

IN THE MATTER OF

ARLENE WEBER ET AL. TRADING AS WEBER
TYPEWRITER MECHANICS SCHOOL

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

Docket 5453. Complaint, July 11, 1946—Decision, Feb. 8, 1950

Where an individual engaged in the interstate sale and distribution, by mail, of a course of study and instruction in typewriter repairing, which she advertised in magazines of national circulation and through circular letters—

- (a) Represented falsely through the use of the word "school" in her trade name and in her advertising and lesson material, that she operated a school devoted to the teaching of the trade of typewriter repairing, and employed a faculty of teachers and maintained facilities for the supervisions of such a course, and for review of the work of purchasers thereof and the testing of purchasers' proficiency in the subjects covered;

The facts being that her business consisted solely of the sale of 18 separate pamphlets, which were designated "lessons," described the work of typewriter repairing, and might all be purchased at once upon the payment of \$35;

- (b) Represented, directly or by implication, that she had operated a typewriter and supply business for over 20 years, and that she was a bonded factory distributor; when in fact she had been engaged in the business concerned for less than 3 years, and had no connection with typewriter manufacturers;
- (c) Represented falsely through the issuance of so-called diplomas to those who had purchased said 18 pamphlets, that the purchaser, as certified thereby, had completed the course and been tested, or had passed examinations therein, and was eligible to become a student dealer and service man; and was thereby assured of such employment; and
- (d) Represented falsely that the lessons offered by her constituted a simple or practical home-study course which might be mastered by correspondence; that many of her students owned their own business, while many others were engaged as repairmen; that repair shops were over-crowded with work; that one-fourth of all inquiries received by her were from soldiers at army camps; that the health or age of the student constituted no handicap to the successful completion of the course; and that a purchaser of her course of study would acquire therefrom the equivalent of 20 years of experience in typewriter repair work, and would acquire secrets in connection therewith which are not available to the average experienced repairman; and
- (e) Represented falsely that the vocation of typewriter repairman would assure a large income and permanent employment; that she would positively enable a person to earn from \$15 to \$50 a day by becoming his own boss; that, among other things, a student was required to make tracings of certain mechanical parts, and to mail them in for comment, and that such tracings were desirable in mastering the course; and that engineers of all of the leading manufacturers of typewriters had participated in the construction of the model machine on which the lessons were based, and that consequently the

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mechanical principles of all makes of typewriters might be found in said model;

The facts being that persons desiring to become experts in typewriter repairing were able to obtain manuals from the leading manufacturers which furnished all necessary information, and there was available to soldiers and veterans without cost a government manual which contained similar instructions and information with respect to all the leading makes and was considered by experts superior to said course (which was not simple or practical for those without previous experience); the drawings were neither corrected nor commented on; and individuals without previous experience in typewriter repairing, mechanical aptitude, and business training would not become successful owners of typewriter repair shops and would not secure well-paying positions as typewriter repairmen; and her representations were otherwise false.

(f) Represented falsely that purchasers of said course were eligible for, or entitled to receive, wholesale prices on machines, parts and tools, and gasoline or tires for automobiles used in the business; that students who had completed and paid for the course would be furnished with the names of companies from which new and rebuilt typewriters and portable machines might be purchased so as to enable them to establish themselves as dealers; and that arrangements would be made by the school with manufacturers automatically establishing such students as authorized dealers in all makes of rebuilt and many makes of new typewriters;

With tendency and capacity to mislead and deceive members of the purchasing public into the erroneous belief that such representations were true and thereby induce their purchase of her said course:

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

Before *Mr. Clyde M. Hadley*, trial examiner.

Mr. William L. Pencke for the Commission.

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 Arline Weber, Letha Weber, Donald Weber, and Harrison Weber, trading as Weber Typewriter Mechanics School, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Arline Weber, Letha Weber, Donald Weber, and Harrison Weber are individuals, trading and doing business under the firm name of Weber Typewriter Mechanics School, with their principal office and place of business located in the town of Osborn,

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in the State of Ohio, and whose business address is post-office box 269 in said town and State.

Said respondents are now, and have 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 a course of study and instruction in typewriter repairing, which said course of study is pursued through the medium of the United States mails. Respondents, in the course and conduct of said business during the time aforesaid, caused and do now cause their said course of study and instruction to be transported from their said place of business in the State of Ohio to the purchasers thereof located in the several States of the United States other than the State of Ohio and in the District of Columbia.

PAR. 2. There is now, and has been at all times hereinafter mentioned, a course of trade in said course of instruction so sold and distributed by respondents in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business respondents, by means of advertisements in magazines having a national circulation and circular letters mailed to purchasers and prospective purchasers of their said course of study and instruction, have made and are making, many false, misleading, and deceptive statements and representations regarding said course of study. Typical of said representations are the following:

FIX TYPEWRITERS

A simplified practical home study course. Many of our students have their own business. Many repair for others. Repair shops swamped. Health or age no handicap.

Our factory "code system" and our "unit system" will give you secrets which the average experienced repair man never would find out in his shop * * *.

After we as distributors appoint you as a repair man or dealer you are eligible for wholesale prices on machines and parts.

Our student-servicemen are eligible to wholesale prices on tools, parts, machines and sufficient gas, tires, etc.

Start now to train for a vocation which insures rich rewards and permanent employment during and after the war.

One-fourth of our inquiries are from soldiers at the camps.

We show you positively how to make from \$15 to \$50 per day by being your own boss.

We have operated a typewriter and supply business for over twenty years. 18 lesson course in typewriter repairing.

Equivalent to 20 years experience.

We are also factory bonded distributors.

Our students trace certain troublesome parts of assembled operations, optional but advisable on each lesson, and send them in for comment. * * *

The engineers from all the leading manufacturers had constructed this machine. Therefore, mechanism similar to all other makes is found in this one single model.

When the student has completed or paid for the course in full he will be given the names of companies from whom he may purchase rebuilt typewriters and new portables * * * and in some cases new typewriters, thus enabling him to establish himself as a dealer if he so desires.

After I have either completed or paid for the course in full it is understood that this school will make arrangements with the manufacturers which will automatically establish me as an Authorized Dealer in all makes of Rebuilt Typewriters, and in many instances New Typewriters, including All New Portables.

PAR. 4. By means of the foregoing statements and representations and many others of similar import, not herein specifically set forth, respondents have represented and implied and do represent and imply that they operate a school devoted to the teaching of the trade of typewriter repairing; that the course consists of a simplified practical home study course and may be studied and mastered by correspondence; that many of their students own their own business while many others are engaged as repairmen; that repair shops are swamped with work and that the health or age of the student constitutes no handicap to the study of the course; that by means of code and unit systems the students will acquire secrets in connection with said trade which are not open to the average experienced repairmen who never could obtain such knowledge; that after students have been appointed by the school as repairmen or dealers they are eligible and entitled to wholesale prices on typewriters of various makes and parts; that the vocation of typewriter repairmen will assure a large income and permanent employment both during and after the war and that respondents will positively enable a person to earn from \$15 to \$50 a day by becoming his own boss; that one-fourth of all inquiries with respect to said course is received from soldiers stationed at Army camps; that respondents have operated a typewriter and supply business for over 20 years and are factory-bonded distributors; that among other things the student is required to make tracings of certain mechanical parts which are mailed in for comment and that such tracings are desirable in mastering the course; that engineers of all the leading manufacturers of typewriters have participated in the construction of the machine which constitutes the model on which the lessons are based and that consequently the mechanical principles of all other makes of typewriters may be found in said model; that students having completed and paid for respondents' course will be furnished with the names of companies from whom new and rebuilt

typewriters and portable machines may be purchased, thereby enabling them to establish themselves as dealers and that students who act as servicemen are entitled to wholesale prices on tools, parts, machines, and incidental materials such as gas and tires for automobiles used in the business; and that at the completion of said course, arrangements will be made by the school with manufacturers automatically establishing students as authorized dealers in all makes of rebuilt and many new typewriters.

PAR. 5. In truth and in fact all of the foregoing representations and many others of like and similar import and effect are grossly deceptive, false, and misleading. Respondents do not operate a school as said term is generally understood, and the inclusion of the designation "school" in respondents' trade name and throughout the advertising and instruction material is wholly unwarranted and misleading. None of the respondents possesses sufficient practical and technical knowledge in the field of typewriter repairing to qualify or act as teacher or mechanic nor do they attempt to do so. Said respondents maintain no equipment or facilities for the teaching of typewriter repairing nor do they employ any instructors experienced in said work. None of the respondents reviews, corrects, or in any other manner deals with lesson material, and the drawings or tracings sent in by purchasers of said course are not reviewed, criticized, or commented upon by the respondents nor any person qualified and experienced in typewriter construction or repairs. Respondents' said business is in no sense a school for the reason that it consists solely of the sale of 18 separate pamphlets, designated lessons, which describe the work of typewriter repairing. In truth and in fact, all of said 18 lessons may be purchased at one time upon the payment of \$35, in which event respondents issue to the purchaser of said complete course a so-called diploma certifying that the purchaser of said course has completed the same and is eligible to become a student dealer and serviceman. Said so-called diploma is wholly without merit in that no evidence is required by respondents showing that the purchaser of said course has studied, comprehended and completed all of the lessons comprising said course or has successfully passed an examination therein, and the representation and implication that such purchaser has completed the course and is qualified as a dealer or a serviceman is therefore false and misleading.

In truth and in fact the work of typewriter repairing cannot be learned by studying a course by correspondence and without supervision by properly qualified teachers and practical work on typewriters. Respondents do not ascertain whether prospective purchas-

ers of said course of study have the necessary mechanical aptitude to become experienced typewriter repairmen; the representations that anyone, regardless of aptitude or qualifications, is assured of earning from \$15 to \$50 a day, or any other substantial earnings, in said business is grossly misleading and exaggerated. Said course of study is not simplified or practical, but on the contrary is compiled and arranged in such a manner that persons without previous experience in typewriter repairing are unable to understand either the text or mechanical drawings. The tracings of certain illustrations or drawings which students may make and send into respondents are of no practical value in learning the trade of typewriter repairing, for the reason that respondents do not criticize or comment upon said work and thereby assist said students in comprehending said lessons and drawings. Engineers from all leading manufacturers of typewriters did not construct the machine on which respondents' course is based and a student cannot readily comprehend the mechanism of other makes. The so-called factory system or unit system will not furnish students any secrets which are not obtainable or available to any average experienced repairman. On the contrary, persons desiring to become expert in typewriter repair work may obtain manuals from the leading typewriter manufacturers which furnish all necessary information pertaining to the respective typewriters. There is available to soldiers and veterans without cost a manual published by the United States Government containing instructions and information with respect to all of the leading makes of typewriters which manual is considered by experts in typewriter repair work superior to respondents' course of study. While, generally speaking, health or age may not be a handicap in the study of typewriter repairing, it is nevertheless important that a person desiring to do said work successfully have mechanical aptitude, be in reasonably good health and young enough to enable him to handle the very large number of minute parts of a typewriter. Students without previous experience in typewriter repairing, mechanical aptitude, and business training, will not become successful owners of typewriter repair shops or secure well paying positions as repairmen.

In truth and in fact, respondents have no connections with manufacturers of typewriters, are not bonded factory representatives, and are in no position to have purchasers of their said course appointed as agents, distributors, repairmen, or dealers for any makes of typewriters, nor do persons having purchased said course become automatically entitled to wholesale prices, discounts, or priorities for gasoline and oil. Respondents have not been engaged in the typewriter

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and supply business for a period of over 20 years, and said course of instruction is not equivalent to 20 years' experience in typewriter repair work. In truth and in fact, respondents have conducted their said business for a period of less than 3 years prior to the date of this complaint.

PAR. 6. The statements and representations made by respondents as aforesaid have had and now have the tendency and capacity to confuse, mislead, and deceive members of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and to induce a substantial number of said public to purchase respondents' course of study 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 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 11, 1946, issued and subsequently served upon the respondents named in the caption hereof its complaint, charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of the respondents' answer to said complaint certain testimony was introduced before a trial examiner of the Commission theretofore designated by it and such testimony was duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, the respondents' answer thereto, the testimony, the trial examiner's recommended decision, and brief of counsel in support of the complaint (no brief having been filed on behalf of the respondents and oral argument not having been requested) and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Letha Weber, is an individual trading and doing business under the name or trade designation Weber Typewriter Mechanics School, with her business address at P. O. Box 1008, in the city of Canton, State of Ohio.

Arline Weber, Donald Weber, and Harrison Weber, the other parties named in the complaint as respondents herein, are the children of the said Letha Weber, but the record shows that both Donald Weber and Harrison Weber were minors at the time of the hearing and that none of these children ever had any part in the ownership or management of or in the responsibility for the business conducted by the said Letha Weber. None of them ever participated in any of the acts or practices described in the complaint.

PAR. 2. The respondent, Letha Weber, hereinafter sometimes referred to simply as the respondent, is now, and for a number of years last past has been, engaged in the sale and distribution of a course of study and instruction in typewriter repairing, which said course is sold and pursued through the medium of the United States mails. The respondent causes, and has caused, her course of study and instruction, when sold, to be transported from her place of business in the State of Ohio to the purchasers thereof located in the several States of the United States other than the State of Ohio and in the District of Columbia. The respondent maintains, and at all times hereinabove mentioned she has maintained, a regular course of trade in said course of study and instruction in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of her business and for the purpose of promoting the sale of her course of study and instruction, the respondent, through the use of advertisements published in magazines having a national circulation and circular letters mailed to purchasers and prospective purchasers, has made many statements and representations regarding said course.

In the manner and for the purpose aforesaid, the respondent has represented directly and by implication, that she operates a school devoted to the teaching of the trade of typewriter repairing; that the course sold by her consists of a simplified practical home-study course and may be studied and mastered by correspondence; that many of her students own their own business, while many others are engaged as repairmen; that repair shops are overcrowded with work; that the health or age of the student constitutes no handicap to the successful completion of the course; that by means of code and unit systems the students will acquire secrets in connection with the typewriter repair work which are not available to the average experienced repairman; that after students have been appointed by the school as repairmen or dealers they are eligible for and entitled to receive wholesale

prices on typewriters of various makes and on parts; that the vocation of typewriter repairman will assure a large income and permanent employment; that the respondent will positively enable a person to earn from \$15 to \$50 a day by becoming his own boss; that one-fourth of all inquiries with respect to the respondent's course are received from soldiers stationed at Army camps; that the respondent has operated a typewriter and supply business for over 20 years and is a factory bonded distributor; that, among other things, a student is required to make tracings of certain mechanical parts which are mailed in for comment and that such tracings are desirable in mastering the course; that engineers of all of the leading manufacturers of typewriters have participated in the construction of the machine constituting the model on which the lessons are based and that consequently the mechanical principles of all makes of typewriters may be found in said model; that students having completed and paid for the respondent's course will be furnished with the names of companies from which new and rebuilt typewriters and portable machines may be purchased, thereby enabling them to establish themselves as dealers; that students who act as service men are entitled to wholesale prices on tools, parts, machines, and incidental materials such as gasoline and tires for automobiles used in the business; and that at the completion of said course arrangements will be made by the school with manufacturers automatically establishing students as authorized dealers in all makes of rebuilt and many makes of new typewriters.

PAR. 4. In truth and in fact the respondent does not operate a school as that term is generally understood, and the designation "School" in her trade name and in her advertising and lesson material is wholly unwarranted and misleading. She does not possess sufficient practical and technical knowledge in the field of typewriter repairing to enable her to qualify or act as a teacher or mechanic, and actually she does not attempt to do so. Said respondent maintains no equipment or facilities for the teaching of typewriter repairing, nor does she employ any instructors experienced in such work. She does not review, correct, or in any manner deal with lesson material, and the drawings or tracings sent in by purchasers of her course are not reviewed, corrected, or commented upon by the respondent or by any person qualified or experienced in typewriter construction or repair.

The respondent's business consists solely of the sale of 18 separate pamphlets, designated lessons, which describe the work of typewriter repairing. All of these lessons may be purchased at one time upon the payment of \$35, and when they are so purchased the respondent issues to the purchaser a so-called diploma certifying that the purchaser of

said course has completed the same and is eligible to become a student dealer and serviceman. This so-called diploma is wholly without merit in that it is issued without the presentation of any evidence showing that the purchaser of the course has studied, comprehended, and completed all of the lessons comprising said course or that he has successfully passed an examination therein, and the representation and implication inherent in such diploma that such person has completed the course and is qualified as a dealer or a serviceman are wholly false and misleading.

The work of typewriter repairing and the ability to successfully engage in such vocation cannot be mastered by everyone by studying a course of correspondence and without practical experience or supervision by properly qualified teachers. The respondent does not ascertain whether or not prospective purchasers of her course of study have the necessary mechanical aptitude to become experienced typewriter repairmen, and the representation that anyone, regardless of aptitude or qualifications, is assured of earning from \$15 to \$50 a day, or any other substantial amount, in the business of typewriter repairing is grossly misleading and exaggerated.

The respondent's course of study is not simplified or practical but, on the contrary, is compiled and arranged in such a manner that persons without previous experience in typewriter repairing are unable to understand either the text of the lessons or the mechanical drawings included therein. The tracings of illustrations or drawings which purchasers of the course may make and send in to the respondent are of no practical value in learning the trade of typewriter repairing for the reason that the respondent does not correct or comment upon said work and thereby assist the purchaser in comprehending the lessons or drawings. Engineers from all leading manufacturers of typewriters did not construct the machine on which the respondent's course is based, and a student cannot, as a result of studying the lessons in such course, readily comprehend the mechanical principles of all makes of typewriters. The so-called factory code system or unit system referred to in the respondent's advertising will not provide purchasers of the respondent's course with any secrets which are not obtainable by or available to any average experienced repairman. On the contrary, persons desiring to become expert in typewriter repair work may obtain manuals from the leading typewriter manufacturers which furnish all necessary information pertaining to the respective makes of typewriters. There is available to soldiers and veterans, without cost, a manual published by the United States Government containing instruction and information with respect to all of

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the leading makes of typewriters, which manual is considered by experts in typewriter repair work superior to the respondent's course of study. It may be that, generally speaking, neither health nor age is a handicap in the study of typewriter repairing, but it is, nevertheless, important that a person desiring to undertake such work have mechanical aptitude, be in reasonably good health, and be capable of handling the very large number of minute parts of a typewriter. Individuals without previous experience in typewriter repairing, mechanical aptitude, and business training will not become successful owners of typewriter repair shops and will not secure well-paying positions as typewriter repairmen.

Contrary to the respondent's representations, she has no connections with manufacturers of typewriters. She is not a bonded factory representative and is in no position to have purchasers of her course appointed as agents, distributors, repairmen, or dealers for any makes of typewriters; nor do purchasers of her course automatically become entitled to wholesale prices, discounts or priorities for tools, parts, machines, gasoline, or tires. The respondent has not been engaged in the typewriter and supply business for a period of 20 years, but only for a period of less than 3 years prior to the date of the complaint, and her course of instruction is not equivalent to 20 years experience in typewriter repair work.

For the foregoing reasons and in the particulars stated the respondent's advertising representations referred to in paragraph 3 were and are false, misleading, and deceptive.

PAR. 5. The use by the respondent of the foregoing false, misleading, and deceptive representations has had the tendency and capacity to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that such representations are true and the tendency and capacity to cause such members of the public, because of such erroneous and mistaken belief, to purchase the respondent's course of study and instruction.

CONCLUSION

The acts and practices of the respondent as herein found have all been to the prejudice and injury of the public and have constituted 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 respondents' an-

swer thereto, certain testimony introduced before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision, and brief in support of the complaint (no brief having been filed on behalf of the respondents and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondent, Letha Weber, has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Letha Weber, individually and trading under the name or trade designation Weber Typewriter Mechanics School, or trading under any other name or trade designation, and said respondent's agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of lessons or courses of study in typewriter repairing, do forthwith cease and desist from:

1. Using the word "School," or any other word or term of similar import or meaning, as a part of the name or trade designation under which the respondent conducts her business; or otherwise representing, directly or by implication, that the respondent employs a faculty of teachers or that she maintains facilities for the supervision of a course of study or for review of the work of a purchaser of such course or for the testing of such purchaser's proficiency in any of the subjects covered;

2. Representing, directly or by implication, that the respondent has operated a typewriter or supply business for over twenty years, or for any period of time greater than that during which she has actually been in business, or that the respondent is a factory bonded distributor;

3. Representing, through the issuance of so-called diplomas, or by any other means, that a purchaser of the respondent's course of study has completed the lessons comprising such course, or that he has been tested or has passed examinations therein, or that such purchaser, even if he has completed the lessons comprising such course, is thereby qualified to become or is assured of employment by a typewriter dealer or serviceman;

4. Representing, directly or by implication, that the lessons offered for sale by the respondent constitute a simple or practical home-study course which may be mastered by correspondence; that any person other than one with previous mechanical experience or one who has demonstrated an aptitude for mechanics is qualified to occupy a position as typewriter repairman; or that a purchaser of the respondent's

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course of study will acquire therefrom the equivalent of 20 years, or any other number of years, experience in typewriter repair work or obtain any secrets not available to the average experienced typewriter repairman;

5. Representing, directly or by implication, that tracings or drawings sent to the respondent by purchasers of her course of study will be reviewed, criticized, or commented upon by the respondent or by any other person, or that the machine used as a model upon which the lessons comprising the respondent's course of study are based was constructed by engineers from all of the leading typewriter manufacturers, or that such model includes the mechanical principles of all makes of typewriters;

6. Representing, directly or by implication, that purchasers of the respondent's course of study are eligible for or entitled to receive wholesale prices on machines, parts, tools, gasoline, or tires;

7. Representing, directly or by implication, that the purchasers of the respondent's course of study will be furnished the names of companies from which they may purchase as dealers new or rebuilt typewriters, or that the respondent will make arrangements with manufacturers which will establish such purchasers as authorized dealers in typewriters;

8. Representing as possible earnings or profits of individuals completing the respondent's course of study any specified sum of money which is not a true representation of the average net earnings consistently made by individuals who have completed such course over substantial periods of time under normal conditions and circumstances.

It is further ordered, For the reasons set forth in the Commission's findings as to the facts in this proceeding, that the complaint herein be, and it hereby is, dismissed as to the respondents Arline Weber, Donald Weber, and Harrison Weber.

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

Syllabus

IN THE MATTER OF

J. RICHARD PHILLIPS, JR. & SONS, INC., ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATIONS
OF SUBSEC. (c) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914,
AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5576. Complaint, July 20, 1948—Decision, Feb. 8, 1950

In a proceeding in which it was alleged that respondent sellers paid commissions or allowances upon or in connection with sales made to a certain buyer for its own account, and in which it appeared that said buyers made use of so-called consignment contracts or agreements under which it made advances—usually from 80 to 90 percent of the purchase price—ordinarily paying the balance after it resold the products, but in some instances paying the total purchase price before such resale; it appearing further, however, that said buyer, in connection with such purchases, took title to the products concerned, assumed all of the risks incident to ownership and sold them at its own prices and terms and took a profit or loss: Such use of said so-called consignment contracts or agreements obviously did not change the real nature of the transaction involved.

Where six concerns, engaged in certain Eastern States in canning food products including tomatoes, tomato juice, peas, lima beans, asparagus, and corn, and in the interstate sale and distribution thereof under their own brands and labels, and those of their customers, through brokers, and directly to a certain buyer which conducted its business as a distributor of food products in part as a broker, and in part as a direct buyer, in the latter capacity taking title to food products it purchased and assuming all the risks incident to ownership—

(a) Granted and allowed, directly or indirectly to said buyer, in connection with purchases made on its own account under so-called consignment contracts, and on transactions in which it did not function as a broker or sales agent commissions, brokerage fees or other allowances in lieu thereof; and

Where said buyer, one of the largest distributors in the South, of canned fruits and vegetables, herring, and herring roe, which it sold to customers in Virginia and the Carolinas, and owner of a number of registered trademarks which it utilized as brands for its food products—

(b) Received and accepted from the aforesaid and from numerous other sellers, on purchase made for its own account as above described, commissions, brokers' fees, or other allowances in lieu thereof:

Held, That the granting and allowance by such sellers, and the receiving and acceptance by said buyer of commissions, brokerage fees or allowances of discounts in lieu thereof, under the circumstances above set forth, constituted violations of section 2 (c) of the Clayton Act as amended.

*Mr. Edward S. Ragsdale and Mr. Cecil G. Miles for the Commission.
Covington, Burling, Rublee & Shorb, of Washington, D. C., for respondents.*