

IN THE MATTER OF
TRAFFIC INSPECTORS TRAINING CORPORATION AND
FRED J. KAVANAGH AND CHARLES VAN BUREN

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

Docket 3562. Complaint, Aug. 29, 1938—Decision, Mar. 27, 1939

Where a corporation and two individuals, who were general officers and principal stockholders thereof and jointly managed, controlled, and directed its policies and operation, engaged in sale and distribution in commerce among States of correspondence course of study and instruction to prepare students for positions as traffic inspectors or checkers, in substantial competition with others engaged in sale and distribution of similar correspondence courses in commerce and in District of Columbia, and including many who do not in any manner use misrepresentations in connection with sale and distribution of their courses; through newspaper advertisements, circulars, and other printed matter circulated to general public throughout the United States, and through verbal statements made by their agents and solicitors—

- (a) Represented "INSPECTORS NEEDED \$150-\$175 Per Month," and "Trained men and women are needed constantly as Railroad, Electric Railway, Streetcar, and Busline Passenger Traffic Inspectors" and that such occupation or "transportation" offered steady employment at high salaries, with opportunity to travel or stay near home, and opportunity for "well-paid position" in "new and uncrowded field";

Facts being there was no such demand, which exceeded supply of trained and experienced inspectors, transportation companies will not employ those who have theoretical knowledge only and no practical experience, such employment has been going on for 50 years and field is not new and does not offer well-paid positions or steady or permanent work or opportunity to remain in given locality for any length of time, or choice of locations, and traffic inspectors do not earn salaries as above set forth, but are compensated, usually, on per diem basis;

- (b) Made many representations as to guaranteeing and securing positions, including statements, in many instances, to prospective purchasers, that there was great demand on said corporation by railroad companies for its graduates, and that they had connections with a large number of such companies and were, therefore, in a position to place graduates without difficulty or delay, and that women graduates could be placed readily with any such company, and other statements of similar import;

Facts being there was no such demand, few, if any, individuals who completed said course found employment as such inspectors, they had no connection whatever with any railroad or other carrier of passengers, and could not and did not fulfill promises and guarantees made to students with respect to employment, and many passenger carriers do not employ women as such inspectors; and

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(c) Represented, as aforesaid, to students and prospective students, that their said 30-lesson course could be completed in 2 or 3 months, and that while completing his studies person could be sufficiently qualified to secure position and earn substantial salary;

Facts being no one had ever completed said course within 3, or even 6, months or ever found employment after partially completing said course, lessons thereof were mailed by them to their students at intervals of week or 10 days, and grading of papers and mailing of lessons were in many instances delayed for much longer periods;

With effect of misleading and deceiving purchasers and prospective purchasers of such courses of study and training into erroneous and mistaken belief that such representations were true, and with capacity and tendency so to do and to induce them to act on belief aforesaid and purchase and pay for their said courses, with result that trade was thereby diverted unfairly to them from competitors:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr William L. Pencke for the Commission.

Mr. Harlow B. Ansell, of Syracuse, N. Y., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act the Federal Trade Commission, having reason to believe that Traffic Inspectors Training Corporation, a corporation, and Fred J. Kavanagh and Charles Van Buren, hereinafter referred to as respondents, have violated the provisions of 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, Traffic Inspectors Training Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York.

Respondent Fred J. Kavanagh is president and respondent Charles Van Buren is secretary and treasurer of said corporation, both individuals being the principal stockholders, jointly managing, controlling, and directing its policies and operations. The offices and principal places of business of all three of said respondents are in the Chimes Building, city of Syracuse and State of New York. Prior to the incorporation of said Traffic Inspectors Training Corporation on September 9, 1937, said individual respondents on April 27, 1937, had started the business hereinafter described, as copartners, continuing as such copartnership until the date of said incorporation.

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PAR. 2. Said respondents are now and since the dates set forth in paragraph 1 have been engaged in the sale and distribution in commerce between and among the various States of the United States of a course of study and instruction intended for preparing students thereof for positions as traffic inspectors or checkers, which said course is pursued by correspondence through the medium of the United States mail. Said respondents in the course and conduct of their said business, during the time aforesaid, caused, and do now cause, their said course of study and instruction to be transported from their said place of business in Syracuse, N. Y., to, into and through States of the United States other than New York, to the various purchasers thereof in such other States.

PAR. 3. There is now, and has been at all times hereinafter mentioned a course of trade in said course of instruction so sold and distributed by said respondents in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business as aforesaid, respondents are now, and since the dates aforesaid have been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the sale and distribution of similar correspondence courses of instruction in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of their said business, and for the purpose of inducing the purchase of their course, respondents, by means of newspaper advertisements, circulars, and other printed matter circulated to the general public throughout the United States, and by verbal statements made by their agents and solicitors to purchasers and prospective purchasers of said course make many representations to the effect that trained traffic inspectors are constantly in demand at high salaries and that employment may be had on the road or near home. Examples of such representations are the following:

INSPECTORS NEEDED \$150-\$175 Per Month

Trained men and women are needed constantly as Railroad, Electric Railway, Streetcar and Busline Passenger Traffic Inspectors.

Transportation offers interesting outdoor employment at high salaries. Travel or stay near home.

Would you like to know how you can qualify in a short time at home for a well-paid position in this new and uncrowded field?

In truth and in fact passenger traffic inspectors are not in constant demand by the various passenger transportation companies for the reason that the supply of trained and experienced inspectors is

greater than the demand. Moreover, transportation companies will not employ applicants who have only a theoretical knowledge of the work and no practical experience. The representation that traffic inspection is a new field is also false in that traffic inspectors have been employed by passenger carriers for about 50 years.

In truth and in fact the representations that traffic inspectors earn between \$150 and \$175 per month and that there are well-paid positions are false and misleading. The nature of the work is such that it can be neither steady nor permanent, and compensation is usually on a per diem basis. Traffic inspectors are generally hired for one trip and employment rarely extends over 1 month.

Representations that traffic inspectors may secure positions near their homes are also false and misleading. In truth and in fact, the location of the work is determined by the needs of the carriers for traffic inspectors and not subject to choice by applicants for said work. Moreover, no traffic inspector can remain in any given locality for any length of time for the reason that his services in such locality are valueless as soon as his identity becomes known to the employees of the carrier for whom such inspector is working.

PAR. 6. Respondents also make many representations in the manner aforesaid, as to guaranteeing and securing positions, which are false and misleading. In many instances representations are made to prospective purchasers of said course of instruction that there is a great demand by railroad companies on respondent Traffic Inspectors Training Corporation for its graduates; that respondents have connections with a large number of railroad companies and are therefore in a position to place their graduates without difficulty or delay; that women graduates can be placed readily with any railroad company; and many other representations of similar import.

In truth and in fact there is no demand made on respondents by passenger carriers for traffic inspectors who have completed respondents' said course. Few, if any, individuals who have completed said course have found employment as traffic inspectors. Respondents have no connection whatever with any railroad company or other carrier of passengers and cannot and do not fulfil the promises and guarantees made to their students with respect to employment. There are many passenger carriers who do not employ women as traffic inspectors.

PAR. 7. By the means aforesaid, respondents falsely and misleadingly represent the length of time required in which said course of study and training may be completed, by assuring students and prospective students that the course could be completed in 2 or 3 months

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and that while the complete course consists of 30 lessons, a person could be sufficiently qualified to secure a position and earn a substantial salary while completing his studies.

In truth and in fact no one has ever completed said course of study and training within 3 or even 6 months; nor has anyone ever found employment after partially completing said course. On the contrary, respondents mail the lessons comprising said course to their students at intervals of a week or 10 days and in many instances delay the grading of papers and mailing of lessons for much longer periods.

PAR. 8. The said advertisements and representations set forth in paragraphs 5, 6, and 7 hereof, and others of like and similar import are false, misleading, and deceptive in that respondents thereby represent that:

1. Trained men and women are constantly needed as traffic inspectors.

2. Traffic inspectors earn substantial salaries and have steady employment.

3. Traffic inspectors may elect to travel or work near their homes.

4. The field of traffic inspection is new and uncrowded.

5. Positions are guaranteed because of their connections with passenger carriers.

6. The traffic inspectors training course can be completed within 3 months or less.

7. Students are enabled to secure positions and earn salaries before said course is completed.

In truth and in fact all of said representations are either false and misleading or grossly exaggerated and not warranted by the facts. There is no constant demand for traffic inspectors by passenger carriers. Traffic inspectors do not earn high salaries but are employed only for short periods of time and usually on a per diem basis; the location of their work is not of their own choosing but is determined by the passenger carriers employing them; the work of traffic inspection is not new but has been carried on for many years and the number of trained and experienced inspectors exceeds the demand for them. Respondents do not guarantee positions and have no connections of any sort enabling them to find immediate employment for their students either before or after completion of said course of study and training. Students are not given an opportunity to complete said course in a short time but are supplied with their lessons in not less than 30 weeks.

PAR. 9. The statements and representations so made by respondents in the manner and by the means hereinabove alleged, have the tendency

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and capacity to, and do, mislead and deceive purchasers and prospective purchasers of said course of study and training into the erroneous and mistaken belief that such representations are true, and to induce them to act on such belief and to purchase and pay for respondents' course of study and instruction. Thereby trade is diverted unfairly to respondents from respondents' competitors in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 10. Among the competitors of the respondents described in paragraph 4 hereof are many who do not in any manner use misrepresentations in connection with the sale and distribution of their said correspondence courses of instruction.

PAR. 11. The above-alleged acts and practices of respondents are all to the prejudice of the public and of competitors of respondents and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 29, 1938, issued, and on August 31, 1938, served, its complaint in this proceeding upon respondents, Traffic Inspectors Training Corporation, a corporation, and Fred J. Kavanagh, and Charles Van Buren, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answers, the Commission, by order entered herein, granted respondents' motion for permission to withdraw said answers and to substitute therefor answers admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answers were duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answers, and the Commission, having duly considered the matter 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, Traffic Inspectors Training Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York.

Respondent, Frank J. Kavanagh, erroneously named in the complaint as Fred J. Kavanagh, is president, and respondent Charles Van Buren is secretary and treasurer of said corporation, both individuals being the principal stockholders, jointly managing, controlling, and directing its policies and operations. The offices and principal places of business of all three of said respondents are in the Chimes Building, city of Syracuse and State of New York. Prior to the incorporation of said traffic Inspectors Training Corporation on September 9, 1937, said individual respondents on April 27, 1937, had started the business hereinafter described, as copartners, continuing as such copartnership until the date of said incorporation.

PAR. 2. Said respondents are now and since the dates set forth in paragraph 1 have been engaged in the sale and distribution in commerce between and among the various States of the United States of a course of study and instruction intended for preparing students thereof for positions as traffic inspectors or checkers, which said course is pursued by correspondence through the medium of the United States mail. Said respondents in the course and conduct of their said business, during the time aforesaid, caused, and do now cause, their said course of study and instruction to be transported from their said place of business in Syracuse, N. Y., to, into and through States of the United States other than New York, to the various purchasers thereof in such other States.

PAR. 3. There is now, and has been at all times hereinafter mentioned, a course of trade in said course of instruction so sold and distributed by said respondents in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business as aforesaid, respondents are now, and since the dates aforesaid have been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the sale and distribution of similar correspondence courses of instruction in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of their said business, and for the purpose of inducing the purchase of their course, respondents, by means of newspaper advertisements, circulars and other printed matter circulated to the general public throughout the United States, and by verbal statements made by their agents and solicitors to purchasers and prospective purchasers of said course make many representations to the effect that trained traffic inspectors are constantly in demand at high salaries and that employment may be had on the

road or near home. Examples of such representations are the following:

INSPECTORS NEEDED \$150-\$175 Per Month

Trained men and women are needed constantly as Railroad Electric Railway, Streetcar and Busline Passenger Traffic Inspectors.

Transportation offers interesting outdoor employment at high salaries. Travel or stay near home.

Would you like to know how you can qualify in a short time at home for a well-paid position in this new and uncrowded field?

In truth and in fact passenger traffic inspectors are not in constant demand by the various passenger transportation companies for the reason that the supply of trained and experienced inspectors is greater than the demand. Moreover, transportation companies will not employ applicants who have only a theoretical knowledge of the work and no practical experience. The representation that traffic inspection is a new field is also false in that traffic inspectors have been employed by passenger carriers for about 50 years.

In truth and in fact the representations that traffic inspectors earn between \$150 and \$175 per month and that there are well-paid positions are false and misleading. The nature of the work is such that it can be neither steady nor permanent, and compensation is usually on a per diem basis. Traffic inspectors are generally hired for one trip and employment rarely extends over 1 month.

Representations that traffic inspectors may secure positions near their homes are also false and misleading. In truth and in fact, the location of the work is determined by the needs of the carriers for traffic inspectors and not subject to choice by applicants for said work. Moreover, no traffic inspector can remain in any given locality for any length of time for the reason that his services in such locality are valueless as soon as his identity becomes known to the employees of the carrier for whom such inspector is working.

PAR. 6. Respondents also make many representations in the manner aforesaid, as to guaranteeing and securing positions, which are false and misleading. In many instances representations are made to prospective purchasers of said course of instruction that there is a great demand by railroad companies on respondent Traffic Inspectors Training Corporation for its graduates; that respondents have connections with a large number of railroad companies and are therefore in a position to place their graduates without difficulty or delay; that women graduates can be placed readily with any railroad company; and many other representations of similar import.

In truth and in fact there is no demand made on respondents by passenger carriers for traffic inspectors who have completed respondents' said course. Few, if any, individuals who have completed said

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course have found employment as traffic inspectors. Respondents have no connection whatever with any railroad company or other carrier of passengers and cannot and do not fulfill the promises and guarantees made to their students with respect to employment. There are many passenger carriers who do not employ women as traffic inspectors.

PAR. 7. By the means aforesaid, respondents falsely and misleadingly represent the length of time required in which said course of study and training may be completed, by assuring students and prospective students that the course could be completed in 2 or 3 months and that while the complete course consists of 30 lessons, a person could be sufficiently qualified to secure a position and earn a substantial salary while completing his studies.

In truth and in fact no one has ever completed said course of study and training within 3 or even 6 months; nor has anyone ever found employment after partially completing said course. On the contrary, respondents mail the lessons comprising said course to their students at intervals of a week or ten days and in many instances delay the grading of papers and mailing of lessons for much longer periods.

PAR. 8. The said advertisements and representations set forth in paragraphs 5, 6, and 7 hereof, and others of like and similar import are false, misleading, and deceptive in that respondents thereby represent that:

1. Trained men and women are constantly needed as traffic inspectors.
2. Traffic inspectors earn substantial salaries and have steady employment.
3. Traffic inspectors may elect to travel or work near their homes.
4. The field of traffic inspection is new and uncrowded.
5. Positions are guaranteed because of their connections with passenger carriers.
6. The traffic inspectors training course can be completed within three months or less.
7. Students are enabled to secure positions and earn salaries before said course is completed.

In truth and in fact all of said representations are either false and misleading or grossly exaggerated and not warranted by the facts. There is no constant demand for traffic inspectors by passenger carriers. Traffic inspectors do not earn high salaries but are employed only for short periods of time and usually on a per diem basis; the location of their work is not of their own choosing but is determined by the passenger carriers employing them; the work of traffic inspection is not new but has been carried on for many years and the num-

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ber of trained and experienced inspectors exceeds the demand for them. Respondents do not guarantee positions and have no connections of any sort enabling them to find immediate employment for their students either before or after completion of said course of study and training. Students are not given an opportunity to complete said course in a short time but are supplied with their lessons in not less than 30 weeks.

PAR. 9. The statements and representations so made by respondents in the manner and by the means hereinabove alleged, have the tendency and capacity to, and do, mislead and deceive purchasers and prospective purchasers of said courses of study and training into the erroneous and mistaken belief that such representations are true, and to induce them to act on such belief and to purchase and pay for respondents' courses of study and instruction. Thereby trade is diverted unfairly to respondents from respondents' competitors in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 10. Among the competitors of the respondents described in paragraph 4 hereof are many who do not in any manner use misrepresentations in connection with the sale and distribution of their said correspondence courses of instruction.

CONCLUSION

The aforesaid acts and practices of the respondent as herein alleged are all to the 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 and the answers of respondents, in which answers respondents admit all the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Traffic Inspectors Training Corporation, a corporation, its officers, agents, representatives, and employees, and Frank J. Kavanagh, named in the complaint as Fred J. Kavanagh, and Charles Van Buren, their agents, representatives, and employees, directly or through any corporate or other device, in con-

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nection with the offering for sale, sale and distribution of correspondence courses of instruction for the purpose of training traffic inspectors, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing, directly or by implication:

1. That trained men and women are constantly needed as traffic inspectors, earn substantial salaries, have steady employment, and may elect to travel or work near their homes.

2. That the field of traffic inspection is new and uncrowded.

3. That positions are guaranteed by the respondents because of their connections with passenger carriers.

4. That the traffic inspectors training course can be completed within a period of 3 months or less.

5. That students are enabled to secure positions and earn salaries before said course of instruction is completed.

It is further ordered, That the respondents shall, within 60 days after 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 complied with this order.

Syllabus

IN THE MATTER OF
W. H. COMSTOCK COMPANY, LTD.

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

Docket \$650. Complaint, Nov. 10, 1938—Decision, Mar. 27, 1939

Where a corporation engaged in sale and distribution of medicinal preparations known as "Comstock's Dead Shot Worm Pellets" and "Comstock's N and B Liniment," to purchasers in other States and in District of Columbia, in substantial competition with others engaged in sale and distribution among the various States and in said District of similar medicinal products or products designed for same or similar purposes, and including many who sell such preparations and do not in any way misrepresent the nature and effectiveness thereof—

- (a) Represented, through advertisements disseminated through the mails and in commerce and otherwise, to induce purchase of its said preparations, that said preparation for treatment of worm infection was a specific medicine for such condition which eliminated said worms from the body and was unfailing in its action in the treatment of such infection, facts being it was not such a specific treatment, would not accomplish such results, and was not unfailing in its action; and
- (b) Represented, as aforesaid, including use of purported testimonial quotations, that its said "N and B Liniment" had therapeutic value in the treatment of, and relieved pain of, rheumatism, lumbago, and neuralgia, and was a remedy or cure for, and had therapeutic value in treatment of, chest colds, and in treatment of muscular pains, sprains, strains, and bruises, facts being said liniment did not give quick relief to all types of muscular pains and was not effective treatment for pains of rheumatism, lumbago, and neuralgia, nor treatment or remedy for chest colds, and would not cure or aid in treatment of serious muscular ailments, but was merely counter-irritant and only of value in treatment of muscular pains when due to minor conditions such as exercise or fatigue, and was not aid in treatment of chest colds which, as internal disorders, will not yield to external counter-irritant application;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that said statements and representations were true, and with result, as direct consequence of such belief, that number of consuming public purchased substantial volume of its said preparations, and trade in commerce as aforesaid was diverted unfairly to it from its competitors likewise engaged in distribution and sale of similar medicinal preparations, or those designed for similar purposes, and who truthfully advertise their respective products:

Held, That such acts and practices were all to the prejudice and injury of the public and competitors and constituted unfair methods of competition and unfair and deceptive acts and practices in commerce.

Mr. B. G. Wilson for the Commission.