

Syllabus

IN THE MATTER OF
W. R. YOUNG, DOING BUSINESS AS NATIONAL
EMPLOYEES TRAINING SERVICE

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

Docket 3331. Complaint, Feb. 10, 1938—Decision, Dec. 7, 1939

Where an individual engaged, as National Employees Training Service, in sale and distribution of correspondence course lessons for persons expecting to take civil service examinations to qualify for appointment to positions in the United States classified civil service, and, as thus engaged, in selling his said courses and lessons to purchasers in other States, in active competition with others also engaged in sale of courses of instruction of same general nature in commerce among the several States—

- (a) Represented, directly or through agents, that he and his said agents were employed by the United States Government and represented the United States Civil Service Commission, and set forth on postal cards, containing various statements with respect to available Government positions and also words "Government positions \$105 to \$175 per month," and inviting inquiry on the attached prepaid reply card, but without advising recipient that he was in business of selling courses of instruction, trade name, National Employees Training Service, facts being neither he nor any of his agents were in the employ of the United States Government and in no way represented the United States Civil Service Commission;
- (b) Represented that his business had been in existence for many years and was an old established one, and that prospective students solicited would have to enroll immediately in order to get within the quota of Government positions allotted to said individual, and which was practically filled, facts being his business had not been in existence for many years, but only for a period of a few years, no such quota had been allotted for the benefit of any of the persons who might purchase courses of instruction which he sold, and he did not confine his soliciting to students of high scholastic standing, but solicited all persons who were willing to subscribe to the course;
- (c) Represented that jobs with the United States Government would be secured for the students taking the course of instruction offered by him, or that the money paid for such courses would be refunded, facts being he could guarantee no positions to any person completing his course, and, with few exceptions, did not refund price of tuition after being unable to secure a position for any student who had completed same; and
- (d) Represented that he was able to get advance information concerning examinations to be conducted by the Civil Service Commission, and that students who had completed his courses had preference over other applicants for positions in the classified civil service, facts being he could in no way influence or control such appointments, persons who completed his courses had no preference over others and he could 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 examination to have their names placed upon

Complaint

30 F. T. C.

the eligibility roll, and he had, as aforesaid indicated, no advance information concerning examinations to be held by such commission, except such information as was given to public at large;

With the result that persons were misled through said cards and caused to believe that he was in some way connected with the United States Government, and with capacity and tendency to confuse, mislead, and deceive members of the public through practices aforesaid, and induce them to purchase his said courses in the erroneous belief that he in some way controlled appointments to positions in said classified civil service, and was in some way connected with the Civil Service Commission aforesaid, and with the result that patronage was diverted unfairly to him from schools conducted by competitors who did not make same or similar claims or representations concerning their said schools or the courses of instruction which they sold:

Held, That such claims and representations, under the circumstances set forth, 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. Michael and *Mr. William L. Pencke* for the Commission.

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 W. R. Young, an individual, doing business under the name and style of National Employees Training Service, hereinafter referred to as respondent, has been and is 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, W. R. Young, an individual, doing business under the name and style of National Employees Training Service, is now, and has 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 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 respondent in the conduct of said business is and has been located at 456 Book Tower Building, 1250 Washington Boulevard, Detroit, Mich. Said respondent, in the

course and conduct of said business, during the time aforesaid, caused and does now cause, his said courses of study and instruction to be transported from his said place of business in Michigan to, into, and through States of the United States other than Michigan 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 have been and are 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 respondent has been, during the time aforesaid, in substantial competition in commerce between and among the various States of the United States in the sale of his said courses of study and instruction with such other individuals, firms, and corporations.

PAR. 3. Said respondent, directly or through representatives and agents designated and appointed by him, has made many misrepresentations to prospective students in soliciting the sale of and in selling said courses of study and instruction, among which are the following:

1. That the sales representative soliciting students for said courses was in the employ of or otherwise represented or was connected with the United States Government.

2. That respondent in conducting his business as aforesaid was an agency of or representative of or connected with the United States Government, or the United States Civil Service Commission.

3. That the business of respondent was an old established business or that it had been in existence for many years.

4. That the prospective students solicited would have to enroll for instruction immediately in order to come within a definite quota, and that the quota was practically filled.

5. That a Government job was guaranteed to the student taking the course offered and if not obtained, money paid would be refunded.

6. That the school conducted by respondent had means of securing advance information concerning examinations held by the United States Civil Service Commission.

7. That respondent's students received preference over other candidates in securing appointments to Government positions.

8. That only a limited number of students was to be enrolled in a certain locality.

Complaint

30 F. T. C.

9. That the prospect solicited had been selected to take the training offered because of high standing in the community or because of superior education or because of other special qualifications.

10. That jobs were offered or that students taking the courses were placed in government positions by respondent school.

11. That a large number of respondent's former students had been placed in or had secured Government positions.

12. That personal help would be given to students taking the courses offered.

13. That the student solicited would be trained for a specific, designated Government position or appointment.

14. That prospective students solicited for said courses and whose contracts and payments were accepted, but who were not qualified by prior education or were not physically or otherwise qualified for Government positions for which training was offered, were properly qualified in such respects.

15. That the nature, character or extent of courses offered was other than that given.

The use by respondent of the word "National" in the name under which said business has been conducted, when used in connection with the sale of correspondence courses intended for preparing students thereof for positions in the classified civil service under the United States Government with other misrepresentations of Government connection by salesmen, as aforesaid, is misleading in that it serves to create an erroneous impression of Government connection and encourages misrepresentations by salesmen as aforesaid.

The term "National Employees" in the name of said school is also misleading in that it tends to create the erroneous impression that said school is an organization composed of employees of the National Government or that it is an official institution for training persons selected for appointment to Government positions.

In truth and in fact, neither respondent, nor the school conducted by him, nor anyone connected with said school, had any connection whatever with the United States Government or with the United States Civil Service Commission. Respondent's school is not an old established one but is a comparatively new institution. Respondent cannot and does not guarantee Government appointments, nor do students of such school receive any preference in appointments to Government positions. Neither respondent nor anyone connected with said school had any advance knowledge in regard to examinations conducted by the United States Civil Service Commission. Refunds are not made as a general thing if Government jobs are not

obtained. Prospective students solicited or accepted for training were not limited by a definite quota or otherwise and were not specially selected but all available prospects were solicited and accepted. Respondent had no Government job to offer and could not place his students in Government jobs. Comparatively few, if any, of respondent's former students have been placed in or have secured Government positions. No personal help was given students taking respondent's courses but all instruction was by correspondence. All of respondent's instruction was general in character and was not for any specific or designated Government position or appointment.

PAR. 4. Respondent, in the sale of his said courses of study and instruction as aforesaid, through use of a so-called "Refund Agreement" as well as by direct representations of salesmen, has represented to students and prospective students that money paid for instruction will be refunded in the event Government positions are not obtained. The "Refund Agreement" used by respondent, as aforesaid, read as follows:

REFUND AGREEMENT

It is understood that I am to be trained for each Civil Service Examination covered by this contract until I have received a passing grade. Then, if I fail to receive an appointment during the period my name remains on the Government eligible list, I am upon written application to receive a refund of the entire amount paid for this training.

The implication of said agreement is that civil service examinations for which respondent's students prepare will be held within a reasonable time after such students have completed their courses and that Government appointments will be available within a reasonable time.

In truth and in fact said agreements are, for all practical purposes, meaningless and inoperative in a large majority of cases and are misleading for the reason that at certain times and in regard to certain examinations for which respondent has offered courses, no examinations are held for long periods of time and as to certain local examinations none is likely to be held in the locality where respondent's students are located. Moreover, even if an examination should be held and a student's name placed on an eligible list, the chances of appointment are and have been remote or, if an appointment is eventually made, it is usually only after a long waiting period due to the fact that in many of the classifications used in making appointments to the classified civil service and in regard to which respondent offers instruction, great numbers of eligibles are and have been available for comparatively few appointments.

Findings

30 F. T. C.

PAR. 5. The use by respondent of the foregoing practices and representations and others similar thereto, in offering for sale and selling his 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 3 and 4 hereof are true, and induces them to purchase such courses of study and instruction on account thereof. Thereby trade is unfairly diverted to respondent 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 civil service examinations as well as from those so engaged in such sale in other lines of study.

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

PAR. 6. The above acts and things done by respondent are all to the injury and prejudice of the public and of competitors of respondent, 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 February 10, 1938, issued its complaint in this proceeding and caused same to be served upon the respondent W. R. Young, an individual doing business under the name and style of National Employees Training Service, charging him with the use of unfair methods of competition in commerce in violation of said act. No answer to said complaint was filed by said respondent and thereafter testimony and other evidence was introduced in support of the allegations of said complaint at Detroit, Mich., on July 5, 1938, and at Columbus, Ohio, on July 7, 1938, by Harry D. Michael, counsel for the Commission, before William C. Reeves, an examiner for the Commission theretofore duly designated by it, which testimony was reduced to writing and filed in the office of the Commission together with numerous pieces of documentary evidence re-

ceived as exhibits. No testimony or other evidence was tendered by or on behalf of the respondent. Thereafter said proceeding regularly came on for final hearing before the Commission on the said complaint, the testimony taken and evidence received and the brief of counsel for the Commission in support of the complaint. No brief was filed by or on behalf of respondent and no request was made by him for permission to present 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 public interest and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, W. R. Young, is an individual and for a number of years carried on business at Detroit, Mich., under the name and style of National Employees Training Service, during which time he was engaged in the business of the sale and distribution of courses of home study instruction conducted by correspondence and intended for use in the instruction of persons who expected to take examinations to be conducted by the Civil Service Commission of the United States for the purpose of creating registers of eligibles for appointment to positions in several of the branches of the classified civil service of the United States. The courses of instruction sold by respondent were divided into lessons and were in printed form and were sent by the United States mail by respondent from his place of business in Detroit in the State of Michigan through and into other States of the United States to the respective purchasers thereof. In the conduct of his said business, respondent was in active competition with various partnerships and corporations and other persons also engaged in the sale of courses of instruction of the same general nature as those sold by respondent, in commerce among several of the States of the United States.

PAR. 2. Respondent, in the course of his business as described in paragraph 1 hereof, in offering for sale and selling courses of instruction, either directly or through agents appointed by him, has made numerous statements and representations concerning such courses of instruction and the benefits to be derived from same, among which were statements and representations to the effect that respondent and his said agents were employed by the United States Government and represented the United States Civil Service Commission; that the business conducted by respondent was an old established business and had been in existence for many years; that prospective students solicited would have to enroll immediately in order to get within the quota of Govern-

ment positions allotted to respondent, which quota was practically filled; that jobs with the United States Government would be secured for the students taking the courses of instruction offered by respondent or that the money paid for such courses would be refunded by respondent; that respondent was able to get advance information concerning examinations to be conducted by the United States Civil Service Commission; that students who completed the courses of instruction sold by respondent had preference over other applicants for positions in the classified civil service of the United States. Other statements and representations of similar import were made by respondent and his agents concerning said courses of instruction.

PAR. 3. As a means of contacting prospective purchasers of the courses of instruction offered for sale by him, respondent mailed to numerous unnamed box holders on rural free delivery routes in various States of the United States, postal cards which had printed thereon numerous statements among which were statements to the effect that due to death, retirement, and normal Government expansion many thousands of Government positions are opened for the trained man or woman each year; that American citizens of good health and character could qualify for Government positions and the request was made that the attached reply card be mailed for free samples of actual questions given in recent civil service examinations, but said cards contained no mention of the fact that respondent was in the business of selling courses of instruction. Attached to each of these cards was a business reply card which could be detached and mailed under the provisions of the United States Postal Laws and Regulations and was addressed to the National Employees Training Service, the trade name under which respondent carried on business. Each of these cards had printed thereon the request that it be detached and mailed. Also there was printed on each of said reply cards the following:

Government positions \$105 to \$175 per month.

Also the statement that no postage stamp was necessary and that the postage would be paid by the addressee. Respondent also caused like cards to be distributed by the Western Union Messenger Service from house to house in various cities of the United States. The evidence shows, and the Commission finds, that many persons who received these cards and detached the return portion and mailed same to respondent were influenced in so doing by the fact that the cards could be sent by mail without attaching a postage stamp thereto and the name of the addressee printed thereon, "National Employees Training Service," caused them to believe that respondent was in some way connected with the United States Government.

PAR. 4. The statements and representations made by respondent, either directly or by his agents, concerning the courses of instruction offered for sale and sold by him, and the benefits to be derived therefrom, as set out in paragraph 2 hereof, were false, misleading, and deceptive in that neither the respondent nor any of his agents was an employee of the United States Government; none of them in any way represented the Civil Service Commission of the United States; no quota of positions in the classified civil service of the United States had been allotted to respondent for the benefit of any of the persons who might purchase the courses of instruction sold by respondent; respondent could in no way influence or control appointments to positions in the classified civil service of the United States, and the persons who completed the courses of instruction sold by respondent had no preference over other applicants for said positions; respondent could 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, and respondent had no advance information concerning examinations to be held by the Civil Service Commission of the United States except such information as was given to the public at large. Respondent could guarantee no positions to any person completing his course of study. With few exceptions, respondent did not refund the price of tuition after being unable to secure a position for any student who had completed the course of instruction. Respondent's school is not an old established institution but had been in existence only for a period of a few years. The respondent did not confine his soliciting to students of high scholastic standing but solicited all persons who were willing to subscribe to the course, without making any discrimination with respect to their scholastic attainments. Such claims and representations have and have had the capacity and tendency to confuse, mislead and deceive members of the public and to induce them to purchase the courses of instruction sold by respondent in the erroneous belief that respondent in some way controlled appointments to positions in the classified civil service of the United States and was in some way connected with the Civil Service Commission of the United States, and as a result, patronage has been diverted unfairly to respondent from schools conducted by competitors, which competitors have not made the same or similar claims and representations concerning the schools conducted by them or the courses of instruction sold by them.

Order

30 F. T. C.

CONCLUSION

The claims and representations made by the respondent as hereinbefore set out are all to the injury of the public and to competitors of respondent, 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, 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, brief filed on behalf of the Commission, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That W. R. Young, an individual, doing business under the name and style of National Employees Training Service, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as commerce is defined in the Federal Trade Commission Act, of courses of home study instruction designed for the preparation for civil service examinations, do forthwith cease and desist from representing:

1. Through the use of the word "National" or any similar word or words in the trade name, advertising literature, or in any other manner, that he has any connection with or is an agency of the United States Government or the United States Civil Service Commission.

2. That his business has been in existence for many years.

3. That the enrollment of students is limited by a definite quota, or that only a small number of students are accepted in any given territory, or that only persons with high scholastic attainments are accepted by respondent as prospective students for said course of instruction.

4. That civil service positions in the United States Government are guaranteed to students who have completed respondent's course of instruction.

5. That the price of tuition will be refunded if respondent fails to secure positions for students who have completed the course of instruction unless and until such refunds are in fact made in accordance with respondent's agreement.

6. That respondent has any advance information with respect to available positions in the civil service, which information cannot be secured from the United States Civil Service Commission, or that respondent has any additional or confidential information with respect to such positions which is not available to the public.

7. That respondent has any control of positions available in the civil service or that respondent's students are preferred by the United States Civil Service Commission over other students who have not taken respondent's course of instruction.

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

IN THE MATTER OF
GENERAL MOTORS CORPORATION, CHEVROLET MOTOR
COMPANY, OLDS MOTOR WORKS, PONTIAC MOTOR
COMPANY, BUICK MOTOR COMPANY, CADILLAC MOTOR
CAR COMPANY, AND GENERAL MOTORS ACCEPTANCE
CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 3001. Complaint, Nov. 30, 1936—Decision, Dec. 8, 1939

Where a corporation engaged in manufacture of a line of motor vehicles and in sale thereof, under various brand names, to public through a number of corporate subsidiaries and, after said subsidiaries' dissolution, through selling subsidiary, and a second concern which it organized to furnish credit to dealers in its said cars and to purchasers at retail buying same from dealer on a deferred payment or credit base, and which concern it entirely owned and controlled—

Featured, or caused to be featured, in numerous and extended advertisements of various kinds and in descriptions therein of their new "6%" plan, as published, directly and through said corporate subsidiaries and through neon lights, mats, and sample advertisements made available to their dealers for use in local advertising, symbol "6%," and so featured same in most of said advertising or advertisements, and in most of which there was not set forth extended explanation found in initial announcement of plan, that attention of purchaser was immediately drawn to said symbol or term and impression gained that there was meant 6 percent simple interest per annum, computed on declining balance as reduced by monthly payments;

Facts being that under method employed of applying charge of one-half of 1 percent per month for period of contract to initial unpaid balance and dividing by number of months involved sum of said balance and figure secured as aforesaid to derive monthly payment of customer, latter paid at rate in excess of 11 percent simple interest on amounts owed on transaction, as reduced by contract's monthly payments;

With effect of causing trade to be unfairly diverted to said corporation and, prior to their dissolution, to its various said subsidiaries, and to said concern, from competitors who did not in any manner misrepresent cost of credit charge for purchasing motor vehicles on installment or deferred payment plan in offer for sale or sale of their said products; to the substantial injury of competitors in commerce among the various States and in the District of Columbia:

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

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. James M. Hammond for the Commission.

Mr. John Thomas Smith, of New York City, for respondents.