

Syllabus

IN THE MATTER OF

NATIONAL INSTITUTE, INC., DOING BUSINESS AS
DIESEL ENGINES TRAINING, AND CLAYTON R. HAST-
INGS, SETH E. ROWDABAUGH AND JOHN C. SMITHCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 3417. Complaint, May 12, 1938—Decision, June 30, 1941*

Where a corporation engaged in competitive interstate sale and distribution of correspondence courses of study and instruction in various subjects, including one on Diesel engines, in sale of which it operated under trade name "Diesel Engines Training"; the president and general manager thereof, who was also a stockholder and director, and formulated, directed, and controlled its policies and practices; and a second individual who was secretary and treasurer thereof and also a stockholder and director and, subject to general supervision of the other, in general charge of its office;

In offering their course of instruction on Diesel engines by distributing circulars through the mails or distributing agencies in various sections of the country, and through 80 or more salesmen, supplied with certificates of identification and sales kit containing promotional and sales literature, who contacted and solicited those sending in the postage prepaid postal cards with which circulars aforesaid were accompanied, bearing the printed request to "Please send me information on how to secure a JOB in the DIESEL MOTOR and ENGINE INDUSTRY in the shortest possible time"; without specifically disclosing, as a rule, that a correspondence course was being offered, but presenting the matter so as to make it appear that the prospect was being afforded opportunity to apply for Diesel engine training, with only a limited number of applicants accepted from the particular vicinity—

- (a) Represented that because of the great increase in the use of Diesel engines during recent years, unusual and unprecedented opportunities for employment in their operation and maintenance were available to persons completing their said course of study, and that their school was able to and did obtain employment for its students upon completion of said course, and that employment was assured or guaranteed upon such completion;
- (b) Represented that their salesmen soliciting prospective students were themselves representatives of Diesel engine manufacturers, that their course of study was offered by or in connection or cooperation with such manufacturers, and that employment would be given to prospective students by such manufacturers upon the completion of their said course of study; and
- (c) Represented that employment would be provided the student while he was pursuing their course of study;

The facts being that, while there had been, during recent years, substantial increase in the use of Diesel engines, such increase did not open up any unusual field for employment in either manufacture or transportation, employees who theretofore operated the form of power displaced by the Diesel engines being made use of to operate the new engine or equipment; it was impossible for said corporation and individuals to obtain employment for

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any substantial number or percentage of their graduates, and employment in no event could be insured or guaranteed; none of their agents was a representative of Diesel engine manufacturers, nor was their course offered by or in connection with such manufacturers, and no employment was provided their students while pursuing the course of study;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to their course of study and the opportunities for employment afforded thereby, and to cause it to purchase the course as a result of such erroneous belief, with result that trade was diverted unfairly to them from their competitors:

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

Before *Mr. Arthur F. Thomas* and *Mr. William C. Reeves*, trial examiners.

Mr. R. A. McOuat for the Commission.

Mr. Seth E. Rowdabaugh, of Warsaw, Ind., for respondents.

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 National Institute, Inc., a corporation, doing business under the name and style of Diesel Engines Training, and Clayton R. Hastings, Seth E. Rowdabaugh and John C. Smith, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent National Institute, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana with its office and principal place of business at 408 Western Reserve Building in the city of Muncie in said State. Respondent Clayton R. Hastings, is the president of said corporation, respondent Seth E. Rowdabaugh is its vice president, and respondent John C. Smith, is its secretary-treasurer. The address of said Seth E. Rowdabaugh is Warsaw, Ind., while the address of the other officers named is the same as that of respondent corporation.

PAR. 2. Respondent, National Institute, Inc., is now, and has been for more than 1 year last past, engaged under the name and style of Diesel Engines Training, in the sale and distribution in commerce between and among the various States of the United States of a course of study and instruction on the subject of Diesel engines, which said

course of study and instruction is given and pursued through the medium of the United States mail supplemented in some cases by a short period of instruction at Muncie. Said respondent corporation, in the course and conduct of said business under the said trade name and during the time aforesaid, caused and does now cause its said course of study and instruction to be transported from its said place of business in Indiana to, into and through States of the United States other than Indiana to the various purchasers thereof in such other States. The individual respondents are managers and stockholders of the corporate respondent, and direct and control its sales policies and business activities. The individual respondents participated and cooperated in the acts and practices herein charged.

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 of the United States and in the District of Columbia of courses of study and instruction on the subject of Diesel engines as well as in other trade subjects and various other kinds of courses, all of which are pursued by correspondence. Said respondent corporation 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 their said course of study and instruction with such other individuals, firms, and corporations.

PAR. 4. Said respondents, directly or through representatives and agents designated and appointed by respondent corporation under and by the supervision and direction of its said officers, have made many misrepresentations to prospective students in soliciting the sale of and in selling said course of study and instruction, among which are the following:

1. That there is a great demand for graduates of the school conducted by respondents as aforesaid and that employment is available and assured upon completion of the course offered.

2. That the school operated by respondents as aforesaid has working arrangements with manufacturers of Diesel engines and other business concerns to place its graduates in employment upon completion of the course.

3. That said school will secure employment for the prospect solicited in the Diesel industry upon completion of the course offered and that it does secure such employment for its graduates as a regular thing.

4. That a job is guaranteed upon completion of the course offered.

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5. That the agent soliciting the prospective student is a representative of a Diesel engine manufacturer and that such manufacturer will furnish the course of instruction offered and also employment on completion of the course.

6. That employment will be provided the student while he is pursuing the course offered.

PAR. 5. Respondent corporation and its officers, the individual respondents herein, have contributed to the foregoing misrepresentations made by representatives of said school and to the effect thereof on prospective students by exaggerated and misleading statements and representations in the printed matter and advertising literature of said school. Among such statements have been the following:

A great field is opening up in DIESEL MOTORS AND ENGINES . . .

DIESEL POWER is sweeping the world . . .

Now, due to the fast development of DIESEL POWER, a number of companies in the DIESEL MOTOR INDUSTRY are cooperating with us to prepare and recommend men to install, supervise, and maintain Diesel equipment . . .

Please send me information on how to secure a JOB in the DIESEL MOTOR and ENGINE INDUSTRY in the shortest possible time.

The misleading effects of the representations above quoted and of the misrepresentations made by the agents of said school are further aggravated and enhanced by the use of the name "Diesel Engines Tr." on the printed matter used by said school by means of which the nature of the business conducted by respondents is made ambiguous.

PAR. 6. In truth and in fact there are no unusual demands for men with training such as that offered by respondents in the field for which such training is offered. Such demands as may exist in such field are met in great part by employers by placing men already in their employ in the openings that arise and training them in the work involved. Such opportunities as may exist for men who take respondents' training or training of similar kind 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 in which the pay is comparable to that of mechanics, minor operating engineers, trades and the like. Employment is not generally available, nor is there any unusual number of new employees in the field for which respondents offer training, nor is such employment assured to the graduates of the school conducted by respondents. Respondents have no working arrangements with manufacturers of Diesel engines by which such manufacturers give employment to any appreciable number of the graduates of said school and no employment is furnished as a general thing to the graduates of said school upon completion of their courses. The school conducted by respondents does not guarantee jobs to its

graduates and representations to that effect by the agents of said school are false and unwarranted. The sales agents employed by said school do not represent any manufacturer, nor is the course offered given in connection with any manufacturing establishment engaged in the manufacture of Diesel engines or kindred products. Neither is employment furnished while students are pursuing their courses by correspondence.

PAR. 7. The foregoing representations used by respondents as aforesaid in offering for sale and selling said course of study and instruction have had and now have the tendency and capacity to and do in fact mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations as set out in paragraphs 4 and 5 hereof are true, and to induce them to purchase the said course of study and instruction on account thereof. Thereby trade is diverted unfairly to the school conducted by 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 calling, including courses of the same general kind as that offered by the school conducted by respondents.

There are among the competitors of the school conducted by respondents 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 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. 8. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice of the public and of the competitors of the school conducted by respondents and constitute unfair methods of competition 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 May 12, 1938, issued and thereafter served its complaint in this proceeding upon the respondents, National Institute, Inc., a corporation doing business under the name and style of Diesel Engines Training, and Clayton R. Hastings, Seth E. Rowdabaugh and John C. Smith, individually and as officers of said corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said

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act. After the issuance of the complaint and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by R. A. McQuat, attorney for the Commission, and in opposition to the allegations of the complaint by Seth E. Rowdabaugh, attorney for the respondents, before trial examiners of the Commission theretofore duly designated by it, and the testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions thereto, and brief in support of the complaint (respondents 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 National Institute, Inc., is a corporation organized and doing business under the laws of the State of Indiana, with its office and principal place of business located at 408 Western Reserve Building, Muncie, Ind. Said respondent is now, and since 1936 has been, engaged in the sale and distribution of correspondence courses of study and instruction in various subjects, including a course on Diesel engines. In selling its course on Diesel engines said respondent operates under the trade name Diesel Engines Training.

In the course and conduct of its business said respondent causes, and since 1936 has caused, its courses of study, when sold, to be transmitted from its place of business in the State of Indiana through the United States mails to the purchasers thereof located in various other States of the United States and in the District of Columbia. Said respondent maintains, and since 1936 has maintained, a course of trade in its courses of study in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Said respondent is now, and since 1936 has been, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the sale and distribution, in commerce among and between the various States of the United States and in the District of Columbia, of correspondence courses of study and instruction similar to the courses conducted by said respondent.

PAR. 3. Respondent Clayton R. Hastings is president and general manager of the corporate respondent and is also a stockholder and

director in the corporation. He is in general charge of the operation of the business and formulates, directs, and controls the policies and practices of the corporation. The mailing address of said respondent is the same as that of the corporate respondent.

Respondent John C. Smith is secretary and treasurer of the corporation and is a stockholder and director therein. He is also the office manager of the corporation and, subject to the general supervision of respondent Hastings, is in general charge of the corporation's office. He has participated actively in the conduct of the business and in the practices of the corporation. The mailing address of said respondent is the same as that of the corporate respondent.

The corporate respondent and respondents Clayton R. Hastings and John C. Smith have all acted in conjunction and cooperation in carrying out the acts and practices hereinafter described.

Respondent Seth E. Rowdabaugh is vice president of the corporate respondent and is also its attorney. The Commission finds however that said respondent has had no active part in the business activities of the corporate respondent, and has not participated actively in the methods or practices hereinafter described. The postoffice address of said respondent is Warsaw, Ind.

The term "respondents" as hereinafter used will, unless the contrary is indicated, apply only to the corporate respondent and respondents Clayton R. Hastings and John C. Smith.

PAR. 4. Respondents offer primarily two courses of instructions, the first known as Diesel Engines Training and the second as Air Conditioning and Refrigeration Training. Formerly a civil service course of study was also offered but this was discontinued. Ordinarily, about 2,000 students are enrolled in the course in Diesel engines training. Respondents employ approximately 25 salaried employees, including five instructors in Diesel engines training.

PAR. 5. For the purpose of selling their course of instruction on Diesel engines, the respondents have organized numerous sales districts throughout the United States, with a district manager or superintendent in charge of each district. In the home office of respondents there is a general sales manager who has supervision over the district managers. The district managers are primarily charged with the employing of salesmen or solicitors to sell the courses of study, but the employing of all salesmen is subject to the approval and general supervision of the home office in Muncie, Ind., and all salesmen are under the general supervision and control of the respondents from the home office. Respondents presently have in their employ some 80 or more salesmen selling the course in Diesel training. As soon as a salesman is employed he is supplied by the respondents with

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a certificate of identification, and is also supplied with a sales kit containing various promotional and sales literature, including articles on Diesel engines, samples of the lessons supplied to students by the respondents, etc.

The course of study in Diesel engines training comprises 33 lessons to be studied by correspondence, together with 2 weeks training in respondents' place of business in Muncie, Ind. Eight to 12 months are usually required for the completion of the course. The cost of the course of instruction is \$165.00, of which a small amount, usually \$10.00, is paid by the student at the time he subscribes for the course. The remaining amount is paid in monthly installments. All salesmen of the respondents work entirely on a commission basis. They are allowed to retain a percentage of the down payment, and as subsequent payments are made by the students a part of such payments is paid over to the salesman by the respondents or credited to the salesman's account.

PAR. 6. The evidence shows, and the Commission finds, that the plan or method pursued by the respondents in the sale of their course of instruction on Diesel engines is substantially as follows: The first step in the sales campaign is the distribution of a circular among prospective purchasers of the course, this distribution being made by respondents through the mails or by means of distributing agencies located in various sections of the country. The circular bears the signature "Diesel Engines Tr." and originally read as follows:

IT TAKES POWER TO GET AHEAD

If you are dissatisfied with your chances of getting ahead and are anxious to do something about it, here is the solution to your problem. A great field is opening up in DIESEL MOTORS AND ENGINES for ambitious men between the ages of 18 and 50 who are mechanically inclined. DIESEL POWER is sweeping the world, and why shouldn't it? It is the most economical power known to man. Diesel engines will burn the very poorest grade of oil with relatively high efficiency.

For these and many other reasons, Diesel Power is rapidly and surely replacing every other form of power, and it is destined in a few years to be the PRIME motive power for driving generators, automobiles, airplanes, locomotives, trucks, buses, tractors, steamships, hoists, cranes, as well as a great many other kinds of machinery. Now, due to the fast development of Diesel Power, we are cooperating with various corporations to prepare and recommend men to install, supervise, and maintain Diesel equipment. Do you want one of these jobs? We must have men right away, or corporations that are promoting the Diesel industry will be seriously delayed. They cannot hope to make progress unless men are available who understand Diesel engineering. That is why we are making such an effort to fulfill our part in developing competent men for these jobs. Now, don't say you have never had a chance to get a good job if you fail to send in the enclosed card.

Therefore, it is reasonable to believe that those men who enter this great and fast growing industry will ultimately reach a goal that will surpass all others. All that it is necessary for you to do to find out how you may secure one of these positions that are open to you in this field is to fill out the enclosed card and drop it in the mail box. The card doesn't even require a stamp. DON'T DELAY! Send in this card AT ONCE.

After this circular had been in use for a year or more, respondents made certain changes in its language, but the substance remained essentially the same.

The circular is in all instances accompanied by a postal card on which postage is prepaid by respondents, and which is to be filled out and signed by those desiring further information with respect to Diesel Engines Training. The pertinent portion of this card reads as follows:

Please send me information on how to secure a JOB in the DIESEL MOTOR and ENGINE INDUSTRY in the shortest possible time.

When the card is received at the respondents' office in Muncie, Ind., the name of the sender, together with his address and other pertinent information, is forwarded by the respondents to the particular sales district in which the prospect resides, and this information is turned over to one of respondents' salesmen, who proceeds to contact the prospect and undertake to sell him the course of instruction.

PAR. 7. The record contains the testimony of numerous persons residing in various sections of the United States who were solicited by respondents' agents, and many of whom purchased the course of study as a result of such solicitation. The testimony of these witnesses shows, and the Commission finds, that among the statements and representations made by respondents through their agents to prospective purchasers were the following:

1. That because of the great increase in the use of Diesel engines during recent years, unusual and unprecedented opportunities for employment in the operation and maintenance of such engines are available to persons completing respondents' course of study.

2. That respondents' school is able to and does in fact obtain employment for its students upon completion of the course of study, and that employment is in fact assured or guaranteed upon completion of such course.

3. That the agents or salesmen soliciting prospective students are themselves representatives of Diesel engine manufacturers, that respondents' course of study is offered by or in connection or cooperation with such manufacturers, and that employment will be given to prospective students by such manufacturers upon the completion of respondents' course of study.

4. That employment will be provided the student while he is pursuing respondents' course of study.

The Commission further finds that the effect of certain of these oral representations made by the respondents through their agents was increased and accentuated by the circular referred to above. Especially is this true as to the representation with respect to the unusual opportunities for employment existing in the Diesel engine field for persons completing respondents' course of study, and the representation that respondents' course of study is offered by or in connection or cooperation with manufacturers of Diesel engines.

PAR. 8. No specific reference is made by respondents in either their circular or the postal card which accompanies it to a correspondence course of study, nor do respondents' agents usually disclose to the prospective purchaser that they are undertaking to sell such prospect a correspondence course of study. Rather, the matter is presented to the prospect in such manner as to make it appear that the prospect is being afforded an opportunity to "apply" for Diesel engine training. The prospect is frequently told by the agent that only a certain number of applicants for the training can be accepted from that particular vicinity. The document presented to the prospect for execution begins with the sentence, "Please accept my application for your complete Diesel engine training." This document however is, in fact, a contract under which the prospect subscribes for respondents' correspondence course of study and agrees to pay a stipulated amount therefor.

PAR. 9. The evidence shows, and the Commission finds, that while there has been during recent years a substantial increase in the use of Diesel engines, such increase has not resulted in opening up any unusual field for employment. The testimony of competent experts introduced as witnesses at the instance of the Commission discloses that almost invariably a Diesel engine purchased by a manufacturing plant simply takes the place of some other form of power formerly used by the purchaser, and that usually the employees who formerly operated the old equipment are used to operate the Diesel engine. After a limited amount of instruction such employees are fully capable of operating the Diesel engine, and it is usually unnecessary that any new persons be employed.

This is true in the field of transportation as well as in the field of manufacture. When a railroad changes from steam or some other form of motive power to Diesel engines, the same train crews who operated the old equipment are almost invariably used on the Diesel trains. Likewise, concerns substituting Diesel engines for gasoline engines in the operation of motor trucks and buses use their old

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employees to operate the new equipment. Usually an employee who has operated a truck or bus propelled by a gasoline motor is equally as competent to operate a truck or bus propelled by a Diesel engine. Shop crews who have maintained old equipment are ordinarily retained to maintain the Diesel equipment.

The Commission therefore finds that there is no factual basis for respondents' representation that great and unusual opportunities for employment in the Diesel engine field are open to graduates of respondents' school. While respondents may have been able, in exceptional cases, to find employment for a few of their graduates, it is impossible for respondents to obtain employment for any substantial number or percentage of their graduates. In no event can employment be assured or guaranteed.

The Commission further finds that none of respondents' agents or salesmen are representatives of Diesel engine manufacturers, nor is respondents' course of study offered by or in connection or cooperation with such manufacturers. No employment is provided respondents' students while they are pursuing the course of study.

PAR. 10. The Commission therefore finds that the representations made by the respondents through their advertising literature and through their agents and salesmen, as aforesaid, are grossly exaggerated, false, deceptive, and misleading.

PAR. 11. The Commission further finds that the use by the respondents of the acts and practices herein described has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondents' course of study and the opportunities for employment afforded thereby, and to cause such portion of the public to purchase respondents' course of study and instruction as a result of the erroneous and mistaken belief engendered by the respondents. In consequence, trade has been diverted unfairly to the respondents from their competitors.

CONCLUSION

The acts and practices of respondents National Institute, Inc., Clayton R. Hastings and John C. Smith, as herein found, are all to the prejudice and injury of the public and of respondents' competitors, and constitute unfair methods of competition 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 answer of respondents, testimony and other evidence taken before trial examiners

of the Commission theretofore duly designated by it, in support of the allegations of the trial examiners upon the evidence and the exceptions thereto, and brief filed by R. A. McOuat, attorney for the Commission (no brief having been filed by respondents and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that certain of the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents National Institute, Inc., a corporation, trading as Diesel Engines Training, or trading under any other name, its officers, and Clayton R. Hastings and John C. Smith, individually and as officers of said corporation, and said respondents' 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 their course of study or instruction on Diesel engines, do forthwith cease and desist from representing:

1. That unusual or unprecedented opportunities for employment in the Diesel engine field are available to persons completing respondents' course of study.

2. That respondents obtain employment for their students upon the completion of respondents' course of study, or that employment is assured or guaranteed to such students.

3. That respondents' agents or salesmen are representatives of Diesel engine manufacturers.

4. That respondents' course of study is offered by or in connection or cooperation with Diesel engine manufacturers, or that employment will be given to respondents' students by such manufacturers.

5. That employment will be provided respondents' students while they are pursuing said course of study.

It is further ordered, That said 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.

It is further ordered, That this proceeding be, and it hereby is, dismissed as to respondent Seth E. Rowdabaugh.

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IN THE MATTER OF

ISIDORE HALPERIN AND MORRIS ORENSTEIN TRADING
AS WELLWORTH SALES COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3470. Complaint, June 30, 1938—Decision, June 30, 1941*

Where two individuals engaged in the competitive interstate sale and distribution of watches, cameras, china and silverware, clocks, cigarette lighters, jewelry, cosmetics, bedding, kitchenware, and other articles of merchandise—

- (a) Made use of sales plan or method involving distribution of advertising or sales circulars and pull cards to prospective customers or representatives to induce them to sell said merchandise by means of a game of chance, gift enterprise, or lottery scheme, under a plan by which the particular article of merchandise received by customer and price paid therefor were determined and disclosed by pull card tab selected and detached by him, and operator of card, after selling all articles listed thereon and remitting amounts charged therefor to said individuals, who thereupon shipped him the merchandise thus sold, was compensated by an article which they included for him as a premium, or at his option, by deduction of cash premium from amount remitted; and thus, notwithstanding inconsistent and subterfuge "NOTICE TO PURCHASERS" on said pull tab device, advising customer of privilege of buying given article at price shown, or declining it,—

Supplied to and placed in the hands of others means of conducting lotteries in the sale and distribution of their said merchandise in accordance with aforesaid sales plan, involving game of chance to procure an article of merchandise at much less than its normal price, contrary to established public policy of the United States Government and in violation of criminal laws, and in competition with many who, unwilling to use such or other method contrary to public policy, refrain therefrom;

With result that many persons were attracted by their said sales method and by the element of chance involved therein and were thereby induced to buy and sell their merchandise in preference to that of their said competitors, whereby trade was unfairly diverted from such competitors to them;

- (b) Made such false and misleading representations and statements in aforesaid advertising circulars as "Free gifts—valuable premiums without cost to you" and "Two extra surprise gifts free"; facts being that none of their articles of merchandise designated as premiums or gifts was given away "free," but instead was delivered as compensation for services rendered; the price thereof was included in that of other articles of merchandise which representatives had to sell, or procure the sale of, before receiving such premiums or gifts; and, for a number of premiums, certain sums of money had to be paid in addition to services rendered; and
- (c) Made such false and misleading representations and statements therein as "42 pce. well-known silver tableware"; when in fact their merchandise designated as "silver tableware" was not made of solid silver, but of metal plated with silver;