

IN THE MATTER OF

ARTHUR R. PATTERSON, ALBERT C. KEHR, ARTHUR W. EDSON, EVA O. BROWN, AND MINNETHA COE, DOING BUSINESS AS PATTERSON SCHOOL

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

Docket 3228. Complaint, Sept. 18, 1937—Decision, June 23, 1939

Where four individuals engaged in conducting correspondence course of instruction to prepare persons for examinations for positions in the classified civil service of the United States, and a fifth individual, principal of said school under arrangement and agreement with the others, and former owner of the business and school involved and, for a time long theretofore, Government employee in the local post office and local representative, as below set forth, of the United States Civil Service Commission; engaged, as above set forth, in selling their said courses through advertisements and salesmen and solicitors employed for the purpose, and through district managers under contract with them—

- (a) Represented, directly and indirectly, that they had civil service positions at their disposal and could assist applicants for such positions, and were in a particularly advantageous or unique position with respect to information pertaining to examinations for such positions, and stressed and featured supposed advantages and status of said principal as former Civil Service Commission employee and expert of long experience in the subject and field in question, through advertisements in the "Help Wanted" columns of the newspapers and elsewhere therein, and in periodicals of general circulation in the various States, containing such statements as "\$1,260 to \$2,100 year, to start working for the United States Government * * *," "* * * No special education or experience usually required * * *," "Get one of these new jobs with the U. S. Government. * * *," "* * * (former gov't examiner) Principal * * * We will advise you where your examination will be held, and how to pass it with a high rating for early appointment," "* * * The only help given by former U. S. examiner * * *," "* * * Let our expert (former Government examiner) prepare you for a position * * *," and, in some advertisements, invited those replying to send for free book, "How to Secure a Government Position," and, in others, for free list of Government jobs, salaries paid, etc., and set forth, on catalogs mailed to those replying, purported facsimile of certificate of appointment of said principal as member and secretary of the local board of civil service examiners, with date of appointment omitted in case of some, and words, in large type, "I was a Gov't Civil Service Examiner for years" and, below, "Proof of my former connection with the Civil Service Commission," and, on letterheads, set forth that such individual was civil service expert with 34 years' civil service experience;

Facts being they had no jobs at their disposal, could not in any way influence or control appointments to positions in classified civil service of the United States, nor be of assistance to prospective appointees other than by instructing them so that they might be better prepared for the

necessary examinations to be placed upon the eligibility rolls, neither they nor anyone else had been authorized by Commission in question to conduct schools for such purpose, they had no advance information regarding examinations or appointments to positions in the classified civil service involved except such as given to the public at large, and said principal's experience of 11, and not 34, years in the classified civil service, including part time work as local representative of said commission some 25 or more years theretofore, and involving such matters as the opening and distribution of examination papers in the presence of those assembled to take such examinations and the collection of the examination papers when completed for return to the said commission, but not the preparing of examinations or the marking of the papers, was not such as to give him expert qualifications on civil service examinations, irrespective of the change in the subject matter during the course of the years which had followed since said individual had had said Government experience, and the changed conditions presently prevailing in the matters involved, and less than 10 percent of those taking examinations for positions in the entire service during last decade received appointments; and

- (b) Included in enrollment agreement which customers or students were required to sign, so-called money-back agreement providing for return to subscriber of all the money paid by him, predicated upon prompt payment of tuition installments as due, completion of course of study prescribed as directed, and either failure to pass examination for which course was intended to prepare subscriber or, in event, of passing same, failure to have appointment offered within period of eligibility;

Facts being that subscriber or student was not advised that no examinations might be held for several years in a number of subjects, and that many months are usually required before papers have been examined and grades published, months and sometimes years may pass before person placed on eligibility list or register is appointed to position, and that proportion of persons passing examination is small and proportion of appointments from such number smaller still, and such money-back agreement did not represent facts and was definitely misleading, and amount of money refunded by them and number of refunds were negligible;

With capacity and tendency to confuse, mislead and deceive members of public and induce such members to subscribe to courses of study sold by said individuals in erroneous belief that they in some way controlled appointments to positions in question, and that said principal, in charge of the lessons and instruction service, was in some way connected with said Civil Service Commission and could, therefore, assure patrons of school that they would receive appointments immediately upon completion of the course of instruction sold subscribers, and with result that patronage was diverted unfairly to them from schools conducted by competitors which did not make same or similar claims and representations concerning their said schools or courses of instruction:

Held, That such claims and representations were all to the injury of the public and competitors and constituted unfair methods of competition.

Before *Mr. William C. Reeves*, trial examiner.

Mr. Harry D. Michæl and *Mr. William L. Pencke* for the Commission.

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Spencer, Ogden, Spencer & Gandy, of Rochester, N. Y., 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 Arthur R. Patterson, Albert C. Kehr, Arthur W. Edson, Eva O. Brown, and Minnetha Coe, individually, and doing business under the name and style of Patterson School, have been and 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 stating its charges in that respect as follows:

PARAGRAPH 1. Said respondents, Arthur R. Patterson, Albert C. Kehr, Arthur W. Edson, Eva O. Brown, and Minnetha Coe, doing business under the name and style of Patterson School, are now and have been since on or about January 8, 1937, engaged in the sale and distribution in commerce between and among the various States of the United States of courses of study and instruction intended for preparing students thereof for examinations for certain civil service positions under the United States Government, which said courses of study and instruction are pursued by correspondence through the medium of the United States mail. The office and principal place of business of said respondents in the conduct of said business is located at 82 St. Paul Street, in the city of Rochester, State of New York. Prior to said date said business was owned and conducted by said Arthur Patterson individually under said trade name and had been so conducted by him for more than one year prior to said time. At the present time and since January 8, 1937, the respondent, Arthur R. Patterson, is and has been the principal of said school and its directing head, while the remaining respondents are and have been actively engaged in the conduct thereof. All of said respondents share in the ownership, direction, management, and operation of said business. Said respondents, in the course and conduct of their business during the time aforesaid, caused and do now cause their said courses of study and instruction to be transported from their place of business in New York to, into and through States of the United States other than New York to the various purchasers thereof in such other States.

PAR. 2. During the time above mentioned, other individuals, firms and corporations in various States of the United States are and have

been engaged in the sale and distribution in commerce, between and among the various States of the United States and in the District of Columbia, of courses of study and instruction intended for preparing students thereof for examinations for civil service positions under the United States Government and also of courses of study and instruction in other lines, all of which are pursued by correspondence. Said respondents have been, during the time aforesaid, in substantial competition in commerce between and among the various States of the United States in the sale of their said courses of study and instruction with such other individuals, firms, and corporations.

PAR. 3. In the sale of said courses of study and instruction, respondents make use of advertisements inserted in newspapers and magazines circulated to the general public in the various States of the United States and also printed advertising matter mailed or delivered direct to prospective students throughout the United States in and by which various misleading representations are made in regard to said courses or matters and things connected therewith. Among such misleading representations are those which represent or imply that respondents have positions under the United States Government to offer or which are under their control or which they can secure for students taking their courses. Examples of such representations are the following:

HELP WANTED

MALE-----

\$1260 to \$2100 YEAR

start working for United States Government. Patterson prepares you. 48-page booklet free, details. Box 1947, News. See Classification No. 34.

Which of these Gov't. Jobs Do You Want? No special education or experience usually required * * * Extra Social Security jobs expected soon * * *

Get One of These New Jobs with The U. S. Government * * * Select Job you want * * *

We will advise you where your examination will be held, and how to pass it with a high rating for early appointment.

In truth and in fact respondents are not connected with the United States Government or the United States Civil Service Commission and they do not have at their disposal positions under the United States Government, nor do they have control over appointments thereto. Neither can they place their students in Government positions or give them assistance in that respect other than to give them

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instruction intended for preparing them for examinations held for the purpose of securing eligibles for appointments under the Classified Civil Service.

PAR. 4. By the means aforesaid, respondents further represent that said respondent, Arthur R. Patterson, has particular qualifications and exclusive information which specially qualify him and said school for preparing students to successfully pass civil service examinations; that a one time official connection with a local civil service examining Board was of recent date and was of such a nature as to give him special knowledge of present day methods used in conducting such examinations and as to the subject matter of such examinations. Such representations are made in various ways, among which is that of reproducing said Arthur R. Patterson's certificate of appointment to the office above mentioned without the date thereof and without any date being given as to the time of its issuance. In connection with the reproduction of said certificate respondents make the following statements in regard to said respondent, Arthur R. Patterson, and his said previous connection:

PROOF OF MY FORMER CONNECTION WITH
THE CIVIL SERVICE COMMISSION

The above is a photographic reproduction of my appointment, by the President of the United States Civil Service Commission, as a member and secretary of the Board of Civil Service Examiners at Rochester, N. Y., for the Second Civil Service District. I was a member of this Board for 8 years.

There is no better proof possible, than this photograph of my appointment, that I am exactly what I represent myself to be.

Many other representations to the same general effect as that above stated are also made by respondents in advertisements and advertising matter, of which the following are examples:

* * * Patterson ex-U. S. civil service exam. prepares you. * * *

* * * Let our expert (former Government examiner) prepare you for a position in the Social Security, Rural Carrier, Post Office, Customs and other branches * * *

33 years Civil Service experience.

By the means aforesaid and as previously shown respondents represent that said Arthur R. Patterson has had 33 years official connection with the United States Civil Service and that he was a member of the Board of Civil Service Examiners at Rochester, N. Y., for a period of 8 years.

In truth and in fact said respondent, Arthur R. Patterson, has had no recent connection with the United States Civil Service Commission or any of its branches. The position with a local examining board to which reference is made in respondents' advertising material was held by him more than 25 years ago. Such connection gave said respondent no special knowledge of present day methods used by the United States Civil Service Commission in conducting its examinations or of the subject matter thereof. The methods and subject matter used in conducting said examinations today vary materially from those used during the time said respondent was connected with a local board as aforesaid. Said respondent, Arthur R. Patterson, has no present means and has had no recent means of procuring information and knowledge as to present day methods of conducting examinations by the United States Civil Service Commission and as to the subject matter thereof that is not available to any member of the public. He has not had 33 years official connection with the United States Civil Service nor was he a member of the Board of Civil Service Examiners at Rochester, N. Y., for a period of 8 years.

PAR. 5. By respondents' advertising matter and by use of a "money-back agreement" entered into with students, respondents represent either directly or by implication that students taking their courses will either be appointed to a Government position or, if not, that money paid for their courses will be refunded. Said "money-back agreement" in respondents' contracts reads as follows;

It is distinctly understood that if I make my payments promptly as agreed; complete the course as directed; and if I then fail to pass the examination (or examinations) for which your course prepared me, or pass but am not offered an appointment during my period of eligibility,¹ EVERY CENT THAT I HAVE PAID WILL BE PROMPTLY REFUNDED WITHOUT QUESTION.

Other representations made in connection with or in reference to said so-called "money-back agreement" are the following:

Read this money-back contract carefully. It is your protection.

* * * This agreement puts everything on our shoulders. It plainly states that you must get results. If you do not, back comes your money * * *.

* * * I am giving you proof of what is *behind* my method of training. and a Money-Back Agreement that completely protects you * * *

No cost if unsuccessful.

¹ The period of eligibility is usually one year, but may be extended in the discretion of the Civil Service Commission.

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In truth and in fact said agreement does not operate so as to effect a return of money paid by respondents' students in the event they do not get civil service positions with the United States Government. Said agreement depends upon the holding of a civil service examination or examinations for the respective positions for which respondents' students may prepare. At certain times and at certain places where such students may be located examinations for positions for which they may prepare are not held at all or may not be held for such long periods of time that such agreement is inoperative and meaningless and of no practical benefit to students of said school in such cases. In those instances students cannot qualify for a refund and neither can they qualify for or secure a Government position.

PAR. 6. The representations of respondents, as aforesaid, have had and do have the tendency and capacity to confuse, mislead and deceive members of the public into the mistaken belief that respondents control appointments under the United States Civil Service or have such positions to offer, or that they can place their students in such positions; that respondent, Arthur R. Patterson, has had recent official connection with the United States Civil Service and that he has special knowledge and information as a result thereof which particularly enables him and said school to successfully prepare students for civil service examinations and positions; that said Arthur R. Patterson has had 33 years official connection with the United States Civil Service and that he was a member of the Board of Civil Service Examiners at Rochester, N. Y., for a period of eight years; that money paid for said courses will be refunded if no Government position is secured and that students of said school can in all cases qualify for or be eligible for such refunds, when such are not the facts. As a result of such mistaken beliefs members of the public purchase and pay for respondents' courses of study and instruction and pursue the same. Thereby trade is unfairly diverted to respondents from competitors engaged in the sale in interstate commerce of correspondence courses intended for preparing students thereof for civil service examinations as well as from those so engaged in such sale in other lines of study.

There are among the competitors of respondents those who do not make the same or similar misleading representations in the sale of their said courses, as aforesaid, as those made by respondents as herein set out. As a result of respondents' said practices, as herein set forth, substantial injury has been and is now being done by respondents to competitors in commerce between and among the various States of the United States.

PAR. 7. The above acts and things done by respondents are all to the injury and prejudice of the public and of competitors of respondents 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 the Federal Trade Commission Act, the Federal Trade Commission on September 18, 1937, issued its complaint in this proceeding and caused same to be served upon the respondents, Arthur R. Patterson, Albert C. Kehr, Arthur W. Edson, Eva O. Brown, and Minnetha Coe, individually, and doing business under the name and style of Patterson School, with principal place of business at Rochester in the State of New York, 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 a joint answer thereto by said respondents, testimony and other evidence in support of the allegations of said complaint were introduced by Harry D. Michael and William L. Pencke, attorneys for the Commission, and in opposition to the allegations of the complaint by Spencer, Ogden and Spencer, attorneys for the respondents, before William C. Reeves, an examiner for the Commission theretofore duly designated by it, 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, briefs in support of the complaint and in opposition thereto, and the oral argument of counsel for the Commission and for the 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. In 1911, the respondent, Arthur R. Patterson, in partnership with a brother, organized a school at Rochester, New York, which for a time was known as "Patterson's Civil Service School" and later as "Patterson's School," which partnership continued until 1920, when said respondent became the sole owner of the school and continued to conduct same until January 1, 1937, when he sold it to the

respondents Albert C. Kehr, Arthur W. Edson, Eva O. Brown and Minnetha Coe, who since said date have carried on the business of the school. As a part of the consideration for the sale of the school the said purchasers agreed to employ said respondent Arthur R. Patterson in the conduct of the school, and since said sale said respondent Arthur R. Patterson has been in the employ of the present proprietors of the school at an agreed salary, with the title of principal, and has been in charge of the lessons and instruction service of the school. Part of the purchase price was made payable in installments, and all past due installments have been paid, but in case of default in the payment of any installment due in the future, said respondent Arthur R. Patterson would have the right under the contract of sale to take back the school. Prior to the sale of the school, each of the respondents, Albert C. Kehr, Arthur W. Edson, Eva O. Brown and Minnetha Coe, for a number of years had been connected with the school as an employee while it was owned and controlled by the respondent Arthur R. Patterson. At the present time, said business is operated by respondents Albert C. Kehr, Arthur W. Edson, Eva O. Brown, and Minnetha Coe, under the trade name and style of Patterson School, and by the respondent Arthur R. Patterson, who is employed by said four respondents as principal of the school, in charge of the lessons, the instruction service, and immediate supervision over all correction work, also supervising all changes which may be made in the instruction material. The purposes for which the school was organized and has been conducted have been the sale of courses of home study instruction to persons who expected to take examinations to be held by the Civil Service Commission of the United States for the purpose of providing lists of persons eligible for appointment to positions in the classified Civil Service of the United States. The courses of instruction so sold by the respondents are in printed form and are divided into 20 regular lessons, and have been given by the respondents by correspondence and have been sold to persons in various States of the United States. The lesson material has been sent by the respondents by mail from their place of business in Rochester in the State of New York through and into, or into, various other States of the United States to the respective purchasers thereof. When the lesson material is sent out, as stated, the persons to whom it is sent are expected to study same and to return to the respondents their papers containing answers to the questions or problems contained in the lesson material. In the conduct of their said business, the respondents have been, and are now, in active competition with various persons and corporations and other partnerships also engaged in the sale of courses of instruction of the same general

nature as those sold by the respondents, in commerce among several of the States of the United States.

PAR. 2. The respondent Arthur R. Patterson, from 1900 to 1911, was in the classified civil service of the United States, during which time he held various positions in the United States Post Office at Rochester, N. Y. On November 5, 1903, he was appointed by the United States Civil Service Commission as a member and assistant secretary of the Board of Civil Service Examiners for the United States Post Office Service at Rochester, N. Y., and later was made a member and secretary of said Board and performed the duties of said positions until May 15, 1911. As secretary of this board he was required to act as the local representative of the Civil Service Commission in giving out information concerning the dates and places of examinations, conditions of eligibility, et cetera, and to conduct examinations under the rules of the Civil Service Commission, but was not required to formulate the questions used in the examinations nor to examine and grade the papers turned in by any of the persons taking the examinations, and did not do so. Only a part of the time of the said respondent was required for the performance of his duties incident to his connection with this Board, and the hours of duty for his general work in the Post Office at Rochester were shortened so that he might perform the duties incident to said Board. When an examination was to be held by the Civil Service Commission at Rochester, N. Y., said respondent was sent notices to be posted in advance of each of the examinations and later packages of questions to be used in each of the examinations were sent to him, and when the persons taking any of the examinations were assembled, the packages of questions to be used in the examination were opened in the presence of the assembled class and copies of the lists of questions were distributed among the members of the class, and at the close of the examination the papers of those who had taken the examination were collected by the respondent and returned by him to the Civil Service Commission of the United States, but said respondent had no part in the preparation of said questions and did not grade the papers of the persons examined nor determine whether any of them should be placed on lists of persons eligible for appointment; the members and secretary of said local Board had no discretionary or policy-forming authority.

PAR. 3. As a means of contacting members of the public for the purpose of selling to them the courses of instruction described in paragraph 1 hereof, respondents have caused advertisements to be published in newspapers, magazines and other periodicals having general circulation in various States of the United States. No refer-

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ence was made in these advertisements to the fact that respondents were in the business of selling courses of instruction but such advertisements contain the following among other statements and representations:

\$1260 to \$2100 year, to start working for the United States Government. Patterson prepares you.

Which of these gov't jobs do you want? No special education or experience usually required. * * * Extra Social Security jobs expected soon. * * *

Get one of these new jobs with the U. S. Government. * * * Select job you want.

Arthur R. Patterson (former gov't examiner) Principal, Patterson School. * * * We will advise you where your examination will be held, and how to pass it with a high rating for early appointment.

U. S. Gov't jobs. The only help given by former U. S. examiner. * * *

* * * Let our expert (former government examiner) prepare you for a position in the Social Security, Rural Carrier, Post Office, Customs, and other branches.

In some of these advertisements, the request was made that members of the public send to respondents, without obligation, for a free book entitled "How to Secure a Government Position." In other of the advertisements the request was made that members of the public send to respondents for a free list of Government jobs, salaries paid, etc. Some of the advertisements were published in the classified columns under the heading "Help Wanted."

When responses to such advertisements were received by the respondents they sent to each of the persons responding a copy of their then current catalog. The catalogs distributed by the respondents prior to the fall of 1937 had on page 2 what purported to be a facsimile of the certificate of appointment of the respondent, Arthur R. Patterson, as a member and secretary at Rochester, N. Y., of the Board of Civil Service Examiners for the Second District with the date of such certificate omitted, but in the fall of 1937 the respondents got out a revised catalog which contained on its page 2 a facsimile of a certificate bearing the date of November 5, 1903. Immediately above the reproduction of said certificate in the said catalog were the words in large type "I was a Gov't Civil Service Examiner for years," and immediately below the reproduction of the certificate in the former catalogs were the words "Proof of my former connection with the Civil Service Commission." Respondents also have made use of letterheads in their business correspondence, which letterheads had printed matter thereon to the effect that the respondent, Arthur R. Patterson, was a civil service expert with 34 years' Civil Service experience.

PAR. 4. The respondents also have employed salesmen or solicitors for the enrollment of subscribers to the courses of instruction offered for sale by them, and the former owner of the school also employed solicitors for that purpose. The respondents also have a district manager, or western manager, for the Pacific Coast States and States adjacent thereto, with headquarters at Los Angeles, Calif. Such manager has had an exclusive territorial contract and has employed his own salesmen who have been under his supervision, and he has caused advertisements to be published on his own account. The respondents have had a similar arrangement with a manager for the city of Chicago and some counties adjacent thereto. Other solicitors or salesmen work under the direct supervision of the respondents. The enrollment in the school operated by the respondents in recent years has been approximately 3,500 each year, and the number of persons to whom instruction has been given by the respondents at any one time has varied from 1,600 to 2,000, this variation having been caused by the fact that some of the students complete the courses sooner than others. Persons enrolled by representatives of the respondents, are required to sign an enrollment agreement which contains a so-called "Money-Back Agreement," which provides in effect that if the subscriber make payment of the installments of tuition promptly when due, and complete the course of study prescribed, as directed, and then fail to pass the examination for which the course was intended to prepare him, or should pass the examination but not have offered to him an appointment in the classified Civil Service of the United States within the period of his eligibility, then all of the money paid to the respondents by the subscriber would be returned to him. There is a general tendency toward eliminating money-back provisions of this nature from all such contracts for the reason that they usually are ambiguous and not fully understood by the subscriber. In the instant case, the objection to the money-back agreement lies not so much in the language used which is clear enough, but rather in the fact that several important conditions pertaining to the taking of the examinations, the eligibility, and the appointments of persons to civil service positions, affect the money-back agreement to such an extent that it is meaningless in a great many instances for all practicable purposes. Thus the subscriber to the course is not advised that no examinations may be held for several years in a number of subjects; that it usually takes many months before the papers have been examined and the grades published; that it may be months and sometimes years before a person placed on the eligibility list or register is appointed to a position; that the proportion of people passing the

examinations is small; and appointments from that number smaller still. When these and other conditions are considered, it is obvious that the money-back agreement does not represent facts and is definitely misleading. The amount of money refunded by the respondent and the number of such refunds are negligible.

PAR. 5. The respondents have no jobs at their disposal and cannot in any way influence or control appointments to positions in the classified civil service of the United States, and can be of no assistance to prospective appointees to such positions except by instructing them so that they might be better prepared to take the necessary examinations to have their names placed upon the eligibility rolls. The United States Civil Service Commission has not authorized the respondents or anyone else to conduct schools for the purpose of instructing persons who expect to take examinations to be conducted by the Civil Service Commission for the purpose of providing lists or eligibles from which appointments may be made to positions in the classified Civil Service of the United States. The school conducted by the respondents, and similar schools, do not have any advance information regarding civil service examinations or appointments to positions in the classified civil service of the United States, except such information as is given to the public at large.

PAR. 6. Frequent mention is made in the advertisements and advertising matter of the respondents of the claimed valuable experience and the supposedly superior training of the respondent Arthur R. Patterson for conducting a school of the kind conducted by the respondents, and the claim is made that the courses of instruction sold by the respondents are given under the personal supervision of the respondent Patterson, who is described in said advertisements and advertising matter as a civil service expert and former civil service examiner with 34 years' civil service experience. Said respondent held positions in the classified Civil Service of the United States for only 11 years, which service ended in 1911, and since that time he has been connected with the school now operated by the respondents. The service performed by said respondent as a member and secretary of the Board of Civil Service Examiners at Rochester, N. Y., from November 5, 1903, to May 15, 1911, would not be sufficient to give him expert qualifications on Civil Service examinations, and due to the changed conditions now prevailing, a familiarity with Civil Service examinations held in the period between 1903 and 1911 would not give anyone special qualifications in preparing others for present day examinations. Conducting a school such as that conducted by the respondents could not be regarded as civil service experience.

PAR. 7. By reading the advertisements and advertising matter of the respondents, the casual observer would be likely to get the impression that he would be assured of a position in the classified Civil Service of the United States merely by completing the course of study and instruction sold by the respondents, whereas there might not be even a chance to take an examination for a long period of time, and after an examination is taken only a small proportion of those making passing grades are given appointments. The last examination for railway postal clerks was held in 1935 and resulted in over 100,000 eligibles, and the names of nearly the whole number are still on the register and there is no likelihood that the register will be exhausted soon. 2,585 appointments were made from this register in 1937, and the list of eligibles is sufficient for any appointments that might be made for a number of years. The last examination for storekeeper gager was held in 1934, and 42,268 persons were examined and 8,684 got passing grades, of whom 805 received appointments. The last examination for immigration parole inspector was held in 1935; 36,116 were examined and 18,513 passed and 97 received appointments. In all classes of the service, the number of appointments as compared with the number of eligibles has been relatively small. In the past ten years only 9 percent of those taking examinations for positions in the entire service, have received appointments. Generally, the regular period of eligibility for appointment for those who have passed civil service examinations is 1 year, but the registers may be extended and usually are extended for 2 or 3 years or for longer periods.

PAR. 8. The claims and representations made by respondents in the advertisements which they have caused to be published and in the advertising matter which they have caused to be distributed as herein set out, are misleading and deceptive and have and have had the capacity and tendency to confuse, mislead, and deceive members of the public and to induce them to subscribe to the courses of study sold by respondents in the erroneous belief that respondents in some way control appointments to positions in the classified civil service of the United States, and that the respondent Arthur R. Patterson, the principal of the school and in charge of its lessons and instruction service, is in some way connected with the Civil Service Commission in the United States, and on that account could assure the patrons of the school conducted by the respondents that they would receive appointments in the classified Civil Service of the United States immediately upon the completion of the course of instruction sold by respondents, and as a result patronage has been diverted unfairly to respondents from schools conducted by competitors or respondents which competitors have not made the same or similar claims and

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representations concerning the school conducted by them or the courses of instruction sold by them.

CONCLUSION

The claims and representations made by the respondents as hereinbefore set out are all to the injury of the public and to competitors of the respondents, and constitute unfair methods of competition in commerce within the intent and meaning of the provisions 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 answer of respondents, testimony and other evidence taken before William C. Reeves, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by William L. Pencke, counsel for the Commission, and by Nelson E. Spencer, counsel for the respondents, 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, Arthur R. Patterson, Albert C. Kehr, Arthur W. Edson, Eva O. Brown, and Minnetha Coe, individually and doing business under the name and style of Patterson School, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of correspondence courses of study and instruction for civil service positions in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing that:

1. Civil service positions are at the disposal of respondents, or that they can in any manner control appointments to civil service positions.
2. Respondents can assist applicants for civil service positions in any manner other than by preparing them to take civil service examinations.
3. Respondents have any information pertaining to examinations for civil service positions other than, or in advance of, regular official notices.
4. Jobs are available at all times; or, through the use of "Help Wanted" columns in newspapers and similar devices, that United

States Government jobs are open and that men and women may secure such jobs through respondents' school.

5. Under the money-back agreement the purchase price for the course of instruction will be refunded, unless and until all of the conditions under which said refunds are made are clearly and fully set forth.

6. Respondent Patterson is a civil service expert or has 33 years' civil service experience, or has any special knowledge qualifying him as an expert in preparing students for civil service examinations.

7. Respondent Patterson has acquired any special knowledge with respect to civil service examinations because of his former employment on a local board of the United States Civil Service Commission.

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.

IN THE MATTER OF

ADAH ALBERTY, TRADING AS ALBERTY'S FOOD PRODUCTS, ALBERTY'S FOOD LAB., ALBERTY'S FOOD LABORATORIES, THE ALBERTY FOOD LABORATORIES, CHENO LABORATORIES, CHENO PRODUCTS, AND U. S. OKEY

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

Docket 2875. Complaint, July 11, 1936—Decision, June 26, 1939

Where an individual engaged in sale of number of baby foods and alleged health preparations purchased by her from various manufacturing druggists and chemists throughout the United States and thereafter packed, bottled, labeled, and sold, under various trade names, through medium of wholesale houses, doctors, and health food stores, principally, located throughout the various States, and, as thus engaged in distribution of her said preparations in commerce among the various States, in substantial competition with others engaged in interstate sale of such foods and preparations recommended for use in treatment of various conditions and ailments for which her respective products were sold and recommended; in extensively advertising the same through newspapers in various cities and health magazines, and through booklets and pamphlets describing her said products and furnished to food stores and by them distributed to public, and through advertising cuts furnished to recognized dealers for use in local newspaper advertising, expense of which she assumed in whole or half, as case might be—

- (a) Falsely represented that her "Alberty's Food Regular" and "Alberty's Food Instant (new style)" rendered milk more readily digestible, and constituted a competent remedy, cure, or treatment for cancer or ulcer, and that her "Alberty's Food Instant (old style)" had therapeutic or medicinal value in treatment of many human ailments, and that her "Alberty's Food" rebuilt the intestinal tract and was the only food which accomplished such result, and that it eliminated rickets and other calcium starvation diseases in children, adults, and animals, and modified milk so that calcium element thereof was assimilated, and that through taking it more calcium and phosphorous were stored up in the body than would be accomplished through use of three or four times the quantity of ordinary milk, and that it was the only food discovered that offset acidosis, and was the most powerful alkaline food known, facts being preparations referred to had nutritional, rather than therapeutic, value, if any, did not render milk readily digestible and were without therapeutic or medicinal value in treatment of cancer or ulcer, and said new style preparation had no therapeutic or medicinal value in treatment of any other ailment, and said old style product possessed no more therapeutic value than that had by ordinary milk, and representations made by her, as aforesaid, were extravagant, misleading, and deceptive;
- (b) Falsely represented that her said "Laxative Blend" affected the muscles of the intestines and was a new laxative blend which had therapeutic value, facts being said preparation was an irrational combination of materials, many of