

IN THE MATTER OF
ABEL ALLAN GOODMAN TRADING AS WEAVERS GUILD

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT

Docket 6153. Complaint, Dec. 22, 1953—Decision, Mar. 14, 1956

Order requiring a seller in Hollywood, Calif., to cease, in advertising for agents to sell a correspondence course designed to prepare students for work as commercial reweavers, representing falsely that highly exaggerated earnings were typical and that he furnished sales agents with names of prospects and everything necessary to make sales; and to cease representing falsely in statements made to prospects by his salesmen and otherwise: the scope of the course, ease of learning, personal assistance to students, earnings of persons completing the course, value of supplies, and refund of monies paid if persons were unable to complete the course; to cease representing falsely that his courses had been approved for training by State and Federal authorities; and to cease use of the word "Guild" in his trade name or otherwise.

Mr. William L. Pencke and Mr. Edward F. Downs for the Commission.

Wolver & Wolver, of Los Angeles, Calif., for respondent.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

HISTORY OF THE PROCEEDING

On December 22, 1953, the Federal Trade Commission issued its complaint in this proceeding, charging the respondent with false, deceptive and misleading statements and representations in connection with the advertising and sale in interstate commerce of a course of study in reweaving, in violation of the Federal Trade Commission Act. On January 11, 1954, the respondent submitted an answer thereto, denying the principal charges of the complaint and praying that the said complaint be dismissed, and that no order be issued against him. In due course, evidence for and against the allegations of the complaint was received into the record. Thereafter proposed findings as to the facts and conclusions were presented by both parties.

IDENTITY AND BUSINESS OF RESPONDENT

Respondent Abel Allan Goodman is an individual who, until January 1, 1954, traded under the name of Weavers Guild, with his principal office and place of business located at 4634 Hollywood

Boulevard, Hollywood, California. Subsequent to January 1, 1954, the business of Weavers Guild has been taken over by a newly-created corporation known as Weavers Guild, Inc., under the direction of the respondent's daughter, his son-in-law and one of his former employees. Respondent Goodman has continued, however, to be associated with the business, and has sometimes signed letters on behalf of the corporation, using the title "Director."

During the time encompassed by the allegations of the complaint, respondent has been engaged in the sale and distribution in commerce, among and between the various States of the United States, of a course of study and instruction designed to prepare students thereof for work as commercial reweavers. This course of instruction is conducted through the medium of the United States mails. Respondent has caused said course of study and instruction to be transported from his place of business in the State of California to purchasers thereof located in other States of the United States. Respondent has, during the period of time mentioned, maintained a substantial course of trade in said correspondence course in commerce among and between the various States of the United States.

THE ISSUES

The complaint divides the alleged misrepresentations disseminated by the respondent into three categories:

1. The alleged misrepresentations made by respondent to prospective sales agents;
2. The alleged misrepresentations made by respondent or by his sales agents to prospective purchasers; and
3. The general misrepresentation inherent in respondent's use of the trade name "Weavers Guild."

In his answer respondent denies that he has made some of the alleged representations, and denies the falsity of all representations made by him. The issues, therefore, are whether respondent has made the alleged advertising representations, and, if so, whether they are in fact false, misleading and deceptive. The determination of these issues requires a detailed enumeration of the individual representations, and a thorough analysis thereof in the light of the entire record.

REPRESENTATIONS DIRECTED TO PROSPECTIVE SALES AGENTS

It is alleged in the complaint that the respondent, for the purpose of securing agents to sell his course of instruction in reweaving, has disseminated advertisements representing:

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1. That earnings of \$1,452 in 11 days, \$1,368 in 7 days and \$1,302 in 10 days are typical earnings of salesmen selling respondent's course of instruction; and

2. That respondent furnishes sales agents with the names of prospects and everything necessary in soliciting and closing sales, including an order-closing sales kit.

As to the first of these allegations, the record shows that respondent has disseminated advertisements setting forth earnings of sales agents as follows:

MEET A FEW OF OUR SALESMEN FACE TO FACE

Their earnings shown here are NOT EXCEPTIONAL or FICTITIOUS. As positive proof we will mail you actual photocopies of their checks.

G. Worthingham Minneapolis, Minn., Formerly Vacuums (PORTRAIT OF SALESMAN)	W. H. Orledge Edmonton, Canada, Formerly Home Study (PORTRAIT OF SALESMAN)	S. Buda Los Angeles, Calif., Formerly Freezers (PORTRAIT OF SALESMAN)
Typical earnings with us:	Typical earnings with us:	Typical earnings with us:
12/1/52..... \$450	1/12/53..... \$228	1/13/53..... \$357
12/5/52..... 150	1/12/53..... 228	1/15/53..... 67
12/11/52..... 627	1/15/53..... 570	1/16/53..... 260
12/12/52..... 225	1/19/53..... 342	1/19/53..... 293
Total, 11 days..... 1,452	Total, 7 days..... 1,368	1/21/53..... 65
		1/23/53..... 260
		Total, 10 days..... 1,302

Under questioning, respondent admitted that the particular earnings set forth in the advertisements were exceptional. Respondent further admitted that the represented earnings "could be typical if he (the salesman) had employed a number of other salesmen under him to bring up that total," adding that "we never know whether that is so or not." In respondent's published advertisements, no mention was made of the necessity of hiring assistant salesmen in order to make such earnings as were set forth as "typical."

In view of the admission by respondent that the above-cited incomes were exceptional, it must be concluded that they are not, as represented in the advertisement, typical of the earnings which might reasonably be expected by anyone undertaking to sell respondent's course of instruction in reweaving.

Relative to the second of the above allegations, that respondent furnishes sales agents with the names of prospects and everything necessary in soliciting and closing sales, including an order-closing sales kit, respondent states in his published advertisements:

You work on qualified leads.

Endless qualified leads to work on. * * * You buy NOTHING—you demonstrate NOTHING. We furnish everything from tested, proven sales talk to order-closing kit.

The phrase "qualified leads" suggests prospective purchasers or students who are qualified to purchase respondent's course. Thus, by implication, respondent has represented to prospective sales agents that they will be furnished with the names of prospective customers.

Respondent admitted that such sales material as brochures and order-closing kits are not furnished free to sales agents, but must be paid for by them. He also admitted that, except on rare occasions, names of prospective purchasers are not furnished to salesmen. A deposit of \$5.00 (erroneously set forth in the complaint as \$500, and admitted to be erroneous by counsel in support of the complaint at the first hearing held herein) is required by respondent to be paid by sales agents for their "order-closing kit." Respondent stated that this deposit "is returnable to the agent," and that he has "a price list on supplies that they (the sales agents) need, such as brochures, certain things that they leave with customers."

It must therefore be concluded that respondent, contrary to his advertising representations, does not furnish to his sales agents the names of prospective purchasers, nor does he furnish his salesmen with everything necessary in soliciting and closing sales.

REPRESENTATIONS DIRECTED TO PROSPECTIVE PURCHASERS OF
RESPONDENT'S REWEAVING COURSE

It is alleged that respondent, for the purpose of inducing the sale of his course of instruction in reweaving, has disseminated through various media including oral sales talks by his salesmen, thirteen statements and representations, as follows:

1. That respondent's course of instructions constitutes a complete course in reweaving.

Respondent denies that any of his advertising justifies this allegation. This representation is alleged to be misleading because respondent's course of instruction is not a complete course in reweaving, but is confined to so-called overweaving or patch weaving and does not include French or other methods of reweaving.

Commission's Exhibit 4, a brochure advertising "Nu-Weaving," left by respondent's salesmen with prospective customers, sets forth, among others, representations as follows:

Learn and Earn with NU-WEAVING.

The modern method of invisible re-weaving. * * * We furnish everything you'll need to learn. To reweave you must know the three basic weaves of cloth. * * * We furnish everything you'll need to run your own home business * * *.

The above statements imply that there are only three basic weaves of cloth, and that respondent's course will impart, to a student thereof, a complete knowledge of the craft of reweaving applicable thereto, including "invisible re-weaving." This implication is misleading because, as shown by testimony herein, respondent's course of instruction is confined to the method of reweaving known as "over-weaving" or "patch weaving," and offers no instructions relative to thread-by-thread replacement or so-called French reweaving. Although in other and separate representations, Nu-Weaving is explained, the advertising described has the tendency and capacity to mislead and deceive as herein described.

2. That a person completing the course is assured of a lifetime of employment with substantial earnings.

This representation is alleged to be false because there are no assurances that a person who completed respondent's course of instruction would thereby be enabled to operate a profitable business for any period of time. Respondent denies that he has represented that a person completing his course is assured of a lifetime of employment at substantial earnings, but contends that he has truthfully represented that a person with proper and skillful application, who has completed his course, has the possibility of substantial earnings.

It is believed that respondent's contention is correct. Respondent has represented in his advertisements that "Nu-Weaving can bring you security and independence," but such statement says merely that it is possible. Nowhere in respondent's advertising does there appear to be any assurance offered that one taking the course will thereafter make a substantial income therefrom, or that such income, if made, will last a lifetime. Accordingly, it appears that this representation is not deceptive.

3. That reweaving is easily learned; can be mastered by completing respondent's course of instruction; and that such course can be completed within as short a time as ten days.

It is alleged in the complaint that the above representations are misleading because learning reweaving is not easy, especially through a correspondence course; reweaving requires manual dexterity and long practice, and respondent's course cannot be completed by most persons within ten days.

The evidence shows that it is not easy to learn thread-by-thread reweaving, called French reweaving, and other types of reweaving, which require considerable manual dexterity as well as practice and experience over a long period of time. On the other hand, there is reliable evidence in the record that the overweaving or patch

weaving taught in respondent's correspondence course is relatively easy to learn and can be learned by correspondence, and that the course can be completed in a relatively short period of time. Furthermore, counsel supporting the complaint, by subdivision (f) of his proposed Order to Cease and Desist, by inference admits the above facts.

We must conclude, therefore, that reweaving in general is not easily learned nor quickly learned, but that the particular method of patch weaving or overweaving taught by respondent through his correspondence course is relatively easily learned, and can be learned by correspondence, by apt students, in a comparatively short period of time.

4. That respondent, through his sales agents, arranges for personal instructors to assist students.

The above representation is alleged to be misleading in that respondent did not arrange for personal instruction through sales agents or otherwise.

The evidence shows that at times the sales agents made the representation that prospective students would be given personal assistance in completing the course, whereas no such personal assistance was provided as a regular part of the course. The respondent, in defense, contended that no salesman was authorized by him to make any such representation or to arrange for personal instruction. Respondent further contended that his salesmen were independent contractors who purchased and resold his course of instruction, and that he was not responsible for any unauthorized representations made by them.

This contention is contrary to the basic concept of fair dealing implicit in the Federal Trade Commission Act. No seller of a product can in justice foster in the minds of prospective purchasers the impression that a salesman selling his product is his authorized representative, and thereafter, having enjoyed, through the efforts of such salesman, a substantial volume of business, disclaim responsibility for any representation, either oral or written, by which such business was obtained. This principle has been repeatedly affirmed both by the Commission and by the courts.

It must therefore be concluded that respondent is responsible under the Federal Trade Commission Act, for all representations made by his salesmen in promoting the sale of his course of instruction. Accordingly, the above representation is false and misleading.

5. That \$25.00 per week for spare time work and from \$50.00 to \$200.00 per week can reasonably be expected by persons completing said course.

This representation is alleged to be misleading because the claimed earnings both as to spare time and full time were far in excess of the average earnings of those completing respondent's course.

The evidence shows that theoretically it is possible for one doing patch reweaving to make \$5.00 an hour, or up to \$200.00 a week, if sufficient work is available and supplied to the reweaver in her home, directly by the owners of the garments being repaired, and if the reweaver devotes her entire time to reweaving. On the other hand, in practice, if the work is supplied by tailors or cleaners, the organization so supplying work to the reweavers retains a large percentage of the price charged for such work, and the percentage remaining as the reweaver's income therefrom is relatively small. In addition, if the reweaver works independently in her home, she finds it practically impossible to obtain sufficient work to provide an income at or near respondent's represented potential earnings. It follows, therefore, that the above representation has the tendency and capacity to mislead and deceive purchasers and prospective purchasers of respondent's course of instruction.

6. That respondent assists graduates in obtaining work from dry cleaners, upholsterers and insurance companies.

It is alleged that this representation is misleading because respondent did not assist graduates in obtaining reweaving work.

The evidence shows that at the request of graduates of his reweaving course, and upon the submission by them of a list of not more than 20 names of dry-cleaners in their vicinity, or of other concerns requiring reweaving, respondent would send a letter of recommendation to such concerns, stating that there was in their vicinity a graduate of his course who was competent and would do reweaving for them at a reasonable charge. Thereafter the responsibility of making personal contact and procuring work rested upon the graduate. It appears, therefore, that respondent did make assistance in obtaining work available to his graduates if requested.

7. That respondent limits the number of sales of his course of instruction in each neighborhood.

It is alleged that this representation is misleading because respondent did not so limit the number of courses sold.

The evidence shows that respondent's salesmen represented that only a few students were being selected in a community, and that the salesmen were instructed to represent to prospective customers that only enough reweavers would be trained in their neighborhood to take care of the amount of reweaving to be done in that area. There is, however, no evidence that respondent did not limit the

number of courses sold in any particular area. On the other hand, there is evidence presented by respondent that a list of graduates in each particular area was kept for the purpose of ascertaining whether or not there was an excess of graduates in that area. Respondent testified that no such excess was ever found to exist, but if such an excess had been found, he would have advised his salesmen in that territory to transfer their efforts elsewhere.

From the evidence in the record, we are not satisfied that respondent maintained an effective system of limiting the sales of his correspondence courses to the actual need for reweaving in any particular community. On the other hand, there is in the record no evidence to show that respondent did not limit his sales of correspondence courses in reweaving in any particular area. Accordingly, it must be concluded that the burden of proof with respect to the allegation here in question has not been sustained.

8. That the regular price of said course is \$240 or \$94 or \$69.50.

This representation is alleged to be misleading in that except for a few isolated instances, the regular and usual price charged for respondent's course was \$35.00.

The evidence shows that \$240 was the price charged by respondent for a resident course of instruction in reweaving. Respondent's salesmen were instructed, however, in presenting the correspondence course in reweaving to the prospective purchaser, to "* * * then show her the \$240 resident school contracts, the photostats of government and state letters." The evidence does now show, however, that \$240 was represented as the regular price for the correspondence course, as distinguished from the resident school course.

The evidence further shows that respondent's correspondence course was offered as follows:

TO EXPEDITE OUR FIELD AGENTS WORK WE MAKE THIS LIMITED OFFER	\$69.50
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The exhibit just quoted shows that the course was offered at \$69.50 as a special price and not as a regular price as alleged. Furthermore, there is no evidence in the record that the course was ever offered as being sold at a regular price of \$94.00. There is evidence that the course was offered, on the printed order blank, at a regular price of \$135.00, which was crossed out and a lesser amount substituted whenever the course was sold for less than \$135.00. It thus appears that respondent's course was represented as being

sold at a regular price, when in fact it was actually being regularly sold for a lesser price. It does not appear, however, that such regular price was specifically, \$240.00 or \$94.00 or \$69.50.

In view of the above facts, it must be concluded that the particular allegation set forth above has not been sustained.

9. That the needles supplied with the course are worth \$30.00.

This representation is alleged to be false because the needles supplied with the course were worth only a fraction of \$30.00, and, in fact, replacements were sold to students for \$1.00.

The evidence shows that respondent's sales agents have been instructed to represent to prospective students that the set of three needles furnished with the course is comparable in value to a similar set sold by an unspecified firm for \$27.50, whereas, in fact, the needles are purchased by respondent for less than a dollar, and are sold to students as replacements for \$1.00 each. Accordingly, it must be concluded that the representation by implication that respondent's needles had a value in excess of \$1.00 each was misleading.

10. That respondent will make full refund of all monies paid under contracts if persons find they are unable to complete the course.

Falsity of this representation is alleged because respondent refused to make any refund for partial payments on contracts for the purchase of his course when the purchaser did not wish to complete the course.

The record shows that in some instances respondent's salesmen have represented that the money paid for the course will be refunded if students find that they are unable to complete the course. There is evidence that respondent has refused to make such refunds when requested to do so. This representation, although contradicted by the terms set forth in the printed sales contract, nevertheless has the capacity to mislead and deceive purchasers of respondent's course.

11. That graduates will receive a membership or an associate membership in Weavers Guild of America.

This representation is alleged to be false because graduates do not receive a membership of any nature in any Weavers Guild.

It is admitted by respondent that the Weavers Guild of America was not developed beyond the "idea point" and never came into actual existence. It appears, however, that respondent's representation with respect to this "Guild" was discontinued more than four years before the issuance of the complaint herein, and does not, therefore, fall within the period of time contemplated by this proceeding.

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12. That respondent's course of instruction has been approved for G.I. training by the Bureau of Education of the State of California and the United States Veterans Administration.

Falsity and deception are alleged with respect to this representation because such approval has not been granted.

The Commission finds that the respondent has falsely represented that his course of instruction has been approved for training by the Bureau of Education of the State of California and the United States Veterans Administration.

GENERAL MISREPRESENTATION INHERENT IN
RESPONDENT'S USE OF THE TRADE NAME "WEAVERS GUILD"

It is alleged in the complaint that the use of the trade name "Weavers Guild" constitutes a false representation by respondent that his business is a national association or guild of weavers, organized in the interests or for the benefit of members of that trade.

The evidence shows that said "Weavers Guild" is not a national association or organization of weavers; that respondent conducts no national programs for weavers; nor does he maintain a headquarters or grant memberships in any guild of weavers. Respondent is neither the director nor founder of any guild or organization of weavers, but is merely engaged in the sale for profit of a correspondence course in reweaving. Respondent admits that the "Weavers Guild of America" never actually existed. Accordingly, since the words "Weavers Guild" suggest an organization or association of weavers, their use by the respondent as a trade name and otherwise has the tendency and capacity to mislead and deceive prospective purchasers into the belief that the so-called "Weavers Guild" is, in fact, such an organization, with all the implications inherent therein.

CONCLUSION

In the light of the above analysis, this proceeding is found to be in the interest of the public. Furthermore, it is concluded that the acts and practices of respondent hereinabove found to be false, misleading and deceptive 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.

ORDER

It is ordered, That the respondent, Abel Allan Goodman, and his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale,

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sale and distribution of courses of instruction in reweaving in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication:

(a) That the typical earnings of persons selling respondent's course of instruction are greater than they actually are in fact;

(b) That respondent will furnish sales leads or other selling assistance to those selling his course of instruction unless he actually does furnish such leads and assistance;

(c) That sales kits and other advertising material are furnished to sales agents unless it is clearly disclosed that such articles are furnished only after said agents have made deposits or payment therefor;

(d) That respondent's course of instruction constitutes a complete course in reweaving unless and until such is in fact true;

(e) That reweaving is easily learned, or quickly learned, by taking respondent's correspondence course, unless such representation be specifically restricted to the overweaving or patch type of reweaving;

(f) That respondent will arrange for personal instructions for those purchasing his course;

(g) That the potential earnings of persons completing respondent's course and engaging in the reweaving business are greater than they are in fact;

(h) That the needles supplied with the course are worth any amount in excess of the amount ordinarily charged for such needles by respondent;

(i) That respondent will refund payments made on contracts unless he in fact makes such refunds upon demand by the purchasers;

(j) That respondent's courses of instruction have been approved for training by the Bureau of Education of the State of California or the United States Veterans Administration;

2. Using the word "Guild" in his trade name or otherwise;

3. Representing, directly or by implication, that respondent's business is anything other than a private business enterprise selling a correspondence course of instruction in reweaving, unless such representation is true.

ON APPEAL FROM INITIAL DECISION

By KERN, Commissioner:

This case comes before the Commission upon the cross appeals filed by the respondent and counsel supporting the complaint from the initial decision of the hearing examiner.

The complaint under which this proceeding was instituted charged that the respondent had engaged in unfair and deceptive acts and practices in connection with the sale and distribution in commerce of a course of instruction designed to prepare purchasers, through home study, for work as commercial weavers. In the initial decision, the hearing examiner held that certain of the allegations of the complaint were sustained by the evidence received in the hearings, and that, in respects there designated, the respondent had engaged in unfair and deceptive acts and practices in commerce in violation of the Federal Trade Commission Act. The order contained in the initial decision requires the respondent to cease and desist from the acts and practices found to be unlawful. The hearing examiner further held that other designated charges of the complaint were not adequately supported by the record. The appeals now challenge certain of the rulings in that decision which are adverse to the appealing parties' respective contentions in the course of the hearings before the hearing officer.

Respondent's courses have been sold through salesmen whose services were solicited by him in magazine advertisements containing statements as to the opportunities for earnings and sales assistance afforded. The hearing examiner held that the evidence established that the respondent's advertisements have falsely represented that earnings of \$1452 in a period of eleven days and other large amounts inuring within similarly brief periods were not exceptional for salesmen selling the course. Although the appeal contends that the foregoing earnings for the periods named were both typical and non-fictitious, it is clear from the evidence that they were not typical but instead related to very exceptional instances. There likewise is sound record basis for the hearing examiner's conclusions that other statements contained in the advertising have served to represent and imply to prospective salesmen, contrary to the true facts, that the respondent would furnish them with sales leads. These aspects of the appeal relating to the hearing examiner's conclusions of misrepresentation to prospective salesmen, are denied.

The initial decision further held that false and misleading statements and representations as to the merits of the course have been made in printed matter and oral sales presentations to prospective students. In the advertising, the course is not offered to satisfy feminine academic curiosity or to augment a woman's accomplishments as a homemaker. Instead, its central theme has emphasized the financial betterment afforded those trained in reweaving who are willing to do full or spare time work in mending torn and burned garments and fabrics.

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The first error urged under respondent's brief in reference to findings of deceptive promotional activities for inducing purchases of the course, is directed to the hearing examiner's failure to find that the advertising statements have not served to represent that the respondent's course constitutes a complete course of reweaving. There was no error, however. This is true for the reason that the term "Nu-Weaving" itself and its designation in the advertising as the modern method of invisible reweaving serve to represent and imply that knowledge of the reweaving craft in general is afforded by the course.

Although evidence was received indicating that the respondent's method of "patch weaving" may be learned in a comparatively short time by apt pupils, the evidence further shows that other methods of weaving are outside its scope and that mastery of "French" weaving, particularly, is not quickly or easily acquired. The latter entails actual thread by thread replacement of the injured portion of the fabric and requires a high degree of skill. There, accordingly, is sound record basis for the hearing examiner's rejection of the respondent's requested finding to the effect that reweaving in general is easily learned by his students.

The appeal additionally objects to the initial decision's rulings that the respondent shares legal responsibility for false oral statements that the respondent arranges personal instruction for assisting purchasers and that full refund will be made of all moneys paid if the enrollee is unable to complete the course. The circumstance that the testimony offered to support the complaint's charges on the latter issue related to but one sales presentation and that the shown instances of misrepresentation as to personal instruction were limited to other presentations made by the same salesman is not controlling. The hearing examiner's findings that misrepresentation occurred in those transactions are supported by substantial evidence and each instance, manifestly, represented a deceptive act contravening the public policy expressed in the Federal Trade Commission Act. The appeal contends also that the hearing examiner erred in failing to find that these particular statements and promises were unauthorized by the respondent. Inasmuch as they were made within the scope of the salesman's apparent authority and formed part of the inducement for sales inuring to the respondent's benefit, an order to require the respondent's cessation from those misrepresentations has sound basis in law. *International Art Co. v. F.T.C.*, 109 F. 2d 393, 396 (C.A. 7, 1940); *Standard Distributors, Inc. v. F.T.C.*, 211 F. 2d 7, 13 (C.A. 2, 1954).

The appeal's exceptions to the hearing examiner's conclusion that the needles furnished with the respondent's course do not have a

value of \$27.50 have been considered and are deemed to be without merit. Properly rejected by the hearing examiner also were findings requested by the respondent that students completing the course can reasonably expect earnings of \$50.00 to \$200.00 per week, and \$25.00 weekly for spare time employment. It is theoretically possible for those performing the type of patch reweaving taught by the respondent to earn up to \$200.00 per week if self-employed and fully occupied, but this circumstance is not controlling, however. Probative evidence was received showing that the actual opportunities for performing this type of mending provide no such remuneration. The advertising statements as to earnings which are challenged in the complaint clearly have exceeded those afforded women whose training and experience are limited to completion of a correspondence course on patch reweaving.

The initial decision held, in effect, that the word "Guild" in the trade name "Weavers Guild," has falsely represented and implied that the respondent's sales enterprise is a national association or a guild of weavers, organized in the interests of members of that trade. The appeal takes issue with that finding and the provision of the initial decision's order forbidding future use of the word "Guild" in identifying the respondent's business. From the printed sales talks, it must be inferred that prospective purchasers frequently inquired whether their payment of a royalty to the Guild would be necessary in case they undertook commercial reweaving. Salesmen have been counseled to emphasize to purchasers that they are needed to fulfill a national program and the instructions have contemplated reference by the salesmen to being "with the Guild." Conclusions that the respondent's use of the word "guild" has had the capacity and tendency to deceive have sound record basis and the Commission is of the further view that the form of remedy provided under the order is appropriate.

The remaining matter presented under the respondent's appeal involves contentions that no cease and desist order should issue for the reason that the respondent discontinued business on December 31, 1953. The record shows, however (Commission Exhibits 30, 77, 78, 79, and 80), that Mr. Goodman, after that date, was participating in a successor business, operated from the same address, in which close relatives were associated.

Having considered the appeal of counsel supporting the complaint, the Commission has determined that the rulings to which objections are interposed in the first six subsections of counsel's appeal brief have adequate support in the record. Those exceptions are, accordingly, denied. Another exception concerns the hearing officer's

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ruling that the evidence failed to support the complaint's charge that representations were made that the course was officially approved for G.I. training. Although G.I. training was not involved, it does appear from the evidence that agencies of several states have in instances sponsored purchases of the respondent's correspondence courses on behalf of handicapped persons. The respondent, however, had supplied to his salesmen a brochure which mentioned "the V.A. and State Approvals," and contained facsimiles of an enrollment acknowledgment from the California State Bureau of Vocational Rehabilitation and of a Veterans Administration authorization for enrollment, both communications have reference to respondent's former "Weaver's Guild Institute," through which he offered resident training. Respondent's correspondence course in reweaving, to which the sales brochure otherwise referred and which is involved herein, was never approved by either of these authorities.

These facsimiles were characterized by the respondent as "dynamite" in other material supplied to salesmen. Hence, they obviously were used to promote sales of unapproved correspondence courses under a name quite similar to that of the officially approved school with which the respondent was no longer connected. That purchaser confusion and deception necessarily attended this promotional situation is also obvious. Mr. Goodman's letter to a salesman under date of January 28, 1952, stated that the fact that his course was accepted and successfully used in the training of G.I.'s was the highest recommendation he could submit. In the light of these matters, the Commission is of the view, and so finds, that the respondent has falsely represented that his correspondence course has been approved for training by the two official agencies noted above. Respondent's acts and practices in this regard have constituted unfair and deceptive acts and practices and are unlawful. The hearing examiner erred in not so finding and in omitting appropriate proscriptions in respect thereto from the initial decision's order.

Our accompanying order accordingly provides for modifying the initial decision in the foregoing respect. The respondent's appeal is denied and the appeal of counsel supporting the complaint granted to the extent hereinbefore noted. With the findings and order to cease and desist thus modified, the initial decision is adopted as the decision of the Commission.

FINAL ORDER

Counsel for the respondent and counsel supporting the complaint having respectively filed on November 7, 1955, and November 4,

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1955, their cross appeals from the initial decision of the hearing examiner in this proceeding; and the matter having been heard by the Commission on the briefs; and the Commission having rendered its decision denying the respondent's appeal and granting in part the appeal of counsel supporting the complaint and adopting the initial decision as modified as the decision of the Commission:

It is ordered, That the initial decision of the hearing examiner be, and it hereby is, modified by striking the second unnumbered paragraph following the paragraph numbered 12, and by substituting in its place and stead the following:

The Commission finds that the respondent has falsely represented that his course of instruction has been approved for training by the Bureau of Education of the State of California and the United States Veterans' Administration.

It is further ordered, That the order contained in the initial decision be, and it hereby is, modified by inserting immediately after subparagraph (i) of Paragraph 1 the following:

(j) That respondent's courses of instruction have been approved for training by the Bureau of Education of the State of California or the United States Veterans Administration.

It is further ordered, That the respondent Abel Allan Goodman shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist.

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CARNATION COMPANY ET AL., THE BORDEN COMPANY ET AL., BEATRICE FOODS COMPANY (DELAWARE), ET AL., NATIONAL DAIRY PRODUCTS CORPORATION ET AL., PET MILK COMPANY ET AL., FAIRMONT FOODS COMPANY ET AL., ARDEN FARMS COMPANY ET AL., FOREMOST DAIRIES, INC. ET AL.

Dockets 6172-6179. Order and opinions, Mar. 14, 1956

Interlocutory order granting appeal of complaint counsel from hearing examiner's ruling denying request for subpoena duces tecum as being in violation of agreement between counsel.

Before *Mr. John Lewis*, hearing examiner.

Mr. Lynn C. Paulson, Mr. Ashby H. Canter and Mrs. Estelle Lee *Ague* for the Commission.

Mr. Frank D. MacDowell, O'Melveny & Myers, Mr. James R. Baird, Jr. and Mr. Gordon T. Jeffers, of Los Angeles, Calif., for Carnation Co., et al.

Dewey, Ballantine, Bushby, Palmer & Wood and Mr. Cecil I. Crouse, of New York City, for The Borden Co., et al.

Winston, Strawn, Black & Towner, of Chicago, Ill., for Beatrice Foods Co. (Delaware), et al.

Snyder, Chadwell & Fagerburg, of Chicago, Ill., for National Dairy Products Corp., et al.

Mr. Robert S. Gordon, of New York City, also represented National Dairy Products Corp., and along with—

Whiteford, Hart, Carmody & Wilson, of Washington, D. C., for Southern Dairies, Inc.

Cann, Taylor, Lamb & Long, of Washington, D. C., for Pet Milk Co., et al.

Flansburg & Flansburg, of Lincoln, Nebr., for Fairmont Foods Co., et al.

Mr. Milton R. Barker, Mr. Milton H. Barker and Gibson, Dunn & Crutcher, of Los Angeles, Calif., for Arden Farms Co., et al.

White & Case, of New York City, and *Milam, McIlvane, Carroll & Wattles*, of Jacksonville, Fla., for Foremost Dairies, Inc., et al.

ORDER GRANTING INTERLOCUTORY APPEAL

This matter having been heard upon the appeal of counsel supporting the complaints from the hearing examiner's ruling of January 26, 1956, denying a request for a subpoena duces tecum as

being in violation of an agreement dated August 22, 1955, between counsel, regarding the furnishing of documents and other materials by the respondents, and upon answers in opposition thereto; and

It appearing that the agreement referred to purports to restrict in a material respect the full utilization by the Commission of its statutory subpoena powers; and

The Commission being of the opinion that, to the extent said agreement prevents counsel supporting the complaints from obtaining and presenting relevant, material and reliable evidence, it is in derogation of the public interest and not binding upon the Commission or the hearing examiner; and

The Commission being further of the opinion that, because of the foregoing, oral argument herein is unnecessary:

It is ordered, That the appeal of counsel supporting the complaints be, and it hereby is, granted.

It is further ordered, That the hearing examiner be, and he hereby is, directed to reconsider counsel's application for subpoena without regard to the agreement dated August 22, 1955, between counsel.

Commissioner Kern not participating, and Commissioner Mason dissenting.

OPINION OF THE COMMISSION

PER CURIAM:

An agreement was entered into between counsel for the respondents and counsel supporting the complaints limiting the documents or other material that respondents might be required or requested to submit. Counsel supporting the complaints have sought to obtain information from respondents by subpoena which, in the opinion of the hearing examiner, falls within the exclusions of the agreement. He has therefore refused to issue the subpoena duces tecum, and the matter is before the Commission on appeal by the attorneys supporting the complaints.

Agreements between counsel should not be entered lightly and when entered should be observed to the letter. They should be withdrawn or abrogated by the Commission only under conditions which would permit no other course. In the matter before us we are of the opinion that the agreement between counsel places an undue restriction on the obtaining of information which otherwise may be necessary to establish the case of counsel supporting the complaints, and to that extent is contrary to the public interest. As said by the Court in *P. Lorillard Co. v. F.T.C.*, 186, F. 2d 52:

"It must not be forgotten that the Commission is not a private party, but a body charged with the protection of the public interest; and it is unthinkable that the public interest should be allowed to suffer as a result of inadvertence or mistake on the part of the Commission or its counsel where this can be avoided."

Opinion

52 F. T. C.

The aim of an administrative hearing is to get the facts and search for the truth. Observance of all the terms of the agreement may preclude the introduction of the complete facts necessary for a decision of this matter. We therefore would be failing to discharge our duty in the protection of the public interest if we did not correct this situation. For this reason the agreement between counsel may be disregarded by the hearing examiner to the extent that it limits or restricts full access to all relevant information and documents necessary to a full trial of the issues. The matter is accordingly remanded to the hearing examiner for further proceedings consistent herewith.

As to this matter, Commissioner Mason dissented and Commissioner Kern did not participate.

DISSENTING OPINION

By MASON, Commissioner.

We can all agree the public interest must be paramount. But it seems these words mean different things to different people. To the totalitarian, they mean solemn treaties are valid, only as long as they benefit him.

We condemn this view in Affairs of Government whilst we practice it in Government Affairs.

The great evil lies not in our inconsistency, but rather in our mistaken idea that the Public Interest can ever be disassociated from the Public Integrity.

As Mr. Justice Brandeis once petulantly observed when his colleagues approved illegal wire tapping by Federal employees:¹

"Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a law-breaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy."

The facts surrounding the present motion in the instant case are these:

Under the aegis of the hearing examiner and with the stamp of his approval, defense and complaining counsel both entered into a solemn commitment and understanding of record. It is this agreement the prosecution would now have us set aside.

The need for the agreement arose because after the original complaint had been filed and trial begun, the prosecution decided to try defendants on charges different from those set forth in the complaint.

¹ *Olmstead v. U.S.*, 277 U.S. 438.

Under the *Morgan* decision² defendants have to be told why they are in court. "The right to a 'full hearing' embraces not only the right to present evidence but also a reasonable opportunity to know the claims of the opposing party and to meet them."

While this annoys some quasi-judicial bodies, it nonetheless remains part and parcel of the American judicial scene.

To avoid the pitfalls of a record that might disclose neglect of this element of due process, the defendants were willing to say they would not challenge an amendment on the face of the complaint in the midst of trial before the examiner; and in return, the prosecution agreed to the mass production by totals of certain types of transactions, rather than to insist upon the introduction of a piecemeal welter of miscellaneous items.

In the *Canteen* case, I adumbrated against a plethora of cumulative evidence.³

One cannot at this point say whether it would be necessary or not in the present case, but the public interest was quite thoroughly explored by the hearing examiner at the time of the agreement. And he himself took pains to see that both sides understood their commitments, so there would be no inadvertence or mistake.

This was no unusual procedure for in the quid pro quo of trial work, opposing counsel often waive procedural rights to the end that time-consuming methods may be short-circuited.

This being done in the instant case, the trial proceeded just as though the usual protections of our judicial process had been observed. With defendants' waiver safely in their stomachs, the prosecution was content. But having digested the benefits, the prosecution now finds the burdens of their agreement onerous to a second change of heart, for now they would again switch the theory of their presentation. While taking nourishment from the "quid," the prosecution would regurgitate the "quo," believing that the public interest is thus best served.

I would advance the not entirely novel contention that, whether it be Government in the halls of justice or a tout at the race track, welshing is a dirty business.

The initial and "on the scene" trier of the facts, our hearing examiner, permitted a full oral hearing before him on the motion

² *Morgan v. United States*, 304 U.S. 1.

³ *F.T.C. v. Canteen*, D. 4933, Opinion of Commission by Mason: "The record in this case does not disclose the reason for such a plethora of cumulative evidence as was adduced by government counsel in the instant matter. Neither harassment of litigants nor the waste of government funds in needless reiteration through cumulative evidence should be countenanced, nor does it seem that it was necessary to name fourteen sellers as typical of a group from which respondent had induced or received discrimination in price, and certainly the records of not more than five of such sellers would have supplied ample evidence of such discriminations or price differentials."

to set aside the agreement. He heard the contentions of both parties. Was there veniality? fraud? misunderstanding? a failure to protect the public interest or private rights in the challenged stipulation? The hearing examiner was unconvinced of any such defects.

Granting the solid authority of the Circuit Court of Appeals decision in *Old Gold*,⁴ that the Commission need not concern itself with such agreements where they stand in the way of a finding of guilt, nevertheless to say that we must now repudiate the instant agreement else we may be unable to find defendants guilty, places us in a partisan role at variance with our judicial protestations.

Is this the impartiality so sought after in the legislative commands of the Administrative Procedure Act?

Or is our judicial demeanor a mere pose to be set aside at the cajoling of the prosecutor?

Does our cavalier acceptance of his request sans hearing, sans showing of veniality, fraud or misunderstanding, put us where we should not be?

Or, to state it plainly, does the stern rejection by the hearing examiner of the prosecution's proposal presage the value of a hearing officer less subject to the importunities of our staff than we seem to be?

As for the appeal of counsel in support of the complaint from the hearing examiner's ruling denying request of counsel in support of the complaint for subpoena duces tecum on respondents—

I am against it.

⁴ *P. Lorillard v. F.T.C.*, U.S.C.A. 4th Circuit, No. 6140.

Complaint

IN THE MATTER OF
JOHN HULL CUTLERS CORPORATION ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT

Docket 6398. Complaint, Aug. 23, 1955—Decision, Mar. 14, 1956

Consent order requiring two associated corporations in New York City to cease affixing to cutlery and flatware before shipment to retailer purchasers, tickets or tags printed with fictitious prices greatly in excess of prices at which the items were usually sold at retail, and furnishing such customers with advertising mats reading "Save \$10 * * * Regularly 19.98—9.98", when \$9.98 did not afford purchasers a saving of \$10.

Before *Mr. Robert L. Piper*, hearing examiner.

Mr. Charles S. Cox for the Commission.

Goldman & Frier, of New York City, 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 John Hull Cutlers Corporation, a corporation, and John Hull Silversmiths, Inc., a corporation, and William B. Berger and Max E. Landau, individually and as officers of said corporations, 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. Respondents John Hull Cutlers Corporation, and John Hull Silversmiths, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York with their office and principal place of business at 1239 Broadway, New York, New York. They are now, and have for several years last past been, engaged in the sale and distribution of cutlery and flatware under such corporate names. Said cutlery and flatware are sold to retailers for resale to the purchasing public.

Respondents William B. Berger and Max E. Landau are President and Secretary-Treasurer, respectively, of said corporations. These individuals formulate, direct and control the policies, acts and practices of said corporate respondents, including those here-