

IN THE MATTER OF
NEW YORK DIESEL INSTITUTION, INC., HENRY M. KRAM-
RATH, JOHN L. SNIDER, EVERETT K. PANGBURN, RICH-
ARD B. CORNELL, AND FRANK F. HAYWARD, INDIVID-
UALLY AND AS OFFICERS THEREOF

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

Docket 3785. Complaint, May 9, 1939—Decision, May 29, 1940

Where a corporation, engaged along with an affiliate, in sale and distribution in commerce among the various States and in the District of Columbia of courses of study and instruction concerning Diesel engines and other trade subjects, conducted in whole or in part by correspondence, to various purchasers in other States and in said District, in active and substantial competition with others engaged in sale and distribution of similar courses of study and of courses of study and instruction intended for preparing students for various positions, employments, trades, callings, and professions and conducted in whole or in part by correspondence—

- (a) Represented to prospective and potential students that it would make available employment with good pay to those students who completed its courses, through such statements in advertisements as "Wanted: Diesel Operators—Installation, Sales, Service, Trouble Shooters, Engineering, All Departments, to Train Immediately for Jobs," and "Become a Diesel Expert—Mechanically minded men of good character to prepare for service in this vast new industry. Our aim—a job for every graduate. Day, evening and home study, with practical shop work at one of our completely equipped institutes. Many students now in splendid, well paying positions," and through sales representatives, and in effect that courses of study offered by it, if diligently pursued by student of average ability, were such that they would enable such student, without other experience or training, to become qualified as a Diesel engine expert, operator, or skilled workman on Diesel engines;

Facts being it merely had instructions courses for sale, had no regular full- or part-time work to offer to prospective students or students who completed its courses, did not obtain employment for any student who was a graduate of its school but failed, in many instances, to be of any assistance to its graduates when requested to do so, and its said courses were not such as would qualify a student of average ability, as aforesaid, and without other experience or training, as a Diesel engineer, etc.;

- (b) Represented, through its advertisements and sales representatives, that its offer of training was made only to a limited number of students in any given territory and to persons having special qualifications for carrying on courses of study offered by it, facts being its offers were made to general public and all students who could pay the price of the course or installments thereon were accepted; and
- (c) Represented, through its advertisements and sales representatives, that classes including shop training with Diesel engines and machinery installed in its buildings, would be held in various localities other than that in which

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it had its principal office and place of business and under competent instructors, facts being that no such training was offered at other points and such instruction as was advertised at said point was of little value and not given by instructors of competence;

With result that a substantial number of prospective students believed said representations to be true and in reliance thereon, were thereby induced to purchase its said courses of instruction, and many competitors in interstate commerce in educational field of instruction in Diesel engineering and who do not make use of unfair representations in aforesaid and other trade subjects, and of methods of advertising similar to those employed by it, were injured by unfair method thus employed by it, and substantial number of students, believing said representations to be true and in reliance thereon, enrolled for said courses, with effect of thereby diverting business unfairly to it from competitors 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. Randolph Preston*, trial examiner.

Mr. Curtis Shears for the Commission.

Mr. Bernard A. Green, of Jersey City, N. J., for New York Diesel Institution, Inc.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that New York Diesel Institution, Inc., a corporation, and Henry M. Kramrath, John L. Snider, Everett K. Pangburn, Richard B. Cornell, Frank F. Hayward, individually and as officers of said corporation, hereinafter referred to as respondents, have been and are violating 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. Respondent, New York Diesel Institution, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business at 47 Rector Street, city of Newark, State of New Jersey. Respondent Henry M. Kramrath is the president of said corporation, said John L. Snider is its vice president, said Everett K. Pangburn is its treasurer, said Richard B. Cornell is its national sales manager, and said Frank F. Hayward is manager thereof. Their office addresses are the same as that of said corporate respondent. Said individual respondents are and have been in active charge of the business of said corporate respondent and control and direct its acts, practices, and policies.

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PAR. 2. Respondent New York Diesel Institution, Inc., is now, and has been for several years last past, 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 concerning Diesel engines, air-conditioning and other trade subjects, which said courses of study and instruction are pursued in whole or in part by correspondence through the medium of the United States mails. Said respondent corporation operates and has for some time past operated resident and correspondence schools at Newark, N. J., and Albany, N. Y., for which it solicits students through agents and advertisements in various States of the United States and in the District of Columbia. Said respondent corporation in the course and conduct of its said business caused and now causes its said courses of study and instruction to be transported from its said place of business in Newark, N. J., to, into and through States of the United States other than New Jersey to various purchasers thereof in such other States and in the District of Columbia. During the time mentioned herein, the respondent New York Diesel Institution, Inc., has been in active and substantial competition with other corporations and with firms and individuals located in various States of the United States 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 concerning Diesel engines, air-conditioning 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 in whole or in part by correspondence.

PAR. 3. Respondents 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. One such representation has been made by the use of advertisements under the heading: "Wanted: Diesel Operators" 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, give 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 said respondent corporation is the following:

WANTED: DIESEL OPERATORS

Installation, Sales, Service, Trouble Shooters, Engineering, All Departments,
to Train Immediately for Jobs.

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BECOME A DIESEL EXPERT

Mechanically minded men of good character, to prepare for service in this vast new industry. Our aim—a job for every graduate. Day, evening and home study, with practical shop work at one of our completely equipped institutes. Many students now in splendid, well paying positions. Low tuition with small monthly payments. Vocational advisor in Calais for one week only to select a limited number of men for this work. Write immediately for complete information to H. S. Sutton, care Calais Advertiser.

NEW YORK DIESEL INST., INC.

Albany, N. Y., Newark, N. J., and Boston, Mass.

Respondent, through its sales representatives, further represents that employment is available with good pay and promises and has promised for some time last past to secure and aid in securing said employment for its graduates. That a job is offered the prospective student at the completion of his training is further implied by the information requested on a questionnaire used by respondent for enrolling students, much of which has no special bearing upon the applicant's specifications to take the courses offered. Among the inquiries made in said questionnaire are the following:

Are you willing to accept work in a foreign country?

Have you ever handled crews?

If you qualify for this enrollment are you willing to allow this institution to use your name as a representation in your district when you are employed in the Diesel Industry?

In truth and in fact, respondents merely have instruction courses for sale and have no regular full or part-time work to offer to prospective students or to students who complete their courses.

PAR. 4. Respondents, by use of said advertisements and by other statements of like effect in advertisements, or by salesmen, represent that their offers to enroll students for training are made to a limited number from a community or to persons having special qualifications, or that such offers are otherwise limited to students capable of carrying on the training successfully to the end that graduates will be a credit to the industry. Examples of statements to this effect are the following:

For the protection of the Institution and the student the Institution reserves the right to request the return of all lessons, binders, or any school materials in his possession and to refund all moneys, less entrance fee, to the student if the school decides that the student is not capable of carrying on this training successfully. It is the purpose of the Institution to graduate only those who will be a credit to the industry.

In truth and in fact, respondents' offers are not made only to a limited number and no special selection of students is made by respondents. Solicitation and acceptance of students are limited generally speaking only by the number of prospects available.

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PAR. 5. Respondents, through advertising matter concerning their courses of instruction and through their sales representatives in selling said courses, make and have made for some time last past many exaggerated and misleading statements and representations in regard to their schools to the effect that classes, including shop training with Diesel machinery installed for this purpose, would be held locally under competent instructors, thus enabling students to finish the entire course locally. Among such representations is the following: That respondents had already opened a school in Providence, R. I., and that the school would be fully equipped with appropriate machinery and able Diesel teachers.

In truth and in fact, the representations referred to are misleading in that they are greatly exaggerated and not accurate statements of the facts involved. Respondents do not hold classes locally, including shop training with Diesel machinery installed for this purpose, so as to enable students to finish their entire course locally. Respondents had not and have not opened a school, fully equipped with appropriate machinery and able Diesel teachers, at Providence, R. I.

PAR. 6. 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 in commerce as herein set out, has had and now has the tendency and capacity to and does mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations as set out in paragraphs 3 to 5, inclusive, 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 positions, employments, trades, callings, and professions, including courses of the same general kind as those offered by respondents.

There are among 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 and in the District of Columbia.

PAR. 7. The above acts and practices 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 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 the 9th day of May 1939, issued its complaint against respondents New York Diesel Institution, Inc., a corporation, and Henry M. Kamrath, John L. Snider, Everett K. Pangburn, Richard B. Cornell, and Frank F. Hayward, individually and as officers of said corporation, charging them with the use of 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, and thereafter served its complaint upon the respondent New York Diesel Institution, Inc., a corporation. Complaint was not served upon the individual respondents and their whereabouts are to the Commission unknown.

After the issuance of said complaint and the filing of answer on May 19, 1939, by respondent, New York Diesel Institution, Inc., testimony and other evidence in support of the allegations of said complaint were introduced by Curtis Shears, attorney for the Commission, and in opposition to the allegations of the complaint by Bernard A. Green, attorney for the respondent, New York Diesel Institution, Inc., before Randolph Preston, a duly appointed trial examiner of said Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission.

On July 31, 1939, with the permission of the Commission, the answer first filed was withdrawn and an answer admitting all the material allegations of the complaint was filed by respondent, New York Diesel Institution, Inc. No answers were filed or appearances entered on behalf of the individual respondents herein.

Thereafter the proceeding regularly came on for final hearing before the Commission as to the respondent, New York Diesel Institution, Inc., on the said complaint, the answer thereto, testimony and other evidence and brief in support of the complaint (said respondent not having filed brief, and oral argument not having been requested); and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, New York Diesel Institution, Inc., is now and for several years last past has been a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business located at 47 Rector Street, in the city of Newark, State of New Jersey.

PAR. 2. Said respondent is now and for several years last past has been engaged in the sale and distribution in commerce between and among various States of the United States and in the District of Columbia of courses of study and instructions concerning Diesel engines and other trade subjects, which said courses of study and instruction are conducted in whole or in part by correspondence through the medium of the United States Mails. Said respondent has had as an affiliate, for some time past, a similar school the New York Diesel Institution of Albany, N. Y., a separate corporation, which in July 1937, transferred its sales staff and student contracts to said respondent.

Prior to July 20, 1938, Henry M. Kramrath, John L. Snider, Everett K. Pangburn, Richard B. Cornell, and Frank F. Hayward were in active control of the management of said respondent but on November 10, 1938, Mr. W. D. Dawson, who is now president of respondent corporation, was placed in full charge of its affairs and continued in full charge up to date of the hearings in this proceeding.

Said respondent corporation, in the course and conduct of its business, has for some years past caused and now causes its courses of study and instruction to be transported from its place of business in Newark, N. J., to and through various States of the United States other than the State of New Jersey, to various purchasers thereof in such other States and in the District of Columbia.

PAR. 3. During the times mentioned herein, the respondent has been in active and substantial competition with other corporations and with firms and individuals located in various States of the United States and in the District of Columbia engaged in the sale and distribution of courses of study concerning Diesel engines and other trade subjects, and also of courses of study and instruction intended for preparing students for various positions, employments, trades, callings and professions, all of which are conducted in whole or in part by correspondence.

PAR. 4. Respondent, in the soliciting of students to enroll in its said courses, has made many misleading representations to the general effect that it will procure jobs for students in addition to giving

courses of instruction as aforesaid. Among such representations used by respondent in its advertisements to the public are the following:

WANTED: DIESEL OPERATORS

Installations, Sales, Service, Trouble Shooters, Engineering, All Departments, to Train Immediately for Jobs.

BECOME A DIESEL EXPERT

Mechanically minded men of good character to prepare for service in this vast new industry. Our aim—a job for every graduate. Day, evening and home study, with practical shop work at one of our completely equipped institutes. Many students now in splendid, well paying positions. Low tuition with small monthly payments. Vocational advisor in Calais for one week only to select a limited number of men for this work. Write immediately for complete information to H. S. Sutton, care Calais Advertiser.

NEW YORK DIESEL INSTITUTE, INC.

Albany, N. Y.

Newark, N. J.

Boston, Mass.

Respondent has never conducted any such school in Boston, Mass.

Said respondent, through the above advertisements and others of similar character and import, and also through its sales representatives, has represented to prospective and potential students that it will make available employment with good pay to those students who complete its courses. Respondents merely have instruction courses for sale, and have no regular full or part time work to offer to prospective students or to students who complete said courses, and respondent did not obtain employment for any student who was a graduate of its school, but failed in many instances to be of any assistance to its graduates when requested to do so.

PAR. 5. In addition to the misrepresentations made to prospective students by the respondent as aforesaid, the respondent represented through its advertisements and its sales representatives that its offer of training was made only to a limited number of students in any given territory, and to persons having special qualifications for carrying on the courses of study offered by respondent; whereas, in truth and in fact, respondent's offers were made to the general public, and all students who could pay the price of the course, or installments thereon, were accepted.

Respondent further represented through its advertisements and by its sales representatives, that classes including shop training with Diesel engines and machinery installed in its buildings would be held in various localities other than Newark, N. J., under competent instructors; whereas, in truth and in fact, no such training was offered other than at Newark, N. J., and the said instruction so

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afforded at this point was of little value and was not given by competent instructors.

PAR. 6. The courses of study offered by said respondent, if intelligently pursued by a student of average ability, are not such as will qualify said student, without other experience or training, as a Diesel engineer, expert operator or skilled workman on Diesel engines, in a Diesel factory or in the operation of a Diesel engine.

PAR. 7. A substantial number of prospective students believed the representations set out herein to be true and in reliance thereon were thereby induced to purchase said respondents' courses of instruction.

PAR. 8. Said respondent has had many competitors in interstate commerce in the educational field of instruction in Diesel engineering, who do not make use of unfair representations in Diesel engines and other trade subjects and methods of advertising similar to those employed by the respondent, and such competitors were and are injured by the unfair methods thus employed by said respondent and a substantial number of students, believing the aforesaid representations to be true and in reliance on said representations, have enrolled for said courses and business has thereby been unfairly diverted from said competitors to said respondent.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice of the public and of respondent's 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 of the Commission, the testimony and other evidence in support of the allegations of the complaint and in opposition thereto, and the answer of respondent, New York Diesel Institution, Inc., a corporation, in which answer said respondent admits all the material allegations of fact set forth in said complaint and states that it waives 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 respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, New York Diesel Institution, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with

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the offering for sale, sale and distribution of courses of study concerning Diesel engines and other trade subjects and other courses of study and instruction intended to prepare students for various positions, employments, trades, callings, and professions, which are conducted in whole or in part by correspondence, in interstate commerce or in the District of Columbia, do forthwith cease and desist:

1. From representing directly, indirectly or by inference that employment is available with good pay to any student who completes one of its courses and that respondent will procure or aid in the procuring of said employment for students taking one of its courses of instruction.

2. From representing directly, indirectly or by inference to prospective students that its offer of training is made only to a limited number of students in any given territory and to persons having special qualifications for carrying on the courses of study offered by respondent.

3. From representing directly, indirectly or by inference that classes including ship training with Diesel engines and machinery installed in its buildings will be held in various localities other than Newark, N. J., under competent instructors.

4. From representing directly, indirectly or by inference that the courses of study offered by it, if diligently pursued by a student of average ability, are such that they will enable such student, without other experience or training, to become qualified as a Diesel engineer, expert, operator, or skilled workman on Diesel engines.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to Henry M. Kramrath, John L. Snider, Everett K. Pangburn, Richard B. Cornell and Frank F. Hayward, for the reason that the complaint and notice of hearings were not served upon said individual respondents because their whereabouts were unknown.

It is further ordered, That the respondent New York Diesel Institution, Inc., 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
UNITED STATES BUSINESS CARD COMPANY, UNITED
STATES STATIONERY CORPORATION, LEWIS WEIS-
MAN, INDIVIDUALLY AND TRADING AS INCOME
RECORD PUBLISHING COMPANY

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

Docket 3784. Complaint, May 6, 1939—Decision, May 31, 1940

Where two corporations, and an individual who was president and treasurer thereof and majority stockholders and director, and controlled sales policy and acts and practices of corporation still active as below set forth, engaged for a number of years in sale of stationery and business forms to buyers in the District of Columbia and in other States, in substantial competition with others engaged in sale and distribution of similar products for similar purposes in commerce as aforesaid, and who neither misrepresent their goods as approved by the United States Government nor themselves as the world's largest manufacturers of business cards exclusively—

- (a) Represented that certain of their business forms were approved by the United States Government through placing thereon the phrase "U. S. Approved," facts being none of the forms sold by them was ever approved by or made according to the specifications of the Government or any agency thereof, and they were not sellers of merchandise approved by the United States Government, purchase of which many buyers prefer; and

Where one of said corporations which, as aforesaid, subsequently became inactive—

- (b) Represented that it was the world's largest manufacturer of business cards exclusively, facts being neither it nor its successor made such cards exclusively during period of time concerned, and corporation in question was not world's largest manufacturer of such products during entire period of time involved;

With capacity and tendency to mislead and deceive a substantial portion of purchasing public into erroneous and false belief that such representations were true and to induce number of said public to buy substantial quantity of said stationery and business forms which, lacking such belief, they would not purchase, and with result, as direct consequence of such belief, induced by representations as aforesaid, that number of said public were caused to buy substantial quantities of said products, and trade was diverted unfairly to them from their competitors aforesaid, who truthfully advertise their stationery and forms:

Held, That such acts and representations were to the prejudice and injury of the public and competitors, and constituted unfair methods of competition in commerce and unfair and deceptive practices therein.

Before *Mr. John W. Addison*, trial examiner.

Mr. L. E. Creel, Jr., for the Commission.

Mr. R. Robert Hochman, of New York City, for respondents.