

IN THE MATTER OF

MELVIN B. SELCER, MARY F. SELCER, CLAY SPENCER
AND CHARLOTTE SPENCER, INDIVIDUALLY AND AS
COPARTNERS, TRADING AS SPENCER BUSINESS COL-
LEGE, AND RAY AXTONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3694. Complaint, Jan. 25, 1939—Decision, Aug. 25, 1939*

Where four partners engaged in sale and distribution of printed and mimeographed courses of instruction in elementary secretarial and business administration subjects and, chiefly, as thus engaged, in conducting correspondence courses in said subjects, and the employee of their "Extension Division," who directed operation of sales representatives, agents, and employees engaged in selling and undertaking to sell their said courses of instruction to be taken by correspondence;

In selling, as aforesaid, through their said sales representatives, agents, or employees, their said correspondence courses, including, under designation "Complete Secretarial" course, instruction in shorthand, typewriting, business English, business correspondence and secretarial duties, and, under designation "Business Administration course," bookkeeping, typewriting, business English and correspondence, and salesmanship and business administration—

- (a) Represented that prospect solicited had been especially selected by them for an offer of enrollment in their courses, and that their said sales representatives, agents or employees, or "registrars," had special authority to sell meritorious persons such offers, and that student or prospective student thus especially selected was offered an especially low price for advertising purposes, consisting only of cost of materials, with tuition to be given free, and that regular price for regular course was higher than said exceptionally low price, facts being prospect solicited had not been especially selected, their said representatives, etc., did not approach such persons by virtue of any especial authority as above claimed, prospect was not offered especially low price consisting only of cost of materials, and tuition for regular price of regular course was not in excess of price offered;
- (b) Represented that such selected prospects were recipients of scholarships, and that enrollment under such scholarship entitled student to the full course of instruction, and that number of scholarships available to any given locality, city, community or State was limited, facts being no scholarships were awarded, enrollment under such alleged special offer did not entitle student to any full course of instruction in excess of that ordinarily procurable, and number of enrollments available to any given locality was not limited; and
- (c) Represented that they maintained branch offices in numerous cities other than that of New Orleans, in which the business and school aforesaid described were located, facts being they maintained no branches elsewhere;

With tendency and capacity to mislead and deceive substantial number of persons into erroneous and mistaken belief that such false and misleading representations were true, and into purchasing their said course in and on account of such belief, and with result that trade was thereby diverted unfairly to them from their competitors who do not make similar misrepresentations in connection with the sale of their courses:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and competitors and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. William B. Lott*, trial examiner.

Mr. Alden S. Bradley and *Mr. Gerard A. Rault* for the Commission.

Porteous, Johnson & Humphrey, of New Orleans, La., for respondents.

COMPLAINT ¹

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 *Melvin B. Selcer*, *Mary F. Selcer*, *Clay Spencer*, and *Charlotte Spencer*, individually, and as copartners, trading as *Spencer Business College* and *Ray Axton*, an individual, 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 in that respect as follows:

PARAGRAPH 1. Respondents, *Melvin B. Selcer*, *Mary F. Selcer*, *Clay Spencer*, and *Charlotte Spencer* are copartners trading as *Spencer Business College* and maintain their principal office and place of business at 310 Carondelet Street, in the city of New Orleans, State of Louisiana. Respondent, *Ray Axton*, is an agent and employee of said copartnership and at all times dominates, manages, and controls that certain department of respondents' business known as the "Extension Division," and maintains his principal office and place of business at the same address, 310 Carondelet Street, in the city of New Orleans, State of Louisiana.

Respondents now are and for many years last past have been engaged in the sale and distribution of printed and mimeographed courses of instruction in elementary secretarial and business administration subjects. The business chiefly operated by respondents is that commonly known as a correspondence school consisting of the sale and delivery by mail and by other means of transportation of the

¹ Published as amended by order of August 18, 1939.

courses of instruction as aforesaid to subscribers or purchasers thereof located in States other than the State of Louisiana. The Extension Division of which respondent, Ray Axton, is manager, as aforesaid, directs the operation of all sales' representatives, agents, and employees of respondents engaged in selling and undertaking to sell courses of instruction to be taken by correspondence. Pursuant to the sale of such courses of instruction respondents ship or transport or cause to be shipped or transported from their place of business in the city of New Orleans, State of Louisiana, the printed and mimeographed matter, examination questions, charts, information, and general literature and paraphernalia comprising the said course or courses of instruction to the purchasers of the same located in States other than the State of Louisiana.

PAR. 2. In the course and conduct of their said business respondents are in substantial competition with other copartnerships and with individuals and corporations engaged in the sale and delivery by mail or in other manner, of courses of instruction to subscribers or purchasers thereof located throughout the various States of the United States.

PAR. 3. A substantial number of the purchasers or subscribers of said courses of instruction so vended by respondents are secured through sales representatives, agents, and employees designated by respondents as "Registrars," who personally solicit members of the general purchasing public throughout the various States of the United States for the purpose of selling the courses of instruction as aforesaid.

PAR. 4. The said sales representatives, agents, or employees in endeavoring to effect sales in the courses aforesaid, make to prospective purchasers thereof various representations among and typical of which are the following:

That the prospect so solicited has been especially selected by respondents for an offer of enrollment in their courses.

That the sales representatives, agents, or employees by them designated as "Registrars" have special authority to sell meritorious persons their offers of enrollment.

That students or prospective students of the school so especially selected are offered an especially low price for advertising purposes; that such especially low price consists of only the cost of the materials and that tuition will be given free to said prospects if they become enrolled as students; that the regular price for the regular course offered said prospects is higher than said exceptionally low price.

That such selected prospects are recipients of "scholarships."

That enrollment under such "scholarship" entitles the student to the "full course" of instruction.

That the number of scholarships available to any given locality, city, community or state is limited.

That respondents maintain branch offices in numerous other cities other than the city of New Orleans.

PAR. 5. Among the courses of instruction offered for sale by the respondents aforesaid are courses in shorthand, typewriting, business English, business correspondence, and secretarial duties designated as a "Complete Secretarial" course. Another of the courses so sold and offered for sale and designated as a "Business Administration" course consists of bookkeeping, typewriting, business English, business correspondence, salesmanship, and business administration.

PAR. 6. The representations as stated in paragraphs 3, 4, and 5 hereof are grossly exaggerated, misleading, false and deceptive in that the prospect so solicited has not been especially selected by respondents; the sales representatives, agents and employees of respondents do not approach such persons by virtue of any special authority to sell to meritorious persons; prospective students so approached are not offered an especially low price which consists only of the cost of materials, and tuition and the regular price for the regular course is not in excess of that so offered; no scholarships are awarded and the enrollment under the alleged special offer does not entitle the student to any "full course" of instruction in excess of that ordinarily procurable; the number of enrollments available to any given locality is not limited; nor do the respondents maintain branch offices in cities other than the city of New Orleans.

PAR. 7. There are among the competitors of respondents, as aforesaid, those who do not make or cause to be made false and misleading statements and representations concerning the nature, terms, and general conditions of enrollment, or of purchase of or subscription for courses of instruction; nor do such competitors falsely represent that they maintain branch offices when in fact they do not.

PAR. 8. The use by the respondents of the false and misleading representations hereinabove set forth has the tendency and capacity to mislead and deceive a substantial number of persons into purchasing said courses of instruction in and on account of said erroneous beliefs. As a result thereof trade has been diverted unfairly to respondents from their competitors who do not make similar misrepresentations in connection with the sale of their courses of instruction. In consequence thereof injury 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. 9. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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 January 25, 1939, issued, and on January 28, 1939, served its complaint in this proceeding upon respondents, Melvin S. Selcer, Mary F. Selcer, Clay Spencer, Charlotte Spencer, and Ray Axton charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer, the Commission, by order entered herein, granted respondents' motion for permission to withdraw said answer and to substitute therefor an answer 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 answer was duly filed in the office of the Commission. A stipulation was entered into herein between W. T. Kelley, chief counsel for the Commission, and Julian B. Humphrey, attorney for respondents, wherein it was stipulated that paragraph 6 of the complaint issued by the Commission on January 25, 1939, be amended so as to correct a clerical error appearing therein and that the aforesaid substitute answer of respondents be deemed an answer to the complaint as thus amended, which stipulation was approved by the Commission; and the Commission, by order entered herein, so amended said complaint and directed that the aforesaid substitute answer of respondents, dated May 18, 1939, be made an answer to the complaint as thus amended. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint as amended and the substitute answer, 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. Respondents, Melvin B. Selcer, Mary F. Selcer, Clay Spencer, and Charlotte Spencer, are copartners trading as

Spencer Business College and maintain their principal office and place of business at 310 Carondelet Street, in the city of New Orleans, State of Louisiana. Respondent Ray Axton is an agent and employee of said copartnership and at all times dominates, manages and controls that certain department of respondents' business known as the "Extension Division," and maintains his principal office and place of business at the same address, 310 Carondelet Street, in the city of New Orleans, State of Louisiana.

Respondents are now, and for many years last past have been, engaged in the sale and distribution of printed and mimeographed courses of instruction in elementary secretarial and business administration subjects. The business chiefly operated by respondents is that commonly known as a correspondence school, consisting of the sale and delivery by mail and by other means of transportation of the courses of instructions as aforesaid to subscribers or purchasers thereof located in States other than the State of Louisiana and in the District of Columbia. The Extension Division of which respondent Ray Axton is manager, as aforesaid, directs the operation of all sales representatives, agents and employees of respondents engaged in selling and undertaking to sell courses of instruction to be taken by correspondence. Pursuant to the sale of such courses of instruction, respondents ship or transport or cause to be shipped or transported from their place of business in the State of Louisiana, the printed and mimeographed matter, examination questions, charts, information and general literature and paraphernalia comprising the said course or courses of instruction to purchasers of the same located in states other than the State of Louisiana and in the District of Columbia.

PAR. 2. In the course and conduct of their said business, respondents are in substantial competition with other copartnerships and with individuals and corporations engaged in the sale and delivery by mail or in other manner, of courses of instruction to subscribers or purchasers thereof located throughout the various States of the United States and in the District of Columbia.

PAR. 3. A substantial number of the purchasers or subscribers of said courses of instruction so vended by respondents are secured through sales representatives, agents and employees designated as "registrars," who personally solicit members of the general purchasing public throughout the various States of the United States for the purpose of selling the courses of instruction as aforesaid.

PAR. 4. The said sales representatives, agents or employees in endeavoring to effect sales in the aforesaid courses make the prospective purchasers thereof various misrepresentations, among and typical of which are the following:

That the prospect so solicited has been especially selected by respondents for an offer of enrollment in their courses.

That the sales representatives, agents or employees by them designated as "Registrars" have special authority to sell meritorious persons their offers of enrollment.

That students or prospective students of the school so especially selected are offered an especially low price for advertising purposes; that such especially low price consists of only the cost of the materials and that tuition will be given free to said prospects if they become enrolled as students; that the regular price for the regular course offered said prospects is higher than said exceptionally low price.

That such selected prospects are recipients of "scholarships".

That enrollment under such "scholarship" entitles the student to the "full course" of instruction.

That the number of "scholarships" available to any given locality, city, community or state is limited.

That respondents maintain branch offices in numerous cities other than the city of New Orleans.

PAR. 5. Among the courses of instruction offered for sale by the respondent aforesaid are courses in shorthand, typewriting, business English, business correspondence, and secretarial duties designated as "Complete Secretarial" course. Another of the courses so sold and offered for sale and designated as a "Business Administration" course consists of bookkeeping, typewriting, business English, business correspondence, salesmanship, and business administration.

PAR. 6. The Commission finds that the representations made by the respondents as stated in paragraphs 3, 4 and 5 hereof are grossly exaggerated, misleading, false and deceptive in that the prospect so solicited has not been especially selected by respondents; the sales representatives, agents and employees of respondents do not approach such persons by virtue of any special authority to sell to meritorious persons; prospective students so approached are not offered an especially low price which consists only of the cost of materials, and tuition for the regular price of the regular course is not in excess of that so offered; no scholarships are awarded and the enrollment under the alleged special offer does not entitle the student to any "full course" in instruction in excess of that ordinarily procurable; the number of enrollments available to any given locality is not limited; nor do the respondents maintain branch offices in cities other than the city of New Orleans.

PAR. 7. There are among the competitors of respondents as aforesaid, those who do not make or cause to be made false and misleading statements and representations concerning the nature, terms and

718

Order

general conditions of enrollment or of purchase of or subscription for course of instruction; nor do such competitors falsely represent that they maintain branch offices when in fact they do not.

PAR. 8. The use by the respondents of the false and misleading representations hereinabove set forth has the tendency and capacity to mislead and deceive a substantial number of persons into the erroneous and mistaken belief that the aforesaid false and misleading representations are true and into purchasing said courses of instruction in and on account of said erroneous belief. As a result thereof, trade has been diverted unfairly to respondents from their competitors who do not make similar misrepresentations in connection with the sale of their courses of instruction.

CONCLUSION

The aforesaid acts and practices of the respondents as herein found, are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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, as amended, of the Commission, stipulation entered into between W. T. Kelley, chief counsel for the Commission and Julian B. Humphrey, attorney for respondents, and the answer of respondents, in which answer 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, Melvin B. Selcer, Mary F. Selcer, Clay Spencer, and Charlotte Spencer, individually and as co-partners trading as Spencer Business College, or under any other name or names, and respondent Ray Axton, an individual, 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 in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that respondents offer for sale correspondence courses at a discount price unless such price is substantially lower

than the price at which such courses are ordinarily offered for sale and sold by respondents.

2. Using the term "scholarship" or any other term or terms of similar import or meaning to designate, describe or in any way refer to an offer or a correspondence course whereby the recipient is required to pay therefor substantially the same price as the price for which such courses are ordinarily sold by respondents.

3. Misrepresenting that any specified sum is the actual cost of "materials" of correspondence courses, or otherwise misrepresenting the actual cost of the materials thereof.

4. Representing that correspondence courses are being, or will be, sold only to a limited or selected number of customers, or otherwise misrepresenting any material fact concerning the terms and conditions of sale, or the extent to which the sale of said correspondence courses is limited.

5. Representing that respondents maintain a branch office or offices in any city or locality wherein respondents do not in fact maintain a branch office or offices.

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

Syllabus

IN THE MATTER OF
SIMMONS COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (A) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 3840. Complaint, June 30, 1939—Decision, Aug. 25, 1939

Where a corporation which (1) was engaged on Nation-wide scale in manufacture, sale, and distribution of standardized and nationally advertised products, such as metal beds, bed springs, studio couches, gliders and mattresses, (2) had, in addition to its principal manufacturing plant in the State of Wisconsin, 8 other manufacturing plants in various States across the country, and maintained and operated approximately 55 warehouses situated in as many cities in over 30 States, and maintained and operated service stations and sales headquarters in each of the cities in which its warehouses were located, for convenience in sale and delivery of its merchandise, and (3) employed some three hundred salesmen who called regularly on the retail trade, and derived approximately 90 percent of its income from sales in the United States, ranging, during the years concerned, from some \$24,000,000 to \$31,000,000, and which, as aforesaid engaged, sold and distributed its said products to customers selling at retail in competition with each other locally and, to a lesser extent, nationally, and in competition in such resale with retailer customers of its competitors, who distributed, in case of few, their products nationally, as did it, but, in case of most, to customers located within 250 or 300 miles of their manufacturing plants;

In selling its said standardized product under its "Plan" and schedule, under which customer purchasing in year amount aggregating from \$50,000 to \$75,000 became entitled to discount of 3 percent on *entire amount* purchased, customer thus purchasing amount aggregating from \$75,000 to \$100,000 became thus entitled to discount of 4 percent under schedule first employed and 3½ percent under later schedule, and under which, through five additional steps in former schedule, customer became entitled to successively increased discounts similarly retroactively applicable and ranging from 5 percent on amount aggregating from \$100,000 to \$200,000, up to 7 percent on amount equalling or exceeding \$500,000, and under which, in later schedule, customer became entitled to similar retroactive discounts of 4 percent on amount ranging from \$100,000 to \$150,000, 4½ percent on amount ranging from \$150,000 to \$200,000, and 5 percent on amount equalling or exceeding latter figure—

(a) Discriminated in price against competing individual customers purchasing less than \$50,000 a year through granting, allowing and paying to the few individual customers who qualified therefor under said schedules by purchasing required amount of \$50,000 or over, discounts due thereunder on such customers' year's purchasing; and

Where said corporation which, for purpose of granting and paying aforementioned discounts, treated as single customer various types of organizations, including the "individual customer" who was individual, partner-