

Syllabus

IN THE MATTER OF

NATIONAL COLLEGE OF AUDIOMETRY ET AL.

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

Docket 5917. Complaint, Aug. 17, 1951—Decision Apr. 7, 1952

A college, as that term is understood in the educational field and by the general public, is an institution of higher learning, including subjects in the arts, sciences and professions—such as law, medicine and theology—laboratories, libraries, and dormitories for resident students, with sufficient financial resources to operate and maintain such an institution; and with an adequate and competent faculty of learned persons qualified and trained to teach the respective subjects offered, and possessing degrees from recognized universities and colleges.

A degree is an academic rank recognized by colleges and universities having a reputable character as institutions of higher learning and recognized as such by standard accrediting organizations, which conveys to the ordinary mind the idea of some collegiate, university or scholastic distinction.

Academic degrees are conferred by duly authorized, accredited and recognized educational institutions of higher learning as evidence and in recognition of prescribed scholastic attainments by students of such institutions, and, unless so earned and conferred, do not constitute degrees in the accepted meaning of the term. Moreover, degrees granted solely for work done by correspondence are not accredited and recognized by colleges and universities or by examining boards of the different professions.

Where a corporation and its president, engaged in the interstate sale and distribution of a correspondence course in audiometry or the fitting of hearing aids; in circulars distributed to prospective students, and advertisements in various magazines of national circulation devoted to the healing arts—

(a) Represented, directly or by implication, that said corporation was a recognized and accredited college or institution of higher learning;

The facts being that it had none of the facilities, equipment, or faculty possessed by such institutions, but was operated by said individual who also constituted its faculty;

(b) Represented that said individual was a holder of a number of degrees pertaining to the subject of audiometry; that their course included basic physics, anatomy, physiology and pathology of the ear, the psychology of hearing, the physics of sound, abnormal psychology, etiology and pathology of diseases of the ear, and the fitting of hearing aids; and that students might obtain either the degree of Bachelor of Science in Audiometry or Doctor of Audiometry;

The facts being that the degree of "Doctor of Audiometry" is not known, accepted or recognized by reputable schools and colleges and is wholly without validity, and, insofar as said individual was concerned, was conferred by him upon himself; while said individual did possess the earned degree of Doctor of Optometry, and the honorary degree of Doctor of Optometric Science, he was not qualified by training or experience to teach either general anatomy or physiology, or the specific anatomy, physiology and pathology

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of the human ear, or any other subject in medical science with the exception of optometry, in which he had had training and experience; and while it is necessary to receive certain practical training, it is not necessary to acquire any academic degrees in order to fit hearing aids properly; and

- (c) Falsely represented that the aforesaid corporation was accepted or recognized by the Treasury Department of the United States as a non-profit educational institution;

With tendency and capacity to confuse, mislead and deceive a substantial portion of the purchasing public with respect to their school and its courses and their purported academic degrees; and thereby to cause such public to purchase their 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. William L. Pack*, hearing examiner.

Mr. William L. Pencke for the Commission.

Mr. John S. Kavanaugh, of Chicago, Ill., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that National College of Audiometry, a corporation, and Frank Keefe, 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. Respondent National College of Audiometry is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois. Respondent Frank Keefe is the president of said corporate respondent and as such, formulates, controls, and directs the policies and practices of said corporation and is responsible for the operation and management thereof. The office and principal place of business of both respondents is located at 5024 North Broadway in the city of Chicago and State of Illinois.

PAR. 2. Respondents are now, and for more than two years last past have been, 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 audiometry or the art of fitting hearing aids, which is pursued by correspondence through the medium of the United States mails.

During the time aforesaid respondents have 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 Illinois to purchasers thereof located in various States of the United States other than the State of Illinois. The conduct of said business contemplates and results in, and has resulted in the transportation of lesson sheets and other documents, money orders, checks and other forms of money, from respondents' place of business in Illinois, through and into other States and from respondents' customers located in various States into the State of Illinois. There is now and has been at all times mentioned herein, a course of trade in said course of instruction so sold and distributed by said respondents in commerce between and among the various States of the United States, and such course of trade has been and is substantial.

PAR. 3. A college, as that term is understood in the educational field and by the general public, is an institution of higher learning, including subjects in the arts, sciences and professions, such as law, medicine and theology, with adequate equipment in the form of buildings, laboratories, libraries and dormitories for resident students, and sufficient financial resources to operate and maintain such institution; with an adequate and competent faculty of learned persons qualified and trained to teach the respective subjects offered by such institutions and possessing degrees from recognized universities and colleges.

A degree is an academic rank recognized by colleges and universities having a reputable character as institutions of higher learning and which are so recognized and accredited by standard accrediting organizations, and which degree conveys to the ordinary mind the idea of some collegiate, university or scholastic distinction.

PAR. 4. Respondents, in soliciting the sale of and in selling said course of study and instruction in audiometry, have made and are making use of printed advertising matter including circulars mailed and distributed to prospective students located in the various States of the United States, and of advertisements inserted in various magazines devoted to the healing arts and having a national circulation, in and by which numerous representations have been and are made in regard to said course of study and matters and things connected therewith. Typical of such representations are the following:

National College of Audiometry.

Frank Keefe, O. D., D. O. S., D. A., President.

This program deals with Basic Physics, with the Anatomy, Physiology and Pathology of the human ear; the Psychology of hearing and the Physics of Sound, with audiometry, the measurement of hearing loss and the proper prescription of an individual hearing aid.

If desired a D. A. (Doctor of Audiometry) Degree or a Bachelor of Science in Audiometry will be awarded without further payment.

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Hearing Aid Consultants—Do You Know That THE NATIONAL COLLEGE OF AUDIOMETRY is chartered as a non-profit Educational Institution under the laws of the State of Illinois;

Is accepted as a non-profit educational institution by the Treasury Department of the United States;

Is the only institution of its kind (as far as we know) which teaches the complete science of audiometry;

The anatomy, physiology and pathology of the human ear; General, abnormal psychology and the psychology of hearing; general pathology and the etiology and pathology of diseases of the ear; the physics of sound and audiometry which is the measurement of the ability to hear; and the proper fitting of hearing aids;

Has the power to confer degrees in Audiometry upon graduation through home study course by correspondence.

A LARGER INCOME assured because of more satisfied patients

A greater PERSONAL satisfaction because of more education.

PAR. 5. By means of the foregoing representations and others of similar import and effect not herein specifically set out, respondents have represented and implied and do represent and imply that the corporate respondent is a recognized and accredited college or institution of higher learning in which is taught the science of audiometry; that the president, Frank Keefe, is the holder of a number of degrees pertaining to the subject of audiometry, that the course of study and instruction by correspondence includes basic physics, anatomy, physiology and pathology of the ear, the psychology of hearing, and the physics of sound; abnormal psychology, etiology, and pathology of diseases of the ear and the fitting of hearing aids; that students may obtain either the degree of Bachelor of Science in Audiometry or Doctor of Audiometry, the latter indicated by the letters D. A.; that they are assured of a larger income and greater personal satisfaction by reason of having taken said course of instruction and that the Treasury Department of the United States accepts said corporate respondent as a non-profit educational institution.

PAR. 6. All of the foregoing statements and representations, and others similar thereto, are false, deceptive and misleading. In truth and in fact the corporate respondent is not a college in the accepted sense of that term and is not a recognized, accredited and accepted institution of higher learning. It has none of the facilities, equipment, or faculty described in Paragraph Three hereof but on the contrary, is operated by respondent Frank Keefe who also constitutes the faculty. The letters "O. D." and "D. O. S." used by said respondent signify that he is a Doctor of Optometry and an Honorary Doctor of Optometric Science. The degree "Doctor of Audiometry" is not known, accepted or recognized by reputable schools and colleges, and is of no validity whatever, and moreover, insofar as respondent is concerned was conferred by him upon himself.

Said respondent Frank Keefe is not qualified by training or experience adequately to teach either the fundamental and general subjects of anatomy and physiology, nor the specific subjects of anatomy, physiology and pathology of the human ear, nor psychology, abnormal psychology, or any other subject dealing with medical science, with the exception of optometry or the scientific examination of the eyes for the purpose of fitting glasses, in which said respondent has had training and experience. While it is necessary to receive certain practical training in connection with the fitting of hearing aids, it is not necessary to have extensive training in medical science nor is it necessary to acquire any academic degrees in order to fit hearing aids properly to persons in need of such equipment. The Treasury Department of the United States has not accepted said corporate respondent as a non-profit educational institution with the implication that such acceptance means a recognition and approval of the educational qualifications of said school by an agency of the United States Government. In truth and in fact, the Treasury Department has merely accepted the existence of said corporate respondent as a non-profit institution in connection with its tax records.

PAR. 7. Academic degrees as defined in Paragraph Three hereof are conferred by duly authorized, accredited and recognized educational institutions of higher learning as evidence and in recognition of prescribed, scholastic attendance by students of such institutions and unless so earned and conferred, do not constitute degrees in the accepted meaning of said terms; moreover, "degrees" granted solely for work done by correspondence are not accredited and recognized by colleges and universities or by examining boards of the different professions.

PAR. 8. The practices and use by respondents 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 respondents' courses of study and instruction in said commerce on account thereof.

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

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 April 7, 1952, the initial

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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 August 17, 1951, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. After the filing by respondents of their answer to the complaint, 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 respondents and incorporated in the record, which was duly filed in the office of the Commission. The stipulation provided that the facts set forth therein should constitute the statement as to the facts in the proceeding, and be the basis for findings as to the facts and conclusion and an order disposing of the proceeding. Thereafter, the proceeding regularly came on for final consideration by the hearing examiner upon the complaint, answer and stipulation (the stipulation having been approved by the hearing examiner) (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. Respondent National College of Audiometry is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois. Respondent Frank Keefe is president of the corporation and formulates, controls and directs its policies and practices and is responsible for its operation and management. The office and principal place of business of both respondents was formerly located in Antioch, Illinois, but is presently located at 5204 North Broadway, Chicago, Illinois. Respondents are engaged in the sale and distribution of a course of study and instruction in audiometry or the art of fitting hearing aids, the course being pursued by correspondence through the medium of the United States mails.

PAR. 2. Respondents cause and have caused their course of study and instruction, when sold, to be transported from their places of business in the State of Illinois to purchasers located in various other States of the United States. Respondents maintain and have maintained a course of trade in their course of study and instruction in commerce between and among various States of the United States.

PAR. 3. A college, as that term is understood in the educational field and by the general public, is an institution of higher learning, including subjects in the arts, sciences and professions, such as law, medicine and theology, with adequate equipment in the form of buildings, laboratories, libraries, and dormitories for resident students, and with sufficient financial resources to operate and maintain such an institution; and with an adequate and competent faculty of learned persons qualified and trained to teach the respective subjects offered by such institutions and possessing degrees from recognized universities and colleges.

A degree is an academic rank recognized by colleges and universities having a reputable character as institutions of higher learning and which are so recognized and accredited by standard accrediting organizations, and which degree conveys to the ordinary mind the idea of some collegiate, university or scholastic distinction.

PAR. 4. In soliciting the sale of their course of study and instruction, respondents make use of printed advertising material, including circulars, mailed and otherwise distributed to prospective students, and of advertisements inserted in various magazines devoted to the healing arts and having a national circulation. Among and typical of the statements appearing in respondents' advertising are the following:

National College of Audiometry.

Frank Keefe, O. D., D. O. S., D. A. President.

This program deals with Basic Physics, with the Anatomy, Physiology and Pathology of the human ear; the Psychology of hearing and the Physics of Sound, with audiometry, the measurement of hearing loss and the proper prescription of an individual hearing aid.

If desired a D. A. (Doctor of Audiometry) Degree or a Bachelor of Science in Audiometry will be awarded without further payment.

Hearing Aid Consultant—Do You Know That THE NATIONAL COLLEGE OF AUDIOMETRY is chartered as a non-profit Educational Institution under the laws of the State of Illinois;

Is accepted as a non-profit educational institution by the Treasury Department of the United States; Is the only institution of its kind (as far as we know) which teaches the complete science of audiometry;

The anatomy, physiology and pathology of the human ear; General, abnormal psychology and the psychology of hearing; general pathology and the etiology and pathology of diseases of the ear; the physics of sound and audiometry which is the measurement of the ability to hear; and the proper fitting of hearing aids;

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Has the power to confer degrees in Audiometry upon graduation through home study course by correspondence.

A LARGER INCOME assured because of more satisfied patients.

A greater PERSONAL satisfaction because of more education.

PAR. 5. Through the use of these statements and others of similar import, respondents have represented, directly or by implication, that the corporate respondent is a recognized and accredited college or institution of higher learning in which is taught the science of audiometry; that the individual respondent is the holder of a number of degrees pertaining to the subject of audiometry; that the course of study and instruction includes basic physics, anatomy, physiology and pathology of the ear, the psychology of hearing, the physics of sound, abnormal psychology, etiology, and pathology of diseases of the ear, and the fitting of hearing aids; that students may obtain either the degree of Bachelor of Science in Audiometry or Doctor of Audiometry, the latter being indicated by the letters D. A.; that students are assured of a larger income and greater personal satisfaction by reason of having taken such course of instruction; and that the corporate respondent is accepted or recognized by the Treasury Department of the United States as a non-profit educational institution.

PAR. 6. These representations are erroneous and misleading. The corporate respondent is not in fact a college in the accepted sense of that term, and is not a recognized, accredited and accepted institution of higher learning. It has none of the facilities, equipment, or faculty described in Paragraph Three hereof but, on the contrary, is operated by the individual respondent who also constitutes the faculty. The letters "O. D." and "D. O. S." used by such respondent signify that he is a Doctor of Optometry and an Honorary Doctor of Optometric Science. The degree "Doctor of Audiometry" is not known, accepted or recognized by reputable schools and colleges, is wholly without validity, and insofar as the individual respondent is concerned, the degree was conferred by him upon himself.

The individual respondent does possess the earned degree of Doctor of Optometry and is also the possessor of the honorary degree of Doctor of Optometric Science. He is not, however, qualified by training or experience adequately to teach either the fundamental or general subjects of anatomy or physiology, nor the specific subjects of anatomy, physiology and pathology of the human ear, nor is he qualified to teach psychology, abnormal psychology, or any other subject in medical science, with the exception of optometry or the scientific examination of the eyes for the purpose of fitting glasses, in which subject he has had training and experience. While it is neces-

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sary to receive certain practical training in connection with the fitting of hearing aids, it is not necessary to have extensive training in medical science nor is it necessary to acquire any academic degree in order to fit hearing aids properly. The Treasury Department of the United States has not recognized or accepted respondents' school as a non-profit educational institution.

PAR. 7. Academic degrees as defined in Paragraph Three hereof are conferred by duly authorized, accredited and recognized educational institutions of higher learning as evidence and in recognition of prescribed scholastic attainments by students of such institutions and unless so earned and conferred, do not constitute degrees in the accepted meaning of the term. Moreover, degrees granted solely for work done by correspondence are not accredited and recognized by colleges and universities or by examining boards of the different professions.

PAR. 8. The record indicates that much of the advertising in question has already been discontinued by respondents.

PAR. 9. The acts and practices of respondents, as described above, have the tendency and capacity to confuse, mislead and deceive a substantial portion of the purchasing public with respect to respondents' school and its course of study and instruction and the purported academic degrees conferred by it, and the tendency and capacity to cause such portion of the public to purchase respondents' course of study and instruction as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of respondents 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.

ORDER

It is ordered, That the respondents, National College of Audiometry, a corporation, and its officers, and Frank Keefe, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondents' course of study and instruction, do forthwith cease and desist from:

1. Representing by offering to grant or confer or through granting or conferring upon purchasers of respondents' course of home study

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and instruction through correspondence any so-called academic degrees, or by any other means, that corporate respondent is an accredited and standard college or institution of higher learning.

2. Using the word "college" or any abbreviation or simulation thereof, to designate, describe or refer to respondents' school; or otherwise representing directly or by implication, that the business conducted by respondents is a college or institution of higher learning.

3. Representing, directly or by implication, that respondent Frank Keefe is the holder of any accredited and recognized academic degrees pertaining to the subject of audiometry.

4. Representing that respondents' school is recognized and accepted or approved as a non-profit educational institution by the Treasury Department of the United States.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents 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 April 7, 1952].

Order

IN THE MATTER OF
HAMILTON MANUFACTURING COMPANY

MODIFIED CEASE AND DESIST ORDER

Docket 3944. Order, April 9, 1952

Order modifying the words "which are to be used or may be used" in the Commission's order directed against the sale of lottery devices, on September 7, 1950, 47 F. T. C. 116 at 127, in accordance with the opinion of the Court of Appeals for the District of Columbia on January 24, 1952, in *Hamilton Manufacturing Company vs. Federal Trade Commission*, 194 F. (2d) 346, and the final decree of February 27, 1952, so as to read, "selling," etc., push cards, etc., "which are designed or intended to be used", as below set out.

Mr. J. W. Brookfield, Jr. for the Commission.

Guesmer, Carson & MacGregor, of Minneapolis, Minn., and *Mr. J. Bond Smith* and *Mr. Joseph A. Padway*, of Washington, D. C., for respondent.

Mr. Joseph A. Padway and *Mr. Herbert S. Thatcher*, of Washington, D. C., for Minneapolis Printing Pressmen and Assistants Union No. 20; Bookbinders and Bindery Women, Twin City Local No. 12, I. B. of B.; and Stenographers, Bookkeepers, Typists, and Assistants Union, Minneapolis Local No. 17661; intervenors.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondent's substitute answer thereto, in which answer said respondent admitted, with certain exceptions, all of the allegations of fact set forth in the complaint, and briefs and oral argument of counsel, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act, on September 7, 1950, issued its order to cease and desist; and

Respondent Hamilton Manufacturing Company, having filed in the United States Court of Appeals for the District of Columbia Circuit its petition to review and set aside the order to cease and desist issued herein, and that Court having heard the matter on briefs and oral argument, having fully considered the matter, and having, thereafter on February 27, 1952, entered its final decree modifying, and affirming and enforcing, as modified, the aforesaid order to cease and desist pursuant to its opinion announced on January 24, 1952; and

Thereafter, the Commission having reconsidered the matter, and being of the opinion that its order should be modified so as to accord