

IN THE MATTER OF

ROY HEMPHILL, DOING BUSINESS AS DIESEL POWER-UNITED ENGINEERING SCHOOLS, DIESEL POWER-UNITED ENGINEERING SCHOOLS, INC., AND DIESEL POWER-UNITED ENGINEERING SCHOOLS

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

Docket 3318. Complaint, Jan. 31, 1938—Decision, Oct. 24, 1939

Where an individual and two corporations, of which said individual was president, engaged, under identical or substantially identical trade and corporate names, in conducting, from four cities in different sections of the United States, identical or practically identical correspondence courses of study and instruction in Diesel engines, air conditioning and refrigeration, and other trade subjects, and operating under an interchange arrangement between them whereby a student who had been enrolled by any one of them could pursue his courses in any of the schools which they operated, and their advertising redounded to benefit of all, and in substantial competition, as aforesaid, with others engaged in sale and distribution of similar courses of study and instruction in Diesel training, air conditioning, and refrigeration and other trade subjects, and also in courses of study and instruction to prepare students for various positions, employments, trades, callings, and professions; in advertising their said courses to the consuming public in various forms of printed matter, by radio broadcasts and otherwise—

- (a) Represented, through use of word "engineering" in trade and corporate names employed by them as aforesaid, and in their advertising matter and through statements and implications of their advertising emphasizing thoroughness of their training and high standing and selection of their personnel or instructors, etc., that their courses were of such a character and extent as to give students thereof basic and general training in engineering science comparable to courses in engineering offered by technical schools which had courses in engineering science and awarded degrees therein after completion of prescribed courses;

Facts being their schools were trade schools with educational entrance requirement of less than eighth grade, courses of instruction were short and not exhaustive of the subject, nor of character and extent to give student basic and general training in engineering science comparable to courses in engineering offered by technical schools offering such courses as aforesaid and awarding degrees, but training was calculated only to prepare students for work as mechanics or work of similar grade, and were not of such a character to warrant the awarding of degrees such as awarded by schools giving recognized instruction in engineering science, and they did not and were not authorized to award such engineering degrees, and, with the exception of two members of the faculty at one of said schools, none at any of the various schools had engineering degree awarded by technical school authorized by law to award degree in engineering science;

- (b) Represented, as aforesaid, that their schools occupied a dominant position in the fields of Diesel power, air conditioning, and refrigeration training, and had largest system of training in the United States in such subjects, and had completely equipped shops for training students as engineers in subjects aforesaid, through such statements, among others, as "recognized as America's great system of training in these fields" and "It is self-evident that such leadership could only come as a result of having the equipment and laboratories and giving this type of instruction that gets results," etc., and "Here, also, for the student's complete instruction is a vast assortment of engines and equipment; exactly what you would expect to find in a school that occupies such a dominant position in this field";

Facts being they were not the largest, greatest, or best schools of their kind in the United States, their equipment was not vast in extent, but in fact limited, and they did not occupy a dominant position in their field of training in the United States; and

- (c) Represented that there was a great and unusual demand in the Diesel power, air conditioning and refrigeration industries for graduates of their schools, and that they operated an employment service for such graduates and procured positions therefor in industries involved and procured gainful employment for their students, enabling them to earn while taking their courses, through such statements, among others, as "* * * fields offer splendid opportunities * * *," "* * * free employment service for our graduates * * * considered just as much our business as teaching you your trade * * * Undreamed of opportunities are suddenly opened to men trained in the new, fast growing 'Comfort Industry' * * *," and "* * * You can prepare yourself in a short time for the many worthwhile jobs that are rapidly developing for trained Diesel men * * *," and "Start your training now. If you have the ambition, * * * we will help you to succeed * * *";

Facts being they had no limited reservation list of men for training, but solicited and accepted as many as were available and could be signed up, had no regular employment offer, and made no effort to secure students a job upon completion of course, and did not place students in positions enabling them to earn while pursuing their courses, and there was no unusual demand for employers for students of correspondence schools with type of training which they offered, and such training did not qualify such students for "big paying positions with a wonderful future" or to secure employment in the "big pay" field as consulting engineers in air conditioning and other subjects involved;

With effect of misleading and deceiving substantial portion of purchasing public into belief that all of said representations were true, and with result, as direct consequence of such belief induced by their said advertising and representations, of causing prospective student public to purchase substantial volume of their said courses and of thereby diverting trade unfairly from those engaged in sale of like and similar correspondence courses and who truthfully advertise and represent the same; to the substantial injury of competition in commerce;

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

Complaint

29 F. T. C.

Before *Mr. William C. Reeves* and *Mr. Charles P. Vicini*, trial examiners.

Mr. Harry D. Michael, *Mr. Reuben J. Martin* and *Mr. William L. Pencke* for the Commission.

Mr. Frank J. O'Brien, of San Francisco, Calif., for Roy Hemphill.

Mr. Louis Sachs, of Minneapolis, Minn., for Diesel Power-United Engineering Schools, Inc. and Diesel Power-United Engineering Schools.

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 Roy Hemphill, doing business under the name and style of Diesel Power-United Engineering Schools, Diesel Power-United Engineering Schools, Inc., a corporation organized under the laws of the State of Minnesota, and Diesel Power-United Engineering Schools, a corporation organized under the laws of the State of Missouri, all hereinafter referred to as respondents, 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. Respondent, Roy Hemphill, is an individual doing business under the name and style of Diesel Power-United Engineering Schools, with his office and principal place of business in the conduct thereof at 200 Hayes Street, San Francisco, Calif. Respondent, Diesel Power-United Engineering Schools, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its office and principal place of business at 5 North Fifteenth Street, Minneapolis, Minn. Respondent, Diesel Power-United Engineering Schools, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business at 1520 McGee Street, Kansas City, Mo. The said Roy Hemphill is president and the directing head of each of the two corporations above named, but maintains his general headquarters at the San Francisco office previously mentioned.

PAR. 2. Respondent, Roy Hemphill, doing business under the name and style of Diesel Power-United Engineering Schools, respondent, Diesel Power-United Engineering Schools, Inc., a corporation, organized under the laws of the State of Minnesota, and respondent,

Diesel Power-United Engineering Schools, a corporation, organized under the laws of the State of Missouri, are now and have been for more than 1 year last past engaged in the sale and distribution in commerce between and among the various States of the United States of courses of study and instruction in Diesel engines, air-conditioning and refrigeration and other trade subjects, which said courses of study and instruction are pursued by correspondence through the medium of the United States mail. Each of said respondent schools, in the course and conduct of said business during the time aforesaid, caused and does now cause its respective courses of study and instruction to be transported from its respective place of business in the State where it is located to, into and through States of the United States other than such State of location, to the various purchasers thereof in such other States.

The courses and training offered by the three respondent schools herein are identical or practically so. The material used by each is furnished by the respondent, Roy Hemphill, the said corporate respondents purchasing the same from him, or from Diesel Power-United Engineering Schools at San Francisco, which said Roy Hemphill operates individually under said trade name as aforesaid. The advertising matter, sales policies and general conduct of the business of the three schools are identical or practically so, and the acts and practices hereinafter set forth are applicable to each as being part of a general policy set in motion and directed by the said Roy Hemphill.

PAR. 3. During the time above mentioned other individuals, firms, and corporations in various States of the United States have been and are engaged in the sale and distribution in commerce between and among the various States in the United States and in the District of Columbia of courses of study and instruction in Diesel training, air-conditioning, refrigeration, and other trade subjects, and also of courses of study and instruction intended for preparing students thereof for various positions, employments, trades, callings, and professions, all of which are pursued by correspondence. Said respondent schools 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. 4. The use by said respondent schools of the word "Engineering" in their respective names as aforesaid, and also as a descriptive term in their advertising matter, is misleading in that it imports and implies that the courses offered by said schools are of such character and extent as to give students thereof basic and general training in engineering science comparable to courses in engineering

Complaint

29 F. T. C.

offered by technical schools offering courses in engineering science and awarding degrees in such science after completion of the prescribed courses therein. The courses offered by respondent schools are not of this character, but, on the other hand, are, in comparison therewith, short and not exhaustive of the subject matter connected therewith. Moreover, said respondent schools neither offer nor award any engineering degrees such as those awarded by schools giving recognized instruction in engineering science, nor are they authorized by law to do so, nor are their courses of such a character to warrant the awarding of such degrees. Said schools are in fact merely trade schools and the training offered is calculated only to fit students thereof for work as mechanics or work of similar grade.

PAR. 5. Said schools in the solicitation of students to enroll in their said courses, have made many misleading representations to the effect that they have jobs to offer instead of being engaged merely in the business of giving instruction as previously mentioned. Such representations have been made by one or more of said schools in one or more of the methods hereinafter set forth. One such representation has been made by the use of advertisements inserted under the heading "Help Wanted," or similar headings, or by the use of so-called "blind" advertisements which do not give the name of the advertiser or clearly indicate the nature of the business in which the advertiser is engaged, but gives only a box number in care of the paper in which the advertisement appears, and also by use of obscure wording of the advertisements by means of which an offer of employment is implied. An example of an advertisement so used by one of said schools is the following:

Young men between the ages of 18 and 27 now being selected from this district to qualify for All-Metal Aircraft industries. To those selected will be given free transportation, including short, inexpensive training under factory methods. For interview write Box 59444, Bee.

Other statements and phrases used having similar import or effect are the following:

Jobs Waiting for Men.

Prepare Yourself for Diesel or Air Conditioning-Refrigeration Jobs.

"* * * and the jobs are waiting."

Men Wanted to Train for Jobs * * *

That a job is offered the prospective student at the completion of his training is further implied from the information requested on a questionnaire used by respondents in enrolling students, much of which has no special bearing upon the applicants' qualifications to take the courses offered. Information requested carrying such implications is that requesting, "Phone No.," "Married or Single,"

"Race," "Nationality," "Do you like Sales Work?," "Speak any foreign language," "References," "Bank References or Connections," etc.

In truth and in fact, respondents merely have instruction courses for sale and have no regular full-time work to offer to prospective students or to students who complete their courses. All they have to offer in the line of employment is a limited number of part time jobs to resident students and assistance to its students in trying to locate jobs elsewhere.

PAR. 6. Respondents, by use of advertisements such as the one first quoted in the preceding paragraph and by other representations of like effect in advertisements or by salesmen, represent that their offers to enroll students for training are limited to certain ages, or to limited numbers from a community, or to persons having special qualifications, or that they are otherwise limited. Examples of statements in advertisements and representations to such effect are the following:

100 young men wanted at once to train for aircraft jobs as mechanics and sheet-metal fabricators.

Reservations Being Accepted Now * * *

A limited number of men now employed will be selected to train for jobs in these fields.

Respondents further the implications created by the above statements through the use of the "Questionnaire" referred to in paragraph 5, in which detailed information as to education, experience, employment, references, etc., is requested and secured.

In truth and in fact, no special selection of students is made by respondents, Solicitations and acceptances of students are limited, generally speaking, only by the number of prospects available.

PAR. 7. Respondents in advertising their courses of instruction to prospective students make many exaggerated and misleading statements and representations in regard to their schools to the effect that they are the largest and greatest in the United States, that they are national in scope, that they are the best equipped for instruction in the subjects given and that such equipment is enormous in volume. Among such statements and representations are the following:

The largest system of Diesel and Air Conditioning-Refrigeration training in U. S.

Our national chain of schools are equipped to give practical and thorough training in the most completely equipped shops.

We operate the greatest system of Diesel and Air Conditioning-Refrigeration Training in America.

* * * a vast assortment of engines and equipment; exactly what you would expect in a school that occupies such a dominant position in this field.

* * * world's largest Diesel, Air Conditioning and Refrigeration School * * *

Complaint

29 F. T. C.

In truth and in fact, the representations referred to are misleading in that they are greatly exaggerated or not accurate statements of the facts involved. Respondents' schools cannot accurately or truthfully be represented as being the largest, greatest or best of their kind in the United States or national in scope, nor can their equipment be accurately described as "vast" in extent, nor can it be accurately stated that they are the "most completely equipped."

PAR. 8. Respondents in advertising their courses of instruction to prospective students make various misleading representations to the effect that they maintain a Nation-wide employment service and which convey the implication that their representatives are located throughout the United States and actively engaged in seeking out employment opportunities for their students. Among such representations are the following:

Our national employment service is maintained for our graduates * * *

A free national lifetime employment service is maintained for our graduates.

Such representations are misleading in that they greatly exaggerate the facts. Employment services are maintained by respondents only at the places where their schools are located, as herein set forth, with the addition of one or two other places where branch schools are or have been, maintained. Such service may not accurately be stated as being national in scope.

PAR. 9. Respondents in advertising their courses of instruction to prospective students make many exaggerated and misleading representations in regard to earnings, character of jobs and future possibilities for its students as a result of taking their courses to the effect that the demand for men in the lines of work for which respondents offer training is much greater than it is in fact and that students who complete their courses are equipped to and may expect positions in the high salaried class. Among such representations are the following:

"Undreamed of Opportunities."

Prepare yourself for a Big-Money Job.

You can prepare yourself in a short time for the many worthwhile jobs that are rapidly developing for trained Diesel men.

Big Pay Diesel Jobs for Trained Men!

Earn Big Money! Diesel Needs Trained Men Now * * * A short course, under expert instructors, in world's largest Diesel, Air Conditioning, and Refrigeration School, will qualify you for a big paying position with a wonderful future. * * *

In truth and in fact, there are no unusual demands for men with training such as that offered by respondents in the fields for which such training is offered. Such demands that do exist in such fields are

in great part met by employers by placing men already in their employ in the openings that arise and training them in the work involved. Such opportunities as there are for men who take respondents' training or training of similar type and grade are in the field of mechanics, operating engineers, or trades where the pay involved is not in the so-called "big pay" field and is comparable to that of mechanics, minor operating engineers, mechanical trades, and the like.

PAR. 10. The use by respondents of the foregoing statements and representations, and others similar thereto, in offering for sale and selling their courses of study and instruction, as herein set out, has had, and now has, the tendency and capacity to, and does, in fact mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations as set out in paragraphs 4, 5, 6, 7, 8, and 9 hereof are true, and induces them to purchase such courses of study and instruction on account thereof. Thereby, trade is unfairly diverted to respondents from competitors engaged in the sale in commerce between and among the various States of the United States and in the District of Columbia of correspondence courses intended for preparing students thereof for various trades, positions, professions, and callings, including courses of the same general kind as those offered by respondents.

There are among the competitors of respondents those who, in the sale of their respective courses of study and instruction, do not similarly or in any manner, misrepresent their courses of study and instruction or matters pertaining thereto. As a result of respondents' said practices as herein set forth, substantial injury has been and is now being done by respondents to competition in commerce between and among the various States of the United States.

PAR. 11. 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 January 31, 1938, issued and served its complaint in this proceeding on the respondents, Roy Hemphill doing business under the name and style of Diesel Power-United Engineering Schools; Diesel Power-United Engineering Schools, Inc.,

Findings

29 F. T. C.

a corporation organized under the laws of the State of Minnesota; and Diesel Power-United Engineering Schools, a corporation organized under the laws of the State of Missouri, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondents each filed an answer to the complaint. Thereafter testimony and other evidence in support of the allegations of said complaint were introduced by Harry D. Michael and Reuben J. Martin, attorneys for the Commission, before William C. Reeves and Charles P. Vicini, trial examiners of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Louis Sachs, attorney for Diesel Power-United Engineering Schools, Inc., a Minnesota corporation, and Diesel Power-United Engineering Schools, Inc., a Missouri corporation and Frank J. O'Brien, attorney for respondent Roy Hemphill, 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 said complaint, the answers thereto, the testimony and other evidence, brief in support of the complaint and the brief on behalf of respondents Diesel Power-United Engineering Schools, Inc., a Minnesota Corporation, and Diesel Power-United Engineering Schools, a corporation organized under the laws of the State of Missouri in opposition thereto, no brief having been filed upon the part of respondent Roy Hemphill, and respondents not having requested oral argument; 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. Roy Hemphill is an individual doing business under the name and style of Diesel Power-United Engineering Schools, with office and principal place of business located at 200 Van Ness Avenue, San Francisco, Calif.

Respondent Diesel Power-United Engineering Schools, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Minnesota, with its office and place of business located at 5 North 15th Street, Minneapolis, Minn. It also operates a branch school located at 1124 Carnegie Avenue, Cleveland, Ohio.

Respondent Diesel Power-United Engineering Schools, Inc., is a corporation organized, existing, and doing business under and by

virtue of the laws of the State of Missouri, and with its principal place of business located at 1520 McGee Street, Kansas City, Mo.

The complaint issued January 31, 1938, charged, among other practices, that the use by the various respondents of trade or corporate names containing as a part thereof the word "engineering" constituted unfair methods of competition. Subsequent to the issuance of complaint, the individual respondent changed the trade name under which he was conducting business so as to eliminate therefrom the word "engineering." Likewise, the corporate respondents changed their respective corporate names so as to eliminate therefrom the word "engineering."

Roy Hemphill was president of both corporations until January 1938, being succeeded at that time by Walter W. Kerschner. Walter W. Kerschner was vice president of both corporations until January 1938 and had been employed by respondent Hemphill at San Francisco and Minneapolis prior to the incorporation of the Minneapolis respondent in September 1936.

Respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution in commerce between and among the various States of the United States of courses of study and instruction in Diesel engines, air conditioning, and refrigeration, and other trade subjects which said courses of study and instruction are pursued by correspondence through the medium of the United States mail. The courses of training offered by respondents were identical or practically so, and said material for the respondent corporations was furnished by respondent Roy Hemphill. This is being gradually superseded by material supplied by Rosencraft of Newark, N. J., since January 1, 1938. There was also an interchange arrangement between the respondents whereby a student who had been enrolled by any respondent could pursue his course of instruction in any of the schools operated by the respondents and the advertising redounded to the benefit of all the respondents.

PAR. 2. Respondent Roy Hemphill, upon receiving contracts from students outside the State of California, ships from his place of business in San Francisco, Calif., through the mails, correspondence lessons to students located in the respective States where they live other than the State of California.

Respondent corporations, upon receipt of contracts, ship their instruction material from the principal place of business of the Minnesota corporation in Minneapolis, Minn., and of the Missouri corporation in Kansas City, Mo., to students located in North Dakota, South Dakota, Wisconsin, Iowa, and other States of the United States.

Findings

29 F. T. C.

PAR. 3. Respondents are now, and for more than one year last past have been, engaged in substantial competition with other individuals, firms and corporations engaged in the sale and distribution of similar courses of study and instruction in Diesel training, air conditioning, refrigeration, and other trade subjects, and also of courses of study and instruction intended for preparing, students thereof for various positions, employments, trades, callings, and professions in commerce between and among the various States of the United States.

PAR. 4. Respondents in the soliciting and sale of, and in selling their said correspondence courses, and for the purpose of creating a demand therefor, now cause, and for more than one year last past have caused, advertisements to be issued, published, and circulated to and among the consuming public of the United States in various forms of printed matter, by radio broadcasts and other ways.

PAR. 5. Respondents make, and have made, to the prospective students, statements with reference to the alleged value and merits of their correspondence courses, their employment service, opportunities for employment of their graduates, and types of positions for which they prepare; some of which statements so made and circulated by the respondents being as follows:

Speed Your Way to Success By Qualifying For A Position in Diesel Engineering, Air Conditioning, Refrigeration * * * Trained Men are Needed * * * With specialized training in Diesel Engineering or Air Conditioning and Refrigeration you should be able to start your career, logically, in an industry that needs trained men Now * * * Prepare yourself for a big money job * * * Free Employment Service. We maintain a free employment service exclusively for our graduates. This service is considered just as much our business as teaching you your trade * * * Undreamed of opportunities are suddenly opened to men trained in the new, fast growing "Comfort Industry." "Positions you can hold in Air Conditioning, Refrigeration" * * * Consultant engineers in air conditioning. Consulting engineers in refrigeration * * * Engineers (chief) of air conditioning plants (Industrial and Commercial) * * * It will pay you to say "I have trained at Diesel Power-United Engineering Schools" * * * A short time spent with Diesel Power-United Engineering Schools is all that is necessary to prepare you for the many opportunities offered in Diesel Engineering Air Conditioning, and Refrigeration fields. Employers want thorough practical, trained men. That is the type of training you are assured of through the Diesel Power-United Engineering Schools system, which devotes its entire resources and facilities to approved methods of training and qualifying men for positions in this great industry. The difference in schools is largely one of the knowledge, background and experience of its staff. Years of successful trade school operation and experience enables the Diesel Power-United Engineering Schools to offer a most complete and approved system of training. Train in Our Well Equipped Shops. The Diesel Power-United Engineering Schools are recognized as America's great system of training in these fields. It is self-evident that such leadership could only come as a result of having

the equipment and laboratories and giving this type of instruction that gets results and prepares a student in a truly efficient way. Here, also, for the student's complete instruction is a vast assortment of engines and equipment; exactly what you would expect to find in a school that occupies such a dominant position in this field. Every instructor has been most carefully selected after rigorous investigation of his qualifications. A wide background of technical training and practical experience is demanded; also a type of mind that is able most effectively to pass on that experience and knowledge to the student * * *

Diesel Power-United Schools, Inc., "America's Great System of Diesel Engineering and Air Conditioning—Refrigeration Training," 5 North 15th Street (At Hennepin Avenue), Minneapolis, Minnesota.

San Francisco, California
Kansas City, Missouri

Cleveland, Ohio
Minneapolis, Minnesota

DIESEL POWER Diesel and air conditioning—refrigeration fields offer splendid opportunities. Rating certificates issued upon graduation from our schools are recognized by national manufacturers and distributors. The largest system of Diesel and air conditioning—refrigeration training in U. S. Write or call for information.

United Schools, 5 North 15th Street, Minneapolis
Kansas City San Francisco Cleveland

America's great system of Diesel training, Diesel Power-United Engineering Schools * * * What we have done for others we can do for you. Start your training now. If you have the ambition, determination, and confidence we will help you to succeed in Diesel work. You can prepare yourself in a short time for the many worthwhile jobs that are rapidly developing for trained Diesel men. The trained man gets the best jobs, shorter hours, easier work, and better pay, as well as greater opportunities for advancement. * * * Students receive a life scholarship upon completion of our course of study and have the privilege of consulting our engineering staff at all times without extra cost.

PAR. 6. Respondents' schools are not the largest, greatest, or best schools of their kind in the United States, nor is their equipment vast in extent, but in fact, limited. Respondents do not occupy a dominant position in their field of training in the United States. The use by the respondents of the word "engineering" in their respective corporate and firm names and also as a descriptive term in their advertising matter is misleading in that it imports and implies that the courses offered by respondents are of such a character and extent as to give students thereof basic and general training in engineering science comparable to courses in engineering offered by technical schools offering courses in engineering science and awarding degrees in such science after completion of the prescribed courses therein. The schools are trade schools with an educational entrance requirement of less than the eighth grade, and the training offered is calculated only to prepare students thereof for work as mechanics,

Findings

29 F. T. C.

or work of similar grade. The courses of instruction are short, not exhaustive of the subject, and not of the character and extent to give the student a basic and general training in engineering science comparable to courses in engineering offered by technical schools having courses in engineering science and awarding degrees in such science after the completion of the prescribed courses therein. Respondent schools neither award any engineering degrees such as are awarded by schools giving recognized instruction in engineering science nor are they authorized by law to do so, nor are their courses of instruction of such character as to warrant the awarding of such degrees. At the San Francisco school of respondent Roy Hemphill, there are only two members of the faculty with the degree of B. S. No other members of the faculty of respondent Hemphill's school, and no member of the faculty at the respondents' Minneapolis, Kansas City, or Cleveland schools has an engineering degree awarded by a technical school authorized by law to award degrees in engineering science.

PAR. 7. Respondents have not had any limited reservation list of men for training, but they solicit and accept as many men as are available and can be signed up. They have no employment office, nor do they make any regular practice or effort to secure students a job upon completion of the course. Respondents do not place students in positions enabling them to earn while pursuing their courses of study. There is, and has been, no unusual demand by employers for students of correspondence schools with the type of training offered by respondents, nor does such training qualify such students for "big paying positions with a wonderful future," to secure employment in the "big pay" field, as Consulting Engineers in air conditioning, Consulting Engineers in refrigeration, Engineers (Chief) of air conditioning plants (industrial and commercial) or other higher technical jobs.

PAR. 8. The testimony on behalf of the respondents indicates that subsequent to the issuance of complaint herein, the several respondents revised various items of their respective advertising literature for the purpose of removing from such advertising literature representations which the Commission charged constituted unfair methods of competition.

PAR. 9. Each and all of the false and misleading statements and representations made by respondents, as aforesaid, by means of advertisements, radio broadcasts, and in other ways, in offering for sale and selling their correspondence courses of instruction, were, and are, calculated to, and have had, and now have, the tendency and capacity to mislead and deceive, and do mislead and deceive a

substantial portion of the purchasing public into the belief that all of the said representations are true.

PAR. 10. Respondents, as a direct consequence of such mistaken and erroneous belief induced by said advertising and representations, cause the prospective student public to purchase a substantial volume of said correspondence courses, with the result that trade has been unfairly diverted from individuals, firms and corporations engaged in the sale of like and similar correspondence courses of study who truthfully advertise and represent their said correspondence courses. As a result thereof substantial injury is done, and has been done, by respondents to competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of respondents as set forth in the foregoing findings as to the facts are all to the prejudice of the public and of respondents' 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, the answers of the respective respondents, testimony and other evidence taken before William C. Reeves, and Charles P. Vicini, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein by William L. Pencke, counsel for the Commission and by Louis Sachs, counsel for the two respondent corporations, (oral argument not having been requested) 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 respondent Roy Hemphill, individually and doing business as Diesel Power-United Engineering Schools, or under any other name or names, his representatives, agents, and employees; and respondents Diesel Power-United Engineering Schools, Inc., a corporation organized under the laws of the State of Minnesota and Diesel Power-United Engineering Schools, a corporation organized under the laws of the State of Missouri, their respective officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of courses of instruction in Diesel engines, air conditioning and refrigeration and other trade subjects in commerce, as

Order

29 F. T. C.

commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing through the use of the word "engineering" or any other word or words of similar import or meaning in respondents' trade or corporate names, or in any other manner, that respondents' courses of instruction qualify students as engineers in Diesel power, air conditioning, refrigeration or any other branch of the engineering profession.

2. Representing in any manner that respondents' schools or any of them, occupy a dominant position in the fields of Diesel power, air conditioning or refrigeration training, or have the largest system of training in the United States in Diesel power, air conditioning or refrigeration, or that respondents' schools have completely equipped shops for training students as engineers in Diesel power, refrigeration or air conditioning.

3. Representing in any manner that respondents' courses of instruction qualify a student for any position requiring a degree of skill or technical knowledge greater than that required of a mechanic.

4. Representing in any manner that there is a great or unusual demand in the Diesel power, air conditioning or refrigeration industries for graduates of respondents' schools or for persons having no greater degree of technical training than that afforded by respondents' courses of instruction.

5. Representing that respondents operate an employment service for the graduates from respondent's schools or that respondents procure positions for such graduates in the Diesel power, air conditioning or refrigeration industries unless and until such are the facts.

6. Representing that respondents procure gainful employment for students enabling them to earn while taking respondents' courses of instruction unless and until such is the fact.

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

Syllabus

IN THE MATTER OF
ARTHUR LONGFIELDCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3823. Complaint, June 16, 1939—Decision, Oct. 24, 1939*

Where Worcestershire Sauce under name "Lea & Perrins Worcestershire Sauce" had long been made in accordance with private and secret formula and been extensively advertised in England and other parts of the world, and had come to be highly popular and, as imported or made and sold in the United States in bottles and with labels or wrappers of distinctive size and shape, to have Nation-wide popularity as product of recognized and uniform excellence, and to be identified by purchasing public principally by aforesaid highly distinctive containers and labels or wrappers; and thereafter an individual engaged in manufacture, sale and distribution of "Longfield's Celebrated Worcestershire Style Sauce," in competition with makers and sellers in the United States of said genuine "Lea & Perrins Worcestershire Sauce," made under the original, private, and secret recipe, and under sanction and control of English parent company—

- (a) Packaged his aforesaid "Worcestershire Style Sauce" in containers closely resembling those of "Lea & Perrins Worcestershire Sauce" with bottles of same distinctive size and shape and wrappers of same type and color and with typography, border, dividing lines, color scheme, and other distinctive features and printed matter, which simulated label and package of Lea & Perrins product aforesaid; and
- (b) Included and copied from label of latter, legend "From the recipe of a nobleman in the county," and enclosed same in scrolls which simulated those used on label of other and, in furtherance of such attempted simulation, used in center of his wrapper or label shield which closely resembled in appearance that used on Lea & Perrins label aforesaid;

Notwithstanding fact recipe for said individual's product was not furnished by nobleman in Worcestershire, England, and said product was not, as thus implied, made under secret recipe used by Lea & Perrins:

With tendency and capacity to induce members of public to form mistaken and erroneous belief that his said "Worcestershire Style Sauce" was in fact Worcestershire Sauce made and sold by Lea & Perrins, and with result, as consequence of such belief, induced by said acts and representations, that substantial numbers of purchasing public bought his said product, and trade was thereby unfairly diverted to him from his competitor aforesaid:

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. Lewis C. Russell*, trial examiner.
Mr. Karl Stecher for the Commission.