

IN THE MATTER OF
CAREER TRAINING INSTITUTE ET AL.

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

Docket 5354. Complaint, July 17, 1945—Decision, June 3, 1948

In a proceeding in which certain practices of the salesmen or representatives of a correspondence school in soliciting prospective students for said school, were challenged as false and misleading and in which it was contended that said representatives or so-called registrars were not agents of the corporation, but occupied the legal status of independent contractors, the Commission was of the view that such position was untenable, and that so far as the public was concerned, said registrars were in fact the agents and salesmen of the corporation, and that it was properly chargeable with the representations made by them.

Where a corporation engaged in the interstate sale and distribution of correspondence courses of study and instruction in various business and clerical subjects such as bookkeeping, typing, shorthand, etc., and in soliciting inquiries with respect to employment in private industry and civil service through postal cards mailed to prospective purchasers, which stated that one of the school's representatives described as a "registrar," would call upon the prospect and ascertain his qualifications; together with three officers thereof who participated actively in its affairs and practices—

(a) Represented through said agents or salesmen, that the agent was a representative of or had some connection with the Government or Civil Service Commission, and was a registrar of the school and authorized to check upon the qualifications of prospective students to determine their eligibility for taking civil-service examinations;

The facts being that said salesmen were employees of the corporation, had no connection with the Government, and called solely to enroll students for courses of study and to obtain payment of the tuition fee or a portion thereof;

(b) Represented as aforesaid that positions in the civil service were guaranteed immediately after the taking and passing of an examination, that such positions would be available in designated localities or cities close to the residence of the prospective student;

The facts being said corporation was a private one, for profit, and had no connection with the Government; was not qualified to place any of its students in civil-service positions; and neither it nor its salesmen could guarantee positions in any branch thereof;

(c) Represented as aforesaid that if students, having completed the course of study, took civil-service examinations and failed to pass, their tuition fees would be refunded immediately;

The facts being that the salesmen failed to explain that the terms and conditions under which refunds were to be made were such that only in rare and unlikely instances would the corporation be obligated to make the refund;

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- (d) Represented as aforesaid that prospective students would lose the advantages available in civil-service positions if they failed to enroll for their courses of instruction;

Notwithstanding the fact students of the school had no greater opportunities for civil-service employment than any other persons possessing the same qualifications;

- (e) Falsely represented through use of the word "registrar" for their agents and salesmen that the latter performed the functions usually performed by officers of educational institutions known as registrars; and

- (f) Falsely represented through use of the word "institute" in their corporate and trade name that the school was an institute in the sense in which that term is understood and accepted in the educational world;

With a tendency and capacity to mislead and deceive a substantial portion of the purchasing public, and thereby cause it to purchase their said courses of study and instruction:

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.

In said proceeding, in which it appeared, as respects said misleading use of the word "institute" in the corporate and trade name, that respondent had adopted, since the institution thereof, the practice of using in connection with its name the additional words "a correspondence institution," the Commission was of the opinion and found that such additional words did not serve to correct the misleading effect of the word "institute" in the corporate name.

Before *Mr. George Biddle*, trial examiner.

Mr. William L. Pencke for the Commission.

Mr. Leo Ertag, of Newark, N. J., 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 Career Training Institute, a corporation, Samuel A. Cannon, Geraldine S. Cannon, Leo Ertag, and Joseph A. Cosenza, 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, Career Training Institute, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey; Geraldine S. Cannon, Samuel A. Cannon, Leo Ertag, and Joseph A. Cosenza are individuals and pres-

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ident, treasurer, vice president, and director, respectively, of said Career Training Institute. The principal office and place of business of said corporate and individual respondents is located at 1060 Broad Street in the city of Newark and State of New Jersey.

Respondent, Samuel A. Cannon, acts as general manager and respondent, Leo Ertag, as legal counsel for said corporate respondent, and all of said individual respondents, in their respective capacities as such officers and executives, formulate, control, and direct the policies and practices of said corporation.

PAR. 2. Respondent, Career Training Institute, is now and has been for more than 1 year last past, engaged in the sale and distribution in commerce between and among the various States of the United States of courses of study and instruction in general clerical subjects and for the preparation of students for civil service examinations in said subjects, which said courses are pursued by correspondence through the medium of the United States mail. Said 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 the State of New Jersey, to the purchasers thereof in such other States.

PAR. 3. In connection with the offering for sale and the sale of said courses of study and instruction, said corporate respondent solicits inquiries from prospective students and purchasers of its said courses by means of postal cards mailed to said prospects, inviting inquiries with respect to employment in private industry and civil service, and stating that one of its representatives, designated as registrar, will call upon said prospect, present his credentials and ascertain the qualifications of said prospect. Said representatives or sales agents, in soliciting students at their respective homes, have made and are making numerous statements and representations to such prospective students and their parents which are grossly exaggerated, deceptive, false, and misleading.

Among such representations made by said agents are statements and implications to the effect:

That said sales agent is a representative of the United States Government or of the United States Civil Service Commission, or has some connection with said Civil Service Commission or some other Government agency;

That said salesman is a registrar of said corporate respondent authorized and required personally to check upon the qualifications

of prospective students to determine their eligibility for taking civil service examinations;

That said corporate respondent is connected with some Government agency or is a part of the United States Civil Service Commission;

That positions in the United States civil service are guaranteed immediately after the taking and passing of an examination; and that such positions will be available in specifically named localities or cities close to the residence of the prospective student;

That if students, having completed said respondent's course of study, take civil service examinations and fail to pass, their tuition fees will be refunded immediately upon said students notifying said respondent of such failure;

That prospective students will forego the advantages available in United States civil service positions if they fail to enroll; that said salesmen are pressed for time, cannot return for further interviews, and that said prospects would have to decide immediately whether or not they desired to enroll; that they had been advised of all the terms of the contract of enrollment and the contents of certain questionnaires, said salesmen in many instances suggesting the answers to be inserted by said prospects;

That school superintendents or principals or prominent local citizens have recommended the prospective student being solicited for said respondent's course of training; or that said prospect has been selected for said training as one of a small group in a given district because of high scholastic standing and character.

The designation of said respondent's salesmen as registrars, together with identification cards or credentials simulating credentials of Government employees, combine to create in the minds of prospective students and their parents the impression and belief that said salesmen are connected with or are employees of the United States Government.

PAR. 4. In truth and in fact:

Respondents' salesmen and representatives are employees of said corporate respondent and have no connection whatever with the United States Government or any of its agencies or branches.

Neither the United States Civil Service Commission nor any other branch of the United States Government has designated respondents' salesmen to make personal calls upon prospective students for the purpose of determining their qualifications or eligibility for civil service examinations or positions. Such calls are made solely to

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secure the enrollment of students for respondents' courses of study and to obtain either the total or a partial payment of the tuition fee.

Respondents' business is a private corporation for profit and is not connected with the United States Government nor is it a part of any Government agency or department.

Respondents' school is not qualified to place any of its students in civil-service positions; and neither respondents nor their salesmen can guarantee positions in any branch of the civil service, nor have they any knowledge of available civil-service positions, nor can they place anyone in a position in any stated city or locality.

Respondents' salesmen fail to explain the conditions under which refunds of tuition fees are agreed to be made; and prospective students, relying entirely upon the representations made by said salesmen, are unaware of the fact that the terms and conditions under which refunds are to be made are such that respondents will only in rare and unlikely instances be obligated to make such refund.

Representations to the effect that prospective students will forego the advantages of civil service if they fail to enroll for respondents' courses of training; or that they will be continued in their present positions or will be preferred for new positions because of having taken said training are false and misleading in that respondents' students and graduates have no greater opportunities for employment than any other persons possessing the same qualifications for civil-service employment.

The representations by respondents' salesmen that they are pressed for time and cannot return for another visit nor afford the prospect an opportunity to discuss the desirability of enrolling or to consider or read the contract of enrollment are all made for the sole purpose of obtaining the signatures of the prospects and in cases of the prospects' minority, their parents' signatures, and to obtain the down payment as quickly as possible, thereby preventing the discovery that respondent, Career Training Institute, is a private business enterprise and not a governmental agency.

The designation of respondents' salesmen as registrars is misleading for the reason that said salesmen are employed to sell courses of instruction on a commission basis and do not have the duties or responsibilities ordinarily incumbent upon officers of educational institutions employed and designated as registrars. Said term or title, together with the use of credentials simulating credentials of Government employees creates the impression in the minds of prospective students that respondents' salesmen are connected with, or employees of the United States Government.

PAR. 5. The name Career Training Institute under which corporate name respondents conduct their business is misleading and deceptive in that it represents or implies to prospective students that respondents conduct a resident institution of learning with a staff of competent, experienced, and qualified educators devoting their full time to classroom instruction and that respondents' business is an extensive institution offering training and instruction in the higher subjects of education, including philosophy, arts, sciences, and other learned subjects.

In truth and in fact, respondents offer courses of study and instruction only in the elementary commercial and clerical subjects including the lower-level type of examinations for civil-service positions, and do not offer training or instruction in philosophy, arts, sciences, or other learned subjects. There is no faculty of learned persons engaged in teaching resident students, and respondents' business is not an institute, as said term is understood and accepted in the educational world. The method of instruction consists of furnishing to students printed or mimeographed texts and previously prepared lessons and the grading of papers by employees of respondents.

PAR. 6. The representations of respondents, as aforesaid, have had and do have a tendency and capacity to, and do, confuse, mislead, and deceive members of the public into the belief that such representations are true, and induce them to purchase respondents' courses of study and instruction and pursue the same on account thereof.

PAR. 7. 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 July 17, 1945, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing by respondents of their answer to the complaint, certain testimony and other evidence in support of and in opposition to the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. During the course of the hearing respondents, through their attorney, admitted, with certain exceptions,

all of the material allegations of fact in the complaint. Subsequently the proceeding regularly came on for final consideration by the Commission upon the complaint, answer, testimony, and other evidence, the admissions of respondents referred to above, recommended decision of the trial examiner, and brief in support of the complaint (no brief having been filed on behalf of 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, Career 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 located at 1060 Broad Street, Newark, N. J. It is engaged in the sale and distribution of courses of study and instruction in various business and clerical subjects such as bookkeeping, typing, shorthand, etc., the courses being pursued by correspondence.

Respondent, Samuel A. Cannon, is treasurer of the respondent corporation and he is also its general manager, being in general charge of its business policies and practices. Respondent, Geraldine S. Cannon, is the wife of Samuel A. Cannon and is president of the corporation. Respondent, Leo Ertag, who is an attorney at law, is vice president of the corporation and is also its general counsel. All of these individuals have participated actively in the affairs and practices of the corporation, and the Commission finds that they were properly joined as respondents in this proceeding.

Respondent, Joseph A. Cosenza, on the other hand, has had little or nothing to do with the policies and business practices of the corporation, having been employed merely as a teacher. The Commission therefore finds that the complaint should be dismissed as to Cosenza and the word "respondents," as used hereinafter, will not include this respondent unless the contrary is indicated.

PAR. 2. Respondent, Career Training Institute, causes and has caused its courses of study and instruction, when sold, 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. The corporation maintains and at all times mentioned herein has maintained a course of trade in its courses of study and instruction in commerce among and between various States of the United States.

PAR. 3. In connection with the offering for sale and sale of its courses of study and instruction the corporate respondent solicits inquiries from prospective purchasers of its courses by means of postal cards mailed to such prospects. Such cards invite inquiries with respect to employment in private industry and civil service and state that one of the school's representatives, designated in the card as a "registrar," will call upon the prospect and ascertain his qualifications. While respondents contend that these so-called registrars are not agents of the corporation but occupy the legal status of independent contractors, the Commission is of the view that this position is untenable. So far as the public is concerned the registrars are in fact the agents and salesmen of the corporation and the corporation is properly chargeable with the representations made by them. Among the representations which have been made by these agents to prospective students are the following:

That the agent was a representative of or had some connection with the United States Government or the United States Civil Service Commission.

That the agent was a registrar of respondents' school and was authorized to check upon the qualifications of prospective students to determine their eligibility for taking civil-service examinations.

That the corporate respondent was connected with some governmental agency or was a part of the United States Civil Service Commission.

The positions in the United States civil service were guaranteed immediately after the taking and passing of an examination and that such positions would be available in certain designated localities or cities close to the residence of the prospective student.

That if students, having completed the course of study, took civil-service examinations and failed to pass, their tuition fees would be refunded immediately.

That prospective students would lose the advantages available in civil-service positions if they failed to enroll for respondents' courses of instruction.

PAR. 4. The Commission finds that these representations were false and misleading. Actually, these salesmen were employees of the respondent corporation and had no connection whatever with the United States Government or any of its agencies. Neither the United States Civil Service Commission nor any other agency of the United States Government had designated these salesmen to make calls upon prospective students for the purpose of determining their qualifications or eligibility for civil-service examinations or positions. The calls were

made by the salesmen solely for the purpose of securing the enrollment of students for the courses of study of the corporate respondent and for the purpose of obtaining the payment of the tuition fee or a portion thereof. The corporate respondent, as indicated above, is in fact a private corporation for profit and has no connection with the United States Government or any of its agencies. The corporation is not qualified to place any of its students in civil-service positions and neither the corporation nor its salesmen can guarantee positions in any branch of the civil service.

The salesmen failed to explain the conditions governing the refund of tuition fees, and prospective students, relying upon the representations made by the salesmen, were unaware of the fact that the terms and conditions under which refunds were to be made were such that only in rare and unlikely instances would the corporation be obligated to make the refund.

Representations to the effect that prospective students would lose the advantages of civil-service positions if they failed to enroll for the courses of instruction were false and misleading in that students of the school have no greater opportunities for employment than any other persons possessing the same qualifications for civil-service employment.

The use of the word "registrar" to designate and describe the agents and salesmen of the respondent corporation was misleading in that such salesmen were employed merely to sell courses of instruction on a commission basis, and they did not have the duties or responsibilities of officers of educational institutions usually designated as registrars.

PAR. 5. The word "institute" in the corporate and trade name of the respondent corporation is misleading and deceptive in that it represents or implies that the school is an institute in the sense in which that term is understood and accepted in the educational world. Actually, the school is not an institute in such sense.

While the respondent corporation, since the institution of this proceeding, has adopted the practice of using in connection with its name the additional words "a correspondence institution," the Commission is of the opinion and finds that these additional words do not serve to correct the misleading effect of the word "institute" in the corporate name.

PAR. 6. The acts and practices of respondents, as set forth above, have the tendency and capacity to mislead and deceive a substantial portion of the public, and the tendency and capacity to cause such portion of the public to purchase respondents' courses of study and instruction as a result of the erroneous and mistaken belief so engendered.

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CONCLUSION

The acts and practices of respondents as herein found are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, testimony, and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, the admissions of respondents made at the hearing, recommended decision of the trial examiner, and brief in support of the complaint (no brief having been filed on behalf of respondents and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that certain of the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondent, Career Training Institute, a corporation, and its officers, and respondents, Samuel A. Cannon, Geraldine S. Cannon, and Leo Ertag, individually and as officers of said corporation, and the respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of courses of study and instruction, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondents' school or its sales agents are representatives of or have any connection with the United States Civil Service Commission or any other governmental agency.

2. Representing, directly or by implication, that positions in the United States civil service are guaranteed to students of respondents' school.

3. Representing, directly or by implication, that refunds of tuition fees will be made to students failing to pass civil-service examinations, unless the terms and conditions of such refunds are fully disclosed and unless such refunds are in fact made in accordance with such representations.

4. Representing, directly or by implication, that prospective students will lose advantages available in United States civil-service positions if they fail to enroll in respondents' school.

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5. Using the word "registrar," or any word of similar import, to designate or describe respondents' sales agents; or otherwise representing that such agents perform the functions usually performed by officers of educational institutions known as registrars.

6. Using the word "institute," or any word of similar import, either alone or in conjunction with other words, in the corporate or trade name of respondent, Career Training Institute; or otherwise representing, directly or by implication, that respondents' school is an institute.

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

It is further ordered, That the complaint herein be, and it hereby is, dismissed as to respondent, Joseph A. Cosenza.

Syllabus

IN THE MATTER OF

E. J. GOODIER, TRADING AS UNIVERSAL LABORATORIES
AND AS GOODIER CO.

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

Docket 5069. Complaint, Oct. 26, 1943—Decision, June 7, 1948

Where an individual engaged in the interstate sale and distribution of some 56 or more medicinal, cosmetic, and toilet preparations, which he sold under various brand names (including, mostly, as a prefix, his own) to agents and house-to-house canvassers, principally, who sold direct to ultimate purchasers; in describing his said products in catalogs, circulars, and other advertising literature distributed to his agents and canvassers for delivery to prospective purchasers for their use in ordering merchandise direct from him—

- (a) Represented falsely that his Milk of Magnesia, Anti-Pain Liniment, Solodine, and Compound with Sarsaparilla, or Sarco, were effective treatments for indigestion, and simple stomach ailments;
- (b) Represented falsely that his Antiseptic Solution, Syrup of White Pine Compound, Medicated Ointment, Aspirin Tablets, Cod Liver Oil Tablets, Laxative Bromide and Quinine Cold Tablets, Laxative Chill Tonic or Chono, Purple Drops, Pine-O-Mint Balm, Pine-O-Mint Cough Drops, Pine-O-Mint Cough Syrup, Mentholated Balm, Tasteless and Odorless Castor Oil, and Pure Turpentine were competent and adequate treatments for, and in the case of some, preventives of, sore throats, coughs, head and chest colds, croup, and lung and throat ailments;
- (c) Represented falsely that his Anti-Pain Liniment, taken internally, Solodine and White Liniment constituted competent treatments for colic and cramps; and that his said liniment, applied externally, would effectively relieve all painful conditions and that his Family Liniment was an adequate treatment for sprains, toothache, all types of backache and sore feet;
- (d) Represented falsely that his Imported Russian Mineral Oil and Compound with Sarsaparilla, or Sarco, were competent treatments for constipation; and that his Medicated Ointment and Solodine were effective antiseptics, healed wounds and prevented infection;
- (e) Represented falsely that his Maytane, Laxative Chill Tonic or Chono, Compound with Sarsaparilla or Sarco, Ton-Ko-Lah and Pep Tablets, or Special Tablets Rx 1761, or Aunt Poody's Pep Tablets, were general tonics, made the blood rich and healthy, restored vitality and pep, etc.; and that his Liverettes, or Liver Actors, or Little Pills, and his F E Cascara Sagraada Aromatic restored the liver to normal functioning;
- (f) Represented falsely that his Aunt Poody's Remedy, or Corno, would relieve corns instantly; that his Diuretic Pills, or Kidney Pills were a competent treatment for diseases of the kidneys; that his Van-Nae Herb Tea and Epsom Salts were effective reducing agents; and that his Laxative Chill