

Decision

58 F.T.C.

manufacturing, processing or selling any polyurethane products or any flexible foam developed by it for a period of five years."

It is further ordered, That the initial decision, as so modified, shall, on the 11th day of January, 1961, become the decision of the Commission.

IN THE MATTER OF

SAMUEL A. CANNON ET AL. DOING BUSINESS AS
NATIONAL EMPLOYMENT INFORMATION SERVICE

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

Docket 7339. Complaint, Dec. 19, 1958—Decision, Jan. 12, 1961

Order requiring two individuals in Newark, N. J., engaged in selling publications concerning employment opportunities for which they charged \$3.00, to cease advertising falsely—in magazines and newspapers, under "Help Wanted" and "Job Opportunities" columns, or otherwise or in follow-up circulars sent in answer to requests for the "free information" offered—that numerous jobs were available in the various occupations set out, both in the U.S. and in foreign countries; that they had knowledge of such jobs; that purchasers of their publications who applied for a job on any of the projects listed therein, could expect to obtain employment; and that information respecting employment opportunities was furnished free.

Mr. Garland S. Ferguson for the Commission.

Brodsky & Cuddy, of Washington, D. C., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

This matter is before the hearing examiner for consideration of the complaint, answer thereto, the evidence and proposed findings as to the facts and conclusions presented by counsel. The findings of fact and conclusions of law proposed by the parties, not hereinafter specifically found or concluded, are herewith rejected. The hearing examiner having considered the record herein, makes the following findings of fact and conclusions.

When the Commission issued its complaint herein the respondents Samuel A. Cannon and Geraldine Cannon, individuals, were trading and doing business as National Employment Information Service, and their office and place of business was located at 1020 Broad Street, Newark, New Jersey. Shortly after the issuance of the complaint the respondents incorporated their business under the laws of

the State of New Jersey and since said time they have operated the business from the same location. The respondents are the owners of all of the stock, are the officers and direct and control all of the activities and policies of said corporation.

Respondents are now, and since approximately 1952 have been, engaged in the business of selling and distributing publications designated as "Job and Opportunity Digest" and "Project Listings" which contain information concerning alleged employment opportunities in foreign countries and in the United States.

Respondents have done, and are doing, business on a nation-wide scale and have caused the said publications, when sold, to be transmitted from the State of New Jersey to purchasers residing in other states of the United States, and have maintained a course of trade in said publications in commerce, as "commerce" is defined in the Federal Trade Commission Act. Their volume of trade in said commerce is, and has been, substantial.

To obtain leads to prospective purchasers of their publications, the respondents place advertisements in approximately 100 magazines and about 250 newspapers published and circularized in the various states of the United States. Among and typical of said advertisements which appeared under classified columns "Help Wanted", "Help Wanted Reports", "Job Opportunities", "Employment Opportunities" and "Male Help Special" are the following:

HIGH PAYING JOBS: Foreign, U.S.A. All trades. Travel paid. Information. Application forms write Dept 21N National, 1020 Broad Street, Newark, N. J.

FREE Information. Earn high pay. All trades. Foreign and U.S.A. Job Opportunities. Travel paid. Applications. Write Dept. 61L. National employment. Information 1020 Broad Street, Newark, N. J.

JOBS Earn High Pay Men-Women All Trades. Work in South America, the Islands, Europe, Canada, or other foreign countries. Also U.S.A. Mechanics, Truck Drivers, Laborers, Office Workers, Engineers, etc. Companies pay fare if hired. Many benefits. Tax free earnings. Make and save a fortune! Applications forms for FREE information. Write Dept. 67H

National Employment Information
1020 Broad St., Newark, New Jersey.

The respondents discontinued the practice of using the words "free information" in its advertisements approximately one year before the issuance of the complaint herein, but there is no assurance that there would be a permanent discontinuance.

The ads give the impression that an offer of employment is being made and that companies are seeking employees to work on projects in the United States and foreign countries.

Persons answering the advertisements receive from the respondents a form letter signed by S. A. Cannon, Director of Personnel which reads:

NATIONAL EMPLOYMENT INFORMATION SERVICE

1020 Broad Street, Newark, N. J., U.S.A.

Dear Friend:

We wish to acknowledge receipt of your request for information concerning employment opportunities in the U. S. A. as well as foreign countries overseas.

Each day *hundreds of opportunities* in most job classifications arise. There are many people, such as yourself, who, with proper information, could be started on the way to success.

Lack of knowledge of where . . . how . . . and when . . . may be the only obstacle in their path.

The information which we can furnish you will enable you to contact hundreds of privately owned American and foreign corporations *employing thousands of personnel in good positions in all parts of the world*. The United States Government also has many opportunities for employment in its various departments both inside and outside the United States.

It is of the utmost importance that all persons desiring or planning to work in foreign countries, whether for a short or extended period, have all the vital facts covering foreign employment. One must know where job opportunities exist and have such information as the *proper procedures* for applying for employment . . . *whom to contact* . . . *how to do so* . . . *rate of pay* . . . and *living accommodations*.

Because we recognize the great need for employment information, NATIONAL EMPLOYMENT INFORMATION SERVICE has found it necessary to publish the JOB and OPPORTUNITY DIGEST. This has been done in order to fulfill the great need for information and guidance by qualified personnel who are seeking jobs.

The research staff of the NATIONAL EMPLOYMENT INFORMATION SERVICE is constantly engaged in assembling data and helpful information to assist men and women who are *seeking remunerative employment in all fields in all parts of the world*.

The NATIONAL EMPLOYMENT INFORMATION SERVICE collects no placement fees or charges after you receive our information or if you obtain any job through information which we supply. We do not function as an employment agency. *All the valuable information and know-how* resulting from our extensive research . . . all procedures . . . all the pertinent *facts* which *you need to assist you* are contained in the latest copyrighted JOB and OPPORTUNITY DIGEST . . . plus the world-wide PROJECT LISTINGS and APPLICATION FORMS, which are available to you complete for the low fee of \$3.00.

For your convenience, we are enclosing an order form and self-addressed envelope. Please print your name and address on the order form and mail it to us together with your remittance of \$3.00 (or \$4.00 if you wish it rushed to

you by airmail). We guarantee delivery of our complete and informative JOB and OPPORTUNITY DIGEST, together with our latest listings of projects started and to be started . . . These will be RUSHED to you the same day we receive your order . . . APPLICATION FORMS which you may submit directly to the firms and organizations on the project listings will be included.

The prompt filing of these application forms may result in your securing a job for which you are qualified but of whose existence you are not aware. We trust that we will be able to *assist you* and *serve you* through our specialized employment information service.

Very truly yours,

NATIONAL EMPLOYMENT INFORMATION SERVICE

S. A. Cannon

Director of Personnel

(Please see other side for important information)

On the back page of the letter there is printed under the heading "Benefits Generally Existent for Men and Women Employed Overseas" the following statements:

HIGHER SALARIES AND WAGES: Qualified workers can earn substantial salaries on many overseas projects. Numerous projects allow their personnel to work overtime at time and a half pay after forty hours per week. Opportunities constantly arise for qualified employees such as engineers, superintendents and craftsman and many others to greatly increase their earning capacity by working overseas.

MEDICAL CARE: Furnished by employer at no cost to employee.

HOUSING: Board and lodging furnished at no cost to employee on many projects. On others, living accommodations furnished at minimum cost by company.

FAMILY ACCOMMODATIONS: At many overseas projects, family accommodations are available. Living costs are usually low, servants easily and cheaply obtained.

TRANSPORTATION: Paid by employer from point of hire to jobsite. Return transportation paid by employer, if you complete your contract.

TRAVEL PAY: You get paid while traveling, usually on an eight-hour-per-day basis.

INCOME TAX: The government allows exemptions under the "foreign residence" rule or "presence in a foreign country" rule. This is fully explained in the "JOB and OPPORTUNITY DIGEST".

ADVANCEMENT: Usually very good opportunities for advancement.

VACATION AND BONUS: Paid vacations. Generous bonuses paid by several companies upon completion of contract.

TRAVEL AND ADVENTURE: The thrill of being in fascinating, exotic, and exciting places and seeing the things you only dreamed about before.

A person who places his order with the respondents, accompanied by a remittance of \$3.00 or \$4.00, is sent a "Job and Opportunity Digest", a "Project Listings", and application forms which might be used to send to the firms set forth in the listing.

The "Job and Opportunity Digest" is a 28-page handbook and the title in the table of contents found therein is descriptive of the information contained. It reads:

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The "Project Listings", offered and received in evidence, is a 12-page booklet containing a list of firms to whom contracts have been awarded, and the type of work being done by each firm.

The purchaser does not receive any information of anyone who is offering any employment or the names of any companies who are seeking employees to work on projects in the United States or foreign countries. In the foreword of "Job and Opportunity Digest"

he reads: "National Employment Information Service IS NOT AN EMPLOYMENT AGENCY AND HAS NO CONNECTION WHATSOEVER WITH ANY OF THE FIRMS OR ORGANIZATIONS HEREIN LISTED."

By the use of the statements appearing in the aforesaid advertisements and letters sent to prospective purchasers, respondents represented, directly or by implication:

1. That numerous jobs are available in the various occupations set out in their advertisements and literature, both in the United States and in foreign countries.

2. That respondents have knowledge of available jobs in the various occupations set out in their advertisements and literature.

3. That information respecting employment opportunities is furnished free to persons requiring such information.

The aforesaid statements, representations, and implications arising therefrom were, and are, false, misleading and deceptive. In truth and in fact:

1. Jobs are seldom available in any occupation, either in the United States or in foreign countries, listed in respondents' advertisements and literature.

2. Respondents have no knowledge whatsoever of any job that may be available on any project.

3. There is no information concerning employment opportunities in the letter or literature which is sent free to those who request it. The information which purports to relate to such opportunities is set out in the publications for which a charge of \$3.00 or \$4.00 is made.

The use by respondents of the foregoing false and misleading statements, representations and implications, has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the public into the mistaken and erroneous belief that said statements, representations and implications were, and are, true and to induce the purchase of their publications because of such mistaken and erroneous belief.

The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitutes, unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents Samuel A. Cannon and Geraldine Cannon, individually and trading and doing business as National

Employment Information Service, or trading under any other name, their agents, representatives or employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of their publications, "Job and Opportunity Digest" and "Project Listings", or any similar publication, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication:

1. That are jobs available in the various occupations set out in their advertisements and literature.

2. That they have knowledge of available jobs in the various occupations set out in their advertisements and literature.

3. That information respecting employment opportunities is furnished free to persons requesting such information.

B. Using any advertisement which does not clearly and conspicuously disclose:

1. That respondents do not operate an employment agency.

2. That respondents are not offering employment.

C. Placing any advertisement for the publications in "Help Wanted", "Job Opportunities", or similar columns in newspapers or periodicals.

OPINION OF THE COMMISSION

By *SECRET. Commissioner:*

The complaint in this matter charges respondents with violation of Section 5 of the Federal Trade Commission Act. The hearing examiner in his initial decision held that the allegations of the complaint were sustained by the evidence and ordered respondents to cease and desist from the practices found to be unlawful. Respondent has appealed from this decision.

Respondents are engaged in the sale of publications which relate to the hiring of personnel by private concerns and the United States Government for overseas and domestic employment. Included in their literature is a publication entitled "Project Listings", which purports to set out various construction and development projects which have been undertaken in this country and abroad, together with names of the firms engaged in working on such projects.

In substance the complaint alleges that respondents, in order to induce the purchase of their publications, have falsely and deceptively represented that numerous jobs in various occupations are available on the listed projects, that they have knowledge of available jobs on such projects, that persons who purchase their publications and apply for jobs on the listed projects can expect to obtain

employment, and that information respecting employment opportunities is furnished free to persons requesting such information.

We will consider first respondents' arguments that they did not represent that jobs were available on the various projects listed in the aforementioned publication or that they had knowledge of available jobs. In contacting prospective job seekers respondents placed advertisements of the following type in numerous magazines and newspapers:

High Paying Jobs: Foreign, U.S.A. All trades. Travel paid. Information. Application forms write Dept 21N National, 1020 Broad Street, Newark, N.J.

Jobs . . . Earn High Pay . . . Men-Women . . . All Trades . . . Work in South America, the Islands, Europe, Canada or other foreign countries. Also U.S.A. Mechanics, truck drivers, laborers. office workers, engineers, etc. Companies pay fare if hired. Many benefits. Tax free earnings. Make and save a fortune. Application forms.

For free information write Department 202 National Employment Information, 1020 Broad Street, Newark, New Jersey.

In some instances these advertisements appeared in classified columns under such headings as "Help Wanted" and "Job Opportunities."

We think it clear from our own reading of these advertisements that respondents have not only represented that numerous jobs are available and that they possess information concerning jobs which would be of material assistance to a person seeking employment but that they are in some way connected with firms that are seeking employees or are themselves offering employment. The record discloses that the contact advertising created similar impressions in the minds of various witnesses who had purchased respondents' publications.

A form letter sent by respondents to persons answering the aforementioned advertising refers to "hundreds of opportunities" which arise in most job classifications every day and points out that lack of knowledge of where, how and when to take advantage of these opportunities may be the only obstacle in the path of the job seeker. The letter also notifies the reader that all of the required information, particularly with respect to employment on projects in foreign countries, is set forth in respondents' publications "Job & Opportunity Digest," "Project Listings" and "Application Forms." Except for the statement that respondents "do not function as an employment agency", which appears in the text thereof, the letter serves to enhance rather than correct the misconceptions created by the contact advertising.

The next question raised by the appeal is whether numerous job opportunities as advertised by respondents are in fact available to purchasers of respondents' publications. The evidence on this point includes the testimony of job seekers concerning their unsuccessful attempts to obtain employment with companies listed in respondents' literature and the testimony of representatives of these companies concerning the policies of the companies with respect to the hiring of employees. It appears from this testimony that it is virtually impossible for a nonskilled or semiskilled worker to obtain employment on an overseas project and that workers of this type needed for construction projects in the United States are hired locally at the site of the construction. It further appears that for the most part the companies ordinarily use their own skilled employees on both foreign and domestic projects. Publications prepared by the Chamber of Commerce of the United States and the United States Department of Commerce, which were introduced into evidence by respondents, also emphasize the difficulty encountered by both skilled and nonskilled workers in obtaining employment abroad. We are of the opinion, therefore, that the evidence clearly supports the allegation that respondents have falsely represented that numerous jobs are available on the various projects listed in their publications.

Respondents also take exception to the hearing examiner's ruling that they had not abandoned the practice of falsely representing that information respecting employment opportunities would be furnished free to persons requesting such information. They contend in this connection that their practice of using the words "free information" in advertising had been discontinued two or three years prior to the issuance of the complaint, not "approximately one year" as stated in the initial decision. We find no error in the hearing examiner's finding on this point nor in his ruling that there was no assurance that the practice would not be resumed.

The contention is also made by respondents that the initial decision does not comply with §3.21(b) of the Commission's Rules of Practice in that it does not contain the reasons or basis for the hearing examiner's conclusions. It is noted in this connection that the hearing examiner has failed to set forth the evidentiary basis for his conclusion that the representations made by respondents are misleading and deceptive. Moreover, certain of the conclusions which he has reached are not entirely accurate. We will therefore modify the initial decision by striking therefrom certain of the conclusions and substituting therefor our own findings and conclusions.

Respondents also object to the order to cease and desist contained in the initial decision, contending that it is unduly drastic and

not in the public interest. While we do not agree with the argument made by respondents we believe that the order should be modified for other reasons. Paragraph (B) of the order would require respondents to disclose in their advertisements that they do not operate an employment agency and that they are not offering employment. The complaint, however, does not allege that an affirmative disclosure of the type required by Paragraph (B) is necessary to prevent deception nor has any showing been made that respondents' publications cannot be advertised truthfully and nondeceptively without such disclosure.

The complaint does allege, however, and the record shows that respondents have falsely and deceptively represented that they have knowledge of available jobs and that persons purchasing their publications can expect to obtain employment. In view thereof, any order to be fully effective should prohibit respondents from using representations which create these erroneous impressions, including representations which may lead the reader to believe that respondents are offering employment or are operating an employment agency.

Respondents' appeal is denied and the initial decision, modified to conform with this opinion, will be adopted as the decision of the Commission.

FINAL ORDER

This matter having been heard by the Commission upon respondents' appeal from the hearing examiner's initial decision, and upon briefs and oral argument in support thereof and in opposition thereto; and the Commission having rendered its decision denying the appeal and directing modification of the decision:

It is ordered, That the initial decision be modified by striking therefrom the conclusions beginning on page 7 with the words "The purchaser does not receive" and ending on page 8 with the words "for which a charge of \$3.00 or \$4.00 is made" and substituting therefor the following:

Respondents have represented directly and by implication through use of their contact advertising and form letter that numerous jobs in various occupations are available, that they have knowledge of available jobs, that persons who purchase their publications and apply for jobs on projects listed therein can expect to obtain employment, and that information respecting employment opportunities is furnished free to persons requesting such information.

Representatives of five companies engaged in projects listed in respondents' publication "Project Listings" testified that their firms do not hire nonskilled or semiskilled workers in the United States

for projects located in foreign countries and that employees of this type needed for construction projects in this country are hired locally at the site of the construction. They also testified that these firms ordinarily use their own skilled employees on projects in the United States and in foreign countries. Persons who had purchased respondents' publications testified that they had made numerous attempts to obtain employment with companies listed in respondents' publication "Project Listings" but had been unsuccessful. Publications prepared by the Chamber of Commerce of the United States and the United States Department of Commerce emphasize the difficulty encountered by persons seeking employment with American firms in foreign countries and explain why such employment is difficult to obtain. One of the respondents admitted that her firm did not know of any specific jobs which were available on the various projects listed in the aforementioned publication and that the firm did not have any contact with the companies engaged in these projects. The testimony of this respondent also discloses that respondents do not know of specific jobs which are available with any company.

It appears from the foregoing evidence that workers for the various projects listed by respondents are for the most part hired locally, both in this country and abroad. Such jobs therefore would ordinarily not be available to the reader of respondents' advertising unless he happened to reside at the site of the project. Most of the projects listed are located outside of the United States or in Alaska or Hawaii. Consequently, it is most unlikely that a person can obtain employment by purchasing respondent's publications and making application for a job on any of the various projects listed therein. Respondents have no knowledge of any job that may be available on such projects or of any other available job. Respondents do not furnish free information respecting employment opportunities to persons requesting such information.

It is further ordered, That the following order be, and it hereby is, substituted for the order contained in the initial decision:

It is ordered, That respondents Samuel A. Cannon and Geraldine Cannon, individually and trading and doing business as National Employment Information Service, or trading under any other name, their agents, representatives or employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of their publications, "Job and Opportunity

Digest" and "Project Listings", or any similar publication, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing directly or by implication:

1. That they have knowledge of available jobs in any occupation or that numerous jobs are available on the projects listed in said publications.

2. That persons answering respondents' advertising or purchasing said publications may expect to obtain employment.

3. That information respecting employment opportunities is furnished free to persons requesting such information.

B. Placing any advertisement in "Help Wanted", "Job Opportunities", or similar columns in newspapers or periodicals, or representing in any manner that they are offering employment or are operating an employment agency.

It is further ordered, That the initial decision of the hearing examiner, as so modified, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondents 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.