

Syllabus

IN THE MATTER OF

AMERICAN INSTITUTE OF BUSINESS ADMINISTRATION, INC., AND PAUL KLINE

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

Docket 4195. Complaint, July 25, 1940—Decision, July 24, 1941

Where a corporation and an individual, who was its principal stockholder and managed and controlled its business, engaged in the interstate sale and distribution of correspondence courses in accounting and business law under a plan by which it circularized public accountants throughout the country with a view to having an accountant in each locality secure names of prospective students, to whom it sent advertising matter, employing the accountants to assist groups of its students and compensating them according to the number of students in the respective group—

- (a) Made use of corporate name including words "American Institute of Business Administration, Inc.", on its letterheads and in advertising matter circulated to prospective students, accountants, and others, when in fact it was not an Institute, but was engaged in a private commercial enterprise;

With effect of creating the erroneous impression that it was a national organization of business executives, administrators, accountants, or other special groups of representative business, or the medium of an organization through which instruction or training was given as a public service;

- (b) Augmented aforesaid misleading impression through such statements, on letterheads and printed matter as "Local chapters in principal cities of the United States * * *"

- (c) Further increased said misleading impression through describing its form of application for instruction as "Application for Membership," designating its enrolled students as "members" and its study groups as "local chapters"; and

- (d) Represented that its activities were national and international in scope, through such statements as aforesaid, and "Representatives in principal cities of the United States, Canada, Porto Rico, Cuba, Philippine Islands," "* * * during the twelve years it has been in operation several thousand accountants throughout the United States, Canada, Porto Rico, Hawaii and the Philippine Islands have participated," and "* * * students all over the United States and Canada," facts being it had less than 100 pupils in the spring of 1938, and, some 2½ years later, about 21 located in six States and Porto Rico.

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

Before *Mr. Lewis C. Russell* and *Mr. William C. Reeves*, trial examiners.

Mr. William L. Pencke for the Commission.

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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 American Institute of Business Administration, Inc., a corporation, and Paul Kline, individually and as President of American Institute of Business Administration, Inc., hereinafter referred to as respondents, have violated the provisions of 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, American Institute of Business Administration, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 126 Liberty Street in the city of New York, State of New York. Respondent, Paul Kline, is president and principal stockholder of the respondent corporation with his principal office and place of business at the aforesaid address, and he formulates, controls, and directs the policies and practices of said corporation.

PAR. 2. Respondent, American Institute of Business Administration, Inc., is now and has been for more than 2 years last past engaged in the sale and distribution in commerce between and among the various States of the United States of courses of study and instruction in accounting, business law, and Federal taxation, which are pursued by correspondence through the medium of the United States mails. The respondent corporation, in the course and conduct of said business during the time aforesaid, causes its said courses of study and instruction to be transported from its said place of business in New York to purchasers thereof located in various States of the United States other than the State of New York. There is now, and has been at all times hereinafter mentioned, a course of trade in said courses of instruction so sold and distributed by said corporate respondent in commerce between and among various States of the United States.

PAR. 3. Said corporate respondent, in soliciting the sale of and in selling its said courses of study and instruction, makes use of its corporate name "American Institute of Business Administration, Inc.," on letterheads and on advertising and printed matter circulated to students, prospective students, public accountants and other members of the general public in various States of the United States. The use of said name in such connection is misleading in that it has the tendency and capacity to create the erroneous impression that

said respondent is a national organization of business executives, administrators, accountants, or other special group of representatives of business or that said respondent is the medium of such an organization through which instruction or training is given as a public service. Said misleading impression is further augmented by statements and phrases on letterheads and printed matter circulated as aforesaid of which the following is an example:

LOCAL CHAPTERS
In Principal Cities
of the United States,
Puerto Rico, Cuba

which import or imply that said corporate respondent is the parent head of nationally organized local groups of business executives, administrators, accountants, or other special representatives of business and that the whole comprises an organized "Institute" of such groups for the promotion of instruction as a means of improving the standards of such business groups and the qualifications of the members thereof.

Such misleading impression is further increased by the description of said respondent's application for instruction as an "Application for Membership" and of the enrolled students as "members" and the study groups as "Local Chapters," as well as by other means and descriptive phrases indicating an organization of members of a particular phase of business.

PAR. 4. Said corporate respondent further represents or has represented in the connection and by the means aforesaid that its activities are national in extent, that it has organized groups of students in all parts of the United States, and that they are international in scope with students in various foreign countries, by statements and phrases of which the following are examples:

Local Chapters in Principal Cities of United States, Puerto Rico, Cuba.

Representatives in the principal cities of the United States, Canada, Puerto Rico, Cuba, Philippine Islands.

* * * The plan operates through an international organization * * *
* * * during the twelve years it has been in operation several thousand accountants throughout the United States, Canada, Puerto Rico, Cuba, Hawaii and Philippines have participated.

* * * students all over the United States and Canada.

PAR. 5. In truth and in fact respondent corporation is not a national organization of business executives, administrators, accountants, or other special group of representatives of business and neither is said respondent the medium of such an organization through which instruction or training is given as a public service. The so-called "Local Chapters" consist of groups of students who have contracted for the

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instruction offered by said respondent and who meet at certain times to consult with a paid so-called "Local Advisor." The relations of such students with each other and with said respondent and with the so-called "Local Advisor" have none of the characteristics or features of membership in an organization as usually understood. The so-called "Application for Membership," when executed and accepted is merely a contract for instruction and for the payment of money therefor. Said individual respondent, Paul Kline, is the sole active participant in the activities of said corporate respondent. When local study groups are formed, a local accountant or other person is employed to meet occasionally with such students and assist and advise them in their studies. The instruction is given entirely by correspondence by said corporate respondent. Said local representatives also assist in the enrollment of students. Said corporate respondent is not an organized "Institute" of representatives of business executives, administrators, accountants, or other special representatives of business or of local groups of such representatives for the purpose of promoting instruction as a means of improving the standards of such business groups and the qualifications of the members thereof, but is purely and solely a commercial undertaking operated by the said respondent, Paul Kline, through the medium of said corporate respondent, American Institute of Business Administration, Inc.

The representations in regard to the extent of said business as set forth in paragraph 4 hereof are and have been misleading in that they are or were greatly exaggerated or not true and accurate statements of fact at the time they were made and used as aforesaid. At no single period of time during the existence of said school were students enrolled in all principal cities of the United States or in the majority of such cities. The activities of said school have not been national in extent nor have groups of students been organized in all parts of the United States at any one time. Neither have such activities been international in scope with students in various foreign countries, but the number of students in foreign countries have been comparatively few and at times there have been no students in foreign countries.

PAR. 6. The foregoing acts and practices used by respondents in connection with the offering for sale and sale of said course of study and instruction have had the tendency and capacity to mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations, as herein alleged, are true, and to induce them to purchase and pursue such courses of study and instruction on account thereof.

PAR. 7. The aforesaid acts and practices of respondents are all to the prejudice of the public and constitute 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 25th day of July, A. D. 1940, issued and thereafter served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce, in violation of the provisions of said act. After the issuance of said complaint and the filing of answers by the respondents, testimony and other evidence in support of the allegations of the complaint were introduced by William L. Pencke, attorney for the Commission, and in opposition to the allegations of the complaint by respondent Paul Kline, attorney for respondents, before duly appointed trial examiners of the Commission designated by it to serve in this proceeding; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint, the answers thereto, the testimony and other evidence, the report of the trial examiner and exceptions thereto, and briefs in support of the complaint and in opposition thereto; 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 American Institute of Business Administration, Inc., is a corporation organized under the laws of the State of New York on June 13, 1928. Its principal office was located at 126 Liberty Street, in the city and State of New York. Respondent Paul Kline is president of said corporation, its principal stockholder and, while it was carrying on the business for which it was organized, was in active management and control of said business. His office and principal place of business is located at 126 Liberty Street, in the city and State of New York.

PAR. 2. The corporate respondent, from the date of its incorporation until May 19, A. D. 1940, was engaged in the business of selling courses of instruction in accounting and business law intended for home study under the direction of said respondent, by correspond-

ence, and during the period in which it was so engaged it caused the courses of instruction and lesson materials sold by it to be transported from its place of business in the State of New York to purchasers thereof located in various other States of the United States.

PAR. 3. The practice of said respondent in the conduct of its business as a correspondence school differs from the methods usually employed by such schools in that students were not solicited directly, but public accountants throughout the country were circularized by respondent, with the view of having an accountant in each locality secure the names of prospective students, to whom advertising matter was then sent by the respondent. Tuition fees of students thus secured were paid directly to the corporate respondent, and the necessary lesson materials were furnished by said respondent. Accountants were employed by respondent in various States of the United States where groups of students designated by it as "chapters" were respectively located, to assist and counsel such students. The services of accountants so employed were paid for by respondent according to the number of students in the respective groups.

PAR. 4. The corporate respondent, in soliciting the sale of and in selling its said courses of study and instruction, made use of its corporate name "American Institute of Business Administration, Inc.," on its letterheads and in advertisements and other advertising matter circulated to students and prospective or potential students, accountants, and other members of the general public located in various States of the United States. The use of said name in such connection is misleading, and has had the tendency and capacity to create, and did create, the erroneous impression that said respondent is a national organization of business executives, administrators, accountants, or other special group of representative business, or that said respondent is the medium of an organization through which instruction or training is given as a public service. Such misleading impression induced by the respondent is further augmented by its statements and by various letterheads and printed matter circulated by it, of which the following is an example: "Local chapters in principal cities of the United States, Porto Rico, Cuba"—and which import or imply that said corporate respondent is the parent head of nationally organized local groups of business executives, administrators, accountants, or other special representatives of business, and that the whole comprises an organized "institute" of such groups for the promotion of instruction as a means of improving the standards of such business groups and the qualifications of the members thereof. Said respondent was not an Institute, but was engaged in a private commercial enterprise.

Such misleading impression was further increased by the description of its form of application for instructions as an "Application for

Membership," and the designation of its enrolled students as "members" and the study groups as "local chapters."

PAR. 5. The respondent corporation has further represented by the means aforesaid, that its activities were national in extent and that it had organized groups of students in all parts of the United States; that such groups were international in scope, with students in various foreign countries; and said respondent has made statements and phrases of which the following are examples:

Local chapters in principal cities of the United States, Porto Rico, Cuba;
Representatives in principal cities of the United States, Canada, Porto Rico,
Cuba, Philippine Islands;
* * * the plan operates through an international organization * * *;
* * * during the twelve years it has been in operation several thousand
accountants throughout the United States, Canada, Porto Rico, Hawaii, and the
Philippine Islands have participated;
* * * students all over the United States and Canada.

In the spring of 1938 the corporate respondent had less than 100 pupils; in the latter part of 1940 it had about 21 pupils, who were located in Florida, New Hampshire, Washington, Oregon, Pennsylvania, Nevada, and Porto Rico.

PAR. 6. Under the laws of the State of New York, the corporate respondent was required to obtain a Certificate of Approval from the University of the State of New York before doing business in the State, and such certificates have to be renewed annually. Approval was withheld from the corporate respondent until the word "Institute" was deleted from its name, and on May 19, 1940, this was done and the word "School" was substituted for the word "Institute," since when said respondent has been known as the "American School of Business Administration.

On the 31st day of July 1938, all of the material, supplies, and equipment of the corporate respondent were destroyed by fire, since which time respondent has been inactive except for the attempt to service existing courses.

CONCLUSION

The aforesaid acts and practices of respondents as herein found are all to the prejudice and injury of the public and constitute 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 answers of re-

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spondents, the testimony and other evidence introduced before duly appointed trial examiners of the Commission designated by it to serve in this proceeding, the report of the trial examiners thereon and exceptions to said report, and briefs filed in support of the complaint and in opposition thereto; and the Commission having made its findings as to the facts and its conclusion that respondents, American Institute of Business Administration, Inc., and Paul Kline, individually and as president of American Institute of Business Administration, Inc., have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent American Institute of Business Administration, Inc., a corporation, its officers, directors, agents, representatives, and employees, and respondent Paul Kline, individually and as president of American Institute of Business Administration, Inc., his agents, representatives, and employees, directly or indirectly or through any corporate or other device, in connection with the business of selling courses of instruction in accountancy and business law, or other educational course or courses intended for home study under the direction of said respondents or either of them, by correspondence or otherwise, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "Institute" as a part of the name of the corporate respondent, or using such term in any other manner to describe or refer to the aforesaid business activities of respondents or either of them.

2. Representing, by use of the word "chapters," or by any other designation, that the corporate respondent is the parent head of nationally organized local groups of business executives, administrators, accountants, or other special representatives of business.

3. Representing, in any manner, that their activities are national, or international, in scope, or conducted through a national or an international organization, or that students of their courses of instruction are enrolled throughout the United States and Canada, or that they have representatives in the principal cities of the United States, Canada, Porto Rico, Cuba, and the Philippine Islands.

4. Designating the application form for the enrollment of students as "Application for Membership" and the students as "members."

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

Syllabus

IN THE MATTER OF
D. STEFAN WROBLEWSKI ET AL.

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

Docket 4196. Complaint, July 25, 1940—Decision, July 24, 1941

Where an individual and three corporations, which he used to carry on his business activities, engaged in the competitive interstate sale and distribution of various medicinal, toilet, and cosmetic preparations; sold under variety of designations such as "Kalwaryjskie Wino Lecznice," "Ampo-Lin," "Reginol," etc., by means of advertisements disseminated through the mail, in newspapers and periodicals, radio continuities, circulars, leaflets, pamphlets, and other advertising literature—

- (a) Falsely represented that its "Kalwaryjskie Wino Lecznice," so-called medicinal wine, was a cure or remedy and a competent and effective treatment for stomach ailments and disorders, including sour stomach, gas on stomach and indigestion, headaches, constipation, listlessness, general weakness of the human system, sluggishness, skin eruptions and blemishes, wrinkles, bad breath, loss of energy, sallow skin, dizziness, colds, fever and chills; and that it would eliminate poisons from the system and serve as a tonic to build up the general health; the facts being that it would not do more than serve as a bitter tonic and appetizer, the laxative properties of which might assist in the temporary relief of constipation;
- (b) Represented that its "Ampo-Lin" liniment constituted a competent and effective treatment for rheumatism, neuralgia, lumbago, arthritis, sciatica, strained and aching muscles, bruises, and swellings, and that its "Reginol" was a cure or remedy for corns and would prevent their return; facts being the former had no therapeutic value in excess of that of a local counter-irritant tending to decrease pain in simple neuralgia and muscular aches and pains, and, while use of the latter might assist in the removal of corns, it would not prevent their return;
- (c) Represented that "Masc Ratunek" or "Ratunek Salve" was a competent and effective treatment for sharp pains in the back and in the bones and body generally; and that their "Kalwa" was such a treatment for coughs, hoarseness, catarrh of the throat, smoker's cough, grippe, whooping cough, and other similar ailments; facts being the former had no therapeutic value other than as a local counterirritant tending to decrease simple neuralgia and muscular aches and pains, and the latter was not a treatment for the conditions set forth, in excess of constituting an expectorant which might aid in the removal of phlegm in coughs due to colds and mild throat irritations and in smoker's cough;
- (d) Represented that their "Wuzi-Wuzi" was a competent and effective treatment for all headaches and for fever, and was safe and harmless, and that their "Krople-Kobiece" or "Women's Drops" was of substantial therapeutic value in the treatment of ailments and disorders peculiar to women; the facts being former was not a treatment for fever, possessed no therapeutic value in the treatment of headaches in excess of such temporary relief as might be afforded by its analgesic properties, and was not safe or harmless by virtue of containing drugs which are habit forming, and were