

Syllabus

IN THE MATTER OF

G. F. PERGANDE, DOING BUSINESS AS PERGANDE
INSTITUTE

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

Docket 4583. Complaint, Sept. 18, 1941—Decision, Feb. 20, 1943

Where an individual, engaged in sale and distribution of correspondence courses for civil service examinations for positions in the United States Government—

- (a) Represented, directly or by implication, through advertisements in the form of cards, circulars, and pamphlets, that during the period involved there were a large number of positions available at all times in various branches of the Government;

The facts being that, until the war emergency, the supply of eligible persons for Government employment and whose names appeared on the Civil Service registers greatly exceeded the number of positions open; and such statements (made by said individual) as "100,000 more jobs under Civil Service" were misleading, in that most of the positions were already filled and persons in question were placed under Civil Service through noncompetitive examination; and the "Executive order placing 45,000 exempt positions under Civil Service" did not open that number of positions to those seeking Government employment; and the statements "42,141 appointed in 1936," and "44,484 appointed in 1937" were similarly misleading, in that they did not, as implied, apply to positions listed by said individual, but covered all appointments during years involved;

- (b) Represented that examinations were being held frequently and that appointments for such positions were made within a short time after examinations were passed;

The facts being examinations were not held frequently, but, in case of numerous positions, at intervals of several years; for certain positions only those were eligible who lived within the district served by a particular post office, and, during the years involved, appointment to civil service positions could not ordinarily be expected within several months, and in many cases more than a year after applicant had passed examination;

- (c) Represented that eligibility to take an examination could be determined by applicant or said individual, and that a high rating in the examination assured an early appointment;

The facts being that eligibility could be determined only by the Civil Service Commission and, because of veterans' preference, apportionment of appointments and other reasons, a high rating did not assure early appointment; and

- (d) Misleadingly represented or implied, through use of word "Institute" in his trade name and advertising, that he conducted an institution of higher learning devoted to research or instruction in philosophy, arts, sciences, or other learned subjects, that his school had a staff of educators and the facilities and resources required to carry on such work; when in fact it possessed none of such qualifications;

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With tendency and capacity to mislead and deceive a substantial portion of the public in aforesaid respects, thereby causing its purchase of said courses of instruction, because of such mistaken belief:

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

Before *Mr. John B. Bramhall*, trial examiner.

Mr. William L. Pencke for the Commission.

Kirkland, Fleming, Green, Martin & Ellis, of Washington, D. C., for respondent.

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 G. F. Pergande, individually, and doing business under the name and style of Pergande Institute, hereinafter referred to as respondent, has 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, G. F. Pergande, is an individual, trading and doing business under the name and style of Pergande Institute, with his office and principal place of business at 314 Randolph Place NE., Washington, D. C.

PAR. 2. Respondent 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 intended for preparing students thereof for examinations for certain civil service positions under the United States Government, which said courses are pursued by correspondence through the medium of the United States mail. 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 the District of Columbia to, into, and through the various States of the United States to purchasers thereof in such States.

PAR. 3. In the sale of said courses of study and instruction, respondent makes use of printed advertising matter mailed to prospective students throughout the United States and the District of Columbia, through which various representations are made in regard to said courses of instruction and matters and things connected therewith. Among such representations are those which represent or imply that

there are large numbers of positions available at all times in various branches of the United States Government, that examinations are being held frequently and that appointments to such positions take place within a short time after examinations have been taken and passed; that eligibility for the taking of an examination may be determined by the applicant or by the respondent; and that the respondent has taken and passed three civil service examinations and in each case was offered an appointment almost immediately. Typical of such representations are the following:

100,000 more jobs under Civil Service

President Roosevelt issued an Executive Order placing 45,000 "exempt" positions under Civil Service, effective February, 1939.

Partial List U. S. Civil Service Positions.

42,141 appointed in 1936

44,484 appointed in 1937

Railway Mail Clerk, City Mail Carrier, Post Office Clerk, Rural (motor) carrier, Postmaster 3rd or 4th class, Statistical Clerk, Clerical-Filing, Sub Clerical-Jr. Messenger, Telephone Operator, Elevator Conductor, Watchman-Guard, Customs Patrol Inspector, Immigration Patrol Inspector, Assistant Lay Inspector (Meat Inspector), Bookkeeper, Auditor-Income Tax, Internal Revenue Agent, Forest and Field Clerk, Typist, Stenographer, Storekeeper-Gauger, Junior Civil Service Examiner.

Send me a service manual describing training for the government jobs for which I am eligible.

Could you feel assured of a higher rating and early appointment?

Mr. G. F. Pergande has taken three Civil Service examinations and in each case was offered an appointment almost immediately.

In truth and in fact, the representation that 100,000 more jobs under Civil Service are available is false in that there were at no time available jobs to the extent of 100,000. The representation that 45,000 "exempt" positions were placed under Civil Service is misleading in that the placing of said positions under Civil Service did not make available 45,000 additional positions to be filled from the civil service register. Moreover, a substantial number of new positions are generally filled by promotions and transfers of employees already under Civil Service.

The representation that 42,141 individuals were appointed in 1936 and 44,484 were appointed in 1937, followed by a description of a number of civil service positions and headed by the statement "Partial List U. S. Civil Service Positions" is misleading in that it implies that the stated number of appointments had been made with respect to the particular positions listed by the respondent when in fact said figures constitute the total number of appointments in all civil service

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positions which includes a large number of positions in the civil service not listed by the respondent.

The representation that the respondent has taken three civil service examinations and in each instance was offered an appointment almost immediately is false and misleading; by implying that said examinations were taken recently, and that offers of appointments were made almost immediately in all three instances. In truth and in fact, two of said examinations were taken by respondent approximately 15 years ago, and the third examination was taken in the year 1934, and respondent did not become eligible for appointment at that time for the reason that he withdrew his application prior to the completion of the investigations conducted with respect to each applicant.

In many instances examinations for various positions are not held as frequently as is generally implied by the respondent and the time which elapses between the filing of an application for the taking of a civil service examination and the actual appointment to a position is generally far greater than is represented and implied throughout the respondent's catalog, and this is true particularly with respect to applications numbering many thousands. Among the positions described in respondent's catalog are those of Assistant Lay Inspector, Customs and Immigration Patrol Inspector, Inspector of Customs, and Storekeeper-Gauger. In truth and in fact, an examination was held for Assistant Lay Inspector in September of 1930, and no other examination was announced until May 1939; an examination for Customs Patrol Inspector, Immigration Patrol Inspector, and Inspector of Customs was announced for September 1938. The last examination for Storekeeper-Gauger was held in May 1934, and no other examination has been held since that time.

In representing that his service manual describes training for the Government jobs for which prospective students of respondent's courses may be eligible, the respondent implies that either he or such prospective student is qualified to determine whether such student is eligible for a particular position, when in truth and in fact the Civil Service Commission is the only body competent to determine the eligibility of persons for civil service positions.

The implication that a higher rating in the examination will carry with it an early appointment is exaggerated and misleading for the reason that there are other factors besides a high rating which determine the appointment of individuals whose names have been placed on the register, such as established claims to preference, promotions, State apportionment, and priority status for entry on the reemployment list. Moreover, an appointment officer may select anyone of the highest three eligibles certified to fill a vacancy.

PAR. 4. The respondent, by the use of the word "Institute" in his trade name, advertising literature, letterheads, and otherwise, represents or implies to prospective students that he conducts an institution of learning with a staff of competent, experienced, and qualified educators, and that his school is an extensive organization offering training and instruction in philosophy, arts, sciences, and other learned subjects. The use of said word as aforesaid is false and misleading. In truth and in fact, respondent offers one general course of instruction which is substantially the same, being modified and adapted to the respective positions and examinations for which his students wish to prepare. Respondent, in the conduct of his business, does not offer training or instruction in philosophy, arts, sciences, or other learned subjects. There is no faculty engaged in teaching resident students, the method of instruction consisting in the mailing of previously prepared sheets and the grading of papers by employees of the respondent.

PAR. 5. The representations of respondent as aforesaid have had, and do have, the tendency and capacity to confuse, mislead, and deceive members of the public into the belief that a large number of civil service positions are available, that examinations are held frequently in the subjects described in respondent's catalog, that applicants may determine their eligibility for admission to examinations, that the respondent has been offered three positions immediately after taking the respective examinations therefor, and that his business is an institute designed for the promotion of learning in philosophy, arts, and sciences. As a result of such misrepresentations, members of the public purchase respondent's courses of study and instruction and pursue the same.

PAR. 6. The aforesaid acts and practices of the respondent, as herein alleged, 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on September 8, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, G. F. Pergande, individually, and doing business under the name and style of Pergande Institute, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondent's answer, testimony, and other evidence in support of the allegations of the com-

plaint, were introduced by the attorney for the Commission, and in opposition thereto by the attorney for the respondent, before a trial examiner of the Commission theretofore duly designated by it, and such 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 brief in support of the complaint (no brief having been filed by respondent 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. The respondent, G. F. Pergande, is an individual, trading and doing business under the name of Pergande Institute, with his office and principal place of business located at 314 Randolph Place NE., Washington, D. C. Respondent is now and for a number of years last past has been engaged in the sale and distribution of courses of study intended for use in preparing students for examinations for certain civil service positions in the United States Government, such courses being pursued by correspondence through the medium of the United States mail.

PAR. 2. In the course and conduct of his business respondent causes and has caused his courses of study, when sold, to be transported from his place of business in the District of Columbia to purchasers thereof located in the various States of the United States. Respondent maintains and has maintained a course of trade in his courses of study in commerce between the District of Columbia and the various States of the United States.

PAR. 3. In the course and conduct of his business and for the purpose of inducing the purchase of his courses of study, respondent distributes among prospective students printed advertising matter in the form of cards, circulars, and pamphlets, which advertising matter contains numerous representations with respect to respondent's courses of study and with respect to the number of positions in the United States Government which are available to persons enrolling for such courses of study and taking the civil service examinations. Among and typical of representations which appeared in respondent's advertising material distributed during the years 1938, 1939, and 1940 are the following:

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Findings

President Roosevelt issued an Executive Order placing about 45,000 "exempt" positions under civil service, effective February, 1939.

(Com. Ex. No. 3, p. 3)

* * * Could you feel assured of a high rating and an early appointment? * * *

(Com. Ex. No. 3, p. 5)

100,000 MORE JOBS UNDER CIVIL SERVICE

PARTIAL LIST U. S. CIVIL SERVICE POSITIONS

42,141 APPOINTED IN 1936

44,484 APPOINTED IN 1937

Railway Mail Clerk-----	* * *
City Mail Carrier-----	* * *
Post Office Clerk-----	* * *
Rural (motor) Carrier-----	* * *
Postmaster—3rd or 4th Class-----	* * *
Statistical Clerk-----	* * *
Clerical-Filing-----	* * *
Sub-Clerical:	
Jr. Messenger-----	* * *
Telephone Operator-----	* * *
Elevator Condr-----	* * *
Watchman-Guard-----	* * *
Customs Patrol Inspector-----	* * *
Immigration Patrol Insp-----	* * *
Assistant Lay Inspector-----	* * *
(Meat Inspector)	
Bookkeeper-----	* * *
Auditor Income Tax-----	* * *
Int. Rev. Agent	
Forest & Field Clerk-----	* * *
Typist-----	* * *
Stenographer-----	* * *
Storekeeper-Gauger-----	* * *
Jr. Civil Serv. Examiner-----	* * *

* * * send me a Service Manual describing training for the government jobs for which I am eligible. * * *

(Com. Ex. No. 4)

PAR. 4. Through the use of these representations and others of a similar nature, respondent represented, directly or by implication, that during the period in question there were large numbers of posi-

tions available at all times in various branches of the United States Government; that examinations were being held frequently, and that appointments to such positions took place within a short time after examinations were taken and passed; that eligibility for the taking of an examination could be determined by the applicant or by respondent; and that a high rating in the examination assured an early appointment.

PAR. 5. The Commission finds from the evidence that these representations were grossly exaggerated, misleading, and deceptive. During the period in question there were not large numbers of positions available in the United States Civil Service. In fact, until the period of national emergency brought on by the war, the supply of eligible persons available for Government employment, and whose names appeared on the registers of the United States Civil Service Commission, greatly exceeded the number of positions open. Examinations were not held at frequent intervals. On the contrary, in the case of numerous positions, several years frequently elapsed before new examinations were held. For example, in the case of substitute railway postal clerks, no open competitive examinations were held during the period between 1937 and 1941. Quarterly reopened examinations for "10-point preference people" (such as disabled veterans) were held, but these examinations were not open to applicants generally. Again, in the case of the position of guard, no general examinations were held between 1937 and 1940. In the case of storekeeper-gauger, the last open competitive examination was held in 1934. In the case of assistant lay inspector (meat inspector), only 25 persons were appointed to positions during 1939 and 1940, although there were 8,000 persons on the civil service register for that position. During the period beginning in 1931 and ending in 1941, there were no open competitive examinations for the position of junior file clerk. Moreover, in the case of certain positions, such as post office clerk substitute and clerk carrier substitute, only those persons are eligible for the examination who live within the district served by the particular post office where the position is open. This fact tends to reduce greatly the opportunity of applicants generally to obtain positions.

During the years in question, an appointment to a civil service position could not ordinarily be expected within a short time after the applicant had passed the examination. Usually several months, and in many cases a year or more, elapsed before an appointment could reasonably be expected. The eligibility for the taking of an examination cannot be determined by the applicant or by respondent, but can be determined only by the United States Civil Service Commission.

Nor did a high rating in the examination assure an early appointment. In addition to such factors as the preference accorded veterans and the apportionment of appointments among the several States, vacancies were and are often filled by promotions and transfers from within the service. Moreover, an appointing officer may select any one of the highest three eligible persons certified by the Civil Service Commission for a vacancy.

The statement made by respondent in his advertising that there were "100,000 More Jobs Under Civil Service" was misleading in that it implied that there were available to applicants Government positions to the extent of 100,000. Most of the positions in question were already filled, and the persons in such positions were placed under the civil service through noncompetitive examinations. Similarly, the Executive order referred to in respondent's advertising as placing 45,000 "exempt" positions under civil service did not in fact result in opening that number of positions to persons seeking to enter the employ of the Government. Respondent's statement that 42,141 persons were appointed to civil service positions in 1936 and 44,484 in 1937 were likewise misleading in that the figures in question appeared in connection with a list of certain positions set forth in respondent's advertising, and the statement implied that the appointments were to the listed positions. Actually, the figures covered all of the appointments to all of the positions in the civil service during the years in question, and many of the appointments were to positions not listed in respondent's advertising and in connection with which respondent has never offered any course of instruction.

PAR. 6. Through the use of the word "Institute" in his trade name and in his advertising literature, respondent represents or implies to prospective students and the public generally that he conducts an institution of higher learning devoted to academic or scientific research or to the giving of instruction in philosophy, arts, sciences, or other learned subjects; that his school has a staff of competent and experienced educators qualified to conduct such research or give such instruction; and that his school possesses the facilities and resources required to carry on such work. Respondent's school does not in fact possess any of these qualifications, and the use of the word "Institute" to designate and describe his school is therefore erroneous and misleading.

PAR. 7. The Commission finds further that the use by respondent of the misleading and deceptive representations herein set forth had and has the tendency and capacity to mislead and deceive a substantial portion of the public with respect to the nature and status of respondent's business, and with respect to respondent's courses

of instruction and the opportunities for appointment to United States Government positions, and the tendency and capacity to cause such members of the public to purchase respondent's courses of instruction as a result of the erroneous and mistaken belief engendered by such representations.

CONCLUSION

The acts and practices of the respondent as herein found 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence in support of and in opposition to the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by respondent and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, G. F. Pergande, individually, and trading as Pergande Institute, or trading under any other name, and his agents, representatives, 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 respondent's courses of study, do forthwith cease and desist from:

1. Using the word "Institute," or any abbreviation or simulation thereof, as a part of respondent's trade name or as a part of the name of respondent's school; or otherwise representing, directly or by implication, that respondent's school is an institute.

2. Representing, directly or by implication, that the number of positions available in the United States Civil Service, or in any branch thereof, is greater than is actually the fact.

3. Representing, directly or by implication, that examinations for positions in the United States Civil Service are held at more frequent intervals than is actually the fact, or that appointments to positions are made within a shorter period of time after the examination than is actually the fact.

4. Representing, directly or by implication, that eligibility for the taking of a civil service examination may be determined by the applicant or by respondent, or by anyone other than the United States Civil Service Commission.

5. Representing, directly or by implication, that a high rating in a civil service examination assures the applicant an early appointment to a position.

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

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IN THE MATTER OF

PAUL J. SIMMONS, DOING BUSINESS AS HARLEM
COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4843. Complaint, Sept. 30, 1942—Decision, Feb. 23, 1943*

Where an individual, engaged in interstate sale and distribution of jewelry and novelties; in advertisements in periodicals and in pamphlets, folders, and other advertising matter—

- (a) Represented that rings advertised to sell for \$1 each were set with real diamonds, through such statements as "Real Diamond Ring Simulated"; the facts being said products were set with imitation stones;
- (b) Represented that a matching wedding band was "given free" with each purchase of a diamond ring, through such statements as "Free Matching Wedding Band Set With Flashing Stones" and "To Introduce This Amazing Value We Offer a Matching Band Absolutely Free"; when in fact their cost was included in purchase price of the ring, and they formed part of a combination offer; and
- (c) Made use of term "yellow or white gold effect" in describing his rings, with tendency and capacity to confuse purchasers as to whether such rings were made of metallic gold, or merely had a gold color; the facts being they contained no appreciable amount of gold, either yellow or white;

With effect of misleading and deceiving a portion of the purchasing public into the mistaken belief that such representations were true, thereby inducing its purchase of said jewelry:

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. Clyde M. Hadley*, trial examiner.

Mr. B. G. Wilson for the Commission.

Mr. George Landesman, of New York City, for respondent.

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 Paul J. Simmons, an individual, trading as Harlem Co., hereinafter referred to as respondent, has 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, Paul J. Simmons, is an individual, trading as Harlem Co., having his office and principal place of business located at 30 Church Street, New York, N. Y.