

IN THE MATTER OF
TRACTOR TRAINING SERVICE ET AL.

DECISION IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT

Docket 5943. Complaint, Jan. 18, 1952—Decision, Mar. 3, 1954

Where two corporations, with principal offices and places of business at Portland, Ore., and Chicago, Ill., respectively, and an individual who was an officer of both, their principal stockholder and in control of their business policies and activities; engaged in the sale and distribution by mail of a course of study and instruction in diesel engines and tractor equipment;

In promoting the sale of their said courses and to secure inquiries from prospective purchasers to whom oral sales presentations would be made in their homes, in advertisements throughout the midwestern and the western states and in Alaska, and through other advertising matter, including reply postal card and bulletin and circulars forwarded to prospects along with a questionnaire, and through oral statements in the course of sales presentations during which additional promotional matter was exhibited to prospective enrollees contacted through such advertising—

- (a) Represented directly and by implication that there was a great demand for graduates of their schools as diesel mechanics, servicemen, and in similar positions, and that employment in such positions was available and assured upon the completion of their course of study and instruction;

The facts being there was no significant demand for such graduates whose training was limited to completion of their courses of study through correspondence, and the demand for men with limited mechanical experience in diesel engines and the training in mechanical theory afforded by their course was not great or unusual; graduates would at best be hired as helpers, apprentices, or sweepers unless they had had shop experience or the substantial equivalent in repairing and servicing diesel engines; employers of diesel and other skilled mechanics generally speaking prefer to promote their own men with proven shop experience when better positions become available, rather than to hire men from the outside for such positions; and, in many establishments, as a condition to employment experience as a journeyman or other work qualifications of an applicant, are passed on by examining committees of unions;

- (b) Represented additionally through their salesmen that the schools had working agreements with manufacturers of diesel engines and tractors and other diesel equipment to place graduates in employment upon completion of their courses of instruction and that, upon such completion, said schools would secure employment for graduates in the diesel industry and secure such employment for them as a regular thing;

The facts being they had no such connection or working agreements; while they maintained a placement department and communicated with retail diesel and tractor dealers, other employers of diesel mechanics, and others, as to job vacancies, circulated information thus secured, with details as to pay and conditions of employment usually omitted, and furnished graduates expressly requesting placement help information as to any jobs believed

open, and frequently offered to forward a statement of the applicant's qualifications, in order for a graduate to be considered, it was necessary that he follow up the leads and satisfy any prospective employer that he met latter's requirements as to training and experience, and conduct his own negotiations as to conditions of employment; and the representations expressly made in sales presentations and implicit in promotional matters that jobs were assured to graduates, due to existing great demand and by reason of respondents' aforesaid supposed connections and working arrangements and their placement service were grossly exaggerated and false;

(c) Falsely represented through their salesmen that students were afforded "on-the-job training" for which they would be paid money while pursuing their course of study;

(d) Represented, as aforesaid, that they provided shop training to students upon completion of their correspondence study at no cost or at only nominal cost;

The facts being that while they did make available to graduates completing their courses shop training during the period from September 1950 to June 1951, through a corporation dissolved on June 29, 1951, which operated as a resident training school from Sept. 11, 1950, to June 2, 1951, such training was not available without cost or at only nominal cost; charge therefor was \$150 for a six-week term of residents' training, with cost of living accommodations extra, and, under an alternative arrangement, cost for tuition and accommodation in dormitories was \$290;

(e) Represented, as aforesaid, that they used a system of rigid selectivity of students and accepted only a few from very large numbers of applicants for their training and placement service, setting forth in the aforesaid questionnaire, which was directed to the "Diesel Committee on Admission" purportedly to enable such committee to form an opinion as to the adaptability of the person responding, a variety of questions as to marital status, education, specialized training, and others;

The facts being that said schools were commercial enterprises operating for profit; their agents worked on a commission basis; and, contrary to the representations in their advertising and the oral statements of their salesmen, they were not selective in accepting prospective students for enrollment, but enrolled all those with some schooling who were interested in mechanical devices, termed by them as evidencing mechanical aptitude, and who were willing or able to make the payments required; and

(f) Represented, as aforesaid, that after graduation from said schools, their placement and advisory service would obtain jobs for graduates at \$2.50 or \$3.50 per hour or at \$75 per week and eventually higher wages;

Notwithstanding the fact that such levels of wages were available in the diesel and heavy equipment industry only to more highly skilled operators, mechanics, and workers whose competence came from substantial shop or other experience; while completion of their course might evidence a laudable sustained interest in mechanical matters on the part of the student applicant and be indicative to prospective employers that he had some knowledge of nomenclature and how parts were assembled, ability of their graduates to command higher levels of starting pay depended essentially on their shop and other practical experience; and starting salaries usually received by their graduates, particularly those employed in the sweeper, helper, and apprentice categories were substantially below \$75 as well as \$70 per week and the hourly rates referred to by their salesmen:

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Held, That such misrepresentations constituted unfair and deceptive acts and practices in commerce.

Before *Mr. J. Earl Cox* and *Mr. Everett F. Haycraft*, hearing examiners.

Mr. R. T. Porter and *Mr. William L. Pencke* for the Commission.
Mr. McDannell Brown, of Portland, Oreg., for respondents.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 18, 1952, 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 of respondents' answer thereto, a hearing was held at which testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a hearing examiner of the Commission originally designated by the Commission to act in this proceeding, and additional testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced in the course of hearings subsequently held before a substitute hearing examiner designated to act in the place and stead of the original hearing examiner, and said testimony and other evidence were duly recorded and filed in the office of the Commission.

On May 1, 1953, the hearing examiner designated to act in the place and stead of the original hearing examiner filed his initial decision. Within the time permitted by the Rules of Practice of the Commission, respondents appealed therefrom, and this matter came on for final hearing upon the record, including briefs in support of and in opposition to the appeal, and oral argument; and the Commission, having duly considered the record and having ruled upon said appeal and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts, conclusion drawn therefrom, and order, the same to be in lieu of the initial decision.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Tractor Training Service, the first of the respondents referred to above in the caption, is a corporation organized under the laws of the State of Oregon. Its operations began in 1943 and its principal office and place of business is at 406 Panama Building, Portland, Oregon. Tractor Training Service, Inc., named as a re-

spondent in the complaint but erroneously designated there as Tractor Training Service, is a corporation organized in 1948 under the laws of the State of Illinois and its principal office and place of business is at 1525 East 53rd Street, Chicago, Illinois. In the interest of brevity, these two corporations will be referred to as "respondent Oregon corporation" and "respondent Illinois corporation."

Tractor Training Diesel Institute, an Oregon corporation, was dissolved on June 29, 1951. It operated as a resident training school from September 11, 1950, to June 2, 1951.

With respect to those individuals who are named in the complaint as parties to this proceeding, respondent Joy E. Badley was, prior to September 1951, president and managing director of both the respondent Oregon and respondent Illinois corporations. Since September 1951, Mr. T. W. Badley has been president of the respondent Illinois corporation, respondent Joy E. Badley remaining as president of the respondent Oregon corporation and chairman of the board of directors of the respondent Illinois corporation.

Respondent McDannell Brown, Ray J. Watson (erroneously designated in the complaint as Roy J. Watson) and Fred L. Innes, are directors of both the respondent Oregon and respondent Illinois corporations; respondent Ray J. Watson is also executive vice-president of the respondent Oregon corporation, and respondent McDannell Brown is secretary of the said respondent Oregon and Illinois corporations; and Fred L. Innes is executive vice-president of the respondent Illinois corporation. Respondents Joy E. Badley, Ray J. Watson, and McDannell Brown have their principal offices at the place of business of respondent Oregon corporation, and respondent Fred L. Innes has his principal office at the place of business of the respondent Illinois corporation.

PAR. 2. Respondent Tractor Training Service and Tractor Training Service, Inc., and respondent Joy E. Badley are now and have been for more than three years last past engaged in the sale and distribution of a course of study and instruction consisting of 46 lessons on the subject of diesel engines and tractor equipment, which course of study and instruction is given and pursued through the medium of the United States mails. They have maintained a course of trade in commerce among and between the various States of the United States, the volume of which has been substantial. The courses are sold at a price of \$275.00 less certain discounts for World War II veterans and for cash. During the year 1951, the Portland school received 1197 enrollments and the Chicago school received 1066 enrollments. The Portland Office of respondent Oregon corporation has approximately 20 employees, of which three are instructors,

and it also employs a sales force on the road of about 24 sales representatives who work on a commission basis. The volume of business in commerce in these courses has been and now is substantial.

PAR. 3. Respondent Joy E. Badley now is and has been during the time aforesaid the guiding spirit and dominant personality controlling the general business policies and activities of respondent Oregon and Illinois corporations, of which he is the principal stockholder, including the preparation and dissemination of advertising material and the over-all supervision of the sales personnel. He keeps in intimate daily touch with all the activities of the various departments and issues directives in the form of bulletins and manuals. Unless otherwise stated, the word "respondents," as it appears hereinafter, is used to designate respondents Tractor Training Service, Tractor Training Service, Inc., and Joy E. Badley.

PAR. 4. In promoting the sale of their courses of instruction and to secure inquiries from prospective purchasers to whom oral sales presentations will be made in their homes, respondents have caused advertisements to be inserted in newspapers throughout the Midwestern and Western States and in Alaska, and have utilized other advertising matter, including reply postal cards and bulletins.

Typical and illustrative statements appearing in newspaper advertisements are the following:

DIESEL

HEAVY EQUIPMENT

We need mechanically inclined and reliable men to train for positions in Tractor and Equipment industry. If you are not making better than \$70 per week you owe it to yourself to write about free facts, without obligation. No time lost on your present job while training. Selections are being made in this area for training and placement advisory service. Write at once to Tractor Training Service, Box 650 Appeal-Democrat.

DIESEL—TRACTOR

HEAVY EQUIPMENT OPPORTUNITY

In Alaska and all over the world skilled men are in demand by the DIESEL-TRACTOR and HEAVY EQUIPMENT INDUSTRY, to operate, maintain, repair and supervise Railroad, Construction, Mine, Marine and Farm DIESEL units.

ARE YOU mechanically inclined or experienced? Does this hi-pay permanent field interest you?

YOU CAN DO SOMETHING ABOUT IT!

TRACTOR TRAINING SERVICE will have its representative in the Anchorage Area in June to interview those qualified for its TRAINING and PLACEMENT ADVISORY SERVICE PROGRAM.

Those qualified can train in spare time without taking time off from your job. Resident shop training available if needed or wanted.

The following statements have appeared in respondents' postal card solicitations:

DIESEL—JOBS—TRACTOR

THOUSANDS of mechanically inclined men must be trained quickly for High-Pay Permanent Jobs in this industry—Can YOU qualify for MORE MONEY, SECURITY, SUCCESS?

Selections Are Now Being Made In This Area For
TRACTOR TRAINING AND PLACEMENT SERVICE

No Time Lost

For Full Details & Qualifications, Fill in Completely, Detach and Mail Attached Postcard. * * *

Would YOU like a job like Joe's? A BIG JOB THAT PAYS BIG MONEY. All these "JOES" earn TOP PAY!

YOU can earn TOP PAY, too, in the DIESEL and INDUSTRIAL TRACTOR FIELD. T. T. S. gives you the "KNOW HOW" To Qualify you for the job you want. Tractor Training Service is the only organization of its kind in the country; no other covers the field as completely. It trains qualified men in the operation and servicing of every type of Diesel-powered and tractor-operated equipment used in industry, agriculture, lumbering, construction and transportation. That's why T. T. S. men command respect and high pay.

Selections are being made by Tractor Training Service in this area for trainees to enter this industrialized tractor and diesel field. No time need be lost from your present job. * * *

Upon the receipt of inquiries from prospective enrollees, respondents, in instances, have forwarded a questionnaire together with a circular, the latter containing the following statements and representations:

DIESEL

A HUNDRED MILLION DOLLAR INDUSTRY!

This new industry got its big jump during the last war and is now rapidly moving ahead in a vast number of peacetime projects, such as in the mechanization of agriculture, lumbering, highway construction, building, contracting, mining, hydroelectric power, etc.

Huge strides have been made with such outstanding success that people are now beginning to realize how tremendously important this new industry has become.

The use of diesel tractors and heavy equipment is creating a revolution in construction technique. Engineers are using this new power and equipment to perform the previously "impossible" tasks. The "pick and shovel" method is rapidly becoming a thing of the past now that this new industrial giant is on the scene.

This industry is developing so fast that it is opening up opportunities for profitable employment—jobs where advancement and outstanding success are practically unlimited.

In our country to-day, there are many young men just out of school who have no trade at all, and there are others who are working at jobs offering them

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little or no chance for a decent future, because of overcrowded conditions and other factors.

Amongst these groups will be found men with ambition and intelligence, whose character and basic qualifications would enable them to succeed if they were employed in a growing industry where opportunities for promotion exist.

You may or you may NOT have the above mentioned qualifications. Obviously, every person would not be suitable. It would be impossible to adapt everyone to this type of work; consequently it becomes necessary for us to determine something about a person's natural abilities beforehand.

If you are not earning better than \$70.00 per week, and are looking for a career in something really worthwhile, then fill in the enclosed questionnaire.

Upon receipt of this form, we shall furnish you with more details.

A PROMPT REPLY IS NECESSARY.

MAIL THE QUESTIONNAIRE WITHOUT DELAY.

The questionnaire form directed to the "Diesel Committee on Admissions" expressly purports to be for the purpose of enabling such committee to form an opinion as to the adaptability of the persons responding. Among the questions which a recipient is directed to answer are those relating to marital status and education and whether he has specialized training, and others inquire as to how long the prospect has been thinking of making a change for the better and whether, if acceptable, he is willing to undergo a period of training for the purpose of building a career. The form contains query also as to whether the responding party believes he has adaptability for diesel work and it concludes with an urgent direction that "This form must be completed and returned within 5 days" to Tractor Training Service.

PAR. 5. Through use of the aforesaid advertisements and by means of oral statements made by sales representatives in the course of sales presentations during which additional promotional matter is exhibited to prospective enrollees responding to the advertisements directed to establishing respondents' initial contact with them, respondents have represented, directly and by implication, that there is a great demand for graduates of respondents' schools as diesel mechanics, servicemen, and for similar positions and that employment in such positions is available and assured upon the completion of respondents' course of study and instruction. In the course of such sales presentations, respondents' representatives additionally have stated and represented that the schools have working agreements with manufacturers of diesel engines and tractors and other diesel equipment to place graduates in employment upon completion of their courses of instruction, and that upon completion of their course said schools will secure employment for graduates in the diesel industry and secure such employment for

graduates as a regular thing; that students are afforded "on-the-job training" for which they will be paid money while pursuing respondents' course of study; that respondents provide "shop training" to students upon completion of their correspondence study at no cost or at only nominal cost; that respondents use a system of rigid selectivity of students and accept only a few from very large numbers of applicants for respondents' training and placement service; and that after graduation from said schools, respondents' placement and advisory service will obtain jobs for graduates at \$2.50 or \$3.50 per hour or at \$75.00 per week and eventually higher wages.

Respondents contend, however, that such evidence received into the record as in any way attests that statements and representations having the import and meaning just noted were in fact made, is vague and equivocal evidence. In appraising respondents' contentions, however, it should be noted that the record reveals various instances in which sales representatives in effect have stated that high pay jobs were completely assured or guaranteed for graduates. In instances, the testimony of enrollees is corroborated by that of family members present during interviews, some of which last two hours or more. This evidence manifestly is not vague or equivocal. To prospects invited in the advertising literature to become "selections" if "qualified" for their training and placement service, respondents' sales manual counsels agents to emphasize as a basic sales theme that Tractor Training Service is a service organization to supply the diesel field with good men and salesmen are directed to make certain wage comparisons during their presentations to show that increased earnings will result from the course. It appears here that certain of the oral representations adopted by salesmen in making sales were inspired or suggested by respondents' printed promotional matter. Without discussing in additional detail the evidence relating to each, the Commission is of the view that it is shown by the greater weight of the evidence that the representations referred to in the preceding paragraph have been made in promoting sales of respondents' courses.

PAR. 6. (a) Contrary to the statements and representations used by the respondents and their sales representatives, there is no significant demand for graduates of respondents' schools whose training is limited to completion of their courses of study through correspondence, nor is the demand for men with limited mechanical experience in diesel engines and the training in mechanical theory afforded by respondents' course great or unusual. Moreover, graduates will at best be hired as helpers, apprentices or sweepers unless they have had shop experience or substantial equivalent in repairing and servicing diesel engines. It appears also that, generally speaking, employers of diesel and other

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skilled mechanics prefer to promote their own men with proven shop experience when better positions become available rather than to hire men from the outside for these positions. Other evidence received into the record additionally indicates that, as a condition to employment as a journeyman or for other work in many establishments, the qualifications of an applicant are passed on by examining committees of unions.

One of respondents' former students who had completed a part of the course stated in his testimony that equipment companies contacted would not take an application from him and also to be noted in passing is testimony adduced by two of respondents' graduates which is to the effect that various equipment dealers to whom they applied for employment had no interest in receiving their applications.

The greater weight of the evidence clearly demonstrates that a correspondence course without job training or other practical technical experience cannot qualify a person as a mechanic or skilled workman and that employment in positions of skill and high pay in these fields is neither available nor assured to applicants whose training in maintenance and repair of diesel and other heavy equipment is based primarily on the completion of a course of study through correspondence. The foregoing views and a conclusion corollary thereto that employers place great emphasis on shop experience when selecting workers to fill positions requiring mechanical skill are corroborated by the testimony of various equipment dealers, shop foremen, and service managers who appeared as witnesses in this proceeding. Their testimony is to the general effect that men cannot qualify as diesel mechanics from a book; that books might be helpful if students were working in the trade; that they could not command high salaries nor be qualified as skilled workmen; that graduates of respondents' schools could not qualify as completely competent mechanics; that there is no unusual demand for correspondence school graduates nor assurance that such men could secure employment as diesel mechanics; that correspondence training without practical experience would not qualify mechanics in the diesel field; that it takes years of experience to get to the point of becoming a skilled mechanic; that a correspondence course without practical experience will not make a mechanic entitled to high salary or make an inexperienced man a skilled workman; that there is no unusual demand in the tractor or diesel fields for a man with only correspondence school training; that actual practical hand work along with study is essential. Some of these experts testified to the effect that correspondence course training would qualify a person to be an apprentice; that while there was some demand for skilled mechanics, there was not for helpers or sweepers and other witnesses holding supervisory positions testified that they would employ respondents' graduates only as helpers or laborers.

The only witness called by respondents who had completed the course of training in respondents' schools was engaged in the repair business on automotive equipment and was a foreman of a garage which employed three mechanics in the tractor division. He believed that the course of instruction assisted him in his advancement and he classified himself as a journeyman, that is, able to take a job and tear it down and put it back together again. It appears, however, that he first secured employment as an apprentice through the assistance of respondents' placement and advisory service during the period when he was studying the course where he worked for four and one-half years.

(b) Contrary to the representations of respondents' sales representatives, respondents' schools have no connection with manufacturers of diesel equipment or working agreements under which manufacturers of diesel engines, tractors, and heavy equipment regularly place graduates in employment upon completion of the course.

Respondents maintain a placement department and its activities entail, among other things, communicating with retail diesel and tractor dealers and other employers of diesel mechanics, service men, operators and workers in an effort to ascertain what establishments have job vacancies or opportunities for employment. As a result of these inquiries, respondents learn of various openings and opportunities for employment and information respecting them is circularized by respondents among the graduates and others with details as to pay and conditions of employment usually omitted.

Under respondents' routine, graduates expressly requesting placement help are informed as to any jobs believed to be open in their areas or states or furnished with the names of one or more equipment dealers known to respondents as employers of help in those areas. Respondents frequently offer also to forward what they refer to as a statement of the applicant's qualifications setting out, among other things, information as to his current occupation, identities of past employers and positions held, and the grades received as a student in the course. In order to be considered for such positions, however, the graduates themselves must follow up the job leads and satisfy any prospective employers that they meet their requirements as to training and experience and conduct their own negotiations as to conditions of employment.

The testimony of two of respondents' graduates who appeared as witnesses herein is to the effect that the placement service did not secure jobs for them or furnish leads deemed by them sufficiently promising for follow up. Whether the aid available from respondents' placement service by way of leads and otherwise assures or

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secures jobs for their graduate body or in fact represents substantial assistance to many of the graduates must be weighed in the light of testimony elsewhere referred to which demonstrates that more lucrative, skilled positions existing in this field are not available upon graduation to those whose qualifications primarily consist of completion of a course of study through correspondence and which additionally indicates that the demand for sweepers or apprentices is not great or unusual. It is manifestly infeasible in a very large number of cases for graduates receiving respondents' leads to negotiate for and, perhaps moving their families, to accept jobs with pay levels set for lesser skilled work, but commensurate with their qualifications, in diesel manufacturing plants or other heavy equipment establishments. The Commission accordingly concludes that representations expressly made in sales presentations and implicit in promotional matter that jobs are assured to graduates due to an existing great demand and because respondents regularly secure jobs for graduates through working arrangement with employers or the efforts of respondents' replacement service are gross exaggerations and false. To be noted in passing also is the circumstance that respondents have not submitted data for the record as to the number of placements resulting from their leads and it appears that their placement department maintains no follow up or check as to whether a job quest turns out successfully.

(c) Students taking the course in their spare time are not offered, or placed in, full or part time paying jobs in shops or elsewhere where they can engage in work on diesel and mechanical equipment. It is concluded, therefore, that the representations which have been made in instances during the course of sales presentations that students are afforded on-the-job training for which they will be paid money while pursuing their studies are false representations.

(d) During the period from September 1950 to June 1951, shop training was available to graduates completing these correspondence courses through the now dissolved Tractor Training Diesel Institute. Such training, however, was not available without cost or at only nominal cost as represented by respondents' sales agents, but respondents instead imposed a charge of \$150 for a six-week term of residence training and cost of living accommodations was extra. It also appears that an alternative arrangement was offered whereby students were to pay \$290 for tuition and accommodations in dormitories. Shop training was abandoned when only a little over a dozen students signed up therefor.

(e) Respondents' schools are commercial enterprises operated for profit and their agents work on commission basis. Contrary to the representations appearing in the advertising and the oral statements

of salesmen, respondents are not selective in accepting prospective students for enrollment in their schools. With certain minor exceptions not here pertinent, respondents will enroll all persons with some schooling who are interested in mechanical devices, such interest being deemed by respondents to evidence mechanical aptitude, and who are willing or able to make the payments required. The record contains the following information with respect to schooling and employment of students at the time of enrollment:

<i>Education</i>	<i>Employment</i>
4 years high school	Service station attendant
3 years high school	Lineman
2 years high school	Wrecking cars
2 years high school	Welder
Seventh grade	Molder—iron foundry
Seventh grade	Truck driver
1 year high school	Safeway Store clerk
1 year college	Machine operator
2 years high school	Wrecking cars
Eighth grade	Welder
4 years high school	Tag Machine operator
2 years high school	Service station owner & operator
Eighth grade	Taxi driver
1 year high school	Smelterman
4 years high school	Cleaning business
Common school	Milk truck driver
3 years high school	Street cleaner
8½ years grade school	Craneman
4 years high school	Farmer
Eighth grade and mechanical school	Automobile Mechanic
3 years high school	Maintenance Man, Ship Lines
1 year high school	
(Withdrawn from school because of mental deficiency.)	
3½ years high school	Recapping tires
Sixth grade	Railroad switchman
No data	Carpenter
Eighth grade	Laborer

(f) Untrue and not founded on the facts have been the oral representations of respondents' salesmen that, upon graduation from the school, students are able to enter on jobs paying \$2.50 or \$3.50 per

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hour or positions at \$75.00 per week. The record clearly shows that these levels of wages are available in the diesel and heavy equipment industry only to more highly skilled operators, mechanics, and workers whose competence comes from substantial shop or other practical experience. In the last analysis, while completion of respondents' course of study may evidence a laudable sustained interest in mechanical matters on the part of the student making application and also be indicative to prospective employers that he has some knowledge of nomenclature and how parts are assembled, it seems equally clear that the ability of respondents' graduates to command higher levels of starting pay depends essentially on their shop and other practical experience. Although various students accepted for the course appear to have had some contact with some farm tools or with maintenance of automobiles or the operation of other mechanical equipment prior to enrolling, others did not. Upon the basis of the entire record, it must be concluded that the starting salaries usually and customarily received by respondents' graduates, particularly those employed in the sweeper, helper and apprentice category, are substantially below \$75.00 as well as \$70.00 per week and the hourly rates referred to by respondents' salesmen.

PAR. 7. While there is some evidence in the record tending to show that salesmen may have represented to prospective students in the course of two sales presentations that diesel engine manufacturers or other business concerns were financially backing respondents' schools to the extent of defraying part of the expense of tuition, the Commission is of the opinion that there is not sufficient evidence for an informed determination of the issues relevant thereto as presented under the complaint. The additional allegations of the complaint to the effect that misrepresentations have been made that all money paid by students will be refunded in the event they discontinue the course or fail to pass final examinations or if employment is not furnished upon completion of the course are not supported by the greater weight of the evidence adduced in the proceeding and this charge accordingly is to be regarded as dismissed also. Similarly lacking in substantial support is another of the charges of the complaint raising an issue as to whether representations have been made that our Government is using respondents' schools for training purposes and that there is a great demand by the Armed Forces for respondents' graduates, and the Commission likewise is of the view that the greater weight of the evidence fails to sustain other charges in reference to whether certain allegedly false reasons have been assigned by sales representatives as to why veterans were not taking the course under the G. I. training program.

CONCLUSION

On the basis of the above-stated facts and other evidence of record, the Commission has concluded that respondents have used false and misleading representations as described in Paragraphs 5 and 6 hereof in promoting the sale of their courses of study in commerce. Misrepresentation clearly has inhered in oral statements and other representations of respondents that there is a great demand for graduates of respondents' schools as diesel mechanics, service men and for similar positions, and that employment in such positions is available and assured on completion of the course when, in fact, there is no great or unusual demand for graduates whose training is limited primarily to completion thereof and no assurance of employment. Respondents' courses have been offered and sold also through statements that the schools have working agreements with manufacturers of diesel engines and others to place graduates in employment and that the schools will secure employment for them and do so as a regular thing when, on the contrary, respondents have no connection with manufacturers or working agreements for regularly placing graduates in employment nor do the schools customarily and regularly secure jobs for graduates. Other misrepresentations, the Commission concludes, clearly have stemmed from statements of sales agents that students are afforded on-the-job training for which they will be paid and that shop training is afforded at no cost or at only nominal cost as well as from additional false representations to the effect that respondents, in accepting enrollees, adhere to a system of rigid selectivity under which only a few from a very large number of applicants are accepted for their training and placement service, and misrepresentative likewise have been statements relating to the earnings graduates will receive upon completion of the course.

Upon the basis of the record, it is additionally concluded that respondents' misrepresentations have had the capacity and tendency to deceive members of the public into the erroneous and mistaken belief that these statements and representations are true and to induce the purchase of substantial numbers of respondents' courses of instruction in commerce. The Commission accordingly concludes that respondents' misrepresentations, as hereinbefore found, have been to the prejudice and injury of the public and therefore constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Since it is empowered and directed under the provisions of such Act to prevent the use in commerce of the methods, acts and practices referred to, the Commission has given careful consideration also to

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the form of remedy which should be applied here. Other cases have come before the Commission for its determination which have presented situations where sales practices and acts used in promoting the sale of other home study courses likewise were characterized by misrepresentation as to the facilities or advantages available to students accepted for enrollment and the opportunities or assurances for employment and lucrative pay afforded upon completion of such courses. On the basis of its experience in those cases and its consideration of all of the factors involved, the Commission has concluded that the proscriptions, as adopted and set out hereinafter, are responsive to the record and will adequately protect the public interest.

ORDER

It is ordered, That the respondents Tractor Training Service, a corporation, and Tractor Training Service, Inc., a corporation, and their officers, and Joy E. Badley, individually and as an officer of said corporations, and said respondents' agents, representatives and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of a course of study and instruction in diesel training and training in heavy equipment in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or by implication:

1. That there is a great demand for individuals completing the respondents' course of study on diesel engines, or that their employment as diesel mechanics, service men or in similar positions is assured; or misrepresenting in any manner the opportunities for employment in the diesel engine and allied products industry.

2. That the respondents have working arrangements or other contracts with members of the diesel engine manufacturing industry whereby individuals completing the respondents' course of study are assured employment, or that respondents customarily secure employment for such individuals.

3. That individuals purchasing the respondents' course of study are afforded "on-the-job training," or part-time employment, for which they are paid.

4. That shop training is provided by respondents to students at no cost or only nominal cost unless such training is in fact available without cost or at nominal cost as designated.

5. That individuals to whom the respondents' courses of study are sold are selected on any basis other than their ability to make the required down payment.

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6. That the earnings of individuals completing respondents' course of study are in excess of the average net earnings consistently made by individuals who have completed such course over substantial periods of time under normal conditions and circumstances.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to respondent Tractor Training Diesel Institute, a corporation, and as to respondents Ray J. Watson, McDannell Brown, and Fred L. Innes, in their capacity as individuals but not in their capacity as officers of the respondent corporations.

It is further ordered, That respondents Tractor Training Service, Tractor Training Service, Inc., and Joy E. Badley, 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.

Commissioner Howrey not participating for the reason that he did not hear oral argument herein.

IN THE MATTER OF
BOOK-OF-THE-MONTH CLUB, INC. ET AL.

MODIFIED ORDER, OPINION, AND DISSENT IN REGARD TO THE ALLEGED
VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket 5572. Order and opinion, Mar. 9, 1954

Order modifying the Commission's prior order, dated May 8, 1952, 48 F. T. C. 1297, with respect to the use of the term "Free", in the light of the Commission's present policy as announced in its opinion in the matter of *Walter J. Black, Inc., etc.*, Docket 5571, Sept. 11, 1953, *infra*, page 225, and following the remand of the proceeding to the Commission by the Court of Appeals for the Second Circuit for its consideration in the aforesaid connection, and the respondents' motion to vacate or modify said order and to dismiss the complaint (granted in part and denied in part)—

So as to require respondent corporation, its officers, etc., in connection with the offer for sale, sale, and distribution of books in commerce, to cease and desist from "using the word 'Free' or any other word or words of similar import or meaning, in advertising or in other offers to the public, to designate or describe any book or other article of merchandise" when all the conditions, etc., pertaining to the matter are not clearly and conspicuously explained at the outset, etc., or when the offerer increases the ordinary price or reduces the quality, quantity, or size of the article, as in said order below in detail set out; and

Dismissing the complaint as to respondent individuals as such, but not as officers of respondent corporation.

Before *Mr. Abner E. Lipscomb*, hearing examiner.

Mr. Jesse D. Kash for the Commission.

Wolfson, Caton & Moguel, of New York City, for respondents.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondents, testimony and other evidence introduced before a hearing examiner of the Commission theretofore duly designated by it, recommended decision of the hearing examiner and exceptions thereto, and briefs and oral argument of counsel, and the Commission, having made its findings as to the facts and its conclusion that the respondent Book-of-the-Month Club, Inc., had violated the provisions of the Federal Trade Commission Act, on May 8, 1952, issued its order to cease and desist, which order was subsequently affirmed by the United States Court of Appeals for the Second Circuit; and

Said Court of Appeals, acting on a petition filed by the respondents, having remanded this proceeding to the Commission for the purpose