

Syllabus

IN THE MATTER OF

WILLIAM J. CRESSY AND MRS. EFFIE M. ROBERTSON,
DOING BUSINESS AS FLYING INTELLIGENCE SERVICECOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3431. Complaint, May 20, 1938—Decision, June 7, 1939*

Where an individual engaged in selling and distributing through the mails aviation manual of instruction and information to purchasers in various other States, in substantial competition with those engaged in sale and distribution among the various States of courses of instruction in flying, and books, pamphlets, and other information pertaining to aeronautics—

Represented that he conducted a flying school and had facilities for training persons in field of aviation and would furnish or procure jobs for students either during or after their course, and was affiliated with or sponsored by the United States Air Corps or connected therewith and that purchasers of the said manual would receive training by said Air Corps, through such advertisements in personal, special notice and instruction columns of newspapers throughout the United States as "Wanted, names, Men under 26 who are willing to work for \$75 a month while training to become aviators or ground mechanics. One year's training given by U. S. Air Corps. Costs absolutely nothing. Flying Intelligence Service," etc., and through such statements in form letter sent to those replying to aforesaid advertisement and setting forth development of aviation and, in glowing terms, opportunities for jobs in commercial aviation for those trained in the Air Corps aviation school as, referring to his said manual, "* * * answers most any question that you may have in regard to the Air Corps and is sent to you prepaid upon the receipt of \$3 from you," and "nothing else to buy" and "this money is a service charge and is refunded to you if you are not accepted for training after making application for admission to this school," and "Students are furnished uniforms, work clothes," etc., and "paid \$75.00 a month while training," etc., and "would cost at least \$3,000 if acquired at any other school, yet it is absolutely FREE HERE";

Facts being said individual at no time conducted flying school, had no facilities for training persons in field in question, never offered jobs to students of aviation, purchasers of his said manual, containing substantially same information as that in pamphlet furnished free by Air Corps, did not, by reason of such purchase, receive year's training by Air Corps, with or without cost, and he did not inform such purchasers that, in order to receive return of money paid for manual, they would be required to make formal application for admission to United States Air Corps training school and be formally denied such admission, and accompany application for refund with such formal rejection, nor disclose exacting and difficult qualifications necessary to entitle applicant to be received in training school in question, under which only those especially well qualified educationally, physically and otherwise have any chance of admission;

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With result that many purchasers of his said manual, upon being advised of such requirements, never applied for admission to school in question and therefore did not and could not secure return of purchase price paid for manual, and substantial portion of purchasing public was misled and deceived into erroneous belief that such various representations were true and, as consequence, purchased substantial quantities of his said manuals, and substantial amount of trade was diverted to him from competitors who did not make such false or misleading representations respecting courses of instruction in flying in their books and pamphlets and other aeronautics information:

Held, That such practices, under the circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

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 William J. Cressy and Mrs. Effie M. Robertson, individuals, doing business as Flying Intelligence Service, hereinafter referred to as respondents, have violated the provisions of the 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 as follows:

PARAGRAPH 1. The respondents, William J. Cressy and Mrs. Effie M. Robertson, are individuals doing business as Flying Intelligence Service at 2521 North Fifty-sixth Street, Milwaukee, Wis. They are engaged in the sale and distribution, through the mails, of a manual of instruction and information, designated as an Aviation Manual, concerning the United States Air Service.

Respondents now cause, and for several months last past have caused, their aviation manual, when sold by them, to be sent by mail from their said place of business in Milwaukee, Wis., to the purchasers thereof, located in the various States of the United States, other than Wisconsin, and in the District of Columbia. There is now, and has been at all times mentioned herein, a course of trade in said Aviation Manual so sold and distributed by the respondents in commerce between and among the various States of the United States and in the District of Columbia.

Respondents are, and at all times mentioned herein have been, in substantial competition with other individuals, and with corporations and partnerships, engaged in the sale and distribution of

courses of instruction in flying and in the sale and distribution of books, pamphlets and other information pertaining to aeronautics, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as aforesaid, respondents represent that they are conducting a flying school, offering training in the field of aviation, and that they are affiliated with, or are sponsored by, the United States Air Corps. Respondents represent further that they will give jobs to men, who are willing to work for \$75 a month, while training to become aviators or ground mechanics.

The aforesaid representations are made by respondents through the medium of classified advertisements placed in the "personal," "special notice," or "instruction" columns of newspapers throughout the United States. Representative of the classified advertisements is the following:

Wanted, names, MEN under 26 who are willing to work for \$75.00 a month while training to become aviators or ground mechanics. One year's training given by U. S. Air Corps. Costs absolutely nothing. Flying Intelligence Service. Box, 522, Milwaukee, Wis.

Persons answering the above advertisement receive a form letter from respondents which gives a brief history of the development of aviation and paints a glowing picture of the opportunities for jobs in the commercial aviation field for those who have been trained in the Air Corps aviation school. Said letter also contains, among others, the following statement relative to respondents' said Aviation Manual:

This information has been very carefully compiled, so that it answers most any question that you may have in regard to the Air Corps, and is sent to you postpaid upon receipt of Three Dollars from you. It is complete, there is nothing else to buy. This money is a service charge and is refunded to you if you are not accepted for training after making application for admission to this school.

Upon receipt of the three dollars, respondents mail a copy of the aforementioned manual to the purchaser. The manual was prepared by the respondents and contains substantially the same information contained in a pamphlet called "Flying Cadets of the Army Air Corps," which pamphlet is furnished free by the United States Air Corps to anyone asking for it. In fact, a large portion of the information contained in the respondents' Aviation Manual was taken from the said "Flying Cadets of the Army Air Corps."

The respondents' aforesaid representations are untrue in that respondents do not conduct a flying school or offer training in the field

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of aviation. They offer no jobs to students of aviation and they are not affiliated or otherwise connected with the United States Air Corps. Purchasers of said Aviation Manual do not receive one year's training given by the United States Air Corps without cost.

PAR. 3. The respondents represent in their aforementioned form letter that they will refund the purchase price of the Aviation Manual in the event the purchaser is not accepted for training after making application for admission to the United States Air Corps training school. Respondents do not apprise the prospect, however, that it will be necessary for him to make a formal application for admission to the said training school, be formally denied admission thereto, and that said formal notice of rejection of the application must be forwarded to the respondents before the prospect is entitled to a refund of the said purchase price. Said refund is made, if at all, only after purchasers have made formal application for admission to the United States Air Corps training school and have received formal notice of rejection of their application, which notice must be submitted to the respondents. Respondents' said letter does not disclose to the prospect the qualifications necessary to gain admission to the said training school. In fact, it is only after the prospect has purchased and read respondents' said Aviation Manual which contains an outline of the qualifications necessary for admission to said school that said prospect learns that the educational, physical and other requirements are such that only those who are especially well qualified educationally, physically and otherwise have any chance of gaining admission thereto. Consequently, many prospects never apply for admission to the said school which is one of the prerequisites to the aforementioned refund of the purchase price of respondents' said Aviation Manual.

PAR. 4. There are among the competitors of the respondents, as mentioned in paragraph 1 hereof, individuals, partnerships and corporations engaged in the sale and distribution of courses of instruction in flying or in the sale and distribution of books, pamphlets and other information pertaining to aeronautics who do not misrepresent the type of business they are engaged in, the nature of the course of instruction or the kind of information offered, the amount students can earn while in training, their connection with the United States Air Corps, or otherwise falsely advertise their business.

PAR. 5. The use by the respondents of the representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive and has misled a substantial number of the student public into the erroneous belief that such representations are true and into the purchase of a substantial number of respondents' course of in-

struction as a result of such erroneous belief. By the representations aforesaid, trade is diverted unfairly to respondents from their aforesaid competitors and as a result thereof a substantial injury is being, and has been, done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. The aforesaid acts and practices of the respondents 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 20th day of May, A. D., 1938, issued and served its complaint in this proceeding upon the respondents William J. Cressy and Mrs. Effie M. Robertson, individuals doing business as Flying Intelligence Service, 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, no answer having been filed by respondents, testimony and other evidence in support of the allegations of said complaint were introduced by Dewitt T. Puckett, attorney for the Commission, before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it. All of the testimony and other evidence were duly recorded and filed in the office of the Commission. No testimony or other evidence was offered on behalf of the respondents, nor were they represented by counsel. All of the 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 testimony and other evidence, brief in support of the complaint, no brief having been filed by respondents, 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, William J. Cressy, from February 1937, to February 24, 1938, was engaged in the business of selling and distributing through the mails a manual of instructions and information, designated as an aviation manual, to purchasers thereof located in various States of the United States other than the State of Wis-

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consin. Respondent's place of business was located at 2521 North Fifty-sixth Street, Milwaukee, Wis.

PAR. 2. Respondent, Mrs. Effie M. Robertson, was not a partner in the business conducted by respondent, William J. Cressy, her only interest therein was the remuneration which she received for stenographic and clerical services.

PAR. 3. Respondent, William J. Cressy, during the time he was engaged as hereinbefore set forth, was in substantial competition with individuals, partnerships, and corporations engaged in the business of selling and distributing in commerce between and among the various states of the United States, courses of instruction in flying and books, pamphlets, and other information pertaining to aeronautics.

PAR. 4. Respondent, William J. Cressy, caused to be placed in the "Personal," "Special Notice," and "Instruction" columns of newspapers throughout the United States an advertisement reading as follows:

Wanted, names, MEN under 26 who are willing to work for \$75 a month while training to become aviators or ground mechanics. One year's training given by U. S. Air Corps. Costs absolutely nothing. Flying Intelligence Service, Box 522 Milwaukee, Wisconsin.

Respondent, William J. Cressy, by said advertisement represented that he was affiliated with or was sponsored by the United States Air Corps, when in fact he never was so affiliated or sponsored. Said respondent at no time conducted a flying school, nor has he ever had any facilities for training persons in the field of aviation, nor has he ever offered jobs to students of aviation.

PAR. 5. Persons answering respondent William J. Cressy's said advertisement received from him a form letter, giving the history of the development of aviation and painting in glowing terms the opportunities for jobs in commercial aviation for those trained in the Air Corps Aviation School. Said letter contained, among other things, the following statements relative to said respondent's aviation manual:

This information has been carefully compiled, so that it answers most any question that you may have in regard to the Air Corps, and is sent to you prepaid upon the receipt of \$3.00 from you. It is complete, there is nothing else to buy. This money is a service charge and is refunded to you if you are not accepted for training after making application for admission to this school.

Students are furnished uniforms, work clothes, board, room and transportation to the field from their homes and in addition are paid \$75.00 a month

while training and when completed they have had a course of training that would cost at least \$3000 if acquired at any other school, yet it is absolutely FREE HERE.

PAR. 6. The recipient of said form letter, upon payment of \$3, received one of respondent William J. Cressy's aviation manuals. This manual contained substantially the same information contained in a pamphlet entitled "Flying Cadets of the Army Air Corps," which was and is furnished free by the United States Air Corps to anyone requesting the same.

PAR. 7. Purchasers of respondent William J. Cressy's aviation manual did not by reason of said purchase receive one year's training by the United States Air Corps, with or without cost. The said respondent in his said form letter did not inform the purchasers of his said aviation manual that in order to receive a return of the money paid for same they would be required to make formal application for admission to the United States Air Corps Training School and be formally denied admission thereto, and that their application for refund must be accompanied by said formal rejection. The said form letter did not disclose the qualifications necessary to entitle an applicant to be received in the said Training School. The requirements of the United States Air Service are such that only those who are exceptionally well qualified educationally, physically and otherwise have any chance of gaining admission thereto. Many purchasers of said respondent's aviation manual, upon being advised as to said requirements, never apply for admission to said school and therefore did not and could not secure the return of the purchase price paid for said aviation manual.

PAR. 8. The false and misleading representations hereinbefore referred to which were made by respondent, William J. Cressy, had the capacity and tendency to mislead and deceive, and did mislead and deceive, a substantial portion of the purchasing public into the erroneous belief that such representations were true, and as a result, they purchased substantial quantities of said respondent's aviation manuals.

PAR. 9. As a result of the false and misleading representations made by respondent, William J. Cressy, hereinbefore set forth, a substantial amount of trade was diverted to said respondent from his competitors who did not make such false or misleading representations respecting the courses of instructions in flying and books, pamphlets, and other information pertaining to aeronautics, sold and distributed by them.

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CONCLUSION

The practices of the respondent, William J. Cressy, as set forth in the foregoing findings as to the facts, were to the prejudice of the public and of said respondent's competitors and constitute unfair methods of competition in commerce in violation 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, testimony and other evidence taken before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and brief in support of the allegations of the complaint and the Commission having made its findings as to the facts and its conclusion that said respondent William J. Cressy has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, William J. Cressy, individually or doing business as Flying Intelligence Service or trading under any other name, his agents, employees, and representatives, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of a manual of instruction and information or any other literature pertaining to aeronautics in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that the respondent conducts a flying school or has facilities for the training of persons in the field of aviation.

2. Representing that respondent will furnish or procure jobs for students either during the course of training or after completion.

3. Representing that respondent is affiliated with or is sponsored by the United States Air Corps or is in any way connected with the United States Air Corps.

4. Representing that purchasers of respondent's aviation manual will receive training by the United States Air Corps.

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.

It is further ordered, That the complaint herein, insofar as it applies to Mrs. Effie Robertson, be, and the same hereby is, dismissed.

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IN THE MATTER OF
R. O. MURPHY, TRADING AS THE STILLWATER
COMPANY

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

Docket 3608. Complaint, Sept. 27, 1938—Decision, June 7, 1939

Where an individual engaged in the manufacture, sale, and distribution of certain medicinal preparations which consisted, as designated, of three different nose sprays, an eye medicine, and a nose salve, and were referred to by him as a "treatment" and, and as thus engaged in selling to purchasers in various other States and in the District of Columbia his said treatment, in substantial competition with others engaged in sale and distribution of other preparations designed and intended for use in treatment of ailments and conditions for which he recommended his said preparations and including many who do not in any manner misrepresent their products or the therapeutic properties thereof and do not make any other false statements in connection with their sale and distribution; in certain advertisements which he caused to be disseminated in commerce through newspapers, periodicals, and other publications circulating through the various States, and through bulletins, circulars, and letters distributed through the mails and otherwise in commerce among prospective purchasers—

- (a) Represented that hay fever resulted from the effect of pollens and the like upon over-sensitive or unhealthy condition of the nasal membranes and that his said preparations possessed therapeutics properties which would heal, toughen, and render less sensitive such membranes and build tissues therein and constituted a remedy and competent treatment for hay fever and would avert the same and fortify the user against such ailment and afford complete relief, facts being said ailment or condition is not attributable to the nasal membranes as above set forth, cannot be successfully treated or cured and cause removed by local medication, his said preparations do not possess therapeutic properties of value in building up such membranes or tissues nor in rendering them less sensitive, and his theories as to treatment or method of averting such affliction by local application are not in accordance with consensus of present day medical opinion and use of his said preparations will not cure, avert, nor fortify the user against such condition nor, in all cases, afford complete relief nor cause subsequent attacks to be less severe or confer any permanent substantial benefit;
- (b) Represented that his said preparations constituted also cure or remedy for asthma, bronchitis, coughs, colds, catarrh, and afflictions of the nose and throat and that use of his said nose salve caused the effect of the use of spray to be retained for several hours and that use of his eye medicine caused the pollens to be eliminated by natural secretions of the eye through tear ducts, facts being his said preparations have no substantial value in the treatment of asthma, bronchitis, and other ailments and conditions mentioned, except insofar as they might be palliatives