

Syllabus

IN THE MATTER OF
CENTRAL UNIVERSITY

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

Docket 5326. Complaint, May 28, 1945—Decision, Apr. 21, 1947

The term "University," as generally understood and accepted by those engaged in the educational field and by the general public, designates an institution of higher learning with power to confer degrees, with an adequate resident faculty of learned persons possessing degrees in the subjects which they purport to teach, and with the necessary buildings equipped with libraries, laboratories, and other facilities for the instruction of resident and non-resident students.

Where a corporation long engaged in the competitive interstate sale and distribution of courses of study and instruction in various subjects, including science, sociology, languages, education, history, and theology; through advertisements in religious magazines, and in catalogs descriptive of the various courses of study and instruction offered by it—

- (a) Falsely represented and implied through use of the word "University" in its corporate name and in other ways through statements therein, that it was a university offering extension training in various subjects of higher learning and had the necessary buildings, libraries, and laboratories, and a resident faculty competent and qualified to teach the subjects described in its catalogs; and that it was headed by a board of directors, an advisory board, and a faculty actively engaged in the management and administration of its affairs;

The facts being its business was that of a correspondence school and it was operated from the residence of and solely by its secretary; courses of instruction were prepared by her and members of the faculty and mailed to enrollees, and, upon return, the answers were similarly sent to members of the faculty for review and correction; there was no resident faculty, the members being located in various cities and engaged in pursuits other than and in addition to the reviewing and correction of lessons of students enrolled in its courses; it had no resident student body and no educational facilities such as libraries or laboratories; and neither the credits earned by its students nor the degrees conferred by it on them, were recognized by reputable accredited colleges or universities:

- (b) Represented and implied through a list of some 300 names entitled "Students and Graduates—A Partial List from Recent Years" that it had a large and substantial number of students;

The facts being that such "Partial List" included the names of a substantial number of persons who had purchased its courses many years prior to the issuance of the catalog in which such lists appeared, whereby the apparent size of its business and the number of students enrolled were grossly exaggerated;

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With tendency and capacity to mislead members of the purchasing public into the erroneous belief that such representations were true, and thereby induce the purchase of its courses:

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.

In a proceeding in which (a) the complaint alleged, among other things, that a correspondence school which designated itself a university and "a correspondence institute" was not an institute as said designation is understood in the educational world, for the reason that it had none of the educational facilities described in the complaint, namely, an adequate resident faculty of learned persons acting as instructors in the various branches of learning, and libraries and other facilities for the instruction of resident and nonresident students, and was not an organization for the promotion of learning, philosophy, arts and sciences, and in which (b) no proof was offered to show that the understanding of the word "institute" in educational circulars and by the general public corresponded to that alleged in the complaint, there was no adequate basis in the record for findings upon said issue and none was made.

As respects the charges, among others, that respondent correspondence school falsely represented that the credits earned by its students were equivalent to those of recognized colleges and universities and that degrees it conferred were recognized by such colleges and universities, no proof was offered in the proceeding that such representations were made by it, and, lacking adequate basis in the record for findings upon such issues, none were made.

With regard to the charges, among others, that respondent corporate correspondence school had no power or authority to confer academic degrees, when in fact its corporate charter indicated that the conferring of appropriate degrees would not be an *ultra vires* act, no finding was made upon such issue, lacking adequate basis in the record therefor.

In a proceeding in which it was charged, among other things, that respondent correspondence school falsely represented that its students received instruction by teachers especially qualified in the subjects offered in its catalog, but in which no proof was offered with respect thereto, no findings upon such issue, lacking adequate basis in the record therefor, were made.

Before *Mr. George Biddle*, trial examiner.

Mr. William L. Pencke for the Commission.

Marsh & Marsh, of Indianapolis, Ind., 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 Central University, 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,

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hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Central University, is a corporation, organized, existing, and doing business under the laws of the State of Indiana, with its office and principal place of business at 6030 Lowell Avenue, in the city of Indianapolis and State of Indiana.

PAR. 2. Said respondent is now, and has been for more than 5 years last past, engaged in the sale and distribution in commerce between and among the various States of the United States and foreign countries of typewritten outlines of courses for the study of various subjects of higher learning, such as science, sociology, languages, education, history, and theology, and hereinafter referred to as outline courses of study which said studies are pursued by correspondence through the medium of the United States mails. Respondent during the time aforesaid caused and does now cause its said outline courses of study to be transported from its said place of business in the State of Indiana to purchasers thereof located in the several States of the United States, other than the State of Indiana, and in foreign countries.

PAR. 3. There is now and has been at all times hereinafter mentioned, a course of trade in said outline courses of study so sold and distributed by the respondent in commerce between the various States of the United States and foreign countries.

There are other firms, corporations, schools, and universities that have been and are engaged in offering for sale, selling, and transporting in commerce between and among the various States of the United States and foreign nations courses of study and instruction in the arts and sciences and general education, and respondent is engaged in substantial competition with such firms, schools, and universities in the sale of courses of study and instruction as herein set out.

PAR. 4. In the course and conduct of its business as aforesaid, respondent distributes to purchasers and prospective purchasers of its said outline courses of study catalogs descriptive of the various courses and subjects purported to be taught by it, which catalogs, among other things, contain the following statements and representations:

CENTRAL UNIVERSITY

A CORRESPONDENCE INSTITUTE

The Institution consists of a Board of Directors, an Advisory Board, and a Faculty composed of instructors who are graduates of America's outstanding colleges and universities, each member teaching the subject or subjects for which he is especially equipped.

The University Extension idea which has been endorsed by leading educators both in Europe and America, is the foundation on which this school rests.

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. . . our courses under the personal direction of interested teachers.

Foreign students before conferring with the Secretary are often unnecessarily discouraged because they do not understand the American system of evaluating credits.

Full credit will be given for all work of a passing grade done in other standard and recognized colleges.

The college offers courses of instruction leading to three degrees: Bachelor of Arts, Bachelor of Science (in Social Science or Education) and Bachelor of Theology.

Central University offers graduate work in most of its departments which leads to the following degrees: Master of Arts, Bachelor of Divinity, Master of Theology, Doctor of Theology and Doctor of Philosophy.

Under the heading "Faculty" in its said catalog, respondent lists the names of 17 individuals, together with the letters designating the degrees and the names of the educational institutions at which said degrees were earned; and under the heading: "Students and Graduates—A Partial List from Recent Years" there are listed the names and addresses of approximately 300 persons.

PAR. 5. Through the use of the foregoing statements and representations and others of similar import and meaning not herein specifically set forth, respondent represents and implies that its business is a university offering extension training in higher subjects of learning; that it has the necessary buildings, libraries, and laboratories and a resident faculty competent and especially qualified to teach the subjects described in said catalog; that said so-called university or institute is headed by a board of directors, an advisory board, and a faculty, actively engaged in the management, administration, and operation of a university or institute: that the work done at its school is equivalent to that offered by extension divisions of standard universities, as endorsed by leading educators in Europe and America; that its students receive the personal attention and direction of instructors interested in the progress of said students; that the credits earned by its students are equivalent to those of standard and recognized colleges and universities; that it has the power and authority to confer academic degrees and that the same are recognized by standard accredited educational institutions, colleges, and universities; that the members of its faculty are resident, full-time instructors especially qualified to teach their respective subjects; and that the list of names of students and graduates is a partial list of such persons that have attended respondent's school in recent years.

PAR. 6. In truth and in fact, said statements and representations as hereinabove described, are exaggerated, deceptive, and misleading. Respondent's business is not a university which term is generally

accepted and understood to mean an institution of higher learning, with power to confer degrees and an adequate resident faculty of learned persons acting as instructors in the various branches of learning, and equipped with libraries, laboratories, and other facilities for the instruction of resident and nonresident students; nor is respondent's business an institute as said designation is understood in the educational world for the reason that it has none of the educational facilities hereinabove described, and is not an organization for the promotion of learning, philosophy, arts, or sciences, but is solely engaged in the sale of outline courses of study by correspondence; respondent's business is operated from the residence of its secretary and has none of the requisite personnel, equipment, and facilities to constitute either a university or an institute, and there are no administrative officers or directors actively engaged in the operation of said school, its affairs being managed solely by said secretary. The members of the faculty listed in its said catalog are not resident instructors, but are located in various cities throughout the United States; many of said individuals have not been engaged in reviewing or correcting lessons of respondent's students for a number of years, their time being devoted to pursuits other than teaching said students; students do not receive instruction by teachers especially qualified in the respective subjects offered in respondent's catalog, in many instances the same instructor supervising the work in a number of different subjects. Not all of the academic degrees possessed by said members of the faculty were obtained from outstanding American universities and colleges.

Neither respondent's school nor any of the degrees conferred by it are recognized by standard accredited and recognized colleges, universities, and accrediting organizations, nor are the credits earned by its students accepted or recognized by said educational and accrediting institutions.

In truth and in fact, respondent was never authorized or empowered to confer academic degrees, any authority which it may have to issue documents under its charter being limited to the issuance of certificates with respect to work completed by purchasers of said outline courses of study; and said certificates have never been, nor are they now recognized by, nor have they any merit in the educational world.

The partial list of students and graduates contained in said catalog is not in fact composed of the names of students and graduates of recent years, but consists of the names of persons that had purchased respondent's outline courses of study many years prior to the issuance and distribution of said catalog, and their inclusion in said list under

said heading creates the impression that the enrollment of students in respondent's school is much greater than it is in fact.

PAR. 7. The misleading and deceptive acts and practices as hereinabove set forth, all have the tendency and capacity to, and do mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and to induce them to purchase respondent's said outline courses of study and instruction on account thereof.

PAR. 8. There are among competitors of respondent individuals, corporations, schools, and universities who sell and distribute courses of study and instruction in the arts and sciences to purchasers thereof in the various States of the United States and foreign countries who truthfully represent their said courses of study and instruction. As a result of said acts and practices of respondent, substantial trade in commerce has been unfairly diverted to respondent from respondent's competitors.

PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair and deceptive acts and practices in commerce and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 28, 1945, issued and subsequently served its complaint in this proceeding upon respondent, Central University, a corporation, charging it with the use of unfair methods of competition in commerce and 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, certain facts were stipulated into the record and certain exhibits introduced in evidence at a hearing before an examiner of the Commission theretofore duly designated by it, and said stipulated facts 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, answer, stipulated facts, and other evidence, report of the trial examiner, and briefs in support of and in opposition to the complaint (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, Central University, is a corporation organized in 1896 under the laws of the State of Indiana, with its office and principal place of business at 6030 Lowell Avenue, Indianapolis, Ind. Respondent is now, and for many years has been, engaged in the sale and distribution of courses of study and instruction in various subjects, including science, sociology, languages, education, history, and theology.

PAR. 2. In the course and conduct of its aforesaid business, respondent causes its said courses of instruction, when sold, to be transported to purchasers thereof at their points of location in various States of the United States and in foreign countries, and maintains, and has maintained, a course of trade in said courses of instruction in commerce among and between various States. There are various firms, corporations, schools, and universities engaged in offering for sale and selling in interstate commerce courses of study and instruction in subjects similar to those subjects in which courses are sold and distributed by respondent, and respondent is engaged in substantial competition with such firms, corporations, schools, and universities, in the sale of such courses of instruction.

PAR. 3. In order to promote the sale of its correspondence courses of study, respondent has caused small advertisements to be published in religious magazines and furnishes to purchasers and prospective purchasers of its courses of study catalogs descriptive of the various courses of study or instruction offered. The catalog thus used from 1938 to March 1944 contains, among other statements and representations, the following:

CENTRAL UNIVERSITY

A Correspondence Institute

* * * * *

The institution consists of a Board of Directors, an Advisory Board, and a Faculty composed of instructors who are graduates of America's outstanding colleges and universities, each member teaching the subject or subjects for which he is especially equipped.

* * * * *

The University Extension idea, which has been endorsed by leading educators, both in Europe and America, is the foundation on which this school rests.

* * * * *

* * * our courses under the personal direction of interested teachers * * *.

* * * * *

Foreign students before conferring with the Secretary are often unnecessarily discouraged because they do not understand the American system of evaluating credits.

* * * * *

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Full credit will be given for all work of a passing grade done in other standard and recognized colleges.

* * * * *

The college offers courses of instruction leading to three degrees: Bachelor of Arts, Bachelor of Science (in Social Science or Education), and Bachelor of Theology.

* * * * *

Central University offers graduate work in most of its departments which leads to the following degrees: Master of Arts, Bachelor of Divinity, Master of Theology, Doctor of Theology, and Doctor of Philosophy.

In its said catalog, under the heading "Faculty," respondent lists the names of 17 individuals with letters designating the degrees and the names of the institutions at which such degrees were earned; and under the heading "Students and Graduates—A Partial List from Recent Years" there are listed the names and addresses of approximately 300 persons. The catalog used beginning in 1944 is substantially the same, except that it lists only 8 faculty members and the degrees offered are bachelor of arts, bachelor of theology, master of theology, and doctor of theology.

PAR. 4. Through the use of the statements and representations set forth above, and others similar thereto but not specifically set out herein, respondent represents and implies that it is a university offering extension training in various subjects of higher learning; that it has the necessary buildings, libraries, and laboratories, and a resident faculty competent and qualified to teach the subjects described in its catalog; that it is headed by a board of directors, an advisory board, and a faculty actively engaged in the management and administration of its affairs. By means of the list of some 300 names, entitled "Students and Graduates—A Partial List from Recent Years," respondent represents and implies that it has a large and substantial number of students.

PAR. 5. As a matter of fact, respondent is not a university. The term "university," as generally understood and accepted by those engaged in the educational field and by the general public, designates an institution of higher learning with power to confer degrees; with an adequate resident faculty of learned persons possessing degrees in the subjects which they purport to teach; and with the necessary buildings equipped with libraries, laboratories, and other facilities for the instruction of resident and nonresident students. Respondent's business is that of a correspondence school and is operated from the residence of and solely by its secretary, Miss Dorothy Morlan. The courses of study and instruction are prepared by Miss Morlan and members of the faculty and are mailed to enrollees, who return

the answers by mail, and these are mailed to members of the faculty for review and correction. There is no resident faculty, its members being located in various cities and engaged in pursuits other than and in addition to the reviewing and correction of lessons of students enrolled in respondent's courses. Respondent has no resident student body and no educational facilities such as libraries, laboratories, or staff of resident teachers. Neither the credits earned by its students nor the degrees conferred by respondent on its students are recognized by reputable, accredited colleges or universities. The so-called "Partial List of Students and Graduates in Recent Years" includes the names of a substantial number of persons who purchased respondent's courses of study many years prior to the issuance and distribution of the catalog in which such list appeared, and by reason of this fact grossly exaggerates the apparent size of respondent's business and the number of students enrolled. A comparison of the receipts from the sale of courses of instruction and the fees charged for such courses indicates an enrollment much smaller than that which would be represented by the listing under the heading heretofore described.

PAR. 6. With respect to the charge made that respondent is not an institute, proof was not offered to show that the understanding of the word "institute" in educational circles and by the general public corresponds to such understanding as alleged in the complaint. In the case of the charges that respondent falsely represented that the credits earned by its students are equivalent to those of standard, recognized colleges and universities and that the degrees it confers are recognized by standard accredited colleges and universities, proof was not offered that such representations were made by respondent. With regard to the charge that respondent has no power or authority to confer academic degrees, respondent's corporate charter indicates that the conferring of appropriate degrees would not be an *ultra vires* act. No proof was offered upon the charge that respondent falsely represented that its students receive instruction by teachers especially qualified in the subjects offered in respondent's catalog. There is no adequate basis in the record for findings upon the issues mentioned in this paragraph, and none are made.

PAR. 7. The acts and practices of respondent as herein found have the tendency and capacity to mislead members of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and to induce the purchase of respondent's courses of study and instruction as a result of such erroneous belief.

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CONCLUSION

The acts and practices of 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, the answer of respondent, certain facts stipulated into the record and other evidence taken before an examiner of the Commission theretofore duly designated by it, report of the trial examiner, and briefs of counsel (oral argument not having been requested), 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 respondent, Central University, a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of its courses of study or instruction in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "university," or any abbreviation or simulation thereof, as a part of respondent's corporate name or as a part of the name of respondent's school, or representing or implying in any manner that respondent's school is a university.

2. Representing, directly or by implication, that respondent's school is a larger institution than it in fact is, or that it has more complete educational facilities or a larger student enrollment than is the fact.

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.

Commissioner Mason not participating.

Syllabus

IN THE MATTER OF

CHARLES W. SCHUTTE AND JANET M. SCHUTTE, TRADING AS SCHUTTE LABORATORIES AND SCHUTTE CO.

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

Docket 5382. Complaint, Sept. 14, 1945—Decision, Apr. 22, 1947

Where two partners engaged in the interstate sale and distribution of certain preparations intended for use in exterminating rats and mice and other animals and designated as "Rat Deth," "Schutte's Liquid Red Squill," "Mouse and Mole Deth," "Schutte's Red Squill," and "Rat Nip", through advertisements in newspapers and periodicals and through circulars, leaflets, display cards, and other advertising media—

(a) Represented that their "Rat-Deth" was an effective killing agent for mice and rats;

The facts being that while red squill, active ingredient of said preparation, is an effective raticide, it is not usually effective as to mice, particularly in concentrations of about ten percent, mice being relatively more resistant to poison than rats and differing from the latter in their eating habits;

(b) Represented that rats and mice, after consuming said product, go outside to die as do mice and moles after consuming their "Mouse and Mole Deth";

The fact being that while red squill affects the respiration and causes thirst, the animal is as likely to seek air and water inside the building as outside; since red squill is slow in its action, said effects also usually do not come on until after the animal has become incapacitated and is unable to move about to any substantial extent; and as respects the "Mouse and Mole Deth," toxic ingredient of which is strychnine, moles live almost entirely underground, and the product is not effective as to them, principally due to its basis of cereal, which they rarely eat;

(c) Represented that use of their "Red Squill" and their "Rat Nip" would result in the extermination of all rats on the premises;

The facts being that no raticide yet developed is one hundred percent effective; and,

(d) Represented that their "Rat Deth" and "Schutte's Liquid Red Squill" were harmless to humans and domestic animals;

The facts being that while the emetic, red squill, when taken by humans and domestic animals, usually causes vomiting and so brings relief, instances have occurred in which it caused death to domestic animals; so that, while relatively harmless, it cannot be considered entirely so;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to their products and thereby induce its purchase of substantial quantities thereof:

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.