

Syllabus

IN THE MATTER OF
AMERICAN COLLEGE, AMERICAN UNIVERSITY, AND
DENTON N. HIGBE

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

Docket 2648. Complaint, Dec. 7, 1935—Decision, Aug. 5, 1938

Where two corporations which (1) occupied the same building and were headed, managed, controlled, and dominated by the same individual, and different addresses of which, as used by said individual in advertisements thereof, designated merely separate entrances to aforesaid building; (2) conducted correspondence schools and sold courses prepared virtually entirely, if not entirely, by said individual, and faculty of which was limited to such individual with occasional assistance of two part-time employees; (3) were respectively engaged in advertising and selling, to persons in the various States and the District of Columbia, courses of instruction in (a) "physiotherapy," "chiropractics," "nursing," and psychoanalysis," and in (b) making and fitting of arch supports; and (4) conferred variously styled degrees without requiring, as a condition precedent, any term of residence or attendance in their so-called "college" or "university"; in substantial competition with those engaged in the sale of similar courses in such subjects who do not represent themselves as being either a college or university, and with those individuals, colleges, and universities who equip students in the above-named subjects and in proper practice in chiropody and phases of the medical profession involved, and with schools, colleges, and universities which give courses similar to those advertised and sold by them, require actual residence or attendance of students thereof, offer both practical and theoretical training in their courses and maintain faculties and laboratories for personal and practical training, and upon completion of prescribed courses confer variously styled degrees—

Made use of their corporate names, respectively including words "College" and "University," in advertising their said business in newspapers and periodicals of national circulation, and in other pamphlets and catalogs of national distribution, and represented therein to the public and prospective students that they were, respectively, a college and a university, and purported to equip students in the proper practice of psychology, psychiatry, nursing, physiotherapy, and in the proper practice of chiropody and those phases of the medical profession dealing with the care, restoration and treatment of feet;

Notwithstanding fact both theoretical and practical knowledge of general psychology, pathology, use of electrical apparatus, bacteriology, and similar and allied subjects is necessary to proper understanding of the rudiments essential to proper practice in the before-mentioned field, adequate knowledge of such subjects cannot be obtained by means of correspondence course, and they did not operate a curriculum embracing those various and varied subjects offered by schools and universities as leading to qualification for degree or degrees, as such curricula are generally and popularly understood by members of the public, courses of instruction offered by them as successful basis for qualification for various degrees were not, of themselves, sufficient to en-

Complaint

27 F. T. C.

able the recipient properly to practice within the field, for which the same were offered as adequate and competent qualifications, they did not undertake to teach arts and sciences as commonly or usually taught in colleges or universities, were not institutions competent to confer degrees in that they had no facilities for personal instruction, required no actual residence, maintained no laboratories or classrooms, etc., where students were required to study, etc., did not require the basic preparation for degrees usually required by colleges or universities as generally understood to apply to colleges or universities, and respectively did not conduct or constitute a college or university within the proper or general conception of the words;

With capacity and tendency, through unqualified use of aforesaid words and aforesaid acts and practices, to mislead and deceive prospective students into mistaken and erroneous belief that said corporations, respectively, constituted in fact a college or a university, as commonly and properly understood by the public, and with effect of inducing prospective students, because of such belief, to enroll and pay for the courses offered and sold by them, and with the result that the acts and practices of said individual, as thus reflected in the direction, management, and control of the policies and business of said corporations, caused diversion of patronage in commerce from competitors to them:

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

Before *Mr. John J. Keenan*, trial examiner.

Mr. James I. Rooney and *Mr. Alden S. Bradley* for the Commission.

Mr. Leo Conlon, of Chicago, Ill., 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 the respondents, American College, a corporation, American University, a corporation, and Denton N. Higbe, individually and as president and principal stockholder of respondent, American College, and as president and principal stockholder of respondent American University, hereafter referred to as respondents, have been and now 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 and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, American College, is a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, and having its principal place of business in the city of Chicago, in said State of Illinois. Respondent, American University, is a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, and having its principal place of busi-

ness in the city of Chicago, in said State of Illinois. Respondent, Denton N. Higbe, is the principal stockholder and controls the respondent corporations, American College and American University, and as such principal stockholder manages and directs their policies. Respondent, Denton N. Higbe, has his place of business in the city of Chicago, State of Illinois. The principal place of business of all the respondents is one and the same, to wit, 510 North Dearborn Street, Chicago, Ill.

Respondents conduct 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 respondents ship or cause to be transported from their 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 their said businesses, respondents are in substantial competition with other corporations and individuals and with firms and partnerships engaged in the sale and interstate delivery, by mail and other means of transportation, of courses of instruction to subscribers and purchasers thereof located in the various States of the United States.

PAR. 2. Respondent, American College, incorporated and in existence since 1915, and acting under the control of said Denton N. Higbe, in the course and conduct of its business, advertises and offers for sale and does sell in States other than the State of Illinois, a course of instruction designated as "Pedopractic." This course of instruction is represented by the respondent, American College, as a course of instruction in correcting abnormal conditions of the foot. It teaches the proper care of the feet, proper posture, how to stand and walk, how to make and fit foot supports to correct various ailments of the feet, and the proper use of shoes and stockings. And as the respondent claims, prepares the students to practice in such work as a profession.

PAR. 3. Respondent, American College, advertises in periodicals of national circulation for students. In such advertisements the respondent uses its corporate and trade name "American College" and also represents to the public and to its students and prospective students by the use of its corporate name and by other means that it is a "college."

Complaint

27 F. T. C.

A "college," as commonly understood by the public and particularly by those seeking education, is an educational institution of higher learning, empowered to confer degrees, with a faculty of learned persons acting as instructors, in the various higher branches of learning embraced in the curriculum, which curriculum includes the liberal arts and sciences.

In truth and in fact respondent, American College, is not a "college" and does not conduct a "college" within the popular and general conception of the word; and it does not undertake to teach the arts and sciences usually taught in colleges, or any of them, nor does it teach or undertake or pretend to teach any art, science, or branch of learning other than the subject particularly described in paragraph 2 of the complaint. The respondent is without authority to confer degrees, it has no faculty, as the same is popularly understood, it is without facilities for personal instruction, in that it has no classroom, lecture hall, or laboratory such as are requisite to the proper functioning of a college.

PAR. 4. Respondent, American University, has at various times since its organization in 1913 and since 1924, acting under the control of the respondent, Denton N. Higbe, conducted courses by means and in the manner outlined in paragraph 1 hereof in "physiotherapy," "chiroprody," and "psychoanalysis," the said course in "psychoanalysis" being the most recent course conducted by the said respondent. As set forth in the said respondent's prospectus, which is mailed to prospective students, "psychoanalysis" is a method of disclosing and analyzing mental states and activities. Said course consists of 32 lessons by correspondence. Examination questions are submitted to the student, for which the student is required to prepare written answers to be sent for criticism and correction, and, as the respondent claims, the writing of these answers serves to firmly impress upon the student's mind the facts he should retain, and that they "also enable his instructors to learn how well the student is mastering the lessons and what additional instruction he needs, if any."

PAR. 5. Respondent, American University, advertises in periodicals of national circulation for students. In such advertisements the respondent uses its corporate and trade name "American University" and also represents by the use of its corporate name and otherwise to the public and to its students and prospective students that it is a "university." A "university" is understood by the public to be an educational institution organized for teaching and study in the higher branches of learning and in which the education imparted is universal, embracing many branches such as arts, sciences, and all manner of learning, and empowered to confer degrees with a faculty of learned

persons acting as instructors and offering one or more special branches of learning, such as theology, law, and medicine.

In truth and in fact respondent, American University, is not a "university" and does not conduct a "university" within the popular and general conception of the word; it does not undertake to teach the arts and sciences usually taught in universities or any of them, nor does it teach or undertake or pretend to teach any art, science, or branch of learning other than the subjects particularly described in paragraph 4 of this complaint. The respondent is without authority to confer degrees, it has no faculty or instructors, as the same is popularly understood. It is without facilities for personal instruction in that it has neither classrooms, lecture halls, or laboratories such as are requisite to the proper functioning of a university.

The use of the names "college" and "university" by the respondents, American College, American University, and by Denton N. Higbe as the managing director of both corporations, is false and misleading and has the tendency and capacity to deceive prospective students, and in fact does deceive prospective students and induces them to enroll and subscribe for respondents' courses, and has caused students to purchase respondents' courses in such erroneous beliefs. Thereby trade is diverted to the respondents from their competitors, who do not make such misrepresentations. Thereby substantial injury is done by the respondents to substantial competition in interstate commerce.

PAR. 6. The acts and practices of the respondents are all to the prejudice of the public and of competitors of the respondents, 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."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on December 7, 1935, issued and served its complaint in this proceeding upon respondents, American College, a corporation, American University, a corporation, and Denton N. Higbe, an individual, 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 filing of respondents' answers thereto, testimony and other evidence in support of the allegations of said complaint were introduced by James I. Rooney, attorney of the Commission, before J. J. Keenan, an examiner of the Commission, theretofore duly designated by it, and in

Findings

27 F. T. C.

opposition to the allegations of the complaint by Leo Conlon, 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 upon the said complaint, the answers thereto, testimony and other evidence and briefs in support of the complaint and in defense thereto (no request for oral argument having been made), 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, American College and American University, are corporations organized and existing under and by virtue of the laws of the State of Illinois, each having its principal office and place of business in the city of Chicago, in the State of Illinois. Denton N. Higbe is the president of each of said corporations, owns or controls 240 of the outstanding 250 shares of the capital stock of the American College, and 48 of the outstanding 50 shares of the capital stock in American University, and manages, directs, and controls their policies and business from his place of business at 510 North Dearborn Street, city of Chicago, State of Illinois, which is the address of each of the corporate respondents.

The corporate respondents, American College and American University, were incorporated in the years 1915 and 1913, respectively, and at all times since their incorporation have operated and conducted in their respective corporate names what is generally understood and known by the public to be correspondence schools.

In the course and conduct of their said businesses, each of the corporate respondents advertise the same in newspapers, magazines, periodicals of national circulation, and other pamphlets and catalogs of national distribution, using their corporate names in such advertisements, and represent to the public and to prospective students that they are respectively a "college" and a "university."

PAR. 2. The business of the respondent, American University, is now, and for many years past has been advertising and selling to persons located in the various States of the United States and the District of Columbia various courses of instruction in "physiotherapy," "chiropractics," "nursing," and "psychoanalysis." The business of the respondent American College is, and for a long period of years has been, advertising and selling courses of instruction in the making and fitting of arch supports. Each of such institutions con-

fers variously styled degrees. Respondent American College confers the degree "pedopractor" and respondent American University confers the degree "chiropractor," and has, upon occasion, conferred a degree designated as "Dr. of Chiropractics" upon persons completing the correspondence course sold by them.

PAR. 3. In the course and conduct of their said businesses, respondents are in substantial competition with other persons, firms, and corporations likewise engaged in the sale of similar courses of instruction and textbooks in the various States of the United States and the District of Columbia, and who do not represent themselves, by advertising or otherwise, to be either a "college" or a "university."

PAR. 4. Respondents purport to equip students in the proper practice of psychoanalysis, psychiatry, nursing, physiotherapy, and also in the proper practice of chiropody and those phases of the medical profession dealing in the care, restoration, and treatment of feet.

There are among the competitors of the respondents those individuals, colleges, and universities who equip students in the above-named subjects and in the proper practice of chiropody and those phases of the medical profession to which reference has last been made.

PAR. 5. There are among the competitors of the respondents various schools, colleges, and universities giving courses of instructions similar to those advertised and sold by the respondents, which require the actual residence and attendance of students of such courses, and which offer both practical and theoretical training in those courses offered by them, and maintain faculties and laboratories for personal and practical training in the same, and who, upon the completion of courses prescribed, confer variously styled degrees.

PAR. 6. The respondents do not require, as a condition precedent to conferring the degrees above named, any term of residence or attendance in their so-called "college" or "university."

PAR. 7. It is necessary to the proper understanding of the rudiments essential to the proper practice in the field before-mentioned to have both a theoretical and practical knowledge of general psychology, pathology, the use of electrical apparatus, bacteriology, and similar and allied subjects. An adequate knowledge of such subjects cannot be obtained by means of a correspondence course.

PAR. 8. The word "college" as understood by the public, is an educational institution of higher learning empowered to confer degrees, with a faculty of learned persons acting as instructors in the various high branches of learning embraced in the curriculum, which curriculum includes the liberal arts and sciences.

Findings

27 F. T. C.

PAR. 9. The word "university" as understood by the public, is an educational institution of higher learning empowered to confer degrees, with a faculty of learned persons acting as instructors in the various high branches of learning embraced in the curriculum, which curriculum includes the liberal arts and sciences, and one or more special branches of learning, such as theology, law, and medicine.

PAR. 10. Respondents do not offer a curriculum embracing those various and varied subjects commonly offered by schools, colleges, and universities as leading to the qualification for a degree, or for degrees, as such curricula are generally and popularly understood by the members of the public.

PAR. 11. The courses of instruction offered by the respondents as sufficient basis for qualification for various degrees are not of themselves sufficient to enable the recipient thereof properly to practice within the field for which the same are offered as adequate and competent qualifications.

PAR. 12. The respondent Denton N. Higbe is in absolute control and dominates the policies of each the respondent American College and American University. He prepares virtually all, if not all, of the courses of instruction sold by each of them and constitutes, with the occasional assistance of two part-time employees, the entire faculty of each of the respondents.

PAR. 13. The respondent Higbe, in connection with all advertisements of respondent American College, causes the address of the same to be given as 54 West Illinois Street, Chicago, Ill., and, in connection with all advertisements of the respondent American University, causes the address of the same to be given as 510 North Dearborn, Chicago, Ill. In fact, each of such last-named respondents occupy the same building and the addresses given in the advertisements designate merely separate entrances to such building.

PAR. 14. Respondent American College is not a college and does not conduct a college within the popular and general conception of the word; it does not undertake to teach arts, letters, and sciences as commonly taught in colleges, nor does it teach or undertake to teach any arts, letters, and sciences other than those set forth in paragraph 2 herein. It is not an institution competent to confer degrees, in that it has no facilities for personal instruction, requires no actual residence, maintains no laboratories or classrooms wherein students are required to study, nor does it require the basic preparation, residence, and actual study for qualification for degrees as usually required by colleges as the word "college" is generally understood to apply to an institution.

PAR. 15. Respondent American University is not a university, and does not conduct a university within the popular and general conception of the word; it does not undertake to teach arts, letters, and sciences usually taught in universities, nor does it teach, or undertake to teach, any arts, letters, and sciences other than those set forth in paragraph 2 herein. It is not an institution competent to confer degrees, in that it has no facilities for personal instruction, requires no actual residence, maintains no laboratories or classrooms wherein students are required to study, nor does it require the basic preparation, residence, and actual study for qualification for degrees as usually required by universities as the word "university" is generally understood to apply to an institution, nor does such respondent maintain a school or schools for the more advanced study of any specialized profession, learning, or culture.

PAR. 16. The unqualified use of the word "college" by the respondent American College as part of respondent's corporate name, and the acts and practices set forth in paragraphs 2 and 4 hereof, are misleading and deceptive and have the capacity and tendency to mislead and deceive prospective students into the mistaken and erroneous belief that the respondent is, in fact, a "college" as a "college" is commonly and popularly understood by the public, and prospective students, because of such belief, are induced to enroll in respondent's institution and to pay for the course advertised and sold by it.

PAR. 17. The unqualified use of the word "university" by the respondent American University as part of respondent's corporate name, and the acts and practices set forth in paragraphs 2 and 4 hereof, are misleading and deceptive and have the capacity and tendency to mislead and deceive prospective students into the mistaken and erroneous belief that the respondent is, in fact, a "university" as a "university" is commonly and popularly understood by the public, and prospective students, because of such belief, are induced to enroll in respondent's institution and to pay for the courses advertised and sold by it.

PAR. 18. The acts and practices of the respondent Denton N. Higbe, as set forth herein, in the direction, management, and control of the policies and business of the corporate respondents, have a capacity to mislead and deceive prospective students and to induce them to enroll in, and obtain courses offered by respondent corporations because of the belief that such corporations are respectively a "college" and a "university" within the popularly and generally accepted meaning of such words, and have thus caused a diversion of patronage in interstate commerce from competitors to them.

Order

27 F. T. C.

CONCLUSION

The aforesaid acts and practices of the respondents are to the injury and prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, testimony and other evidence taken before J. J. Keenan, an examiner of the Commission, theretofore duly designated by it, in support of the allegations of said complaint, and in opposition thereto, and briefs filed therein (no request for oral argument having been made), and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, American College, a corporation, its officers and directors, and Denton N. Higbe, an individual, their agents, representatives, and employees, in connection with the offering for sale, sale, and distribution between and among the various States of the United States, and in the District of Columbia, of courses of instruction or textbooks, cease and desist from:

Representing directly or indirectly through the use of the word "College" in the corporate name of the respondent, American College, or in any other manner, that said respondent, American College, conducts a college or institution of higher learning.

It is ordered, That the respondents, American University, a corporation, its officers and directors, and Denton N. Higbe, an individual, their agents, representatives, and employees, in connection with the offering for sale, sale and distribution between and among the various States of the United States, and in the District of Columbia, of courses of instruction or textbooks, cease and desist from:

Representing directly or indirectly through the use of the word "University" in the corporate name of the respondent, American University, or in any other manner, that said respondent, American University, conducts a university or institution of higher learning.

It is further ordered, That the respondents, and each of them, shall, within 60 days after the date of the service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have, and each of them has, complied with the order to cease and desist hereinabove set forth.

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709

Syllabus