

IN THE MATTER OF
NATIONAL COACHING SERVICE INSTITUTE, INC. 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 5876. Complaint, May 2, 1951—Decision, Apr. 21, 1952

Where a corporation and its president, who also operated a branch under a similar trade name in another city, engaged in the interstate sale and distribution of correspondence courses to prepare students for Civil Service examinations; in promoting the sale of their courses through printed postal cards mailed to prospective purchasers, and through traveling sales agents, to whom they referred inquiries received—

- (a) Falsely represented through their said agents that said corporation and business were connected with the United States Civil Service or some other Government agency, and that said agents had official connection therewith;
- (b) Falsely represented that completion of their courses assured students of appointment to Civil Service positions or made them eligible for such appointment;
- (c) Falsely represented that they would hold positions open for students who failed to pass Civil Service examinations, that prospective students must take their courses of study in order to obtain Civil Service positions, and that the examinations given by them were examinations for specific positions in Civil Service;
- (d) Falsely represented that students would receive Civil Service positions immediately or within a few days after successfully completing their courses and that they might obtain employment in or near the cities or towns in which they resided;

The facts being that the time of actual employment for those who have passed a Civil Service examination depends upon a number of factors, such as availability of eligible persons in various Civil Service districts, the rating of eligibles, veterans' preferences and other conditions over which neither they nor the applicants have any control; and neither they nor applicants can determine the place of employment;

- (e) Falsely represented that students who did not possess the experience, physical, mental or educational qualifications, or veterans' status required for many positions for which they offered training, might nevertheless find employment in such positions; and
- (f) Falsely represented that the United States Civil Service Commission was looking to or relying upon them to locate and place employees; and

Where said corporation and individual—

- (g) Falsely implied and represented through the use of the word "Institute" in their corporate and trade names, that their school was a resident institution of higher learning;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to said school and its courses, and with respect to positions in the United States Civil Service, and thereby induce its purchase of their said courses:

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.

Before *Mr. William L. Pack*, hearing 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 National Coaching Service Institute, Inc., a corporation, and Archie K. Babson, individually and as an officer of National Coaching Service Institute, Inc., and also doing business as National Service Institute and Career Institute, hereinafter referred to as respondents, have violated the provisions of the said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent National Coaching Service Institute, Inc., is a corporation organized and existing under the laws of the State of Colorado with its principal office and place of business at 412 Bank Block Building, 1026 17th Street, Denver, Colorado.

Respondent Archie K. Babson is an individual and president of said corporation and as such formulates, controls and manages all of the affairs of said corporation. Said respondent has also done business under the trade name of National Service Institute and is presently operating a branch of National Coaching Service Institute, Inc., under the trade name of Career Institute located at 110 Market Street, San Francisco, California, which is also the address of said respondent Archie K. Babson.

PAR. 2. For more than one year last past, respondents have been and are now engaged in the sale and distribution of courses of study and instruction intended for preparing students thereof for examination for certain civil service positions under the United States Government, which said courses are pursued by correspondence through the medium of the United States mails. Respondents, in the course and conduct of said business, cause said courses of study and instruction to be transported from their respective places of business in the States of Colorado and California to, into and through States of the United States other than Colorado and California to the purchasers thereof located in such other States and the District of Columbia. There has been at all times mentioned herein a course of trade in said courses of instruction so sold and distributed by respondents in commerce between and among the various States of the United States, and said course of trade has been and is substantial.

Complaint

48 F. T. C.

PAR. 3. In connection with the sale of said courses of study and instruction respondents have made and are making use of printed advertising matter distributed to prospective students throughout the United 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, made on postal cards distributed to rural route or Post Office Box holders are the following:

I AM VERY MUCH INTERESTED IN CIVIL SERVICE

Please Send Full Information and List of Positions

* *

* *

MANY THOUSANDS OF

OPPORTUNITIES

RURAL MAIL CARRIER

GOVERNMENT

POST MASTER

POSITIONS

MEN AND WOMEN

2nd CLASS

AGES 18 to 50

Preparatory Train-

3rd CLASS

ing for Civil Service

4th CLASS

(To \$4479.00 Yearly to Start) (To \$4479.00 Yearly to Start)

HERE IS YOUR OPPORTUNITY!!!

CIVIL SERVICE POSITIONS OFFER CHANCES FOR ADVANCEMENT AND INCREASED EARNINGS IN GRADE PAY RAISES, LIBERAL PENSIONS, SICK LEAVE WITH PAY and PAID VACATIONS. INSTRUCTIONS NOW BEING GIVEN IF YOU QUALIFY.

Postal Clerks

Asst. Meat Inspectors

Mail Clerks

Railway Mail Clerks

Customs Service

Immigration Service

Storekeepers

Weather Bureau

Veterans

Reclamation Service

Administration

Many Others

Mail Attached Card TODAY

For Full Information

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 corporate and trade names National Coaching Service Institute, Inc., National Service Institute and Career Institute, respondents represent and imply that their said business 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 advertisement, are vacant, or available to all applicants; that men and women are needed to fill said vacancies and are wanted by the United States Government to prepare for civil service positions, and that said positions may be obtained

through respondents' National Coaching Service Institute, Inc., or Career Institute; and that the starting salaries for the positions listed run as high as \$4479.00 per annum.

PAR. 5. In the course and conduct of said business as aforesaid, respondents employ numerous sales agents or representatives who call on prospective purchasers of said courses of study. By means of oral statements and representations made by said sales agents respondents represent and imply to prospective students and purchasers of their said courses of study:

1. That National Coaching Service, Inc., National Service Institute and Career Institute are connected with, or are branches of, the U. S. Civil Service or the United States Government or some agency thereof;

2. That respondents' said sales agents are representatives or employees of the U. S. Civil Service or have some official connection therewith;

3. That the completion of said courses of study makes enrollees eligible for appointment to, or assures them of, or guarantees U. S. Civil Service positions;

4. That enrollees failing to pass Civil Service examinations will have positions held open for them by respondents;

5. That enrollees must take respondents' course of study in order to obtain Civil Service positions;

6. That the examinations given by respondents are examinations for specific positions in the Civil Service;

7. That enrollees will receive Civil Service positions immediately or within a few days after successfully completing said courses;

8. That enrollees may obtain employment at or near their homes or within a short distance therefrom;

9. That enrollees who do not have the experience, physical, mental, or educational qualifications, or veterans' status required in many positions for which respondents offer training, may nevertheless find employment in such positions;

10. That the U. S. Civil Service Commission is looking to, or relying upon, respondents to locate and place employees;

11. That enrollment contracts are cancelled or refunds of money paid for tuition are made if enrollees decide to discontinue said courses or are dissatisfied or have changed their minds.

In many instances said sales agents have rushed prospective purchasers into signing said enrollment contract without affording them an opportunity to think over and consider the advisability of enrolling, or reading and understanding the terms of said contract; and in some instances respondents have demanded payment of tuition fees after

Complaint

48 F. T. C.

they had been advised by the prospective purchasers that they had signed no note or contract for the payment of such fees.

PAR. 6. All of said statements, representations, implications and practices are grossly exaggerated, false and misleading. In truth and in fact, while there are opportunities for employment in government service, the U. S. Civil Service Commission does not advertise for men and women to fill government positions or that vacancies exist in government service.

The statements on said postal cards "Preparatory training for civil service" and "Instructions now being given if you qualify" imply that respondents are authorized or designated by the U. S. Civil Service to qualify and prepare applicants for the taking of civil service examinations. Most of the positions listed on said postal cards are not open to applicants generally but are either restricted to persons with veteran's status or requiring special physical and educational qualifications and practical experience.

There is no position known as Assistant Meat Inspector, or positions in the Weather Bureau, Veterans Administration, Customs, or Reclamation Services paying \$4479.00 per annum filled solely through competitive examinations. The unqualified representation that the positions listed on said postal cards have starting salaries as high as \$4479.00 per year is grossly exaggerated and misleading; with respect to postal service, the entrance salary in Post Offices of the first and second class is \$1.31½ per hour and in the railway mail service, \$1.41½ per hour. Moreover, employment is frequently on a temporary or part time basis and employees are advanced to regular or carrier positions as vacancies occur. Positions in salary ranges of \$4479.00 per annum require college or professional training or approximately five years of practical experience. The lowest grade of meat inspector position begins at \$2650.00 per annum and requires two years of experience. Many positions in the Customs and Immigration Service are restricted to veterans.

Neither the respondents nor any of their officers, agents or salesmen are connected in any manner whatsoever with the U. S. Civil Service, the United States Government or any agency thereof. Employees having completed respondents' courses of study are not eligible for any position in the Civil Service by reason of that fact, and any assurance, promise or guarantee to that effect made by said salesmen is false. Respondents cannot hold open any position for any enrollee who has failed to pass a Civil Service examination for such position; there is no requirement by the Civil Service Commission to take respondents' courses of instruction to qualify for Civil Service examinations or positions, and examinations given by respondents are not

examinations for specific positions in the Civil Service. Enrollees who have completed respondents' course or who have taken and passed a Civil Service examination will not in all instances be placed immediately or in a short time in a Civil Service position, the time of actual employment depending upon a number of factors, such as availability of eligible person in various Civil Service districts, the rating of eligibles, veterans' preferences, and other conditions over which neither respondents nor applicants have any control; nor can they determine the locations or place of employment. There are many positions in the Civil Service that are either limited exclusively to veterans or are subject to special requirements pertaining to experience and physical, mental and educational qualifications and no one can be employed in such positions without meeting all requirements. The U. S. Civil Service Commission does not request or depend on any individuals or private business to secure, furnish or recommend any employees or applicants for Civil Service positions. Respondents do not refund deposits or money paid on account of tuition costs by students or purchasers of said courses, regardless of the reasons given therefor.

A large number of prospects solicited by said salesmen live in rural and farming areas where information regarding Civil Service and the methods of obtaining employment therein is not readily available. The representations on said postal cards that men and women are wanted, the emphasis on Civil Service and listing of government positions, singly and in combination with the corporate and trade names create the erroneous impression that said cards are official announcements of the U. S. Civil Service Commission; and this implication is furthered and strengthened by said salesmen making the statements and representations set forth in Paragraph Five hereof, and in failing to explain the terms of the enrollment contract or afford prospective purchasers the time to read, consider and comprehend said terms. In many instances enrollees believe they are signing applications and are not aware that they are signing a contract and a promissory note.

PAR. 7. The use of the words "National" and "Institute" in the names National Coaching Service Institute, Inc., National Service Institute and Career Institute under which respondents' business is conducted are misleading in that they imply an official government connection and the operation of a resident institution of learning with a staff of competent experienced and qualified educators offering instruction in philosophy, the arts, sciences and other subjects of higher learning.

In truth and in fact, respondents do not operate an "Institute" in the accepted sense of that term. Respondents offer no training or

instruction in philosophy, the arts, sciences, or other learned subjects. No basic, thorough or competent instruction is given in residence in any subject of learning. While respondents may have in their employ a number of persons possessing degrees from recognized institutions of learning and teachers' certificates, the subject matters in which respondents' students are prepared are not of the extent properly to be included in the term of higher education. In fact, respondents' courses of study and instruction consist of a general information type of Civil Service examination and a number of special lessons in the lower and non-professional type of examinations for Civil Service positions. All work is done by correspondence and consists of mailing previously prepared lessons and the grading of papers by employees. Moreover, much of the handling of contracts and grading of lessons is done with machines, the operation of which does not require academic training or teachers' certificates.

PAR. 8. The use by respondents 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 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 21, 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 May 2, 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. 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 Coaching Service Institute, Inc., is a corporation organized and existing under the laws of the State of Colorado, with its principal office and place of business located at 1026 17th Street, Denver, Colorado. Respondent Archie K. Babson, an individual, is president of the corporation and formulates, controls and manages all of its affairs. Respondent Babson has also done business under the trade name National Service Institute and is presently operating a branch of National Coaching Service Institute, Inc., under the trade name Career Institute, such branch being located at 110 Market Street, San Francisco, California. Respondents are engaged in the sale and distribution of courses of study and instruction intended for preparing students thereof for examinations for certain positions in the United States Civil Service, such courses being pursued by correspondence through the medium of the United States mails.

PAR. 2. In the course and conduct of their business, respondents cause and have caused their courses of study and instruction, when sold, to be transported from their places of business in the States of Colorado and California to purchasers located in various other States of the United States and in the District of Columbia. Respondents maintain and have maintained a course of trade in their courses in commerce between and among various States of the United States and in the District of Columbia.

PAR. 3. In promoting the sale of their courses of study and instruction respondents use printed postal cards which are mailed to prospective purchasers. Inquiries received in response to such cards are referred by respondents to traveling sales agents employed by them who proceed to call upon the prospects and undertake to sell them the

Findings

48 F. T. C.

courses. It is with certain oral representations alleged to have been made to prospective students by these sales agents that the present proceeding is primarily concerned. The record establishes that in a substantial number of instances the following representations have been made:

(a) That National Coaching Service Institute, Inc., National Service Institute, and Career Institute are connected with the United States Civil Service or some other agency of the United States Government.

(b) That respondents' sales agents are representatives or employees of the United States Civil Service or have some official connection therewith.

(c) That the completion of respondents' courses of study assures students of appointment to United States Civil Service positions or makes them eligible for such appointments.

(d) That students failing to pass Civil Service examinations will have positions held open for them by respondents.

(e) That prospective students must take respondents' courses of study in order to obtain Civil Service positions.

(f) That the examinations given by respondents are examinations for specific positions in Civil Service.

(g) That students will receive Civil Service positions immediately or within a few days after successfully completing respondents' courses.

(h) That students may obtain employment in or near the cities or towns in which they reside.

(i) That students not possessing the experience, physical, mental or educational qualifications or veterans' status required for many positions for which respondents offer training may nevertheless find employment in such positions.

(j) That the United States Civil Service Commission is looking to or relying upon respondents to locate and place employees.

PAR. 4. These representations were false and misleading. Neither respondents nor any of their agents are connected in any manner with the United States Civil Service or any other agency of the United States Government. Students completing respondents' courses are not by reason of that fact eligible for any position in the Civil Service. Respondents are wholly without power or authority to hold open any position in the Civil Service for anyone. There is no requirement that persons take respondents' courses in order to qualify for Civil Service examinations or positions. The examinations given by respondents are not examinations for specific positions in the Civil Serv-

ice. Persons who have completed respondents' courses and passed a Civil Service examination will not, in all instances, be placed in Civil Service positions immediately or within a short time. The time of actual employment depends upon a number of factors, such as availability of eligible persons in various Civil Service districts, the rating of eligibles, veterans' preferences, and other conditions over which neither respondents nor applicants have any control. Nor can respondents or applicants determine the place of employment. There are some positions in the Civil Service which are either limited exclusively to veterans or are subject to special requirements pertaining to experience and to physical, mental and educational qualifications, and no one can be employed in such positions unless he meets such requirements. The United States Civil Service Commission does not look to or rely upon respondents to secure or recommend any employees or applicants for Civil Service positions.

PAR. 5. The record indicates that respondents have sought in good faith to prevent misrepresentation by their sales agents and that sales agents have been dismissed by respondents when it was found that they had been guilty of making false statements to prospective purchasers. Respondents place upon the printed form of enrollment agreement which purchasers are required to sign, a statement to the effect that respondents are not connected in any way with any Governmental agency, and this statement also appears on a circular letter and other advertising material used by respondents in contacting prospective students.

PAR. 6. The use by respondents of the word "Institute" in their corporate and trade names is itself misleading in that such word implies that respondents' school is a resident institution of higher learning. The school is not in fact such an institution but, as heretofore stated, is a correspondence school engaged in the teaching of courses designed to prepare students for Civil Service examinations.

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

PAR. 8. The acts and practices of respondents, 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 the tendency and capacity to cause such portion of the public to purchase respondents' courses as as result of the erroneous and mistaken belief so engendered.

Order

48 F. T. C.

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 Coaching Service Institute, Inc., a corporation, and its officers, and Archie K. Babson, individually and as an officer of said corporation and also doing business under the names of National Service Institute and Career Institute, 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 respondent's courses of study and instruction, do forthwith cease and desist from:

1. Using the word "Institute" or any simulation thereof as a part of respondents' corporate or trade names; or otherwise representing, directly or by implication, that respondents' school is a resident institution of higher learning.

2. Representing, directly or by implication:

(a) That respondents' school has any connection with the United States Civil Service or any other agency of the United States Government.

(b) That respondents' sales agents are representatives or employees of the United States Civil Service or have any connection therewith.

(c) That the completion of respondents' courses of study assures students of positions in the United States Civil Service or makes them eligible for appointment to such positions.

(d) That respondents have any power or authority to hold open for any person any position in the United States Civil Service.

(e) That it is necessary that persons seeking Civil Service positions take respondents' courses of study in order to qualify for or obtain such positions.

(f) That the examinations given by respondents are examinations for specific positions in the Civil Service.

(g) That all persons completing respondents' courses and passing Civil Service examinations will obtain positions immediately or within a short time.

(h) That positions obtained in the United States Civil Service will be at or near the place of residence of the employee.

1214

Order

(i) That Civil Service positions requiring certain physical, mental or educational qualifications or veterans' status may be obtained by persons not meeting such requirements.

(j) That the United States Civil Service Commission is looking to or relying upon respondents to locate persons to fill positions in the Civil Service.

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 21, 1952].