

IN THE MATTER OF
EUGENE F. AGEE TRADING AS COMMERCIAL EXTENSION SCHOOL OF COMMERCE

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

Docket 5904. Complaint, July 9, 1951—Decision, Feb. 19, 1952

Where an individual engaged in the competitive operation of a business school and in the sale of residence and correspondence courses of study through sales agents who called upon prospective purchasers, and whom he supplied with copies of "A Directory of Private Business Schools in the United States", published by the "National Association and Council of Business Schools", which purported to be a handbook for vocational advisors and guidance officers throughout the United States, was distributed to members of the association and other interested parties, and included a "Directory of Approved Schools", names of some of which, in the 1949 and 1950 editions, were followed by an asterisk with footnote reference reading "Temporary approval to December 31, 1949" or "1950"—

- (a) Represented in a substantial number of instances to prospective students through his said sales agents that "such temporary approval" was due to one or more of the facts (1) that the quality of the work done was not up to standard or was inferior to other approved schools; (2) that such schools would lose accreditation unless there was a complete change in the faculty by a given date; (3) that prospective employers refused to employ any graduate from any school whose rating was unfavorable as indicated by such asterisk, and that students attending competitive schools thus designated might impair their chances of employment; and (4) that the standing of such schools was questionable and that their officers had been involved in "crooked" or "shady" deals;

The facts being that the schools thus designated were regarded by the association as having failed to compute correctly the annual dues payable to it; and the so-called temporary approval had no relation whatever to their reputation, financial standing, accreditation, quality of work or the reputation of their faculty;

- (b) Falsely represented that said "Directory of Private Business Schools" was an official publication of the United States Government;
- (c) Falsely represented that certain named high school principals recommended said school to their graduates; and
- (d) Represented that the character or nature of the student body of a certain competing school was undesirable in several respects;

The facts being that while some competitive schools did admit to their classes students of all races and ages, such fact did not render them undesirable; and

- (e) Falsely represented that competing schools were undesirable choices for the reason that they might soon have to close down due to frequent changes in ownership and to financial difficulties;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondent's school and its competitors,

and to cause purchase of respondent's courses as a result; whereby substantial trade was unfairly diverted to said individual from his competitors: *Held*, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and of respondent's competitors, and constituted unfair methods of competition and unfair and deceptive acts and practices in commerce.

While the complaint also charged that respondent's sales agents falsely represented that prospects must enroll immediately and make a deposit in order to be assured of membership in the starting class, or wait at least a year; and that students enrolling for a preliminary course in business English prior to attending residence school and graduation from high school could complete the standard business course in less time and at less expense than at competing schools: such additional charges were not sustained by the record, which also indicated that respondent had sought in good faith to prevent the aforesaid disparagement by his agents and other misleading representations—which were made without the knowledge or consent of him or his administrative staff—and that he had given assurances that in the future he and his said staff would continue to instruct all agents to avoid erroneous and misleading representations.

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

Mr. William L. Pencke for the Commission.

Frost, Peasinger & Myers, of Omaha, Nebr., 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 Eugene F. Agee, trading as The Commercial Extension School of Commerce, 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 Eugene F. Agee is an individual trading and doing business as Commercial Extension School of Commerce, hereinafter also referred to as the school, with his office and principal place of business located at 1514 Howard Street in the city of Omaha and State of Nebraska.

Said respondent is now and has been for more than two years last past engaged in the operation of a business school and the sale of courses of study and instruction in business subjects which said courses are pursued in residence and also by correspondence through the medium of the United States mails. Said respondent causes said courses to be transported from his said place of business in the State of Nebraska into and through States of the United States other than

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Nebraska to purchasers thereof located 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 said respondent in commerce between and among the various States of the United States and said course of trade has been and is substantial.

PAR. 2. During the time above mentioned, other individuals, firms and corporations in various States in the United States have been and are 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 commercial subjects which are pursued in residence and by correspondence. Said respondent has been, during the time aforesaid, in substantial competition in commerce between and among the various States of the United States, in the sale of his said courses of study and instruction with such other individuals, firms and corporations.

PAR. 3. In the course and conduct of his business as aforesaid, respondent, Eugene F. Agee, employs sales agents or representatives who call upon prospective purchasers of said courses of study for the purpose of soliciting enrollments and selling said courses. Respondent Agee has furnished and now furnishes said sales agents with copies of a "Directory of Private Business Schools in the United States," which directory is published by the National Association and Council of Business Schools, located in the city of Washington, D. C., and distributed to members of said association and other interested parties, and also purports to be a handbook for vocational advisors and guidance officers throughout the United States.

Part II of said Directory of Private Business Schools consists of a "Directory of Approved Schools" containing the names, addresses, administrative heads, year of founding, student capacity and approved courses of all member schools of said Association. The names of a certain number of schools in said directory are preceded by an asterisk, and at the bottom of each page appears the statement "*Temporary approval to December 31, 1950."

By causing said directory to be exhibited and through oral statements made by said sales agents, said respondent represented directly and by implication, to prospective students and purchasers of said courses of study:

1. That competitive schools listed in said Directory bearing an asterisk are approved only temporarily for one or more of the following reasons: the quality of the work done is not up to standard or is inferior to other approved schools; such schools would lose accreditation unless there were a complete change in the faculty by a given date; prospective employers refuse to employ any graduates from any

school whose rating was unfavorable as indicated by said asterisk, and students attending competitive schools so designated may impair their chances of employment; the standing of said schools is questionable and their officers were involved in "crooked" or "shady" deals.

2. That said Directory of Private Business Schools is an official publication of the United States Government.

3. That certain named high school principals recommend respondent's school to their graduates.

4. That prospects must enroll immediately and make a deposit on the tuition fees in order to be assured of membership in the starting class; or that failure to enroll immediately might prevent enrollment for at least one year.

5. That students enrolling for a preliminary correspondence course in Business English in respondent's school prior to attending residence school and prior to graduation from high school can complete the standard business courses in less time and at less expense than at competing schools.

6. That a certain competing school is undesirable for inexperienced young girls from rural communities because of the large number of old men, negroes, and veterans among its student body.

7. That competing schools are undesirable choices for the reason that they may soon have to close down due to frequent change in ownership and financial difficulties.

PAR. 4. All of said practices, statements, representations and implications are false, deceptive and misleading. In truth and in fact, the asterisk placed against the names of certain schools in said Directory solely denotes temporary approval of schools which are claimed by said Association to have failed properly to compute the annual dues payable to said Association. The use of said asterisk had no relation whatever to the reputation, financial standing, accreditation, quality of work or standing of competitive schools or the reputation of their faculties and the use of said Directory and the statements made by salesmen in connection therewith unfairly disparage the competitive schools designated by the asterisk.

Said Directory is not a publication by the United States Government or any agency thereof. The high school principals named by respondent's salesmen do not recommend his school to their graduates.

PAR. 5. Prospective students do not need to enroll immediately upon being solicited by respondent's salesmen in order to be assured of membership in the class being then formed; nor will they be prevented from enrolling at a later date if they do not enroll at the time of the salesman's visit. Enrollment in respondent's school for the so-called Business English course prior to graduation from high school does

not result in completing said respondent's standard course in less time and at less expense than at competing schools. On the contrary, such enrollment is detrimental to high school students whose regular school work requires all their time and attention prior to graduation; moreover, such preliminary course in Business English is substantially a duplication of the work already done by said students in high school.

While it is true that there are small numbers of negroes and veterans among the student body of a certain competing school, this fact does not make attendance at such school undesirable for young girls. Competitive schools do not have to close down because of financial difficulties or frequent change in ownership, nor will said competitive schools lose accreditation unless they change their faculties or improve their standard. Employers do not refuse to employ graduates from competitive schools because of any alleged unfavorable rating of said schools in said Directory; and students attending said competitive schools do not impair their future chances of employment.

PAR. 6. The aforesaid practices and use of the statements and representations aforesaid have had and now have the tendency and capacity to and do 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. As a result, substantial trade in commerce has been unfairly diverted to respondent from his competitors and substantial injury has been and is being done to competition in commerce.

PAR. 7. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair and deceptive acts and practices and unfair methods of competition 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 19, 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 July 9, 1951, issued and subse-

quently served its complaint in this proceeding upon the respondent, Eugene F. Agee, an individual trading as Commercial Extension School of Commerce, charging him with the use of unfair methods of competition and 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 a stipulation of facts was entered into by counsel supporting the complaint and counsel for respondent and incorporated in the record, which was duly filed in the office of the Commission. Counsel also agreed upon and recommended to the hearing examiner a form of order disposing of the proceeding. Thereafter, the proceeding regularly came on for final consideration by the hearing examiner upon the complaint, answer, stipulation (approved by the hearing examiner), and recommended order (counsel having elected not to submit 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, Eugene F. Agee, is an individual doing business under the name Commercial Extension School of Commerce, with his office and principal place of business located at 1514 Howard Street, Omaha, Nebraska. Respondent is now, and for a number of years last past has been, engaged in the operation of a business school and in the sale of courses of study and instruction in business subjects, which courses are pursued both in residence and by correspondence through the medium of the United States mails.

PAR. 2. 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 Nebraska to purchasers located in various other States of the United States. Respondent maintains and has maintained a course of trade in his courses in commerce between and among various States of the United States.

PAR. 3. In the sale of his courses of study and instruction respondent is and has been in substantial competition with other individuals and with firms and corporations 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 commercial subjects.

PAR. 4. In the course and conduct of his business, respondent employs sales agents or representatives to call upon prospective pur-

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chasers of his courses of study for the purpose of soliciting enrollments and selling such courses. These sales agents are supplied by respondent with copies of a "Directory of Private Business Schools in the United States" which is published by an organization known as the National Association and Council of Business Schools, and purports to be a handbook for vocational advisers and guidance officers throughout the United States. The book is distributed to members of the association and other interested parties. Included in the book is a "Directory of Approved Schools" which contains the names, addresses, administrative heads, the year of founding, student capacity, and approved courses of all schools which are members of the association. In the 1949 and 1950 editions of the book, the names of certain schools were preceded by an asterisk, and in such instances there appeared at the bottom of the page, following an asterisk, the statement "Temporary approval to December 31, 1949" or "1950." The asterisks and statements were omitted from the 1951 edition of the directory.

In a substantial number of instances the following representations have been made by respondent's sales agents to prospective students:

(a) That the approval of competitive schools designated in the directory by an asterisk is limited to temporary approval only for one or more of the following reasons: The quality of the work done by the school is not up to standard or is inferior to other approved schools; such schools would lose accreditation unless there were a complete change in the faculty by a given date; prospective employers refuse to employ any graduate from any school whose rating is unfavorable as indicated by such asterisk, and students attending competitive schools so designated may impair their chances of employment; the standing of such schools is questionable and their officers have been involved in "crooked" or "shady" deals.

(b) That such Directory of Private Business Schools is an official publication of the United States Government.

(c) That certain named high school principals recommend respondent's school to their graduates.

(d) That the character or nature of the student body of a certain competing school was undesirable in several respects.

(e) That competing schools are undesirable choices for the reason that they may soon have to close down due to frequent changes in ownership and to financial difficulties.

PAR. 5. These representations were unwarranted and misleading. The use in the directory of the asterisk and statement in question denotes only that the schools so designated have received temporary rather than final approval for the reason that such schools were re-

garded by the association as having failed to compute correctly the annual dues payable to the association. The so-called temporary approval has no relation whatever to the reputation, financial standing, accreditation, quality of work, or standing of competitive schools or the reputation of the faculty of such schools. The directory is not a publication of the United States Government or any agency thereof. Some of the high school principals named by respondent's agents had not in fact recommended respondent's school to their graduates. While some competitive schools admit to their classes members of all races and ages, such fact does not render such schools undesirable. It was not a fact that certain competitive schools referred to by respondent's agents would be compelled to discontinue operations because of financial difficulties or frequent changes in ownership, or that such schools would lose accreditation unless they changed their faculties and standards. Employers do not refuse to employ graduates from competitive schools because of any alleged unfavorable rating of such schools in the directory, and students attending such competitive schools do not thereby impair their future chances of employment.

PAR. 6. The record indicates that respondent has sought in good faith to prevent disparagement of competitive schools by his sales agents, as well as other representations which are misleading and without proper factual basis, and that the misrepresentations referred to above were made without the knowledge or consent of respondent or his administrative staff. The record also contains assurances by respondent that in the future he and his administrative staff will continue to instruct all sales agents to avoid erroneous and misleading representations.

PAR. 7. While the complaint contained certain charges in addition to those referred to above, such additional charges are not sustained by the record.

PAR. 8. The acts and practices of respondent as set forth in Paragraphs Four and Five have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondent's school and its competitors, and to cause such portion of the public to purchase respondent's courses of study and instruction as a result of the erroneous and mistaken belief so engendered. In consequence, substantial trade has been unfairly diverted to respondent from his competitors.

CONCLUSION

The acts and practices of respondent as hereinabove set out are all to the prejudice of the public and of respondent's competitors, and

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constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondent, Eugene F. Agee, individually and trading as Commercial Extension School of Commerce or under any other name, and his 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 respondent's courses of study and instruction, do forthwith cease and desist from:

1. Disparaging competitive schools by representing that such temporary or qualified approval as may be accorded to particular schools by any commercial school directory for reasons having no relation to the reputation or financial standing of such schools or their officers, or to the quality of their courses or to their accreditation, connotes that such schools or the courses offered by them do not conform to standards of approved schools or are inferior thereto; or by representing that employers refuse to employ graduates of such schools or that chances for employment of students attending competitive schools are otherwise impaired, or that competitive schools or their officers are of bad repute or engaged in dishonorable financial conduct, unless such is the fact.

2. Making any disparaging representations concerning the courses offered by competitors or with respect to the ethical, financial and educational reputation or standing of competitive schools or their officers, unless such representations are in fact true and correct.

3. Representing that the publication known as the Directory of Private Business Schools or any other directories published by commercial or trade organizations are official publications of the United States Government or any agency thereof.

4. Representing that any principals or officers of public schools or educational institutions recommend respondent's school or courses of study and instruction to their students or graduates, unless such is the fact.

5. Advertising in any manner to the character or nature of the student body of any competing school, inconsistent with the facts.

6. Representing that competing schools may close due to frequent changes in ownership or to financial difficulties, unless such is the fact.

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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 19, 1952].

IN THE MATTER OF
DAVID'S SPECIALTY SHOPS, INC. AND DAVID, HARRY
AND OSCAR ISRAEL

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF AN
ACT OF CONGRESS APPROVED OCT. 14, 1940

Docket 5852. Complaint, Feb. 21, 1951—Decision, Feb. 27, 1952

Where a corporate chain organization with several retail outlets in New York and Ohio, and its three officers—

- (a) Misbranded certain wool products in violation of the Wool Products Labeling Act through labeling them as "100% wool," when they contained in fact substantial quantities of rayon fiber;
- (b) Misbranded said products in that the constituent fibers and the percentages thereof were not shown on the tags or labels thereon as required by said Act and Rules and Regulations promulgated thereunder;
- (c) Misbranded certain of said products in that the legal name of the manufacturer or other person authorized by the Act to affix stamps, etc. thereto or, in lieu thereof, a registered identification number, was not shown on the attached labels;
- (d) Misbranded certain of said products in that constituent fibers of their interlinings were not separately set forth upon the attached labels, as required by said Rules, etc.;
- (e) Misbranded certain of said products within the intent and meaning of said Act and Rule 12, in that skirts and coats sold in combination, were not labeled separately with their constituent fibers and the percentages thereof;
- (f) Misbranded certain of said products in that attached stamps, tags, etc. named fibers not present therein; and

After the delivery of certain wool products to them and shipment thereof to their retail stores in Ohio, and before offer and sale to the public; and with intent to violate the provisions of said Act—

- (g) Caused and participated in the removal, and in other cases, in the mutilation, of some of the required stamps, tags, etc. affixed to certain wool products when received by them at their place of business;

With the result that said wool products, when offered for sale and sold by them to the public at their places of business, did not bear the information required by said Act and Rules and Regulations:

Held, That such acts, practices and methods, under the circumstances set forth, were in violation of the Wool Products Labeling Act of 1939, and the Rules and Regulations promulgated thereunder, and constituted unfair and deceptive acts and practices in commerce.

In said proceeding in which respondents filed a substitute answer admitting all of the material allegations of fact set forth in the complaint and waiving all intervening procedure and further hearing as to said facts; and in which the hearing examiner filed his initial decision, and counsel supporting the complaint seasonably filed an appeal and supporting brief and the Commission granted said appeal: