Syllabus

IN THE MATTER OF

WASHINGTON INSTITUTE AND ARTHUR F. JOHNSTONE AND JoRENE JOHNSTONE

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

Docket 4890. Complaint, Jan. 20, 1943—Decision, Apr. 26, 1944

Where a corporation engaged in interstate sale and distribution of correspondence courses of study for various civil service positions; in advertising circulars or cards with business reply cards attached, which it distributed among prospective students, and in which, listing many of said positions, it made such statements as "COMPARE YOUR JOB WITH CIVIL SERVICE! 68,578 CIVIL SERVICE POSITIONS FILLED LAST YEAR! Many opportunities for men and women who are seeking employment with a future and good pay. Excellent working conditions, security, vacations, sick leave and pensions. EXAMINATIONS ARE NOW BEING POSTED. VACANCIES CONSTANTLY OCCUR. If you meet the requirements you are eligible for examinations. NO OBLIGATION," etc.—

(*a*) Falsely represented, directly or by implication, that during the period in question there were large numbers of positions available at all times in various branches of the Government, that examinations were being held frequently, and that the positions listed were at that time available and that examinations were then being held therefor; facts being that until the national emergency brought on by the war, the names of eligibles on the register of the United States Civil Service Commission greatly exceeded the number of positions open; examinations were not held frequently, but in the case of numerous positions only at intervals of several years; for such positions as city mail carrier, post office clerk, and railway mail carrier, only persons within the particular post office district were eligible for the examination; at time concerned appointment could not ordinarily be expected shortly after passing the examination, but usually only after several months, and in many cases a year or more; statement "68,578 Civil Service positions filled last year" was misleading in that many of said positions were filled from a register of eligibles, and by transfer, reinstatement, and promotion; only a small proportion of Government positions open would be available in Seattle or Washington State and surrounding territory, selections of eligibles from nationally announced examinations being dependent upon appointments as apportioned between the states; and the figures did not, as implied, apply to positions listed, but covered all appointments to all positions in the civil service during period in question, including many in connection with which it had never offered any course; and

(*b*) Falsely represented or implied, through the use of the word "Institute" in its trade name and in its advertising literature, that it conducted an institution of higher learning devoted to academic or scientific research or to instructions in philosophy, arts, sciences, or other learned subjects; and that its school had a staff of competent and experienced educators and the facilities and resources required to carry on such work;

With tendency and capacity to mislead and deceive a substantial portion of the public with respect to its said courses and the opportunities for Government appointment, and thereby cause such public to purchase the same:

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. James A. Purcell* and *Mr. Henry M. White*, trial examiners.
Mr. William L. Pencke for the Commission.
Mr. William H. Rois, of Seattle, Wash., 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 Washington Institute, a corporation, Arthur F. Johnstone and JoRene Johnstone, 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, Washington Institute, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Washington with its principal office and place of business at 1230 Vance Building in the city of Seattle and State of Washington. Arthur F. Johnstone, is President, and JoRene Johnstone, is Secretary, of said corporation with their principal office and place of business at 1230 Vance Building, Seattle, Wash. Respondent, Arthur F. Johnstone, is the principal stockholder of said corporation and is responsible for the policies and business methods of said corporation.

PAR. 2. Respondent, Washington Institute, is now and has been for more than two 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, Washington Institute, in the course and conduct of said business, 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 the State of Washington to, into and through States of the United States other than Washington to the purchasers thereof in such other States.

PAR. 3. In the sale of said courses of study and instruction respondents make use of printed advertising matter mailed or distributed to prospective students in several States of the United States in and by which various misleading representations were and are made in regard to said course or matters and things connected therewith. Among such misleading representations are those which represent or imply that vacancies are available in all of the positions specifically listed in respondent's advertisements and that examinations are being held for such positions.

Typical of such representations are the following:

Compare your job with Civil Service.

68,578 Civil Service positions filled last year. Vacancies constantly occur. If you meet the requirements you are eligible for examinations. Mail this card today and get the free information about the positions listed and many others.

Railroad Postal Clerk	Bookkeeper
City Mail Carrier	Auditor
Post Office Clerk	Forest and Field Clerk
Rural (Motor Carrier)	Typist

Clerical Filing Local	Stenographer
Assistant Statistical Clerk	Storekeeper Gauger
Messenger	Jr. Inspector
Telephone Operator	Student Finger-print Classifier
Elevator Conductor	Apprentice
Watch-Guard-Laborer	Meteorology Observer
Immigration position	Office Machine Operators
Customs Patrol Inspector	Jr. Investigator
Customs Inspector	Social Security
Border Patrolman	Jr. Engineer (options)

PAR. 4. By means of statements and representations made by agents and representatives of respondents who call upon prospective students respondent, Washington Institute, represents to such prospective students that it has positions in the United States Government to offer which are under its control or which it can secure for students taking its course; that it is connected with the United States Government and is authorized by the United States Civil Service Commission to qualify applicants for Government position; that it has advance information with respect to the holding of Civil Service examinations or information concerning such examinations which is not readily available to prospective candidates for Civil Service examinations; that respondent's school is an official government training school and that such agents or representatives are connected with the government or the United States Civil Service Commission.

PAR. 5. In truth and in fact the respondents have no positions to offer and have no connection whatever with the Government of the United States or any branch thereof and therefore can not guarantee positions or appointments of persons who have passed examinations. Respondents do not have any information with respect to the places at or dates on which examinations will be held. A number of the positions listed and described in the respondents' advertising literature have either been abolished by the Civil Service Commission or no examinations have been announced therefor or will be announced for some time to come.

PAR. 6. The name, Washington Institute, under which the corporate business is conducted, is misleading in that it represents or implies to prospective students that respondents conduct an institution of learning with a staff of competent experienced and qualified educators and that said school is an extensive institution offering training and instruction in philosophy, arts, sciences and other learned subjects.

In truth and in fact respondents offer only one course of study and instruction in the lower level type of examinations for Civil Service positions which is substantially the same regardless of the Civil Service examination for which the respondents' students wish to prepare.

Respondent, Washington Institute, in the course and conduct of its said business does not offer training or instruction in philosophy, arts, sciences and other learned subjects. No basic or thorough or competent instruction is given in any subject of learning and said school is not an institution of learning in the accepted sense of that term. There is no faculty of learned persons engaged in teaching resident students. The method of instruction consists of the mailing of previously prepared sheets and the grading of papers by the employees of respondents. All of the material used in connection with said coaching service is purchased by respondents from a publisher specializing in the sale of Civil Service courses.

Among the purchasers of respondents' courses of study are those who believe that the name "Washington Institute" implies a school or agency operated or controlled by the government of the United States. In truth and in fact said name is the corporate name of a private business enterprise and having no connection with the Government of the United States or any branch or agency thereof.

PAR. 7. The representations of respondents, as aforesaid, have had and do have a tendency and capacity to confuse, mislead and deceive members of the public into the belief that such representations are true and to induce them to purchase respondents' courses of study and instruction and pursue the same on account thereof.

PAR. 8. The aforesaid acts and practices of respondents, 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 January 20, 1943, issued and subsequently served its complaint in this proceeding on the respondents, Washington Institute, a corporation, and Arthur F. Johnstone and JoRene Johnstone, individually, and as officers of Washington Institute, 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 respondents' answers thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answers thereto, testimony and other evidence, report of the trial examiner upon the evidence, and brief filed in support of the complaint (no brief having been filed by the respondents 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, Washington Institute, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Washington and had its principal office and place of business at 1230 Vance Building in the city of Seattle, State of Washington. Respondents, Arthur F. Johnstone and JoRene Johnstone, are individuals, residing at 2608 35th Street, Seattle, Wash., and were respectively president and secretary of said corporate respondent.

PAR. 2. Respondent, Washington Institute, for more than two years prior to about July 1942 was 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 were pursued by correspondence through the medium of the United States mail.

PAR. 3. In the course and conduct of its business, respondent, Washington Institute, a corporation, caused its courses of study when sold to be transported from its place of business in the State of Washington to purchasers thereof located in various other States of the United States. Said respondent has at all times mentioned herein maintained a course of trade in its course of study in commerce among and between the various States of the United States.

PAR. 4. In the course and conduct of its business and for the purpose of inducing the purchase of its courses of study, said corporate respondent distributed among prospective students printed advertising matter in the form of circulars or cards with business reply card attached, which advertising matter contains numerous representations with respect to its courses of study and with respect to the number of positions in the United States Government which were available to persons enrolling in such courses of study and taking the Civil Service examinations. Among and typical of the representations which appeared in said respondent's advertising material distributed during the year 1941 are the following:

COMPARE YOUR JOB WITH CIVIL SERVICE!
68,578 CIVIL SERVICE POSITIONS
FILLED LAST YEAR!

Many opportunities for men and women who are seeking employment with a future and good pay. Excellent working conditions, security, vacations, sick leave and pensions. EXAMINATIONS ARE NOW BEING POSTED. VACANCIES CONSTANTLY OCCUR. If you meet the requirements you are eligible for examinations.

NO OBLIGATION

MAIL THIS CARD TODAY AND GET THE FREE INFORMATION ABOUT THE POSITIONS LISTED AND MANY OTHERS.

PARTIAL LIST U. S. CIVIL SERVICE POSITIONS

Railway Postal Clerk * * *
City Mail Carrier * * *
Post Office Clerk * * *
Rural (motor) Carrier * * *
Clerical-Filing . . . Local * * *
Ass't. Statistical Clerk * * *
Messenger * * *
Telephone Operator * * *
Elevator Conductor * * *
Watch-Guard-Laborer * * *
Immigration Positions * * *
Customs Patrol Inspector * * *
Customs Inspector * * *
Border Patrolman * * *
Ass't Lay (Meat) Insp. * * *
Bookkeeper * * *
Auditor * * *
Forest & Field Clerk * * *
Typist * * *
Stenographer * * *
Storekeeper-Gauger * * *

Jr. Inspector * * *
Student Fingerprint Classifier * * *
Apprentice * * *
Meteorology Observer * * *
Office Machine Operators * * *
Jr. Investigator * * *
Social Security * * *
Junior Engineer (options) * * *

Washington Institute; Vance Bldg.,
Seattle, Washington.

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MAIL THIS CARD TODAY—NO STAMP REQUIRED

Gentlemen:

I am interested in securing Government employment. Please furnish me, without cost, information covering the requirements necessary to obtain a Civil Service position with the Government. * * *

PAR. 5. Through the use of these representations and others of a similar nature, said respondent represented directly or by implication that during the period in question there were large numbers of positions available at all times in various branches of the United States Government, that examinations were being held frequently, and that the specific positions listed were at that time available and that examinations were then being held for such positions.

PAR. 6. 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 register 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 railway postal clerks no open, competitive examinations were held during the period between 1935 and 1941. In the case of customs control inspectors, customs inspectors, and border patrolmen, the last examination was held in 1939 and for which positions the Civil Service Commission received about 275,000 applications, which caused this register to be available for some time. Forest and field clerk examinations are held infrequently — approximately every four or five years — because of the large number that qualify. Moreover, in the case of certain positions, such as city mail carrier, post office clerk, and railway mail carrier, 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 statement by the said respondent in its advertising that there were "68,578 Civil Service positions filled last year" was misleading in that it implied that there were available to applicants a similar number of positions for the current year. Many of such positions were filled by selection from a register of eligibles, by transfer within the service, by reinstatement, and by promotion. Only a small proportion of the available positions with the Government would be available in the city of Seattle or the State of Washington and surrounding territory. Selections of eligibles from a nationally announced examination are dependent upon the allowed quota of appointments as apportioned between States. Furthermore, such statement as to the number of Civil Service positions filled during the previous year implied that the appointments were to the positions listed in the advertisement. Actually, the figures covered all the appointments to all the positions in the Civil Service during the year in question and many of the appointments were to positions not listed in said respondent's advertising and in connection with which respondent has never offered any course of instruction.

PAR. 7. The Commission further finds that the said respondent represents or implies to prospective students and the public generally, through the use of the word "Institute" in its trade name and in its advertising literature, that it conducts an institution of higher learning devoted to academic or scientific research or to the giving of instructions in philosophy, arts, sciences, or other learned subjects; that its school has a staff of competent and experienced educators competent to conduct such research or to give such instruction; and that its school possesses the facilities and resources required to carry on such work. Said respondent's school does not in fact possess any of these qualifications and the use of the word "Institute" to designate and describe its school is therefore erroneous and misleading.

PAR. 8. The Commission finds, further, that the use by the said corporate respondent of the misleading and deceptive representations herein set forth has had the tendency and capacity to mislead and deceive a substantial portion of the public with respect to the nature and status of said respondent's business and with respect to said respondent's course of instruction and the opportunities for appointment to United States Government positions and has had 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 beliefs engendered by such representation.

CONCLUSION

The acts and practices of the respondent, Washington Institute, a corporation, 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 respondents, 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 the respondents and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondent Washington Institute, a corporation, has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Washington Institute, a corporation, and its officers, representatives, agents, and employees in connection with the offering for sale, sale, and distribution in commerce as "commerce" is defined in the Federal Trade Commission Act of courses of study and instruction intended for preparing students thereof for examinations for Civil Service positions under the United States Government or any similar courses of study, do forthwith cease and desist from:

1. Using the word "Institute" or any abbreviation or simulation thereof as part of said respondent's trade name or as 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 certain specified Civil Service positions are open and available to students of said respondent's courses when in fact such positions are not open and available or when such positions are such that students of respondent's courses cannot properly qualify.

5. Misrepresenting in any manner the possibilities or opportunities for employment in Civil Service positions of students of said respondent's courses of study.

It is further ordered, That the complaint herein be, and it hereby is, dismissed as to the individual respondents, Arthur F. Johnstone and JoRene Johnstone.

It is further ordered, That the respondent, Washington Institute 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.

Syllabus

IN THE MATTER OF

AMERICAN ASSOCIATION OF LAW BOOK PUBLISHERS, ET AL.

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

Docket 4526. Complaint, June 30, 1941—Decision, Apr. 27, 1944[1]

As respects contention of a respondent publisher that it was not a party to any of the agreements found to have been entered into with others joined in proceeding in question, and directed to bringing about and maintaining uniform practices in such matters as institutional and cash discounts, uniform prices, government bids, price policy in the matter of tradeins and overstock, and reciprocity in the bringing out of new works dealing with the same subject: Where it appeared, among other things, that while said publisher, an early member of the association through which the agreements were undertaken and carried out, had not been such a member for some 8 or 10 years preceding its dissolution, it had, nevertheless, cooperated with others, who were members, in the aforesaid various concerted and cooperative undertakings, excepting only the matter of cash discounts on its own publications, and had for years a controlling interest in another publisher which was and continued to be a member of the association and took an active interest in the affairs thereof and in the agreements and understandings above indicated, such contention was not tenable.

As respects the contention of a respondent publisher of law books that it was not a party to any of the agreements found to have been entered into with others joined in proceeding in question and directed to bringing about uniformity in such matters as institutional and cash discounts, price maintenance, government bids, price policies in the matter of tradeins and overstocks, since it did not sell any of its publications to or through the other members, nor sell any of their publications: Where it appeared that said publisher had been a member of the association, through which various concerted and cooperative undertakings were initiated or carried out, for many years since its organization, had taken an active interest in all of its activities, attended all meetings except the first, and that its president was active in various responsible capacities for said association and took an active and responsible part, among other things, in establishing the plan of uniform government discounts and bids, *held* such contention could not be sustained, and that said publisher, through its participation in the affairs of the association and that of its president in said affairs and in the agreements entered into among the members, participated therein and in the acts and practices concerned.

Where an association of law book publishers, formed at a time when price cutting was prevalent in the industry; and its members, which were engaged in the compilation, publication, sale and distribution of text books, treatises, legal reference books, official reports of court decisions, codes, etc., and included the largest publisher of law books in the United States, with a controlling interest in five other members, and two other publishers, which, also owned controlling interests in three other members, and, with a few exceptions, sold both their own publications and those of other members;

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[1] Order published as modified on June 26, 1944.