

IN THE MATTER OF
**JOHN HARTFORD AND HARVEY E. WAGLEY, TRADING
AS FEDERAL 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 2795. Complaint, May 2, 1936—Decision, July 7, 1937

Where two individuals engaged in sale and distribution of correspondence courses for Civil Service positions under the United States Government—

- (a) Made use of trade name including words "Federal Civil Service Training Bureau" in conduct of their said business, and thereby represented and implied that such business, thus designated, was a part of, or was connected with, or an agency of, the Government of the United States, or of the United States Civil Service Commission, notwithstanding fact neither of said individuals, nor business or school in question, nor anyone connected therewith, had any connection whatsoever with either said Government or Commission, or in any way represented either of them;
- (b) Represented and set forth, in advertisements of their said courses of study and instruction, that said school would prepare the prospective student for coming Civil Service examinations, and that, due to deaths, natural growth of service, etc., many examinations were being announced, and that in one year the Government pay-roll had increased some sixty-odd thousand, as therein set forth, and that many examinations were being announced and would "be held convenient to you," and thereby represented and implied that examinations in the various Civil Service classifications for which they gave training were being held at frequent intervals and that appointments to Government positions were constantly being made from eligibles thus obtained, facts being that few, if any, examinations were being held during much of time concerned, and few, if any, appointments made in some of classifications for which they proposed to and did give training, and that increase in appointments referred to was not, in the main, in the Classified Civil Service, but in appointments made regardless of Civil Service requirements; and
- (c) Made use of a contract form containing so-called "Refund Agreement," careful reading of which belied its import and implication that a Government appointment was assured within a year or money paid would be refunded, and which was rendered inoperative, in the main, due to the fact that examinations, taking of which were a prerequisite, were not being held during a part of the time, at least, when it was in use, and consequently could not be taken by the students in the subjects which they had studied so as to entitle them to refund during such time and under agreement in question;

With tendency and capacity to confuse, mislead and deceive members of the public into believing that said school was a branch or bureau of, or connected with, the Government of the United States, and that civil service examinations were being held at frequent intervals in classifications for which they offered training, Government positions in such classifications were available and appointments therein were being and

Complaint

would be made, and that vacancies existed in the Government service and were to be filled, and that students who enrolled for courses in question and did not secure Government positions would receive their money back upon conditions reasonably possible of fulfillment, and to induce members of public to answer their said advertisements, sign their contracts, pay money to them, and purchase said courses of study and instruction as above described, by reason of erroneous beliefs thus engendered, and to divert trade to them from competitors engaged in sale of correspondence courses in similar and in other lines of study, including therein competitors who do not make the same or similar misleading misrepresentations, but truthfully and accurately state the private character of their undertakings, without implying Government connection, and the facts in regard to civil service examinations and availability of Government positions in civil service, and who do not make use of refund agreements which mislead in their terms or failure to disclose pertinent facts upon which agreements depend, from whom said acts and practices tended to and did in fact unfairly divert business to themselves; to the substantial injury and prejudice of 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. John W. Addison*, trial examiner.

Mr. Harry D. Michael for the Commission.

Mr. Noble W. Lee, of Chicago, Ill., for Harvey E. Wagley.

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 John Hartford and Harvey E. Wagley, doing business under the name and style of Federal Civil Service Training Bureau, have been and are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to 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. That said respondents, John Hartford and Harvey E. Wagley, doing business under the name and style of Federal Civil Service Training Bureau, are now and have been engaged for more than six months last past in the sale and distribution of courses of study and instruction designed and intended for preparing students thereof for examination for various civil service positions under the United States Government, which said courses of study and instruction are pursued by correspondence. Said respondents, in conducting their said business, have their offices and principal

Complaint

25 F. T. C.

place of business in the city of Chicago, in the State of Illinois. Respondents, in the course and conduct of their said business, cause their said courses of study and instruction, consisting of pamphlets, study and question sheets, and other printed or mimeographed matter, to be transported from their said place of business in Illinois to, into, and through States of the United States other than Illinois to various and numerous persons to whom said course of study and instruction are or have been sold.

The relationship existing between said respondents in connection with said business is that the said John Hartford is the owner thereof while the said Harvey E. Wagley is a creditor and in active operation and charge of the same for the purpose of securing and liquidating such indebtedness.

PAR. 2. That, during the time above mentioned, other individuals, firms, and corporations in various States of the United States are and have been engaged in the sale and distribution of courses of study and instruction designed and intended for the purpose of preparing students thereof for examination for various civil service positions under the United States Government, and also engaged in the sale and distribution of other courses of study and instruction in other lines, all of which are pursued by correspondence. Such other individuals, firms, and corporations have caused and do now cause their said courses of study and instruction, when sold by them, to be transported from various States of the United States to, into and through States other than the State of origin of the shipment thereof. Said respondents have been, during the aforesaid time, in competition in interstate commerce in the sale of their said courses of study and instruction with such other individuals, firms, and corporations.

PAR. 3. That the name, Federal Civil Service Training Bureau, used by respondents in conducting their said business, implies and has the tendency and capacity to create the belief among persons solicited to pursue respondents' courses of study that said Federal Civil Service Training Bureau is a part of, or is connected with, or is an agency of, the Government of the United States or of the United States Civil Service Commission. That the word "Federal" is a term frequently used in referring to the United States Government or its agencies or to institutions under its direction or supervision. That the term "Civil Service" is used to designate a class of employees of the United States Government or to apply to the work in which they are engaged. That the word "Bureau" is a term frequently and generally used in officially or otherwise de-

scribing various governmental agencies. That, in fact, neither respondents nor their school nor anyone connected therewith have any connection whatsoever with the United States Government or with the United States Civil Service Commission or in any way represent either of them.

PAR. 4. That respondents, in advertising their said course of study and instruction, make use of advertising matter in which the following statements appear:

FEDERAL CIVIL SERVICE TRAINING BUREAU

Will Prepare You for Coming Civil Service Examinations.

Due to deaths and retirements, the natural growth of the service, promotions, etc., many examinations are being announced. In one year, 1933 to 1934, the payroll of Federal Executive Employees increased from 563,488 to 623,599.

EXAMINATIONS BEING HELD—Many examinations are now being announced; they will be held convenient to you.

Said statements, so made by respondents, carry the implications to the general public that examinations in the various civil service classifications for which respondents give training are being held at frequent intervals and that appointments to government positions are constantly being made from eligibles thus obtained; when, in fact, during much of the time respondents have been giving their said training, few, if any, examinations were being held and few, if any, appointments were being made in many of the classifications for which respondents proposed to give and did give training. Said statements are further misleading from the fact that the appointments referred to therein were not, in the main, in the civil service, but appointments made regardless of civil service requirements.

PAR. 5. That respondents, in the sale of their said course of study and instruction, make use of a contract form containing a so-called "Refund Agreement," reading as follows:

It is understood that I am to complete the entire training, sending in all work for correction; try the first examination covered by this training; then, if I fail to pass the examination, or pass and am not offered an appointment within one year from date that my name is placed on the government eligible list, I am, upon written application, to receive a refund of the entire amount paid for this training, or I will be trained for every examination for the above stated position, without further payment, until my name is placed on the Government eligible list.

The import and implication of the above quoted agreement is that a government appointment is assured within one year or the money paid will be refunded; when, in fact, such agreement, by careful

reading thereof, means nothing of the kind. Said agreement is further meaningless, and was so during the period of its use by respondents, on account of the fact that it was rendered inoperative, in the main, because examinations for which respondents gave training were not being held and it was consequently impossible for their students to be placed on an eligible list and thereby become entitled to a refund under such agreement.

PAR. 6. That the representations of respondents, as aforesaid, have had and do have the tendency and capacity to confuse, mislead and deceive members of the public into the belief that respondents' school is representative of or connected with the Government of the United States; that civil service examinations are being held at frequent intervals in the classifications for which respondents offer training; that Government positions in such classifications are available and that appointments therein are being made and will be made; that vacancies exist in the government service that are to be filled; and that students who enroll for respondents' courses will receive their money back upon conditions reasonably possible of fulfillment; when, in truth and in fact, such are not the facts. Said representations of respondents have had and do have the tendency and capacity to induce members of the public to answer respondents' advertisements, to sign their said contracts, to pay money to respondents, and to purchase said courses of study and instruction, as herein described, because of the erroneous beliefs engendered, as above set forth, and to divert trade to respondents from competitors engaged in the sale of correspondence courses in interstate commerce in similar lines to those offered by respondents, as well as those so engaged in such sale in other lines of study. There are among the competitors of respondents those who do not make the same or similar misleading representations as made by respondents, as herein set out, but who truthfully and accurately state the private character of their undertakings without implying Government connection and who truthfully state the facts in regard to civil service examinations and availability of government positions in the civil service and who agree to make refunds on clear conditions that are possible of fulfillment. As a result of respondents' practices, as herein set forth, injury has been and is now being done by respondents to competition in commerce between and among the various States of the United States.

PAR. 7. The above acts and things done by respondents are all to the injury and prejudice of the public and the competitors of respondents in interstate commerce within the meaning and intent of Section 5 of an Act of Congress entitled "An Act to create a Federal

Findings

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 May 2, 1936, issued its complaint in this proceeding, charging the respondents, John Hartford and Harvey E. Wagley, doing business under the name and style of Federal Civil Service Training Bureau, with the use of unfair methods of competition in commerce in violation of the provisions of said act. Said respondent John Hartford was not found and was not served with the complaint herein. Said respondent Harvey E. Wagley was duly served with complaint and filed answer. After the issuance of said complaint and the filing of answer thereto by respondent Harvey E. Wagley, testimony and other evidence in support of the allegations of said complaint were introduced by Harry D. Michael, attorney for the Commission, before John W. Addison, an examiner of the Commission, theretofore duly designated by it, respondent Harvey E. Wagley having failed to introduce testimony and other evidence in opposition to the allegations of the complaint; 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 of the respondent Harvey E. Wagley, testimony and other evidence, and brief in support of the complaint, counsel for respondent Harvey E. Wagley having waived the filing of briefs and having elected to submit the case on the record; 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. The said respondents, John Hartford and Harvey E. Wagley, were engaged in business under the name and style of Federal Civil Service Training Bureau for the period of time and under the circumstances hereinafter stated and were engaged in the sale and distribution in commerce between and among the various States of the United States of courses of study and instruction designed and intended for preparing students thereof for examinations

Findings

25 F. T. C.

for various civil service positions under the United States Government, which said courses of study and instructions were pursued by correspondence. Said respondents, in the conduct of said business, had their offices and principal place of business at No. 508 South Dearborn Street, in the city of Chicago, State of Illinois. Respondents, in the course and conduct of their said business, caused their said courses of study and instruction, consisting of pamphlets, study, and question sheets and other printed or mimeographed material, when sold by them, to be transported in commerce from their said place of business in the State of Illinois to, into and through States of the United States other than Illinois to various and numerous persons in such other States to whom said courses of study and instruction were sold.

PAR. 2. During the time respondents conducted said business, as herein set out, other individuals, firms, and corporations in various States of the United States were engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of courses of study and instruction designed and intended for the purpose of preparing students thereof for examinations for various civil service positions under the United States Government, and also engaged, as aforesaid, in the sale and distribution of other courses of study and instruction in other lines, all of which are and were pursued by correspondence. Such other individuals, firms, and corporations have caused and do now cause their said courses of study and instruction, when sold by them, to be transported from the various States of the United States where they are located to, into, and through States other than the States of origin of the shipment thereof to the purchasers of the same in such other States. Said respondents were, during the time of the conduct of their said business, in substantial competition, in the sale of their said courses of study and instruction in commerce between and among the various States of the United States, with such other individuals, firms, and corporations.

PAR. 3. Said business conducted under the name of Federal Civil Service Training Bureau was originally established by the said respondent John Hartford. Said respondent Hartford made arrangements with the said respondent Wagley whereby the said Wagley did a considerable volume of the printing and mimeographing work used in the conduct of the business of said correspondence school conducted under the trade name aforesaid. Said respondent Hartford subleased offices from said respondent Wagley for the conduct of said business. The business was started early in the year 1935. On November 23, 1935, respondent Hartford entered into an agreement

with respondent Wagley, by the terms of which said business and the property appertaining thereto were set over to respondent Wagley in trust for the purpose of securing an indebtedness amounting to \$5,077.77. By the terms of this agreement respondent Wagley was authorized to collect and receive money owing to said respondent Hartford in the conduct of said correspondence school under the said name Federal Civil Service Training Bureau. He was further authorized under said agreement to apply the proceeds so received and collected to the payment of said indebtedness.

Pursuant to said agreement, respondent Wagley took charge of the office of said Federal Civil Service Training Bureau and had general charge of the financial affairs thereof, at least in the absence of respondent Hartford. During much of the time when said agreement was in effect, respondent Hartford was in the field selling courses of instruction. Also, during the time when said agreement was in effect, office work was conducted by Mr. Charles Raymond, an employee of respondent Wagley, who devoted part time work to the affairs of said correspondence school as an employee of the school. During the period of time when said business was so conducted, the name Federal Civil Service Training Bureau was used in the conduct thereof, and the printed matter and contract forms as herein set out and which had previously been used by the respondent Hartford were continued in use. Courses of instruction were sold to students during said period, and such courses were serviced and money collected thereon. A small sum was applied to respondent Wagley's indebtedness during the period when said agreement was in effect.

On or about January 21, 1936, respondent Hartford turned the entire business over to respondent Wagley, and the latter thereupon assumed control. No new business was solicited by respondent Wagley from such time until in March 1936, when the name of the business was changed to Commercial Training Institute. Solicitation of business was then resumed and the name of the business was later changed to Public Training Service. These were merely trade names, the business being owned and operated by respondent Wagley individually.

The relationship of said respondent Wagley with said respondent Hartford, as above specified, and the acts and things done by the said respondent Wagley in pursuance thereof, and as a result thereof, made the said respondent Wagley responsible for the acts and things done and the practices used in the conduct of said business as herein set out and made him a principal therein.

Findings

25 F. T. C.

PAR. 4. The name, Federal Civil Service Training Bureau, used by respondents in the conduct of said business, implied and had the tendency and capacity to create the belief among persons solicited to pursue the courses of study sold under such name that said Federal Civil Service Training Bureau was a part of, or was connected with, or was an agency of, the Government of the United States or of the United States Civil Service Commission. The word "Federal" is a term frequently used in referring to the United States Government or its agencies or to institutions under its direction or supervision. The term "Civil Service" is used to designate a class of employees of the United States Government or to apply to the work in which they are engaged. The word "Bureau" is a term frequently and generally used in officially or otherwise describing various Governmental agencies. Neither respondents, nor either of them, nor said school, nor anyone connected therewith, had any connection whatsoever with the United States Government or with the United States Civil Service Commission, or in any way represented either of them.

PAR. 5. Respondents, in advertising said courses of study and instruction, made use of advertising matter in which the following statements appeared:

FEDERAL CIVIL SERVICE TRAINING BUREAU

Will Prepare You for Coming Civil Service Examinations.

Due to deaths and retirements, the natural growth of the service, promotions, etc., many examinations are being announced. In one year, 1933 to 1934, the payroll of Federal Executive Employees increased from 503,488 to 623,500.

EXAMINATIONS BEING HELD — Many examinations are now being announced; they will be held convenient to you.

Said statements directly and by implication served as representations to the general public that examinations in the various civil service classifications for which respondents gave training were being held at frequent intervals and that appointments to Government positions were constantly being made from eligibles thus obtained. In fact, during much of the time respondents were giving their said training few, if any, examinations were being held and few, if any, appointments were being made in some of the classified civil service, but were appointments made regardless of training. Said statements were also misleading in that the increase in appointments referred to therein were not, in the main, in the classified civil service, but were appointments made regardless of civil service requirements.

PAR. 6. Respondents, in the sale of said courses of study and instruction, made use of a contract form containing a so-called "Refund Agreement" reading as follows:

It is understood that I am to complete the entire training, sending in all work for correction; try the first examination covered by this training; then if I fail to pass the examination, or pass and am not offered an appointment within one year from date that my name is placed on the Government eligible list, I am, upon written application, to receive a refund of the entire amount paid for this training, or I will be trained for every examination for the above stated position, without further payment, until my name is placed on the Government eligible list.

The import and implication of the above quoted agreement was that a Government appointment was assured within one year or the money paid would be refunded; when, in fact, such agreement, by careful reading thereof, meant otherwise. Said agreement was also valueless on account of the fact that it was rendered inoperative, in the main, because examinations for which respondents gave training were not being held, at least during a part of the time it was in use, and it was consequently impossible for their students to take the examination in the subjects which they had studied and thereby become entitled to a refund under such agreement during such time.

PAR. 7. The representations of respondents, as aforesaid, had the tendency and capacity to confuse, mislead, and deceive members of the public into the beliefs that respondents' school was a branch or bureau of or connected with the Government of the United States; that Civil Service examinations were being held at frequent intervals in the classifications for which respondents offered training; that Government positions in such classifications were available and that appointments therein were being made and would be made; that vacancies existed in the Government service that were to be filled; and that students who enrolled for such courses and did not secure Government positions would receive their money back upon conditions reasonably possible of fulfillment. Said representations of respondents had the tendency and capacity to induce members of the public to answer respondents' advertisements, to sign their said contracts, to pay money to respondents, and to purchase said courses of study and instruction as herein described, because of the erroneous beliefs engendered, as above set forth, and to divert trade to respondents from competitors engaged in the sale of correspondence courses in similar lines to those offered by respondents, as well as those so engaged in such sale in other lines of study in interstate commerce. There were and are among the competitors of respondents those who do not make the same or similar

Order

25 F. T. C.

misleading representations as made by respondents, as herein set out, but who truthfully and accurately state the private character of their undertakings without implying Government connection and who truthfully state the facts in regard to civil service examinations and availability of Government positions in the civil service, and who do not make use of refund agreements that are misleading in their terms or that are misleading because of failure to disclose pertinent facts upon which such agreements depend. Respondents' said acts and practices tended to and did in fact unfairly divert business to respondents from their said competitors, to the substantial injury and prejudice of competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of respondent Harvey E. Wagley, doing business under the name and style of Federal Civil Service Training Bureau, are to the prejudice of the public and of respondent's 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 respondent Harvey E. Wagley (respondent John Hartford not having been served with the complaint herein), testimony and other evidence taken before John W. Addison, an examiner of the Commission theretofore duly designated by it, in support of the allegations of the complaint, and brief in support of complaint, respondent Harvey E. Wagley having failed to introduce evidence in his behalf, and having elected to submit the case upon the record without brief or oral argument, and the Commission having made its findings as to the facts and its conclusion that said respondent Harvey E. Wagley 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 said case be closed as to the respondent John Hartford, on account of failure of service of the complaint upon him, without prejudice to the right of the Commission, should the facts so warrant, to reopen the same and resume prosecution of the complaint in accordance with its regular procedure.

Order

It is further ordered, That the respondent Harvey E. Wagley, doing business under the name and style of Federal Civil Service Training Bureau, or under any other name or in any other manner, his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of courses of study and instruction, or of books, study material, pamphlets, or printed or mimeographed matter, designed or intended for preparing students thereof for examinations for civil service positions under the United States Government, in interstate commerce, or in the District of Columbia, do forthwith cease and desist from:

1. Representing, through the use of the words "Federal" or "Bureau" or the term "Civil Service" or any other words or terms of similar import, meaning and effect, that respondent's business is a part of, is connected with, or is a branch, bureau or agency of, the Government of the United States or the United States Civil Service Commission;

2. Representing that the number and character of appointments to positions in the United States Classified Civil Service or the character of examinations held therefor are other than the facts, existing at the time such representations are made, may warrant;

3. Representing that the total number of appointments to Government positions not in the Classified Civil Service are indicative of the opportunities for appointment to the Classified Civil Service;

4. Representing that the total number of appointments to the Classified Civil Service are indicative of the opportunities for appointment therein of those who may complete the training offered by the respondents' courses, unless such number be limited to those appointments made in the classifications for which said courses are adapted;

5. Representing, through the use of inoperative, misleading or deceptive refund agreement that a Government position is assured to those purchasing respondents' courses of instruction and that if said position is not obtained the money paid for said courses will be refunded.

It is further ordered, That said respondent Harvey E. Wagley 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
TOLPIN STUDIOS, INC.

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

Docket 2950. Complaint, Oct. 16, 1936—Decision, July 7, 1937

Where a vitreous, translucent, and glazed ware designated, described, and known as china, was and had been, for some 150 years, made at Limoges, France, and had long been exported therefrom into the various countries of Europe and America, and particularly into the United States, and had acquired a favorable reputation in the latter country as a china of utility and beauty, and had come to possess a goodwill which developed an increasingly popular demand for the products of said city, and china made at said city and imported into the United States had long been widely and generally known as Limoges china, and word "Limoges" applied to and used in describing or designating china or chinaware had long since come to signify and mean, and still signified and meant, china made at Limoges in France; and thereafter, a corporation engaged in processing and decorating foreign and domestic made, undecorated china or chinaware products, and in offering, selling and distributing certain of its decorated china or chinaware products to wholesale and retail dealers, including department stores and auctioneers, and purchasers thereof in various States—

Branded, imprinted, and otherwise caused to appear, words and description "Limoges" and "French Decoration" on its said products, notwithstanding fact products thus described and referred to were not, as thus represented, made in, and did not originate in Limoges, France, but were obtained by it from other countries, and said products were not decorated in France or with French designs and decorations peculiar to country of France and French artistry;

With result of placing in the hands of dealers selling its products means by which to mislead and deceive consuming public into purchase of its china or chinaware products, and with tendency and capacity to mislead and deceive, and with effect of misleading and deceiving, members of public and of retail trade into false and erroneous belief that representations thus made by said branding and imprinting were true, and that products thus represented as "Limoges" originated and were made in said city, and that products represented by words "French Decoration" were decorated in France and with French designs and decorations, as above set forth, and of thereby causing members of public and of retail trade to buy and deal in its products in lieu and in place of competing products of competitors, and of thus diverting trade to it from its competitors who do not misbrand, or falsely and misleadingly label, mark, or otherwise misrepresent their products:

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

Before *Mr. Robert S. Hall*, trial examiner.

Mr. Jay L. Jackson for the Commission.