

IN THE MATTER OF
PREPARATORY TRAINING INSTITUTE

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

Docket 4454. Complaint, Jan. 28, 1941—Decision, June 29, 1944

Where a corporation engaged in interstate sale and distribution of correspondence courses of study and instruction for certain United States Civil Service positions—

- (a) Represented, directly or by implication, through circulars, and through an enumeration on its so-called "enrollment contracts," 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, that the specific positions listed were at that time available, and that examinations were then being held for such positions; and
- (b) Represented through agents designated as "Registrars," that it had positions in the United States Government to offer, which were under its control or which it could secure for students taking its courses, that it was connected with the United States Government and authorized by the United States Civil Service Commission to qualify applicants for Government jobs, that it had advance information with respect to the holding of Civil Service examinations or information concerning such examinations which was not readily available to prospective candidates therefor, that the applicants for its courses of training were especially selected, and that vacancies existed in certain branches of the United States Government which could be filled immediately after applicant had passed examination with respect thereto;

The facts being it had no such connections, no such positions to offer and no information with respect to places at or dates on which such examinations would be held which was not available to any person applying therefor to the Civil Service Commission; its representatives were merely salesmen and not officials of said commission, there were not then available a large number of positions as aforesaid, the names of eligibles on the register greatly exceeding the number of positions; examinations were not held frequently but often only at intervals of several years; in the case of certain positions, such as postal clerk, mail carrier, railway clerk and rural mail carrier, only those residing in the locality where the position was open were eligible for examinations; and several months usually, and often a year or more, elapsed after passing of the examination before appointment could reasonably be expected; and its so-called "Personal Report" for execution by the student along with the enrollment contract, calling for various personal matter and purporting to disclaim any connection of the school with Government agencies, or ability to promise or guarantee positions, was designed to mislead the student and did not, under the circumstances and tactics involved, serve its purported purpose; and

- (c) Falsely represented or implied, through the use of the word "Institute" in its corporate name and advertising literature, that it conducted an institution of learning offering instruction in philosophy, art, science, and other learned subjects, with a staff of competent, experienced, and qualified educators;

The facts being it offered only one course of study and instruction, which was substantially the same regardless of the examination for which a student wished to prepare; and it was not an institution of learning in the accepted sense of that term,

its method of instruction consisting in the mailing of previously prepared sheets and the grading of papers by its employees;

With tendency and capacity to mislead and deceive a substantial portion of the public with respect to the course of instruction and the opportunities for appointment to United States Government positions, and thereby to cause it to purchase 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.

As respects certain "Personal Report" forms tendered by salesmen of a correspondence course for execution by prospective students along with the school's enrollment contracts, which, in addition to covering personal information such as weight, height, sex, student's favorite subject in school, etc., included under the caption "Do you understand that," three paragraphs, purporting to disclaim connection of the school with government agencies, or ability of the school to promise or guarantee positions, and which, answered "yes," in so far as appeared, were pressed as a defense to the charge of misleading representations in the aforesaid respects in connection with solicitation of students; Where it further appeared, from the testimony of nine enrollees, that none of them was aware of the significance of said report and that the respective salesmen not only failed to call specific attention to the aforesaid three provisions dealing with the said disclaimers, but, as shown by the testimony of four, prevented a proper reading and understanding of said report by continuing to talk while the prospects attempted to read the document or by simply pointing at the blanks, reading off the questions, and having the prospects fill in the answers; that in several instances high-pressure tactics were used, the salesman urging the immediate execution of the contract on the plea that he must leave at once and was unable to return, thereby depriving the prospects of careful consideration of the contract of enrollment, although prospects requested sufficient time to read and comprehend said "Personal Report," and there was no evidence that the school referred enrollees desiring to cancel the contract because of the salesman's misrepresentations to the "Personal Report" executed by them, in which they stated in effect that they understood the true facts with respect to the school's having no connection with the Government and no ability to promise jobs; testimony and evidence showed that said form was designed to mislead prospective purchasers of the seller's courses of study into the belief that it was obtained for the purpose of securing certain statistical information, and that its execution was secured in a manner calculated to prevent a full understanding of those provisions which disclaimed the various statements resorted to by salesmen to induce prospective students to enroll.

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. William L. Pencke for the Commission.

Tobriner, Graham, Brez & Tobriner, of Washington, D. C., for respondent.

COMPLAINT ¹

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 Com-

¹ Complaint is published as amended by Commission order dated October 2, 1941 granting motion to amend complaint, as follows:

This matter coming on for hearing before the Commission, upon the motion of the Commission's Chief Counsel and the trial attorney for the Commission in the above-entitled proceeding that the complaint heretofore issued be amended and supplemented in specified respects, and that all testimony and other

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mission, having reason to believe that Preparatory Training Institute, a corporation, 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, Preparatory Training Institute, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business at 55 N. Clinton Avenue in the city of Trenton, State of New Jersey.

PAR. 2. Respondent 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, in the course and conduct of said business during the time aforesaid, caused and does now cause its said courses of study and instruction to be transported from its said place of business in the State of New Jersey to, into and through States of the United States other than New Jersey to the purchasers thereof in such other States.

PAR. 3. In the sale of said courses of study and instruction respondent makes use of printed advertising matter mailed or distributed to prospective students throughout the United States in and by which various misleading representations are made in regard to said courses or matters and things connected therewith. Among such misleading representations are those which represent or imply that respondent has positions under the United States Government to offer which are under its control and which

evidence adduced at hearings heretofore held in this proceeding be made a part of the record relative to the complaint as amended and be received and considered in like manner, and to the same extent, as though said testimony and other evidence had been received at hearings held upon the charges stated in the complaint as amended; and the Commission, having duly considered said motion, and briefs in support of and in opposition thereto, and the record herein, and being now fully advised in the premises;

It is ordered, That said motion to amend the complaint herein in the specific respects set out in said motion be, and the same hereby is, granted to wit, that immediately following paragraph 5 of the original complaint the following paragraph be inserted as an amendment to said complaint:

"The name Preparatory Training Institute, under which respondent conducts its said business, is misleading in that it represents or implies to prospective students that respondent conducts an institution of learning, with a staff of competent, experienced and qualified educators, and that its school is an extensive institution offering training and instruction in philosophy, art, science and other learned subjects. In truth and in fact, respondent offers only one course of study and instruction, which is substantially the same, regardless of the civil service examination for which its said students wish to prepare. Respondent in the conduct of its said business does not offer training or instruction in philosophy, art, science or other learned subjects. No basic or thorough or complete 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 engaged in teaching resident students, the method of instruction consisting in the mailing of previously prepared sheets and the grading of papers by the employees of respondent."

It is further ordered, That all testimony and other evidence heretofore received at hearings held in this proceeding be made a part of the record in connection with the complaint as amended and be considered in like manner, and to the same effect, as though said testimony and other evidence had been originally received at hearings held upon the allegations contained in said complaint as amended, saving, however, to the respondent its right to rebut said testimony or other evidence by any proper means at any such subsequent hearings as may be held herein.

It is further ordered, That the application for oral argument on said motion to amend be, and the same hereby is, denied.

It is further ordered, That the respondent shall have 20 days from the date of service of this order within which to file answer to the amended complaint.

can be secured by taking respondent's courses. Typical of such representations are the following:

Subject: Government Jobs

Federal—State—Municipal

New employees are constantly being added.

We are advising free of charge how to qualify for a Government job.

PAR. 4. By means of statements and representations made by agents and representatives of the respondent who are designated registrars and who call upon prospective students, the respondent 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 courses; that it is connected with the United States Government and authorized by the United States Civil Service Commission to qualify applicants for government jobs; 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 the applicants for respondent's courses of training are specially selected; that vacancies exist in certain branches of the United States Government which can be filled immediately after an applicant has passed the examination with respect to such positions.

PAR. 5. In truth and in fact the respondent has no positions to offer and has no connection whatever with the government of the United States or any branch thereof, and therefore cannot guarantee positions or appointments of persons who have passed examinations. Respondent does not have any information with respect to the places at, or dates on, which examinations will be held. Applicants for courses of study are not specially selected, but generally all who apply for the courses of instruction are accepted by the respondent. In instances where respondent's agents have represented that vacancies exist, such positions have either been abolished by the Civil Service Commission or the vacancies have in fact been supplied. Respondent's representatives are merely salesmen and the designation of such salesmen as "registrars" further tends to mislead prospective students into the belief that they are officials of the Civil Service Commission.

The name Preparatory Training Institute, under which respondent conducts its said business, is misleading in that it represents or implies to prospective students that respondent conducts an institution of learning, with a staff of competent, experienced and qualified educators, and that its school is an extensive institution offering training and instruction in philosophy, art, science and other learned subjects. In truth and in fact, respondent offers only one course of study and instruction, which is substantially the same, regardless of the civil service examination for which its said students wish to prepare. Respondent in the conduct of its said business does not offer training or instruction in philosophy, art, science or other learned subjects. No basic or thorough or complete 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 engaged in teaching resident students, the method of instruction consisting in the mailing of previously prepared sheets and the grading of papers by the employees of respondent.

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PAR. 6. In its enrollment contract the respondent has embodied a provision for refund of tuition fees wherein it is stated that:

After completing the training and payment of fees, should I fail to become eligible for appointment as a result of the first Civil Service Examination I take, I shall receive a refund in full upon compliance with the following conditions:

1. That within 15 days after sitting for examination, I shall have informed you of its title and date.
2. That I make written request for refund within 30 days after receiving official notice of my failure.
3. That I return all text material and my Certificate of Completion, together with my request for refund.

It is distinctly understood that refund will be made under no other conditions.

PAR. 7. In truth and in fact, by concealing or failing to reveal pertinent facts, said refund provision has the tendency or capacity to mislead and deceive prospective students into the belief that the probabilities for obtaining appointments to Civil Service positions are greater than they are in fact. It is not disclosed to said prospective students that examinations for certain positions may not be called for several years; or that even if a student takes and passes an examination, his name may not be reached upon the eligible list for a number of years; nor is there any assurance that an appointment will be made although such student may have received an eligible rating.

PAR. 8. 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 such representations are true and to induce them to purchase respondent's courses of study and instruction and pursue the same on account thereof.

PAR. 9. 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 January 28, 1941, issued and subsequently served its complaint in this proceeding on the respondent, Preparatory Training Institute, a corporation, charging it 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 respondent's answer 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. Subsequent thereto, on October 2, 1941, the Commission, after hearing, granted the motion of W. T. Kelley, Chief Counsel, and William L. Pencke, trial attorney, counsel for the Commission, to amend the complaint by inserting an additional paragraph after paragraph 5 thereof. Thereafter, on October 18, 1941, the respondent filed its answer to said amendment, and testimony and other evidence in support

of and in opposition to the allegations of said complaint as amended were introduced before said trial examiner of the Commission, 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 and amendment thereto, answers filed by the respondent, testimony and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, briefs filed in support of and in opposition to the complaint as amended, and oral argument of counsel; 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, Preparatory Training Institute, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business at 55 North Clinton Avenue in the city of Trenton, State of New Jersey.

PAR. 2. Respondent is now, and for several years last past has been, 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 mails. Respondent, in the course and conduct of said business, has caused its said courses of study and instruction to be transported from its place of business in the State of New Jersey to purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its courses of study in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of its business and for the purpose of inducing the purchase of its courses of study, said respondent distributed among prospective students printed advertising matter in the form of circulars, which advertising matter contained various misleading representations in regard to said courses of study or matters and things connected therewith. Typical of such representations are the following:

SUBJECT: GOVERNMENT JOBS

Federal—State—Municipal

NEW EMPLOYEES ARE CONSTANTLY BEING ADDED.

* * * We will advise you free of charge how to qualify for a Government job.

Act at once. Francis A. Buckley

Department of Registry.

In addition, on its so-called "enrollment contracts," the respondent listed approximately thirty or more positions in various departments of the United States Government.

PAR. 4. Through the use of these representations and others of similar nature, 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, that the specific positions listed were at that time available, and that examinations were then being held for such positions.

PAR. 5. In addition to the above advertising matter, the respondent represented through and by means of agents and representatives who were generally designated as registrars that respondent has positions in the United States Government to offer which are under its control or which it can secure for students taking its courses, that it is connected with the United States Government and authorized by the United States Civil Service Commission to qualify applicants for Government jobs, 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 the applicants for respondent's courses of training are especially selected, and that vacancies exist in certain branches of the United States Government which can be filled immediately after applicant has passed examination with respect to such positions.

PAR. 6. In truth and in fact, respondent has no Civil Service positions to offer and has no connection with the Government of the United States or any branch thereof, including the Civil Service Commission, and therefore cannot guarantee positions or appointments of persons who have passed Civil Service examinations. Respondent does not have any information with respect to the places at or dates on which Civil Service examinations will be held which is not available to any person applying to the Civil Service Commission therefor. Applicants for courses of study are not specially selected, but generally all who apply for the courses of instruction are accepted by the respondent. Respondent's representatives are merely salesmen, and the designation of such salesmen as "Registrars" further tends to mislead prospective students into the belief that they are officials of the Civil Service Commission.

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. Moreover, in the case of certain positions, such as postal clerk, mail carrier, railway clerk, and rural mail carrier, only those persons are eligible for the examinations residing in the locality 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.

PAR. 7. Respondent's salesmen follow substantially the same pattern in securing enrollments. By their manner and the nature of their sales

talk they convey the impression that they and the school are connected with the United States Civil Service Commission; that by enrolling for the course of instruction the subscribers are assured of a position with the Government; that the enrollment contract can be cancelled at any time by the student, and that moneys paid in would be refunded upon demand or that refund would be made if student did not obtain a position at the conclusion of the course.

Various witnesses testified that respondent's representatives stated or inferred that they were Government men working for the respondent or for the Civil Service Commission and that the respondent would guarantee them a Civil Service job immediately after graduation.

A number of witnesses read over the contract after the salesman had left and upon discovering that the provisions of the contract differed from the representations made by the salesmen they made inquiries with a view to learning to what extent the school could live up to the promises made by such salesmen and upon being advised that the school had no connection with the Government and could promise no positions, either cancelled their contracts or refused to continue payments.

PAR. 8. In the course of the trial of this proceeding, the respondent introduced in evidence as a defense to this proceeding certain printed documents entitled "Personal Report." The answers to the questions contained on said personal report and the signature of the applicant were obtained by respondent's salesmen at the time the enrollment contract was executed by the applicant. These personal reports consisted of printed forms containing inquiries, the answers to which the prospective student was required to supply in his own handwriting. The questions cover information regarding personal qualifications, such as weight, height, sex, health, occupations, etc., followed by three paragraphs as follows:

Do you understand that:

1. The Civil Service Commissions are not engaged in the business of giving instruction in preparation for examinations, and that political or any other outside influence has no bearing on appointments?-----

ANSWER

2. Application for examinations must be made with the Civil Service Commission; no one has advanced information regarding examination questions, need of employees, or dates of examinations; appointments are made from those on the eligible list according to their ratings, and therefore cannot be guaranteed; ratings are based upon the work done in the examination room and other evidence of qualifications gathered by the Commission?---

ANSWER

3. Preparatory Training Institute, its employees, or registrars, have no connection with, nor are they agents of, or claim to be selected or recommended by Civil Service Commission, or any other branch of the government; Preparatory Training Institute is a private educational institution incorporated in New Jersey?-----

ANSWER

Each of these paragraphs is followed by a blank space for an answer and all reports show that the prospects filled in the word "Yes." These three paragraphs are followed by the questions:

What subject did you like best in school? and
How many minutes can you study daily?

The testimony of nine enrollees with respect to the execution of said personal report shows that none of said enrollees was aware of the significance of said report and that the respective salesmen not only failed to call specific attention to the three provisions dealing with the disclaimer of the school's connection with Government agencies or its ability to promise or guarantee positions, but, as shown by the testimony of four witnesses, prevented a proper reading and understanding of said report by continuing to talk while the prospects attempted to read the document or by simply pointing at the blanks, reading off the questions, and having the prospects fill in the answers.

Several instances show the use of high-pressure tactics, the salesman urging the immediate execution of the contract on the plea that he must leave at once and is unable to return, thereby depriving the prospects of careful consideration of the contract of enrollment although prospects requested sufficient time to read and comprehend the personal report.

Several of the enrollees advised the school that they desired to cancel the contract because of the misrepresentations made by the salesman, and there is no evidence that the school referred the complaining enrollees to the personal report executed by them, in which they stated in effect that they understood the true facts with respect to the school's having no connection with the Government and no ability to promise jobs.

PAR. 9. The testimony and evidence show, and the Commission finds, that the form of personal report was designed to mislead prospective purchasers of respondent's said courses of study into the belief that it was obtained for the purpose of securing certain statistical information and that its execution was secured in a manner calculated to prevent a full understanding of those provisions which disclaimed the various statements resorted to by salesmen to induce said prospective students to enroll.

PAR. 10. The Commission further finds that the respondent represents or implies to prospective students and to the public generally through the use of the word "Institute" in its corporate or trade name and in its advertising literature that respondent conducts an institution of learning, with a staff of competent, experienced, and qualified educators, and that its school is an extensive institution offering training and instruction in philosophy, art, science, and other learned subjects.

In truth and in fact, respondent offers only one course of study and instruction, which is substantially the same regardless of the Civil Service examination for which its students wish to prepare. Respondent, in the conduct of its said business, does not offer any training or instruction in philosophy, art, science, or other learned subjects. No basic, thorough, or complete 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 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 respondent.

PAR. 11. The use by the respondent of the misleading and deceptive representations herein set forth has had and now 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 course of instruction and the opportunities for appointment to United States Government positions, and has a tendency and capacity to cause such members of the public to purchase respondent's courses of instruction as the 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 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 and amendment thereto, the answers of the respondent to the complaint and amendment, testimony and other evidence in support of and in opposition to the allegations of the complaint and the amendment thereto taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and exceptions filed thereto, briefs in support of and in opposition to the complaint as amended, and oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Preparatory Training 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. 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.

2. 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.

3. 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 positions are such that students of respondent's courses cannot properly qualify.

4. Representing directly or by implication that respondent controls or will procure Government jobs for students completing its courses of study.

5. Representing directly or by implication that respondent has any connection with the Government of the United States or any branch thereof, including the Civil Service Commission.

6. Representing directly or by implication that respondent is authorized by the Civil Service Commission to qualify applicants for Government positions.

7. Representing directly or by implication that respondent has information with respect to places at, or dates on which, Civil Service examinations will be held which are not available to any person applying to the Civil Service Commission for such information.

8. Representing directly or by implication that applicants or prospective purchasers of respondent's courses of study are especially selected.

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9. Representing directly or by implication that appointment to positions in the Civil Service may or can be secured through respondent.

10. Using the term "Registrar" to designate or describe respondent's representatives and salesmen.

11. 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 using the word "Institute" in any manner to designate, describe, or refer to respondent's business.

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

It is further ordered, That the respondent 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.