

Syllabus

IN THE MATTER OF

WESLEYAN DIESEL SERVICE, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3097. Complaint, Apr. 6, 1937—Decision, Aug. 18, 1937*

Where a corporation engaged in sale and distribution of correspondence courses of study in the installation, care, and maintenance of Diesel engines to members of the public in the various States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of such courses of study and instruction in the same and allied fields in commerce among the various States and in aforesaid District, and including among those engaged in sale of such courses pertaining to Diesel engines as aforesaid, competitors who do not misrepresent the nature of their courses nor make untrue claims therefor; in soliciting sale of its said courses through statements and representations circulated among the various States in newspapers, periodicals, booklets, circulars, and general business correspondence, and through agents and radio broadcasts, to pupils and prospective pupils—

- (a) Represented that there was a great demand for men trained to work with Diesel engines, and that it had not been able to fill the demand therefor, and that it wanted "to consider a few young men mechanically inclined" and was selecting and training for service and installation work on such engines a limited number of young men, and that a job was "practically certain," facts being there was no great demand for such men, it was not selecting or restricting number of its pupils for such courses to those possessing certain qualifications, but accepting all members of the public paying the required price, and positions were not available to all students completing its courses;
- (b) Represented that its instruction service included careful handling and grading of the written work of students by instructors who were competent and qualified to do such work, and that students finishing its said course were qualified to install, maintain, and service such engines, facts being its said instruction service did not include careful handling and grading of written work, such work was not handled or graded by any competent person or persons qualified so to do or to make constructive suggestions in regard thereto, and students finishing its course were not qualified and did not acquire sufficient knowledge therefrom to enable them properly to install, operate, or service such engines;
- (c) Represented that after the completion of its said course, the students had the privilege of entering another institution for practical shop training at a named total tuition fee, and that such tuition was "special" to such students and lower than the usual amount charged therefor, facts being practical training in shop work referred to as "special" in price of tuition to those students was not such, in that tuition fee to said students was not lower than usual amount charged therefor; and
- (d) Represented that it maintained branches of its school in certain named cities other than the city of its location, and maintained a free employment service for a period of two years for the benefit of those students com-

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pleting its course, and that tuition fee would be refunded if student was not satisfied with results obtained after such completion, facts being it had no branches in any city other than that in which its said school was located, maintained no free employment service for any period of time whatever, or at all, for the benefit of its students, and made no such refunds;

With effect of misleading and deceiving substantial portion of the public into the erroneous belief that such representations were true, and of causing such members of the public to enroll and pay for its said course as students, on account of such erroneous beliefs, and of thereby diverting trade from its aforesaid competitors who do not misrepresent the nature of their courses or make untrue claims therefor; to the substantial injury 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. Miles J. Furnas* and *Mr. Henry M. White*, trial examiners.

Mr. Astor Hogg for the Commission.

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 Wesleyan Diesel Service, Inc., a corporation hereinafter referred to as respondent, has been, and is 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 would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Wesleyan Diesel Service, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 2906 Leavenworth Street, Omaha, Nebr.

Respondent is now, and has been for several years last past, engaged in the sale and distribution of correspondence courses of study in the installation, care and maintenance of Diesel engines, to members of the public located in the various States of the United States and in the District of Columbia. It now causes, and during the time herein mentioned has caused, its correspondence courses, when sold, to be shipped from its place of business in Omaha, Nebr., to the purchasers thereof located in various States of the United States other than the State of Nebraska, and in the District of Columbia. There is now, and has been at all times mentioned herein, a constant current of trade and commerce by the respondent in said

correspondence courses between and among the various States of the United States, and in the District of Columbia.

Respondent is now, and at all times mentioned herein has been in substantial competition with other corporations, and with persons, firms, and individuals engaged in the sale and distribution of correspondence courses of study and instruction in the same and allied fields in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondent, in soliciting the sale of and in selling its correspondence courses, now circulates in and among the various States of the United States, and during all the time herein mentioned has so circulated, certain statements and representations in newspapers, periodicals, booklets, circulars, and general business correspondence, and through agents, and radio broadcasts to pupils and prospective pupils. Typical of such representations are the following, to wit:

WE WANT—to select reliable young men to train immediately for service and installation work of Diesel engines, 90 days training, free employment service.

Diesel Engineering—we want to consider a few young men mechanically inclined—.

The school had calls for 150 positions in 1935 that could not be filled because of an insufficient amount of men taking the course; a job is practically certain.

Instruction service includes carefully handling and grading of all written work.

Points not made clear in the lessons will be explained in personal letters by the Chief Engineer.

Money Back Agreement—I believe I have not benefitted by it, I may make application within ten days from graduation before a notary public, and the full amount paid by me will be refunded.

Two years free CONSULTATION and EMPLOYMENT SERVICE after completion.

Demand for Diesel-trained men increasing. Our 3-month training at small cost qualifies you with 1936 Diesel Knowledge.

Branches are maintained at Tulsa, Oklahoma, Dallas, Texas, Los Angeles, California.

To be acceptable, a man must be mechanically inclined or have machinery experience, steady or good habits, as well as reliable.

Special Offer.—may have the privilege of entering The American Technical Institute—for practical shop training—at a total tuition fee of \$35.00.

Such statements and representations serve as representations on the part of the respondent to prospective pupils that several young men possessing required qualifications are to be selected and trained for service and installation work on Diesel engines; that there is a great demand for men trained to work with Diesel engines, and that good positions can be secured by students after completing the course of instruction sold by respondent; that instruction service

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includes careful handling and grading of all written work by instructors who are competent and qualified to do such work; that the tuition fee will be refunded if the student is not satisfied with the results obtained after the course has been completed; that a free employment service is maintained by respondent for a period of two years for the benefit of those students completing the course; that students finishing the course will be qualified to install, maintain, and service Diesel engines; that the respondent maintains branches of its school in various cities other than Omaha, Nebr.; that after the completion of the course, the students have the privilege of entering another institution for practical shop training at a total tuition of \$35.00, and that such tuition is "special" to such students and is less than the usual amount charged therefor.

PAR. 3. The above and foregoing representations, and other representation made by respondent of similar import and effect, are false and misleading. Respondent does not select or restrict the number of its pupils for such courses to those possessing certain qualifications. In truth and in fact any and all members of the public who pay the required price for the course are accepted as students. There is no great demand for men trained in the installation, maintenance and repair of Diesel engines, and such positions are not available to all of the students completing the course. The instruction service does not include careful handling and grading of the written work, nor is such written work handled or graded by any competent person or persons qualified to do such work or to make constructive suggestions about such work. The respondent will not, and does not, refund the tuition fee if the student is not satisfied with the results obtained after the completion of the course. No free employment service is maintained by the respondent for the benefit of the students completing the course for a period of two years or for any period of time, and in fact respondent does not maintain any employment service for the benefit of its students. Students finishing the course are not qualified to, and they do not acquire sufficient knowledge from the course to enable them to properly install, operate, service, or maintain Diesel engines. Respondent does not maintain branches of its school in any city other than Omaha, Nebr. The practical training in shop work referred to by the respondent as special in price of tuition to such students is not special in that the tuition fee to such students is not less than the usual amount charged therefor.

PAR. 4. The use by respondent, of the statements and representations set forth herein in paragraph 2 and others similar thereto, has had, and now has, the capacity and tendency to mislead and deceive, and has misled and does now mislead a substantial portion of the

public into the erroneous belief that such representations are true, and has caused and now causes said members of the public to enroll as students of respondent on account of such erroneous belief. There are among the competitors of respondent mentioned in paragraph 1 hereof, corporations, individuals, partnerships, and firms engaged in the sale of correspondence courses pertaining to the study of installation, care, and maintenance of Diesel engines who do not misrepresent the nature of the business of the course offered, nor otherwise publish claims for the course which are untrue. By the representations aforesaid, trade is unfairly diverted to respondent from such competitors and thereby substantial injury has been done, and is being done, by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 5. The above alleged acts and practices of respondent are all to the injury and 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, 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 April 6, 1937, issued, and on April 8, 1937, served, its complaint in this proceeding upon respondent, Wesleyan Diesel Service, Inc., a corporation charging it 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, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, which substitute answer was duly filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, 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. Respondent, Wesleyan Diesel Service, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 2906 Leavenworth Street, Omaha, Nebr. It is now, and has been for several years last past, engaged in the sale and distribution of correspondence courses of study in the installation, care, and maintenance of Diesel engines to members of the public located in the various States of the United States and in the District of Columbia. It causes, and during the time mentioned herein, has caused its correspondence courses when sold to be shipped from its place of business in Omaha, Nebr., to the purchasers thereof located in the various States of the United States other than the State of Nebraska and in the District of Columbia. There is now, and has been at all times mentioned herein, a constant current of trade and commerce by the respondent in said correspondence courses between and among the various States of the United States, and in the District of Columbia. Respondent is now, and, at all times mentioned herein, has been in substantial competition with other corporations, and with persons, firms, and individuals engaged in the sale and distribution of correspondence courses of study and instruction in the same and allied fields in commerce among and between the various States of the United States, and in the District of Columbia.

PAR. 2. In soliciting the sale of and selling its correspondence courses, respondent circulated and circulates in and among the various States of the United States, certain statements and representations in newspapers, periodicals, booklets, circulars, and general business correspondence, and through agents and radio broadcasts to pupils and prospective pupils. Typical of such representations are the following, to wit:

WE WANT—to select reliable young men to train immediately for service and installation work of Diesel engines, 90 days training, free employment service.

Diesel Engineering—we want to consider a few young men mechanically inclined—

The school had calls for 150 positions in 1935 that could not be filled because of an insufficient amount of men taking the course; a job is practically certain.

Instruction service includes carefully handling and grading of all work.

Points not made clear in the lessons will be explained in personal letters by the Chief Engineer.

Money Back Agreement—I believe I have not benefited by it, I may make application within ten days from graduation before a notary public, and the full amount paid by me will be refunded.

Two years free CONSULTATION and EMPLOYMENT SERVICE after completion.

Demand for Diesel-trained men increasing. Our 3-month training at small cost qualifies you with 1936 Diesel Knowledge.

Branches are maintained at Tulsa, Oklahoma, Dallas, Texas, Los Angeles, California.

To be acceptable, a man must be mechanically inclined or have machinery experience, steady or good habits, as well as reliable.

Special Offer—may have the privilege of entering The American Technical Institute—for practical shop training—at a total tuition fee of \$35.00.

In the manner and through the means above stated, the respondent represents and represented that several young men possessing required qualifications are and were to be selected and trained for service and installation work on Diesel engines; that there is a great demand for men trained to work with Diesel engines, and that good positions can be secured by students after completing the course of instruction sold by respondent; that instruction service includes careful handling and grading of all written work by instructors who are competent and qualified to do such work; that the tuition fee will be refunded if the student is not satisfied with the results obtained after completion of the course; that a free employment service is maintained by respondent for a period of two years for the benefit of those students completing the course; that students finishing the course will be qualified to install, maintain, and service Diesel engines; that the respondent maintains branches of its school in various cities other than Omaha, Nebr.; that after the completion of the course, the students have the privilege of entering another institution for practical shop training at a total tuition of \$35.00, and that such tuition is "special" to such students and is less than the usual amount charged therefor.

PAR. 3. The above and foregoing representations are and were false and misleading in that respondent did not and does not select or restrict the number of its pupils for such courses to those possessing certain qualifications, but on the contrary, all members of the public who pay the required price for the course are accepted as students. There is no great demand for men trained in the installation, maintenance and repair of Diesel engines, and positions are not available to all students completing the course. The instruction service does not include careful handling and grading of the written work, nor is such written work handled or graded by any competent person or persons qualified to do such work or to make constructive suggestions about such work. Respondent does not refund the tuition fee paid by the student if the student is not satisfied with the results obtained after the completion of the course. No free employment service is

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maintained by the respondent for the benefit of the students completing the course for a period of two years, or for any period of time, and in fact respondent does not maintain any employment service for the benefit of its students. Students finishing the course are not qualified to and they do not acquire sufficient knowledge from the course to enable them properly to install, operate, service, or maintain Diesel engines. It does not maintain branches of its school in any city other than Omaha, Nebr. The practical training in shop work referred to by respondent as special in price of tuition to such students, is not special in that the tuition fee to such students is not less than the usual amount charged therefor.

PAR. 4. There are among the competitors of respondent, corporations, individuals, partnerships, and firms engaged in the sale of correspondence courses pertaining to the study of the installation, care, and maintenance of Diesel engines who do not misrepresent the nature of the course offered, or make claims for the course which are not true.

PAR. 5. The use by respondent of the foregoing false and misleading representations has had and now has the capacity and tendency to mislead and deceive, and has mislead and does now mislead, a substantial portion of the public into the erroneous belief that such representations are true, and has caused and now causes such members of the public to enroll and pay for such course as students of respondent on account of such erroneous beliefs. By the representations aforesaid, trade in said commerce is unfairly diverted to respondent from such competitors and thereby substantial injury has been done and is being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, Wesleyan Diesel Service, Inc., 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 and the answer filed

herein on July 28, 1937, by respondent admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and 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, Wesleyan Diesel Service, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of correspondence courses of study and instruction in installing, maintaining and servicing Diesel engines in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing in any manner, directly or indirectly, that a limited number of young men are to be selected and trained for service and installation work on Diesel engines;

2. That the demand for men trained to work with Diesel engines is in excess of the demand that actually exists or that positions are available to all of the students completing said course of instruction;

3. That the instruction service includes careful handling and grading of the written work of students by persons qualified to do such work;

4. That the tuition fee paid by a student will be refunded if the student is not satisfied with the results obtained after the completion of said course of instruction;

5. That free employment service, or any kind of employment service, is maintained for the benefit of the students completing the course of instruction;

6. That students finishing said course of instruction are qualified to install, maintain and service Diesel engines;

7. That branches of its school are maintained in cities other than Omaha, Nebr.;

8. That after the completion of said course of instruction students are privileged to enter another institution for practical shop training for a "special" tuition price or for a less price than the usual amount charged therefor.

It is furthered ordered, That the respondent shall, within 60 days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF
BIRCONJEL CORPORATION, INC.

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

Docket 2998. Complaint, Nov. 27, 1936—Decision, Aug. 20, 1937

Where a corporation engaged in the manufacture of certain so-called hygienic and other products for use by women, including its so-called "Birconjel" and a patented applicator for use in connection therewith, and in the sale of said "Birconjel" and applicator, through radio and other advertising, to wholesale druggists and others, and, on order, to any individual unit of the purchasing or consuming public, in substantial competition with others similarly engaged in the offer and sale, in commerce among the various States, of hygienic and other products intended and designed for use exclusively by women, and including among its competitors those offering medicines or preparations of various kinds for use in connection with feminine hygiene and for aforesaid preventive effects, without stating expressly, or implying or importing, in their representations that their products or any of them are invariably or uniformly effective and safe and harmless, and those offering and selling, as aforesaid, medicines, with or without applicators, and other preparations, truthfully represented as for use in feminine hygiene and to prevent diseases arising from lack thereof, and as preventing contraction of diseases by women when used in accordance with directions—

- (a) Represented, through advertising literature enclosed in the carton or container of said product and distributed also among purchasers and prospective purchasers, and through window display advertising and other advertising matter distributed by its agents in introducing and promoting sale of said product, and also through booklets and other advertising, that said "Birconjel" and appliance constituted a competent and effective contraceptive and could be relied upon absolutely for such preventive purpose, and that its said preparation constituted a reliable remedy, treatment and cure for ills and diseases peculiar to women, facts being preparation in question could not be relied upon as such a preventive and had no beneficial therapeutic value in the treatment of any ailments, ills, or diseases peculiar to the feminine anatomy; and
- (b) Represented that said preparation constituted a protection against diseases and acted both mechanically and as a germicide in the prevention of trouble, and that it was prescribed by thousands of physicians and had the approval of the American Medical Association, American Birth Control League, and physicians generally, and that it was not a patent or proprietary medicine, but an open formula which might be used with safety and without deleterious effects by all women, facts being it was not a scientific prophylactic for feminine hygiene or otherwise, had not been used or approved as above claimed, formula thereof was not open, but secret, and use thereof, either with or without said applicator, was not absolutely harmless, but in many cases was capable of causing injuries and had deleterious effect upon the user thereof;