

IN THE MATTER OF

T. G. COOKE, TRADING AS INSTITUTE OF APPLIED
SCIENCECOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2731. Complaint, Feb. 27, 1936—Decision, Jan. 5, 1938*

Where an individual engaged in sale of certain correspondence courses pertaining to the subject of Forensic Ballistics, as commonly known, and consisting of three lessons which purported to tell the police officer proper things to do and not to do at scene of crime, correct scientific procedure for examination of firearms and bullets in police laboratories, together with list of necessary equipment for laboratory work, and, finally and third, to tell expert in firearms identification how to conduct himself in court, with statement of questions which would be asked by the lawyers and certain citations from available authorities, Federal and State; in advertising his aforesaid courses in numerous newspapers, magazines, and other periodicals of general circulation throughout the United States—
Represented to purchasing public that the same were full and complete courses of instruction in "Finger Print Work, Bertillon Identification, Photography, Ballistics and Secret Service Intelligence," facts being they were neither full and complete courses of instruction in Ballistics nor in Forensic Ballistics, but constituted, at most, incomplete outlines of latter subject as commonly known, and contained very little, if any, information of value to one desiring to become acquainted with former;

With effect of misleading purchasing public into erroneous belief that said representations were true, and into purchasing its said courses of instruction in reliance thereon, and with capacity and tendency to mislead and deceive substantial number of purchasing public into erroneous belief that all of its said representations were true and into purchase of a substantial amount of its said product on account of such beliefs, induced as aforesaid, and with result that trade was diverted to it from those engaged in sale and distribution of courses of instruction prepared, intended and sold for substantially same purpose and use and who truthfully advertise their products; to the injury of competitors 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*, trial examiner.

Mr. T. H. Kennedy and *Mr. Floyd O. Collins* for the Commission.

Mr. Gustav E. Beerly, of Chicago, Ill., for respondent.

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 T. G. Cooke, hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the 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. Respondent acting individually and doing business under the trade name of "Institute of Applied Science," maintains his office and principal place of business at 1920 Sunnyside Avenue, in the city of Chicago, State of Illinois.

PAR. 2. Respondent is now, and has been for more than one year last past, engaged in conducting a business commonly known as a correspondence school, which consists of the sale and delivery by mail, and by other means of transportation, of certain courses of instruction to subscribers or purchasers thereof located in States other than the State of Illinois. After the said courses of instruction have been subscribed for or purchased, the respondent ships or causes to be transported from his principal place of business in the city of Chicago, State of Illinois, the printed matter, examination questions, charts, information and paraphernalia comprising the said course of instruction to the purchasers thereof located in States other than the State of Illinois. Said subscribers or purchasers are members of the general public and are hereinafter referred to as students. In the course and conduct of his business, as aforesaid, respondent is in substantial competition with other individuals, corporations, partnerships, and firms engaged in the sale and shipment in interstate commerce, by mail and other means of transportation, of courses of instruction to subscribers or purchasers thereof located in the various States of the United States.

PAR. 3. In the course and conduct of his business, as heretofore described and alleged, the respondent caused to be prepared and printed a textbook containing a series of three lessons which he entitled "FORENSIC BALLISTICS The Science of Examining Guns and Ammunition in Crimes" and advertised, used and referred to the same, in connection with soliciting the sale of, and in selling a complete course of instruction in finger printing, as follows: "Low Tuition Rates Still in Effect, Include Secret Service, Bertillon, Photography and Ballistics Courses," and in aid of his said business, and in soliciting such sale, and in selling said course of instruction, and for the purpose of inducing persons to enter into contracts with him to enroll as students with him for this course of instruction,

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the respondent further, in his advertising literature, among other things, stated and represented:

I am offering my complete course in Finger Print Work, including the complete Finger Print Outfit, and all the other allied courses complete, for only \$70, payable \$5 down and \$5 per month for thirteen months.

This is indeed a low rate and is a real bargain for anyone interested in getting into this work. Of course, if you enroll under the \$70.00 price that is all you will ever have to pay. *After you are enrolled* the price to you cannot be raised.

and further, in connection therewith, the following:

When I receive your enrollment, I will send you our complete courses in Secret Service, Bertillon Work, Photography and Ballistic Lessons without any additional charge.

when in truth and in fact the said textbook does not deal with the science of "Ballistics" and the instruction so advertised and imparted to students does not relate to that science, and when in fact it contains many absurd and misleading statements as applied to the science of ballistics and to a ballisticians, and when the subject matter of said textbook deals merely with a very sketchy and meagre outline of some of the basic principles of firearms identification and not with the science of "Ballistics," which is the science that deals with the impact, path and velocity of projectiles.

PAR. 4. The use of the word "ballistics," in soliciting the sale of, and in selling and furnishing said textbook and said course of instruction, as heretofore described and alleged, is false and misleading and has the tendency and capacity to confuse, mislead, and deceive prospective students and in fact does deceive prospective students and induce them to enroll and subscribe for respondent's said course, or courses, and has caused students to purchase respondent's said course, or courses, in such erroneous belief, and thereby unfairly diverts trade to respondent from his said competitors, engaged in the sale in interstate commerce of like or similar courses of instruction, and who do not make such misrepresentation or misuse of the word or term "ballistics" in selling such course, or courses, in the manner heretofore described and alleged in paragraph 3 herein; and, thereby substantial injury is done by respondent to substantial competition in interstate commerce.

PAR. 5. The acts, methods, and practices of respondent, as hereinabove alleged, described and set forth, are to the injury and prejudice of the public and to respondent's competitors, and constitute unfair methods of competition in interstate commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on February 27, 1936, issued and served its complaint in this proceeding upon respondent, T. G. Cooke, doing business under the trade name and style of Institute of Applied Science, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Thomas G. Kennedy, attorney for the Commission, before W. W. Sheppard, an examiner of the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint by Gustav E. Beerly, attorney for the respondent; 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, brief in support of the complaint, respondent's attorney having advised the Commission that no brief would be filed on behalf of the respondent and no oral argument would be requested, 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 conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. T. G. Cooke, acting individually, has been and is now conducting a business known as a correspondence school. Respondent conducts said business under the trade name of Institute of Applied Science. For the purpose of conducting said business under said trade name respondent maintains an office and place of business at 1920 Sunnyside Avenue, in the city of Chicago, State of Illinois. Said business consists of the sale and distribution of courses of instruction to subscribers or purchasers thereof, located in the various States of the United States. When respondent makes a sale of said courses of instruction, he causes the same to be shipped and transported from his place of business in the city of Chicago, State of Illinois, to the purchasers thereof located in various States of the United States other than the State of Illinois. Respondent does now, and has for a number of years last past, maintained a constant cur-

rent of trade and commerce in said courses of instruction among and between the various States of the United States and the District of Columbia.

PAR. 2. There are now and have been for a number of years, numerous other individuals and numerous corporations, firms, and partnerships, engaged in the business of selling and transporting in interstate commerce, courses of instruction similar to the courses sold and distributed by respondent, and which courses of instruction are sold and distributed for similar purposes for which respondent's courses of instruction are sold and distributed, and which are sold to the same class of purchasers to whom respondent sells his courses of instruction.

PAR. 3. Respondent, in selling and offering for sale his courses of instruction, advertises in numerous newspapers, magazines, and other periodicals, of general circulation throughout the United States, and in said advertising, among other things, represents:

I am offering my complete course in Finger Print Work, including the Complete Finger Print Outfit, and all the other allied courses complete, for only \$70, payable \$5 down and \$5 per month for thirteen months.

This is indeed a low rate and is a real bargain for anyone interested in getting into this work. Of course, if you enroll under the \$70 price that is all you will ever have to pay. After you are enrolled the price to you cannot be raised.

When I receive your enrollment, I will send you our complete courses in Secret Service, Bertillon Work, Photography and Ballistic Lessons without any additional charge.

Furnish you with a full and complete course of instructions in *FINGER PRINT WORK, BERTILLON IDENTIFICATION, PHOTOGRAPHY, BALLISTICS AND SECRET SERVICE INTELLIGENCE*.

By said statements in said advertising respondent represents to the purchasing public that the courses of instruction sold by respondent are full and complete courses of instruction in Finger Print Work, Bertillon Identification, Photography, Ballistics and Secret Service Intelligence.

PAR. 4. The terms "Ballistics," "Forensic Ballistics," and "Firearms Identification" have distinct different technical meanings but they are generally used interchangeably by the general public, and very often by technicians and experts. To the layman and general public the terms are practically synonymous.

Said courses of instruction sold by respondent consist of three lessons. Lesson No. 1 purports to tell the police officer the proper things to do and the things not to do at the scene of a crime. Lesson No. 2 purports to tell police officers the correct scientific procedure for the examination of firearms and bullets in their laboratories, and this lesson lists the necessary equipment for laboratory work. Lesson

No. 3 purports to tell the expert in firearms identification how to conduct himself in court and what questions will be asked by the lawyers on both sides and gives certain citations from available authorities, both Federal and State.

PAR. 5. The representations made and being made by respondent in selling and offering for sale said courses of instruction, wherein respondent represents the courses to be full and complete courses in ballistics, or forensic ballistics, are false and misleading. Said representations had, and now have, the tendency and effect to, and did, and do, mislead the purchasing public into the erroneous belief that said representations are true and lead them into purchasing respondent's courses of instruction relying upon said representations. In truth and in fact the courses sold by respondent are not full and complete courses of instruction in ballistics, neither are they full and complete courses of instruction in forensic ballistics. Insofar as the subjects of ballistics and forensic ballistics are concerned, respondent's courses are far from complete. The most that can be said of them is that they are incomplete outlines of what is commonly known as forensic ballistics and contain very little, if any, information which would be of value to one desiring to become acquainted with the science of ballistics.

PAR. 6. The statement and representations made by respondent in describing the courses of instruction and the contents of same had, and now have, a capacity and tendency to mislead and deceive a substantial number of the purchasing public into the erroneous belief that all of the said representations are true, and into the purchase of a substantial amount of respondent's product on account of such beliefs induced by the respondent's representations as above set out. As a result thereof, trade has been diverted to respondent from individuals and from firms, corporations, and partnerships likewise engaged in the business of selling and distributing courses of instruction, prepared, intended, and sold for substantially the same purpose and use for which respondent's courses of instruction are sold, and who truthfully advertise their products. As a consequence thereof, injury has been, and is now being, done by respondent to competitors in commerce among and between the various States of the United States and the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondent, T. G. Cooke, trading under the style and firm name of Institute of Applied Science, are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce, within

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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, testimony and other evidence taken before W. W. Shepard, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto by Thomas H. Kennedy, counsel for the Commission, and by Gustav E. Beerly, counsel for respondent, and brief filed herein by Floyd O. Collins, counsel for the Commission, counsel for the respondent having advised the Commission that no brief would be filed in behalf of respondent and that no oral argument was desired, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondent, T. G. Cooke, an individual, trading as Institute of Applied Science, his representatives, agents, and employees, in connection with the offering for sale, sale and distribution of his courses of instruction in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing directly or indirectly:

1. That said courses of instruction are full and complete courses in the science of ballistics, or

2. That said courses of instruction are full and complete courses in the science of forensic ballistics.

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

Syllabus

IN THE MATTER OF

HARRY WEINBERG, TRADING AS NU-ART TAILORING
COMPANY

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

Docket 3256. Complaint, Oct. 30, 1937—Decision, Jan. 5, 1938

Where an individual engaged in offer and sale of men's clothing through traveling salesmen or agents, whom he equipped with order blanks for taking measurements of each purchaser and with samples of materials for purchasers' selection as to color, weave, and quality, and who recorded such selections, along with purchasers' measurements on aforesaid blanks and forwarded orders, and were compensated by deposit required of purchaser at such time, and, as thus engaged, in substantial competition with others likewise engaged in selling and distributing men's clothing in interstate commerce, and with many who likewise sell their clothing through salesmen or agents and have not adopted the below described acts, practices, and methods—

- (a) Represented and implied to prospective purchasers that he would make for and deliver to them made-to-measure or tailor-made garments and garments made from material of the color, weave and quality selected by them from the samples exhibited by his said salesmen or agents, facts being garments delivered, in many cases, were not tailor-made, as understood by purchasing public, but "ready-made" or "hand-me-down" clothes previously made without regard to individual measurements of purchaser to whom they were eventually sold, garments, in some instances in which in fact made to individual measurements of purchaser, did not fit in same manner as made-to-measure or tailor-made garments, or at all, or with any reasonable relation to individual to whom they were delivered, due to lack of experience and skill on part of salesman or agent in making and taking measurements, etc., or lack of skill on part of workman making the clothing, and, in many instances, were so cut and constructed that it was not possible for expert tailors to alter them so as to fit the purchaser, and, in many instances, garments were made from material which was different in color and weave from, and substantially inferior in quality to, material selected by customer;
- (b) Represented, from time to time, to prospective purchasers, that delivery of the garment ordered would be made to purchaser by one of his salesmen or agents in person, so as to afford former opportunity to inspect the same as to material from which made and as to its fit prior to paying balance of purchase money due, and, in many instances, that well-known men in purchaser's community had bought clothing from him and that they were satisfied therewith and had indorsed the same, facts being that, in practically every instance, garment was shipped to purchaser by express, cash on delivery for balance of purchase money, with no inspection permitted and with no opportunity to inspect clothing prior to payment of such balance, and representation as to purchases by well-known men in particular customer's community were false;