

IN THE MATTER OF
HARRY A. BURCH DOING BUSINESS AS WESTERN TRAIN-
ING SERVICE AND NATIONAL TRAINING SERVICE

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

Docket 5827. Complaint, Nov. 2, 1950—Decision, Feb. 14, 1952

Where an individual engaged in the interstate sale and distribution of correspondence courses to prepare students for examination for certain Civil Service positions—

- (a) Falsely represented through statements on printed postal cards, circulars, newspapers, and other advertising media, and through sales agents and a sales guide with which he supplied them, that his school was a branch of, or connected with, the Government or the Civil Service Commission;
- (b) Represented that many positions were vacant, that men and women were needed to fill such vacancies, and that such positions might be obtained through his school; and
- (c) Represented as aforesaid, including statements on postal cards distributed to holders of rural post office boxes, that men and women were wanted to prepare for various Civil Service examinations, including customs, immigration and border patrol positions, and through such statements created the impression that such postal cards were official announcements of the Civil Service Commission;

The facts being that said commission does not advertise for persons to prepare for examinations or to fill Government positions; said individual had no power or authority to place any person in any Civil Service position; and while many vacancies may exist generally in the Civil Service, the taking of his course of study and the passing of a Civil Service examination would not assure employment, due to veterans' preferences, availability of eligibles in different Civil Service districts, and other contingencies;

- (d) Falsely represented that the remuneration in Civil Service positions was better than the average salaries or wages obtainable in comparable positions in private industry; and

Where said individual, engaged as aforesaid—

- (e) Represented through his said traveling sales agents, that an eighth grade education was sufficient to qualify for and obtain the positions concerned; the fact being that while such an education may suffice for most of the lower grade positions, a high school education is required for many, and still others require additional special training, specific physical qualifications, or practical experience;
- (f) Falsely represented that persons employed in the United States Civil Service are pensioned on two-thirds of their salaries; the facts being that the amount of retirement paid depends in each case upon the length of service and other factors;
- (g) Falsely represented that unless students enrolled at the time of the sales agent's visit they would not be permitted to enroll for a period of two years; when in fact they were free to enroll at any time;

- (h) In certain instances furthered the false implication that said school was connected with or authorized by the Government and that such agents had some official capacity or authority, through exhibiting to prospective purchasers a book entitled "Reference Manual of Government Positions"; and
- (i) Represented falsely that it was necessary that prospects take the courses of study offered in order to qualify for Civil Service positions, and that such agents were required by the Civil Service to obtain certain preliminary information for prospects;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the belief that such representations were true, and thereby induce its purchase of said courses of study:

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.

While the complaint also raised an issue as to respondent's trade name, National Training Service, which it charged as misleading in itself as representing or implying a Government connection, and a stipulation of facts contained a statement to the same effect: there appeared little likelihood that the name itself, apart from other representations as to Government connection, would be misleading to the public, and it was accordingly concluded that an order prohibiting its use would not be warranted.

Before *Mr. William L. Pack*, hearing examiner.

Mr. William L. Pencke for the Commission.

Mr. Maurice Kadish, of Seattle, Wash., 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 Harry A. Burch, an individual, doing business under the names of Western Training Service and National Training Service, hereinafter referred to as respondent, has violated the provisions of the said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent. Harry A. Burch, is an individual, trading and doing business under the names of Western Training Service and National Training Service, with his office and principal place of business at 1314 East 43rd Street, in the city of Seattle and State of Washington.

PAR. 2. For more than two years last past, respondent has been and is now engaged in the sale and distribution in commerce between and among the various States of the United States of courses of study and instruction intended for preparing students thereof for examination for certain Civil Service positions under the United States Govern-

Complaint

48 F. T. C.

ment, which said courses are pursued by correspondence through the medium of the United States mails. Respondent, in the course and conduct of said business, causes his said courses of study and instruction to be transported from his said place of business in the State of Washington to, into and through States of the United States other than Washington to the purchasers thereof in such other States. There has been at all times mentioned herein a course of trade in said courses of instruction so sold and distributed by respondent in commerce between and among the various States of the United States, and said course of trade has been and is, substantial.

PAR. 3. In connection with the sale of said courses of study and instruction respondent has made and is making use of printed advertising matter distributed to prospective students throughout the central and western States, and of advertisements in newspapers circulated in said States, in and by which numerous representations have been and are made in regard to said courses of study and matters and things connected therewith. Typical of such representations are the following:

CIVIL SERVICE JOBS

(MEN AND WOMEN 18 TO 50)

Offer YOU: Better than average pay! PERMANENT SECURITY! AUTOMATIC PAY INCREASES!! AUTOMATIC PROMOTIONS! TWO WEEKS OR MORE ANNUAL VACATION WITH PAY! ANNUAL SICK LEAVE WITH PAY! 40-HOUR WEEK! TEN PER CENT EXTRA FOR NIGHT WORK! HIGH RETIRED PAY AS LONG AS YOU LIVE WHEN YOU REACH RETIREMENT AGE! The above advantages go with all jobs in the PERMANENT CLASSIFIED CIVIL SERVICE. To be able to get one of these jobs you must PASS CIVIL SERVICE COMPETITIVE EXAMINATION. TRAINING YOU TO PASS THESE EXAMINATIONS IS OUR BUSINESS!!! Time required is short. The COST IS LOW! The TERMS ARE EASY!

WESTERN TRAINING SERVICE

MEN
and
WOMEN
WANTED

AGES 18 to 50

To Prepare For
CIVIL SERVICE JOBS

GOOD SALARIES &
PERMANENT JOBS
FOR LIFE

RURAL STAR ROUTE
OR
POST OFFICE BOXHOLDER
LOCAL

776

Complaint

MEN
and
WOMEN
WANTED

Ages—18-50

TO PREPARE FOR

CIVIL SERVICE EXAMINATIONS

Railway Postal Clerk—P. O. Clerk, Carriers—

Customs—Immigration—Internal Revenue—

Clerks, Inspectors—Border Patrol Contact

Representatives

CIVIL SERVICE OFFERS: Permanent Employ-
ment, Promotions, Vacations, Sick

Leave, Pensions

MUNICIPAL—STATE—FEDERAL

For full details and qualifications, fill in

completely, detach and mail attached post card

AT ONCE—No Postage Necessary.

PAR. 4. By means of the foregoing statements and representations and others to the same effect not herein set out and by the use of the trade name National Training Service, respondent represents and implies that his said school is a branch of or connected with the United States Government or the U. S. Civil Service Commission; that many positions in the United States Civil Service, including those specifically named in said advertisements are vacant, that men and women are needed to fill said vacancies and that said positions may be obtained through respondent's Western Training Service or National Training Service; that men and women are wanted by the United States Government to prepare for civil service positions; and that the remuneration in civil service is better than the average wages paid in comparable jobs.

PAR. 5. Respondent furnished his salesmen with a so-called "Sales Guide" containing suggestions and directions for conducting interviews with prospective purchasers of said course. Among the statements directed by respondent to be made as aforesaid are the following:

Mr. Doe, you wrote in about Civil Service . . . The reason that I have called to talk to you about Civil Service is that you could have but one arm or a leg and we would not know anything about it. . . There are a few personal questions I have to ask you. I do not like to, but it is required by the Civil Preparation Service . . . —if you cannot pass us, you could not pass the government . . .

I am going to give you a little Civil Service to see how you would make out . . . In Civil Service no one knows how high they can go . . . At the time of retirement, . . . they say "You have done your work well, Go home and we will pay you just the same, and that is two-thirds of your pay the rest of your life" . . .

The very important part about our qualifications are selecting people who

Complaint

48 F. T. C.

have a decisive mind. This is the last call I can make for a period of two years . . .

By means of said sales talk and other oral statements and representations made by his sales agents, respondent represents and implies to prospective students and purchasers of his said courses of instruction that said Western Training Service and National Training Service are connected with the United States Government or the United States Civil Service Commission in some official capacity; that if enrollees pursue and complete respondent's course of study, they will be assured of a job in the U. S. Civil Service and that it is necessary to take said course of instruction in order to qualify therefor, and that said salesmen are required by the Civil Service to obtain preliminary information; that many vacancies exist in the U. S. Civil Service and that respondent can place his students in such positions; that an eighth grade education is sufficient to qualify for and obtain most of said positions; that persons employed in the United States Civil Service are pensioned on two-thirds of their salary; and that unless students enroll at the time of the salesman's visit, they will not be able to do so for a period of two years.

Through statements on postal cards distributed to holders of rural newspaper and post office boxes respondent represents that men and women are wanted to prepare for civil service examinations, including customs, immigration and border patrol positions, which statements coupled with the trade name National Training Service, create the impression that said cards are official announcements of the U. S. Civil Service Commission.

By means of exhibiting a book entitled "Reference Manual of Government Positions," to prospective purchasers, respondent's salesmen further the impression and implication that respondent's school is connected with, or authorized by the United States Government and that said salesmen are clothed with some official capacity or authority.

PAR. 6. All of said statements, representations and implications are grossly exaggerated, false and misleading. In truth and in fact, there is no connection whatsoever between the respondent or his salesmen and the United States Government or any agency thereof. The United States Civil Service Commission does not advertise for men and women to prepare for civil service examinations or to fill Government positions. Respondent has no power or authority to place any person in any civil service position. Neither respondent nor his salesmen have been authorized by any Government agency to qualify applicants for civil service examinations or positions, or obtain preliminary data. It is not necessary to purchase respondent's courses of instruction in

order to take civil service examinations and obtain positions in civil service.

While many vacancies may exist generally in the U. S. Civil Service, the taking of respondent's course of study and passing an examination does not assure immediate employment, for the reason that such employment is subject to veterans' preferences, the availability of eligibles in various civil service districts, and other conditions. Moreover, examinations for numerous positions listed in respondents's sales literature may not be called for several years, and even if a student takes and passes an examination and his name is placed upon the eligible list, an appointment may not be made for a long time; and a number of positions are open only to ten-point veterans. While an eighth grade education may be sufficient for most of the lower grades, a high school education is required for many positions, and still other positions require additional special training, specific physical qualifications or practical experience.

The wages and salaries paid to Civil Service employees are not higher than the average wages and salaries prevailing for comparable positions in private industry. U. S. Civil Service employees are not pensioned at two-thirds of their salaries, the amount of retirement pay depending in each case upon the length of service and other specific provisions pertaining to the retirement of Government employees.

If prospective purchasers of said courses of study do not decide to enroll at the time they are solicited by respondent's salesmen, they may enroll at any time subsequent to such visit and are not required to wait for a return visit by said salesmen two years after the first call.

Respondent's use of the name National Training Service in connection with the sale of courses of study for U. S. Civil Service examinations, creates the impression and implication that said National Training Service is connected with or a part of the U. S. Civil Service. In truth and in fact, it is a private business, operated for profit by respondent.

PAR. 7. The use by respondent of the statements and representations aforesaid, has had and now has the tendency and capacity to and does confuse, mislead and deceive members of the public into the erroneous and mistaken belief that such statements and representations are true, and to induce them to purchase respondent's courses of study and instruction in said commerce on account thereof.

PAR. 8. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated February 14, 1952, the initial decision in the instant matter of Hearing Examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 2, 1950, issued and subsequently served its complaint in this proceeding upon the respondent, Harry A. Burch, individually and doing business under the names Western Training Service and National Training Service, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. After the filing by respondent of his answer to the complaint a hearing was held before the above-named hearing examiner, theretofore duly designated by the Commission, at which hearing a stipulation of facts was entered into between counsel supporting the complaint and counsel for respondent, and certain testimony and other evidence were also introduced at the hearing. Such stipulation, testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final consideration by the hearing examiner upon the complaint, answer, stipulation of facts, (such stipulation having been approved by the hearing examiner) and testimony and other evidence (counsel having elected not to file proposed findings and conclusions for consideration by the hearing examiner or to argue the matter orally), and the hearing examiner, having duly considered the matter, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Harry A. Burch, is an individual trading and doing business under the name National Training Service, with his office and principal place of business located at 1314 East 43rd Street, Seattle, Washington. Respondent formerly used also the trade name Western Training Service, the use of this name having been discontinued by him some two years ago. Respondent is now, and for a number of years last past has been, engaged in the sale and

distribution of courses of study and instruction intended for preparing students thereof for examination for certain Civil Service positions in the United States Government, such courses being pursued by correspondence through the medium of the United States mails.

PAR. 2. In the course and conduct of his business respondent causes and has caused his courses of study and instruction, when sold, to be transported from his place of business in the State of Washington to purchasers located in various other States of the United States. Respondent maintains and has maintained a course of trade in such courses in commerce between and among various States of the United States.

PAR. 3. In promoting the sale of his course of study and instruction respondent makes use of printed postal cards, circulars and other advertising media and also of advertisements inserted in newspapers, all of which are disseminated among prospective purchasers. By means of various statements appearing in such advertising material, respondent represents that his school is a branch of or is connected with the United States Government or the United States Civil Service Commission; that many positions in the United States Civil Service, including certain positions specifically named in such advertising material, are vacant, that men and women are needed to fill such vacancies and that such positions may be obtained through respondent's school; that men and women are wanted by the United States Government to prepare for Civil Service positions; and that the remuneration in Civil Service positions is better than the average salaries or wages obtainable in comparable positions in private industry.

Respondent also uses traveling sales agents to contact prospective students and such agents are supplied by respondent with a sales guide which contains suggestions and instructions for conducting interviews with prospects. Through the use of such sales guide and of other statements made by his sales agents, respondent represents to prospective students that his school is connected with the United States Government of the United States Civil Service Commission in some official capacity; that if enrollees pursue and complete respondent's courses of study they will be assured of a position in the United States Civil Service, and that it is necessary that prospects take such courses of study in order to qualify for such positions; that such sales agents are required by the United States Civil Service to obtain certain preliminary information from prospects; that many vacancies exist in the United States Civil Service, and that respondent can place his students in such positions; that an eighth grade education is sufficient to qualify for and obtain most of such positions; that persons employed in the United States Civil Service are pensioned on two-thirds of their

Findings

48 F. T. C.

salary; and that unless students enroll at the time of the sales agent's visit they will not be permitted to enroll for a period of two years.

By means of statements on postal cards distributed to holders of rural post office boxes, respondent further represents that men and women are wanted to prepare for various Civil Service examinations, including customs, immigration and border patrol positions, and such statements create the impression that such postal cards are official announcements of the United States Civil Service Commission.

By exhibiting to prospective purchasers a book entitled "Reference Manual of Government Positions," respondent's sales agents have in certain instances furthered the impression and implication that respondent's school is connected with or authorized by the United States Government and that such sales agents have some official capacity or authority.

PAR. 4. All of these representations are erroneous and misleading. Respondent and his sales agents have no connection whatever with the United States Government or any agency thereof. The United States Civil Service Commission does not advertise for persons to prepare for Civil Service examinations or to fill Government positions. Respondent has no power or authority to place any person in any Civil Service position. Neither respondent nor his salesmen have been authorized by any Government agency to qualify applicants for Civil Service examinations or positions or to obtain preliminary or other data from such persons. It is not necessary to purchase respondent's courses of study in order to take Civil Service examinations and obtain Civil Service positions.

While many vacancies may exist generally in the United States Civil Service, the taking of respondent's course of study and passing a Civil Service examination does not assure employment, as employment is subject to veterans' preferences, the availability of eligibles in various Civil Service districts, and other conditions. Moreover, examinations for numerous positions listed in respondent's sales literature may not be called for several years, and even if a student takes and passes an examination and his name is placed upon the eligible list an appointment may not be made for a long period of time, and a number of positions are open only to veterans with ten-point preference. While an eighth grade education may be sufficient for most of the lower grade positions in Civil Service, a high school education is required for many positions, and still other positions require additional special training, specific physical qualifications, or practical experience.

Salaries and wages paid Civil Service employees are not higher than the average salaries and wages prevailing in comparable positions in

776

Order

private industry. Civil Service employees are not pensioned at two-thirds of their salary, the amount of retirement pay depending, in each case, upon the length of service and other specific provisions pertaining to the retirement of Government employees.

If prospective purchasers of respondent's courses of study do not decide to enroll at the time they are solicited by respondent's salesman, they may enroll at any time subsequent to such visit and are not required to wait two years or any other period of time.

PAR. 5. The acts and practices of respondent, as described above, have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondent's school and its courses of study and instruction and with respect to positions in the United States Civil Service, and have the tendency and capacity to cause such portion of the public to purchase respondent's courses as a result of the erroneous and mistaken belief so engendered.

CONCLUSIONS

The acts and practices of respondent, as hereinabove set out, 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.

The complaint also raises an issue as to respondent's trade name National Training Service, charging that the name itself is misleading as representing or implying that the school is connected with the United States Government. While the stipulation of facts contains a statement to the same effect, the hearing examiner questions whether such position is sound. There would appear to be little likelihood that the name itself, apart from other representations as to Government connection, would be misleading to the public. It is therefore concluded that an order prohibiting the use of the trade name would not be warranted.

ORDER

It is ordered, That the respondent, Harry A. Burch, individually and doing business under the names Western Training Service and National Training Service or any other name, and his representatives, agents 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 representing, directly or by implication:

1. That respondent's school has any connection with the United States Government or any agency thereof.

Order

48 F. T. C.

2. That persons completing respondent's courses are assured of positions in the United States Civil Service, or that it is necessary that persons take such courses in order to qualify for such positions.

3. That salaries or wages obtainable in Civil Service positions are higher than those obtainable in comparable positions in private industry.

4. That respondent's sales agents are authorized by the United States Civil Service Commission to obtain any information from purchasers or prospective purchasers of respondent's courses, or that such sales agents have any connection whatever with said Commission.

5. That an eighth grade education is sufficient to qualify for and obtain most Civil Service positions, unless such representation be limited to positions in the lower grades.

6. That persons employed in the United States Civil Service receive pensions or retirement annuities amounting to two-thirds of their salary.

7. That unless prospective students enroll for respondent's courses at the time of the visit of respondent's sales agent they will not be permitted to enroll for a period of two years or any other specified period of time.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent herein shall, within sixty (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 the order to cease and desist [as required by said declaratory decision and order of February 14, 1952].

Order

IN THE MATTER OF

RENE D. LYON COMPANY, INC. ET AL.

MODIFIED ORDER TO CEASE AND DESIST

Docket 5859. Order, February 14, 1952

Order modifying prior order of Commission of September 20, 1951, at page 313, *supra*, in the public interest so as to prohibit adequately "a continuation of the unlawful acts and practices" there set forth; and

To require respondents, etc.; in connection with the offer, etc., of watch or wrist bands or similar products of foreign origin, in commerce, to cease and desist from offering the same without clearly and conspicuously disclosing the country of their origin, etc. as in the order specified.

Before *Mr. Webster Ballinger*, hearing examiner.

Mr. William L. Taggart for the Commission.

ORDER REOPENING PROCEEDING AND MODIFYING ORDER TO CEASE AND
DESIST

The Commission, on its own motion, having reconsidered its decision of September 20, 1951, in this matter, and it appearing that the order to cease and desist in said decision is inadequate to prohibit a continuation of the unlawful acts and practices set forth in the findings as to the facts in said decision and that the public interest may require that this proceeding be reopened and said order to cease and desist modified; and the Commission having issued its rule to show cause why the proceeding should not be reopened and the order to cease and desist modified in the respects indicated therein, and no reasons having been presented as to why the public interest does not require that this proceeding be reopened and the order to cease and desist modified; and

The Commission having duly considered the matter and being of the opinion that the public interest requires that this proceeding be reopened and the order to cease and desist modified:

It is ordered, That this proceeding be, and it hereby is, reopened for the purpose of modifying the order to cease and desist previously entered herein.

It is further ordered, That said order to cease and desist be, and it hereby is, modified to read as follows: