distilled by." On labels for cordials and some other products, the name is preceded by "Made by" or "Prepared by." One of the labels received in evidence for Edgewood Straight Pennsylvania Bourbon Whiskey contained the trade name "Old Abbey Distilling Company," with nothing whatever to suggest that respondents were not the distillers of the product. On other whiskey labels, the trade names are preceded by the words "Bottled by" or "Bottled for" and in the case of one label, to wit: a Pine Ridge Whiskey label, the name "Tonkin Distributing Company" is used followed by the designation "Sole distributors," with nothing on that label to indicate that it is a distillery-bottled package. The Commission finds that by the use which respondents make, and have made, of the word "Distilling" in their aforesaid trade names printed on their stationery and on their labels attached to the bottles in which they sell and ship their said products, and in various other ways, respondents represent to their customers and furnish them with the means of representing to their vendees, both retailers and the ultimate consuming public, that the whiskies, gins and other spirituous beverages therein contained were by them manufactured through the process of distillation from mash, wort, or wash, as aforesaid, when, as a matter of fact, respondents are not distillers, do not distill the said whiskies, gins, or other spirituous beverages by them so bottled labeled, sold and transported, and do not own, operate, or control any place or places where such beverages are manufactured by the process of distillation from mash, wort, or wash.

Respondents are rectifiers and warehouse men, not distillers.

Respondents purchase most of the whiskies which they sell from distilleries located in Pennsylvania and Kentucky, and the alcohols which they use in the production of their gin from the Commercial Solvents Company.

Respondents have a still they use in making gin by redistillation of purchased alcohol, not produced by them, over juniper berries and other aromatics, but this redistillation does not make respondents distillers as commonly understood by the public and the liquor industry. As shown by the testimony of many witnesses who for long periods of time had been, and still were, actively engaged in the liquor industry, including distillers, wholesalers, and retailers, and by the testimony of representative members of the consuming public, for a long period the word "distilling" when used in connection with the liquor industry and with products thereof has had, and still has, the definite significance and meaning to the minds of wholesalers and retailers in such industry and to the ultimate purchasing public of the making of beverages by original distillation from grain, fruit, or vegetable mash.

In general, the investment and expenses of the distiller are greater than those of the rectifier.

Much of the "distilled" gin on the market is produced by companies who do distill their own alcohol and produce gin therefrom by redistillation in exactly the same manner that respondents produce their gins—not under any distillery permit, but under a rectifying permit. These distiller-rectifiers place on their gin labels: "Distilled by -----Distillers." There are distilleries which produce gin by the same process in the distillery by one continuous process and the tax is paid at the completion of the process, that is, after the alcohol becomes gin, so that although the final redistillation process is the same as that of respondents, yet it is all done in a distillery, and the distiller has control over the process from the mash to the gin. Thus it includes original or primary distillation through closed pipes and vessels, as well as the final process of redistillation over the juniper berries.

Section 5 of the Federal Alcohol Administration Act, approved August 29, 1935, dealing with unfair competition and unlawful practices in the industry, provides that it shall be unlawful to sell in bottles any distilled spirits in interstate or foreign commerce unless they are bottled, packaged, and labeled in conformity with such regulations, to be prescribed by the Administrator, as will prohibit deception of the consumer with respect to such products.

Existing regulations under this act define "distilled gin" as the distillate by original distillation or redistillation of neutral spirits with aromatics.

The regulations further provide that on labels of domestic distilled spirits bottled by or for the actual distiller thereof, there shall be stated the words "distilled by" and immediately thereafter the name of such distiller and the place where distilled.

PAR. 4. There are among the competitors of respondents engaged in the sale of spirituous beverages as mentioned in paragraph 1 hereof corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash whiskies, gins, and other spirituous beverages sold by them and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate names and on their stationery, and on the labels of the bottles in which they sell and ship such products. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate names, or on their stationery, or on the labels attached to the bottles in which they sell and ship their products.

PAR. 5. A substantial portion of the purchasing public does prefer to buy spirituous liquors bottled by the actual distillers and manufacturers thereof, and such representation is a misrepresentation in fact, and has a tendency to mislead and deceive dealers and the purchasing public, with the resultant tendency to induce them to buy respondents' products in preference to the products of truthful competitors.

The testimony clearly showed, and the Commission finds, that a prestige attaches in the minds of the wholesale trade to the distiller, and that this prestige is an advantage in overcoming sales resistance; that in the minds of the wholesale trade and the public, the belief that a distiller is controlling the making of such products from start to finish, with all the ingredients going into them within its own establishment, is an advantage to the seller; and that the use of the word "distilling" or "distiller" in a trade or corporate name of a concern gives it a competitive advantage over concerns which do not pursue or practice such characterizations, and which do not purport to be manufacturers when they are not.

The Commission, therefore, finds that the representation of respondents through use of the word "Distilling" in their trade names as aforesaid is calculated to, and has the capacity and tendency to, and does, mislead and deceive dealers and the purchasing public into the belief that the whiskies, gins, and other spirituous beverages sold by the respondents are manufactured and distilled by them from

918

Order

mash, wort, or wash, and is calculated to, and has the capacity and tendency to, and does, induce dealers and the purchasing public, acting in such belief, to purchase the whiskies, gins, and other spirituous beverages bottled and sold by the respondents, thereby diverting trade to respondents from their competitors who do not by their corporate name or in any other manner misrepresent that they are manufacturers by distillation from mash, wort, or wash of whiskies, gins, and other spirituous beverages, and thereby respondents do substantial injury to substantial competition in interstate commerce.

PAR. 6. Because of existing regulations, under the Federal Alcohol Administration Act approved August 29, 1935 (49 Stat. 977), which regulations became effective August 15, 1936, providing that rectifiers who redistill purchased alcohol over juniper berries and other aromatics may sell such resulting product as "distilled gin," and requiring that the labels state who distilled it, the Commission has excepted gins produced by respondents by redistillation of alcohol over juniper berries and other aromatics from the prohibitions of its order.

CONCLUSION

The aforesaid acts and practices of the respondents, J. M. Tonkin and S. M. Modlin, individuals trading under the names and styles of Columbia Distilling Company, Tonkin Distributing Company, and Old Abbey Distilling Company, are to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning 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 answer of respondents, testimony and other evidence taken before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, and before John W. Addison, a substituted examiner of the Commission theretofore duly designated by it to take testimony and other evidence in the place and stead of the said W. W. Sheppard, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, oral arguments of counsel for the Commission and for respondents having been waived; and the Commission having made its findings as to the facts and its conclusion that

Order

23 F. T. C.

said respondents have 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 J. M. Tonkin and S. M. Modlin, individuals trading under the names and styles of Columbia Distilling Company, Tonkin Distributing Company, and Old Abbey Distilling Company, and the officers, representatives, agents, and employees of each of them in connection with the offering for sale, sale, and distribution by them of whiskies, gins, or other spirituous beverages in interstate commerce or in the District of Columbia (except gins produced by them through a process of rectification whereby alcohol, purchased but not produced by respondents, is redistilled over juniper berries and other aromatics) do cease and desist from:

Representing, through the use of the word "Distilling" in their trade names, on their stationery, advertising, or on the labels attached to the bottles in which they sell and ship their said products, or in any other way by word or words of like import, (a) that they are distillers of whiskies, gins, or other spirituous beverages; or (b) that the said whiskies, gins, or other spirituous beverages were by them manufactured through the process of distillation; or (c) that they own, operate, or control a place or places wherein such products are by them manufactured by a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete, unless and until respondents shall actually own, operate, or control such a place or places.

It is further ordered, That 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.

Syllabus

IN THE MATTER OF

WILLIAM W. BABCOCK, TRADING AS NATIONAL CIVIL
SERVICE TRAINING BUREAU

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

Docket 2672. Complaint, Dec. 27, 1935—Decision, Nov. 19, 1936

Where an individual engaged in sale and distribution of correspondence course of study and instruction designed and intended to prepare students for civil service positions with the United States Government; in describing his said business and course and in soliciting sale of latter through advertising matter, application and contract blanks, and through agents and representatives who solicited prospective students, and otherwise—

- (a) Included in trade name employed by him in his aforesaid business the words "Civil Service" and "Bureau," and represented that he or his said business was connected with the United States Government, and that it made "Civil Service Tests," and tests for which students contracted were the regular civil service examinations, and it had been authorized by the Government to select a certain number of students to prepare for civil service positions, and that under the "New Deal" the Government was hand-picking employees and it, i. e., the school, was engaged in such selection, and that payments made by students went to the Government, and school was operating "in strict compliance" with the laws and regulations of the Federal Trade Commission;
- (b) Represented that civil service positions under the Government were open and available and that its students and prospective students could and would be placed in Government positions if they pursued its course of study, that many of its former students had received appointments to such positions, and students enrolling with it would be given positions in Washington as soon as they completed its training;
- (c) Represented that it prepared its students for "General Clerks" and "Internal Revenue Clerks," and that its course of study and instruction afforded adequate and complete training for civil service examinations held by the United States Civil Service Commission, and that part of instruction was under personal supervision and would be in accordance with the qualifications required for the positions desired;
- (d) Represented that it was a large institution with headquarters and instruction staffs in various cities, including Chicago, Kansas City, Philadelphia, and Los Angeles, and that only a limited number of students were to be selected for training in a particular place or district and particular prospects were those thus selected, and that a particular student or prospective student had been awarded a scholarship, and price offered prospective student was a special one and regular price was greater than that offered, and that a Government position was guaranteed and assured on completion of the course, and that it would refund to students money paid by them therefor if they were not satisfied therewith;